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JAMES MITCHELL *v.* COMMISSIONER
OF CORRECTION
(AC 36120)

Sheldon, Keller and Bear, Js.

Argued February 6—officially released April 7, 2015

(Appeal from Superior Court, judicial district of
Tolland, Cobb, J.)

Mary H. Trainer, assigned counsel, for the appellant (petitioner).

Bruce R. Lockwood, senior assistant state's attorney, with whom, on the brief, were *Gail P. Hardy*, state's attorney, and *Marcia A. Pillsbury*, assistant state's attorney, for the appellee (respondent).

Opinion

KELLER, J. After the habeas court granted certification to appeal, the petitioner, James Mitchell, brought this appeal from the judgment of the habeas court denying his amended petition for a writ of habeas corpus. First, the petitioner claims that, although the court did not address the issue in its decision, the record reflects that, in connection with pretrial plea negotiations, his trial counsel rendered ineffective assistance by failing to advise him of the essential elements of the crimes with which he was charged. Second, the petitioner claims that the court improperly rejected his claim that the failure of his trial counsel to investigate certain videotape evidence adequately constituted ineffective assistance. We affirm the judgment of the habeas court.

The following procedural history underlies this appeal. In 2005, following a jury trial, the petitioner was convicted of attempt to commit murder in violation of General Statutes §§ 53a-49 (a), 53a-8 and 53a-54a, conspiracy to commit murder in violation of General Statutes §§ 53a-48 (a) and 53a-54a, kidnapping in the first degree in violation of General Statutes §§ 53a-8 and 53a-92 (a) (2) (A), conspiracy to commit kidnapping in the first degree in violation of General Statutes §§ 53a-48 and 53a-92 (a) (2) (A), sexual assault in the first degree in violation of General Statutes §§ 53a-8 and 53a-70 (a) (1), conspiracy to commit sexual assault in the first degree in violation of General Statutes §§ 53a-48 and 53a-70 (a) (1), assault in the first degree in violation of General Statutes §§ 53a-8 and 53a-59 (a) (5), conspiracy to commit assault in the first degree in violation of General Statutes §§ 53a-48 (a) and 53a-59 (a) (5), and criminal possession of a firearm in violation of General Statutes § 53a-217 (a) (1). The court imposed a total effective sentence of fifty-seven years imprisonment.

The petitioner appealed from the judgment of conviction to this court, which affirmed the judgment of the trial court. *State v. Mitchell*, 110 Conn. App. 305, 955 A.2d 84, cert. denied, 289 Conn. 946, 959 A.2d 1012 (2008). The facts underlying the conviction, as the jury reasonably could have found them, appear in this court's earlier decision: "On August 23, 2003, following an evening at a nightclub, the victim¹ was dropped off at a friend's house in East Hartford. Wanting to return home, and with her residence too distant to walk, the victim called the [petitioner] for a ride. The victim chose to call the [petitioner] because she knew that Denasha Sanders, the mother of one of the [petitioner's] children, had lived in the same building as the victim and that the [petitioner] was frequently in the vicinity. The [petitioner] and the victim's brother had had a prior confrontation concerning the fact that the victim's brother had dated Sanders. Shortly before August 23, the victim's brother and Sanders had moved to North Carolina with

the child of Sanders and the [petitioner].

“The [petitioner] arrived driving a gold Nissan Altima accompanied by another man, unknown to the victim at the time, but later identified as Travis Hampton. The victim agreed to go with the [petitioner] and Hampton to downtown Hartford to get something to eat. Upon leaving a restaurant, the [petitioner] became violent with the victim, striking her with his cell phone and demanding to know the location of the victim’s brother. Out of fear that the [petitioner] would harm her, the victim lied to the [petitioner] and told him that her brother was at her grandfather’s house. The victim attempted to leave the car, but the [petitioner] pulled her by the hair and locked the doors. During this time, Hampton remained in the backseat of the vehicle.

“The [petitioner] subsequently determined that the victim’s brother was not at her grandfather’s house. He drove the victim and Hampton to his mother’s house in Hartford and ordered the victim out of the car. The victim briefly complied and then returned to the vehicle while the [petitioner] and Hampton entered the house. When the [petitioner] and Hampton returned, the three proceeded to leave the area by car. The [petitioner] apologized to the victim for hitting her and offered her marijuana, which she accepted. Instead of driving the victim home, however, the [petitioner] drove to Market Street in Hartford and parked his vehicle. The [petitioner] told the victim he wanted to have sex with her and proposed that they go to a hotel or to Sanders’ house.

“The victim refused and got out of the car, intending to walk home. The [petitioner] produced a shotgun, which he gave to Hampton, who pointed the weapon at the victim’s face. The [petitioner] and Hampton told the victim to remove her pants. The victim testified that the [petitioner] raped her vaginally from behind. When the [petitioner] was finished, he forced the victim to perform fellatio on Hampton. The victim complied briefly, and Hampton proceeded to rape her vaginally, while the [petitioner] regained and held the shotgun. The victim grabbed her pants and yelled at the [petitioner] to let her leave. The [petitioner] told the victim she could get into a nearby dumpster or run. As the victim attempted to run, the [petitioner] shot her in the side of the stomach. The victim continued her attempt to run away, followed by Hampton, who now had the shotgun. The [petitioner] pursued the victim in the car and blocked her path. Hampton shot the victim again. He and the [petitioner] then left the scene. Shortly thereafter, the [petitioner] and Hampton returned briefly and then left the area again. The victim dragged herself to the street, where she was found by a passing driver. The police and paramedics were summoned, and the victim was taken to Hartford Hospital for treatment.” (Footnote in original.) Id., 308–10.

In 2010, the petitioner filed a petition for a writ of habeas corpus. By way of an amended petition, filed on June 11, 2012, the petitioner alleged that his trial counsel (Kirstin B. Coffin, Ramona Mercado Espinoza, and David Thompson) had performed deficiently in a variety of different ways and that there was a reasonable probability that, but for such deficient performance, the outcome of his trial would have been different. In his prayer for relief, the petitioner requested, inter alia, that the habeas court vacate his conviction and grant him a new trial. On August 1, 2013, the court issued a memorandum of decision in which it addressed the petitioner's claims concerning ineffective representation in four areas: (1) advising the petitioner relative to the state's plea offer, (2) conducting pretrial investigation, (3) examining witnesses and objecting to evidence, and (4) presenting closing argument. The court denied the amended petition. This appeal followed. Additional facts will be discussed as necessary.

I

First, the petitioner claims that, although the court did not address the issue in its decision, the record reflects that, in connection with pretrial plea negotiations, his trial counsel rendered ineffective assistance by failing to advise him of the essential elements of the crimes with which he was charged. Specifically, the petitioner asserts that his trial counsel failed to advise him adequately "regarding the elements required [for the state] to prove accessory liability, conspiracy liability, and liability under *Pinkerton* [v. *United States*, 328 U.S. 640, 66 S. Ct. 1180, 90 L. Ed. 1489 (1946)]." We do not reach the merits of this claim.

As the petitioner correctly acknowledges in his brief before this court, the habeas court did not address this claim in its decision. The petitioner asserts that "the record is sufficient for [this] court on its own to find ineffective assistance of counsel and resulting prejudice."

In his amended petition for a writ of habeas corpus, the petitioner alleged that his trial counsel "failed to adequately and effectively . . . advise [the] petitioner as to the applicable law, prior to the petitioner's decision to be tried to a jury, which prejudiced the petitioner in not permitting him to make a knowing, intelligent, and voluntary decision" At the conclusion of the hearing on the petition, the court discussed with the petitioner's attorney the importance of posttrial briefs to bring into focus the claims on which the petitioner relied. The court stated that it was unsure of the nature of some of the claims broadly alleged in the petition and stressed that it would consider only those claims that clearly were addressed in the petitioner's posttrial brief. The present claim was not distinctly raised in the petitioner's lengthy posttrial brief and was not

addressed by the court in its decision denying the petition. The petitioner thus abandoned the claim as a result of his failure to brief it before the habeas court. See, e.g., *Jackson v. Commissioner of Correction*, 149 Conn. App. 681, 687–88, 89 A.3d 426, cert. granted on other grounds, 313 Conn. 901, 96 A.3d 558 (2014); *Raynor v. Commissioner of Correction*, 117 Conn. App. 788, 796–97, 981 A.2d 517 (2009), cert. denied, 294 Conn. 926, 986 A.2d 1053 (2010). The record does not reflect that the petitioner attempted to amend his posttrial brief or otherwise seek to obtain a ruling on this claim.

It is well settled that “this court is not bound to consider any claimed error unless it appears on the record that the question was distinctly raised at trial and was ruled upon and decided by the court adversely to the appellant’s claim.” (Internal quotation marks omitted.) *Shelton v. Commissioner of Correction*, 116 Conn. App. 867, 873, 977 A.2d 714, cert. denied, 293 Conn. 936, 981 A.2d 1080 (2009); see also *Ajadi v. Commissioner of Correction*, 280 Conn. 514, 550, 911 A.2d 712 (2006) (same); Practice Book § 60-5 (reviewing court not bound to consider claim unless it was distinctly raised at trial or arose subsequent to trial). It is equally well settled that “a party cannot submit a case to the trial court on one theory and then seek a reversal in the reviewing court on another.” *In re James L.*, 55 Conn. App. 336, 348, 738 A.2d 749, cert. denied, 252 Conn. 907, 743 A.2d 618 (1999).

We decline to address the present claim because the petitioner abandoned it by his failure to address the claim in his posttrial brief, and it was not ruled on by the habeas court in a manner adverse to the petitioner.

II

Second, the petitioner claims that the court improperly rejected his claim that the failure of his trial counsel to investigate certain videotape evidence adequately constituted ineffective assistance. We disagree.

The following additional facts are relevant to this claim. One of the grounds set forth in the petitioner’s petition for a writ of habeas corpus was that “[t]rial counsel failed to seek a professional evaluation of videotape taken from security cameras at the time of the incident, and admitted as evidence, to determine whether exculpatory evidence could be obtained therefrom”

At the petitioner’s criminal trial, the victim testified in relevant part that the petitioner sexually assaulted her near a gas station in Hartford, and that he then compelled her to perform a sex act on Hampton. She testified that, as she ran from the location where this had occurred, the petitioner shot her in the stomach. Then, according to the victim, Hampton chased her on foot and shot her several times. Meanwhile, the petitioner pursued her in his automobile. The victim testi-

fied that she hid behind a tree, Hampton shot her in the arm, and she pretended to be dead. She stated that, at this time, the petitioner was standing outside of his automobile and told Hampton, "Make sure that bitch is dead." The victim testified that the two men drove off, but that they returned to determine if she was dead. The victim testified that, before they left the scene, she held her breath and pretended to be dead.

Additionally, the state presented testimony from an eyewitness, security guard Charles Oliver, who was on duty at a private business located on Market Street at the time of the events at issue. Oliver testified that after he heard the sound of gunshots, he observed a person running from the vicinity of the nearby gas station and that such person was being followed by an automobile. He testified that gunshots appeared to have been fired from that automobile, and that it stopped near the victim before leaving the scene. Another eyewitness, security guard Joshua Maize, who was on duty with Oliver at the time of the events at issue, testified that, after hearing gunshots from the area near the gas station, he saw a person staggering toward the gas station. Maize testified that he observed an automobile involved in these events, and that he observed a person get into the driver's seat and drive away from the scene. Maize testified that, shortly thereafter, the automobile returned to the scene, at which time the driver briefly exited the automobile before driving off.

At the petitioner's criminal trial, the state presented videotape evidence that was captured by security cameras that were located at a business on Market Street. This evidence came in the form of videotape footage that was generated at the time of the criminal activity at issue, as well as still frames taken from that footage. The state also presented testimony about the content of these images. The state used this evidence to bolster the victim's testimony concerning the events that occurred after she ran away from the immediate vicinity of the gas station. Notably, Alfred Henderson, a Hartford police detective, testified as to his belief that the images depicted the automobile involved in the crime as it was traveling and stopped on Market Street. Henderson testified that the images depicted the automobile come to a stop, the flash of a gunshot, and an individual exiting the front passenger door of the automobile.

At the habeas trial, the petitioner presented testimony from Lindsay Hawk, an employee of Angelsea Critical Evidence, a company that analyzes recorded images such as the videotape images at issue in the present claim. Hawk testified that, at the state's request prior to the petitioner's criminal trial, she had analyzed this videotape evidence. She testified that the security cameras at issue were activated by motion. Among her other observations, Hawk testified that one of the frames depicted what appeared to be a person at the passenger

door of an automobile, but that it would be “a wild guess” to describe what he or she was wearing. Due to the poor resolution of the evidence, Hawk testified that the only thing she could say for certain was that the videotape images depicted “a human being” standing outside the passenger door of an automobile. Also, Hawk testified that, shortly thereafter, the videotape appeared to depict a white flash that was consistent with a “muzzle blast.” Hawk testified that images captured minutes later depicted a police car arriving at the scene. Hawk testified that, to her knowledge, her company had not been contacted by any of the attorneys who had represented the petitioner in his criminal trial. Hawk was not called as a witness during the petitioner’s criminal trial.

At the habeas trial, the petitioner also presented testimony from Michael Fitzpatrick, an attorney. Fitzpatrick opined that the videotape did not capture all of the relevant events at issue and that it did not demonstrate who exited the automobile depicted therein. Fitzpatrick, however, opined that it would have been “[e]xtremely important” for the petitioner’s trial counsel to have analyzed the videotape evidence prior to trial and that they should have reviewed this evidence with the petitioner during consultations as to whether he should proceed to trial or accept a plea offer. Fitzpatrick also opined that the videotape evidence was detrimental to the defense because, even if it did not definitively demonstrate that the petitioner was the shooter depicted therein, it supported a finding that he bore criminal liability for the shooting.

With regard to the issue of the videotape evidence, Coffin testified that, on more than one occasion prior to trial, she viewed the videotape footage at the office of the state’s attorney and that, on one occasion prior to trial, she viewed portions of the videotape footage at the offices of the company that operated the security cameras. Also, she testified that, prior to trial, she contacted Angelsea Critical Evidence, at which time she learned that it would be very costly to retain their services. Coffin testified that she had believed that the defense may have had a problem funding such services. When asked whether she had considered petitioning the court for additional investigative expenses, Coffin testified that she had petitioned the court to obtain funds to retain the services of a toxicologist to determine the effect, if any, of drugs on the victim at the time of the events at issue, but that she was unsure if she had considered seeking funds to investigate the videotape evidence because she believed that she and the petitioner’s other attorneys were capable of reviewing such evidence without the assistance of others. Essentially, Coffin testified that her assessment of the videotape footage was that it was not conclusive as to the actors depicted therein and that it “didn’t tell us a clear story [as to] what happened that night.”

In his posttrial brief before the habeas court, the petitioner argued that the evidence demonstrated that his trial attorneys did not request their own copy of the videotape until the eve of trial and had failed to employ Hawk to review the videotape on behalf of the defense. With regard to the issue of prejudice, the petitioner asserted that Hawk's analysis of the videotape at the habeas trial "revealed a crucial piece of exculpatory evidence, that the petitioner, always claimed by the state at trial to be the driver of the vehicle involved in the incident, did not exit the vehicle to view, and then shoot the victim on Market Street, as the victim testified to, but that the passenger, Hampton, clearly did so." The petitioner also argued that, insofar as Hawk's analysis demonstrated that the driver of the automobile involved in the crimes had not exited the automobile, it undermined the testimony of the victim and Maize, and supported his theory of defense that Hampton was the passenger of the automobile at issue, who had exited the automobile and shot the victim.

With regard to the petitioner's claim that he had received ineffective assistance as a result of the failure of his trial counsel to obtain an expert evaluation of the videotape evidence, the court found as follows: "The petitioner claims that the pretrial investigation by his attorneys was deficient in that they failed to properly obtain copies of videotapes of the incident and have them slowed down or produced in frame by frame photos by an expert. Had they done so, the petitioner claims, they would have discovered exculpatory evidence showing that it was the passenger, not the driver, who exited the vehicle and shot the victim. Because the petitioner asserts that he was not the passenger, he did not shoot the victim. The court finds that the petitioner has failed to prove this claim.

"The reasonableness of an investigation must be evaluated not through hindsight but from the perspective of the attorney when he was conducting it. . . . The burden to demonstrate what benefit additional investigation would have revealed is on the petitioner. . . .

"At the habeas trial, the petitioner introduced the testimony of an expert who slowed down one of the videotapes. While the tape showed the passenger of the vehicle exiting the car, it was impossible to determine the identity of that person. At his criminal trial, the petitioner's strategy was to show that he was not the shooter and that he had no prior knowledge that his codefendant intended to shoot the victim. Contrary to the petitioner's contention, the videotape and still frames derived from them do not exculpate him. The victim testified that the petitioner shot her in the stomach and then pursued her in his car while the codefendant pursued her by foot and shot her several more times. She fell and pretended to be dead. The petitioner and codefendant then left but returned shortly there-

after, at which point someone got out of the car, presumably to check on the victim, before the car left again.

“The videotape and still frames therefrom do not show the entire incident. They only show a portion of it, and most importantly, they were before the jury. The jury watched the videotape and saw the still frames taken therefrom. It also heard testimony describing what was depicted on them, including testimony from Detective Alfred Henderson, who testified that one of the still frames showed the passenger getting out of the car. In other words, the record reveals that the very evidence that the petitioner faults his attorneys for failing to discover and present to the jury was in fact presented to the jury, albeit by the state. Accordingly, the petitioner did not suffer any prejudice from his trial attorneys’ alleged deficient performance.” (Citation omitted; internal quotation marks omitted.)

The petitioner raises a number of arguments before this court. First, the petitioner argues that the habeas court improperly determined that the videotape and still frames did not depict the entire incident involving the victim. Second, the petitioner argues that the court mischaracterized Henderson’s trial testimony when it found that Henderson had testified at trial that one of the still frames showed “the passenger getting out of the car.” Third, the petitioner argues that “[t]he viewing of the tape and the still frames revealed a crucial piece of exculpatory evidence—namely, that the petitioner was the driver of the vehicle, as the state has always claimed, and that he did not exit the vehicle. Also, contrary to the victim’s testimony, the stills showed that the petitioner did not exit the vehicle to view or shoot her on Market Street. These stills would have also refuted the security guard, Joshua Maize, who testified at the criminal trial that the driver exited the vehicle.”

“We begin our analysis with the applicable standard of review and the law governing ineffective assistance of counsel claims. 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. . . .

“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. . . . 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*, [466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)], 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. . . . In addition, in 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 fair trial, a trial whose result is reliable. . . .

"In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. . . . Instead, *Strickland* asks whether it is reasonably likely the result would have been different. . . . This does not require a showing that counsel's actions more likely than not altered the outcome, but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters only in the rarest case. . . . The likelihood of a different result must be substantial, not just conceivable. . . .

"Moreover, [i]n making this determination, a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or the jury. . . . Some errors will have had a pervasive effect on the inferences to be drawn from the evidence, altering the entire evidentiary picture, and some will have had an isolated, trivial effect. Moreover, a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support. . . . [T]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. . . . The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." (Citations omitted; internal quotation marks omitted.) *Anderson v. Commissioner of Correction*, 313 Conn. 360, 375–77, 98 A.3d 23 (2014), cert. denied sub nom. *Anderson v. Semple*, U.S. (80 U.S.L.W. 3678, February 23, 2015).

First, the petitioner argues that the court improperly found that the videotape and still frames do not show the entire incident. This finding was well supported by the evidence that significant portions of the incident, including those portions that occurred in the immediate vicinity of the gas station, plainly were not depicted in the videotape. As described previously in this opinion, the victim testified that the petitioner sexually assaulted and shot her in the vicinity of the gas station, which, in relation to the security cameras at issue, was on the opposite side of Market Street. Additionally, at the habeas trial, the deficiency of the videotape evidence was brought into focus by Fitzpatrick, who testified that “[the] videotape . . . does not capture the entire episode,” and the petitioner, who agreed that it was possible that the security cameras did not capture all of the relevant events.

Second, the petitioner argues that the court mischaracterized Henderson’s trial testimony when it found that Henderson had testified that one of the still frames showed “the passenger getting out of the car.” The petitioner’s argument is based on a purely technical reading of Henderson’s trial testimony, during which he testified that one of the still frames showed that “[a]n individual is getting out of that front passenger door of that vehicle.” The court’s finding properly was based on Henderson’s trial testimony and the reasonable inferences to be drawn therefrom. Accordingly, the petitioner has not demonstrated that the court’s finding in this regard was clearly erroneous.

Finally, the petitioner disagrees with the court’s general conclusion that an expert evaluation of the videotape evidence was unlikely to have affected the outcome of his trial. The petitioner’s argument concerning *Strickland*’s prejudice prong is based on his assertion that an expert evaluation would have placed exculpatory evidence in the hands of the jury that demonstrated that he was the driver of the automobile depicted in the videotape and that, contrary to the testimony of the victim and Maize, he never exited the automobile on Market Street.

The court properly rejected these arguments for several reasons. As stated previously in this opinion, the evidence in its entirety demonstrated that the security cameras were positioned in such a manner that they captured images of only *some* of the events that transpired between the petitioner and the victim on the night in question—the cameras were not positioned to capture images of events that occurred in the immediate vicinity of the gas station that was located across the street. The petitioner did not demonstrate that an expert evaluation of the videotape in any way cast doubt on the victim’s testimony that the petitioner had sexually assaulted her and shot her in the immediate vicinity of the gas station. Also, the evidence amply demonstrated

that the poor resolution of the videotape rendered it useless as a means of determining the *identity* of the persons depicted therein. Furthermore, as the court aptly observed, the videotape and several still frames taken therefrom were admitted as exhibits before the jury, which was tasked with reviewing all of the evidence. The jury heard the petitioner's theory of the case, which was that, although he was driving the automobile at issue, Hampton was the shooter and he was shocked at Hampton's conduct. Although one of the petitioner's trial attorneys argued during closing argument that "the video shows nothing," the jury heard Henderson's trial testimony that the videotape appeared to depict a person exiting the passenger door of the automobile involved in the crimes. This interpretation of the evidence, which tended to implicate the passenger as the shooter, is what the petitioner alleges was missing from his criminal trial and is the evidence on which he bases his claim of ineffective assistance. For these reasons, the petitioner has failed to establish that Hawk's evaluation of the videotape, in which she could indicate only that the videotape depicted a "human being" standing outside of the passenger door of the automobile at issue, likely would have led the trier of fact to a different outcome.

Additionally, insofar as an evaluation of prejudice essentially asks whether deficient performance likely affected the outcome of the trial, we must take into consideration the strength of the state's case against the petitioner to determine what effect the lack of an expert evaluation can be said to have had. With regard to this issue, the court stated: "The state had a strong case against the petitioner, who was charged with committing the substantive crimes as either a principal, accessory or on the basis of vicarious liability under the *Pinkerton* doctrine. . . . Shortly after coming out of surgery, the victim told the police what happened to her and identified the petitioner, whom she knew prior to the incident, as one of the perpetrators. Her identification of the petitioner was unequivocal. The petitioner admitted to being present during the incident but denied any criminal involvement therein, shifting all the blame to his codefendant. The victim's version of events was corroborated in part by the testimony of two eyewitnesses, who heard gunshots and saw a car in pursuit of someone on foot, and by surveillance videotapes, which had captured a portion of the incident. The petitioner has not shown that, but for any of defense counsel's alleged errors, there is a reasonable probability that the outcome of his criminal trial would have been different." (Citation omitted.) The court's analysis in this regard is sound. In addition to these observations made by the court concerning the strength of the state's case, the respondent, the Commissioner of Correction, in his analysis of the present claim, correctly observes that the jury also heard evidence on which it reasonably

could have found that the petitioner had a motive for committing violent crimes against the victim, and that the petitioner initially lied to the police concerning his whereabouts at the time of the incident. Finally, the state presented compelling evidence, in the form of a letter that the petitioner wrote to his girlfriend while he was incarcerated and awaiting trial in this case, that evinced his plans to flee the state and, thus, tended to demonstrate his consciousness of guilt. *State v. Mitchell*, supra, 110 Conn. App. 323.

Our evaluation of the evidence on which the petitioner bases his claim of ineffective representation as well as our evaluation of the strength of the state's case leads us to conclude that the petitioner has not satisfied his burden of demonstrating that the claimed deficiency in the performance of his trial counsel was prejudicial under *Strickland*.² Accordingly, we conclude that the court properly denied his petition for a writ of habeas corpus.

The judgment is affirmed.

In this opinion the other judges concurred.

¹ In accordance with our policy of protecting the privacy interests of the victims of sexual abuse, we decline to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

² Because we resolve the petitioner's claim under *Strickland's* prejudice prong, we need not consider whether the petitioner demonstrated that his trial counsel performed deficiently.
