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IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs February 1, 2023

STATE OF TENNESSEE v. RICKY ANDERSON

Appeal from the Criminal Court for Shelby County
Nos. 18-06628, C1809679 Glenn Ivy Wright, Judge

No. W2022-00452-CCA-R3-CD

Defendant, Ricky Anderson, appeals his Shelby County convictions for two counts of first degree premeditated murder, for which he received concurrent life sentences. Defendant contends that the evidence presented at trial was insufficient to support his convictions and that the trial court abused its discretion in admitting photographs of one of the deceased victims. 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 TIMOTHY L. EASTER and KYLE A. HIXSON, JJ., joined.

Blake Ballin, Memphis, Tennessee, for the appellant, Ricky Anderson.

Jonathan Skrmetti, Attorney General and Reporter; Brent C. Cherry, Senior Assistant Attorney General; Amy P. Weirich, District Attorney General; Greg Gilbert and Julie Cardillo, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

This case arises from the killing of Karmeshi Pipes and her unborn child in January 2018. The Shelby County Grand Jury subsequently indicted Defendant for two counts of premeditated first degree murder in relation to their deaths. Prior to trial, Defendant filed a notice of his intent to rely on an insanity defense.

State's case-in-chief

At trial, Memphis Police Department (MPD) Officer Samuel Briggs testified that, on January 30, 2018, he was dispatched to Defendant's residence on Sparks Street regarding a "D.O.A." At the residence, Officer Briggs encountered Defendant and Defendant's mother and father, Regina Anderson and Ricky Anderson, Sr. When Officer Briggs entered the residence, he noticed a strong odor of bleach, and he saw a bottle of bleach sitting out on a counter. Officer Briggs walked through the residence to the dining room, where he found the body of Ms. Pipes lying on the floor. Ms. Pipes was covered by a blanket, but Officer Briggs noted that she appeared to be pregnant. When asked, Mrs. Anderson confirmed that Ms. Pipes was nine months pregnant and "due very soon." Officer Briggs testified that Ms. Pipes' body appeared to have been moved to the location in the dining room. He said that the dining room floor had been cleaned; there were trash bags containing bedding and a mattress from the bedroom leaning against the wall.

Officer Briggs testified that paramedics arrived on scene and "hooked up leads" to Ms. Pipes to confirm that there were no signs of life. Officer Briggs recalled that he spoke to Mr. and Mrs. Anderson about when they had last seen Ms. Pipes alive. He also asked Defendant several questions, but Defendant "stared back blankly[.]" When Officer Briggs asked Defendant when Defendant last saw Ms. Pipes alive, Defendant responded, "Am I the suspect[?]" Officer Briggs then detained Defendant for further investigation.

Ms. Pipes' grandmother, Essie Pipes, testified that she had raised Ms. Pipes. She said that Ms. Pipes had been twenty-six years old at the time of her death and had been involved in a relationship with Defendant. Ms. Pipes' grandmother recalled that Defendant was always neat in his appearance and that he was quiet and polite when visiting her home. She said that Defendant and Ms. Pipes seemed to get along well and that she never saw them argue. She stated that Ms. Pipes was due to give birth to the couple's child on February 7, 2018. She explained that Ms. Pipes had already picked out the baby's name, Rickiha.

Ms. Pipes' grandmother testified that she threw a baby shower for Ms. Pipes on the evening of Sunday, January 21, 2018, which was attended by thirty to forty people, including Defendant and his family. At one point that evening, Ms. Pipes' grandmother noticed that Defendant was crying. She stated that, prior to the baby shower, Ms. Pipes had been splitting her time between Defendant's residence and her home. Ms. Pipes told her that she would "come home" after the delivery of her baby so that she could help Ms. Pipes with the newborn. Ms. Pipes also said that she was not going to stay at Defendant's residence after the baby shower and that she would "be back" at her grandmother's home. Ms. Pipes' grandmother testified, however, that she never saw Ms. Pipes alive again.

Ms. Pipes' grandmother testified that, between the night of January 21 and January 30 when Ms. Pipes was found deceased, she called Ms. Pipes numerous times. She said that, at first, her calls went to voicemail but that, on Monday, January 22, Defendant answered Ms. Pipes' cell phone. Defendant told her that Ms. Pipes was asleep, and she asked Defendant to tell Ms. Pipes to call her. Ms. Pipes' grandmother testified that Defendant had never answered Ms. Pipes' phone before. She recalled that, when she phoned Ms. Pipes again on Wednesday, Defendant answered and told her that Ms. Pipes was shopping with Defendant's mother. She testified, "I asked [Defendant] whenever she gets back in will you have her to call me. And he said, okay." She said that she called Ms. Pipes' phone every day that week and that, after Wednesday, Defendant stopped answering and her calls again went to voicemail.

Ms. Pipes' grandmother stated that, on Thursday night January 26, she and her other granddaughter went to Defendant's residence; they knocked on the door, and no one answered, but they also noticed that there was no car in the driveway. She left a note on the door of the residence, letting Defendant know that they had been there and asking Defendant to tell Ms. Pipes to call her. She testified that she did not receive a phone call from Ms. Pipes on her birthday—Monday, January 29. Ms. Pipes' grandmother testified, "I said, 'Huh-uh', something's wrong, because [Ms. Pipes] would not let my birthday pass without calling me . . . or try[ing] to get in touch with me."

Ms. Pipes' grandmother said that, on January 30, several family members took her to breakfast for her birthday. She recalled that, before breakfast, Ms. Pipes' sister called Defendant's mother asking about Ms. Pipes. She testified that, as they were getting ready to eat breakfast, Defendant's mother called back and said, "It don't look good, they found [Ms. Pipes], it don't look good, would you all come over here to the house[.]" Ms. Pipes' grandmother said that they left the restaurant and went to Defendant's residence on Sparks Street. By the time they arrived, police were there. She recalled that a police officer took her into the living room and informed her that Ms. Pipes was deceased in the back portion of the residence.

Defendant's father, Ricky Anderson, Sr., testified that he first met Ms. Pipes in the spring of 2017. He said that Ms. Pipes was in a truck with Defendant, and Defendant introduced her as his "friend." Mr. Anderson recalled that he met Ms. Pipes for a second time on November 19, 2017. He explained:

> [W]e were getting ready to leave that Saturday morning on the 19th of November, [Defendant] came by and [Ms. Pipes] was with him. And so, that was the second time that I met her and [Defendant] said, well we are going to the birthday dinner as well. So they ro[de] with us to Jackson, that day.

Mr. Anderson testified that he learned on that day that Ms. Pipes was pregnant with Defendant's child. He said that Ms. Pipes appeared to be in the last trimester of her pregnancy and that he was "a little shocked, because . . . from May until now [he] hadn't heard anything, but . . . [he] was very welcoming." A few days after the trip to Jackson, Mr. Anderson questioned Defendant about how long Defendant had been dating Ms. Pipes. Mr. Anderson acknowledged that, when he spoke to Defendant about Ms. Pipes' pregnancy, Defendant "had some questions about the paternity" and about "whether the child could have been his[.]" Mr. Anderson recalled that he told Defendant, "[W]ell y'all have been dating, or seeing each other, yeah . . . the baby could be yours."

Mr. Anderson testified that he, his wife, and Defendant's sister attended Ms. Pipes' baby shower on January 21, 2018. He said that there were no arguments between Ms. Pipes and Defendant at the shower; he noted, however, that Defendant's mood and demeanor were "kind of reserved [and] withdrawn." He said that Defendant seemed "emotional" and was crying at one point. He stated that they took family pictures and that Defendant also took pictures with Ms. Pipes. He said, however, that Defendant's smile appeared "forced[.]" Mr. Anderson testified that Defendant was "kind of removed from . . . everybody talking and mingling[,]" which was "totally out of the norm for him." He testified that the last time he saw Ms. Pipes alive was at the baby shower.

Mr. Anderson testified that Defendant had not sought mental health treatment prior to January 25, 2018, when his wife took Defendant to the hospital for anxiety. He recalled that he went out to eat with Defendant on Sunday, January 28. He said that Defendant did not appear to be hearing or seeing things that were not there.

Mr. Anderson stated that he and Mrs. Anderson found Ms. Pipes' body on January 30, 2018, after Ms. Pipes' relatives told Mrs. Anderson that they had not been able to contact Ms. Pipes for days. Mrs. Anderson said that she tried to call Defendant and Ms. Pipes and that neither answered, so Mr. Anderson left work and met Mrs. Anderson at Defendant's residence. Mr. Anderson testified:

> Well, we knocked on the door and nobody came. The house that [Defendant] started renting, that is my wife's parents['] house, they had both recently passed and that is when [Defendant] had moved in, so she handed me the key, because the family had a key to the house and as I was unlocking the door and we started to go in that is when he was coming to the door and we were in the living room.
>
> . . . .

> Well, we got in the house and my wife asked, “How are you doing” and [Defendant] was just staring. He may have said, “Hey”, then after that she asked, “Was [Ms. Pipes] here” and he didn’t say anything, he’s just staring again, like, in a daze.
>
> And then . . . I said, “[Defendant,] I want to go check on the drywall in the bedroom that you asked me back in November to look at[.]”
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> And, when I walked to the master bedroom[,] the first thing I noticed [was] the top mattress on the bed was missing and I just stared and looked and then I walked back in the living room.
>
> The lights were off, there were no lights on in the whole house, but it was daylight, around ten-ish in the morning and when I walked back in the den I remember [Mrs. Anderson] was asking [Defendant], “Is [Ms. Pipes] here, or where is she[,]” but he still wasn’t speaking, he [was] just dazed and staring.
>
> And, I think my wife turned on the lights in the den, where we were standing and then that is when I saw the top mattress in the middle of the den, in front of the TV.
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> . . . .
>
> And then, a few seconds later, that is when my wife kind of screamed out, “Oh, no[.]”

Mr. Anderson testified that he saw Ms. Pipes lying on the floor, beside the mattress, between the kitchen and the den. He stated that Ms. Pipes was “covered to her head” with a robe or a blanket and that she appeared lifeless. He said, “I stared at her . . . for a long time, because there was [a] blood smear leading up to where she was laying and that blood was dry[.]” He said that the mattress also appeared to have blood on it. Mr. Anderson said that both he and his wife both asked Defendant what had happened. Defendant did not say anything but was “just staring.” Mr. Anderson said that Defendant was “like [a] deer caught in the headlights of a car[.]” Mr. Anderson then called 911.

Mr. Anderson said that, between November 2017 and the end of January 2018, he did not see any signs of unhappiness between Defendant and Ms. Pipes. He testified, however, that he had an unusual interaction with Defendant on November 18, 2017. He stated that he and his wife stopped by Defendant’s residence and that Defendant mentioned that the closet in the master bedroom had “[h]oles in it[,]” even though there were no holes

in the closet when Defendant moved into the residence. Mr. Anderson went into the master bedroom and saw that the drywall inside the closet "from ceiling to floor had been ripped out." When Mr. Anderson asked Defendant what happened, Defendant stated, "I woke up in the middle of the night, I heard noises in the closet, there was somebody in the closet." Defendant said that he was "trying to find who was in the closet" and that he "tor[e] the walls down, trying to see what it was."

Mr. Anderson said that Defendant was at a gas station in early December 2017 when there was a drive-by shooting and that this episode "got to [Defendant], shook him up, again." He testified that, shortly afterwards, Defendant showed up at his house in the middle of the night. He stated:

> We were in bed, I know that it was after midnight and you know he has a key to our house as well. So we are in the bed and we are asleep and I remember waking up and he was standing on my wife's side of the bed, I guess my wife woke up too and that startled her.
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> . . . .
>
> And [Defendant] was on edge, because after we got up we all went in the den and was sitting down and he said, "Somebody's following me, somebody's following me[."] He said, "Momma, you got the police following me[?"] And we [were] like, "Huh[?"]
>
> And he said, "The police [are] following me[,"] and we said, "No[."] And he said, it was like, at least 2:00 o'clock in the morning so he said he woke up again and came out of the house and said come over here and when I pulled out, I passed the police, they are following me.

Mr. Anderson said that Defendant seemed paranoid and anxious. Defendant said that he needed a cigarette, so Mr. Anderson took Defendant to a store to purchase cigarettes. Mr. Anderson testified:

> Somebody was coming out of the store and [Defendant] was like they are following me, they are following me. And I said, "Who[?"] And he said, "That dude, the police[."]
>
> And I said, "No . . . that is a customer, that is not the police."
>
> He got his cigarettes[,] and we went back to the house, we sat back in the den and he was calming down more, he was calm[.]

Defendant eventually said that he was "alright" and that he was going back to his residence.

Mr. Anderson testified that, during 2017, Defendant was in welding school and worked full time as a school custodian. He recalled, however, that Defendant did not return to work in January 2018 after Christmas break.

Lauren Price testified that, prior to her death, Ms. Pipes was the babysitter for her eight-month-old daughter. Ms. Price said that she would take her daughter to Ms. Pipes in the mornings at either Ms. Pipes' grandmother's home or Defendant's residence on Sparks Street. Ms. Price recalled that, on Monday January 22, 2018, she took her daughter to Ms. Pipes at Defendant's residence. She stated, "That Monday morning [Ms. Pipes] and [Defendant] came to the door, he was helping her to get the baby, because the carrier was too heavy for her to pick up at the time." Ms. Price said that she picked up her daughter that evening around 5:30 or 5:45 p.m. She spoke to Ms. Pipes on the phone, and Ms. Pipes told her that she was leaving her doctor's office. Ms. Price waited for Defendant and Ms. Pipes to arrive at the Sparks Street residence, and when they arrived, Defendant helped Ms. Pipes get Ms. Price's daughter out of their car.

Ms. Price said that, when she dropped off her daughter the following day, both Defendant and Ms. Pipes came to the door and that everything appeared normal. When Ms. Price returned to the residence that evening, she had to knock on the door a little harder "because everybody in the house was sleeping that evening and they both came to the door with their robes on, they had been sleeping and brought the baby out."

Ms. Price testified that, when she dropped off her daughter on Wednesday morning, Defendant greeted her. She said that Defendant acted normally and was "quiet and pleasant[.]" Ms. Price said that she did not see Ms. Pipes that morning or when she picked up her daughter that evening. She stated:

> When I went and picked her up that evening . . . [Defendant] brought the baby to me and I asked, "Where was [Ms. Pipes]" and he said . . . that she was sleeping and I said, "Oh I guess she's sleeping a lot you guys are having your baby next week[."]
>
> And he didn't say anything and just gave me the baby[.]
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> . . . .
>
> So Thursday I came to the house -- I texted [Ms. Pipes] to tell her I was on the way. I pulled up to the driveway, there was a car at the end of the

> driveway, I knocked and knocked and knocked on the door, but nobody came.

Ms. Price said that she had to miss work that day. She said that she was "[v]ery upset" and did not attempt to contact Ms. Pipes thereafter.

MPD Officer Eric Carlisle testified that, after the discovery of Ms. Pipes' body, he was called to Defendant's residence to collect evidence. Officer Carlisle explained that he created a sketch of the scene and photographed the scene and items of evidence. He said that he observed a mattress in the den that appeared to have been moved out of the master bedroom. In front of the mattress on the floor, Officer Carlisle found a towel that appeared to have blood on it. He said that it appeared Ms. Pipes was killed in the master bedroom because there were bullet holes in the mattress and in the box springs and blood on the mattress, and officers found spent shell casings in the bedroom. Additionally, there was a "bullet strike" on the wood frame that held the box springs. He said that there was also a large knife on top of the box springs.

Officer Carlisle testified that there were signs that someone tried to clean up the scene. He said, "It looked like spots along the hallway like it had been cleaned up with Clorox." He stated that there was a bleach smell inside the residence and that he found an empty bottle of bleach in the den and the bottle's cap in the master bedroom. Officer Carlisle also found a pair of latex gloves in the master bedroom and signs that bleach had been used in the room. He said that, in a bathroom, he found a "cleaning bucket" that contained rags and a scouring pad. He said that Ms. Pipes' body was covered with a comforter and that there were "swipes of blood" consistent with Ms. Pipes' body having been dragged into the room. He said that it appeared attempts had been made to clean up the blood. He noted that officers recovered a nine-millimeter handgun on top of the dining room table, along with a box of ammunition, about two or three feet from Ms. Pipes' body. Officer Carlisle testified that there was a magazine inside the handgun that contained two live nine-millimeter rounds.

Officer Carlisle said that there were several trash bags containing pillows and bed linens inside the residence. He noted that the bed linens had blood stains on them and that one pillow had a bullet hole in it. He explained that, when the comforter was removed from the trash bag, he found a bullet hole in the comforter. Additionally, inside one of the trash bags, Officer Carlisle found a spent nine-millimeter shell casing, a live round, and a handgun magazine, which appeared to have blood on it.

Officer Carlisle testified that, when the medical examiner moved Ms. Pipes' body, he saw what appeared to be bullet holes in Ms. Pipes' body and "a spent projectile sticking

out" of the body. He said that there was evidence that Ms. Pipes' body had been inside the residence for a while, noting that there was a "[c]hange in color" of her body.

Officer Carlisle explained that he later processed items collected at the scene for latent fingerprints. He also collected swabs from the handgun and spent shell casings for possible touch DNA. He said that he lifted prints from a small clear plastic bag, the black trash bags, the ammunition box, and the handgun magazine. He said that he preserved the prints so that a print examiner could review them.

MPD Lieutenant Dennis Norman testified that, on January 30, 2018, he worked in the department's homicide bureau. He testified that, when he responded to Defendant's residence on Sparks Street, Defendant was already detained in the back of a patrol car. He stated that, after obtaining a search warrant, he entered the residence and immediately smelled the odor of a decaying body. Lieutenant Norman explained that, when the medical examiner removed the blanket covering Ms. Pipes' body, he noticed "a bullet that was . . . partially out of her skin." He also observed that some of the skin on Ms. Pipes' body was sloughing off, indicating to him that Ms. Pipes' body had been there "maybe two or three days[.]"

Lieutenant Norman stated that he instructed a crime scene investigator to take photographs of Defendant. He said that Defendant was "clean looking, [with] a little bit of facial hair" that "look[ed] like it had been manicured." He stated that he saw some "minor lacerations" on Defendant's left wrist but that, otherwise, Defendant had no injuries. He recalled that crime scene officers obtained buccal swabs from Defendant.

Nathan Gathright testified that he was a latent print examiner working in the MPD Crime Scene Investigation Unit's Latent Print Section. Mr. Gathright testified that, in relation to this case, he received five cards bearing five transparent fingerprint lifts and a DVD with twenty-four photographic images of these five prints. He noted that two of the prints were lifted from a handgun magazine and that the other three lifts came from cuttings from a trash bag. He testified that his examination of the five prints showed that they matched Defendant's prints.

During a jury-out hearing, the State indicated that there were "a bunch of pictures and stuff to go through with the medical examiner[.]" [1] Defense counsel lodged "an objection to those photographs under [Tennessee Rule of Evidence 403,] being that they are unfairly prejudicial and have very low probative value." Defense counsel argued that there was no dispute about "the manner of death, cause of death, or even who committed

[1] Prior to the jury-out hearing, one autopsy photograph of Ms. Pipes (Exhibit 5) had been admitted without objection from Defendant. The photograph showed Ms. Pipes' face and the top of her shoulders.

this act" and that there were diagrams made by the medical examiner that showed "exactly what the pictures show[ed.]" Defense counsel noted that the State had "twelve or fifteen [photographs] of . . . Ms. Pipes" and one photograph of her unborn child. At this point, the prosecutor offered "to mitigate some of this" and suggested, "I have one picture that I think I am going to use, instead of all those twelve[.]" Defense counsel renewed his objection "with regard to the low probative value and the high prejudicial value of pictures of the deceased decaying body, especially that of an unborn child."

The trial court considered the two photographs proffered by the State—one of Ms. Pipes and one of her unborn child—that were taken by the medical examiner at autopsy. The State argued that the photograph of Ms. Pipes' body was "relevant to the decomposition, [and] critical to the time frame of how long she was in the house, deceased and what [Defendant] knew, how long he would have known that she was deceased." The State also asserted that the photograph was relevant for the medical examiner "to describe how she is able to differentiate an entrance versus an exit [wound]."

Considering the photographs, the trial court found that the photograph of Ms. Pipes' unborn child was not admissible as its probative value was outweighed by its prejudicial effect. Regarding the photograph of Ms. Pipes' body, however, the trial court found that

> for the reasons as stated of showing the bullet holes in the victim's back and showing the state of decomposition, I am going to rule that that is relevant and it is probative, this is a first-degree murder case. And that, although there is some prejudice [this] is not a gruesome photograph of the adult victim, it is just showing . . . her back. And, I am going to rule that the probative value outweighs the prejudice, okay, and allow that into evidence.

Following the jury-out hearing, Dr. Katrina Van Pelt testified that she worked as a forensic pathologist at the West Tennessee Regional Forensic Center for the University of Tennessee Health Sciences and that she performed the victims' autopsies. Dr. Van Pelt agreed that Ms. Pipes had been about thirty-six weeks into her pregnancy at the time of her death. Dr. Van Pelt explained that "full term is anywhere between thirty-seven weeks and forty [weeks]." She testified that "the baby was head down with the head in the pelvis and that is typically in the position that the baby wants to get into for easy delivery."

Dr. Van Pelt noted that Ms. Pipes was wearing a robe when she was found. With respect to the injuries to Ms. Pipes, Dr. Van Pelt testified that she documented multiple gunshot wounds. She said that there was evidence of "skin slippage" on Ms. Pipes' body. She explained that "after death your cells will start breaking down and . . . so the skin will also start breaking down and that connection between the skin and the underlying dermis, those connections break down." She agreed that "this [is] a normal process of the

decomposition." Based on the condition of Ms. Pipes' body, Dr. Van Pelt estimated that at the time Ms. Pipes was discovered, she had been dead for "more than twenty-four hours, . . . probably more like several days, but at least twenty-four hours."

Dr. Van Pelt testified that Ms. Pipes suffered seventeen gunshot entrance wounds resulting in twenty-five defects or holes in her skin. Dr. Van Pelt testified that she could not determine the distance from which the gunshots were fired. She affirmed that Ms. Pipes' wounds were consistent with her being shot while lying in bed. Dr. Van Pelt said that, during the autopsy, she recovered eleven bullets and bullet fragments. She documented multiple wounds to the lungs, heart, kidney, spleen, and spine. Dr. Van Pelt determined that the cause of Ms. Pipes' death was multiple gunshot wounds and that the manner of death was homicide.

Dr. Van Pelt conducted a separate examination of Ms. Pipes' unborn child. Dr. Van Pelt testified that "the baby had some evidence of decomposition and skin slippage." She determined that the baby was not directly struck by any of the bullets; she said that none of the bullets punctured the amniotic sack, and the baby was free from any gunshot wounds. Dr. Van Pelt testified that Ms. Pipes' unborn child appeared to be normally developed and that the child was likely to have been born alive but for the killing of Ms. Pipes.

Dr. Van Pelt testified that the baby "had two skull fractures on the left and right parietal bones, which are the bones on the sides of your head, and then the baby also had a subarachnoid hemorrhage which is blood just on the surface of the brain." She explained that "[u]sually a subarachnoid hemorrhage like this would be due to trauma and that could cause death, so that was significant." She said that the baby would have still been alive when the fractures occurred. Dr. Van Pelt explained:

> So, the most likely cause of these skull fractures and these injuries is due to the excess[ive] forces of the bullets going near the baby. It didn't hit the baby, but when bullets go through an area it causes this force going through and that force going through the body, especially very close to the baby, especially the baby's head, could have caused these injuries and would be consistent with that.

Special Agent Christie Smith of the Tennessee Bureau of Investigation (TBI) testified that she was a scientist assigned to the crime laboratory's Forensic Biology Unit, where she routinely examined items of evidence for bodily fluids and performed DNA testing. Agent Smith said that she obtained DNA samples from Defendant's buccal swab and from a blood standard collected from Ms. Pipes at autopsy. She said that she received nail clippings from Ms. Pipes' body and swabs from "a handgun, live rounds[,] and cartridge cases." Agent Smith stated that her testing of the nail clippings showed that there

was a mixture of two individuals' DNA, with the major contributor of the DNA being Ms. Pipes. Agent Smith explained that because the minor contributor's DNA sample "was so limited[,]" she was unable to make a comparison. Agent Smith said that her testing of the DNA swabs from the live rounds did not indicate the presence of DNA. She stated that she obtained a limited DNA profile from the handgun but that "it fell into an inconclusive category[.]" Agent Smith said that she tested the swabs from the cartridge cases but that there was not enough human DNA found on the items to proceed with further testing.

TBI Special Agent Kasia Lynch testified that she was assigned to the Jackson Regional Crime Laboratory in the firearms identification unit. Agent Lynch explained, as relevant to Defendant's case, that she received for testing a nine-millimeter handgun, approximately thirteen live nine-millimeter rounds, twenty-one fired cartridge cases, and thirteen bullets "that had been damaged and separated slightly." She identified the handgun as a Taurus nine-millimeter semi-automatic pistol. She stated that the handgun was in normal operating condition and that the safety features were functioning on it. Agent Lynch testified, based on her examination, that all the spent cartridge casings and all the bullets that she examined were fired from the nine-millimeter handgun.

Defense proof

Joyce Kelly, Defendant's aunt, testified that there was a history of mental illness in her family. Ms. Kelly explained that Defendant's great-grandmother and two or three of his great-aunts suffered from schizophrenia. She said that several of Defendant's cousins also had "serious mental illness."

Ms. Kelly testified that, during their family's Christmas dinner in 2017, she noticed that Defendant was "a little exasperated" and seemed "a little anxious[.]" Ms. Kelly said, however, that Defendant's behavior did not rise to the level where she thought he needed "to get . . . help[.]"

Ms. Kelly said that she had worked as a special education teacher at a charter school in 2017 and that she had helped Defendant get a job as a custodian at the school. Ms. Kelly recalled that, in January 2018, she learned that Defendant had stopped reporting to work. She called Defendant and told him that he needed to come to the school and apply for a leave of absence.

Ms. Kelly testified that she was a part of the meeting Defendant had with the charter school administration on January 25, 2018. She said that, when questioned about his absence from work by the school's personnel director, Defendant did not respond. Ms. Kelly then asked the personnel director for paperwork so that Defendant could apply for a leave of absence. When the director left the room, Defendant started to cry and told Ms.

Kelly that "he wasn't feeling good, he wasn't able to come back, . . . [and] that he wasn't ready to come back to work." Ms. Kelly testified that, at this point, she took Defendant to the emergency room because she felt "there [was] something wrong" with him. She said that Defendant did not object, and she took him to Methodist South Hospital. Ms. Kelly recalled that, during the car ride, she asked Defendant, "Do you hear anything, is anybody saying anything to you, or anything like that?" She testified that Defendant looked at her like he wanted to respond but then "he didn't say anything and . . . just turned around and looked back out the window." She said that the way Defendant looked at her "kind of frightened [her]." Ms. Kelly stated that she called Defendant's mother and asked her to meet them at the hospital.

On cross-examination, Ms. Kelly agreed that, during the car ride, Defendant did not seem to be responding to "people who were not there" and that he did not tell her he was "hearing voices[.]" She said, however, that he seemed extremely anxious.

Defendant's mother, Regina Anderson, testified that Defendant lived at home with her and Mr. Anderson until October 2017. She said that, after he moved out, Defendant routinely came over to her home. She said that she and Defendant were "very close" and that they "talked a lot." Mrs. Anderson testified that, in mid-August 2017, Defendant told her, "Momma there's a girl that says I got her pregnant." Mrs. Anderson continued:

> And I said, "Who[,"] because I hadn't met anyone and I said, "Who is she[?"]
>
> And [Defendant] said, "Her name is [Ms. Pipes."] And . . . he was like, "I don't know don't know[,"] that's what he told me. He said, ["]I just don't know,["] he said, ["I]t looks like she got pregnant too quickly.["]
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> . . . .
>
> I said, but if you are the father, there's nothing that I want to miss, because this is my first grandbaby and I don't want to miss anything and I don't want you to miss anything.
>
> So if there is a possibility, I need you to stay connected with her.
>
> And he seemed like he was okay with that. And he was like, "Okay[."]

She said that she was unaware of Ms. Pipes until this conversation.

Mrs. Anderson recalled that, on November 18, 2017, she and her husband went to Defendant's residence. She stated that she went into the master bedroom and saw that the closet was "torn up." Mrs. Anderson was concerned and upset by the level of damage to the closet and asked Defendant what happened. She recalled:

> And [Defendant] said, it was something in that closet, I was hearing noises and someone, I felt, was looking at me and I was trying to get at it and find it before it ran.
>
> And it took me back. I just looked and I said, "What?" And he said it was something in there, I woke up in the middle of the night, I was hearing noises and I was trying to find it.
>
> . . . .
>
> I asked him what was going on and I was like, . . . are you good, are you good, what is going on. And he was like, I'm fine, I'm fine, there was something in that closet and I wasn't going to let it just stay in there and he said he thought it was peeking at him, is what he said, "I thought it was looking at me[."]

Mrs. Anderson testified that, on November 19, 2017, she and Mr. Anderson were going to a family dinner for her niece's birthday. Defendant came to the house that day with Ms. Pipes and said that he and Ms. Pipes were going to the birthday dinner with them. Mrs. Anderson testified that it was obvious that Ms. Pipes was pregnant; she said that Mr. Anderson learned about the pregnancy that day. Mrs. Anderson stated that she asked Ms. Pipes at dinner if there was any possibility that Defendant was not the father of her baby, but Ms. Pipes assured her that Defendant was the father.

Mrs. Anderson stated that, after her niece's birthday dinner, Defendant "embraced the idea of having" a baby with Ms. Pipes and was excited about the prospect. Mrs. Anderson obtained Ms. Pipes' cell phone number from Defendant, and Ms. Pipes began coming over to Defendant's parents' house four to five times a week with Defendant. Mrs. Anderson stated, "[Ms. Pipes] and I had gotten very close where we would text each other[.]" She recalled that Ms. Pipes joined Defendant at their Thanksgiving Day dinner and that, at dinner, Defendant told people that he was thankful for Ms. Pipes and their unborn child. She stated that, when trying to come up with a name for the baby, Defendant said, "[W]hen I look down at my baby I want to see me all over her, I want her name to be Ricky." Mrs. Anderson explained that she and Ms. Pipes eventually came up with the name "Rickiha" for the baby. Mrs. Anderson testified that Ms. Pipes and Defendant

appeared to have an affectionate relationship and that she "never saw anything between them that would make [her] wonder were there issues."

Mrs. Anderson testified that, one morning in December 2017, around 1:30 or 2:00 a.m., she woke up to Defendant's standing over her. She said that Defendant began pacing and asked her, "Do you have the police following me, do you have the police following me?" Mrs. Anderson said that she was "really scared" and confused and that Defendant's eyes were "not right[.]" She continued, "I said, calmly, because he is very upset, I said, ['Defendant], why would I have the police following you?['] He said, [']I don't know, I don't know what you've got going on with the police, I don't know why you would have the police following me[.'"] Mrs. Anderson said that her husband got out of bed and took Defendant to the living room to talk. She then asked Defendant if he recalled that there had been a shooting near his residence, and she explained that the police were likely in the area because they were still looking for the suspect. Defendant said that he needed to smoke, so Mr. Anderson went with him to a store to purchase cigarettes. Mrs. Anderson recalled that, when he returned, Defendant was quiet. When she suggested that he might "need to get some help[,]" Defendant said that he was fine.

Mrs. Anderson said that, around Christmas 2017, Defendant's "look changed" and he became less affectionate and more withdrawn. She said that Ms. Pipes told her about an incident when Defendant went with Ms. Pipes to an ultrasound appointment. Ms. Pipes said that Defendant was at a vending machine during the ultrasound and did not get to see it. She said that Defendant was upset and crying because the ultrasound technician did not have time to redo the procedure.

Mrs. Anderson recalled Ms. Pipes' baby shower and said that Defendant was "a bit quiet," withdrawn, and "not his happy self." Mrs. Anderson testified that, the day after the baby shower, she heard that Defendant was not going to work, so she went to his residence to check on him. She said that she could hear Ms. Pipes inside the residence, so she asked Defendant to step outside. When she asked Defendant about his failure to return to work, Defendant said that "there [was] a black vale that come over [him]" and that he got depressed when he went to the school. Mrs. Anderson told Defendant that he needed to talk to somebody and get some help. Mrs. Anderson testified that Defendant responded, "[W]hy are you talking, you are a demon[.]" Defendant said that he could hear her voice but that he saw "a demon." Mrs. Anderson said that, after this incident, Defendant agreed to talk to someone, and she made an appointment for Defendant with the first provider that could see him. She recalled that she took Defendant to see the doctor on January 28, 2018.

Mrs. Anderson said that, after the baby shower, Ms. Pipes began not answering her phone calls. When she asked Defendant about this, Defendant told her that Ms. Pipes' phone had gotten wet. Mrs. Anderson testified that, on January 29, 2018, she went to

Defendant's residence and knocked on the door. When Defendant did not answer, she used her key to unlock the door. Defendant then met Mrs. Anderson at the door. Mrs. Anderson testified:

> I stood in the threshold, because [Defendant's] eyes were not right. I did not feel comfortable going in the house, because I had seen that look when he was standing over me and I wasn't going in. I was by myself and I said, "Are you okay, how you doing, I was checking on you[."]
>
> And, he just kind of looked at me and he was like, "Yeah[."]

Mrs. Anderson said that she did not go inside the residence that day.

She recalled that she received an instant message from Ms. Pipes' sister the following day and learned that Ms. Pipes' family had not been able to get in touch with Ms. Pipes. Mrs. Anderson then called Defendant, but he did not answer, so she and Mr. Anderson drove over to Defendant's residence. Regarding what happened when they arrived, Mrs. Anderson testified:

> Knocked on the door and we were opening the door at the same time. We had already said, we are not stopping at the living room, we got to get throughout the house.
>
> . . . .
>
> And so we walk in the house and we say, "Hey[,"] and [Defendant's] kind of standing there. I guess he is-kind of taken back, because he knows that this is a work day and why are the both of us here, I don't know, but he's just kind of looking at us.
>
> And my husband says . . . ["]I came to see the closet, trying to see how much sheetrock I need[."]
>
> So [Mr. Anderson] takes off and he goes to the back. [Defendant] is still standing there with me in the living room, so I just start walking towards the back.

Mrs. Anderson said that she asked Defendant where Ms. Pipes was, and he told her that Ms. Pipes was at her grandmother's house. Mrs. Anderson saw Ms. Pipes' purse inside and again asked Defendant about her location. Mrs. Anderson testified:

And as I am turning the light on and my eyes were focusing on the purse, I look and I see there is a mattress on the floor.

. . . .

So I said, "Why is this mattress" - I don't see blood initially, I said, "Why is this mattress[,"] and then I said, "Where's [Ms. Pipes?"] And my eyes hit [Ms. Pipes' body].

Mrs. Anderson said that Ms. Pipes was lying on the floor wrapped in a blanket and that she initially thought Ms. Pipes had hurt her back. She then "saw the stillness" and recognized that Ms. Pipes was dead. Mrs. Anderson screamed and asked Defendant what had happened, but Defendant did not respond. Mr. Anderson called 9-1-1, and she called Ms. Pipes' sister. She said she later learned from the police that Ms. Pipes had been shot multiple times.

On cross-examination, Mrs. Anderson agreed that Ms. Pipes was living with Defendant at his residence at the time of the shooting, but she said that Defendant never expressed to her that he was unhappy with Ms. Pipes' being there. The following exchange then occurred:

Q. If [Defendant] indicated that he told the doctors that he's used alcohol since the age of twelve, or thirteen until his arrest, does that surprise you?

A. I would be surprised.

Q. That he had a pint of liquor, per day, is what he reported here, would that surprise you?

A. Very much so.

Q. He said cannabis he had used daily since the age of thirteen, does that surprise you?

A. That did, I wouldn't think that is true, but okay.

Q. And opioid pills he used from age sixteen to present?

A. Not aware.

Q. Lortabs, four to five pills per day, would that surprise you?

A. No.

Q. How about [hallucinogens], [Defendant] was using MDMA, or ecstasy, and I think that he said that on the day this happened he had taken two MDMA, were you aware that he was taking ecstasy?

A. I am not aware that he was doing any of those drugs.

Dr. Rena Isen, a psychologist at Middle Tennessee Mental Health Institute, specializing in forensics, testified that she conducted a court-ordered evaluation concerning Defendant's competency to stand trial and his mental state at the time of the offenses. Dr. Isen testified that, after a series of interviews with Defendant and Defendant's being prescribed medication, she found that Defendant was competent to stand trial, meaning that he understood what was happening in the courtroom.

Dr. Isen stated that she diagnosed him with "unspecified schizophrenia spectrum disorder" and "generalized anxiety disorder." Dr. Isen explained that generalized anxiety disorder was not considered a severe mental defect and that it was "essentially excessive anxiety over multiple events, or activities." She stated that someone with unspecified schizophrenia disorder would experience psychotic symptoms, causing significant distress and impairment; she explained that "[p]sychotic means that the person has a break from reality in one way or another. Sometimes that's in hearing, or seeing things that aren't really there, believing things that aren't really true, things of that nature." Dr. Isen agreed that schizophrenia could cause someone to not understand the nature or wrongfulness of their actions and that it was considered a severe mental illness.

Dr. Isen testified that she conducted three tests on Defendant—Spectra, the Millar Forensic Assessment of Symptoms Test, and a Malingered Symptomatology interview. She said that the Spectra test indicated that Defendant may have a significant amount of psychological problems but also indicated that he could be exaggerating or feigning his symptoms. She explained that the Millar Forensic Assessment of Symptoms Test was used as a screening tool for malingering and that this test also indicated Defendant was exaggerating his symptoms. Dr. Isen stated that she then gave Defendant the Malingered Symptomatology interview, which she described as "a more extensive assessment of malingering[,]" and she said that the interview also indicated that Defendant was malingering. She explained that, in one of the tests, Defendant "even reported the ringing in his ears and feeling like something was crawling on him, which was suggested to him from the previous test[.]"

Dr. Isen said that, although she found Defendant was malingering, she believed that he was suffering from a severe mental defect that affected his ability to understand the nature or wrongfulness of his actions. She testified that she diagnosed Defendant with unspecified schizophrenia spectrum disorder "because of his presentation during his hospitalization." She said that "he presented with depressed mood, anxiety, disorganized thoughts," and "[h]e reported hearing a voice that he could not understand." Dr. Isen testified that Defendant had delusions of his life being "a staged television show that involved the whole City of Memphis." Defendant reportedly thought that he was being watched through cameras in his home and that people were putting drugs in his drinks and pumping gas into the vents of his home. Dr. Isen testified that Defendant said that he received messages "through just ordinary circumstances, or occurrences." She stated, "For example, when [Defendant] was talking to me[,] he coughed and he thought that was a signal that he should refocus. He thought that when he had a negative thought that there would be static on the TV."

Dr. Isen explained that the signs and symptoms of psychosis "can vary, sometimes a high amount of stress can cause an exacerbation of symptoms. Sometimes it can depend on their environment, if they are over stimulated. It can also depend on if they are taking medication at that time." She said that she reviewed Defendant's medical records from the jail, which indicated that Defendant exhibited signs of psychosis some of the time and, at other times, he did not.

Dr. Isen agreed that, when she reviewed the records of Defendant's interactions with Dr. Floyd Covey, she saw no indication of a psychotic disorder. Regarding Defendant's use of drugs, Dr. Isen testified that Defendant reported to her that, around the time of the offenses, "he was regularly using Cannabis, Ecstasy, Codeine, Promethazine, Xanax, Lortab and Percocet. He said he typically took two or three of those different drugs, every day." Dr. Isen stated that drug abuse could have been responsible for Defendant's behavior. She noted, however, that Defendant had been in the mental health facility over a period of time and had no access to those drugs and that Defendant still had mental health issues, suggesting to Dr. Isen that Defendant's drug abuse had not been the cause of his mental health problems.

Dr. Isen testified that Defendant was in her facility from July 11, 2019, to August 1, 2019. She explained that, during this time, Defendant reported various delusions and that he attacked two other inmates due to his delusions. Regarding what happened at the time of the offenses, Defendant told Dr. Isen that he thought "everything was staged, that it was not real." Defendant told Dr. Isen that he believed Ms. Pipes was cheating on him and that he did not trust her. Dr. Isen testified that Defendant told her he shot a gun, and the bullet did not come out of the chamber. Defendant also reported that he shot at a dresser in his bedroom and that the dresser did not have any damage to it afterwards. Defendant said

that he did not think the gun and the bullets were real and that, after he shot Ms. Pipes, he did not think she was dead. Dr. Isen recalled, "[Defendant] said that he thought [Ms. Pipes] was given some kind drug to make her appear to be dead and that when he left the house people would come and give her more and kind of continue to stage things." Dr. Isen testified that Defendant thought that Ms. Pipes was involved in what was happening to him. She testified:

> [Defendant] said that she did things that would feed into what was going on, the staging of events and she was close to him, so she knew how to hurt him.
>
> He said that she would do things like corner him in the shower and it would cause him to break down, or almost break down.
>
> He also said that she would cut him in his sleep.

Defendant also told Ms. Isen that Ms. Pipes had threatened his life. When asked about the cuts on his wrist, Defendant said, "I was trying to find a way to end it all."

Dr. Isen testified that Defendant acknowledged that he and Ms. Pipes argued about "something to do with her baby shower" on the day of the murder and that there was a "tussle[.]" When Dr. Isen asked Defendant why he shot Ms. Pipes, he said that "he did not believe she actually died. He was trying to get everything to end. He said that he was in a maze and things were being done to him to make him mad." Defendant also said that he did not believe Ms. Pipes was pregnant.

Dr. Isen recalled that Defendant also told her about a video game that was part of a "staging of events" that he had to go through. Defendant reported that "he would make large sums of money in the game, and he thought that when he made the money and then turned the video game system off, he would get the money in real life, as pay back for everything he was being put through."

Dr. Isen testified that Defendant admitted trying to clean up the scene of the murder after he shot Ms. Pipes. Defendant told Dr. Isen that he and Ms. Pipes "previously cleaned up a crime scene that included blood and guts on the floor. It was a job that she had that he helped her with, and he thought that this was part of this staged event, as a way to prepare him for cleaning after he shot her." Defendant told Dr. Isen that, after he shot Ms. Pipes, "he said, [']I did too much[,'] and then she looked at him and nodded her head and then her eyes fluttered and closed."

Dr. Isen testified that, despite her finding that Defendant was malingering, she concluded that Defendant was mentally ill. She further opined that Defendant did not understand the wrongfulness of his actions at the time of the murder. She conceded, however, that Defendant's drug abuse could alter his mental status; that Defendant's efforts to clean up the murder scene could indicate that Defendant knew that what he did was wrong; and that Defendant's lying about Ms. Pipes' location and about what happened to her could indicate that Defendant knew what he had done was wrong.

On cross-examination, Dr. Isen agreed that the only thing Dr. Covey diagnosed Defendant with was generalized anxiety disorder but that, when Defendant first presented at Dr. Isen's clinic, he claimed that he had been diagnosed with bipolar disorder. Dr. Isen conceded that in medicine, physical matters can be observed, and determinations can be made "within the reasonable bounds of medical certainty" based on quantifiable criteria; however, when trying "to determine something within a reasonable psychological certainty, the problem is you can't measure emotions[.]" Dr. Isen agreed that "if someone says that they are seeing or hearing things, that could be true, or that could be false" and that "you can't know for certain." Dr. Isen acknowledged that Defendant had been dishonest with her during her interviews and conceded that Defendant was "kind of old for the onset of schizophrenia." She agreed that Defendant had no history of mental illness until the end of 2017. She further agreed that Defendant's reported drug abuse was "pretty severe" and that it "could have been the source of his psychosis and not mental illness." Dr. Isen acknowledged that, during her interview with Defendant, he explained that, when he cleaned up the crime scene, he "was trying to cover [his] tracks so it wouldn't go to the police."

Dr. Isen conceded that Defendant had problems with Ms. Pipes. Dr. Isen recalled that Defendant's mother had reported that Ms. Pipes created a Facebook account under Defendant's email address and posted things on the account that "caused [Defendant] stress." Dr. Isen agreed that Defendant told her that Ms. Pipes was "dating one of his friends while he was out of town" and that he "reported he didn't know if [she] was pregnant with his baby, or with his friend's baby."

Dr. Isen testified that Defendant had not been prescribed any anti-psychotic medications prior to his evaluation with her on July 11, 2019. Dr. Isen agreed that, although she ultimately opined that Defendant "was suffering from mental illness and was having difficulty with the nature and lawfulness of his behavior," she found several factors that would support a conclusion that Defendant was able to appreciate the wrongfulness of his actions. She noted in her report that Defendant "attempted to clean up the crime scene"; "ma[d]e efforts to hide [Ms. Pipes'] death by saying that her phone was not working and by meeting his mother outside the house, multiple times"; "gave evasive responses when asked if he and [Ms. Pipes] had a physical altercation on the date of the offense"; and

"reported using a significant amount of drugs prior to his arrest[.]" Dr. Isen also stated in her report that Defendant's psychological testing indicated malingering and that Defendant "might have been exaggerating symptoms to obtain support for the insanity defense, which he expressed the desire to plead."

State's rebuttal proof

In rebuttal, the State showed body camera footage from Officer Briggs' walk-through of the crime scene after Ms. Pipes' body was found.

Additionally, Deputy Ruben Ramirez of the Shelby County Sheriff's Department testified that the phone calls of inmates in the Shelby County jail were routinely recorded and that, as part of his job, he collected and disseminated jail phone calls when requested by law enforcement. Deputy Ramirez stated that he received a request for Defendant's jail phone calls, which he fulfilled. Deputy Ramirez agreed that there was a gap in Defendant's jail phone calls from July 10, 2019, until August 2, 2019, during which time Defendant was being evaluated at the mental health facility. The State then played two jail phone call recordings of conversations between Defendant and Mrs. Anderson. In the first, Defendant spoke with Mrs. Anderson on July 10, 2019, prior to his being evaluated by Dr. Isen. In the second, Defendant spoke with Mrs. Anderson on August 2, 2019, after the evaluation. Both phone calls were approximately fifteen minutes long. Although, at times, it is difficult to understand their conversation due to the background noise of the jail, Defendant sounds coherent and rational in the calls and does not mention any of the delusions he reported to Dr. Isen.

Following deliberations, the jury found Defendant guilty as charged, and the trial court imposed concurrent life sentences.

Defendant filed a timely motion for new trial and amended motion for new trial. Following a hearing, the trial court denied his request for a new trial in a written order. This timely appeal follows.

Analysis

1. Sufficiency of the evidence

Defendant contends that the evidence is insufficient to support his convictions for two counts of first degree premeditated murder because Defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature or wrongfulness of his acts. Alternatively, Defendant asserts that the evidence is insufficient to support his convictions because, as a result of a severe mental disease or defect, he was unable to form the requisite

mens rea for the convictions; he contends, therefore, that his convictions "should be modified to a lesser offense." The State responds that the jury properly rejected the evidence of insanity or mental defect presented by Defendant and that the evidence presented at trial is sufficient to support the jury's verdicts.

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) (emphasis in original); *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). This court will not reweigh the evidence. *Id*. 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 defendant bears the burden of proving why the evidence was insufficient to support the conviction. *Bland*, 958 S.W.2d at 659; *Tuggle*, 639 S.W.2d at 914. On appeal, 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).

First degree murder is the premeditated and intentional killing of another person. Tenn. Code Ann. § 39-13-202(a)(1) (2018). A person acts intentionally "when it is the person's conscious objective or desire to engage in the conduct or cause the result." Tenn. Code Ann. § 39-11-302(a) (2018). Premeditation "is an act done after the exercise of reflection and judgment. 'Premeditation' means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time." Tenn. Code Ann. § 39-13-202(d) (2018). Additionally, "[t]he mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation." *Id*.

Premeditation "may be established by proof of the circumstances surrounding the killing." *State v. Suttles*, 30 S.W.3d 252, 261 (Tenn. 2000). These circumstances include, but are not limited to:

> the use of a deadly weapon upon an unarmed victim; the particular cruelty of a killing; the defendant's threats or declarations of intent to kill; the

> defendant's procurement of a weapon; any preparations to conceal the crime undertaken before the crime is committed; destruction or secretion of evidence of the killing; and a defendant's calmness immediately after a killing.

State v. Davidson, 121 S.W.3d 600, 615 (Tenn. 2003) (citing *Bland*, 958 S.W.2d at 660; *State v. Pike*, 978 S.W.2d 904, 914-15 (Tenn. 1998)). This court has also noted that the jury may infer premeditation from any planning activity by the defendant before the killing, evidence concerning the defendant's motive, and the nature of the killing. *State v. Bordis*, 905 S.W.2d 214, 222 (Tenn. Crim. App. 1995) (citation omitted). In addition, a jury may infer premeditation from a lack of provocation by the victim and the defendant's failure to render aid to the victim. *State v. Lewis*, 36 S.W.3d 88, 96 (Tenn. Crim. App. 2000). Whether premeditation is present in a given case is a question of fact to be determined by the jury from all of the circumstances surrounding the killing. *Davidson*, 121 S.W.3d at 614 (citing *Suttles*, 30 S.W.3d at 261; *Pike*, 978 S.W.2d at 914).

a. Defendant's ability to appreciate the nature or wrongfulness of his acts

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 jury's credibility determinations. *Id*.

In this case, Dr. Isen opined that Defendant was suffering from a severe mental disease or defect, unspecified schizophrenia spectrum disorder, at the time he killed Ms. Pipes and her unborn child and that this affected Defendant's ability to understand the nature or wrongfulness of his actions. However, the State countered the defense proof of insanity through vigorous cross-examination of Dr. Isen. During cross-examination, Dr. Isen conceded that Defendant had no prior history of mental illness and that Defendant was "kind of old for the onset of schizophrenia." Dr. Isen also acknowledged that Defendant had problems with Ms. Pipes prior to the murder and that Defendant said he and Ms. Pipes argued about "something to do with her baby shower" on the day of the murder and that there was a "tussle[.]" Dr. Isen conceded that, when Defendant went to see Dr. Covey on January 28, 2018, Dr. Covey only diagnosed Defendant with generalized anxiety disorder, and she agreed that, in her review of the records of Defendant's interactions with Dr. Covey, she saw no indication of a psychotic disorder. Dr. Isen conceded that Defendant had been dishonest with her during her interviews with him, falsely claiming that he had been previously diagnosed with bipolar disorder. She also testified that Defendant was malingering during testing, meaning that Defendant was exaggerating or feigning his symptoms, and she stated that Defendant "might have been exaggerating symptoms to obtain support for the insanity defense, which he expressed the desire to plead." Dr. Isen

further conceded that Defendant's heavy drug abuse at the time of the offenses could have been responsible for Defendant's behavior and that Defendant's efforts to clean up the crime scene and his repeated lying about Ms. Pipes' location and condition could indicate that Defendant knew what he did was wrong.

Here, although Dr. Isen opined that Defendant was suffering from a severe mental disease or defect at the time he killed Ms. Pipes and her unborn child and that this affected Defendant's ability to understand the nature or wrongfulness of his actions, Dr. Isen conceded that there was significant evidence to suggest that Defendant knew and understood what he was doing and that it was wrong. "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." *Flake*, 88 S.W.3d at 554 (citing *Edwards*, 540 S.W.2d at 647). The jury chose not to accredit the defense proof, likely based on the concessions made by Dr. Isen in conjunction with evidence of Defendant's behavior before, during, and after the crimes. We will not reweigh the evidence or reevaluate the jury's credibility determinations. *Id*.

Viewing the evidence in the light most favorable to the State, we conclude that a reasonable jury could have found that Defendant's insanity at the time of the offenses was not established by clear and convincing evidence. *See id*. Defendant is not entitled to relief.

<u>b. Defendant's ability to form the requisite *mens rea*</u>

Diminished capacity is not a defense to a criminal charge, but Tennessee law permits the introduction of evidence regarding the defendant's mental condition for the purposes of negating the requisite mental state for the offense charged. *See State v. Ferrell*, 277 S.W.3d 372, 379 (Tenn. 2009) (citing *State v. Hall*, 958 S.W.2d 679, 690-91 (Tenn. 1997)); *State v. Phipps*, 883 S.W.2d 138, 149 (Tenn. Crim. App. 1994). In *Hall*, our supreme court explained "diminished capacity" as follows:

> [D]iminished capacity is not considered a justification or excuse for a crime, but rather an attempt to prove that the defendant, incapable of the requisite intent of the crime charged, is innocent of that crime but most likely guilty of a lesser included offense. Thus, a defendant claiming diminished capacity contemplates full responsibility, but only for the crime actually committed. In other words, "diminished capacity" is actually a defendant's presentation of expert, psychiatric evidence aimed at negating the requisite culpable mental state.

958 S.W.2d at 688 (internal citations omitted). The court in *Hall* explained that, to be admissible,

> expert testimony regarding a defendant's incapacity to form the required mental state must satisfy the general relevancy standards as well as the evidentiary rules which specifically govern expert testimony. Assuming that those standards are satisfied, psychiatric evidence that the defendant lacks the capacity, because of mental disease or defect, to form the requisite culpable mental state to commit the offense charged is admissible under Tennessee law.

Id. at 689. The supreme court "emphasize[d] that the psychiatric testimony must demonstrate that the defendant's inability to form the requisite culpable mental state was the product of a mental disease or defect, not just a particular emotional state or mental condition," stating that "[i]t is the showing of a lack of *capacity* to form the requisite culpable mental intent that is central to evaluating the admissibility of expert psychiatric testimony on the issue." *Id.* at 690 (emphasis in original) (citing *State v. Shelton*, 854 S.W.2d 116, 122 (Tenn. Crim. App. 1992)). Although our supreme court expanded the holding in *Hall* to encompass testimony from experts other than psychiatrists, the court has consistently held that evidence that a defendant suffered from a mental disease or defect is only "admissible whenever it is relevant to prove that the defendant did or did not have the state of mind which is an element of the offense." *Ferrell*, 277 S.W.3d at 379 (quoting *Hall*, 958 S.W.2d at 690 n. 9).

"It is well established that a mental disease or defect that impairs or reduces a defendant's capacity to form the requisite culpable mental state for the offense" but does not negate it altogether "does not satisfy the two-prong test under *Hall*." *State v. Lesergio Duran Wilson*, No. M2014-01487-CCA-R9-CD, 2015 WL 5170970, at *12 (Tenn. Crim. App. Sept. 2, 2015) (citing *State v. Tray Dontacc Chaney*, No. W2013-00914-CCA-R9-CD, 2014 WL 2016655, at *9 (Tenn. Crim. App. May 14, 2014); *State v. Herbert Michael Merritt*, No. E2011-01348-CCA-R3-CD, 2013 WL 1189092, at *27 (Tenn. Crim. App. Mar. 22, 2013); *State v. Anthony Poole*, No. W2007-00447-CCA-R3-CD, 2009 WL 1025868, at *11 (Tenn. Crim. App. Apr. 14, 2009); *State v. Antonio D. Idellfonso-Diaz*, No. M2006-00203-CCA-R9-CD, 2006 WL 3093207, at *4 (Tenn. Crim. App. Nov. 1, 2006)), *perm. app. denied* (Tenn. Dec. 10, 2015).

In this case, although Dr. Isen diagnosed Defendant with a severe mental disease or defect, she never testified that because of this condition, Defendant was incapable of forming the requisite intent for the crime of first degree premediated murder. In his brief, Defendant cites his claims to Dr. Isen that, prior to his killing of Ms. Pipes and her unborn child, "[he] had been experimenting with guns by shooting into his home's dresser thinking

it was not loaded" and "shooting what he thought to be a loaded gun . . . with no bullet coming out" and that "he thought everything that was happening was staged, to the point he still believed the victim was alive[.]" However, during Dr. Isen's testimony, she acknowledged that Defendant had been dishonest during her interviews with him. She further testified that all three of the tests she gave Defendant indicated that he was malingering, meaning that he was feigning or exaggerating his symptoms. Under these circumstances, a rational juror could have discredited Defendant's self-reported delusions and concluded that any mental disease or defect suffered by Defendant did not render him incapable of forming the requisite intent for the indicted offenses.

Moreover, from the circumstances surrounding the offenses, it is clear that a rational juror could have found the essential elements of first degree premeditated murder. The proof at trial established that Defendant armed himself with a nine-millimeter handgun and shot the unarmed Ms. Pipes seventeen times while she was lying in the bed. Ms. Pipes, who was nine months pregnant, died from the multiple gunshot wounds inflicted by Defendant, along with her unborn child who would have been born alive but for Ms. Pipes' murder. The evidence showed that Defendant left Ms. Pipes inside his residence for multiple days while he attempted to clean up the crime scene and hide evidence of the offenses. When asked about Ms. Pipes in the days leading up to her discovery, Defendant repeatedly lied about her location and condition.

Viewing the evidence in the light most favorable to the State, we conclude that the evidence was legally sufficient to support Defendant's convictions for the first degree premeditated murder of Ms. Pipes and her unborn child. Accordingly, he is not entitled to relief.

2. Admission of autopsy photographs of Ms. Pipes

Defendant contends that the trial court committed reversible error, under Tennessee Rule of Evidence 403, by admitting into evidence "unfairly prejudicial" photographs of Ms. Pipes' deceased body despite there being no dispute as to her cause or manner of death. The State responded that the trial court properly allowed the jury to view photographs of Ms. Pipes' body.

Initially, we note that Defendant argues in his brief that the trial court committed reversible error by admitting "multiple photos" of Ms. Pipes' body. Our review of the record shows that two autopsy photographs of Ms. Pipes' body were admitted at trial—Exhibits 5 and 85—as well as several photographs of the victim at the crime scene. However, Defendant objected to only one of these photographs—the second autopsy photograph, Exhibit 85. By failing to contemporaneously object, Defendant has waived

any claim that the trial court erred in admitting the remaining photographs. *See* Tenn. R. App. P. 36(a); *State v. Jordan*, 325 S.W.3d 1, 58 (Tenn. 2010).

Whether the admission of the photographs constitutes reversible error requires a two-step analysis. First, we must determine whether the photographs were relevant to an issue the jury would be required to determine and whether their probative value was substantially outweighed by the danger of unfair prejudice. *See State v. Banks*, 564 S.W.2d 947, 951 (Tenn. 1978); *State v. Collins*, 986 S.W.2d 13, 20 (Tenn. Crim. App. 1998). Second, if the trial court abused its discretion and erred in admitting the photographs, we must determine whether such error was harmless. *See Banks*, 564 S.W.2d at 952-53; *Collins*, 986 S.W.2d at 21-22.

In order to be admitted into evidence, a photograph must be relevant to an issue that the jury must decide. *State v. Thomas*, 158 S.W.3d 361, 394 (Tenn. 2005). "[E]vidence is relevant if it helps the trier of fact resolve an issue of fact." *State v. James*, 81 S.W.3d 751, 757 (Tenn. 2002) (quoting Neil P. Cohen, et al., Tennessee Law of Evidence § 4.01[4], at 4-8 (4th ed. 2000)). However, relevant evidence should be excluded if its prejudicial effect substantially outweighs its probative value. *Banks*, 564 S.W.2d at 951. "[T]he admissibility of photographs lies within the discretion of the trial court," whose ruling "will not be overturned on appeal except upon a clear showing of an abuse of discretion." *Id*. at 949.

Rule 403 of the Tennessee Rules of Evidence provides, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." "Unfair prejudice" is defined as "[a]n undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *Banks*, 564 S.W.2d at 951 (quoting Advisory Committee Note to Federal Rule of Evidence 403). This court has also stated that "[p]rejudice becomes unfair when the primary purpose of the evidence at issue is to elicit emotions of 'bias, sympathy, hatred, contempt, retribution, or horror.'" *Collins*, 986 S.W.2d at 20 (quoting M. Graham, Handbook of Federal Evidence, 182-83 (2d ed. 1986)).

Photographs must never be used "solely to inflame the jury and prejudice them against the defendant." *Banks*, 564 SW.2d at 951. Evidence which only appeals to the sympathies of the jury, conveys a sense of horror, or "engenders an instinct to punish" should be excluded. *Collins*, 986 S.W.2d at 20. Factors to be considered when determining whether the probative value of photographs of homicide victims outweighs their prejudicial effect include:

> [T]he value of the photographs as evidence, that is, their accuracy and clarity, and whether they were taken before the corpse was moved, if the position and location of the body when found is material; the inadequacy of testimonial evidence in relating the facts to the jury; and the need for the evidence to establish a prima facie case of guilt or to rebut the defendant's contentions.

Banks, 564 S.W.2d at 951. "The more gruesome the photographs, the more difficult it is to establish that their probative value and relevance outweigh their prejudicial effect." *Id*. "As a general rule, where medical testimony adequately describes the degree or extent of an injury, gruesome and graphic photographs should not be admitted." *Collins*, 986 S.W.2d at 21 (citing *State v. Duncan*, 698 S.W.2d 63, 69 (Tenn. 1985)). Photographic evidence may be excluded when it does not add anything to the testimonial description of the injuries. *Banks*, 564 S.W.2d at 951.

The photograph at issue (Exhibit 85) shows the exposed back of Ms. Pipes, with several apparent gunshot wounds. The photograph shows the "[c]hange in color" of Ms. Pipes' body and several spots of "skin slippage," which Dr. Van Pelt testified were indicative of decay. The photograph of Ms. Pipes' body is not unduly gruesome. Defendant was charged with first degree premeditated murder in the death of Ms. Pipes, and the photograph is relevant in establishing the cause and manner of Ms. Pipes' death. It is also indicative of Defendant's intent, and it supports Dr. Van Pelt's testimony regarding the amount of time that had passed before Ms. Pipes was discovered. The photograph's probative value is not substantially outweighed by the danger of unfair prejudice, and the trial court did not abuse its discretion in admitting the exhibit. Tenn. R. Evid. 403. Defendant is not entitled to relief.

Conclusion

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

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ROBERT L. HOLLOWAY, JR., JUDGE