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IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
April 4, 2023 Session

STATE OF TENNESSEE v. SHANYNTHIA GARDNER

Appeal from the Criminal Court for Shelby County
Nos. 17-00369, C170112 James M. Lammey, Judge

No. W2022-00820-CCA-R3-CD

Following a bench trial, Shanynthia Gardner ("Defendant") was convicted of four counts each of first degree premeditated murder, first degree felony murder in perpetration of aggravated child abuse, first degree felony murder in perpetration of aggravated child neglect, aggravated child abuse, and aggravated child neglect, for which she received an effective sentence of life. In this direct appeal, Defendant contends that: (1) the trial court used an incorrect legal standard in determining that she failed to carry her burden of establishing her insanity at the time of the offenses; (2) the evidence is insufficient to support her convictions; and (3) the trial court erred when it denied Defendant's request to make an offer of proof of the entirety of a witness's audio recorded statement to police. Following a thorough review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which J. ROSS DYER and JILL BARTEE AYERS, JJ., joined.

Craig V. Morton (at trial and on appeal) and Lauren Pasley (at trial), Memphis, Tennessee, for the appellant, Shanynthia Gardner.

Jonathan Skrmetti, Attorney General and Reporter; Katharine K. Decker, Senior Assistant Attorney General; Amy P. Weirich, District Attorney General; and Eric Christensen and Dru Carpenter, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. Factual and Procedural Background

On July 1, 2016, Defendant stabbed to death four of her five children inside their Memphis apartment. The Shelby County Grand Jury subsequently charged Defendant, in a twenty-eight-count indictment, with the following:

Count	Offense	Victim
1	First degree premeditated murder	Yahzi Gardner
2	Aggravated child abuse	Yahzi Gardner
3	First degree murder in perpetration of aggravated child abuse	Yahzi Gardner
4	Aggravated child neglect	Yahzi Gardner
5	First degree murder in perpetration of aggravated child neglect	Yahzi Gardner
6	Aggravated child endangerment	Yahzi Gardner
7	First degree murder in perpetration of aggravated child endangerment	Yahzi Gardner
8	First degree premeditated murder	Sahvi Gardner
9	Aggravated child abuse	Sahvi Gardner
10	First degree murder in perpetration of aggravated child abuse	Sahvi Gardner
11	Aggravated child neglect	Sahvi Gardner
12	First degree murder in perpetration of aggravated child neglect	Sahvi Gardner
13	Aggravated child endangerment	Sahvi Gardner
14	First degree murder in perpetration of aggravated child endangerment	Sahvi Gardner
15	First degree premeditated murder	Sya Gardner

16	Aggravated child abuse	Sya Gardner
17	First degree murder in perpetration of aggravated child abuse	Sya Gardner
18	Aggravated child neglect	Sya Gardner
19	First degree murder in perpetration of aggravated child neglect	Sya Gardner
20	Aggravated child endangerment	Sya Gardner
21	First degree murder in perpetration of aggravated child endangerment	Sya Gardner
22	First degree premeditated murder	Tallen Gardner
23	Aggravated child abuse	Tallen Gardner
24	First degree murder in perpetration of aggravated child abuse	Tallen Gardner
25	Aggravated child neglect	Tallen Gardner
26	First degree murder in perpetration of aggravated child neglect	Tallen Gardner
27	Aggravated child endangerment	Tallen Gardner
28	First degree murder in perpetration of aggravated child endangerment	Tallen Gardner

Following her indictment, the trial court ordered Defendant to undergo a mental evaluation at Memphis Mental Health Institute (MMHI) to assess her competency to stand trial and her sanity at the time of the offenses. Thereafter, Defendant filed a Notice of Insanity Defense and Expert Testimony of Defendant's Mental Condition.

Trial

State's Proof:

Defendant waived her right to a jury trial, and the matter proceeded to a bench trial. During the trial, a recorded statement from witness Darryl Richards was played for the court by agreement of the parties. Mr. Richards said that he was visiting family at an apartment complex in Memphis on July 1, 2016. Mr. Richards stated that he was taking trash outside when he "heard a child hollering and screaming." Mr. Richards continued:

> And I looked down to my left and the child was hollering and screaming and he took off running toward me and said, sir, sir, please help me. Please help me. So, I stopped and I said, what's wrong. He said, call the police, call the police. My mom has stabbed my sister.
>
> At that time, I grabbed him by the hand, grabbed my cell phone, called 911. And while trying to contact 911[,] I asked him to show me where he lived. We walked back down the sidewalk and just as we I got closer to the apartment, the lady came out, she had the knife in her hand, appeared to have blood on her pants legs and she saw me with her child and she went back in and slammed the door.
>
> By that time, I had got 911 on the phone and was trying to get help here. While . . . on the phone with 911 . . . I found out that the child was about seven years old. I asked him was there anybody else that I could call. He gave me his dad['s] phone number. I tried to contact his dad . . . but got a voicemail immediately.
>
> During the process at that time a female officer pulled up and I waived her down and directed her to where the young child told me that he lived. That's about it.
>
> . . . .
>
> The young child said that his mother mentioned that somebody was gonna get them or get her or something like that. Then he just start[ed] crying again.

Deputy Francies Toles, with the Shelby County Sheriff's Office (SCSO), testified that, on July 1, 2016, she responded to a "wounded party" call at an apartment on Southern Hill Drive. Deputy Toles explained that she arrived at 12:40 p.m. and knocked on the door of the apartment but that no one responded. Deputy Toles heard no noise coming from the apartment, and she did not see anyone "looking out the blinds, windows or anything[.]" Deputy Toles requested and obtained a key to the apartment from the apartment complex office. Deputy Toles testified that, as she was attempting to put the key into the door lock, Defendant opened the door. Defendant had blood on her neck and arms. Inside the residence, Deputy Toles noticed an infant car seat that contained "a small infant with wounds . . . [and] blood"; she saw another small child lying on the floor next to the car seat. Deputy Toles instructed Defendant to get down on the floor, and she handcuffed her. Deputy Toles testified that, when she handcuffed Defendant, Defendant "moaned as though

. . . she was maybe hurt or in a way of the discomfort." She noted, however, that Defendant was alert, responsive, and did not appear to be afraid.

Deputy Toles placed Defendant into the back of her patrol car, which was equipped with a video camera. Deputy Toles asked Defendant if she was on medication and if she had been previously diagnosed with psychosis. While Defendant was in the patrol car, Defendant's husband arrived at the apartment complex, and officers had to physically restrain him from entering the apartment.

The video from Deputy Toles' patrol car was introduced and played for the trial court. The video shows Defendant's crying and sobbing at times, and it shows her distraught reaction when her husband arrived at the scene. The video also shows deputies discussing a statement made by Defendant that she "had to do it because they were coming to take them." At one point in the video, Defendant asks herself, "How am I supposed to undo the motherf***er."

Deputy Elvin Holmes with the SCSO testified that he responded to Defendant's apartment on July 1, 2016, after the sheriff's office received a call indicating that a child had witnessed his mother wounding one of his siblings. Deputy Holmes stated that, when he arrived, Deputy Toles was banging on the front door of Defendant's apartment. They heard no noise coming from inside the apartment. While another deputy obtained a key to Defendant's apartment, Deputy Holmes "held the door." He testified that, as he and Deputy Toles attempted to use the key, Defendant opened the door, "covered in blood." Deputy Holmes said that the blood was not fresh and that it "[s]eemed like it had been there for a while." Deputy Holmes told Defendant to get on the ground, and she complied. He said that Defendant did not appear to be "in fear" when she opened the door. As Defendant was being handcuffed by another officer, Deputy Holmes stepped inside the apartment and saw a baby sitting in an infant car seat on the floor; he also saw another small child lying on the floor beside the car seat. As Deputy Holmes continued to clear the apartment, another deputy went into a bedroom and informed Deputy Holmes that there were two more children in the bedroom. Deputy Holmes looked in the bedroom and saw a young boy lying close to the door and a young girl lying on an air mattress. Both had obvious wounds to their throats and did not appear to be alive. Deputy Holmes recalled that he saw a long "serrated knife" or "[b]utcher knife" on an end table in the hallway.

Deputy Holmes testified that Defendant was assessed at the scene by the Shelby County Fire Department and paramedics before he transported her to the sheriff's office. Deputy Holmes noted that Defendant had small cuts on the right side of her neck and some on her hands but that none appeared to be life threatening. He said that Defendant's demeanor was "calm the whole time" and that he heard Defendant say, "something to the effect of, I had to do it because they were coming to take them."

Paramedic supervisor Lilliam Jamison testified that she examined Defendant at the scene for any life-threatening injuries. Ms. Jamison testified that Defendant had no difficulty breathing, speaking, or answering questions and was not under physical distress. Ms. Jamison said that she looked at the wounds on Defendant's neck and did not see any active bleeding. She noted that the wounds appeared minor and superficial. As such, Defendant was not transferred to a hospital at that time.

When asked, Defendant told Ms. Jamison that she had a prior history of psychosis. Ms. Jamison asked whether Defendant heard voices, and Defendant said that she had visions. Ms. Jamison said that Defendant appeared calm but appeared to be looking for something. When Ms. Jamison asked what she was looking for, Defendant responded by asking, "Where is my son?" Ms. Jamison testified that she also evaluated Defendant's surviving child and did not observe any injuries to him.

Defendant's surviving child, D.C.,[1] did not testify at trial, but the video of his forensic interview, conducted July 1, 2016, was played for the trial court. In his interview, D.C. recounted that Defendant was acting normally on the morning of the offenses and that she made breakfast for him and his brother, Tallen. He said that he and Tallen watched movies until lunchtime. Around that time, Defendant "started saying stuff about being a mom," and she asked, "Am I a good mom?" D.C. said that Defendant "was talking about somebody getting us and we won't be safe and will make us suffer some way." He stated that Defendant then "started acting coo-coo." D.C. said that Defendant had a kitchen knife and that she started grabbing his siblings and "getting [them] on the floor, trying to stab" them. D.C. recalled that his siblings began running from Defendant. D.C. said that he used a backscratcher to defend himself; he held it up and moved away from her as she came closer to him. He said that he and Tallen got behind a playpen at one point and that they ducked to the side of it as Defendant approached them.

D.C. recounted that, during the attack, Defendant said, "You won't be safe. I don't want to see you suffer[,]" and that he asked her, "Why do you have to kill us then?" He said that he, Tallen, and Sya were crying. He said that, when he tried to pick up the baby, Defendant told him to put her down. He said that Defendant then grabbed his arm, put him in his bedroom, and told the other children to get out of the room. D.C. stated that, when Defendant began walking toward him with the knife, he ran out of the bedroom. D.C. recounted that Defendant tried to stab him; he said that, at one point, Defendant had him on the ground trying to stab him but that he kicked his legs so that she could not aim. He said that he was able to get away from Defendant and flee the bedroom.

[1] It is the policy of this court to refer to minor witnesses by their initials only.

D.C. recounted that then Defendant put Sahvi on the floor, stepped on her legs, and stabbed her in the stomach. D.C. told Defendant, "No," and then he unlocked the front door of the apartment and ran outside to Mr. Richardson, who called the police. He said that, when he ran outside, Tallen tried to follow him. He recalled that Defendant followed him outside but that, when she saw him talking to Mr. Richardson, she went back inside the apartment. D.C. said that he was not physically injured in Defendant's attack.

Martin Gardner, Defendant's husband, testified that he met Defendant in 2009 and that they began dating seriously in August 2010. Mr. Gardner explained that, when he met Defendant, she already had one son, D.C., who was born in November 2008. Mr. Gardner said that he and Defendant eventually had four children together. Their oldest son, Tallen, was born in August 2011. He and Defendant's second child, Sya, was born in October 2012; their third child, Sahvi, was born in January 2014; and their fourth child, Yahzi, was born on January 25, 2016. Mr. Gardner said that he and Defendant got married after she found out that she was pregnant with Sahvi.

Mr. Gardner testified that, while Defendant was pregnant with Tallen, she threatened to take Tallen away from him after she found out that he was talking to another woman on Facebook. Mr. Gardner recalled that they had an argument about this but that he reassured Defendant. Mr. Gardner explained, "I knew this situation, I had a son on the way and I was already like claiming [D.C.] I got attached to [D.C.] So, we were cool. Everything was straight and I promised she [did not have] to worry about that no more."

Mr. Gardner recalled that, before Tallen was born, Defendant wanted to get an apartment, so they moved out of the house where they lived with Mr. Gardner's brother. He said that this was a rough time in their relationship because Defendant was unemployed and did not have a high school diploma, so their finances were "tight." He explained, however, that Defendant eventually obtained her GED and got a job in the donation office of St. Jude Children's Research Hospital ("St. Jude"). Mr. Gardner said that, during this time before Tallen's birth, Defendant also became jealous of his friend, Ashley. He recalled that he and Defendant were at Walmart one night when Ashley approached him. He said that, after he greeted Ashley and introduced her to Defendant, Defendant "yanked [his] phone out [his] hand and said, I told you she like you or whatever." Mr. Gardner recalled another incident while he was driving down the road when he and Defendant argued about Ashley. During the argument, Defendant yanked off a necklace she was wearing and began whipping Mr. Gardner across the face with the necklace while he was driving. Mr. Gardner testified that, during their relationship, Defendant constantly accused him of having affairs but that "it progressively got worse . . . , which was very frustrating to [him]." Mr. Gardner said that Defendant eventually began accusing him of having an affair with her mother.

Mr. Gardner testified that his relationship with Defendant began to change after he learned that Defendant could not "just take the kids every time she [got] mad at [him] about something." He recalled that, one day in March 2015, Defendant told him that someone had called in a bomb threat to St. Jude and that she was the person who took the call. He said that he and Defendant had a "small argument" but that he told Defendant she was going to be okay. Defendant then said she was going to "take these kids." When Mr. Gardner got home, Defendant and the children were gone. He said that he called the police and reported her. He said that a police officer then called Defendant and told her that what she was doing was against the law and convinced Defendant to return home. The officer told Mr. Gardner that Defendant had made it to Corinth, Mississippi.

Mr. Gardner said that he and Defendant continued to argue after this incident and that he eventually "put [Defendant] out [of] the house." He explained that Defendant grabbed Sahvi by the leg one day and pushed her aside. Mr. Gardner then "pushed the storm door open and grabbed [Defendant] by her arm and led her on out to the porch." He said that Defendant went to her mother's house. A few weeks later, Defendant called Mr. Gardner from her mother's house and asked him why her mother was giving her sleeping pills.

Mr. Gardner stated that, days later, Defendant's mother brought Defendant back to their residence. Mr. Gardner left Defendant and her mother at the residence with the children while he went to the store. When he returned, the children were "running around crying" because Defendant had cut "all her hair off in patches and left it in the bathroom." Mr. Gardner testified that Defendant looked different as she had long dreadlocks before she cut her hair. Mr. Gardner denied that Defendant told him she cut her hair to hide from people who were going to harm her or the children. He said that, when he asked her why she cut her hair, Defendant said, "I don't know." Mr. Gardner said that Defendant's mother was sitting on the couch "very calm" but that she told him that she was going to take Defendant to Lakeside Hospital ("Lakeside") to be evaluated. Defendant's mother then asked Mr. Gardner for a $1500 loan. Mr. Gardner said that Defendant was voluntarily admitted at Lakeside. He said that she came home when she got out of Lakeside. He said that their relationship was "cool" until he told Defendant that Defendant's mother had asked him for $1500. He said that Defendant immediately accused him of having an affair with her mother.

Mr. Gardner recalled an incident when he came into his children's bedroom and Defendant "had them sitting in a perfect circle" with her on the floor. He said that Defendant "had [a] knife tucked under her leg." He took the knife from Defendant, and when he asked her why she had the knife, she said, "It's for protection." Mr. Gardner said that Defendant did not tell him she was having visions that the children were in danger and that they were going to be raped and tortured. She never said that she was hearing voices.

Mr. Gardner testified that, in 2016, Defendant signed up for a house buying program without consulting him and that they had to move in with Defendant's mother. Mr. Gardner stated that he told Defendant to find them a place to live while they waited for their house because he was tired of being accused of having an affair with her mother. Defendant found them an apartment on Southern Hill Drive, which they moved into in the spring of 2016. Mr. Gardner explained that Defendant also became "very upset" when she learned that she could not be listed as the head of the house and had to be a co-signor on their new house because she made less money than Mr. Gardner.

Mr. Gardner said that, in June 2016, things started "getting strange around Father's Day." He recalled that, on the Monday before the children's deaths, he and Defendant got into a physical altercation. He said that Defendant accused him of cheating on her and that, in the past, Defendant would hit him when accusing him of cheating. Mr. Gardner continued:

> When [Defendant] came around that corner . . . I just reacted. I thought she was [going to] hit me. So, I swung first. Not swing reared back, just more of a get up off me pushing. Because I only did it once.
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> . . . .
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> She kind of fell, stumbled. And it's like I thought . . . she was [going to] get up and go to dukes, but she didn't. She kind of was like she kind of was upset. And then when I seen she was upset, I apologized instantly[,] and I got upset. I told her I won't do that no more and . . . it just kind of died down from that.

Mr. Gardner stated that, after this altercation, Defendant left overnight. When she returned home, Mr. Gardner asked where she had been, and Defendant responded, "who you owe some money[.]" Defendant told him that someone was "pulling beside her" in traffic. Mr. Gardner then called Defendant's sister to let her hear what Defendant was saying. Mr. Gardner said that, on the Thursday before the children's deaths, Defendant came home from work "and she kind of briefly explained to [him] how she got somebody to pray for the kids or pray over the kids" and that she said the children "should be involved in more activities[.]"

Mr. Gardner testified that they were supposed to sign paperwork for the new house on July 11, 2016. Mr. Gardner told Defendant, however, that she would be moving into the house without him. He said that he was going to move in with his father and "just help out[.]" He also told Defendant that he would fight for custody of their children. Mr. Gardner explained:

> Because she constantly accusing me of cheating and I ain't cheated not one time. So, at this point, if that's how you feel you need to do, you the one sneaking out in the middle of the night talking about you going to Walmart. A'ight. You can do what you want to do. I want the kids.

He said that he had this discussion with Defendant in the days leading up to the killings.

Mr. Gardner testified that, when he left for work on the morning of Friday, July 1, 2016, Defendant was lying in bed pretending to be asleep. He recalled that he got to work around 8:00 a.m. and that, around 10:00 a.m., he called to check on Defendant and the children. Defendant said that she was about to make the children something to eat and that they were going to watch some movies. Mr. Gardner heard the children in the background while he was talking to Defendant. Mr. Gardner then told Defendant that he was going to be home soon.

Mr. Gardner testified that Defendant did not tell him she was having visions that someone was going to pistol whip the children. She did not tell him that she was having auditory or visual hallucinations that someone was going to rape the children and make them sex slaves or that she was concerned because there were voices that were telling her to kill the children to protect them. Mr. Gardner said that he would have immediately left work if Defendant had told him any of those things.

Mr. Gardner recalled that, as he was leaving work, he saw that he had missed several phone calls from Defendant's sister. When he returned her calls, Defendant's sister told him that something was not right with Defendant and that he needed to "get home." Mr. Gardner immediately called Defendant, and she answered the phone. Mr. Gardner testified, "[Defendant] was acting like she was gagging and throwing up and she told me she killed my kids." Mr. Gardner asked to speak to each of the children, and Defendant again told him, "I killed these kids." Mr. Gardner testified that Defendant did not tell him why she killed the children.

The following colloquy then occurred:

> Q. You talked to Dr. Resnick at some point. Do you remember talking to him?
>
> A. Yes.
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> Q. He put in his report that he talked to you and you said that basically what you just said. She was making gagging sounds like she was throwing

up and she told you that she killed the children because they were gonna be molested and tortured?

A. That was after I talked to her [in] her first jail call and I asked her why she [did] it.

Q. Okay.

A. That day she didn't tell me. That's when I told him what she told me on one of her jail calls.

Mr. Gardner identified a photograph of the children that he received from Defendant as a Father's Day gift. He said that Defendant told him she had taken the photograph of the children at a park; however, when he looked closer at the photograph, he realized that it was a picture of the children in a cemetery. He said that she gave him the photograph on June 19, about two weeks before she killed the children.

During cross-examination, defense counsel requested to use the audio recording of Mr. Gardner's police interview to either refresh his recollection or impeach him. The trial court would not allow defense counsel to play the entire audio recording but said that counsel could play a relevant portion of the recording if Mr. Gardner testified that he did not remember making, or denied or equivocated about making, a particular statement. The trial court also denied defense counsel's request to make an "offer of proof" of the entire recording by playing the entire recording for the court.

Dr. Marco Ross, Chief Medical Examiner at West Tennessee Regional Forensic Center, testified that Dr. Paul Benson performed the victims' autopsies but that Dr. Benson no longer worked for the medical examiner's office. Dr. Ross identified Dr. Benson's autopsy report and toxicology report on Sahvi Gardner, who was two years old at the time of her death. Dr. Ross testified that Sahvi's cause of death was multiple sharp force injuries and that the manner of death was homicide. Dr. Ross explained that Sahvi suffered a total of twenty-one stab and incise wounds with injuries to the trachea, esophagus, left jugular vein, left common carotid artery, the cervical vertebrae or spine, and the left and right lung. Dr. Ross noted that Sahvi had stab wounds on the front of the chest as well as some wounds on the back of the neck and upper back.

When asked about Sahvi's most significant wound, Dr. Ross stated:

Wound number 5 is an incised wound to the neck that is located on the front of the neck and is a five inch by one and a half inch gap[]ing incised

> wound that extends up to a depth of one and half inches, which transected the trachea or the windpipe just below the vocal cords.
>
> It also transected the thyroid gland, which sits on the trachea at that level. And also transected or cut across the esophagus, the left common carotid artery, which supplies blood to the left side of the head and transected the left jugular vein as well as incising or cutting into the front aspect of the front part of the sixth cervical intervertebral disc, which is a disc between the 6th and 7th vertebrae of the cervical spine.

Dr. Ross noted that there was a "hemo aspiration pattern in the [victim's] lungs, which reflect[ed] the fact that blood got into the airway and was spread into the lung tissue because it was breathed in presumably through the injury to [the] trachea and the neck."

Dr. Ross next identified a copy of Dr. Benson's autopsy report for Tallen Gardner, who was four years old at the time of his death. Dr. Ross said that Tallen suffered a total of twenty-three sharp force injuries, including injuries to his trachea, esophagus, heart, right lung, cervical spine, left internal jugular vein, first thoracic vertebrae, and left sternocleidomastoid muscle, which Dr. Ross explained was "a large muscle between the base of the skull and the sternum[.]" Dr. Ross testified that Tallen had wounds to both the front and back of his body. When asked about the nature of some of the wounds, Dr. Ross stated:

> Wound number 4 is an incised wound of the neck. This is located on the front of the neck. It's also again, a gap[]ing three and a half by one-half inch wide incised wound that extended up to a depth of approximately one and a quarter inch.
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> This one also transected the trachea or the windpipe, the esophagus and it cut into the front part of the second vertebrae of the cervical spine.
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> . . . .
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> Wound number 23 is a stab wound on the right side of the chest. Sort of on the right little bit toward the back. And that wound penetrated . . . up to three inches in depth. And that one perforated the middle part of the right lung, the right middle lobe and also penetrated into the right main stem bronchus, which is the windpipe division that goes to the right side of the lung.

Dr. Ross agreed that the wound to Tallen's neck "suggested the possibility of a sawing motion." Dr. Ross stated that the cause of Tallen's death was multiple sharp force injuries and that the manner of death was homicide.

Dr. Ross next identified the autopsy report prepared by Dr. Benson for Sya Gardner's autopsy. Dr. Ross testified that Sya was three years old at the time of her death; he said that her cause of death was multiple sharp force injuries and that the manner of death was homicide. Dr. Ross noted that Sya suffered a total of eleven stab and incise wounds, which injured her internal jugular vein, muscles of the neck, the right internal jugular vein, the right common carotid artery, the right subclavian artery, and the right sternum cleidomastoid muscle. Regarding some of the most serious of Sya's wounds, Dr. Ross stated:

> Wound Number 5 is . . . an incised wound to the neck located on the left side of the neck. It is one inch in length and extends to a depth of approximately -- just a little over three quarters of an inch and transects the left internal jugular vein.
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> . . . .
>
> Wound number 7 is described as a stab wound to the neck that extends to a depth of greater than one and half inches and goes into some of the strap muscles. These are just muscles that are next to the neck organs. And it also injures the right internal jugular vein, the right common carotid artery and partially transects the right subclavian artery.
>
> . . . .
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> Probably the most significant one would have been the stab wound number 7, which is actually very lower down on the lower part of the neck since it injured two major blood vessels as well as one of the jugular veins.

Dr. Ross next identified the autopsy report for Yahzi Gardner that was prepared by Dr. Benson. Dr. Ross testified that Yahzi was five months old at the time of her death and that she suffered a total of thirteen stab wounds with injuries to the neck muscles, the thyroid gland, the right vertebra artery, the cervical spine, and the left internal jugular vein. When asked about Yahzi's most significant stab wound, Dr. Ross said:

> The most significant injury was . . . probably stab wound number 4. That stab wound went a depth of approximately one inch. And that wound

actually transected the right vertebra artery, which is an artery located within the cervical spine as well as injuring part of the spine itself.

Dr. Ross testified that the cause of Yahzi's death was multiple stab wounds and that the manner of death was homicide.

Detective Samuel Crews of the SCSO testified that he responded to the crime scene on July 1, 2016, and he identified a video of the crime scene, which showed the location of each of the four victims in the residence. Detective Crews identified a razor knife that was recovered from a small table in the short hallway between the living area and the bedroom. Detective Crews noted that deputies also found a small amount of narcotics in the apartment. He said that, when Defendant was taken to the sheriff's office, photographs were taken of Defendant to document her injuries, and then she was provided with a change of clothes. Detective Crews testified that Defendant did not appear to have trouble breathing, and he described her demeanor as calm. He said, "[S]he seemed like she understood what was going on and other times she seemed a little confused. But . . . we interacted with her to obtain a buccal swab. And she understood what that was for." He testified that, when he told her that her four children were deceased, he did not see any change in emotion from Defendant. Detective Crews stated that Defendant was eventually transported to the hospital to make sure that she was "medically cleared" before she was taken to the jail.

Detective Crews said that, when he informed Mr. Gardner that all his children were deceased, Mr. Gardner was "over rocked with emotions." He said that, during his interview, Mr. Gardner would break down and sob. Detective Crews stated:

> And then [Mr. Gardner] would continue trying to talk through his emotions. And then he would back track to earlier and give us back stories for the relationship and then move. He was just kind of all over the place.
>
> And we'd have to stop and wait for him to finish crying for us to move on during his interview.

Detective Crews explained that he watched video footage from the back of the patrol car at the time of Defendant's arrest; he said the video footage showed that, while sitting inside the patrol car, Defendant spontaneously said to herself, "[H]ow am I supposed to undo the motherf***er[?]" Detective Crews testified that he also listened to recorded phone calls made by Defendant from the jail four to six weeks after the offenses. He said that, during one recorded jail call between Defendant and Mr. Gardner, Defendant asked Mr. Gardner why had he not visited her and that Defendant told him they were "in this together[.]" Detective Crews explained that "Yari" was Defendant's nickname and that,

in another phone call, Defendant told Mr. Gardner that they could "have all the kids [they] want[ed]" but that there was "only one Yari."

Defense Proof:

Ashley Snodgrass testified that she was Defendant's sister and that she lived in Huntsville, Alabama. Ms. Snodgrass said that she and Defendant were close and that they spoke by phone every other day prior to the victims' deaths. Ms. Snodgrass stated that, the day before the killings, she talked to Defendant on the phone throughout the day. Ms. Snodgrass recalled that, during their conversation, Defendant said that someone put a rat in the parking lot of her apartment "on purpose to . . . mess with her mind or something." Ms. Snodgrass said that Defendant sounded paranoid and mentioned that someone "looked in [her] blinds[.]" At another point in their conversation, Defendant said that she was "writing down the serial number to their satellite cable box" and told Ms. Snodgrass, "this is how I'm gonna communicate with you." Finally, Ms. Snodgrass recalled that she referred to Defendant as "Trayvon Martin" during their call because Defendant was wearing a hoodie. Ms. Snodgrass testified that her comment "made [Defendant] feel like somebody was about to kill her and just made her all paranoid[.]"

Ms. Snodgrass stated that she did not believe Defendant slept on the night of June 30. She said that she was on the phone with Defendant until the early morning of July 1. Then, around 11:00 a.m., Defendant called her back, and they talked until 12:06 p.m. Ms. Snodgrass said that Defendant was "talking in circles" during the phone call and not responding to some of what Ms. Snodgrass said. Ms. Snodgrass said that Defendant never gave her the impression that she might hurt or kill the children. Ms. Snodgrass testified, "[S]he never said anything about hurting the kids. It was always somebody is following me or somebody is looking through the window. Like she was just always paranoid about something." After the call with Defendant, Ms. Snodgrass became nervous and texted Mr. Gardner, telling him that he needed to go home; she told him that Defendant was "saying crazy stuff."

Ms. Snodgrass testified that Defendant's grandmother had schizophrenia and bipolar disorder and that their grandmother had been committed to a mental hospital multiple times. Ms. Snodgrass recalled that, prior to the offenses, Defendant went to St. Francis Hospital ("St. Francis") and then Lakeside for mental health treatment. During this time, Defendant told Ms. Snodgrass that "she felt like something [was] wrong in her body[.]" Ms. Snodgrass testified that Defendant sounded more "like herself" after her stay at Lakeside. She acknowledged, however, that Defendant "cut off all her hair" after leaving Lakeside.

Ms. Snodgrass recalled an incident in 2014, when she was in Florida with Defendant and other family members. She said that Defendant was "acting weird" and got "super angry" with Ms. Snodgrass. Ms. Snodgrass testified:

> [Defendant's] eyes were . . . super big. She looked just like my grandmother. And that's -- when I left there that's what I told my dad and my mom that she looked possessed. And that was my first time, in my opinion, where I saw a change in like her behavior.

On cross-examination, Ms. Snodgrass agreed that Defendant smoked a lot of marijuana, that she was employed at St. Jude, and that she maintained her employment prior to the offenses. She agreed that, when she last spoke to Defendant on July 1, 2016, Defendant never told her that she was afraid someone was going to rape, torture, or kill her children. Ms. Snodgrass maintained, however, that Defendant was "out of her mind that day and very sleepy." She acknowledged that Defendant previously told her she was concerned that Mr. Gardner was cheating on her.

Anthony Douglas, Defendant's father, testified that he lives in Huntsville, Alabama. He said that Mr. Gardner called him between midnight and 1:00 a.m. on July 1, 2016. He spoke briefly to Mr. Gardner, who sounded "upset" and "bothered." Mr. Douglas then spoke to Defendant for an hour or two. He testified that Defendant seemed "very nervous and sounded confused." Defendant mentioned that "whatever spirit that was on her . . . was hurting her to her bones[,]" that she could not sleep, that she could not "shake it[,]" and that "she would see it outside of her window." Mr. Douglas prayed for Defendant while they were on the phone, and he told her that everything was going to be okay. According to Mr. Douglas, Defendant seemed "pretty relaxed" by the time they got off the phone. He said that Defendant never told him that she was afraid her children were going to be raped, suffer a torturous death, or be taken into sex trafficking. Mr. Douglas said that he never thought Defendant was going to hurt her children.

Mr. Douglas recalled that, in the months before she killed the children, Defendant sounded less "like herself." He testified that, in March 2015, he received a call from Mr. Gardner who explained that Defendant had taken the children from their residence. Mr. Douglas called the SCSO and provided a description of Defendant's car, Defendant, and her children. He explained that an officer found Defendant in Corinth, Mississippi and told her to return to Memphis and that she did as the officer instructed.

Mr. Douglas recalled that, in April 2015, Defendant went to Lakeside for treatment. He said that, at Lakeside, they put Defendant on medication and that she agreed to continue the medication and attend follow-up appointments after her discharge. However, Defendant went to only one follow-up appointment and then stopped attending. She also

told Mr. Douglas that she was not taking the prescribed medications. Mr. Douglas explained that his mother had been previously diagnosed with schizophrenia and bipolar disorder.

On cross-examination, Mr. Douglas agreed that, prior to his call with Defendant on the morning of July 1, 2016, he had not spoken to Defendant for one to two months. Mr. Douglas stated that he had not been aware of any relationship issues between Defendant and Mr. Gardner and had not been aware Defendant had accused Mr. Gardner of cheating on her. He said that he was also unaware of any physical altercations between Defendant and Mr. Gardner.

Dr. Wyatt Nichols, a clinical psychologist specializing in forensic psychology, testified that he evaluated Defendant's competency to stand trial and her mental condition at the time of the offense. Dr. Nichols said that he first assessed Defendant on July 15, 2016, when she was a patient at MMHI, and that he met with her at the Shelby County Jail. He said that he concluded Defendant was competent to stand trial.

Dr. Nichols testified that he diagnosed Defendant with paranoid schizophrenia, a severe mental illness. He stated that, in assessing her psychological condition, he relied on Defendant's medical records from St. Francis, Regional One, Lakeside, MMHI, and the Shelby County Jail, in addition to his meetings with Defendant.

Dr. Nichols was asked whether he considered malingering in his evaluation of Defendant, and he replied, "For sure. Always. Definitely in forensic situations." In explaining the term "malingering," Dr. Nichols said, "It's just when someone is trying to fake having a mental illness or exaggerate the mental illness." He said that he did not administer a test for determining whether Defendant was malingering. Dr. Nichols opined that Defendant was not malingering based on her presentation to him and her psychiatric records and history, which he considered to be "consistent with mental illness" and not "something that all of a sudden showed up on the first day of July of 2016.

Regarding Defendant's psychiatric history, Dr. Nichols maintained that Defendant had her first psychotic break in 2015. He said that, in the spring of 2015, Defendant was working at St. Jude in the donation office; she was having trouble sleeping and was "very confused [and] disorganized." Dr. Nichols said that Defendant began "hiding knives around [her] house because she was scared of people coming inside the house to harm them." He explained that Defendant also had "ideas of reference[,]" meaning that she thought "everything had something to do with her." He said that, when letters were received at the donation office at St. Jude, Defendant "would think the letter had something to do with her or her family members." One time, Defendant became scared while talking

to a donor at the hospital, and she thought she was going to be killed; Defendant then called her mother and asked that she meet her in the parking lot and escort her to her car.

Dr. Nichols said that Defendant tried to take her children to her parents' house in Alabama in March 2015 because she believed that someone was going to harm her or the children. He said that police officers in Corinth, Mississippi stopped her and convinced her to return to Memphis. Dr. Nichols explained that, days later, Defendant "got panicky and scared . . . and ran off again. And ran out in traffic as a suicide attempt." He said that Defendant was taken to St. Francis by police following this incident.

Dr. Nichols testified that the records from St. Francis reflected that Defendant was "very delusional[,]" and he noted that Mr. Douglas reported Defendant did not recognize him when he and Mr. Gardner came to the hospital. Defendant also made hospital staff turn off the television "because the people on the TV were talking to her." Dr. Nichols explained that Defendant was diagnosed with psychosis and marijuana abuse at St. Francis. He acknowledged that Defendant had a history of smoking marijuana and that marijuana can cause paranoia. He maintained, however, that Defendant's paranoia was caused by her schizophrenia. Dr. Nichols said that Defendant's grandmother and her aunts on her father's side of the family were schizophrenic and that Mr. Douglas reported that Defendant's maternal grandfather was committed to a mental hospital at one point.

Dr. Nichols explained that Defendant went to Lakeside on March 20, 2015, the day after she was discharged from St. Francis. While at Lakeside, Defendant was diagnosed with paranoid schizophrenia. She spent about twelve days there and then was discharged on a strict outpatient program. Dr. Nichols explained that, as part of the outpatient program, Defendant spent up to eight hours a day at Lakeside and then returned home at night and on weekends. Dr. Nichols testified that Defendant did not remain compliant after her discharge from the outpatient program and that she quit taking her medication about a month later. Defendant told Dr. Nichols that she stopped taking her medication because it slowed her down and she was not able to function "as well as a mother[.]"

Dr. Nichols testified that, when Defendant stopped taking her medication, her hallucinations returned. Dr. Nichols explained, "There was an incident leading up to July of [2016] where a donor called St. Jude and asked for his money back or some of his money back. He had made a mistake in his donation. And [Defendant] took it that she must have done something wrong." Dr. Nichols continued:

> The donor . . . supposedly made some comment about the color of [a] man's hair. I don't know what . . . the donor was talking about, but [Defendant] took that to mean she's talking about me. She's . . . gonna kill

> me. Somebody is gonna shoot me in the head because [the donor's] talking about this guy's head. So, [Defendant] cut off her hair.

Regarding the day of the offenses, Dr. Nichols stated:

> It got to the point that [Defendant's] mental illness was so severe and overwhelmed her rational thinking that she was unable to appreciate the nature of the wrongfulness of what she was doing because in her mind she was saving her children from being tortured and turned into sex slaves.
>
> . . . . .
>
> . . . And she had this strong belief that her children were going to be taken into slavery or used as sex slaves or killed including herself, and she wrestled with that and argued with herself, no, no, it must be a dream. That can't be true.
>
> But at some point, the rational part of her thinking lost out and she -- her delusional beliefs about her children being mistreated and abused and traumatized took over. And she thought she was saving them from that torture, from that abuse, that mistreatment by killing them.

Dr. Nichols explained that "some man walked by outside and . . . that meant to [Defendant] that he was going to harm them . . . before they could get into the vehicle[.]" He stated, "[Defendant] was panicked and scared and she was in the process of getting the kids ready to . . . get in the car to go to the grocery store to get some pull-ups for the children and she just panicked." Dr. Nichols opined that Defendant suffered from a severe mental illness "that had been going on for some time and that . . . [the] mental illness . . . prevented her from appreciating the wrongfulness and nature of what she was doing." He said that, when Defendant killed the victims, Defendant "thought she was doing the right thing."

Dr. Nichols said that he considered spousal revenge as a possible motive for Defendant's killing of the victims but stated he had no indication that this was the reason for Defendant's actions. He acknowledged that Mr. Gardner reported Defendant accused him of having numerous affairs but opined that Mr. Gardner's alleged cheating did not "play into her thinking[.]" Dr. Nichols testified Defendant reported to him that Mr. Gardner was a good man and a good provider. She also reported that they had a good marriage, although she was aware that her behavior caused problems in the relationship. Dr. Nichols further maintained that Defendant's "role as a mother" was "very important to her."

On cross-examination, Dr. Nichols stated that, although Defendant "was having a psychotic episode for a year" leading up to the killings, she could not understand the wrongfulness of her actions during only the "severe part of her psychotic episode[.]" Dr. Nichols agreed that, when she was at Lakeside, Defendant told staff only that she was having an occupational problem and a relationship problem with her husband. Dr. Nichols said that the possibility that the killings could have been the result of a marital conflict was "something to be concerned about," although he did not think that was what happened. Dr. Nichols acknowledged that Defendant told staff at MMHI that she killed her children because she "did not want them."

Dr. Nichols testified that Defendant's statement in the back of the patrol car, "How am I going to undo this motherf***er," indicated "that at that point she had some appreciation of the wrongfulness" of her actions. He agreed that Defendant's self-inflicted cuts did not look life-threatening. He also agreed that, given his opinion that Defendant had killed her children and tried to kill herself out of an intense fear that people were coming to kill them, it would be a "concern" if Defendant had faked a suicide attempt.

Regarding Defendant's mental state at the time of the offense, the following colloquy occurred during cross-examination:

> Q. What fate is she trying to save [the victims] from?
>
> A. Being raped.
>
> Q. That's wrong, right? Rape.
>
> A. Yes.
>
> Q. She knows that, correct?
>
> A. Yeah.
>
> Q. What else?
>
> A. Being tortured --
>
> Q. That's wrong.
>
> A. Being kidnapped.
>
> Q. Being tortured is wrong, right? She knows that, right?

A. She was not --

Q. The whole time she knows that.

A. She was trying to save them from the emotional trauma.

Q. Okay.

A. The emotional experiences of that.

Q. She's trying to save them from being killed, which is what, wrong, bad, right?

A. She's trying to save them from the emotional trauma of the rape and the sex slave and all that. That's what she's trying to save them from.

Q. If she were say, apologizing to the kids while she's stabbing them, what would that indicate to you?

A. It -- well, obviously she knows in a sense that what she's doing is [going to] kill them.

On redirect, Dr. Nichols explained that he found Defendant competent to stand trial because she was on medicine and was "stable" at the time he performed his evaluation. He said that, when Defendant left Lakeside, she was taking an antipsychotic medication and a mood stabilizer. Dr. Nichols distinguished Defendant's insanity defense from diminished capacity, saying the difference was "[a] big picture of the appreciation" and that Defendant "would know that it would be wrong in a legal sense. But in her mind at that time, she was convinced it was right to prevent these traumas from happening to her kids."

Forensic psychiatrist, Dr. Phillip Resnick, also testified on Defendant's behalf. Dr. Resnick explained that he had written numerous articles on child murder by parents and had developed a widely accepted classification of the motives of parents who kill their children. Dr. Resnick testified that he met with Defendant and Mr. Gardner in December 2016; he spoke to Defendant again in February 2017. Dr. Resnick said that he also reviewed Defendant's medical records from St. Francis, Lakeside, Regional One, MMHI, and the Shelby County Jail in reaching his opinions.

Regarding Defendant's psychiatric history that resulted in her 2015 admission into Lakeside, Dr. Resnick testified that "the gist of her psychiatric problems" was that "she tended to have depression. She would feel bad about herself." He stated that Defendant

"thought she was a bad mom" and that she was paranoid that "others wanted to harm her, were working against her." He explained that Defendant also thought she was being retaliated against at work. Dr. Resnick said that Defendant exhibited similar paranoia in 2016.

Dr. Resnick testified that his formal diagnosis of Defendant was that she suffered from schizoaffective illness, which he explained took into consideration "her periods of depression along with her schizophrenic like illness." Dr. Resnick testified that he disagreed with Dr. Nichols's diagnosis of Defendant as being chronically severely ill; instead, Dr. Resnick opined that Defendant suffered bouts of severe paranoia and that she had been in the middle of an "episodic experience" on July 1 that began about a week earlier. He opined that, at the time she killed the victims, Defendant did not appreciate the wrongfulness of what she was doing due to her severe mental disease and that "[s]he believed she was doing what was right. She believed she was doing what was . . . best [for] . . . the children that she dearly loved."

Dr. Resnick stated that Defendant provided him with a detailed account of what she said led up to her killing the victims. Defendant reported that she had a conversation with Mr. Gardner that morning before he went to work. According to Dr. Resnick's report:

> [Defendant] reported that[,] when she awoke Friday, July 1, 2016[,] her husband "blew her kisses." She felt "very paranoid[,]" and she believed that somebody was after her and her children. She didn't say anything to her husband about it. Her husband told her when he left for work that he'd be back by 2:30 p.m. There were 2 or 3 phone calls between them that morning. Her husband told her that she could go out and buy pull ups (underwear pampers) for her daughters.

Defendant specified the food Mr. Gardner told her to feed the children, as well as the movie she put on for her children—a movie where a man "killed his kids." She reported that she then heard voices telling her, "Your kids are going to get raped and tortured. You are a bad mom if you let that happen to them." Defendant said that she then "cut off the front of her hair so that the 'killer' would not recognize her." She reported that this "partially snapped [her] out of it, but the voices kept saying that [her] kids would be tortured and raped."

Defendant stated that she spoke to her sister on the phone but that she did not share her intense fears because she did not want her sister to think she was crazy. Defendant reported that she then told her children to get ready to go to the store. She said that she saw visions of her children being raped, pistol whipped, and "crying and screaming" and that she heard a voice say, "This is what will happen to them."

Defendant stated that she placed Yahzi in an infant car seat; she had trouble opening the apartment door and then saw a white van pass by outside, which scared her. Defendant reported that

> [s]he saw a white van pass by and concluded that the driver was "the killer." A voice told her that the white van was there to pick her daughters up and make them "sex slaves." She shut the door because she was so scared. She was afraid to start her car because she believed there might be a bomb wired to her car.

Defendant recalled getting a kitchen knife, telling D.C., "They are going to hurt you and kill you," and D.C. responding, "No they are not." Defendant reported hearing more voices tell her, "You have got to do it. You've got to save them." Defendant told Dr. Resnick that she used the kitchen knife to stab three-year-old Sahvi in the stomach but became concerned about her suffering when she did not die, so she then stabbed her in the neck. Defendant also reported that she heard her oldest daughter Sya crying because she was not dead, so she stabbed her in the throat to reduce her suffering. Defendant reported that Tallen and D.C. left the house after she began stabbing the other children and that she told Tallen to come back inside because she saw a man outside who she believed was going to rape him. She said that she stabbed Tallen in the throat after he came back inside. Defendant reported that she apologized to her children the entire time she was stabbing them and explained that the killers were going to get them. She said that she told them, "I have to save you." Defendant said that the voices stopped after she killed the victims.

Defendant said that she believed the "killer outside her home had gotten to her older son," D.C. When Dr. Resnick asked why she did not kill D.C., Defendant replied that he ran and that she would have killed him otherwise. Also, she "had a belief that [D.C.'s] father would try to rape her children but he would not do that to his own son. She had thought that D.C. was either safe with his father or that he had been killed."

Defendant reported that the voices then told her, "They are on the way to kill you," and she stabbed herself in the throat because she feared she too would be tortured and killed. She said that she also tried to slit her wrists with a razor but "it did not work"; she then poured lighter fluid over herself. Defendant said that officers arrived at the apartment before she got a chance to set herself on fire. Defendant told Dr. Resnick that she was fearful when she heard someone at her door. She said that she thought it was the "killers" coming for her and that she opened the door with a knife in her hand. Defendant reported that, after she was put into the patrol car, she heard voices say, "They (the kids) are okay." She said she believed that Mr. Gardner and the children would come to get her "after the kids were stitched up."

When Dr. Resnick asked Defendant whether, on July 1, she believed that killing her children was wrong, Defendant replied, "I thought I was doing what was right." Dr. Resnick also asked Defendant whether she felt she had any choice in killing her children, and she replied, "I didn't know how to stop myself. I thought it was real. I love my children."

Dr. Resnick said that Defendant thought she was doing the children "a good service" and doing what was "right" by killing them. He said that Defendant was choosing the lesser of two evils, explaining that, "[i]n other words, they were going to die anyway. She simply protected them from torture and death." Dr. Resnick opined that, when Defendant saw the van and believed "it" was about to happen, "that's when she had no choice" but to kill the victims to avoid their suffering. Dr. Resnick maintained that, with a van outside and people about to come and kill the children, Defendant's stabbing the children multiple times was to "get them dead as soon as possible."

Dr. Resnick opined that Defendant made a serious suicide attempt on July 1, noting that a stab wound to her throat perforated her trachea. While he acknowledged that Defendant's suicide attempt could be considered as consciousness of guilt, he maintained that Defendant thought she and the children were going to be tortured and killed. He said that Defendant's cutting her hair the morning of the offenses to avoid recognition was consistent with the fear of being killed.

When asked about the statement Defendant made after her arrest while sitting in the back of the patrol car, Dr. Resnick said that the comment did not affect his opinion. He said:

> No. First of all, . . . we know that she was hallucinating that day. We don't know what the voices said to her when she said undo this motherf***er. We don't know what delusional belief she was responding to.
>
> The prosecutor implied that this was undoing the killing. We don't know that to be true. There are no words before and after that can contextualize it with what was going on in her psychotic mind. So, no, I don't see it as undoing my opinion in any way.

According to Dr. Resnick, Defendant had no rational motive to kill her children. Dr. Resnick reasoned that

> the concerns that her husband was unfaithful had gone on for years. That had not changed. What changed was the persecutory belief that her children were about to be killed or even tortured. That is why she killed the children,

> not because of infidelity, which had been going on for years and years in her mind.

On cross-examination, Dr. Resnick acknowledged that, when Defendant was killing the victims, she knew that she was doing something "evil." He opined, however, that Defendant was "not appreciating it relative to the context." He said that Defendant knew it was wrong to kill her children, "[e]xcept to save them from a greater type of torture." Dr. Resnick stated, "She knew it was against the law to kill her children, but she believed she was doing what was right for them since they were ultimately going to die after torture."

Verdict

At the close of proof and following arguments of counsel, the trial court adjourned to begin its deliberations. The court reconvened five days later to deliver its verdict. The court first confirmed that the State had entered a nolle prosequi on the counts charging Defendant with aggravated child endangerment and first degree murder in perpetration of aggravated child endangerment and withdrawn those counts from the court's consideration.

Prior to announcing its verdict, the trial court stated that it had "a jury charge to enter into the record" so that it was "clear the law that [the court] was citing." The jury charge referred to by the trial court provides, in relevant part:

> AFFIRMATIVE DEFENSE: INSANITY
>
> The defendant has raised the defense that she was insane at the time of the commission of the offense.
>
> A person is not responsible for criminal conduct if, at the time of the commission of the acts constituting the offense, the person, as a result of a severe mental disease or defect, was unable to appreciate the wrongfulness of such person's acts.
>
> A mental disease or defect by itself is not a defense. The terms "mental disease or defect" do not include any abnormality manifested only by repeated criminal or otherwise anti-social behavior.
>
> The defendant has the burden of proving the defense of insanity. For the trier of fact to return a verdict of not guilty by reason of insanity, the defendant must prove both of the following things by clear and convincing evidence:

> (1) she had a severe mental disease or defect at the time that the acts constituting the crime were committed;
>
> and
>
> (2) that as a result of this severe mental disease or defect, she was not able to understand what she was doing, or to understand that what she was doing was wrong.
>
> "Clear and convincing evidence" means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.

In announcing its verdict, the trial court found that Defendant had shown by clear and convincing evidence that she had a severe mental disease at the time of the offenses. Regarding the second prong of the insanity defense, the trial court stated:

> The second prong is that . . . as a result of this severe mental disease or defect, she was not able to understand what she was doing or to understand that what she was doing was wrong.
>
> Clear and convincing evidence means evidence which -- in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. I think that was the question all along. I find that there is a serious or substantial doubt about the correctness of the conclusions.

The court then stated, "I don't believe that by . . . clear and convincing evidence [D]efendant was insane at the time of this event."

The trial court found Defendant guilty of four counts of first degree premeditated murder, four counts of first degree felony murder in perpetration of aggravated child abuse, four counts of first degree felony murder in perpetration of aggravated child neglect, four counts of aggravated child abuse, and four counts of aggravated child neglect.

Sentencing and Motion for New Trial

At a subsequent sentencing hearing, the trial court imposed a sentence of life on each first degree murder conviction and fifteen years on each aggravated child abuse and aggravated child neglect conviction, and it ordered all counts to run concurrently. The court also merged Defendant's murder convictions as to each victim.

Defendant then filed a timely motion for new trial and amended motions for new trial, to which the State filed a response. At the hearing on the motion for new trial, the trial court found that it had properly rejected Defendant's insanity defense. The trial court also discussed evidence that it believed would support Defendant's conviction for murder in perpetration of aggravated child neglect notwithstanding its verdict. Following the hearing, the court entered a written order denying Defendant's request for a new trial. This timely appeal follows.

II. Analysis

A. Legal Standard for Insanity Defense

Defendant contends that, in reaching its verdict, the trial court used an incorrect legal standard for the affirmative defense of insanity, thereby denying Defendant her right to a fair trial. Defendant further asserts that the court's conclusions were ambiguous based upon the court's statements at the time of the verdict and at the motion for new trial hearing. Defendant argues:

> There was no question that the [trial] court ruled that [D]efendant suffered a severe mental disease by "clear and convincing evidence[.]" However, it is unclear in the court's findings . . . whether [Defendant] could not . . . appreciate the nature of her actions or she could not appreciate the wrongfulness of those actions. The court merely stated she was not insane, which appears to contradict his earlier statement that she suffered from a severe mental disease.

The State responds that that trial court used the correct standard to determine that Defendant did not meet her burden of proving she was insane at the time of the offenses. The State contends that the court "set forth the correct standard in the 'jury charge' that [was] included in the record" and that the court referred to that standard as the governing law prior to rejecting Defendant's insanity defense. The State argues that neither the trial court's "remarks about that standard nor its remarks about [D]efendant's guilt created any ambiguity as to whether it used the correct standard."

It is well-settled that, if Defendant had opted for a jury trial, she would have had the "'right to a correct and complete charge of the law so that each issue of fact raised by the evidence will be submitted to the jury on proper instructions[,]'" *State v. Perrier*, 536 S.W.3d 388, 403 (Tenn. 2017) (quoting *State v. Farner*, 66 S.W.3d 188, 204 (Tenn. 2001)), and that the trial court would have had a duty to give "'a complete charge of the law applicable to the facts of a case.'" *Id*. (quoting *State v. Harbison*, 704 S.W.2d 314, 319 (Tenn. 1986)). Issues relating to the propriety of jury instructions involve mixed questions

of law and fact and are reviewed de novo with no presumption of correctness. *Id*. (citing *State v. Rush*, 50 S.W.3d 424, 427 (Tenn. 2001); *State v. Smiley*, 38 S.W.3d 521, 524 (Tenn. 2001)); *State v. Arriola*, No. M2007-00428-CCA-R3-CD, 2009 WL 2733746, at *6 (Tenn. Crim. App. Aug. 26, 2009) (stating that "[w]hether the trial court used the proper legal standard for the insanity defense is a question of law, which we review de novo with no presumption of correctness"), *perm. app. denied* (Tenn. Feb. 22, 2010). An instruction should be considered prejudicially erroneous only if the charge, when read as a whole, fails to fairly submit the legal issues or misleads the trier of fact as to the applicable law. *See id*.

In this case, the "jury charge" prepared by and referred to by the trial court when it announced its verdict clearly sets forth the correct legal standard for determining whether a defendant meets his or her burden of proving the affirmative defense of insanity, *see* Tenn. Code Ann. § 39-11-501, and the trial court's comments show that the court followed this standard in making its determination. First, the trial court found that Defendant proved by clear and convincing evidence that she had a severe mental disease at the time of the offenses. Regarding the second prong of the insanity defense, the court correctly summarized what Defendant was required to prove, *i.e.*, "that as a result of this severe mental disease or defect, she was not able to understand what she was doing or to understand that what she was doing was wrong." While still discussing the second prong, the court remarked that this "was the question all along." The court properly summarized the definition of clear and convincing evidence, stating that "[c]lear and convincing evidence means evidence . . . in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence" and then found that, as to the second prong, it had serious or substantial doubts about the conclusions drawn from the evidence.

Citing *State v. Arriola*, 2009 WL 2733746, at *1, Defendant contends that the trial court's ruling is ambiguous because the court did not specify whether it found that Defendant failed to show she was not able to understand what she was doing or failed to show that she was not able to understand that what she was doing was wrong. In *Arriola*, the trial court issued a written order regarding its findings on the issue of insanity. Regarding the second prong of the insanity defense, the trial court concluded that the concept of "wrongfulness" was a narrower part of the concept of "nature." *Id*. at *6. On appeal, this court found that the trial court applied the wrong legal standard, stating:

> "Wrongfulness" goes to whether a defendant understands whether the actions were wrong, or, in other words, it addresses a moral capacity, whereas "nature" goes to whether a defendant understands what the actions were, or, in other words, it addresses a cognitive capacity. *See Clark v. Arizona*, 548 U.S. 735, 747-48 . . . (2006) (interpreting Arizona's insanity defense statute,

> which has similar language to Tennessee's statute)); *see also State v. Holder*, 15 S.W.3d 905 (Tenn. Crim. App. 1999) (holding that the defendant knew the nature of his actions because he knew he stabbed a man and that he knew the wrongfulness of those actions because he knew stabbing a person was wrong). Additionally . . . the Legislature listed "wrongfulness" and "nature" as independent grounds of supporting a defense of insanity. *See* [Tenn. Code Ann.] § 39-11-501 (1995). Thus, the two words must be mutually exclusive and not "part and parcel," as the trial court found.
>
> Second, a defendant need only successfully prove that he, "as a result of a severe mental disease or defect, was unable to appreciate the nature or wrongfulness of [his] acts." [Tenn. Code Ann.] § 39-11-501. The trial court wrote that "*because* the defendant could not prove that he was unable to appreciate the *nature* of his actions he *therefore* could not prove that he was unable to appreciate the *wrongfulness* of his actions." (emphasis added). Again, we respectfully disagree. A defendant need only prove that, as a result of a severe mental disease or defect, *either* he could not appreciate the nature of his actions *or* he could not appreciate the wrongfulness of those actions.

Id. at *6-7 (footnote omitted).

Unlike in *Arriola*, the trial court's comments in this case do not suggest that the court thought Defendant had to prove *both* that she could not appreciate the nature of her actions *and* that she could not appreciate the wrongfulness of those actions. Moreover, Defendant in this case presented no evidence that, due to a severe mental disease, she did not appreciate the *nature* of her actions; instead, both of her experts testified that she could not appreciate the *wrongfulness* of her actions due to her severe mental illness. This was the argument that the trial court was addressing when it determined that Defendant did not meet the second prong of the insanity defense. There was nothing improper about the trial court's analysis, and we see no ambiguity in the court's findings.

Additionally, nothing in the trial court's comments at the motion for new trial hearing suggests that the court did not use the proper standard in rejecting the insanity defense. The trial court did not comment on the standard it used; rather, in the remarks quoted by Defendant in her brief, the trial court discussed the sufficiency of the evidence relating to some of Defendant's convictions aside from the application of the insanity defense.

Defendant has not shown that the trial court applied an incorrect legal standard when it found that she had not established the affirmative defense of insanity. Defendant is not entitled to relief on this claim.

B. Sufficiency of the Evidence

In challenging the sufficiency of the evidence, Defendant contends that the evidence was insufficient to support her convictions because she "establishe[d] by clear and convincing evidence that at the time of the killing of her children [Defendant] suffered a severe mental disease and, as a result, she could not appreciate the wrongfulness of her acts." Defendant notes that the State offered no expert proof to contradict the testimony of her expert witnesses and argues that the trial court arbitrarily ignored their testimony. Defendant asserts:

> [B]ased upon the uncontroverted testimony of both experts, the failure of the [S]tate to rationally challenge the opinions of the expert witnesses, the on-going history of the mental illness of [D]efendant as told by every witness who knew her that testified . . . and reflected in the admitted medical records; the testimony of the first responders [whose] first questions to [D]efendant were concerning her mental state; and, the implausibility that [D]efendant had been a premeditated malingerer since her 2015 hospitalization, all support that, no reasonable trier of fact could have failed to find that [D]efendant's insanity at the time of the offense[s] was established by clear and convincing evidence[.]

The State responds that the evidence amply supported the trial court's rejection of the insanity defense. The State does not contest the trial court's finding that Defendant suffered from a severe mental disease at the time she killed the victims. The State argues, however, that Defendant did not meet her burden of establishing by clear and convincing evidence that, as a result of the severe mental disease, she was unable to appreciate the nature or wrongfulness of her acts at the time she was stabbing the victims.

Our standard of review for a sufficiency of the evidence challenge is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also* Tenn. R. App. P. 13(e). Questions of fact, the credibility of witnesses, and weight of the evidence are resolved by the fact finder. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). In a bench trial, the trial judge, as the trier of fact, must resolve all questions concerning the credibility of witnesses and the weight and value to be given the evidence, as well as all factual issues raised by the evidence. *State v. Ball*, 973 S.W.2d 288, 292 (Tenn. Crim. App. 1998). This court will not reweigh the evidence. *Bland*, 958 S.W.2d at 659. Our standard of review "is the same whether the conviction is based upon direct or circumstantial evidence." *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)) (internal quotation marks omitted).

A guilty verdict removes the presumption of innocence, replacing it with a presumption of guilt. *Bland*, 958 S.W.2d at 659; *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). The trial judge's verdict in a bench trial carries the same weight as a jury verdict. *State v. Hatchett*, 560 S.W.2d 627, 630 (Tenn. 1978); *see also Holder*, 15 S.W.3d at 911. On appeal, the defendant bears the burden of proving why the evidence was insufficient to support the conviction, *Bland*, 958 S.W.2d at 659, and the "State must be afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom." *State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007).

With respect to Defendant's insanity claim, Tennessee Code Annotated section 39-11-501 provides:

> (a) It is an affirmative defense to prosecution that, at the time of the commission of the acts constituting the offense, the defendant, as a result of severe mental disease or defect, was unable to appreciate the nature or wrongfulness of the defendant's acts. Mental disease or defect does not otherwise constitute a defense. The defendant has the burden of proving the defense of insanity by clear and convincing evidence.
>
> (b) As used in this section, "mental disease or defect" does not include any abnormality manifested only by repeated criminal or otherwise antisocial conduct.
>
> (c) No expert witness may testify as to whether the defendant was or was not insane as set forth in subsection (a). Such ultimate issue is a matter for the trier of fact alone.

"[A]ppellate courts in Tennessee should reverse a jury verdict rejecting the insanity defense only if, considering the evidence in the light most favorable to the prosecution, no reasonable trier of fact could have failed to find that the defendant's insanity at the time of the offense was established by clear and convincing evidence." *State v. Flake*, 88 S.W.3d 540, 554 (Tenn. 2002). This standard of review is similar to the reasonableness standard reviewing courts apply when assessing the sufficiency of the evidence; appellate courts "should consider all the evidence in the record in the light most favorable to the [S]tate in determining whether the jury appropriately rejected the insanity defense." *Id*. When the evidence is disputed, this court will "rarely reverse a jury's rejection of the insanity defense under this deferential standard of review." *Id*. at 556.

The defendant has the burden of establishing the affirmative defense of insanity. *Id*. at 554. The Tennessee Supreme Court has "explicitly reject[ed] the notion that the State must rebut defense proof of insanity with substantial evidence." *Id*. "In determining

whether a defendant is insane, a jury is entitled to consider all the evidence offered, including the facts surrounding the crime, the testimony of lay witnesses, and expert testimony." *Id*. at 556. Defense proof of insanity "can be countered by contrary expert testimony, lay witnesses, or vigorous cross-examination designed to undermine the credibility of the defense expert." *Id*. at 554. If expert testimony is presented at trial, the jury must evaluate the credibility of the expert, determine the weight and value of the testimony, and resolve all factual disputes raised by the evidence. *Id*. (citing *State v. Sparks*, 891 S.W.2d 607, 616 (Tenn. 1995); *Edwards v. State*, 540 S.W.2d 641, 647 (Tenn. 1976)). "Where there is a conflict in the evidence, the trier of fact is not required to accept expert testimony over other evidence and must determine the weight and credibility of each in light of all the facts and circumstances of the case." *Id*. (citing *Edwards*, 540 S.W.2d at 647). It is not the role of this court to reweigh the evidence or reevaluate the trier of fact's credibility determinations. *Id*.

In this case, as to the first prong of the insanity defense, the evidence clearly established that Defendant suffered from a severe mental disease at the time of the offenses. Dr. Nichols testified that, at the time of the offenses, Defendant suffered from paranoid schizophrenia, while Dr. Resnick diagnosed Defendant with schizoaffective illness, which he said took into consideration Defendant's "periods of depression along with her schizophrenic like illness." Additionally, medical records from 2015 show that Defendant had a history of mental illness and had been diagnosed with paranoid schizophrenia and psychosis at St. Francis and Lakeside.

As to the second prong of the insanity defense, Dr. Nichols opined that Defendant's mental illness prevented her from appreciating the wrongfulness of her conduct. Dr. Nichols also testified, however, that Defendant knew that killing her children "would be wrong in a legal sense. But in her mind at the time, she was convinced it was right to prevent these traumas from happening to her kids[.]" Likewise, Dr. Resnick testified that, at the time she killed the victims, Defendant did not appreciate the wrongfulness of what she was doing due to her mental illness, but he acknowledged that Defendant knew that she was doing something "evil" when she killed the victims. Dr. Resnick stated, "She knew it was against the law to kill her children, but she believed she was doing what was right for them since they were ultimately going to die after torture." As noted by the State, "our law does not make a distinction between legal and moral wrongfulness[.]" *State v. Odle*, No. M2014-00349-CCA-R3-CD, 2014 WL 6607013, at *4 (Tenn. Crim. App. Nov. 21, 2014) (finding that the jury reasonably rejected an insanity defense where experts "testified that appellant understood that his actions were legally wrong but not morally wrong"), *perm. app. denied* (Tenn. Mar. 12, 2015); *see also State v. Parker*, No. E2017-01787-CCA-R3-CD, 2019 WL 931827, at *19 (Tenn. Crim. App. Feb. 25, 2019) (finding insufficient evidence that the defendant was insane at time of the offense where, among other things, he knew that killing the victim was legally wrong), *no perm. app. filed*; *State*

v. Wise, No. M2012-02520-CCA-R3-CD, 2014 WL 992102, at *16 (Tenn. Crim. App. Mar. 13, 2014) (rejecting argument distinguishing "legal" and "moral" wrongfulness), *perm. app. denied* (Tenn. Sept. 19, 2014); *State v. Kelley*, No. M2001-00461-CCA-R3-CD, 2002 WL 927610, at *23-24 (Tenn. Crim. App. May 7, 2002) (holding that a rational jury could conclude that the defendant appreciated the nature or wrongfulness of his criminal act where defense experts testified that the defendant knew his conduct was illegal and that he could be arrested), *perm. app. denied* (Tenn. Oct. 21, 2002). It is enough that a defendant understand that his or her actions are wrong in one form or another. *Parker*, 2019 WL 931827, at *19. Based upon the testimony from Dr. Nichols and Dr. Resnick that Defendant knew that killing her children was against the law and "wrong in a legal sense[,]" the trial court could have reasonably found that Defendant failed to establish insanity at the time of the offenses by clear and convincing evidence. *Flake*, 88 S.W.3d at 554; *Parker*, 2019 WL 931827, at *19; *Odle*, 2014 WL 6607013, at *4; *Wise*, 2014 WL 992102, at *16.

In addition to testimony from lay witnesses and medical experts, the trier of fact may look at evidence of a defendant's actions and words before, at, and immediately after the commission of the offense in determining the defendant's mental status. *Holder*, 15 S.W.3d at 912. Thus, the trial court could have also considered the following circumstances as evidence that Defendant appreciated the wrongfulness of her actions: that Defendant apologized to the victims while stabbing them and that she attempted suicide immediately after the killings, which could be seen as showing her consciousness of guilt; that, when placed in the back of the patrol car, Defendant questioned how she could "undo the motherf***er," which Dr. Nichols testified indicated Defendant had an appreciation of the wrongfulness of her actions at some point; that, when asked at Regional One why she killed her children, Defendant made no mention of having delusions or hallucinations but instead said she killed them because she did not want them; and that, in the days leading up to the killings, Defendant accused Mr. Gardner of cheating on her, and Mr. Gardner struck Defendant, told her he was not moving into the new house with her, and told her that he would fight for custody of the children, which could establish Defendant's potential motive for the killings, spousal revenge, as argued by the State.

Considering all the evidence in the record in the light most favorable to the State, we conclude that a rational trier of fact could have found that Defendant failed to show by clear and convincing evidence that she was unable to appreciate the nature or wrongfulness of her acts as a result of her severe mental disease. Thus, the trial court trier appropriately rejected the insanity defense, and Defendant is not entitled to relief on this issue.

C. Defendant's Offer of Proof

Defendant asserts that the trial court should not have denied her request to make an offer of proof of the entire audio recording of Mr. Gardner's police interview. Defendant argues that the audio recording of Mr. Gardner's police interview was "the best and most complete evidence of [his] recollection of the events to which he was testifying" and that, had the entire audio recording been played for the court, "it would have pointed out the number of times Mr. Gardner's direct testimony contradict[ed] with his July 1, 2016 recorded statement, which goes directly to his credibility." Defendant contends that "[t]he failure to allow the introduction of the recording and to allow [D]efendant an opportunity to adequately question [Mr.] Gardner on cross-examination was reversible error and denied Defendant a fair trial."

The State responds that the trial court properly denied Defendant's request to make an offer of proof of the entire audio recording of Mr. Gardner's police interview. The State argues that the court properly followed the procedure in Tennessee Rule of Evidence 613(b), when it ruled that Defendant could play portions of Mr. Gardner's interview after calling his attention to statements that he could not recall or denied making.

As the State notes in its brief, Defendant raised this issue in her amended motion for new trial and attached a copy of the entire audio recording of Mr. Gardner's police interview to the amended motion. The recording is thus included in the appellate record and available for this court's review. To the extent that Defendant asserts the trial court erred by not allowing a copy of the interview to be entered into the record, the issue is moot. *See State ex rel. Lewis v. State*, 347 S.W.2d 47, 48 (Tenn. 1961); *Dockery v. Dockery*, 559 S.W.2d 952, 954 (Tenn. Ct. App. 1977).

To the extent that Defendant contends the trial court erred by not allowing Defendant the opportunity to adequately cross-examine Mr. Gardner through use of the audio recording of his police interview, we respectfully disagree. Tennessee Rule of Evidence 613 provides, in pertinent part:

> (a) Examining Witness Concerning Prior Statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.
>
> (b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless and until the witness is afforded an opportunity to explain or deny the

> same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require.

Tenn. R. Evid. 613(a)-(b). Our supreme court has held that "extrinsic evidence remains inadmissible until the witness either denies or equivocates as to having made the prior inconsistent statement." *State v. Martin*, 964 S.W.2d 564, 567 (Tenn. 1998) (citations omitted). Rule 613 does not require the playing of an entire recorded statement that could include statements not previously brought to the attention of the witness, statements that may be consistent with the witness's trial testimony, and statements that the witness remembers and readily agrees to have made.

In ruling on Defendant's request that she be allowed to play the entire audio recording of Mr. Gardner's police interview, the trial court found that it would be improper for defense counsel to play the entire audio recording but stated that counsel could play relevant portions of the recording if Mr. Gardner testified that he did not remember making, or denied or equivocated about making, a particular statement. The trial court's ruling allowed Defendant to impeach Mr. Gardner with any prior inconsistent statements in his recorded police interview by drawing his attention to those statements and then playing the corresponding portions of the recording if Mr. Gardner either denied or equivocated about the statement. *See id*. Although Defendant may not have chosen to take advantage of the trial court's ruling, her failure to do so does not constitute error on the part of the trial court.

In her brief, Defendant argues that the entire audio recording of Mr. Gardner's police interview was the "best and most complete evidence" of his recollection of the events to which he was testifying. In making her argument, Defendant cites to Tennessee Rule of Evidence 106, which provides that, "[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." However, because the State had not introduced any part of Mr. Gardner's recorded statement, Rule 106 was not applicable. Defendant is not entitled to relief on this claim.

III. Conclusion

Based on the foregoing, we affirm the trial court's judgments of conviction.

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ROBERT L. HOLLOWAY, JR., JUDGE