

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs August 15, 2023

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HERSHEL WAYNE GRIMES v. STATE OF TENNESSEE

Appeal from the Circuit Court for Grundy County
No. 4006 **Curtis Smith, Judge**

No. M2022-01020-CCA-R3-PC

A Grundy County jury convicted the Petitioner, Hershel Wayne Grimes, of first degree murder, and the trial court sentenced him to life in prison. This court affirmed his conviction on appeal. *State v. Grimes*, No. M2000-01531-CCA-R3-CD, 2007 WL 1670188, at *1 (Tenn. Crim. App. June 8, 2007), *perm. app. denied* (Tenn. Nov. 13, 2007). The Petitioner filed a timely petition for post-conviction relief, which he later amended, that alleged that he had received the ineffective assistance of counsel and that the State had suppressed exculpatory evidence. After a hearing, the post-conviction court denied the petition. On appeal, the Petitioner contends that the post-conviction court erred when it denied his petition because: (1) trial counsel was ineffective for not calling as witnesses Steven Groves, Tracy Marie Pressley, Billy Ray Griffith, and Billy Eugene Caldwell; and (2) the State failed to disclose exculpatory information in the form of a letter written by Special Agent Larry Davis to U.S. District Judge Sparks. After review, we affirm the post-conviction court’s judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and J. ROSS DYER, JJ., joined.

Samuel F. Hudson, Dunlap, Tennessee, for the appellant, Hershel Wayne Grimes.

Jonathan Skrmetti, Attorney General and Reporter; Mary Elizabeth King, Assistant Attorney General; Courtney C. Lynch, District Attorney General; and Steven H. Strain, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

A. Trial

This case arises from the first degree murder of William Doyle Pressley, for which a jury convicted the Petitioner. On direct appeal, we summarized the facts presented at trial as follows¹: Sharon Pressley Lynch (“Sharon Pressley”), the victim’s wife, testified that the victim was killed in December of 1998. Prior to his murder, the victim met and befriended the Petitioner while the two worked together. During the course of their friendship, the Petitioner married Patty Grimes, and the two families became close. The victim and the Petitioner moved employment and both began separate construction businesses. In 1997, Sharon Pressley began working as the Petitioner’s bookkeeper for his construction business.

The Petitioner would sometimes come to the home Sharon Pressley shared with the victim when the victim was not present, which upset the victim. In the summer of 1998, Sharon Pressley told the Petitioner she would no longer be keeping his books, which she said was, in part, based upon the victim’s feelings on the matter, and the Petitioner asked her not to quit. Sharon Pressley discussed it with the victim and felt that, because the Petitioner stopped by their home so frequently, it looked inappropriate. She, therefore, returned his books to him and attempted to give him back his work computer. In August of 1998, Sharon Pressley and the victim moved to Monteagle and were preparing to build a new house. At this same time, the Petitioner separated from his wife, and he still came to Sharon Pressley’s home frequently when she was alone. She felt uncomfortable. If she did not answer the door when the Petitioner came by, he would continue to bang on the door or her window. She recalled that, one time, she got scared because she did not answer the door and the Defendant was standing at the back door saying, “Why are you doing this to me? Please let me in.” Sharon Pressley said that she would eventually answer the door so that he would stop and leave. Sharon Pressley testified that, during the time before her husband was killed, the Petitioner made no sexual advances towards her, and they were not romantically involved.

When the victim was killed, December 13, 1998, the Petitioner was staying at the Budget Host Inn in Monteagle. The victim repeatedly offered for the Petitioner to come to their home for meals rather than sit alone in a motel. On the day before the victim disappeared, the Petitioner came to the Sharon Pressley’s house while she and the victim were finishing supper. Sharon Pressley offered the Petitioner some supper, which he ate. The Petitioner and the victim discussed hunting, which they had done together in the past. Before he left, the Petitioner secretly showed Sharon Pressley a note, that he then hid from her. She later learned that the note asked her to go to the Petitioner’s motel room the following day after the victim left to go hunting.

¹In order to abbreviate the facts, they are not quoted directly from our opinion. All facts are taken from *State v. Grimes*, No. M2000-01531-CCA-R3-CD, 2007 WL 1670188, at *1 (Tenn. Crim. App. June 8, 2007), *perm. app. denied* (Tenn. Nov. 13, 2007).

The next morning, Sharon Pressley took her husband to his hunting spot. While it was the last day of “muzzle loader” season, the victim did not bring his “muzzle loader” gun but brought a 270 high powered rifle. Sharon Pressley questioned him about this and about the fact that he was not wearing his orange vest, and the victim said that he was not going to need his vest. Sharon Pressley said that, after dropping her husband off, she went back to her home. She sat there for a few moments because she did not want to go to the Petitioner’s motel room, but she knew that if she did not he would come to her house. Therefore, she drove to the motel but did not see the Petitioner’s car. After driving through Monteagle, she then circled back by the room.

The Petitioner came up to her car window, and she opened the door. The Petitioner got in, and he seemed to be “very emotional.” Sharon Pressley asked the Petitioner what was the matter, and the Petitioner asked her to “[j]ust drive, just get out of here.” She started driving, and the Petitioner told her that he went into the woods where the victim was hunting. He saw the victim start climbing a tree, and the victim looked over at him and raised his gun like he was going to shoot. The Petitioner said he had no choice but to shoot the victim. The Petitioner told her that he walked close enough to the victim to tell that he was not moving, and he saw that the victim’s gun was sticking in the ground near the tree that was close to his body. He then told Sharon Pressley that she should not tell anyone about this and that she should take this information “to the grave with [her].” She said that, at this point, she did not actually believe the Petitioner.

Sharon Pressley went to pick up her husband where she was supposed to meet him, near a small clump of trees near an Exxon station. Her husband did not arrive. He had previously told her that, if he did not show up at their designated meeting area, she should drive around for fifteen minutes and come back to the designated spot. Sharon Pressley said that she did this all evening. She also called her daughter and left several messages telling her daughter that the victim had not come out of the woods. She took her son and her son-in-law to the spot where she had dropped the victim off, and they looked for him but did not find him.

Sharon Pressley and her daughter went to the police department and reported that the victim had not come out of the woods. She did not tell the police that the Petitioner said that he had shot the victim. She said she did not say anything because the Petitioner had told her not to, and she was scared of him. A search was organized, and the victim’s body was found the next day. Sharon Pressley said that she was interviewed by Agent Davis, an agent with the Tennessee Bureau of Investigations (“TBI”), but she did not tell him what the Petitioner had told her and she never told him that she had gone by the Petitioner’s motel. She was advised to, and did, hire a criminal defense attorney to represent her.

Sharon Pressley's next interaction with the Petitioner came after the victim's funeral when the Petitioner helped her by putting in a dead bolt lock on her door. He did not mention the victim's death at that time. The Petitioner still came by her home, and he also gave her money, between twelve and fifteen thousand dollars, telling her that it was okay if she could not repay him. In October or November, a few months after her husband's death, Sharon Pressley was intimate with the Petitioner on three different occasions. She said that, shortly thereafter, she moved to Texas because she felt like the Petitioner was controlling her and because she met a man, Steve Groves, through a Christian pen pal website. The day that she moved, the Petitioner kept driving back and forth in front of her house. When in Texas, Sharon Pressley gave Mr. Groves all the money that she had inherited from the victim's death to start a business that ultimately failed. Sharon Pressley told Mr. Groves about what the Petitioner had said to her the morning of her husband's murder. She was shortly thereafter contacted by Agent Davis with the TBI, and he told her that he was considering indicting her for murder unless she came forward. She then testified before the grand jury.

Witnesses confirmed that there was a gunshot on December 13, 1998, at 6:00 a.m. in the area where the victim was hunting. There was additional testimony from the people who found the victim's body.

Larry Davis, a special agent with the TBI, investigated this case and noted that the victim was not wearing an iridescent orange hunting vest, and, near his body, there appeared to be a rifle or a weapon, the barrel of which was sticking in the ground. When he examined the gun, he noted that the safety was in the "safe" position and would have had to be pushed before the trigger could be pulled. When the agent examined the victim's body, he saw a gunshot wound that appeared to have traveled through the left arm up next to his shoulder. He also saw a secondary wound from that projectile that went into the victim's body on the left side with no exit wound. Agent Davis looked for, but did not find, any expended cartridges or other weapons in the area near the victim's body. The agent sent the victim's body for an autopsy.

Agent Davis spoke with the Petitioner, who had voluntarily come to the Grundy County Jail, on the day that the victim's body was found. The Petitioner told him that, on the morning of December 13, 1998, he stayed at the Budget Host Inn. He said that he got up before daylight and went to a nearby city to check on a house that he was building for his brother. He said that he left the house around 8:00 a.m. and went to a restaurant and had breakfast. The Petitioner said that he then went to the house where his wife and son live and asked his son if he wanted to go to Chattanooga. He went to church and then back to the house where his wife and son live. His wife let him in, and he stayed for ten minutes

until his son was ready. The two stopped at a friend's house and then went to Chattanooga for dinner. When he returned, he learned that the victim was missing.

In his statement, the Petitioner said that Sharon Pressley had kept his books for the last couple of years but that she stopped after his wife accused him of "going with" Sharon Pressley. He also said that, about two weeks before the victim's murder, he noticed two boys in the Million Dollar View area. He noticed that they did not have guns and that the victim's tree stand was missing. He asked the boys about the tree stand, and they said that they found it in the road, and their dad took it to a blue house. The Petitioner told the victim, who said he was going to confront the boys. The agent spoke with the boys, but neither of them owned a gun similar to the one used to kill the victim.

Agent Davis testified that, during the course of this investigation, he learned about Steve Groves. The agent went to Texas to the Federal penitentiary to interview Mr. Groves. Based upon this conversation, he contacted Sharon Pressley again and asked her to give another statement. Agent Davis also obtained her agreement to testify before the grand jury.

On cross-examination, Agent Davis agreed that he wrote a memo that indicated that he thought he had enough evidence to indict Sharon Pressley for first degree murder. He also said in the memo that he had discussed the case with the District Attorney, who was willing to make a deal with Sharon Pressley if she testified against the Petitioner. On redirect examination, Agent Davis said that he did not have from his investigation any evidence to substantiate the claim that Sharon Pressley shot the victim.

The victim died of multiple gunshot wounds caused by a single bullet. TBI examination of the bullet indicated that it was fired from a Winchester .243 rifle. A witness testified that the Petitioner owned and previously fired a .243 rifle.

Patty Grimes, the Petitioner's ex-wife, testified that the two did not divorce until 2003, but that they were separated in 1998 when the victim was killed and the Petitioner was staying at the Budget Host Inn. The two separated because the Petitioner was giving Sharon Pressley, his bookkeeper, attention that Ms. Grimes believed was not appropriate, while he also talked negatively about the victim. Ms. Grimes testified that, after she learned of the victim's death, she thought that her husband might have been involved. She confronted the Petitioner multiple times about the possibility that a .243 rifle was used to kill the victim and that he owned such a weapon. On multiple occasions, the Petitioner told her that he had sold or never owned a .243 rifle, despite the fact that Ms. Grimes had seen him with such a rifle.

Ms. Grimes said she asked the Petitioner about a rumor that she had heard that the TBI had obtained a cast of a boot print at the scene of the murder. She said that the Petitioner went straight into their bedroom, got his boots out of the closet, cut them up in pieces, and put gas on them and burned them. He then shoveled them into a five-gallon bucket and dumped the remnants in a creek.

Teresa Marlene Curtis testified that she knew all the parties involved in this case. On the Monday after this murder, the Petitioner came by her house and asked her to lie and say she had seen him at a Coke machine in front of her beauty shop early in the morning on the day the victim was killed. She declined, and the Petitioner, who appeared nervous and upset, left.

The Petitioner called Venettia Harelson who testified that she spent the night with the Petitioner the night of December 12, 1998, and left his motel room at 5:15 a.m., following the Petitioner to a nearby town where she lived. Earl Grimes, the Petitioner's brother, testified that on December 13, 1998, he arrived at a house he was building at around 6:20 a.m., and the Petitioner was there dressed in jeans and a pullover shirt. He said that the Petitioner had already changed the propane cylinder in the heater, and, when Earl Grimes left at around 7:00 a.m., the Petitioner was still at the house. Earl Grimes's wife confirmed his testimony about when Earl Grimes left and returned home on December 13, 1998.

Christopher Doyle Pressley, the son of the victim and Sharon Pressley, saw his mother on December 13, 1998, at around 9:00 a.m. when he went by her house to pick up a check. When he got there, Sharon Pressley told him that she could not write his check until his father returned. She said that they needed to pick up his father before 10:00 a.m. Mr. Pressley put his two children in his mother's Cadillac and went to the Million Dollar View area to pick up his father a little after 10:00 a.m. His father was not waiting at the designated spot, and Sharon Pressley said that she had to go back to the house. Mr. Pressley told Sharon Pressley that he would go back to his apartment, leave his kids with a babysitter, get his other car, and go back to get his father. After Mr. Pressley got his other car, he went back to his parents' trailer and told Sharon Pressley he was going to look for his father. At this time, he said that he was the only one looking for his father. Mr. Pressley's brother-in-law started to help look for the victim and then left to tell Sharon Pressley to call the rescue squad while Mr. Pressley continued to look for his father.

Mr. Pressley recounted that the rescue squad found his father the next day. The Petitioner and Sharon Pressley were present, and both appeared to be crying. Later when Mr. Pressley learned that Sharon Pressley had testified before the grand jury, he asked her why she had not told him what she knew, and she responded that the Petitioner had

threatened her. Mr. Pressley said that his mother had surgery in May 1998 and that she could not hunt or shoot a gun because she had screws and a plate in the back of her neck.

There was other testimony that Sharon Pressley did not appear upset when the victim went missing. Others testified that Ms. Grimes hated the Petitioner and sought to ruin him.

The Petitioner described his marriage to Ms. Grimes as “stormy,” and he could not recall how many times they had separated while they were married. Ms. Grimes had been diagnosed as bipolar and had been hospitalized for her mental issues. He concurred that Ms. Grimes became jealous of Sharon Pressley. The Petitioner believed Ms. Grimes had attempted to poison him.

The Petitioner said that he had hunted with both the victim and Sharon Pressley and had hunted in the area where the victim was killed. He had previously owned a .243 rifle in November or December of 1997, but he had traded it to the victim, who was going to give it to Sharon Pressley. The last time that he saw the rifle was at the victim’s house the night before he was murdered. The Petitioner said that a .243 rifle does not have as much kick as other guns, including a shotgun.

December 11, 1998, the Petitioner visited the victim and Sharon Pressley, who said they were going deer hunting the following day. The victim asked the Petitioner to go on Saturday morning and see if there was anyone hunting in the Million Dollar View area. The next morning, the Petitioner awoke around 5:00 a.m. and went and looked at the hunting area and saw that there were no fresh tracks, and he went to the victim’s house to tell him so and to have breakfast. While at breakfast, the victim told the Petitioner that Sharon Pressley did not want to go hunting. After breakfast, the Petitioner went to the house that he was building for his brother in Gruetli-Laager. The Petitioner placed a heater in the house, but the heater was not functioning properly, which concerned him. He said that he left the job site at dark and went to his motel in Monteagle. He then showered and went back to the victim’s house to get the money the victim owed him. He agreed that he stayed at the house for approximately thirty minutes, and he denied he ever passed Sharon Pressley a note. The Petitioner said that there was no discussion of hunting the next day; rather, the victim said that he was going Christmas shopping and then by his foster mother’s house.

The Petitioner said that, after he left the victim’s home, he went to the Waffle House near his motel. There, he saw Harelson, and he spent the night with her. He said that he woke up at around 5:00 a.m., and the weather was very foggy and drizzly. Ms. Harelson told the Petitioner that she had trouble seeing in the fog and was not familiar with the area, so Ms. Harelson followed the Petitioner to Gruetli-Laager. He said that the two left at

around 5:30 a.m., and he arrived at the house that he was building for his brother at around 6:00 a.m. He went to the house to check on the heater, and there he saw his brother, Earl Grimes. He changed the gas in the heater, then left the house and went to the cemetery where his daughter is buried.

The Petitioner said he did not have anything else to do, so he rode around thinking he may see a deer from the truck. Then, he had breakfast at Larry and Joan's Restaurant, where he left at around 9:00 or 9:30 a.m. The Petitioner then went to his son's house to see if his son wanted to go to Chattanooga as they had previously planned. His son said yes but did not want to go until after church. The Petitioner went to church, and his friend told him that he had shot a six-point deer. After church, the Petitioner went to his friend's house to look at the deer, and then he went back to get his son. He and his son went to Chattanooga and did not return until 5:00 or 6:00 p.m. When he got back, he learned that the victim was missing, and he and his friend went to the Monteagle Police Department to see what was going on.

The Petitioner said that he took his friend home, borrowed some coveralls, and went back to the woods to search for the victim. He stayed searching until the search party was disbanded for the evening. He then went to his motel. The next morning, he woke up at 5:00 a.m. and went back to the house that he was building for his brother. He got his crew working and then went back to help find the victim. When he got there, the rescue squad had just found his body. The Petitioner went back to the victim's house to talk with the family. There, Sharon Pressley asked him to put a dead bolt on her door, which he did. The Petitioner described Sharon Pressley as acting like a "very happy woman" that day.

The Petitioner went to the police department and gave a statement. He said that Ms. Grimes called him and told him that she was the one that told law enforcement that he may have committed this crime. She then asked him to move back in with her, and he agreed.

Before the victim's death, the victim was having financial problems and had borrowed money from the Petitioner. The Petitioner also offered to help the victim replace a work truck that he had lost. After the victim's death, Sharon Pressley started asking the Petitioner for money. He said that she borrowed \$11,000 and kept telling him that she would pay him back.

The Petitioner claimed that Sharon Pressley's testimony that she was supposed to come to his motel room was not true. He said that he did not jump into her car and that he never told her that he had killed the victim. The Petitioner said that, within two weeks of the victim's death, he saw a picture of another man at Sharon Pressley's house. Further, Sharon Pressley sold everything that belonged to the victim. Sharon Pressley gave the Petitioner some of the victim's tools to help pay back the money that she owed him. She

told him she would pay him the rest of the money when she received the insurance check from the truck that they lost, the victim's worker's compensation claim, and his insurance policy. She never, however, paid him. The Petitioner denied that he ever threatened Sharon Pressley and that she was not telling the truth about him banging on her door or window.

The Petitioner said that he never went to Ms. Curtis and asked her to be an alibi for him. He said that they did have a conversation when he was at her shop where he told her that he had been questioned for this crime. He told her that there was no way that he could have done it because he was not in Monteagle. Further, he said that, had he done it, he would have gone to the L&L Market or would have stood out front of her shop at her Coke machine so that everyone would know where he was.

The Petitioner said that he never cut up any boots in front of his ex-wife. He said that the two had a hostile relationship at times and that she had even tried to run him over with a car. She also told him that even though she knew that he had not killed the victim she was going to tell Agent Davis lies about him if the Petitioner did not move back in with her.

Other witnesses testified about the truthfulness of witnesses who had testified, the demeanor and mental health of Ms. Grimes, and the state of mind of Sharon Pressley after the victim's death.

Based upon this evidence, the jury convicted the Petitioner of one count of first degree murder. The trial court sentenced him to life in prison. The Petitioner appealed, contending that: the evidence was insufficient to sustain his conviction, the State knowingly presented false testimony, the trial court committed evidentiary errors, and that the cumulative effect of the errors required reversal. *Grimes*, 2007 WL 1670188, at *1. We affirmed the Petitioner's conviction.

B. Post-Conviction

The Petitioner filed a petition for post-conviction relief, and an amended petition, in which he alleged as relevant to this appeal that his trial counsel ("Counsel") was ineffective for failing to call: Steven Groves and Tracy Marie Pressley ("Tracy Pressley"). He further contended that the State suppressed exculpatory evidence when it did not provide him with a copy of Special Agent Larry Davis's letter to U.S. District Judge Sparks.

At a hearing on the petition, the parties presented the following evidence: Billy Ray Griffith testified that at the time of the victim's death, Mr. Griffith worked at L&L Market, which was a convenience store. He knew both the victim and Sharon Pressley by "family

association” and from their coming to the store. He noted that Sharon Pressley was “always immaculately dressed,” “always had her face done up,” and had bleached blonde hair.

On the evening of December 13, 1998, Mr. Griffith learned that the victim had been killed. That morning, at 7:00 a.m., Sharon Pressley came into the store dressed in black combat boots, camouflage pants, a black vest, and a thermal fleece, with her hair pulled into a ponytail under a black hat. She purchased three gallons of bleach and asked Mr. Griffith if they had any more bleach, and he informed her that they did not. He commented on the fact that she was purchasing so much bleach.

Later that morning, at around 8:00 or 8:15 a.m., Mr. Griffith saw the Petitioner, whom he knew through his uncle, Wayne Grimes. The Petitioner, who was acting normally, came into the store to purchase biscuits and orange juice.

Mr. Griffith said that no investigator ever spoke with him about what he had observed and it was not until the Petitioner’s “second appeal” that he was asked for information.

During cross-examination, Mr. Griffith agreed that the Petitioner is his uncle. Mr. Griffith then conceded that it may not have been until December 14 that he learned that the victim’s body had been found, since the victim’s body was in fact not found until the following day.

Tracy Pressley² testified that Sharon Pressley was her mother-in-law at the time of the victim’s death, as Tracy Pressley was married to Sharon Pressley’s son, Christopher Pressley. She recalled that, on December 13, 1998, she was staying at her parents’ house with her two children. Sharon Pressley and Christopher were supposed to pick her and the children up in the morning and take Tracy Pressley to work. The two arrived in a white Cadillac being driven by Sharon Pressley, who was wearing jeans and a sweater, at around 9:00 a.m. Sharon Pressley dropped Tracy Pressley at work at 9:42 a.m. and left. Tracy Pressley did not see Sharon Pressley again that day.

On cross-examination, Tracy Pressley testified that she told a similar version of her story six years before. She acknowledged that her recounting of events differed from Christopher Pressley’s recount.

During redirect, Tracy Pressley testified that she told Counsel her story before the Petitioner’s trial.

²We will refer to this witness by her first name so as to distinguish her from Sharon Pressley. We intend no disrespect.

Counsel testified that, originally, there was not enough evidence to pursue charges against the Petitioner. After Mr. Groves contacted law enforcement and told them about Sharon Pressley's statement, the State sought an indictment. His indictment was not issued until March 2004. After he was retained, Counsel sought discovery as part of his representing the Petitioner.

Counsel identified a letter written by Special Agent Larry Davis to Honorable Judge Sam Sparks, a United States District Judge, which he said was not in his file. He could "not say for sure" whether he had seen the document before, but it was not in his file.

The letter, which was admitted into evidence, stated (exhibit 4):

I am writing this letter on behalf of Steven Groves concerning his parole revocation hearing set for June 29th in your Court.

On Friday, March 23, 2001, DEA Agent Ray Troy . . . paged me. . . . When I called Agent Troy, he stated that he had received information related to an unsolved homicide that I was working. The informant's name was Steve Groves, and the case was the Doyle Pressley murder case.

This homicide occurred on Sunday, December 13, 1998, in the mountainous area of Grundy County, Tennessee. Doyle Pressley was deer hunting in a tree when he was shot and killed with a 243-caliber rifle. Doyle Pressley's wife, Sharon Pressley, and her lover at the time, Wayne Grimes, are the suspects in this case. This case is presently unsolved.

During our March 23rd conversation, Agent Troy stated that Sharon Pressley was living in League City, Texas. She had moved there with her son, Christopher Doyle Pressley, after her husband died. She had met Steve Groves over the Internet while Groves was in prison in Texas. Sharon Pressley started dating Groves after he got out of prison.

Agent Troy told me Sharon Pressley's address He also stated that her son, Christopher Doyle Pressley, was living at the same address. Agent Troy then gave me Steve Groves' cellular phone number . . . and told me that Groves was waiting for me to call. I called Groves and have talked to him numerous times. I also contacted his Federal Parole Officer in Houston . . . and informed her and her supervisor of the conversations with Groves.

During our various conversations, [Mr.] Groves told me that when he and Sharon Pressley dated, she had told him about her husband's murder, and that I was working the case. Sharon Pressley has given information to Steve Groves about this case that no one knows except me. She told [Mr.] Groves that Wayne Grimes is the one who shot her husband. She has asked [Mr.] Groves to help her find someone to come to Tennessee and murder Wayne Grimes. She stated the reason is that [Wayne] Grimes is the only person that could convict her of murder, and she wanted him out of the way.

When I received this information, I immediately got in touch with the Texas Department of Safety At this time, [a sergeant] started working a solicitation-to-commit-murder case on Sharon Pressley using Steve Groves as a confidential informant. [Mr.] Groves would be taken out of the loop as soon as he introduced a State Agent to Sharon Pressley as the possible "hit man." At this time, [Mr.] Groves'[s] parole was violated and he was picked up before the operation was completed. I called [Wayne] Grimes'[s] Federal Parole Officer . . . and explained to her and her supervisor the need to keep [Mr.] Groves on the street.

Steve Groves has been a reliable and pertinent source of information in this case. I hope to use him in the future in a possible completion of this case and conviction of Sharon Pressley.

Counsel testified that Mr. Groves could have assisted in impeaching Sharon Pressley, and he filed a certificate declaring Mr. Groves a material witness and asking that he be transferred to Tennessee for trial. In his request, he stated that Mr. Groves's testimony was "critical." After this, Mr. Groves wrote Counsel a letter in which he said that he had offered his information because he had a "good heart" and not for a favorable release date. He said that he believed that Sharon Pressley killed her husband and tried to blame anyone that she could, including her own son.

Counsel traveled to Texas to meet with Mr. Groves in March 2005. He memorialized his recollection of the meeting shortly thereafter in a memo that he mailed to the Petitioner. In the memo, Counsel recounted that Mr. Groves said he would not be cooperative unless he was no longer in custody, which Counsel said was clearly intended to put pressure on him to help arrange for Mr. Groves's early release. Counsel said that Mr. Groves said that Sharon Pressley never told him that the Petitioner had admitted to shooting the victim. She at one point told him that the death was an accident. He also told Counsel about the interview Agent Davis conducted of Mr. Groves that "before the tape record was running, [Agent] Davis suggested obliquely what he wanted him to say, and so he did."

Counsel said that he ultimately decided not to call Mr. Groves. He said he discussed the matter with his law partner “numerous times,” and that they decided that the balance between his credibility and his perception, in their minds, made him a “loose cannon,” which swayed them against using him as a witness.

Counsel testified about the other potential witnesses that the Petitioner claimed should have testified. He said that he knew that Tracy Pressley was Christopher Pressley’s first wife. He did not think that either he or his investigator contacted her. He did not recognize the name Billy Ray Griffith, but he would have followed up had he known that Mr. Griffith claimed to have sold Sharon Pressley three containers of bleach.

During cross-examination, Counsel agreed that Mr. Groves stated on multiple occasions that Sharon Pressley told him that the Petitioner had killed the victim. Further, he said Mr. Groves had a “fairly extensive” criminal record, mostly related to honesty, and he repeatedly sought help for his Texas convictions in exchange for his information. In one letter to Counsel, Mr. Groves stated “Please don’t make me come to Tennessee in chains. I won’t make a very good witness if that happens.” Counsel expressed several concerns with Mr. Groves’s potential testimony, including his inconsistent statements. Counsel agreed that, while Agent Davis’s letter regarding Mr. Groves was not in his file, his file did contain a letter from Mr. Groves to Agent Davis in which Mr. Groves thanked Agent Davis for writing a letter to the judge on his behalf.

Counsel testified that he offered evidence to show that Sharon Pressley had killed her husband.

On redirect examination, Counsel agreed that he asked Sharon Pressley during her testimony if she had told Mr. Groves that the Petitioner had admitted killing the victim. He also agreed that, when she answered affirmatively, there was nothing to dispute this testimony. Counsel maintained that he did not want to call Mr. Groves to dispute Sharon Pressley’s testimony because his statements were not consistent with each other, and he was unsure what Mr. Groves’s testimony would be.

On recross-examination, Counsel testified that he argued to the jury that Sharon Pressley had committed this crime.

Billy Eugene Caldwell testified that he saw Sharon Pressley on December 13, 1998. She was dressed up in “nice clothes” with make-up on. She told him that she and her son were going Christmas shopping. She did not appear distressed. He said that he had seen the Petitioner the night before when the Petitioner came to his house at around 5:00 p.m.

Mr. Groves did not appear to testify, even though he had agreed to appear, so the post-conviction court granted the Petitioner a continuance. At a second hearing, the Petitioner's post-conviction counsel informed the post-conviction court that Mr. Groves had again not appeared, even though the Petitioner had given him money to come to court. Post-conviction counsel asked that Mr. Groves's deposition be made a part of the record.

The Petitioner gave an unsworn statement. In it he said that Counsel had previously represented the victim and his wife. He stated that there had been an allegation that the victim had forcibly raped his daughter using a gun and that his co-counsel had represented the victim in that case. Counsel then represented both the victim and Sharon Pressley in their case to again obtain custody of the daughter who had allegedly been raped. The Petitioner said that this was a conflict of interest, in part because his trial attorneys could not question Sharon Pressley about this incident.

Based upon this evidence, the post-conviction court denied the Petitioner's petition for post-conviction relief. It is from this judgment that the Petitioner now appeals.

II. Analysis

On appeal, the Petitioner contends that the post-conviction court erred when it denied his petition because: (1) trial counsel was ineffective for not calling as witnesses Steven Groves, Tracy Pressley, Billy Ray Griffith, and Billy Eugene Caldwell; and (2) the State withheld exculpatory evidence in the form of a letter written by Special Agent Larry Davis to U.S. District Judge Sparks on behalf of Steven Groves.

In order to obtain post-conviction relief, a petitioner must show that his or her conviction or sentence is void or voidable because of the abridgment of a constitutional right. T.C.A. § 40-30-103 (2018). The petitioner bears the burden of proving factual allegations in the petition for post-conviction relief by clear and convincing evidence. T.C.A. § 40-30-110(f) (2018). Upon review, this Court will not re-weigh or re-evaluate the evidence below; all questions concerning the credibility of witnesses, the weight and value to be given their testimony, and the factual issues raised by the evidence are to be resolved by the trial judge, not the appellate courts. *Momon v. State*, 18 S.W.3d 152, 156 (Tenn. 1999) (citing *Henley v. State*, 960 S.W.2d 572, 578-79 (Tenn. 1997)). A post-conviction court's factual findings are subject to a *de novo* review by this Court; however, we must accord these factual findings a presumption of correctness, which can be overcome only when a preponderance of the evidence is contrary to the post-conviction court's factual findings. *Fields v. State*, 40 S.W.3d 450, 456-57 (Tenn. 2001). A post-conviction court's conclusions of law are subject to a purely *de novo* review by this Court, with no presumption of correctness. *Id.* at 457.

The right of a criminally accused to representation is guaranteed by both the Sixth Amendment to the United States Constitution and article I, section 9, of the Tennessee Constitution. *State v. White*, 114 S.W.3d 469, 475 (Tenn. 2003); *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999); *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). The following two-prong test directs a court's evaluation of a claim for ineffectiveness:

First, the [petitioner] must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the [petitioner] by the Sixth Amendment. Second, the [petitioner] must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the [petitioner] of a fair trial, a trial whose result is reliable. Unless a [petitioner] makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984); see also *State v. Melson*, 772 S.W.2d 417, 419 (Tenn. 1989).

In reviewing a claim of ineffective assistance of counsel, this Court must determine whether the advice given or services rendered by the attorney are within the range of competence demanded of attorneys in criminal cases. *Baxter*, 523 S.W.2d at 936. To prevail on a claim of ineffective assistance of counsel, "a petitioner must show that counsel's representation fell below an objective standard of reasonableness." *House v. State*, 44 S.W.3d 508, 515 (Tenn. 2001) (citing *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996)).

When evaluating an ineffective assistance of counsel claim, the reviewing court should judge the attorney's performance within the context of the case as a whole, taking into account all relevant circumstances. *Strickland*, 466 U.S. at 690; *State v. Mitchell*, 753 S.W.2d 148, 149 (Tenn. Crim. App. 1988). Under the two prong test enunciated by *Strickland*, and adopted by our Tennessee courts, a defendant must show that counsel made errors that were so serious that counsel was not functioning as "counsel" as guaranteed by the Sixth Amendment and that the deficient performance prejudiced the defense so that he was denied a fair trial. The reviewing court should avoid the "distorting effects of hindsight" and "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Strickland*, 466 U.S. at 689-90. In doing so, the reviewing court must be highly deferential and "should indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Burns*, 6 S.W.3d at 462. Finally, we note that a defendant in a criminal case is not entitled to perfect representation, only constitutionally adequate

representation. *Denton v. State*, 945 S.W.2d 793, 796 (Tenn. Crim. App. 1996). In other words, “in considering claims of ineffective assistance of counsel, ‘we address not what is prudent or appropriate, but only what is constitutionally compelled.’” *Burger v. Kemp*, 483 U.S. 776, 794 (1987) (quoting *United States v. Cronin*, 466 U.S. 648, 665 n.38 (1984)). Counsel should not be deemed to have been ineffective merely because a different procedure or strategy might have produced a different result. *Williams v. State*, 599 S.W.2d 276, 279-80 (Tenn. Crim. App. 1980). “‘The fact that a particular strategy or tactic failed or hurt the defense, does not, standing alone, establish unreasonable representation. However, deference to matters of strategy and tactical choices applies only if the choices are informed ones based upon adequate preparation.’” *House*, 44 S.W.3d at 515 (quoting *Goad*, 938 S.W.2d at 369).

If the petitioner shows that counsel’s representation fell below a reasonable standard, then the petitioner must satisfy the prejudice prong of the *Strickland* test by demonstrating “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694; *Nichols v. State*, 90 S.W.3d 576, 587 (Tenn. 2002). This reasonable probability must be “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694; *Harris v. State*, 875 S.W.2d 662, 665 (Tenn. 1994).

A. Calling Witnesses

On appeal, the Petitioner contends that the post-conviction court erred when it denied his petition because Counsel was ineffective for not calling as witnesses Steven Groves, Tracy Pressley, Billy Ray Griffith, and Billy Eugene Caldwell.

1. Steven Groves

The Petitioner contends that Counsel was ineffective for failing to call Mr. Groves because he stated in his deposition that Sharon Pressley never told him that the Petitioner confessed to the murder. The State counters that Sharon Pressley told Mr. Groves that the Petitioner had shot the victim and Mr. Groves contacted law enforcement with this information, which is what initiated the charges against the Petitioner. His subsequent testimony that she never said that the Petitioner confessed showed he had inconsistent statements. Further, Mr. Groves had an extensive criminal history, was not a reliable witness, and was clearly seeking to offer his statements for his own gain. Therefore, the State asserts, Counsel was not ineffective when he decided not to call Mr. Groves as a witness.

About this witness, the post-conviction court found:

Steven Groves

Before [the] Petitioner's 2005 trial, Agent Larry Davis with the TBI revealed that he went to Texas to interview Steven Groves who was in prison. The Groves interview was not introduced at trial nor did Agent Davis testify at trial as to what Groves told him. After the Groves interview Agent Davis contacted Sharon Pressley and interviewed her.

A transcript of Steven Groves'[s] deposition taken July 13, 2015, was introduced at the August 23, 2017 post-conviction hearing. Mr. Groves offered contradictory testimony on many issues. However, he admitted he told Agent Davis that Sharon Pressley had told him [the] Petitioner had killed the victim. [Mr.] Groves only knowledge of the homicide was what Sharon Pressley told him as he was in prison in Texas when the homicide occurred.

[Counsel] testified at the post-conviction hearing on August 23, 2017, that before trial he traveled to Texas and interviewed Steven Groves who was in prison. [Counsel] was accompanied by his investigator and spent approximately three hours with [Mr.] Groves. [Mr.] Groves had sought help with his criminal problems from Agent Davis and wanted help from [Counsel] as well.

Howell Clements was [Counsel's] law partner. The proof at the post-conviction hearing established both Mr. Clements and [Counsel] were experienced criminal defense attorneys and both participated in the trial. [Counsel] testified that he and Mr. Clements discussed calling Steven Groves and made a decision not to call him as a witness. At the post-conviction hearing [Counsel] described Mr. Groves as a "loose cannon." If Mr. Groves had testified the State would have impeached him with his extensive criminal history and the statement he made to Agent Davis that Sharon Pressley had told [Mr.] Groves [that the] Petitioner had killed the victim. [Counsel] was asked at the post-conviction hearing why he did not call [Mr.] Groves as a witness and he replied, "My law partner and I discussed it numerous times, and decided that the balance between his credibility and his perception, in our minds at least, of being a loose cannon, tilted against using him as a witness." . . .

[Counsel] was asked about the "loose cannon" comment later in the hearing and testified, "We thought that outweighed – that and the credibility problems outweighed – those risks outweighed the potential benefits." . . .

The Court finds the testimony of [Counsel] to be credible. [Counsel] and Mr. Clements analyzed Steven Groves'[s] potential testimony and their decision not to call him was a reasonable trial strategy and was not deficient performance. The Court finds Steven Groves'[s] testimony would not have affected the outcome of the trial and the decision not to call [Mr.] Groves does not undermine confidence in the outcome of the trial.

Giving deference to Counsel's strategy, the decision not to use Steven Groves for the reasons explained was sound and well-informed. *See House v. State*, 44 S.W.3d 508, 515 (Tenn. 2001) ("The fact that a particular strategy or tactic failed or hurt the defense, does not, standing alone, establish unreasonable representation. Deference, however, to matters of strategy and tactical choices applies only if the choices are informed ones based on adequate preparation." (quoting *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996))); *Strickland v. Washington*, 466 U.S. 668, 690 (1984) (noting that "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable").

Mr. Groves's statements were inconsistent, and he was unreliable. Mr. Groves had an extensive criminal history, and it was apparent that he was offering his testimony in an effort to reduce his own prison sentence. As further support for Counsel's sound decision, Mr. Groves did not appear at two scheduled post-conviction hearings, despite agreeing to attend and having his expenses prepaid to him.

Finally, it seems unlikely that any testimony from Mr. Groves would have altered the outcome of the trial. The prosecutor at the Petitioner's trial expressed a desire to also prosecute Sharon Pressley for the victim's murder, but the prosecutor stated there was not enough evidence. The jury heard and knew that Sharon Pressley was an additional suspect who had a romantic relationship with the Petitioner at some point in time around the time of the victim's murder. Mr. Groves offered that Sharon Pressley was involved, but he also told Agent Davis that Sharon Pressley disclosed that the Petitioner had shot the victim. In his post-conviction deposition, he stated that she never, in fact, told him that the Petitioner had shot the victim. Counsel flew to Texas, met with Mr. Groves, evaluated his statements, considered his prior criminal history and bias, and thereafter determined that his credibility issues could make his testimony problematic for the Petitioner. We conclude that Counsel used sound judgment and reasoning and was not ineffective for deciding not to call Mr. Groves as a witness for the Petitioner at trial.

Further, the Petitioner cannot prove he was prejudiced by Counsel's not calling Mr. Groves. As previously stated, if the petitioner had shown that his counsel had been ineffective, he would also have to prove that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Strickland, 466 U.S. at 694; *Nichols*, 90 S.W.3d at 587. This reasonable probability must be “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694; *Harris*, 875 S.W.2d at 665. In this case, it was clear that the Petitioner wanted to be near Sharon Pressley, he sought her out and his marriage and his relationship with the victim suffered because he continually went to Sharon Pressley’s house where they were home alone together. Sharon Pressley testified that he admitted to her that he shot the victim. The Petitioner’s ex-wife testified that, as soon as he learned police had recovered a boot print from the scene, the Petitioner cut up and burned his boots. Another witness testified that the Petitioner asked the witness to lie and say that the witness saw him the morning of the murder at her place of business. The Petitioner then engaged in an extramarital affair with Sharon Pressley shortly after the victim’s death and while he was still married. Considering this evidence and these circumstances, we agree that the Petitioner has not shown that the result of the proceeding would have been different had Mr. Groves testified.

2. Tracy Pressley

The Petitioner next contends that the post-conviction court erred because Counsel was ineffective for failing to call Tracy Pressley. While she wavered, Tracy Pressley ultimately testified that she spoke with Agent Davis in March 2004, some months before the Petitioner’s trial in October 2004. Tracy Pressley’s testimony would have been that Sharon Pressley and her son, who was Tracy Pressley’s husband, picked her up on the morning of December 13, 1998, and took her to work. Sharon Pressley was wearing jeans and a sweater and took Tracy Pressley to her place of employment around 9:42 a.m. This, the Petitioner alleges, would have contradicted Sharon Pressley’s testimony about her whereabouts that morning.

The State contends first that Counsel was not deficient for not identifying and calling Tracy Pressley because he was unaware that she had any relevant and material testimony. It posits that, as the post-conviction court found, Tracy Pressley did not disclose her information until after the trial, so Counsel could not be deficient for not calling a witness that he was unaware of having any relevant testimony concerning this case.

About this witness, the post-conviction court found:

Tracy [] Pressley

Tracy [] Pressley testified at the post-conviction hearing regarding alleged contradictions in the trial testimony of Sharon Pressley and Tracy [] Pressley’s then husband, Chris Pressley. However, [Tracy] Pressley testified that she did not recall talking to [C]ounsel . . . about the case before the September 2005 trial. She admitted she was contacted by a detective for

Petitioner after the trial and had spoken with family members of the Petitioner after the trial. Based on her testimony at the post-conviction hearing the Court finds any conversations Tracy [] Pressley testified about at the post-conviction hearing were revealed after the trial. [Counsel] testified that he was not made aware of any material testimony [Sharon] Pressley may have had to offer in favor of [the] Petitioner. The Court finds the contradictions and equivocations in [Sharon] Pressley's testimony at the post-conviction hearing render [Tracy] Pressley's testimony not credible.

The court finds [Counsel] was not aware of Tracy [] Pressley's testimony regarding events on the morning of the homicide as she did not relate her testimony until after the trial. Therefore [Counsel's] trial performance was not deficient relating to [Tracy] Pressley's testimony.

We rely upon the post-conviction court's credibility determinations and conclude that the Petitioner has not proven that Counsel's representation was deficient in this regard. We have previously stated, that "trial counsel cannot be deficient for failing to do what he was unaware of." *Brawner v. State*, No. W2013-00933-CCA-R3-PC, 2014 WL 1101990, at *5 (Tenn. Crim. App. Feb. 5, 2014), *perm. app. denied* (Tenn. June 20, 2014). Here, it is clear that Counsel was unaware of Tracy Pressley's statement, and there is no contention that he did not adequately investigate this case, so his performance cannot be deficient for his failure to call her as a witness. Further, based on the evidence and the fact that the witness was not credible, the Petitioner cannot prove that he was prejudiced by her not testifying at trial.

3. Billy Ray Griffith

The Petitioner next contends that Counsel was ineffective for failing to call Billy Ray Griffith to testify. About this witness, the post-conviction court found:

Billy Ray Griffith

Mr. Griffith testified at the post-conviction hearing on August 23, 2017. He testified on the Sunday Doyle Pressley was murdered that Sharon Pres[s]ley came into the store where he worked dressed in outdoor clothing and purchased three (3) gallons of bleach at approximately 7:00 a.m. Mr. Griffith's uncle is [the] Petitioner . . . but Mr. Griffith never spoke with anyone about his knowledge of the case until long after the trial. The Court does not believe that Mr. Griffith, being a member of [the] Petitioner's family, would not have imparted his testimony to either [the] Petitioner's family or [Counsel] prior to trial. Therefore, the Court finds Mr. Griffith not

a credible witness. Even if the Court found his testimony credible, there is no proof that Mr. Griffith made trial counsel aware of his testimony nor could trial counsel have discovered it through due diligence.

Again, we rely upon the post-conviction court's credibility determinations and conclude that the Petitioner has not proven that Counsel's representation was deficient in this regard. We have previously stated, that "trial counsel cannot be deficient for failing to do what he was unaware of." *Brawner*, 2014 WL 1101990, at *5. Here it is clear that Counsel was unaware of Mr. Griffith's statement, and there is no contention that he did not adequately investigate this case, so his performance cannot be deficient for his failure to call him as a witness. Further, based on the evidence and the fact that the witness was not credible, the Petitioner cannot prove that he was prejudiced by his not testifying at trial.

4. Billy Eugene Caldwell.

The Petitioner contends that Counsel was ineffective for failing to call Billy Eugene Caldwell to testify. About this witness, the post-conviction court found:

Billy Eugene Caldwell

Mr. Caldwell testified at the post-conviction hearing but clearly was not in good health. He stated that at 9:00 on the Sunday morning Doyle Pressley was killed that he saw Sharon Pressley dressed well and that she said she was going Christmas shopping with her husband, Doyle Pressley. Mr. Caldwell was acquainted with [the] Petitioner and had seen him that day.

Mr. Caldwell did not come forward and announce these alleged facts to defense counsel. Just as with Mr. Griffith, Mr. Caldwell should have offered his testimony to defense counsel before the 2005 trial. His failure to do so causes this Court to doubt his credibility. There is no proof in the record to indicate [Counsel] was aware of Mr. Caldwell's testimony or could have discovered it through due diligence.

Again, we rely upon the post-conviction court's credibility determinations and conclude that the Petitioner has not proven that Counsel's representation was deficient in this regard. Counsel was unaware of Mr. Caldwell's statement, so his performance cannot be deficient for his failure to call him as a witness. Further, based on the evidence and the fact that the witness was not credible, the Petitioner cannot prove that he was prejudiced by his not testifying at trial.

B. Agent Davis's Letter

The Petitioner next contends that the post-conviction court erred when it denied his post-conviction petition because the State withheld exculpatory evidence in the form of a letter written by Agent Davis to U.S. District Judge Sparks on behalf of Steven Groves. He asserts that this evidence was exculpatory and should have been disclosed pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). The State counters that the post-conviction court did not err because the letter: (1) was not requested by the [Petitioner]; (2) was not obviously exculpatory; (3) was not suppressed; (4) was not favorable to the Petitioner; and (5) was not material to his defense.

About this letter, the post-conviction court found:

Agent Davis'[s] letter to U.S. District Judge Sparks

The proof revealed the letter in question written by Agent Davis stated Steven Groves had cooperated and that in Agent Davis'[s] opinion he had enough evidence to convict Sharon Pressley. His opinion would not have been admissible at trial.

Defense counsel was provided correspondence from Steven Groves stating Agent Davis had written the Federal judge on his behalf.

The Court has found that defense counsel's strategy was not to call Steven Groves as a witness for the reasons heretofore stated. The Court is of the opinion defense counsel's performance on this issue would not have affected the outcome of the trial.

In order to establish a violation based on the withholding of favorable evidence, the petitioner must demonstrate that: (1) the petitioner requested the information or that it was obviously exculpatory; (2) the State suppressed evidence in its possession; (3) the information was favorable to the accused; and (4) the information was material. *State v. Jackson*, 444 S.W.3d 554, 594 (Tenn. 2014). Evidence is material if there is a reasonable probability the result of the proceeding would have been different had the evidence been disclosed. *State v. Cureton*, 38 S.W.3d 64, 77 (Tenn. Crim. App. 2000).

We agree with the post-conviction court that Petitioner has not proven a *Brady* violation based on the withholding of favorable evidence. First, the Petitioner did not prove that the State failed to disclose this letter. Counsel testified that the letter was not in his file but that he could not be sure whether he had previously seen the letter. Second, Counsel did not request this letter and it is not obviously exculpatory. The fact that another person might also be responsible for the victim's death did not negate the Petitioner's participation

in this offense. Third, Counsel’s file did contain another letter that referenced the letter in question, meaning that there was an adequate basis for Counsel to ask about additional correspondence. Third, as the trial court noted, Agent Davis’s opinion testimony would not have been admissible. Finally, Counsel was aware of Mr. Groves as a potential witness, he met with him, and he reasonably determined that he should not call Mr. Groves as a witness. Under these circumstances, the Petitioner has not proven that the letter was “material” by showing that there is a reasonable probability the result of the proceeding would have been different had the letter been disclosed. *See Cureton*, 38 S.W.3d at 77.

III. Conclusion

In accordance with the foregoing reasoning and authorities, we affirm the post-conviction court’s judgment.

ROBERT W. WEDEMEYER, JUDGE