IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
MARCH SESSION, 1996

FILED

January 30, 1997

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	No. 01C01-9505-CR-00157
Appellee	)	
	)	DAVIDSON COUNTY
vs.	)	
	)	Hon. Thomas H. Shriver, Judge
LUCIEN SAMUEL SHERROD,	)	
	)	(First Degree Murder)
Appellant	)	

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OPINION FILED: ________________________

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Lucien S. Sherrod, was convicted by a jury in the Davidson County Criminal Court of first degree murder and was sentenced to life imprisonment without the possibility of parole. On appeal, he raises three issues for our determination: (1) whether the evidence was sufficient to support a conviction for first degree murder; (2) whether the introduction of hearsay statements of the deceased victim was error; and (3) whether the evidence was sufficient to support the sentence of life imprisonment without parole.

After reviewing the record and applicable case law, we conclude that the trial court did not commit error. Accordingly, we affirm the judgment entered by the trial court.

I. BACKGROUND

On the morning of February 21, 1994, the mutilated body of Barbara Sherrod was discovered at a Nashville restaurant by a fellow employee reporting to work. The evidence presented at trial, which led to the conviction of the appellant, revealed the following facts. Barbara Sherrod, a thirty-five year old mother of three, was married to the appellant for nine years. Approximately two weeks prior to her death, she and the appellant had separated. A divorce action had been filed by Mrs. Sherrod. At the time of her death, she was employed as the restaurant manager of Captain D's Restaurant, located at 3003 West End Avenue, Nashville. Mrs. Sherrod left her apartment that morning to begin her shift, which began at 6:30 a.m. She arrived at the restaurant at 6:25 a.m. Two minutes later, the murderer entered the restaurant, found Mrs. Sherrod in the

kitchen area, stabbed her at least twenty-five times, and left.[1]

At approximately 6:30 a.m., while cleaning the front door at Houston's, a nearby restaurant, Robert Hendricks saw a "black male" walking across West End Avenue from the direction of Captain D's. "As [the man] got to the sidewalk, he turned around and went back to the middle of the street. He had dropped a butcher knife . . . ." The unidentified man then picked up the knife, placed it in a plastic bag, and continued west on 30th Street. Hendricks testified that the man was wearing brown pants, a black mid-length jacket, and a black gambler's type hat. James Worsham, a former security guard at Compton's Foodland, also observed an "individual coming off of West End Avenue" on February 21, around 6:30 a.m. Worsham added that the man was walking at a good pace, although it was not excessive. He further indicated that the individual was wearing a "sloppy" dark hat.

At approximately 7:15 a.m., Jackie Harris, an employee of Captain D's, arrived at the restaurant. She testified that when she "walked into the vestibule area [she] looked down and there were blood drops." Harris noticed that the dining room lights were not on and that coffee was not brewing. This was unusual. The telephone began to ring. After it rang four times, Harris testified that "[she] knew something was wrong because [Mrs. Sherrod] had not answered the phone." Harris entered the kitchen area. In the back area of the kitchen, she saw a body and knew it was Mrs. Sherrod "from her blonde hair." Harris "went out through the back door" of the restaurant and answered the ringing telephone. She informed the caller, David Carter, who was the area supervisor of Captain D's Restaurants, that "Ms. Barbara . . . is lying on the floor and there's blood everywhere." Carter replied that he would come to the

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[1]The surveillance cameras and security alarm at Captain D's indicate the times at which both the victim and the appellant entered the restaurant, 6:25 a.m. and 6:27 a.m. respectively. The surveillance camera also recorded the appellant leaving the restaurant one to two minutes later. During the intervening period, the victim was murdered.

restaurant immediately, and the two parties ended the conversation. In the parking lot, Harris spotted a man with a car phone and directed him to call 911 in order to obtain help. Harris then went next door to a bagel shop and waited for the police.

Metro Police Officer Robert Gray testified that he responded to the initial call for help at the restaurant. Arriving at the restaurant around 7:31 a.m., Gray spoke with Harris, observed the body on the floor, and secured the scene. Shortly thereafter, other police officers arrived at the scene to take photographs, prepare crime scene sketches, and collect evidence, including fingerprints and blood samples.

On the date of the victim's murder, the appellant was living with his girlfriend, Frances Hampton. Ms. Hampton's apartment was approximately ten to eleven miles from the restaurant. Hampton testified that the previous evening, she and the appellant went to bed together at approximately 10:30 p.m. However, when she awoke at 7:30 a.m., the appellant was not in the bed with her. She found the appellant, dressed in a gray housecoat, sitting at the kitchen table drinking coffee. Hampton asked the appellant to empty the garbage. He complied, and, when he returned, he complained that he had cut his hand. Hampton bandaged the large gash. Around 9:00 a.m., the appellant left without informing her of his intended destination. He returned approximately one hour later.

That afternoon, Detective Grady Eleam received permission from Frances Hampton to search her residence on Whitsett Road and her vehicle, a 1978 Dodge Aspen. The appellant had previously consented to the search of his vehicle, a red Dodge pick up truck, which was also parked at the Whitsett Road address. The search revealed two knives from within the apartment. Hampton

identified these as belonging to the appellant. Another knife, a butcher knife, was located in Hampton's car, above the visor. However, there was no reason to believe that these knives were used in the murder. Additionally, Eleam retrieved a gambler's hat and a mid-length brown leather jacket from the apartment. He testified that both articles were "soaking wet." He also noticed that the appellant's truck appeared freshly washed, inside and out.

Hampton, subsequently, brought the appellant to the Criminal Justice Center. Detective Larry Flair, the lead investigator in this case, arrested the appellant at 5:30 p.m. At the time of the arrest, Flair noticed various injuries on the appellant's person, including cuts on his hands, neck, and face. Photographs were taken of these injuries. Following the appellant's arrest, various persons came forth as witnesses, while police investigators contacted others who might have information. These individuals testified at trial.

Nicholas Cook, the fifteen year old son of the victim, testified that, two weeks prior to his mother's death, he and his two younger siblings had moved with their mother to a new apartment. After the family moved into their new residence, Barbara Sherrod advised her son to "lock the doors and call the police" if he saw the appellant. Cook stated that his mother was afraid that she would be killed as a result of her separation from the appellant. The victim's son also identified certain knives owned and a hat worn by the appellant.

Linda Holiday, the victim's sister, testified that Barbara Sherrod was in the process of obtaining a divorce from the appellant. Mrs. Sherrod asked Holiday to help her find an attorney, purchase furniture, locate an apartment, and move to a new location. Additionally, Mrs. Sherrod wanted to execute her plans without the appellant's knowledge, because she felt he would kill her if he knew. Holiday also testified that the victim refused to share the new address with her friends or

her co-workers, because she was terrified that the appellant would discover the location of her new apartment and would kill her. Holiday added that the victim had obtained a restraining order prohibiting the appellant from coming near her. Concluding her testimony, Holiday related that Mrs. Sherrod had given her "instructions . . . if she was to get killed [Holiday] was to take the children and take care of them, make sure that they get raised."

Jackie Harris, a co-worker, testified that, in the past, the appellant routinely accompanied the victim to the restaurant in the mornings and he usually stayed until the restaurant opened. She explained that Mrs. Sherrod was concerned for her safety because she had previously been robbed at knife point while at the restaurant. Harris described the appellant as "possessive" and "jealous" of Mrs. Sherrod. She added that Sherrod was fearful of her husband and had given Harris a key to the store with the instructions that "[i]f [Harris] ever arrived at 7:00 a.m. and she was not there, [Harris] was to come in and call the police because there was something wrong . . . . " Another of the victim's co-workers, Charlotte Matthews, testified that Mrs. Sherrod had informed her that she was moving away from her husband and did not want anyone to know where she was living so that her husband could not find her. She corroborated Harris' testimony that, prior to their separation, the appellant was usually present at the restaurant when his wife opened in the morning. She added that Sherrod was "scared for her life because she was afraid that he was going to do something to her."

David Carter testified that, on several occasions, the victim had told him that she was having marital problems with the appellant, that she needed to find a new place to live where she could feel safe and secure, and that she did not want anyone to know where she was going to live. He added that, during every conversation on the subject, Mrs. Sherrod was strongly concerned about her

safety and inquired whether Captain D's could provide her with protection. Carter also stated that, when he arrived at Captain D's following Sherrod's murder, he noticed that three of the four knives kept on a magnetic bar in the kitchen were missing.

Beverly Fisher, an attorney, testified that she was representing the victim in a divorce action that had been filed on February 4, 1994. In conjunction with the divorce, Fisher also obtained, on Barbara Sherrod's behalf, a restraining order against the appellant. She testified that this would be an order to keep "him . . . from harming her, molesting her, calling her at work and, also, uh -- harming or molesting the children." Fisher added that Sherrod was afraid of her husband and feared that she might be harmed by him. Karen Rucker, an employee of the Davidson County Circuit Court Clerk's office, corroborated Fisher's testimony that a divorce petition, Barbara Sherrod v. Lucien Sherrod, was filed on February 4, 1994, and that a restraining order was issued on February 9, 1994. Rucker added that the restraining order and divorce complaint were served on the appellant on February 17, 1994, four days before the murder.

Dr. Julia Gooden, former medical examiner for Davidson County, performed an autopsy on the body of the victim on February 22, 1994.[2] Dr. Gooden's examination of the body revealed twenty-five stab and cutting wounds, accompanied by various abrasions, scrapes and contusions, in addition to a broken collar bone. Although a knife caused most of the wounds, some bruises were blunt force type injuries, not produced by a knife, while others appeared to be defensive wounds.

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[2]Gooden testified that, on February 21, she performed a visual examination of the victim at the scene.

Gooden testified that there were six stab wounds to the back of the body. One of these wounds went through the spine and into the victim's lung. Two of these wounds went through her ribs into her lungs. One penetrated the esophagus. Additionally, these wounds caused blood to accumulate in both of the victim's chest cavities. The remaining wounds were to the victim's head and neck. The depth of these wounds "is such that the knife penetrated into the skull and two pieces of . . . knife blade are broken off in the skull bone." One wound, in particular, cut "completely through [the victim's] nose." Other wounds succeeded in slicing away a "three and one half [inch] area of skin . . . over the ear," "going through the ear," and cutting from "the middle of the head to the front of the neck."

Following her examination of the wounds, Dr. Gooden concluded that, based upon blood patterns, Mrs. Sherrod received the majority of the wounds "after she was down on the floor" and that the types of wounds received would have required considerable force and would have caused excessive bleeding. She stated that all wounds were received while the victim was still alive, although they were inflicted over a very short period of time. She confirmed that death occurred at approximately 6:30 a.m. Moreover, over defense objection, Dr. Gooden described Mrs. Sherrod's final moments:

> She's alive, she's struggling and she's trying to defend herself. She's got multiple stab wounds to the head, almost -- the back part of her scalp is almost removed while she's alive. And, she has multiple stab wounds to the back, and she has a cut to her neck in which she's trying to breathe. And, her trachea is disrupted; so, she's having difficulty breathing, <u>she's feeling a lot of pain, she's struggling, she's afraid</u>, and she has a lot of blood that's accumulating in her lung spaces.
>
> So, she can't breathe at the same time; so, yes, I would think it would be <u>extremely terrifying and painful</u>.

(Emphasis added).

Additionally, tangible evidence, directly linking the appellant to Mrs.

Sherrod's murder, was admitted at trial. This evidence included the following: a palm print in a pool of blood on a stainless steel table matching the print of the appellant; the DNA profile analysis of three separate blood samples removed from the crime scene matching the DNA profile of the appellant; and a video tape made by Captain D's internal security system showing a figure walking in the restaurant at 6:27 a.m. and leaving one minute later. Considering this evidence, in addition to the testimony of the State's witnesses, the jury found the appellant guilty of first degree murder and, consequently, imposed a sentence of life imprisonment without the possibility of parole.[3] Subsequently, the trial court approved the verdict and sentence. The appellant now appeals from the judgment of the trial court.

II. SUFFICIENCY OF THE EVIDENCE

In his first issue, the appellant argues that "there is simply no evidence of premeditation or the cool purpose required under current law for a conviction of premeditated murder." Accordingly, he argues that the evidence was insufficient, as a matter of law, to support a verdict of first degree murder. We disagree.

When there is a challenge to the verdict based on the sufficiency of the evidence, this court must review the evidence in the light most favorable to the prosecution and determine whether "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, 99 S.Ct. 2781, 2789 (1979); State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994); Tenn. R. App. P. 13(e). We do not reweigh or

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[3]The defense did not present any proof during either the guilt or the sentencing phases of the appellant's trial. Likewise, the State did not present any proof during the sentencing phase. Rather the State relied upon the proof in the record to support its argument.

reevaluate the evidence; these are issues resolved by the trier of fact. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Furthermore, a guilty verdict accredits the testimony of witnesses for the State, and a presumption of guilt replaces the presumption of innocence. State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). The appellant bears the burden of proving that the evidence was insufficient to support the jury verdict in his case. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

First degree murder not committed in the perpetration of a crime requires the "intentional, premeditated and deliberate killing of another." Tenn. Code Ann. §39-13-202 (a)(1) (1994 Supp.). A death caused by the intentional act of another is presumed to be second degree murder. State v. Brown, 836 S.W.2d 530, 543 (Tenn. 1992). Thus, the State must prove premeditation and deliberation to raise the offense to first degree murder. Id. Premeditation necessitates "the exercise of reflection and judgment," Tenn. Code Ann. § 39-13-201(b)(2) (1991), requiring "a previously formed design or intent to kill." State v. West, 844 S.W.2d 144, 147 (Tenn. 1992). Deliberation, on the other hand, is defined as a "cool purpose . . . formed in the absence of passion." Brown, 836 S.W.2d at 538 (citations and internal quotations omitted). Deliberation also requires "some period of reflection, during which the mind is free from the influence of excitement." Id.; see also Tenn. Code Ann. § 39-13-201(b)(2) (1989).

The elements of premeditation and deliberation are questions for the jury and may be inferred from the circumstances surrounding the killing. State v. Gentry, 881 S.W.2d 1, 3 (Tenn. Crim. App. 1993), perm. to appeal denied, (Tenn. 1994). Although there are no strict standards governing what constitutes proof of premeditation and deliberation, several relevant circumstances are helpful in the inquiry, including: the use of a deadly weapon upon an unarmed

victim; the fact that the killing was particularly cruel; declarations by the defendant of his intent to kill; and the making of preparations before the killing for the purpose of concealing the crime. State v. Bland, No. 02C01-9412-CR-0028 (Tenn. Crim. App. at Jackson, Mar. 27, 1996), reh'g denied, (Tenn. Crim. App. May 1, 1996) (citing Brown, 836 S.W.2d at 541-42). Additional factors from which the jury may infer premeditation and deliberation include planning activities by the appellant prior to the killing, the appellant's prior relationship with the victim, and the nature of the killing. Id. (citing State v. Bordis, No. 01C01-9305-CR-00157 (Tenn. Crim. App. at Nashville, Feb. 24, 1995), perm. to appeal denied, (Tenn. July 10, 1995) (quoting 2 W. LaFave and A. Scott, Jr., Substantive Criminal Law Sec. 7.7 (1986))); Gentry, 881 S.W.2d at 4-5 (citation omitted).

Reviewing the present case in the light most favorable to the State, the appellant, on the morning of the murder, left his girlfriend's apartment sometime before 6:30 a.m. and drove ten to eleven miles across town to where his estranged wife worked. He was familiar with the time that she would arrive, and he knew that she would be alone. Although it was 6:30 a.m. and no one would have been parked in the Captain D's parking lot, the appellant apparently parked his vehicle somewhere on the other side of West End Avenue.[4] The murder was completed within a one to two minute period, during which the appellant inflicted twenty-five stab wounds upon his wife. Immediately after the murder, an eyewitness saw an individual matching the appellant's description drop a butcher knife in the middle of the street, pick it up, and return it to a plastic bag. The appellant then calmly walked across West End Avenue, returned to his vehicle, and drove back across town to his girlfriend's apartment. Once at the apartment, the appellant changed into a "gray housecoat," poured a cup of coffee, and sat

[4]Although not directly presented in the proof, a rational juror could reasonably infer this fact from the evidence presented at trial.

at the kitchen table, to make it appear as if he had just awakened. Sometime that morning, the appellant thoroughly washed his truck and washed the clothes he had been wearing during the murder.

Our Supreme Court has held that "calmness immediately after a killing may be evidence of a cool, dispassionate, premeditated murder." West, 844 S.W.2d at 148 (citations omitted). Moreover, although the concealment of evidence after the fact is not probative of the appellant's state of mind before the murder, the fact that the concealment occurred immediately after the killing supports the theory that the appellant committed the killing "in the absence of passion." Id. Accordingly, we conclude that there is sufficient evidence concerning the appellant's planning activity, his relationship to the victim, the nature of the killing, and the appellant's actions following the murder to support the jury's finding of premeditation and deliberation. This issue is without merit.

III. STATEMENTS OF THE VICTIM

The appellant next contends that the trial court erred in permitting several witnesses to testify about statements that the victim had made expressing her fear of the appellant. To support his argument, the appellant submits, in his brief, that, since there is no dispute that the appellant committed the murder, the probative value of these statements is outweighed by the danger of unfair prejudice to the appellant. The State argues that the statements were admissible under the "existing mental state" exception to the hearsay rule and because the statements show premeditation and motive.

Hearsay statements are admissible if they fall within a limited number of

exceptions. See Tenn. R. Evid. 802 & 803. Rule 803(3) of the Tennessee Rules of Evidence establishes the "Then Existing Mental, Emotional, or Physical Condition" exception to the hearsay rule:

> A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition . . . but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

Clearly, the statements made by Mrs. Sherrod to her son, her sister, her employer, and her co-workers fall within this exception to the hearsay rule.[5]

However, the appellant questions whether the victim's fear of the appellant was relevant since "there was no real issue that the [appellant] was the person that was responsible for the death of his wife." See Tenn.R.Evid. 401, 403. In the present case, the trial court reasoned that "the testimony would be admissible to show motive and to show pre-meditation (sic)." Considering that the appellant was charged with first degree murder, premeditation is at issue in this case." The victim's statement showed her state of mind which, in turn, was relevant to show that [the appellant] had given her a reason to believe that he was considering killing her." State v. Howell, No. 03C01-9406-CR-00203 (Tenn. Crim. App. at Knoxville, Feb. 12, 1996), perm. to appeal denied, (Tenn. July 7, 1996). This belief, on part of the victim, can provide the inference that the appellant planned to kill her, thus establishing the element of premeditation.[6]

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[5]We do not attempt to distinguish each individual statement made by the victim. However, we conclude that, because some of Mrs. Sherrod's statements are commands, they do not constitute hearsay because they are not intended to prove the truth of the matter asserted. Tenn.R.Evid. 801.

[6]In State v. Smith, 868 S.W.2d 561, 573 (Tenn. 1993), reh'g denied, (Tenn. 1994), cert. denied, -- U.S. --, 115 S.Ct. 417 (1994), a case in which the murderer's identity was not at issue, our supreme court held that, [w]hile the evidence was admissible to show the declarant's state of mind, i.e., that the victim was afraid of the [appellant] or had expressed fear of the [appellant] . . ., [the victim's] state of mind was not directly probative on the issue of whether the [appellant] had murdered her. . . ." Accord State v. Bragan, 920 S.W.2d 227, 242 (Tenn. Crim. App. 1995), perm. to appeal denied, (Tenn. 1996). However, the decision in Smith does not consider the relevancy of the statements to the issue of premeditation, although Smith does consider motive. Smith, 868 S.W.2d at 573. Accord Bragan, 920 S.W.2d at 242. Moreover, the court, in Smith, held that any error in admitting the statements of the victim was harmless. Smith, 868 S.W.2d at 573. Accord Bragan, 920 S.W.2d at 242. In any case, we agree with the decision of this court in State v. Howell that testimony of the victim's fearful state of mind is relevant in determining the issue of premeditation. Howell, No. 03C01-9406-CR-00203. Furthermore, we note that the

Accordingly, her statements were relevant to an issue raised at trial. The trial court did not err in admitting these statements. This issue is without merit.

IV. "HEINOUS, ATROCIOUS, OR CRUEL" AGGRAVATING FACTOR

In his final issue, the appellant challenges the jury's imposition of a sentence of a life imprisonment without the possibility of parole. Specifically, he contends that, because the jury was required to rely only upon the circumstances of the offense, the evidence was insufficient to justify the finding of the "heinous, atrocious, or cruel" aggravating factor beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. at 307, 99 S.Ct. at 2781. The State asserts that the circumstances of this offense alone are sufficient to justify the verdict of life imprisonment without parole. We agree with the State.

Tenn. Code Ann. § 39-13-204(i)(5) (1994 Supp.) requires that, in order to be especially heinous, atrocious, or cruel, a murder must "involve torture or serious physical abuse beyond that necessary to produce death." In State v. Williams, 690 S.W.2d 517, 529 (Tenn. 1985), our supreme court defined "torture" as:

> . . . the infliction of severe physical or mental pain upon the victim while he or she remains alive and conscious. In proving that such torture occurred, the State, necessarily, also proves that the murder involved depravity of mind of the murderer, because the state of mind of one who willfully inflicts such severe physical or mental pain on the victim is depraved.

In the present case, the victim suffered as many as twenty-five stab wounds prior to her death. Dr. Gooden testified that the victim had "defense wounds of the hands," "wounds . . . that are made in such a way that they are

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decision in Howell does not contradict the language of Smith, 868 S.W.2d at 573, or Bragan, 920 S.W.2d at 242.

obvious that she's trying to defend herself from the assailant." The victim also had abrasions, scrapes and contusions on various parts of her body caused by a blunt object, not a knife. Additionally, the victim suffered a broken collarbone. Gooden related that it would have taken "a considerable amount of force [to] break a clavicle." The majority of the wounds were inflicted to the victim's head and neck. While stabbing the top of the victim's head, the appellant broke off two knife points in the victim's skull. The cuts were so severe that "her scalp was almost just peeled back." Multiple cuts were inflicted upon her face, including a two inch cut through her nose. Gooden also observed multiple wounds to the victim's back, one cutting through her spine and into her lung. The wounds to her back caused her chest cavity to fill with blood, making breathing difficult. Furthermore, the victim was alive while all of the wounds were inflicted. Although Dr. Gooden conceded that the victim died within minutes of the attack, she concluded that the event was extremely painful and terrifying to the victim.

Given the manner in which Mrs. Sherrod experienced her final minutes, the jury appropriately found that this murder was "heinous, atrocious, and cruel" beyond a reasonable doubt.[7] Moreover, the jury could rationally infer, from the number and severity of the wounds, from the fact that the victim was alive during the onslaught, and from the medical testimony describing the victim's ordeal, that the murder constituted torture, as defined in Williams, and that the murder involved serious physical abuse beyond that necessary to produce death, as defined in State v. Odom, No. 02S01-9502-CR-00014 (Tenn. at Nashville, June

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[7]See, e.g., State v. Miller, 771 S.W.2d 401, 405 (Tenn. 1989), cert. denied, 497 U.S. 1031, 110 S.Ct. 3292 (1990)(Striking victim twice with fire poker and bruises on victim's body sufficient to establish "heinous, atrocious, or cruel," regardless that there was no evidence to show how long it took victim to die.); State v. Taylor, 771 S.W.2d 387, 398 (Tenn. 1989), cert. denied, 497 U.S. 1031, 110 S.Ct. 3291(1990)(Waiting behind prison guard for opportunity to strike, stabbing guard with knife while victim pleading for life, and victim's statement of pain before death sufficient to establish "heinous, atrocious, or cruel."); State v. Sutton, 761 S.W.2d 763, 767 (Tenn. 1988), cert. denied, 497 U.S. 1031, 110 S.Ct. 3287 (1990)(Thirty-eight stab wounds on body, nine of which were fatal and seven of which were defensive, and testimony describing that the victim screamed and pleaded for help during the attack sufficient to find murder "heinous, atrocious, or cruel.").

3, 1996).[8] Accordingly, we conclude that there is sufficient evidence from which the jury could impose a sentence of life imprisonment without the possibility of parole. This issue is without merit.

V. CONCLUSION

After a thorough review of the record and the applicable law, we find no error in the judgment of the trial court. Additionally, in accordance with Tenn. Code Ann. § 39-13-207(g) (1994 Supp.), we conclude that the jury appropriately found the statutory aggravating factor "heinous, atrocious, or cruel" and did not arbitrarily impose a sentence of life without the possibility of parole. Accordingly, the judgment of conviction and sentence are affirmed.

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DAVID G. HAYES, Judge

CONCUR:

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JERRY L. SMITH, Judge

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WILLIAM S. RUSSELL, Special Judge

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[8] In defining the term "serious physical abuse," the Tennessee Supreme Court held:
The word "serious" alludes to a matter of degree. The abuse must be physical, as opposed to mental, and it must be "beyond that" or more than what is "necessary to produce death." "Abuse" is defined as an act that is "excessive" or which makes "improper use of a thing," or which uses a thing "in a manner contrary to the natural or legal rules for its use."

Odom, No. 02S01-9502-CR-00014.