IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

STATE OF TENNESSEE v. WILLIAM RILEY GAUL

Criminal Court for Knox County
No. 109744

No. E2021-00734-SC-R11-CD

ORDER

Upon consideration of the application for permission to appeal of William Riley Gaul and the record before us, the application is denied.

PER CURIAM

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
November 16, 2022 Session

STATE OF TENNESSEE v. WILLIAM RILEY GAUL

Appeal from the Criminal Court for Knox County
No. 109744 Bobby R. McGee, Judge

No. E2021-00734-CCA-R3-CD

The Defendant, William Riley Gaul, was convicted by a Knox County Criminal Court jury of first degree premeditated murder, first degree felony murder, possession of a firearm during the commission of a dangerous felony, reckless endangerment, stalking, tampering with evidence, and theft of property valued over $500. After merging the felony murder conviction into the premeditated murder conviction, the trial court sentenced the Defendant to an effective term of life imprisonment in the Tennessee Department of Correction. The Defendant raises twelve issues on appeal, which we have condensed and reordered as follows: (1) whether the trial court erred by denying the Defendant's motion to dismiss the especially aggravated stalking count of the presentment; (2) whether the trial court erred by not sequestering the jury and by allowing the trial to be livestreamed by the media outlet Law and Crime; (3) whether the trial court erred by admitting a Snapchat message between the Defendant and the victim; (4) whether the trial court erred in allowing the State to present character evidence in the form of testimony that the Defendant was controlling, manipulative, and possessive in his relationship with the victim; (5) whether the Defendant was denied his right to a fair trial by the State's introduction of his use of the video game "Call of Duty" and the related evidence that the game included "wall banging," or killing individuals by shooting through the walls of a building; (6) whether the trial court erred in allowing Bobby Jones, Jr., to testify as an expert and to offer trajectory evidence; (7) whether the trial court erred by allowing the State to introduce evidence of the Defendant's uncharged criminal conduct relating to the theft charge; (8) whether the evidence is sufficient to sustain the convictions for first degree murder, felony murder, stalking, possession of a firearm during the commission of a dangerous felony, and theft of property valued over $500; (9) whether the jury returned mutually exclusive and patchwork verdicts; and (10) whether the cumulative effect of the various alleged errors deprived the Defendant of his right to a fair trial. Based on our review, we conclude that the Defendant's felony theft conviction in count three must be modified to a Class A misdemeanor and a sentence of eleven months, twenty-nine days pursuant to the savings statute. The Defendant's

remaining convictions are affirmed and the case remanded to the trial court for an amended judgment in count three.

Tenn. R. App P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed in part, Modified in part; and Case Remanded

JOHN W. CAMPBELL, SR. J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and TIMOTHY L. EASTER, JJ., joined.

Wesley D. Stone, Knoxville Tennessee (at trial and on appeal), for the appellant, William Riley Gaul.

Jonathan Skrmetti, Attorney General and Reporter; Jonathan H. Wardle, Senior Assistant Attorney General; Charme P. Allen, District Attorney General; and Kevin Allen and Molly Martin, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS

In the early morning hours of Monday, November 21, 2016, the eighteen-year-old Defendant, armed with a 9mm pistol he had stolen from his grandfather, stood outside the Knoxville home of sixteen-year-old Emma Walker and fired two gunshots into the corner of the house where her bed was located. One of the shots struck the victim in the head, killing her. The victim had recently ended the couple's two-year-long tumultuous romance and had been resisting the Defendant's repeated attempts at reconciliation. These reconciliation attempts included the Defendant's actions on Friday, November 18, 2016, in which he first sent text messages to the victim, pretending to be his own kidnapper, and then appeared uninvited to the slumber party the victim was attending stating that he had just been released there by his kidnappers.

In a statement to police on the night of November 21, 2016, the Defendant said that two men had kidnapped him from the street outside his stepfather's home Friday night, November 18, before dropping him off at the slumber party. The Defendant stated that he was at his stepfather's house the next morning, Saturday, November 19, when the victim contacted him about an individual dressed in black who was attempting to break into her home. He said that the victim asked for his help and that he rushed over to protect her. The Defendant stated that he was at Maryville College, weeping over the victim's rejection, early on Monday morning, November 21, when the victim was shot. The Defendant

repeatedly denied that he had stolen his grandfather's gun, but the next night, the Defendant was arrested as he attempted to dispose of the gun, a bag of black clothing, and gloves.

The Defendant was subsequently charged in a seven-count presentment with first degree premeditated murder in count one, especially aggravated stalking in count two, theft of property valued over $500 in count three, tampering with evidence in count four, reckless endangerment in count five, employing a firearm during the commission of the dangerous felony of especially aggravated stalking in count six, and first degree felony murder during the attempt to perpetrate aggravated child abuse in count seven. He was tried before a Knox County Criminal Court jury from May 1 through May 8, 2018.

Before trial, the Defendant abandoned the kidnapping story and his claim that he was in Maryville at the time of the shooting. Instead, he claimed that he fabricated the kidnapping in an attempt to get the victim's attention and sympathy and that he fired the gun outside the victim's home to frighten her so that he could act as a hero and rescue her. In accordance with his defense theory, the Defendant entered a formal guilty plea to the reckless endangerment charge and not guilty pleas to the remaining charges in the presentment.

At trial, the victim's mother, Jill Walker, testified that she was a teacher at Sterchi Elementary School in Knoxville and her husband was a "planner at Y-12." She and her husband had two children: the victim, who was sixteen years old at the time of her death, and the victim's brother, who was sixteen years old at the time of trial. The family lived in the Sterchi Hills subdivision in Knoxville in a home in which Mr. and Mrs. Walker's bedroom was on one side of the home, and the children's bedrooms were located off a hallway on the other side of the home, with the victim's brother's bedroom first, a shared bathroom, and the victim's bedroom at the end. The victim's bed was oriented such that the victim slept with her head at the "back far left corner of the house[.]"

Mrs. Walker testified that the victim was a good student who aspired to become a neonatal nurse. She described the victim as fun-loving and silly, an animal lover, empathetic, curious, independent, strong-willed, and stubborn. The victim and the Defendant began dating when the victim, who was on the high school cheer team, was fourteen years old, and the Defendant, who was on the football team, was sixteen years old. She and her husband had no issues with the relationship at first, but they began over time to see a different side of the Defendant, who initially appeared to be "very nice and sweet to [the victim]."

According to Mrs. Walker, in the winter of 2015, the Defendant began trying to reunite with an ex-girlfriend while still dating the victim, "kind of playing them both." In addition, she and her husband, who monitored the victim's cell phone and social media,

started seeing inappropriate text and messages sent by the Defendant to the victim. Mrs. Walker identified a Snapchat message the Defendant had sent to the victim that she and her husband found particularly worrisome. In the message, the Defendant repeatedly told the victim "F*** you," called the victim a "piece of s***[,]" mentioned that the victim was always talking about committing suicide, told the victim to "gain some confidence[,]" and said that he would "check the obituary[.]"

Mrs. Walker testified that she and her husband discussed their concerns with the Defendant, "and he would explain he was angry and try to defend himself against it." Although the Defendant was respectful to them in person, his messages to the victim made it clear that he did not respect their authority as her parents. Because of their concerns, they attempted to discourage the victim from dating the Defendant. To that end, they set limits on how and when the Defendant and the victim could see each other.

Mrs. Walker testified that after the Defendant graduated from Central High School and began attending Maryville College, the Defendant and the victim saw each other less frequently. Prior to that time, the Defendant was in their home two to three times per week. In the beginning, the Defendant was allowed in the victim's bedroom with the bedroom door open. However, before the Defendant graduated from high school, she and her husband had placed the victim's bedroom off limits, restricting the Defendant to the common areas of their home where they could more closely monitor the couple's relationship.

Mrs. Walker testified that she and her husband instituted various punishments in response to the victim's breaking of their rules with respect to the Defendant. These included forbidding the victim from seeing the Defendant for various periods; grounding the victim from going anywhere other than school, cheer, and work; and taking the victim's cell phone away for short times to "try to get her to step back and maybe realize this wasn't the healthiest situation to be in for her."

Mrs. Walker testified that a few weeks prior to the victim's death, she and her husband had grounded the victim based on an incident that occurred on October 30, 2016, that involved the police. She explained that they had allowed the victim to spend the night at a friend's house, where the Defendant was not supposed to be present. A neighbor later called the police after seeing the Defendant and the victim in a driveway. When the police responded, the victim was required to call her parents to pick her up because she was a juvenile. As a result of that incident, Mr. and Mrs. Walker took the victim's phone away and grounded her from all social activities. Mrs. Walker testified that they "had reached all [their] limits in trying to get something that worked for [the victim], for [the victim] to see the light that this wasn't the best thing for her and not the healthiest thing for her . . . to

be in a relationship with [the Defendant]." She said the victim complied but was "[v]ery stubborn, very defiant" and not happy with them.

Mrs. Walker testified that after the October 30 incident, the victim stopped dating the Defendant and began "being a little bit more her normal self, open and talkative," "less defiant[,]" and "happier." She and Mr. Walker, therefore, allowed the victim to go to the home of her friend, S.S.[1], for a sleepover on the Friday night after Central High School's November 18, 2016 football game. The next morning, the victim was supposed to meet Mrs. Walker at Sterchi Elementary School to help her set up for a PTA event. When the victim had not shown up by 11:00 a.m., Mrs. Walker became concerned, drove home, and found the victim standing in their driveway with the Defendant beside her. Mrs. Walker testified that she and her husband had banned the Defendant from their home after an incident that had occurred at the beginning of October 2016. She stated that she reminded the Defendant that he was not supposed to be at their home and asked him to leave.

Mrs. Walker testified that the victim, who was shaking, related what had just happened. That night, the victim asked her parents to turn on their home's security system, which was something she had never done before. Because Mrs. Walker was still worried the next day about what had transpired that Saturday morning, she followed the victim as the victim drove to her Sunday part-time job. When the victim's work shift ended, Mr. Walker met the victim and followed her home.

Mrs. Walker testified that the victim was in the victim's bedroom when Mrs. Walker went to bed at 10:00 or 10:30 p.m. that night. Mr. Walker, who had to get up for work by 4:00 a.m., had already gone to bed. Sometime between 1:00 and 1:30 a.m. on Monday, November 21, Mrs. Walker woke, got up, saw that the victim's television was on, and turned it off. The victim appeared to be sleeping, and Mrs. Walker noticed nothing unusual. She recalled waking again later as Mr. Walker came back to bed saying that he had heard something, but she did not get out of bed again until 5:00 a.m. At 6:15 a.m., she went to wake the victim, found her cold and unresponsive, and called 911.

On cross-examination, Mrs. Walker acknowledged that she and her husband had developed "some trust issues" with the victim with respect to the victim's relationship with the Defendant. As an example, she said they learned that the Defendant had "snuck into [their] home[.]" Before that, there were several incidents in which the Defendant had been at places they had allowed the victim to go, despite their having told the victim that she was not allowed to see the Defendant. She testified that the Defendant visited the victim in their home, under their supervision, approximately once a week or less from the spring

[1] To protect the privacy of the witnesses who were juveniles at the time of trial, we refer to them by their initials.

of 2016 until the beginning of October 2016, when the incident occurred that caused them to ban the Defendant from their home. To her knowledge, the Defendant had not visited the victim in their home after that. She acknowledged, however, that the victim was secretive about her relationship with the Defendant.

Mrs. Walker agreed that the victim was not happy with the restrictions they imposed and with the loss of her cell phone privileges. She conceded that she found another cell phone, an iPod, and a writing tablet with notes from the Defendant in the victim's room after her death. She acknowledged that the victim assured her in text messages on the Friday and Saturday preceding her death that it was not the Defendant who had sent her text messages and called her from an unknown number that Friday night. She further acknowledged that the victim did not tell her that the Defendant had shown up at S.S.'s house that Friday night or that someone had tried to break into the victim's family home that Saturday morning. She agreed that the victim also failed to let her know that the Defendant was at their home that Saturday morning. She testified that the victim later informed her that she had asked the Defendant to come to the home that morning. Finally, she estimated that the victim and the Defendant had broken up and gotten back together approximately ten times over the course of their relationship.

The victim's brother testified that he last saw the victim alive on Sunday night sometime after 9:00 p.m. when he retrieved their shared laptop from her. A sound sleeper, he did not wake until he heard his mother's screams from the victim's bedroom the next morning. On cross-examination, he testified that the victim and the Defendant had broken up and gotten back together "[c]ountless times" over the course of their relationship. On redirect examination, he identified and read tweets in which the Defendant, after the victim's death, expressed his love for the victim. He said that when he read the Defendant's tweets, he thought that the Defendant was "fake" and "just playing a role."

Mark Joseph Walker, the victim's father, corroborated his wife's account of their concerns with the Defendant and their attempts to limit the victim's contacts with him. He testified that after he and his wife had forbidden the victim from communicating with the Defendant, he discovered that the Defendant had supplied the victim with an iPod to continue their communication. He said that he installed a hidden surveillance camera in their living room. Based on what he and his wife saw on the camera, he banned the Defendant from their home at the end of October 2016.

Mr. Walker testified that he met the victim at the end of her work shift on Sunday, November 20, and followed her home "because [he] did not want anyone to show up that wasn't supposed to be there." He went to bed at 8:00 p.m. but was awakened sometime in the night by what sounded like a door being slammed shut. Three to five seconds later, he heard a similar, but louder, sound that made him think that someone was in the house. He

jumped out of bed and ran to check on the victim, opening her bedroom door and looking at her for fifteen to twenty seconds from the doorway. The victim's television was off, and the victim appeared to him to be sleeping, so he shut her bedroom door, checked on his sleeping son, checked the children's bathroom to see if one of them had just flushed the toilet, and then checked the home's doors to ensure that they were locked. Afterward, he went back to bed.

On cross-examination, Mr. Walker acknowledged that he was unaware of the Defendant's ever physically harming the victim prior to the events of this case. He further acknowledged that the strong-willed victim found ways to communicate with the Defendant and sometimes engaged in deceptive behavior to see him.

The victim's across-the-street neighbors, husband and wife John and Karren Warren, were awake early in the morning on November 21, 2016, and heard the two gunshots the Defendant fired into the victim's bedroom. Mr. Warren testified that he noted when he let their dog out shortly afterwards that the time was between 2:50 and 2:55 a.m.

Lieutenant Krystal Gibson of the Knox County Sheriff's Office ("KCSO") testified that she collected a motion-activated home surveillance video from a home that was "10, 15 houses away [from the victim's home] at an intersecting street." The first video clip, recorded at 10:01 a.m. on Saturday, November 19, 2016, showed an individual in black clothing walking from the direction of the Sterchi Hills pool toward the victim's home. Approximately three minutes later, the same individual was captured on the video running in the opposite direction.

Seventeen-year-old S.S., who said that she and the victim were best friends, described the victim's relationship with the Defendant as "toxic[,]" with the "emotionally abusive" Defendant appearing "sweet" at times but at other times "the opposite[.]" She testified that the couple began dating when the victim was a freshman and the Defendant was a junior and that they continued to date off and on after the Defendant had graduated from high school and was attending Maryville College.

S.S. testified that on Friday night after the school's November 18, 2016 football game, the victim and several other friends went to S.S.'s house to "hang out." She was aware that the victim had recently broken up with the Defendant, testifying that the victim "just didn't want to do it anymore and talk to him, 'cause she was just over being upset all the time." At approximately 12:00 or 1:00 a.m., she noticed the visibly frightened victim standing in the hallway with their friend Zachary Green. After informing S.S. that the victim was receiving calls from a "weird number[,]" the victim and Mr. Green went outside together. They both came back inside approximately five minutes later and told S.S. that someone was outside, and S.S. informed her father. The victim, Mr. Green, and several

others then went back outside. When S.S. followed, she saw the Defendant at the end of her driveway. The victim and several friends went down the driveway to the Defendant's location, and S.S. and her father stayed close to the house, where she could hear the victim and the Defendant arguing and the victim yelling at the Defendant to go away.

When the crying victim came back inside, she appeared "shaken up and angry and scared." After most of the boys had left, S.S., the victim, and the other friends attending the sleepover watched a movie and then went to sleep. However, they first lowered the blinds in S.S.'s playroom because they "were all a little scared." The next day, the group had breakfast at Chick-fil-A and then went their separate ways. Later that morning, the victim communicated via group text message that someone dressed in black was walking toward her home and then banging on the door trying to get into the house. When S.S. visited the victim at the victim's home that afternoon, the victim was still "shaken up and scared."

On cross-examination, S.S. acknowledged that the victim continued to communicate with the Defendant during the off periods in their off and on relationship. She acknowledged that neither she nor her father called the police when the Defendant appeared at their home Friday, November 18. She conceded that the victim said in the group text message that the Defendant was not the individual in black trying to get into her home because the Defendant "was speeding over there FaceTiming her." S.S. pointed out, however, that the individual in black had already left the victim's home by that time.

Seventeen-year-old K.L. testified that she and the victim had known each other since kindergarten and were such close friends that they were almost like sisters. She stated that she frequently let the victim know that she did not approve of her relationship with the Defendant because the Defendant was "[p]ossessive" and "overbearing" and did not treat the victim with respect. She said she was aware at the time of the Friday night slumber party that the victim was no longer dating the Defendant.

K.L. initially went outside at the slumber party with the others when the victim told of the strange text messages she was receiving, but she then returned inside and watched from the window as the victim and several other friends walked down the driveway. She recognized the Defendant and was able to see the victim talking with him but was unable to hear their conversation. Afterward, the shaking victim came back inside, sat beside K.L., told K.L. she was scared, and related what had happened outside. When they went to bed that night, the victim asked K.L. to sleep with her in S.S.'s upstairs bedroom instead of with the others downstairs, telling her that she was "really scared." The next morning, the victim, who was still scared, asked K.L. to walk with her outside to her car as they left.

On cross-examination, K.L. acknowledged that the victim's relationship with the Defendant was off and on and that the victim continued to communicate with the Defendant during the off periods. She described the victim as "very strong-willed" and agreed that the victim and the Defendant found ways to see each other despite Mr. and Mrs. Walker's restrictions. She testified that everyone at the slumber party thought it was the Defendant text messaging the victim that night, but the victim was initially unsure because the number originated from Georgia. She stated that the victim was upset when the Defendant showed up at the house because the victim "wanted to get away from him for - - like, for good this time." She acknowledged that the breakup was recent and that the Defendant had done things to get the victim's attention throughout the couple's tumultuous relationship.

Elijah Maxwell Bacon, a friend of the victim who followed the victim down S.S.'s driveway that Friday night, testified that the Defendant was pacing back and forth and holding his head. The victim asked the Defendant if he was telling her that he had been kidnapped, and the Defendant replied that he did not know where he was and that his head hurt. The victim told the Defendant that she could not "deal with stuff like this anymore." The Defendant got angrier and repeated that he did not know what had happened. Both the victim's and the Defendant's voices were raised during the exchange. The victim asked the Defendant if he had his cell phone. The Defendant responded that he did not know where it was, and Mr. Bacon offered to let the Defendant borrow his. The Defendant, however, replied that he did not know anyone's number. The crying victim began walking back to the house, and the Defendant began walking down the street.

Mr. Bacon testified that he believed the Defendant was "faking" because he appeared to be aware of his surroundings, despite his claims to the contrary. He said that when the "violently sobbing" victim returned to the house, it took twenty or thirty minutes for her to calm down. On cross-examination, he agreed that the victim's and the Defendant's relationship was off and on and that the two appeared to have strong feelings for each other. He said he never heard the Defendant threatening the victim.

Zachary Green, one of the victim's best friends, described the victim's relationship with the Defendant as "[u]nhealthy" and "toxic[,]" testifying that the Defendant was "just very controlling." He stated that he became aware a week or two prior to the victim's death that her relationship with the Defendant was over. At the Friday night slumber party at S.S.'s house, the victim shared with him the "weird" text messages she was receiving in which someone instructed her to go outside alone if she did not want to see someone she loved hurt. He went outside with the victim, but they did not see anything. When they returned to the house, the victim received a text message asking what part of going outside alone did she not understand. The distraught victim continued to receive and share with him the strange text messages she was receiving, and he and she eventually went back outside, where they saw a figure lying face down on the ground. Frightened, they ran back

inside to tell the others and awakened S.S.'s father. At that point, he, the victim, Mr. Bacon, H.M., and S.S.'s father went back outside, where they saw that the individual who had been lying on the ground, whom they now recognized as the Defendant, had gotten up and was walking down the street.

Mr. Green testified that the victim "ma[de] a beeline for [the Defendant]" and that he and several other friends followed. When the shaken victim reached the Defendant, she kept asking him why he was there and why he was doing this and telling him that he needed to leave. The Defendant, who appeared to Mr. Green to be acting, was holding his head and kept asking where he was and saying that he had been kidnapped. Mr. Green testified that the episode ended when the victim returned to the house and the Defendant walked away. He said that the victim was very frightened, that it took her thirty or forty minutes to calm down, and that they closed all the blinds in the home due to the victim's fright.

On cross-examination, Mr. Green acknowledged that the Defendant and the victim had frequent breakups over the course of their relationship, that they continued to communicate when they were not together, and that the Defendant would do things to get the victim's attention. As examples of the Defendant's attention-seeking behavior, he testified that on several different occasions, he saw the Defendant waiting outside the victim's classroom for the victim to emerge and once saw the Defendant sitting all day at the Sterchi Hills pool reading a book as he waited for the victim to appear. He agreed that the victim had a good idea that the Defendant sent the text messages to her that Friday night and that the victim suggested that they go outside. He also acknowledged that S.S.'s father, in dismissing his suggestion that they call the police, commented that the Defendant had done similar "crazy" things in the past.

Seventeen-year-old H.M., another close friend of the victim, testified that the Defendant was "[v]ery controlling" in his relationship with the victim. She regularly expressed her opinion that the victim should break up with the Defendant, but the victim brushed off her concerns until toward the end of the relationship. She was aware that the victim and the Defendant frequently circumvented the restrictions imposed by the victim's parents, testifying that the Defendant told her that he would park at the Sterchi Hills pool in an area that was not visible from the street, walk to the victim's home, and "get into her room through her window." She said it was common for the couple to argue and for the Defendant to "beg for [the victim's] attention and continue to reach out to her in any way that he could to get her attention" during periods when they were not together.

H.M. testified that she attended the Friday night slumber party at S.S.'s home and was aware that the victim and the Defendant were not together at that time. Sometime that evening, H.M. also became aware that someone was text messaging the victim "through a random number . . . saying that they had [the Defendant]." When Mr. Green and the victim,

both of whom were "freaking out[,]" came running back inside the house saying that there was an unconscious body outside, she looked out the window and saw the Defendant walking down the street. She stated that she was familiar with the Defendant and able to recognize him by "the way he carried himself and the way he walked."

H.M. was present when the victim confronted the Defendant outside. She testified that the Defendant kept saying that he had been hit on the head and did not know how he had gotten there, and the angry victim kept yelling at him to leave. After about a minute, the victim returned to the house, but H.M. remained outside to make sure that the Defendant, who said he planned to walk to Noah Walton's house, had a ride home. She said she called Mr. Walton, and the Defendant told her that Mr. Walton was coming to pick him up.

H.M. testified that the Defendant text messaged her after he left, despite having told her that he did not have his cell phone. She read from the series of text messages in which the Defendant repeatedly expressed his disappointment, frustration, and anger that the victim did not believe his kidnapping story and dismissed H.M.'s suggestions that he should call the police and/or go to the hospital to be checked for a concussion. The following is illustrative of the tenor of those text messages:

> Actually, I don't even care. Out of everything that just happened, I could have been killed and [the victim] didn't even give a f***. Just leave it alone. I don't know what the f*** happened, why someone would do that or why she was involved like that, but she basically don't give a f*** if I lived or died. So just leave it at that. LOL. F*** it. Thank you for caring, though. At least someone gives a s***

H.M. also identified and read from a series of group text messages she and other friends exchanged with the victim on November 13, 2016, in which the victim said that she and the Defendant were "done for good," that she needed to be happy, and that she could not get over the Defendant while they were still communicating. The victim also said that the Defendant had called her threatening suicide, that the Defendant's mother was not answering the victim's phone calls, and that she still loved and cared about the Defendant as a person.

H.M. testified that after the Saturday, November 19, Chick-Fil-A breakfast, she was returning to her home, located just a few doors from the victim's home, when she saw the Defendant dressed in black walking on the other side of the street. She said she recognized him by his stance. She stated that she watched him for a moment and then reached to open her garage door. The Defendant looked at her garage door and then turned and walked

toward the swimming pool. Approximately five minutes later, she drove into the pool parking lot and saw the Defendant's Honda Accord parked in its usual place.

H.M. testified that she was familiar with the Defendant's vehicle, which had a Tennessee flag sticker on it. When she saw the vehicle at the pool, the sticker had been scratched off and an orange Nike shoebox was in the back. After seeing the vehicle parked at the pool, she immediately text messaged to the Defendant to ask why he was in Sterchi Hills, and he "freaked out and denied it." In the text messages, which were included with the numerous other exhibits in the case, the Defendant said that he had eaten breakfast with his stepfather and been with Mr. Walton all morning. H.M. said she knew the Defendant was not telling the truth because she had just seen him, and she thought that his purpose in being there was to try to scare the victim, as he had the previous night.

On cross-examination, H.M. acknowledged that the victim and the Defendant frequently bickered and repeatedly broke up and reconciled. She agreed that the Defendant often did things to get the victim's attention, such as showing up where she was, calling her numerous times, and threatening suicide. She testified that she knew "without a doubt" that she saw the Defendant walking down her street on Saturday morning and that she saw his car parked at the pool. She acknowledged, however, that she told the police in her initial interview that she "thought" it was the Defendant and that she was "50/50" in her identification of the vehicle. On redirect examination, she explained that the uncertainty she initially expressed was because the last time she had seen the vehicle before that Saturday, it still had the orange Tennessee flag sticker in the rear windshield.

Benjamin Seth Donilon, the Defendant's stepfather, testified that he remained involved in the Defendant's life after his separation from the Defendant's mother, which occurred in the summer before the Defendant's junior year of high school. He said the Defendant lived with him after the separation until the Defendant eventually moved into his grandparents' home. The Defendant kept a key to his home and was always free to come and go as he wished. On Friday, November 18, 2016, Mr. Donilon text messaged the Defendant about the possibility of getting together with him that weekend, and the Defendant responded that he would let him know. The next text message communication he had with the Defendant was on Saturday evening, November 19, when he asked what the Defendant had done that day. Mr. Donilon agreed that he and the Defendant communicated primarily by text message and that if they had arranged to meet that Saturday, it likely would have been reflected in their text messages.

James Wesley Walker, the Defendant's step-grandfather, who was not related to the victim, testified that he actively followed the Defendant's football career. The Defendant was a star high school athlete and continued to play in college. Mr. James Walker said that a few weeks prior to the victim's death, the Defendant experienced "a tremendous

emotional crisis" and tried to take his own life. After the suicide attempt, the Defendant was hospitalized for twenty-four hours and then scheduled for follow-up care with a psychologist at the college.

Mr. James Walker testified that he had purchased a Glock 9mm handgun in 2003. Although he had a carry permit, he usually kept it in the holster in a dresser in his bedroom or, if he took it with him, stored it in the holster underneath the driver's seat of his vehicle. On Friday morning, November 18, 2016, he drove to the Defendant's college dormitory and left his vehicle for the Defendant while he took the Defendant's gray 2009 Honda Accord to the tire shop to buy four new tires. After he returned the Defendant's vehicle to the Defendant and the Defendant had left, Mr. James Walker got into his vehicle and reached under his driver's seat to check on his gun, as was his habit. He found the holster still in place but the gun missing. He immediately contacted the Defendant, who told him that he did not know anything about the missing gun. Mr. James Walker called the Defendant's mother, who searched the Defendant's dormitory room but was unable to find the weapon.

When he returned home, Mr. James Walker conducted a search of his house for the weapon. That night, he notified the Maryville College football coach, who was aware of the Defendant's suicide attempt. The next day, Mr. James Walker attempted to report the weapon stolen by calling the police non-emergency line but was unable to get through until the following day. He identified a photograph of his receipt for the gun, which reflected a $509 purchase price on February 26, 2003. He also identified photographs of the gun and the two fired rounds and target that were included with the gun when it was shipped. He explained that at the time of his purchase, Glock would fire two rounds from a weapon and include the two fired rounds and the target with the gun. He stated that he had never fired the weapon.

Mr. James Walker testified that the Defendant was at his home working on his laptop on Sunday night, November 20, but left at about 10:00 p.m. to go back to college. The next morning, a friend informed Mr. James Walker of the victim's death, and Mr. James Walker drove to Maryville College, where he met his wife, his stepdaughter, the Maryville College football coach, and the Defendant. To his knowledge, the Defendant, who appeared devastated, was told at that time only that the victim had been hurt. After the Defendant came home, Mr. James Walker called KCSO Investigator William David Wise, whose son had played football with the Defendant, and asked him to come over to help console the Defendant.

On cross-examination, Mr. James Walker estimated that the value of his gun in November 2016 was $350 to $400. He said he had taken the gun apart to clean it approximately half a dozen times in the years he had owned it. He confirmed that he had

never fired it and said that he had no idea that it did not work properly. To his knowledge, the Defendant had never fired the gun, but he had shown the Defendant the gun in the past and was fairly confident that the Defendant had handled it. He testified it never crossed his mind that the Defendant would harm anyone other than himself, and certainly not the victim, because "that wasn't him." On redirect examination, he testified that, although he kept six to eight rounds in the gun, he never kept the weapon "hot"; to fire the gun, he would have had to slide the rack back to chamber a round.

KCSO Investigator William David Wise testified that at the time he responded to James Walker's request to talk to the Defendant about James Walker's missing gun, he was operating under the theory that the victim had committed suicide. The Defendant appeared "disconnected" and at one point in their conversation asked Investigator Wise what he meant when he said he was sorry about the victim. Investigator Wise responded that the victim was gone, and the Defendant asked "[W]here did she go?" At another point, he was talking to James Walker outside the house when the Defendant's mother told him that the Defendant needed to talk to him again. When he went back inside, the Defendant told him that in the days before the victim's death, there was somebody "dressed all in black . . . messing around her house." Because Investigator Wise still thought that the victim's death was a suicide, he found the Defendant's statement "very odd." When he left the home, he called KCSO Lieutenant Gabe Mullinax to ask about the circumstances of the victim's death and learned that it was not a suicide but a homicide involving a gun.

Isaac Kent Ewers, who said that the Defendant had been his best friend, described the Defendant as "[c]ontrolling" and "possessive" in his "chaotic, hectic, high octane, high energy" relationship with the victim. He said that during the periods when the couple were banned from seeing each other, he allowed the Defendant to borrow his phone to text message the victim. He stated that the Defendant talked to him about sneaking into the victim's house to see the victim. To avoid detection, the Defendant would park at different locations in the neighborhood, walk to the victim's home, and enter via a window. These parking locations included the Sterchi Hills pool, the tennis courts, the church, and an empty building known as "the Shack."

Mr. Ewers testified that after their graduation from high school, he and the Defendant and a mutual friend, Alex McCarty, frequently "hung out" together with their friend Noah Walton in Mr. Walton's home, where they played pool, watched movies, and played video games. He said they played a number of different video games, but the Defendant's favorite was "Call of Duty," a "[f]irst-person shooter game[.]" When asked to describe it, he testified that each player had an array of weapons at his disposal, including a variety of guns, and that there were "animations for reloading, cocking the gun, everything."

Mr. Ewers testified that he was with Mr. Walton and another friend at Mr. Walton's house late on Friday night, November 18, when they received a call from the Defendant stating that he had been kidnapped. Although they did not believe the story, they told the Defendant they would come to get him. However, before they were five feet from Mr. Walton's driveway, the Defendant pulled up in his vehicle. The Defendant kept repeating that he had been hit on the head and kidnapped, but he did not provide any details and refused when they suggested that they call the police or take him to the hospital. Eventually, they dropped the topic because they knew the story was not true and that the Defendant was not in any danger.

Alex McCarty testified that Mr. Walton and Mr. Ewers told him about the Defendant's kidnapping story. When Mr. McCarty saw the Defendant on Saturday night, November 19, at Mr. Walton's house, the Defendant was distant and "mopey," and he pulled the Defendant aside for a trip to the store and an opportunity to talk. The Defendant told him that he thought people "were after him and [the victim,]" that he had been kidnapped and dropped in S.S.'s yard, and that he had stolen his grandfather's gun for protection. They were in the Defendant's vehicle at the time, and the Defendant pulled the gun out and handed it to him. He recognized the gun as a 9mm and recalled that the Defendant warned him that it might be loaded.

Mr. McCarty testified that he did not believe the kidnapping story but played along because he was worried that the Defendant was suicidal and did not want to upset the Defendant. After the Defendant left, Mr. McCarty told Mr. Ewers and Mr. Walton about the gun, and the three of them planned to stage an intervention with the Defendant. The next night, Sunday, November 20, they saw the Defendant at Mr. Walton's house but did not implement their planned intervention, and the Defendant left at about 11:00 p.m. The next morning, Mr. Walton called to tell Mr. McCarty that the victim had "passed away" and that "there was a lot of confusion over the circumstances." Mr. McCarty testified that his first thought upon learning the news was that the Defendant was involved in some way.

Mr. McCarty testified that the Defendant asked him to visit the Defendant that night. When Mr. McCarty arrived, he asked the Defendant whether the Defendant still had the gun, and the Defendant told him that he had returned it to his grandfather. During the conversation, however, the Defendant's mother came outside the house and began questioning the Defendant about the gun's location, so he knew that the Defendant had not returned the gun. After she left, Mr. McCarty asked the Defendant what was going on, and the Defendant told him "that the police would . . . put [the murder] on him if -- if they found the gun." When the Defendant mentioned throwing the gun into the river, Mr. McCarty attempted to dissuade him, telling the Defendant that the gun would prove his innocence if he had nothing to do with the victim's death.

Mr. McCarty testified that a short time after he had left the Defendant's home, the Defendant sent a text message to ask for his help disposing of the gun. He told the Defendant that he would help, but that night he talked to the police, telling them that he thought the Defendant would feel comfortable disposing of the gun in his presence. After his interview with the police, the Defendant, who was interviewed after Mr. McCarty, contacted him to suggest that he tell the police that he had been using drugs Saturday night, November 19, and had not seen the Defendant with a gun.

The next night, Tuesday, November 22, the Defendant contacted Mr. McCarty with a plan of throwing the gun off "the bluffs" into the Tennessee River. He informed the Defendant that he had told Mr. Walton about the Defendant's plan to dispose of the gun, and the Defendant, although initially hesitant, agreed to Mr. Walton's accompanying them. Mr. McCarty testified that the police supplied him with a hidden recording device before he drove with the Defendant to pick up Mr. Walton and then to the Defendant's stepfather's home for the Defendant to retrieve the gun.

Mr. McCarty testified that he parked his vehicle behind a church near the Defendant's stepfather's home. The Defendant exited the vehicle and came back a short time later with a plastic trash bag, which he placed on the front passenger floorboard between his legs. Once they reached the bluffs, the Defendant put on a pair of white chef gloves, opened the trash bag, revealing black clothing, and removed the gun. About that time, the police came up to the vehicle and arrested the Defendant. Mr. McCarty identified the video recording of the incident, which was published to the jury and admitted as an exhibit.

On cross-examination, Mr. McCarty acknowledged that the Defendant struggled with stress and depression and frequently threatened suicide. Mr. McCarty testified that when the Defendant showed him the gun on Saturday, November 19, he was worried that the Defendant would harm himself but was not worried that the Defendant would harm anyone else. Mr. McCarty said he had never been worried about his safety with the Defendant, but in the past, he had witnessed the Defendant punch a wall during a period in which the Defendant was obsessed with another girl. Before the night of November 19, 2016, he had never known the Defendant to have a gun, and, to his knowledge, the Defendant did not know anything about guns.

Noah Anthony Wye Walton testified that the Defendant came to his home at approximately 6:00 p.m. on Friday, November 18, 2016, told him that he was doing "a scrapping metal job," and asked him to hold his cell phone. Mr. Walton had never known the Defendant to work with scrap metal but knew that the Defendant had been struggling emotionally, so he sought the Defendant's reassurance that he was not planning "to do anything stupid." After the Defendant reassured Mr. Walton, Mr. Walton took the

Defendant's cell phone, and the Defendant left. At about 9:00 or 10:00 p.m., the Defendant returned, retrieved his phone from Mr. Walton, and left.

Mr. Walton next heard from the Defendant at 12:30 or 1:00 a.m. on Saturday, November 19, when the Defendant called with the kidnapping story. The Defendant spent that night with Mr. Walton in his home, but when Mr. Walton got up the next morning at 11:00 a.m., the Defendant was already gone. The Defendant was quiet and visibly upset when Mr. Walton saw him that Saturday night and appeared to be "in kind of a dark place." On Sunday night, the Defendant was again at Mr. Walton's home but left at 10:00 or 11:00 p.m., saying that he was returning to his college to work on a paper. At the time, the Defendant was not "as gloomy" as he had been the previous night, and seemed "normal."

At approximately 12:00 or 12:30 a.m. on Monday, November 21, the Defendant called to ask Mr. Walton if he could come back to Mr. Walton's house, and Mr. Walton told him no. During that conversation, the Defendant also asked if Mr. Walton knew how to remove fingerprints from a gun. Mr. Walton replied that he did not and inquired why the Defendant would ask such a thing, and the Defendant told him that his roommate had asked him the question. After Mr. Walton learned later that day about the circumstances of the victim's death, he and Mr. McCarty went to a friend's home to seek the advice of her father, a Central High School principal. The principal contacted KCSO Detective Merritt, and Detective Merritt came to the house to talk to them.

Mr. Walton identified a text message he received at 11:19:51 p.m. on Friday, November 18, 2016, from a number that was unknown to him. The text message read, "Hey. Do you know who this is?" When he responded No[,]" the individual replied, "What number is this?" and "Hello?" Mr. Walton stated that it was the only time he ever received a text message from that number.

KCSO Lieutenant Steven Sanders, who participated in the Defendant's November 22 arrest, identified photographs of the gun and clothing found on the floorboard of Mr. McCarty's vehicle. On cross-examination, he testified that the Defendant was compliant during the arrest.

Jack Piepenbring, Director of Safety and Security at Maryville College, testified that Maryville College students unlock the main doors to their residence halls by presenting their student identification cards to the proximity reader at the entrances to the buildings. He said that a student assigned to one residence hall could not use the student's identification card to access a different residence hall. The last time the Defendant's student identification card was used on Friday, November 18, 2016, to access Gamble Hall, the Defendant's assigned dormitory, was at 4:32 p.m. The card was not used on Saturday or Sunday, November 19 and 20, but it was used on Monday, November 21 at 4:30 a.m.

McMillian Cole Seagle, an upperclassman wide receiver on the Maryville College football team, testified that in 2016, he lived in a suite in Carnegie Hall and befriended the freshman Defendant, a fellow wide receiver. Because two of his assigned roommates usually stayed off campus with their respective girlfriends, there was an empty bedroom in Mr. Seagle's suite that the Defendant frequently used. The Defendant often was "FaceTiming" with the victim as they were traveling home from their away games, and he observed that the conversations were sometimes pleasant and sometimes not. Toward the end of the football season, the relationship appeared to him to become "very toxic." As the relationship worsened, the Defendant, while weeping, constantly called him and other friends to talk about the victim. In those conversations, the Defendant talked about how sad he was, how he needed the victim, and could not see himself without her.

Mr. Seagle testified that the distraught Defendant lost twenty or thirty pounds and began spending more and more time at Mr. Seagle's dormitory. Approximately two weeks before the victim's death, the weeping Defendant called him from Knoxville saying that he "couldn't do it anymore." Later that same night, a teammate informed Mr. Seagle that the Defendant was "passed out" in front of the Maryville College athletic building. When Mr. Seagle and other friends arrived, they found the unconscious Defendant in his vehicle with a suicide note and pill and beer bottles around him.

Late on Sunday night, November 20, the Defendant called Mr. Seagle and his roommate to tell them that he was coming to their dormitory, that the Defendant's mother would have his cell phone, and he needed them to watch for him so that they could let him into the building. The Defendant arrived around 11:42 p.m., immediately asked to borrow Mr. Seagle's cell phone, and then left the room. Approximately ten minutes later, the Defendant, who seemed to be happy, returned Mr. Seagle's cell phone and departed, saying that he was going to sleep in Gamble Hall.

Mr. Seagle identified a series of text messages sent from his phone to the victim's phone during the time the Defendant had borrowed his phone. He stated that he had neither sent those text messages nor made any of the fifty-two calls to the victim's phone that night. Mr. Seagle's phone records reflect that, after an initial short conversation, the victim did not answer any of the phone calls and, with the exception of one short "I love you" text message, did not respond to any of the numerous text messages the Defendant sent her that night. On cross-examination, Mr. Seagle acknowledged that he had never seen the Defendant angry and that the only person he ever thought the Defendant would harm was the Defendant.

Andrew Walker Stanley, the Defendant's freshman roommate in Gamble Hall, testified that he noticed toward the end of the fall semester that the Defendant was losing a lot of weight and was not "in a good place in his life." He saw the Defendant and the

Defendant's mother at the dormitory on Friday, November 18 at about 2:30 p.m. but did not see the Defendant again until the Defendant woke him when he entered their room at 4:45 a.m. on Monday, November 21. After Mr. Stanley had gone home to Georgia for the Thanksgiving break, the police contacted him when he was in a deer stand. Mr. Stanley stated that he said he had grown up hunting and fishing, that his family owned approximately 120 guns, and that he never asked the Defendant how to remove fingerprints from a gun. He testified that after he had already been contacted by the police, the Defendant sent him a Snapchat message asking him not to talk to the police.

KCSO Officer Dedire Bules, a forensics technician, identified a number of photographs she took of the crime scene, including of a spent round on the ground outside an exterior wall of the victim's bedroom and a live round and a spent round on the ground outside the adjacent exterior wall. She also identified photographs of items found in Mr. McCarty's vehicle at the time of the Defendant's arrest, including Mr. James Walker's 9mm pistol, a magazine with four live rounds, black gloves, white gloves, a pair of black sweatpants, a black hooded zip-up sweatshirt, and black shoes with black duct tape wrapped around the soles of the shoes.

Kendall Stoner, DNA Database Supervisor for the Tennessee Bureau of Investigation ("TBI") Crime Laboratory in Nashville and an expert in serology and DNA, testified that the Defendant's DNA was on the shoes, gloves, and sweatshirt.

TBI Special Agent Forensic Scientist Jessica Hudson, an expert in firearm and tool mark examination, testified that the slide lock lever on the 9mm Glock handgun was installed incorrectly, potentially causing a "double feed[,]" or "when two cartridges try to go into the chamber at once." She explained that in that situation, one of the two cartridges would get stuck. To clear the chamber, one would have to "rack the slide back[,]" causing a live round to fall to the ground. During her test firing, the problem occurred once out of the six times that she pulled the trigger.

KCSO Forensic Services Officer Nathan Stansberry, who helped process the crime scene, identified photographs of a pillow on the victim's bed from which a fired projectile was recovered, the two bullet holes in the victim's adjacent bedroom walls, and the "flight-path rods" placed in the bullet holes by KCSO Captain Brad Park. On cross-examination, Officer Stansberry testified that the projectile found in the pillow did not strike the victim. He recalled that Captain Park had difficulty placing the flight path rod in the wall on the side of the room closest to that pillow and agreed that the bullet "may have grazed a stud."

KCSO Captain Miles Bradford Park, supervisor of the crime scene unit, testified that he inserted trajectory or flight path rods into the defects in the victim's bedroom walls and measured the angle that each bullet took in entering the home. He had no difficulty

inserting a rod through the defect on the southeast corner of the house, but the bullet that entered on the northeast wall had deflected slightly after entry, possibly due to striking a wall stud. He said the "baseball-size circles" visible on the ends of the flight path rods were used by the FARO scanner for more accurate measuring of the scene. On cross-examination, he agreed that the FARO scanner was also used in accident reconstruction.

KCSO Officer Glen Simerly, Jr., a patrol officer with the traffic division, testified that the FARO scanner is a laser device used to document accident and crime scenes. He said he brought the FARO scanner to the crime scene on November 21, 2016, and used it to scan both the victim's bedroom and the exterior of the home. After the scans were complete, he removed the SD card from the scanner and downloaded it into a computer, where the data was accessible to Bobby Jones, Jr., who analyzed the data with "the Scene processing software." On cross-examination, Officer Simerly testified that the sheriff's department had had the scanner for approximately two and a half years, that he primarily used it in traffic accident reconstruction, and that the instant case was the first time the scanner had been used in Knox County for anything other than a traffic accident.

Bobby Eugene Jones, Jr., recognized by the court as an expert in the field of forensic reconstruction, testified that he was self-employed with Bobby Jones and Associates and worked part-time with the KCSO doing "[c]rash reconstruction and some crime scene reconstruction." In his work as a crash and crime scene reconstructionist, he used the FARO scanner, which he described as a "3D laser scanner . . . that's used to capture, basically, a snapshot of reality in such a way that [one] can view that in a virtual world on a computer." He testified that the FARO scanner first scanned the scene, collecting "millions of points" or a "lamp globe of information[,]" and then took photographs. After the data was collected by the scanner, he used SCENE software, made by the same company that manufactured the scanner, to process the data and to create a three-dimensional view of the scene. He explained how the scanner measured the trajectories of the bullets that entered the victim's bedroom:

> As the scanner scans, we set up rods with these spheres. And often the rods are coming out of the wall. And what we're hoping to get with the scanner, and what we do get is, we capture a hemisphere, capture half of the sphere. It uses the calculation of all the placement of all of those points to calculate literally thousands of points on this surface, to calculate the exact center of each one of those spheres.
>
> With that, we know an XYZ coordinate for each. And using a basic Pythagorean theorem, we can calculate a trajectory line. In other words, a geometric ray or straight line following the bullet path upon the position of the rod.

Mr. Jones testified that the scanner was set up both inside the victim's bedroom and outside the home to calculate the trajectories of the bullets. He identified PowerPoint images created from that data, which were admitted as exhibits and published to the jury. On cross-examination, he testified that the instant case was the first in which he had testified about bullet trajectories determined by the FARO scanner.

KCSO Officer Sandi Campbell, who participated in the execution of a search warrant on the Defendant's vehicle on November 21, 2016, identified photographs that showed, among other things, a shoe box on the rear deck of the vehicle, a scratched-out Tennessee flag sticker on the rear windshield, a photograph of the victim in the console, and a roll of black duct tape in the trunk.

Knox County Deputy Medical Examiner Dr. Christopher Lochmuller testified that the victim had a single gunshot wound to the head in which the bullet entered just above her left ear, fracturing her skull and causing severe injury to her brain. The victim's toxicology report was negative for the presence of alcohol or drugs. He determined that the cause of death was the gunshot wound to the head and that the manner of death was homicide. Dr. Lochmuller opined that the victim was immediately rendered unconscious by the bullet to her brain but her death would not have been instantaneous.

KCSO Lieutenant Richard Allen Merritt, the lead detective on the case and the State's final witness, testified that when he arrived at the crime scene on the morning of November 21, the victim was lying on her back on her bed in her small bedroom, located at the northeast corner of the house. He first noticed a wound on the side of the victim's head above her ear and a hole in the wall directly across from her head. As he continued to examine the crime scene, he saw a second bullet hole in the end wall of the house, "directly behind and in line with [the victim's] head and body." When he went outside, he located the corresponding bullet holes in the exterior siding of the home and observed that the bottom of the victim's windowsill was in line with the top of her mattress. He explained that someone with intimate knowledge of the victim's bedroom and with the victim's sleeping habits could use the location of the windowsill to aim directly at the sleeping victim's head:

> So if I'm standing outside the residence and I look and I see this window, and I have intimate knowledge of the residence - - in other words, I've been inside, which I had been, and so I'm able to stand outside and determine that the bottom of this windowsill is in line with the top of her mattress.
>
> If I also, in fact, have intimate knowledge that [the victim] sleeps on pillows, actually, three to be exact, then her head's going to be in an elevated position.

Based on the location of the spent casings outside the victim's bedroom, Detective Merritt estimated that the shooter was approximately four to five feet from the outside walls at the time he fired each shot.

Detective Merritt testified that he was able to determine the Defendant's movements throughout the weekend preceding the victim's death by tracking the Defendant's cell phone usage. At 11:19 p.m. on Friday, November 18, 2016, just before Mr. Walton received the text message from an unknown number, the Defendant downloaded a cell phone application used to make anonymous phone calls and text messages from a smartphone. Detective Merritt testified that the text message Mr. Walton received was sent from the same number that was used a short time later to send text messages the victim about the Defendant's alleged kidnapping. He stated that the Defendant's phone was unusually inactive for several hours around the time of the shooting, but at 12:29 a.m. that morning, the Defendant sent a text message to his mother asking if his grandfather had found his missing gun.

Detective Merritt testified that he had researched the video game, "Call of Duty," which included a concept called "[w]all banging[,]" or "shooting through a wall to . . . kill the enemy or the adversary on the other side."

Detective Merritt identified a video recording of the interview that he and a fellow detective held with the Defendant on the night of November 21, 2016, which was admitted as an exhibit and published to the jury. In the interview, the Defendant, who referred to the victim at least twice as "the girl" or "that girl" instead of by name, stated that he spent Friday night at Mr. Walton's house and was at his stepfather's house on Saturday morning when the frightened victim text messaged him about the man in black attempting to enter her home. The Defendant stated that he rushed over to the victim's home at her request, FaceTiming her as he drove. When he arrived, he checked the home's exterior and the surrounding street. The victim's mother arrived, and he left.

The Defendant told the detectives that the victim had broken up with him two or three weeks earlier, but that he was helping her with a paper on Sunday night, November 20. He stated that the victim told him that he had to use a friend's phone to talk to her because her mother had made her block the Defendant's number. The Defendant said he borrowed Mr. Seagle's cell phone to call the victim, but during the conversation, the victim was "cruel," telling him that she did not care to be with him anymore. He stated that he kept calling her back because he wanted her to reason with him, but she eventually blocked Mr. Seagle's number. He said he returned to Knoxville to log out of his grandmother's laptop, which he had borrowed earlier in the night, and then drove back to college, parked outside his dormitory, and sat in his vehicle and cried for two to three hours.

The Defendant denied throughout the interview that he had taken his grandfather's gun. He did not mention the Friday night alleged kidnapping until toward the end of the interview when the detectives brought it up. At that point, he said that two men in a van had kidnapped him from the street outside his stepfather's house, told him to call someone he loved, and then used their phone to text message the victim after the victim would not answer his call. The Defendant told the detectives that he had not mentioned the kidnapping earlier because it was a traumatic experience and he had not wanted to talk about it.

The Defendant elected not to testify and rested his case without presenting any witnesses. Following deliberations, the jury found him guilty of first degree premediated murder, first degree felony murder, reckless endangerment, theft of property valued over $500, and tampering with evidence, as charged in the presentment, and of the lesser-included offenses of misdemeanor stalking and possession of a firearm during the commission of a dangerous felony.

ANALYSIS

I. Denial of Motion to Dismiss Especially Aggravated Stalking Count

The Defendant contends that the trial court erred by denying his pretrial motion to dismiss the especially aggravated stalking count of the presentment. He argues that the count of especially aggravated stalking, which was the underlying felony for his possession of a firearm during the commission of a dangerous felony conviction, should have been dismissed because the State relied on the victim's death for the serious bodily injury element of the offense, and death is not included in the statutory definition of serious bodily injury. The State responds by arguing, among other things, that the trial court correctly denied the motion to dismiss because serious bodily injury includes any injury that involves a substantial risk of death, including an injury "which results in death."

The definition of "serious bodily injury" includes an injury that involves

(A) A substantial risk of death;

(B) Protracted unconsciousness;

(C) Extreme physical pain;

(D) Protracted or obvious disfigurement;

(E) Protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty; or

(F) A broken bone of a child who is twelve (12) years of age or less[.]

Tenn. Code Ann. § 39-11-106(a)(34) (2014) (amended).

There has been a split in this court regarding whether death is considered serious bodily injury. *State v. Randall T. Beaty,* No. M2014-00130-CCA-R3-CD, 2016 WL 3752968, at *30 (Tenn. Crim. App. July 8, 2016), *perm. app. denied* (Tenn. Mar. 19, 2017) (citation omitted). In *Randall T. Beaty,* a panel of this court ruled that aggravated assault was not a lesser-included offense of first degree murder because the serious bodily injury element in aggravated assault was different from the killing element in the first degree murder statute. *Id.* at *31. Other panels of this court have ruled the opposite. In *State v. Paul Graham Manning,* No. M2002-00547-CCA-R3-CD, 2003 WL 354510 (Tenn. Crim. App. Feb. 14, 2003), *perm. app. denied* (Tenn. Dec. 15, 2003), a panel of this court stated that "[a] killing certainly includes serious bodily injury (as well as mere bodily injury)." *Id.* at *6; *see also State v. Lia Bonds,* No. W2006-01943-CCA-R3-CD, 2007 WL 3254711 at *11 *(Tenn. Crim. App. Nov. 2, 2007), perm. app. denied* (Tenn. Apr. 14, 2008); *State v. David Wayne Smart,* No. M2001-02881-CCA-R3-CD at *16 (Tenn. Crim. App. May 13, 2003), *perm. app. denied* (Tenn. Oct. 13, 2003). We are persuaded by the reasoning in *Manning,* but it is not necessary to engage in this debate at this time. The jury heard testimony from Dr. Lochmuller that the victim sustained a gunshot wound to the head that resulted in a traumatic brain injury that rendered her immediately unconscious and ultimately killed her. Therefore, a reasonable jury could have concluded that the victim suffered "substantial loss of a function of a bodily member, organ, or mental faculty." As the trial court observed in its ruling, it would defy commonsense to conclude that a gunshot to the side of the head that does not kill a victim is a serious bodily injury, but a gunshot to the side of the head that kills a victim is not. The Defendant is not entitled to relief on the basis of this issue.

II. Motion for Sequestered Jury and Objection to Livestreaming of Trial

The Defendant contends that the trial court erred in denying his motion for a sequestered jury and in permitting the trial to be livestreamed. The record reflects that "Law and Crime," formerly known as "Court TV," filed a request on April 16, 2018, to have a camera in the courtroom to livestream the proceedings. Four days later, the Defendant filed an objection to that request, along with a motion for a sequestered jury.

At the April 25, 2018 hearing on the motions, defense counsel argued, among other things, that Law and Crime was not a legitimate news agency, that a camera in the

courtroom would be unduly disruptive, and that the danger was too great that trial witnesses would watch the testimony of preceding witnesses. In its ruling permitting the camera, the trial court recognized that the case had received a great deal of media coverage and that passions in the community were high. It found, however, that the concerns cited by defense counsel were insufficient to overcome the presumption in favor of media access contained in Rule 30 of the Rules of the Tennessee Supreme Court.

Tennessee Supreme Court Rule 30 allows for media coverage of public judicial proceedings in this state, subject to the discretion of the trial court to "(i) control the conduct of the proceedings before the court; (ii) maintain decorum and prevent distraction; (iii) guarantee the safety of any party, witness, or juror; and (iv) ensure the fair and impartial administration of justice." Tenn. R. Sup Ct. 30(A)(1), (D)(2). Rule 30(D)(2) allows the trial court, upon a proper showing, to limit in-court media coverage in order to accommodate any of these important interests. This court has recognized that "[t]he First Amendment rights of the press are always of great public interest and are of vital importance to the administration of justice in this state." *State v. Montgomery*, 929 S.W.2d 409, 414 (Tenn. Crim. App. 1996). Thus,

> given the presumption in favor of media coverage of judicial proceedings, any finding that such coverage should be denied, limited, suspended, or terminated must be supported by substantial evidence that at least one of the four interests in Rules 30(A)(1) and 30(D)(2) is of concern . . . and that the order excluding or limiting, etc., is necessary to adequately reach an accommodation of the interest involved.

State v. Freddie Morrow, No. 02C01-9601-CC-00022, 1996 WL 170679, at *5 (Tenn. Crim. App. Apr. 12, 1996).

We conclude that the trial court did not abuse its discretion in its ruling. After first determining that the Defendant's concerns were insufficient to overcome the presumption in favor of media coverage, the trial court took appropriate steps to minimize the disruption to the courtroom by requiring Law and Crime to pool their film footage with other media outlets so that only one camera and crew member would be present. After the trial began, the trial court added a prohibition against filming the juvenile witnesses, the crime scene, and the autopsy photographs of the victim.

We also conclude that the trial court did not abuse its discretion in denying the Defendant's request for a sequestered jury. Tennessee Code Annotated section 40-18-116 provides that "[i]n all criminal prosecutions, except those in which a death sentence may be rendered, jurors shall only be sequestered at the sound discretion of the trial judge, which shall prohibit the jurors from separating at times when they are not engaged upon actual

trial or deliberation of the case." We, therefore, review a trial court's denial of a request for sequestration of the jury for an abuse of discretion. *See State v. Larry Walcott,* No. E2004-02705-CCA-R3-CD, 2005 WL 2007203 at *7 (Tenn. Crim. App., Aug. 22, 2005), *perm. app. denied* (Tenn. Feb. 6, 2006).

As mentioned above, the motion for a sequestered jury was not made until April 20, 2018, following Law and Crime's request to livestream the trial, which started May 1. In denying the motion, the trial court noted the impossibility at that late hour of finding suitable accommodations and staffing to handle a sequestered jury. The Defendant argues that the trial court's concerns with logistics were an improper basis to deny his request. We respectfully disagree. Moreover, as the State points out, the trial court also stated in its ruling that it had reviewed "the current authorities" and did not find anything about the manner or amount of media coverage that would require a sequestered jury. Throughout the proceedings, the trial court repeatedly reminded the jury not to talk about the case and not to read or watch any news coverage. There is nothing in the record to suggest that the jury did not follow the trial court's instructions. The Defendant is not entitled to relief on the basis of these issues.

III. Admission of Defendant's Snapchat Message to Victim

The Defendant contends that the trial court erred in admitting his Snapchat message to the victim "because its primary purpose was to elicit emotions of bias, sympathy, hatred, contempt, retribution, or horror." He argues that the trial court used the wrong standard of review under Tennessee Rule of Evidence 403 by finding that the probative value of the evidence merely outweighed, rather than substantially outweighed, the danger of unfair prejudice. The State argues that the Defendant misstates the requirements of Rule 403, and that the trial court properly admitted the evidence. We agree with the State.

The admissibility of evidence generally lies within the sound discretion of the trial court, and this court will not interfere with the exercise of that discretion unless a clear abuse appears on the face of the record. *State v. Franklin*, 308 S.W.3d 799, 809 (Tenn. 2010) (citing *State v. Lewis*, 235 S.W.3d 136, 141 (Tenn. 2007)). "An abuse of discretion occurs when the trial court applies an incorrect legal standard or reaches a conclusion that is illogical or unreasonable and causes an injustice to the party complaining." *Lewis*, 235 S.W.3d at 141 (internal quotation and citation omitted).

During Mrs. Walker's testimony, the State sought to introduce two of the Defendant's Snapchat messages to the victim to show why Mr. and Mrs. Walker developed concerns about the Defendant. The trial court excluded one of the Snapchat messages, in which the Defendant apparently made threats to kill Mrs. Walker, as too prejudicial, but it found that the probative value of the Snapchat message at issue in this appeal, in which the

Defendant called the victim names and suggested she follow through with her threats to commit suicide, "d[id] outweigh the danger of unfair prejudice."

We conclude that the trial court did not abuse its discretion in admitting this evidence. Under Rule 403, relevant evidence, which is generally admissible under Rule 402, "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." The Defendant attempts to flip the burden by misreading the rule to require exclusion of evidence unless there is a finding that its probative value substantially outweighs the danger of unfair prejudice. Rule 403 does not require such a heightened burden for the admission of relevant evidence. We agree with the State that the Snapchat message at issue was relevant to show why the victim's parents developed concerns about the Defendant and that its probative value was not substantially outweighed by the danger of unfair prejudice. The Defendant is not entitled to relief on the basis of this issue.

IV. Testimony that Defendant was Controlling, Manipulative, and Possessive

The Defendant contends that the trial court erred in admitting what the Defendant characterizes as improper character evidence -- testimony by the victim's friend group that he was controlling, manipulative and possessive -- because he never placed his character at issue by testifying. The State argues that the testimony was not introduced to show the Defendant's actions in conformity with any character trait, but to explain why the victim's friends encouraged the victim to leave the Defendant and why the victim took the actions she did as the relationship was ending.

On April 30, 2018, the Defendant filed a motion in limine requesting that the trial court "exclude any evidence of [the Defendant's] character or trait of character to prove action in conformity therewith on a particular occasion." At the pretrial hearing on the motion, defense counsel, relying on Tennessee Rule of Evidence Rule 404(a), cited as impermissible character evidence statements of witnesses that the Defendant "may have been controlling . . . [and] things of nature[.]" The prosecutor responded that such testimony was only the witnesses' "description and interpretation of this relationship." The trial court reserved its ruling until the development of the proof at trial, observing that "[w]hat might be evidence and character trait in one context can actually be factual in another context[.]"

After K.L. testified that she had told the victim that she did not approve of the victim's relationship with the Defendant because she thought the victim deserved better, the prosecutor asked what words she would use to describe the Defendant's behavior in the relationship. K.L. responded, "Possessive, kind of controlling, not just kind of controlling,

overbearing." Defense counsel immediately objected on the basis that it was the type of improper character evidence that counsel had sought to prevent with the motion in limine. In the bench conference that followed, the prosecutor responded that the testimony was not offered to prove the Defendant's action in conformity with a character trait, but to show the toxic nature of the couple's relationship and to establish a motive for the killing. The trial court ruled that the witness could testify about the witness's "feelings and opinions about what was going on with [the victim]" and could describe what happened between the victim and the Defendant, but that the witness could not testify about how the victim and the Defendant felt about each other.

Tennessee Rule of Evidence 404(a) provides that, generally, "[e]vidence of a person's character or trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion." "In other words, a party may not use character evidence to show that a person acted in a particular way because he or she had a propensity to do so." *State v. Wyrick*, 62 S.W.3d 751, 771 (Tenn. Crim. App. 2001).

We conclude that the trial court did not abuse its discretion in admitting the evidence. The trial court found that the testimony of the witnesses concerned the dynamics of the Defendant's and the victim's relationship and was used to explain why the witnesses thought the relationship was unhealthy or, as many of them described it, "toxic." This testimony also explained why the victim ended her relationship with the Defendant. The State did not use the testimony to show that the Defendant acted in a particular way because he had a propensity to do so. We note that prior to K.L.'s testimony, S.S. testified, without any objection from the Defendant, that the Defendant was "sweet" sometimes but "the opposite" other times and that he was "emotionally abusive" to the victim.

In support of his argument that it was improper for the trial court to allow the "character evidence" of his controlling, possessive, and manipulative behavior when he did not place that character trait at issue, the Defendant cites *State v. West*, 844 S.W.2d 144, 149-50 (Tenn. 1992). However, *West* is readily distinguishable from the present case. In *West*, another first degree murder case, the prosecutor asked the defendant on cross-examination whether he considered himself a peaceful person and whether he had "ever threatened to kill a man named Jodie Copas." 844 S.W.2d at 149. When the defendant "described himself as being 'as peaceful as anybody else' and denied threatening Copas[,]" the trial court allowed the prosecutor to call Mr. Copas as a rebuttal witness to testify about an argument he had had with the defendant five years earlier in which the defendant threatened his life. *Id.* Our supreme court concluded that the admission of the evidence was improper because the defendant never made an issue of his good character until the prosecutor opened the door by asking whether he considered himself a peaceful person. *Id.* The testimony in the case at bar describing the Defendant as controlling, possessive, and manipulative is in no way analogous to the situation in *West*, in which the prosecutor

used the defendant's claim of peacefulness to introduce his prior bad act of threatening violence to another. The Defendant is not entitled to relief on the basis of this issue.

V. Evidence of Defendant's Use of Video Game that Involves "Wall Banging"

The Defendant contends that he was denied his right to a fair trial by the introduction of his use of the video game "Call of Duty", along with the related evidence that the game includes "wall banging," or killing someone by shooting through the walls of a building. He argues that such evidence constituted impermissible character evidence, which the trial court should have excluded after holding a jury-out hearing pursuant to Tennessee Rule of Evidence 404(b). The State argues that evidence that the Defendant played a video game does not amount to evidence of a prior bad act, and that the State did not introduce it to show the Defendant's propensity to shoot through walls, but to rebut the suggestion that the Defendant did not realize that he might kill the victim if he fired at the outside walls of her bedroom.

We agree with the State that there was no error in the admission of the evidence. Throughout the trial, the Defendant attempted to show that he lacked knowledge and familiarity with guns. As such, his use of the video game was relevant to counter the suggestion that he did not know how to load or fire a weapon and did not realize that bullets fired into the outside walls of the home could penetrate the walls to kill the victim. Under Tennessee Rule of Evidence 403, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice to the Defendant. The Defendant is not entitled to relief on the basis of this issue.

VI. Expert Testimony of Bobby Jones, Jr.

The Defendant contends that the trial court erred in allowing Mr. Jones to testify as an expert and to present cumulative and misleading trajectory evidence. The State argues that the trial court properly allowed Mr. Jones to testify within his expertise as a reconstruction expert. We agree with the State.

The admissibility of expert testimony is governed by Rules 702 and 703 of the Tennessee Rules of Evidence. Rule 702 provides: "If scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise." Tenn. R. Evid. 702. Rule 703 provides that:

> The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or

> before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. The court shall disallow testimony in the form of an opinion or inference if the underlying facts or data indicate lack of trustworthiness.

Tenn. R. Evid. 703.

"[Q]uestions regarding the admissibility, qualifications, relevancy and competency of expert testimony are left to the discretion of the trial court." *McDaniel v. CSX Transp., Inc.*, 955 S.W.2d 257, 263 (Tenn. 1997) (citing *State v. Ballard*, 855 S.W.2d 557, 562 (Tenn. 1993)). "A trial court should admit the testimony of a competent expert unless the party opposing the expert's testimony shows that it will not substantially assist the trier of fact or if the facts or data on which the opinion is based are not trustworthy pursuant to Rules 702 and 703." *Shipley v. Williams*, 350 S.W.3d 527, 551 (Tenn. 2011). "Generally speaking, the trial court is afforded broad discretion in resolving questions concerning the admissibility of expert testimony; in consequence, we will not overturn its ruling on appeal absent a finding that it abused its discretion." *State v. Ferrell*, 277 S.W.3d 372, 378 (Tenn. 2009).

In a jury-out hearing, Mr. Jones testified about his extensive background as a crash reconstructionist and his expertise working with the FARO scanner and accompanying software. He stated that he had taught classes on the use of the FARO scanner and software nationally, including to a number of law enforcement agencies. He also provided a lengthy explanation of the data the scanner collected and how the software enabled him to create a three-dimensional image of a crime or accident scene, including of the bullet trajectories in the case. During his jury-out testimony, he demonstrated the three-dimensional images of the crime scene he had created with the use of the scanner and software.

At the conclusion of the hearing, the trial court found no issue with Mr. Jones' qualifications as a forensic reconstruction expert or "with the integrity of the scientific principles" he used but expressed concern with the images that depicted a figure outside the victim's home in a classic shooter's stance. The trial court, therefore, excluded that evidence but allowed the State to introduce during Mr. Jones' testimony different three-dimensional images that omitted the figures of the shooter and the victim. In allowing the latter, the trial court found that Mr. Jones' reconstruction of the crime scene showing the bullet trajectories was "different than just sticking a dowel in a hole."

We conclude that the trial court did not abuse its discretion in allowing Mr. Jones to testify as a forensic expert and in admitting the challenged images. Although Mr. Jones' prior experience with the scanner was primarily in traffic accident rather than crime scene

reconstruction, he explained that there was no difference in the use of the technology to create a three-dimensional image of a crime scene versus a traffic accident. As for the images Mr. Jones created through the use of the scanner and software, the record supports the trial court's finding that they were "different than just sticking a dowel in a hole." Through those PowerPoint images, the jury was provided a three-dimensional view of the trajectory of each bullet as opposed to just photographs and/or diagrams of the crime scene.

The Defendant argues that the images of the crime scene presented through Mr. Jones' testimony were misleading because they showed an open window in the victim's bedroom and depicted daylight hours. However, as the State notes, defense counsel argued those same points to the jury in closing. In response, the prosecutor asserted that there "was no playing with the scene[,]" pointing out that the testimony was clear that the scanner was set up to scan the bedroom and exterior of the home during the daylight hours. The trial court acted within its discretion in admitting the expert evidence, and the Defendant is not entitled to relief on the basis of this issue.

VII. Uncharged Criminal Conduct Relating to Theft of Gun

The Defendant contends that the trial court erred in admitting evidence of his uncharged criminal conduct relating to his obtention of his grandfather's gun. Specifically, he argues that the trial court should have excluded evidence of the circumstances surrounding his obtention of the gun because he was charged in the presentment with exercising control of the gun, not obtaining the gun. The State argues that evidence of how the Defendant obtained the gun was relevant to show that he did not have his grandfather's effective consent to exercise control of the gun, to show that the Defendant had possession of the gun when he contacted the victim over that weekend, and to explain why his friends and family were concerned for his welfare.

After hearing arguments in the pretrial hearing, the trial court determined that the evidence was relevant and that its probative value outweighed the danger of unfair prejudice. The trial court's ruling on this issue states in pertinent part:

> THE COURT: If the charging instrument had only referred to constructive possession and not actual, then I think defense position might be well taken, but that's not the case there. What's being alleged is - - does amount to actual - - actual possession. And that would qualify as exercising control. That's just one way to exercise control, is to actually have it.
>
> All right. Anything else?
>
> [DEFENSE COUNSEL]: Yes, Judge.

If I could, just on that note as well, Judge, it would also be our position that evidence of a taking would be - - would be, also, subject to 404(b), because it would be a - - a other crime, wrong, or act. So it's our position that that should also apply.

THE COURT: The Court would rule that, in this context, that's clearly the - - the probative value would exceed any threat of unfair prejudice. I'll allow it in.

The trial court's findings are supported by the record. We, therefore, conclude that the trial court did not abuse its discretion in admitting the evidence.

VIII. Sufficiency of the Evidence

The Defendant challenges the sufficiency of the evidence for his convictions for first degree premeditated murder, first degree felony murder, possession of a firearm during the commission of a dangerous felony, stalking, and theft of property valued over $500. When the sufficiency of the evidence is challenged on appeal, the relevant question of the reviewing court 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* Tenn. R. App. P. 13(e) ("Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt."); *State v. Evans*, 838 S.W.2d 185, 190-92 (Tenn. 1992); *State v. Anderson*, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992).

Therefore, on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from it. *See State v. Williams*, 657 S.W.2d 405, 410 (Tenn. 1983). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *See State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990). "A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

The guilt of a defendant, including any fact required to be proven, may be predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *See State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999). The standard of review for the sufficiency of the evidence is the same whether

the conviction is based on direct or circumstantial evidence or a combination of the two. *See State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011).

A. First Degree Premeditated Murder

First degree premeditated murder is defined as "[a] premeditated and intentional killing of another[.]" Tenn. Code Ann. § 39-13-202 (a)(1) (2014 & 2018). Premeditation requires that the act be "done after the exercise of reflection and judgment" and committed when the accused "was sufficiently free from excitement and passion as to be capable of premeditation." *Id.* at § 39-13-202(d). Whether premeditation exists is a factual question for the jury to determine from all the evidence, including the circumstances surrounding the killing. *State v. Davidson*, 121 S.W.3d 600, 614 (Tenn. 2003).

Our supreme court has provided a non-exclusive list of factors from which a jury may infer premeditation, including the defendant's declarations of an intent to kill, evidence of the procurement of a weapon, the defendant's use of a weapon on an unarmed victim, the particular cruelty of the killing, evidence of the infliction of multiple wounds, the defendant's preparation before the killing to conceal the crime, destruction or secretion of evidence after the killing, and the defendant's calmness immediately after the killing. *State v. Nichols*, 24 S.W.3d 297, 302 (Tenn. 2000). Additional evidence from which a jury may infer premeditation is establishment of a motive for the killing. *State v. Leach*, 148 S.W.3d 42, 54 (Tenn. 2004).

The Defendant contends that the evidence was insufficient to show that he acted intentionally and with premeditation in his killing of the victim, rather than recklessly by firing the gun into her home to frighten her. We respectfully disagree. Viewed in the light most favorable to the State, the evidence established that the Defendant, angry at the victim's having ended their relationship and with her refusal to reconcile, stole a gun from his grandfather, went to elaborate lengths to create an alibi and to throw suspicion onto a black-clad assailant outside the victim's home and some unknown kidnapper(s), drove in the early morning hours to the victim's home, fired twice through her adjacent bedroom walls with each shot aimed at the location of her head, fled the scene, and later attempted to dispose of the murder weapon. The evidence in this case was sufficient for a rational jury reasonably to conclude that the Defendant acted intentionally and with premeditation in his killing of the victim.

B. Stalking

> At the time of the relevant events in this case, stalking was defined as
> a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized,

> frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested[.]

Tenn. Code Ann. § 39-17-315(a)(4) (Supp. 2016) (amended). "Course of conduct" was defined as

> a pattern of conduct composed of a series of two (2) or more separate, noncontinuous acts evidencing a continuity of purpose, including, but not limited to, acts in which the defendant directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to a person, or interferes with a person's property;

Id. at § 39-17-315(a)(1). "Harassment" was defined as

> conduct directed towards a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable person to suffer emotional distress, and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;

Id. at § 39-17-315(a)(3). "Unconsented contact" was defined as

> any contact with another person that is initiated or continued without that person's consent, or in disregard of that person's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:
>
> (A) Following or appearing within sight of that person;
>
> (B) Approaching or confronting that person in a public place or on private property;
>
> (C) Appearing at that person's workplace or residence;
>
> (D) Entering onto or remaining on property owned, leased, or occupied by that person;
>
> (E) Contacting that person by telephone;

(F) Sending to that person mail or any electronic communications, including, but not limited to, electronic mail, text messages, or any other type of electronic message sent using the Internet, web sites, or a social media platform; or

(G) Placing an object on, or delivering an object to, property owned, leased, or occupied by that person[.]

Id. at § 39-17-315(a)(5).

In its response to the Defendant's motion for a bill of particulars, the State identified the actions that constituted the especially aggravated stalking count of the presentment as "the discharge of a firearm into the head" of the victim on November 21. The State stated that the additional contacts on which it relied included, but were not limited to, the Friday night, November 18 contacts at S.S.'s home and the Saturday morning, November 19, contacts at the victim's family home. The Defendant contends that the evidence is insufficient to sustain his stalking conviction because the contacts on which the State relied for the offense occurred with the victim's consent, did not cause the victim to feel harassed, terrorized, or frightened, and were part of the continuous pattern of behavior the Defendant had exhibited over the course of the couple's two-year romance when the Defendant was attempting to reconcile with the victim.

However, when viewed in the light most favorable to the State, the evidence established that the victim had broken up with the Defendant prior to the Friday night slumber party; that she was frightened and harassed by the "kidnapping texts" and the Defendant's appearance at the slumber party; that she was terrorized and frightened when the disguised Defendant banged at her door the next morning; and that the Defendant continued to harass her the next night by making repeated unwelcome calls and text messages to her before he drove to her home to shoot two bullets through her bedroom walls at her head. We, therefore, conclude that the evidence is sufficient to sustain the Defendant's stalking conviction.

C. Possession of a Firearm During the Commission of a Dangerous Felony

At the time of the offense, Tennessee Code Annotated section 39-17-1324(a) provided: "It is an offense to possess a firearm with the intent to go armed during the commission of . . . a dangerous felony." Tenn. Code Ann. § 39-17-1324(a) (2014) (amended). Especially aggravated stalking is included in the list of dangerous felonies. *Id.* at § 39-17-1324 (i)(1)(I). A person commits especially aggravated stalking who commits the offense of aggravated stalking, defined for the purposes of this case as a stalking committed with the display of a deadly weapon during the course and furtherance of a

stalking, *id.* at § 39-17-315(c)(1)(A), and intentionally or recklessly causes serious bodily injury to the victim. *Id.* at § 39-17-315(d)(1)(B).

The Defendant bases his challenge to the sufficiency of the evidence for his possession of a firearm during the commission of a dangerous felony conviction on the jury's failure to convict him of the especially aggravated stalking count of the presentment. We address the Defendant's argument that the jury returned mutually exclusive verdicts in a separate section of our opinion below. At this juncture, we simply note that consistency in verdicts is not required, *see State v. Davis*, 466 S.W.3d 49, 71-78 (Tenn. 2015), and that there was ample evidence from which the jury could find the existence beyond a reasonable doubt of the essential elements of the offense of possession of a firearm during the commission of an especially aggravated stalking. We, therefore, conclude that the evidence is sufficient to sustain the conviction.

D. First Degree Felony Murder

First degree felony murder, for the purposes of this case, is defined as the "killing of another committed in the . . . attempt to perpetrate . . . aggravated child abuse." Tenn. Code Ann. § 39-13-202(a)(2) (2014) (amended). At the time of the offense and as charged in this case, aggravated child abuse occurs when a person "commits child abuse . . ." and a "deadly weapon . . . is used to accomplish the act of abuse[.]" Tenn. Code Ann. at § 39-15-402(a)(2) (2014) (amended). Child abuse occurs when a person "knowingly, other than by accidental means, treats a child under eighteen (18) years of age in such a manner as to inflict injury[.]" *Id.* at § 39-15-401(a). Finally, criminal attempt is defined as follows:

> A person commits criminal attempt who, acting with the kind of culpability otherwise required for the offense:
>
> (1) Intentionally engages in action or causes a result that would constitute an offense, if the circumstances surrounding the conduct were as the person believes them to be;
>
> (2) Acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part; or
>
> (3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.

Tenn. Code Ann § 39-12-101(a)(2014 & 2018).

The Defendant contends that the evidence is insufficient to sustain his felony murder conviction because the jury's verdicts finding him guilty of felony murder during the attempt to perpetrate aggravated child abuse and stalking are mutually exclusive, the injury he inflicted was accidental, and the single fatal gunshot wound the victim sustained does not satisfy the bodily injury element of aggravated child abuse because there was no proof that it resulted "from a protracted pattern of abuse meaning the abuse must cause injury independent of death." The State argues that there was sufficient evidence to sustain the conviction. We agree.

As previously mentioned, Tennessee does not require consistency in verdicts. *Davis*, 466 S.W.3d at 71-78. The Defendant's claim that his injury to the victim occurred by accidental means is belied by the evidence that he intentionally fired two gunshots directly in line with where the victim's head was resting on her pillow. We reject the Defendant's claim that the State was required to show a protracted pattern of abuse causing a physical injury apart from the single, fatal gunshot wound to satisfy the injury element of the aggravated child abuse statute as charged in his case. The aggravated child abuse statute does not require multiple incidents. *See* Tenn. Code Ann. § 13-15-402. (2014).

In support of this latter claim, the Defendant relies on "the history of the felony murder statute and the cases interpreting it" to argue that "the legislature has shown its intent that the death must result from an independent infliction of injury." The Defendant cites *Dorantes*, 331 S.W.3d at 382, in which our supreme court, in reviewing the history of the first degree murder statute as it relates to felony murder through aggravated child abuse and aggravated child neglect, noted that the 1988 version of our first degree murder statute provided in part that first degree murder included the killing of a child less than thirteen years of age "'if the child's death results from one (1) or more incidents of a protracted pattern or multiple incidents of child abuse committed by the defendant against such child, or if such death results from the cumulative effect of such pattern or incidents.'" *Id.* (citing Tenn. Code Ann. § 39-2-202 (2) (Supp. 1988) (repealed by Act of May 24, 1989, ch. 591, § 1, 1989 Tenn. Pub. Acts 1169)). *Dorantes*, however, dealt with a prior version of the statute and with a case involving neglect. The version of the first degree murder statute under which the Defendant was convicted does not include language requiring evidence of "a protracted pattern or multiple incidents of child abuse[.]" The Defendant has not cited any cases that hold otherwise.

Viewed in the light most favorable to the State, the evidence establishes that the Defendant intentionally fired a gun at the head of the child victim; that his actions inflicted bodily injury; and that the victim died as a result of that bodily injury. We, therefore,

conclude that the evidence is sufficient to sustain the Defendant's felony murder conviction.

E. Theft over $500

"A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent." Tenn. Code Ann. § 39-14-103(a) (2014 & 2018). At the time of the offense, theft of property was a Class E felony if the property was valued at more than $500 but less than $1,000. Tenn. Code Ann. § 39-14-105(a)(2) (2014) (amended). "Value," as relevant to the instant case, was defined as either "[t]he fair market value of the property or service at the time of the offense[,]" or "[i]f the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense[.]" Tenn. Code Ann. § 39-11-106(39)(A)(i)-(ii) (2014 & 2018). Tennessee Rule of Evidence 701(b) provides that "[a] witness may testify to the value of the witness's own property or services." Tenn. R. Evid. 701(b).

The Defendant contends that the evidence is insufficient to sustain his theft over $500 conviction because the only competent proof of the gun's value in November 2016 was Mr. James Walker's estimate of $350 to $400. He argues that the failure of the jury, the prosecutor, and the trial court to follow the law regarding valuation of property is but one example of the multiple errors that deprived him of his right to a fair trial. The State argues that the jury was entitled to reject Mr. James Walker's estimate and to base its valuation on the $509 purchase price and the $509 value listed in the police theft report.

We agree with the State. Although Mr. James Walker estimated the gun's value as only $350 to $400, the proof at trial included a copy of the receipt reflecting a purchase price in 2003 of $509, as well as a copy of the theft report created when Mr. James Walker reported the gun as stolen, which reflected the same value. Therefore, regardless of Mr. James Walker's estimate, there was evidence in the record from which the jury could reasonably have found that the gun, which had never been fired by anyone other than the manufacturer, had a value of over $500 at the time of the theft.

Although not raised by the parties, we note that the 2016 amendment, effective on January 1, 2017, changed the grading of theft to make it a Class A misdemeanor if the value of the property or services obtained is $1,000 or less. Tenn. Code Ann. § 39-14-105(a)(1) (Supp. 2017). The Defendant was sentenced after the amendment to the theft grading statute making theft under $1,000 a Class A misdemeanor, but before the 2021 amendment that creates a separate grading category for the theft of a firearm. Therefore, we hold that under the savings statute, he was entitled to be sentenced to theft as a Class A misdemeanor. *See* Tenn. Code Ann. § 39-11-112 (2018) (providing that if a criminal

statute is amended to provide for a lesser penalty, a defendant must be afforded the benefit of the subsequent statute at the time of sentencing); *State v. Menke*, 590 S.W.3d 455, 470 (Tenn. 2019). This holding renders moot the Defendant's arguments regarding the valuation of the gun.

VIII. Mutually Exclusive and Patchwork Verdicts

The Defendant contends that the jury returned mutually exclusive verdicts by finding him guilty of the lesser included offense of stalking in count two, thereby rejecting the deadly weapon and serious bodily injury elements of especially aggravated stalking, while at the same time finding him guilty in count six of possession of a firearm during the commission of the dangerous felony of especially aggravated stalking, and guilty in count seven of felony murder during the attempt to perpetrate aggravated child abuse. The State responds by pointing out that our supreme court has held that consistency between verdicts on separate counts of an indictment is not necessary, and that appellate courts will not disturb seemingly inconsistent verdicts. We agree with the State.

In *State v. Davis*, our supreme court rejected a defendant's argument that Tennessee should follow the minority of jurisdictions that differentiate between so-called "inconsistent" verdicts, in which a jury returns inconsistent convictions and acquittals on multiple counts against a single defendant, 466 S.W.3d at 72, and "mutually exclusive" verdicts, in which a jury returns inconsistent verdicts on alternate counts arising from a single criminal conviction where "'a guilty verdict on one count logically excludes a finding of guilt on the other." *Id.* at 73 (quoting *United States v. Powell*, 469 U.S. 57, 69 n.8 (1984)). Our supreme court held that, regardless of the terminology, a defendant in Tennessee is not entitled to relief in either situation:

> [W]e reject the argument that we should alter our longstanding position of honoring and respecting a jury's verdicts, even when they are inconsistent.
>
> Moreover, as set forth above, the few jurisdictions that grant relief on the basis of "mutually exclusive" verdicts appear to struggle with both defining and applying the concept. We are disinclined to open the door to the increased confusion and increased litigation that arises from trying to parse a jury's inconsistent verdicts.

Id. at 77. We conclude that the Defendant is not entitled to relief on the basis of his claim of mutually inconsistent verdicts.

We further conclude that the Defendant is not entitled to relief based on his claim that the jury returned a patchwork verdict in count six, possession of a firearm during the

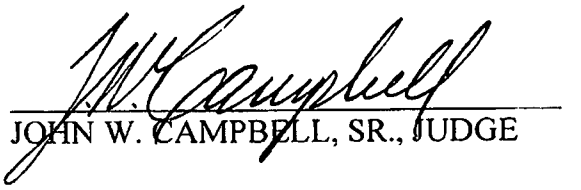
commission of a dangerous felony. Primarily seen in sex crimes, a patchwork verdict occurs when the State fails to make an election of offenses in a case where there is evidence of multiple incidents that satisfy the elements of the charged offense, thereby creating a situation in which some of the jurors may base their verdict on one incident, while other jurors base their verdict on a different incident. *See State v. Shelton*, 851 S.W.2d 134, 137 (Tenn. 1993). When there is evidence of only a single offense, there is no danger of a patchwork verdict. *State v. Adams*, 24 S.W.3d 289, 294 (Tenn. 2000). We are unpersuaded by the Defendant's argument that the different incidents the State identified in support of the especially aggravated stalking count of the presentment resulted in a patchwork verdict for his possession of a firearm during the commission of a dangerous felony conviction. The offense of especially aggravated stalking, by definition, necessarily requires proof of different incidents to establish the required course of conduct for stalking. *See* Tenn. Code Ann. § 39-17-315.

IX. Cumulative Error

Lastly, the Defendant contends that the cumulative effect of the various errors at trial deprived him of his right to a fair trial. "The cumulative error doctrine is a judicial recognition that there may be multiple errors committed in trial proceedings, each of which in isolation constitutes mere harmless error, but which when aggregated, have a cumulative effect on the proceedings so great as to require reversal in order to preserve a defendant's right to a fair trial." *State v. Hester*, 324 S.W.3d 1, 76-77 (Tenn. 2010) (citations omitted). Having determined that no errors occurred, we conclude that the cumulative error doctrine does not apply in this case. "To warrant assessment under the cumulative error doctrine, there must have been more than one actual error committed in the trial proceedings." *Id.* The Defendant is not entitled to relief on the basis of this issue.

CONCLUSION

Having reviewed the entire record, we modify the Defendant's felony theft conviction in count three to a Class A misdemeanor theft, impose a sentence of eleven months, twenty-nine days, and remand to the trial court for entry of an amended judgment in that count. We affirm the remaining convictions.



JOHN W. CAMPBELL, SR., JUDGE

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