ANGEL LLERA *v.* COMMISSIONER OF CORRECTION
(AC 35807)

Sheldon, Mullins and Foti, Js.

Argued September 8, 2014—officially released April 14, 2015

(Appeal from Superior Court, judicial district of Tolland, Hon. Joseph J. Purtill, judge trial referee.)

Justine F. Miller, assigned counsel, for the appellant (petitioner).

C. Robert Satti, Jr., supervisory assistant state's attorney, with whom, on the brief, were *John C. Smriga*, state's attorney, and *Craig P. Nowak*, senior assistant state's attorney, for the appellee (respondent).

Opinion

FOTI, J. The petitioner, Angel Llera, appeals following the granting of certification to appeal from the judgment of the habeas court denying his amended petition for a writ of habeas corpus. The petitioner claims that the habeas court improperly found that his trial counsel did not render ineffective assistance by failing to: (1) investigate or call a potential alibi witness; (2) attack the reliability of a statement given to police and testified to during a hearing on a motion to suppress; or (3) properly cross-examine the state's firearms expert to elicit exculpatory evidence. We affirm the judgment of the habeas court.

After a jury trial, the petitioner was convicted of murder with a firearm as a principal or accessory[1] in violation of General Statutes §§ 53a-54a (a) and 53-202k, three counts of assault in the first degree with a firearm in violation of General Statutes §§ 53a-59 (a) (5) and 53-202k, and carrying a pistol without a permit in violation of General Statutes § 29-35 (a). This court affirmed the conviction on direct appeal. See *State* v. *Llera*, 114 Conn. App. 337, 346, 969 A.2d 225 (2009). The following facts, taken from the decision in the direct appeal, are relevant in the present case.

At approximately 1:45 a.m. on "April 16, 2006, the [petitioner] and Samuel Walker were at Club Novella in Bridgeport. Also at Club Novella were Eric Ortiz, Tyrelle Noblin, Timothy White and Angela Tucker. Noblin testified that he observed the [petitioner] hand a gun to Walker immediately before Walker fired several gunshots. White, Tucker and Noblin were shot and injured, and Ortiz was shot and killed. The bullets were fired from the same nine millimeter [handgun].

"On April 19, 2006, the Bridgeport police arrested an individual named Roosevelt Jefferson on an unrelated narcotics charge. Jefferson had spoken with the [petitioner] in the [petitioner's] vehicle [a green Ford Taurus (Taurus)] two days after the shooting, and he testified against the [petitioner], hoping to receive leniency when he became eligible for parole. Jefferson testified that he saw the [petitioner] with a nine millimeter semiautomatic [Ruger handgun (Ruger)].[2] He also testified that the [petitioner] went everywhere with 'that type of gun.' While Jefferson was in the car, the [petitioner] removed the clip from the nine millimeter [Ruger] and placed the [Ruger] in a console behind his car radio. During their conversation, the [petitioner] told Jefferson that he, not Walker, had shot Ortiz in the face with his nine millimeter [Ruger] because of a gang related conflict and that he carried the gun because of an ongoing conflict. The [petitioner] also told Jefferson that he was going to the housing projects to speak with a female named Smurf, who was spreading rumors about him." (Footnotes omitted.) *State* v. *Llera*, supra, 114 Conn.

App. 339–40.

The habeas court found the following additional facts. Officers from the Bridgeport Police Department apprehended the petitioner several days after the Club Novella shooting while he was driving the Taurus in the Marina Village housing project. In the course of the petitioner's arrest, police located a .40 caliber semiautomatic Glock handgun (.40 caliber Glock) in a compartment hidden behind the Taurus' radio. A Ruger, however, was not recovered from the Taurus. Later, during a second search of the Taurus, conducted with the consent of Lucy Montoya, the petitioner's mother and the owner of the vehicle, the police found blood containing DNA profiles that matched those of White and Ortiz.

Following his arrest, the petitioner was charged with one count of murder with a firearm in connection with the death of Ortiz, three counts of assault in the first degree with a firearm in connection with the shootings of White, Tucker and Noblin, and one count of carrying a pistol without a permit. *State* v. *Llera*, supra, 114 Conn. App. 338–39. The petitioner was represented at trial by Attorney Barry Butler. After a jury trial, the petitioner was found guilty of all charges. The trial court rendered judgment in accordance with the jury verdict and sentenced the petitioner to a total effective term of sixty years incarceration. The petitioner appealed his conviction, which this court affirmed. Id., 339.

On January 29, 2010, the petitioner filed a petition for a writ of habeas corpus. In his third amended petition, the petitioner pleaded multiple claims of ineffective assistance of trial counsel and one count of prosecutorial impropriety. After a full hearing, the habeas court denied the petition. The habeas court concluded that the petitioner had failed to demonstrate that he had received ineffective assistance of trial counsel in any of the ways alleged in his petition and that there had been no prosecutorial impropriety at the trial. The petitioner was granted certification to appeal from the denial of his three claims of ineffective assistance of trial counsel. We address each claim in turn.[3]

Preliminarily, we set forth the standard of review and the law governing claims of ineffective assistance of counsel. "The habeas court is afforded broad discretion in making its factual findings, and those findings will not be disturbed unless they are clearly erroneous. . . . Historical facts constitute a recital of external events and the credibility of their narrators. . . . Accordingly, [t]he habeas judge, as the trier of facts, is the sole arbiter of the credibility of witnesses and the weight to be given to their testimony. . . . The application of the habeas court's factual findings to the pertinent legal standard, however, presents a mixed question of law and fact, which is subject to plenary review." (Citations omitted; internal quotation marks omitted.) *Anderson*

v. *Commissioner of Correction*, 313 Conn. 360, 375, 98 A.3d 23 (2014), cert. denied sub nom. *Anderson* v. *Semple*, U.S. (83 U.S.L.W. 3678, February 23, 2015).

"Furthermore, it is well established that [a] criminal defendant is constitutionally entitled to adequate and effective assistance of counsel at all critical stages of criminal proceedings. *Strickland* v. *Washington*, [466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)]. This right arises under the sixth and fourteenth amendments to the United States constitution and article first, § 8, of the Connecticut constitution. . . . As enunciated in *Strickland* v. *Washington*, supra, 687, this court has stated: It is axiomatic that the right to counsel is the right to the effective assistance of counsel. . . . A claim of ineffective assistance of counsel consists of two components: a performance prong and a prejudice prong. To satisfy the performance prong . . . the petitioner must demonstrate that his attorney's representation was not reasonably competent or within the range of competence displayed by lawyers with ordinary training and skill in the criminal law. . . . To satisfy the prejudice prong, a claimant must demonstrate that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. . . . [I]n order to demonstrate that counsel's deficient performance prejudiced his defense, the petitioner must establish that counsel's errors were so serious as to deprive the [petitioner] of . . . a trial whose result is reliable." (Citation omitted; internal quotation marks omitted.) *Anderson* v. *Commissioner of Correction*, supra, 313 Conn. 375–76. "Because both prongs of *Strickland* must be demonstrated for the petitioner to prevail, failure to prove either prong is fatal to an ineffective assistance claim." *Jefferson* v. *Commissioner of Correction*, 144 Conn. App. 767, 773, 73 A.3d 840, cert. denied, 310 Conn. 929, 78 A.3d 856 (2013).

I

In his first claim, the petitioner challenges the determination of the habeas court that the failure of Butler to investigate and call an alibi witness to testify at trial was not ineffective assistance of counsel. He claims that counsel's failure to investigate and call the petitioner's brother, Wilfredo Hostos, Jr., to testify constituted deficient performance because it prevented him from presenting an alibi defense. We disagree.

The following additional facts, as found by the habeas court, are relevant to this claim. Although the petitioner did not testify at his underlying criminal trial, he did testify during the habeas trial. During his testimony, the petitioner stated that, after getting out of work on the evening of the shooting, he took the Taurus to his uncle's garage for repair. He then picked up his girlfriend, Takena Jennings, and went to a nearby McDon-

ald's restaurant.[4] From there, they drove back to the house they shared with Hostos. The petitioner testified that Hostos arrived at the house around midnight. Thereafter, claimed the petitioner, while he and Hostos were playing video games, he received a phone call from Walker. In the call, Walker asked the petitioner if he could borrow the Taurus for the purpose of going out to a club. The petitioner agreed and left Hostos to go outside to give Walker the keys to the Taurus. After he did so, the petitioner claims that he returned inside the house and went directly to bed with Jennings.

The habeas court found that Butler had attempted, through his investigator, to contact Hostos. The investigator made numerous visits to Hostos' address, left business cards for him with requests that he call Butler, and even made numerous requests to Montoya, Hostos' mother, to bring Hostos in for an interview. The court further found that, although the petitioner wanted to call Hostos as a witness, he never told Butler that Hostos could support his alibi defense. Eventually, after numerous attempts to contact Hostos, Butler and the petitioner agreed together not to call Hostos as a witness due to his unwillingness to talk.

To establish that there was deficient performance by petitioner's counsel, "the petitioner must show that counsel's representation fell below an objective standard of reasonableness. . . . A reviewing court must view counsel's conduct with a strong presumption that it falls within the wide range of reasonable professional assistance." (Internal quotation marks omitted.) *Blake* v. *Commissioner of Correction*, 150 Conn. App. 692, 698, 91 A.3d 535, cert. denied, 312 Conn. 923, 94 A.3d 1202 (2014). "The range of competence demanded is reasonably competent, or within the range of competence displayed by lawyers with ordinary training and skill in the criminal law." (Internal quotation marks omitted.) *Greene* v. *Commissioner of Correction*, 123 Conn. App. 121, 127, cert. denied, 298 Conn. 929, 5 A.3d 489 (2010), cert. denied sub nom. *Greene* v. *Arnone*, U.S. , 131 S. Ct. 2925, 179 L. Ed. 2d 1248 (2011).

"A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. . . . [T]he [petitioner] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." (Internal quotation marks omitted.) *Toccaline* v. *Commissioner of Correction*, 80 Conn. App. 792, 798–99, 837 A.2d 849, cert. denied, 268 Conn. 907, 845 A.2d 413, cert. denied sub nom. *Toccaline* v. *Lantz*, 543 U.S. 854, 125 S. Ct. 301, 160 L. Ed. 2d 90 (2004). The habeas court concluded that Butler's decision not to pursue Hostos' testimony was a valid strategic decision in light of the weaknesses

in his proposed testimony and his reluctance to testify. We agree.

We initially note that "counsel need not track down each and every lead or personally investigate every evidentiary possibility before choosing a defense and developing it." (Internal quotation marks omitted.) *Gaines* v. *Commissioner of Correction*, 306 Conn. 664, 683, 51 A.3d 948 (2012). Butler's decision not to call Hostos as a witness was reasonable because Hostos refused to cooperate with Butler. "Defense counsel will be deemed ineffective only when it is shown that a defendant has informed his attorney of the existence of the witness and that the attorney, without a reasonable investigation and without adequate explanation, failed to call the witness at trial." (Internal quotation marks omitted.) Id., 681.

In the present case, we agree with the habeas court that defense counsel exerted as much effort to contact Hostos as could reasonably have been expected of him under the circumstances. Despite having no knowledge about the petitioner's assertion that Walker had borrowed the Taurus, Butler made multiple attempts to contact Hostos through his investigator and requested that Montoya bring Hostos in for an interview. That Hostos did not make any attempt to contact Butler, his brother's attorney, with possibly exonerating information, indicated an unwillingness on the part of either the petitioner or his family to expose Hostos to Butler, who could not reasonably have been expected to force him to cooperate.

Thus, although the petitioner and Hostos vigorously deny that Butler made any attempt to contact Hostos, the habeas court found Butler's testimony that he made repeated attempts to locate Hostos to be credible. See *Douros* v. *Commissioner of Correction*, 111 Conn. App. 525, 528–29, 929 A.2d 1041 (2008) (credibility of witnesses rests within sound discretion of habeas court). The habeas court concluded that Hostos was reluctant or unwilling to testify on the basis of Hostos' failure to contact Butler after repeated requests that he do so and his failure to appear after Butler requested that Montoya bring him in for an interview.

We conclude that the habeas court correctly determined that there was no deficiency in Butler's performance based on his failure to interview Hostos before trial or to call him as a witness at trial.

II

The petitioner next claims that the habeas court improperly concluded that Butler's failure to attack the reliability of Jefferson's tip during a hearing on the motion to suppress evidence found during a search of the Taurus was not ineffective assistance of counsel because such an attack would not have led to the granting of the motion. We agree with the conclusion of the

habeas court that the petitioner has not demonstrated that he suffered actual prejudice as a result of counsel's allegedly deficient performance.

The following additional facts are relevant to this claim. As part of his statement to police, Jefferson claimed that while he was in the petitioner's Taurus, the petitioner secreted his unloaded "nine Ruger," a nine millimeter pistol, in a hidden compartment behind the Taurus' car radio. On the basis of Jefferson's statement, Todd Toth, a detective with the Bridgeport Police Department, traced the ownership of the Taurus described by Jefferson to the petitioner's mother, Montoya. He then issued a "be on the lookout" for the vehicle.

Sergeant Brian Fitzgerald of the Bridgeport Police Department was informed by fellow Sergeant John Cummings that the petitioner's car had been spotted in Marina Village. Fitzgerald pulled up behind the vehicle and observed the petitioner inside. He then approached the vehicle on foot and ordered the petitioner to step out of the vehicle. Fitzgerald and Cummings located the .40 caliber Glock concealed in a compartment behind a loose radio. The petitioner was arrested, and Fitzgerald ordered that the Taurus be towed and impounded. After impounding the car, police conducted a second search which revealed blood containing DNA profiles that matched White and Ortiz.

Before the criminal trial, the petitioner filed a motion to suppress the evidence seized in both searches of the Taurus, along with all evidence derived from the searches, claiming that the searches were unreasonable in violation of the fourth and fourteenth amendments to the United States Constitution.[5] As part of their testimony during the hearing, both Toth and Fitzgerald were asked about how they came to suspect the petitioner of participating in the Club Novella shooting, particularly the receipt of Jefferson's tip about the petitioner's possession of the Ruger and his alleged admission that it was the murder weapon. Toth and Fitzgerald also were cross-examined about the manner in which they seized and searched the petitioner's car, finding the .40 caliber Glock inside. Toth did not reveal in his testimony, however, that Jefferson was under arrest at the time he told the police about the petitioner's possession of the alleged murder weapon, and Jefferson was not called by either party to testify at the suppression hearing.

It is undisputed that the police lacked a warrant to seize or to search the Taurus. A warrantless search of a vehicle is permissible if the police have probable cause to believe that the car contains contraband or evidence pertaining to a crime. *State* v. *Winfrey*, 302 Conn. 195, 201, 24 A.3d 1218 (2011). The petitioner argues that had Jefferson's arrest and resulting motivation for talking to the police been properly developed in evidence at

the hearing on the motion to suppress, either by calling Jefferson as a witness or by cross-examining Toth about his arrest, the trial court would have concluded that the police lacked probable cause to search the Taurus. The habeas court disagreed, concluding that the reliability of Jefferson's tip as to the petitioner's possession of the Ruger in the Taurus was sufficiently well established to support a finding of probable cause, regardless of his motivation for communicating with police, based upon the independent observations of the police, which strongly corroborated Jefferson's tip. The habeas court also found that the petitioner had suffered no prejudice as a result of Butler's failure to attack the reliability of Jefferson's statement by presenting evidence of his arrest at the suppression hearing. We agree with the habeas court.

The petitioner's assertion that counsel's failure to attack the reliability of Jefferson's tip by presenting evidence of his arrest constituted ineffective assistance of counsel hinges on the probable impact that such information would have had on the trial court's determination of probable cause. "Probable cause to search exists if: (1) there is probable cause to believe that the particular items sought to be seized are connected with criminal activity or will assist in a particular apprehension or conviction . . . and (2) there is probable cause to believe that the items sought to be seized will be found in the place to be searched. . . . *State* v. *Vincent*, 229 Conn. 164, 171, 640 A.2d 94 (1994). The determination of whether probable cause exists under the fourth amendment to the federal constitution, and under article first, §7, of our state constitution, is made pursuant to a totality of circumstances test. *Illinois* v. *Gates*, 462 U.S. 213, 231–32, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983); *State* v. *Barton*, 219 Conn. 529, 544, 594 A.2d 917 (1991). Under the *Gates* test, a court must examine all of the evidence relating to the issue of probable cause and, on the basis of that evidence, make a commonsense, practical determination of whether probable cause existed." (Internal quotation marks omitted.) *State* v. *Smith*, 257 Conn. 216, 223, 777 A.2d 182 (2001).

The case of *State* v. *Johnson*, 286 Conn. 427, 944 A.2d 297, cert. denied, 555 U.S. 883, 129 S. Ct. 236, 172 L. Ed. 2d 144 (2008), is instructive on the issue of assessing the reliability of an informant's tip for the purpose of establishing probable cause. As in the present case, *Johnson* involved an individual who, when arrested, offered information to police. Id., 430. Our Supreme Court in *Johnson* considered the custodial arrest and fact that the informant was not anonymous as indicia of the reliability of his tip, reasoning that the informant was aware that he "could expect adverse consequences if the information that he provided was erroneous." Id., 438. In addition, *Johnson* noted that "[p]artial corroboration of an informant's report by facts developed by police . . . is another way to establish the reliability

of an untested informant's tip . . . ." (Internal quotation marks omitted.) Id., 439. In the present case, Jefferson's description of the make and model of the petitioner's vehicle and the location of a hidden compartment behind the radio were corroborated by Cummings' observations of the petitioner's vehicle in Marina Village and his discovery of the hidden compartment. See id., 440 (informant's description of defendant and his activities confirmed by police surveillance).

On review, we agree with the habeas court that eliciting from Toth or Jefferson the information that Jefferson was under arrest at the time of his statement to police would not have affected the trial court's probable cause determination. The trial court, in deciding the motion to suppress, found support for its determination that probable cause existed in Jefferson's personal knowledge of the petitioner, his reported firsthand observation of the Ruger in the petitioner's possession, and his detailed description of the vehicle and its secret compartment. Personal knowledge of information and detailed descriptions of alleged criminal activity in a challenged tip are strong indicia of the tip's reliability for the purpose of establishing probable cause based upon it. See *State* v. *Smith*, supra, 257 Conn. 227.

Because the petitioner has not shown how Butler's failure to elicit information about Jefferson's arrest at the hearing on the motion to suppress would have resulted in the suppression of the fruits of the challenged search and seizure, we conclude that he was not prejudiced by any alleged error and, accordingly, cannot demonstrate ineffective assistance of counsel. See *Jefferson* v. *Commissioner of Correction*, supra, 144 Conn. App. 773.[6]

III

The petitioner last claims that the habeas court erred in holding that Butler did not render ineffective assistance of counsel by failing to cross-examine the state's firearms expert effectively.[7] Specifically, the petitioner criticizes Butler's failure to elicit evidence from the firearms expert that the Ruger that Jefferson had seen the petitioner secret in the Taurus could not have fired the nine millimeter bullets used in the shooting. After a close examination of the record, we conclude that the habeas court correctly found that counsel's challenged conduct did not constitute deficient performance.

The following additional facts are relevant to this claim. In preparation for the underlying criminal trial, the state's firearms expert, Marshall Robinson, drew up a list of possible manufacturers who produced weapons from which the nine millimeter bullets used in the shooting could have been fired. Although this list included fourteen different manufacturers, the manufacturer of the Ruger was not among them.[8] In the habeas trial, Robinson testified that, although his list was not

exhaustive, he knew that the bullets used in the shooting could not have been fired from the Ruger.

The habeas court noted that, during the criminal trial, Butler had conducted a very brief cross-examination of Robinson that focused solely on whether the .40 caliber Glock found in the Taurus could have fired the recovered nine millimeter bullets.[9] At no time during the criminal trial did Butler attempt to present proof that a Ruger, of the sort that Jefferson said the petitioner owned, was incapable of firing the nine millimeter bullets used in the shooting.

Butler explained at the habeas trial that he had received, as part of the state's pretrial disclosures, the criminal investigation report in which Robinson had presented his findings and the list of weapons from which the bullets could have been fired.[10] Butler explained, however, that he was less concerned about whether Jefferson's claimed observation of the Ruger in the petitioner's possession was correct than about limiting the jury's exposure to testimony about the .40 caliber Glock. He adopted a trial strategy of emphasizing that the .40 caliber Glock recovered in the Taurus was not in fact the murder weapon, and, thus, that the petitioner's alleged admission to Jefferson that he had shot Noblin with that handgun was a complete fabrication. Butler not only argued that the petitioner was not the shooter, but also that he was not even at the Club Novella when the shooting took place.

The habeas court found that counsel's failure to establish at trial that the Ruger described by Jefferson could not have fired the nine millimeter bullets used in the shooting did not constitute ineffective assistance. The habeas court stated two reasons for this conclusion. First, Butler's performance was not deficient, but rather reflected a strategic decision to reduce the amount of testimony about firearms. The only evidence that a specific kind of gun was used in the shooting was Jefferson's tip about the petitioner's admission that he had committed the crime with the handgun that Jefferson saw being secreted in the Taurus. The court concluded that Butler effectively undermined this claim by impeaching Jefferson and highlighting the difference between the weapon seized from the Taurus, the .40 caliber Glock, and the murder weapon.

Furthermore, the court noted that the contradiction between Jefferson's version of events based on the petitioner's alleged admission of the shooting and the otherwise unchallenged eyewitness testimony by Noblin that Walker was the shooter undermined the reliability of Jefferson's tip without needing specifically to prove that the Ruger could not have fired the nine millimeter bullets in question. On that basis, the court also found that the petitioner had not been prejudiced by Butler's chosen strategy for cross-examining the firearms expert.

The petitioner claims that the failure of counsel to elicit exculpatory testimony from Robinson about the Ruger was deficient performance, and that he was significantly prejudiced because the information in question would have resulted in discrediting evidence of the only other weapon the state could have tied to the petitioner that may have been capable of firing nine millimeter bullets. We agree with the habeas court that there was no ineffective representation.

"With respect to the performance component of the *Strickland* test, [t]o prove that his counsel's performance was deficient, the petitioner must demonstrate that trial counsel's representation fell below an objective standard of reasonableness. . . . Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the [petitioner] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Minor* v. *Commissioner of Correction*, 150 Conn. App. 756, 761, 92 A.3d 1008, cert. denied, 314 Conn. 903, 99 A.3d 1168 (2014).

As the habeas court noted, a Ruger was not recovered from the petitioner's car. Jefferson was the only witness to claim that the petitioner used a Ruger, and that it was stored in the petitioner's vehicle. Butler effectively countered this evidence by showing that the gun Jefferson observed may have been the .40 caliber Glock—which could not have fired the recovered nine millimeter bullets.

The viability of the Ruger as the murder weapon depended on the credibility of Jefferson's assertion that the petitioner possessed the Ruger. Butler, however, had already undermined the reliability of Jefferson's story, so much so that the habeas court specifically noted that Jefferson's testimony was "consistent with a person attempting to ingratiate himself with the authorities so as to improve his position with the court and probation." The petitioner has not provided any argument as to why Butler should have engaged in a strategy further attacking the credibility of a witness whose testimony was already highly suspect due to his impeachment on other grounds and, more importantly, the inconsistency of his testimony with that of Noblin, the only eyewitness as to the identity of the shooter.

"Notwithstanding our responsibility to examine the record scrupulously, it is well established that we may not substitute our judgment for that of the [jury] when it comes to evaluating the credibility of a witness. . . . It is the exclusive province of the trier of fact to weigh conflicting testimony and make determinations of credibility, crediting some, all or none of any given witness' testimony. . . . Questions of whether to believe or to

disbelieve a competent witness are beyond our review." (Internal quotation marks omitted.) *State* v. *DeMarco*, 311 Conn. 510, 519–520, 88 A.3d 491 (2014).

After having already effectively impeached Jefferson's credibility, Butler's decision not to attack his testimony further by eliciting testimony from Robinson regarding the Ruger was strategically sound. We agree with the habeas court that his neutralization of the impact of Jefferson's testimony by contrasting the .40 caliber Glock with the murder weapon, and through the impeachment of Jefferson's motives for testifying, was fully effective on its own, and as such his performance was not deficient.[11]

We have held, and the habeas court reiterated, that "[u]nless a [petitioner] makes both showings [of deficient performance and actual prejudice], it cannot be said that the conviction . . . resulted from a breakdown in the adversar[ial] process that renders the result unworkable. . . . Only if the petitioner succeeds in [this] herculean task will he receive a new trial." (Internal quotation marks omitted.) *Boyd* v. *Commissioner of Correction*, 130 Conn. App. 291, 295, 21 A.3d 969, cert. denied, 302 Conn. 926, 28 A.3d 337 (2011). The petitioner has not successfully demonstrated that Butler's performance was deficient, and consequently we find no error.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] "Since under our law both principals and accessories are treated as principals . . . if the evidence, taken in the light most favorable to sustaining the verdict, establishes that [the petitioner] committed the [crime] charged or did some act which forms . . . a part thereof the conviction must stand. . . . [T]he state is not required to prove whether the [petitioner] was a principal or an accessory." (Citation omitted; internal quotation marks omitted.) *State* v. *Llera*, 114 Conn. App. 337, 338 n.1, 969 A.2d 225 (2009); see also *State* v. *Hines*, 89 Conn. App. 440, 447, 873 A.2d 1042, cert. denied, 275 Conn. 904, 882 A.2d 678 (2005).

[2] Due to a transcript error in the record, the original facts recited in the direct appeal mistakenly referred to the Ruger identified by Jefferson as a "Luger." The habeas court noted the error and, although it had no impact on the outcome of the direct appeal, we have substituted the proper term for the purpose of clarity.

[3] The petitioner did not include in his petition for certification to appeal the habeas court's rejection of his claim of prosecutorial impropriety and does not brief that claim on appeal. As a result, we do not address it. *Stenner* v. *Commissioner of Correction*, 144 Conn. App. 371, 375, 71 A.3d 693, cert. denied, 310 Conn. 918, 76 A.3d 633 (2013).

[4] The petitioner and Butler originally planned to call Jennings as a witness for the defense. Allegedly, originally she was to testify as to the petitioner being asleep next to her at the time of the shooting. The habeas court, however, credited Butler's testimony, which noted that, as trial approached, Jennings' story significantly deviated and she became increasingly nervous about testifying. Butler testified that he and the petitioner agreed not to call Jennings.

[5] The petitioner only challenges the effectiveness of counsel in regards to the initial search and seizure of the Taurus. His claim, both before the habeas court and on appeal, is that had the first search and seizure been deemed unreasonable under the fourth and fourteenth amendments the evidence from the second search would have been excluded as fruit of the poisonous tree. See, e.g., *State* v. *Doyle*, 139 Conn. App. 367, 379, 55 A.3d 805 (2012), cert. denied, 307 Conn. 952, 58 A.3d 976 (2013).

[6] Moreover, during the habeas trial, the petitioner did not challenge any of the alternative justifications raised by the trial court in its memorandum of decision regarding the motion to suppress the search of his car. The trial court found three separate justifications for the search, one of which was that the police had probable cause to search the vehicle. The petitioner therefore cannot claim that he suffered any prejudice as a result of counsel's failure to challenge the evidentiary basis for the trial court's finding of probable cause to search the vehicle because he did not also challenge the alternative justifications found by the trial court. See *Harris* v. *Commissioner of Correction*, 134 Conn. App. 44, 54, 37 A.3d 802, cert. denied, 304 Conn. 919, 41 A.3d 306 (2012).

[7] Although the petitioner argued in his brief and during oral argument before this court that Butler rendered ineffective assistance of counsel by failing to cross-examine the state's firearms expert properly, we note that the petitioner in fact alleged in his petition and argued before the habeas court two interrelated acts that resulted in the alleged ineffective assistance at issue here; Butler failed to investigate allegedly exculpatory information provided by the state's firearms expert and failed to present that information through cross-examination.

[8] Those fourteen manufacturers, as listed in Robinson's report, were: "Beretta, Taurus, Intratec, Arcus, SWD Inc., Astra, Benelli, Walther, Sigarms, Steyr, Tanfoglio, Llama, Hi-Point, and Jennings/Bryco."

[9] The entirety of Robinson's cross-examination by Butler during the criminal trial, outside of introductory statements, was as follows:

"[Butler]: I think you just testified that a nine millimeter has to fire in a nine millimeter weapon. Is that correct to say?

"[Robinson]: Yes.

"[Butler]: All right. And that's because of the diameter of the barrel. Is that fair to say?

"[Robinson]: It's the bore diameter and the diameter of the bullet. Yes. There has to be an agreement.

"[Butler]: For instance, I wouldn't be able to take a .357 Magnum bullet and get it to fire in a nine millimeter [weapon]; right?

"[Robinson]: A .357 Magnum cartridge, no.

"[Butler]: Cartridge. Thank you. Are you familiar with a Glock .40 caliber weapon? Are you familiar with that particular weapon?

"[Robinson]: Yes.

"[Butler]: And I take it a nine millimeter cartridge and bullet is not going to fire through that weapon either?

"[Robinson]: No, it's not.

"[Butler]: No. Thank you, sir."

[10] Butler testified as follows on direct examination during the habeas trial in response to questions from counsel for the respondent, the Commissioner of Correction:

"[The Respondent's Counsel]: Now, you testified you reviewed Marshall Robinson's report?

"[Butler]: Yes.

"[The Respondent's Counsel]: About the types of firearms that could have been used to fire [the bullets recovered from the shooting]?

"[Butler]: Right, his report enumerates five or six or seven of them, but that's not an exhaustive list, in my understanding.

"[The Respondent's Counsel]: I just want to make sure the record's clear. I'm showing you [Robinson's criminal investigation report]. That the report you reviewed?

"[Butler]: Yes.

"[The Respondent's Counsel]: You had that?

"[Butler]: Yes.

"[The Respondent's Counsel]: In preparation of your trial?

"[Butler]: Yes.

"[The Respondent's Counsel]: Of [the petitioner]?

"[Butler]: Yes."

[11] As a result of our conclusion that Butler's performance was not deficient, we need not address the issue of whether the petitioner was actually prejudiced. See *Jefferson* v. *Commissioner of Correction*, supra, 144 Conn. App. 773.