IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs August 29, 2023

STATE OF TENNESSEE v. JAMAAL MONDREW MAYES

Appeal from the Criminal Court for Hamilton County
No. 304869, 303827 Don W. Poole, Judge

No. E2022-00824-CCA-R3-CD

The Appellant appeals his convictions of second degree murder and possession of a firearm with a prior violent felony conviction, for which he received an effective sentence of forty-eight years' imprisonment. In this appeal, the Appellant argues that (1) the trial court erred in denying the motion to suppress his confession; and (2) the evidence is insufficient to establish his identity as the perpetrator of the offenses. After review, we affirm the trial court's judgments.

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

CAMILLE R. MCMULLEN, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and JILL BARTEE AYERS, JJ., joined.

Daniel J. Ripper, Chattanooga, Tennessee, for the Appellant, Jamaal Mondrew Mayes.

Jonathan Skrmetti, Attorney General and Reporter; Mary Elizabeth King, Assistant Attorney General; Neal Pinkston, District Attorney General; and P. Andrew Coyle, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

On November 5, 2017, the Appellant shot and killed Willie Bacon at the corner of Baldwin Street and 11th Street in Chattanooga after Bacon failed to repay the forty or fifty dollars the Appellant loaned him. The Appellant then went to his friend Jessica Hackerd's apartment and confessed that he had just shot a man near the Community Kitchen. He showed her the gun and handed her a shell casing. Hackerd alerted the police, who then took the Appellant to the police station where he confessed to shooting Bacon. A Hamilton

County grand jury indicted the Appellant for first degree murder and possession of a firearm with a prior violent felony conviction.

Competency Evaluations. After indictment, the trial court ordered the Appellant to undergo a competency evaluation. In July 2018, Johnson Mental Health Center ("Johnson") reported they were unable to determine the Appellant's competency on an out-patient basis. They noted that the Appellant did not appear to understand the seriousness of the charges against him or the roles of the members of the court, but because of the Appellant's criminal history, "it [was] unclear . . . if [he] knows more about the legal system than he is telling evaluators." The court ordered a second evaluation at Moccasin Bend Mental Health Institute ("Moccasin Bend").

Though Moccasin Bend reported that the Appellant was competent to stand trial in September 2018, the court ordered a third evaluation in December 2019 after a conflict of interest cast doubt on the evaluation's reliability. Johnson conducted the third evaluation and was again unable to determine the Appellant's competency on an out-patient basis. Evaluators noted that the Appellant "could identify the month [and] year but stated that he could not identify the current president or spell the word [] black." He was also unable to state the charges against him or the potential sentence if found guilty. The court ordered a fourth evaluation.

In April of 2020, nearly two and a half years after the shooting, Middle Tennessee Mental Health Institute ("MTMHI") reported that the Appellant was not competent to stand trial. Though evaluators expressed concern about malingering "due to [the Appellant's] excessively slowed speech as well as inconsistencies in his behavior," the Appellant "[had] not demonstrated a basic understanding of his charges or of the legal process." Therefore, the court ordered that the Appellant undergo competency training.

After competency training, the Tennessee Department of Intellectual & Developmental Disabilities reported that the Appellant was competent to stand trial. Prior to competency training, the Appellant was administered the "Competence Assessment for Standing Trial for Defendants with Mental Retardation" and scored forty-five out of fifty possible points—eight points above the mean score of thirty-seven for individuals with intellectual disabilities who were competent to stand trial. After competency training, he scored forty-eight points. The report indicated that his "presentation was not consistent with previous evaluations at [Johnson] and MTMHI," though that may have been because of a change in medication while being treated at MTMHI.

Motion to Suppress. The Appellant filed a motion to suppress his statements to the police, alleging he did not validly waive his Miranda rights and his confession was involuntary. A hearing was held on July 15, 2021. Two witnesses testified for the State—

the Appellant's probation officer and one of the officers who interviewed the Appellant. The Appellant testified for the defense.

Tyler Reeves testified that he began supervising the Appellant's probation in 2015. As a sex offender, the Appellant was required to regularly report to the probation office. He "[f]or the most part . . . understood what [Reeves] was talking about and did what he needed to do," but "[t]here were things [Reeves] had to explain a few times[.]" When the Appellant reported to the office, he completed and signed a monthly report form and supplemental sex offender form. The forms required only basic background information and did not involve any legal concepts.

On cross-examination, Reeves acknowledged that the Appellant spelled Reeves' name incorrectly on numerous forms. Reeves did not know whether the Appellant suffered from any psychological conditions, took medication, or received treatment. The Appellant was receiving Social Security disability payments, but Reeves did not know the nature of his disability. Reeves did not remember seeing anyone come to the office with the Appellant to help him.

Sergeant Corey Stokes of the Chattanooga Police Department testified that he responded to the shooting around 7:30 p.m. on November 5, 2017. The victim, Bacon, died from a single gunshot to the chest. Less than an hour after Sergeant Stokes' arrival, he was notified of two persons of interest—the Appellant and Hackerd. Hackerd called police about a man in her apartment with a gun who had handed her a spent casing from a recent shooting. Sergeant Stokes directed that they both be taken into custody for an interview. He interviewed Hackerd first.

Sergeant Stokes, along with Sergeant Emery, then interviewed the Appellant. The interview took place in a major crimes interview room and was audio and video recorded. Sergeant Stokes testified that he advised the Appellant of his constitutional rights, and he believed the Appellant understood them. He and the Appellant went through each right on the rights waiver form, and he clarified any questions the Appellant had. The Appellant then initialed next to each right and signed the form at 11:10 p.m., agreeing to waive his rights and speak with the officers. The Appellant did not appear to be under the influence of alcohol or drugs. Sergeant Stokes did not deny him any "creature comforts" or prevent him from using the restroom.

The recording of the interview was introduced. The interview lasted approximately one hour, and after forty-five minutes the Appellant confessed to shooting Bacon. The recording shows that after covering background questions, Sergeant Stokes presented the Appellant with the rights waiver form. Sergeant Emery told the Appellant he was not under arrest, but they had to read him his rights before asking questions that could incriminate

him. When asked whether he could read and write, the Appellant responded, "[l]ittle bit." He also indicated that he received a GED in prison. Sergeant Stokes then directed the Appellant to read each right aloud, which the Appellant did with minimal difficulty. As he read each right, he initialed next to it.

The recording shows that Sergeant Stokes and Sergeant Emery provided further explanation of many of the Miranda rights. After reading his right to remain silent, the Appellant asked, "What [does] that mean?" Sergeant Stokes responded, "If I ask you, say, what time it is, you ain't got to say. That's your right to remain silent." The Appellant then read that anything he says can be used against him in court. Sergeant Emery asked if he understood, and the Appellant responded, "That's like incriminating yourself or something?" Sergeant Stokes answered, "Correct." The Appellant then read his right to an attorney and again asked, "So[,] what [does] that mean?" Sergeant Stokes responded, "Basically, what it means, is that you have the right to talk to an attorney for advice before answering any questions, and, if you want him here with you, you have that right as well. You understand that?" The Appellant nodded his head. After reading his right to have an attorney appointed if he cannot afford one, Sergeant Stokes asked if he understood. The Appellant paused. Sergeant Emery said "[t]hat means if you want that, [] the [c]ourt can provide it for you." The Appellant responded, "[o]h, okay." After reading that he can stop answering questions at any time, Sergeant Stokes again asked if he understood. The Appellant responded, "kinda." Sergeant Emery explained that he can decide when he wants to stop or speak to an attorney.

After reading and initialing next to each right, the Appellant indicated that he was willing to speak with the officers and signed the rights waiver form. Twenty-three minutes into the interview, the officers began questioning the Appellant about his day. He said he stayed at a hotel on Broad Street with his girlfriend the night before. He woke up and went to church at the Salvation Army around 7:30 a.m. or 8:00 a.m. Church ended around 11:30 a.m. or 12:00 p.m., and he went to his mom's salon. He got something to eat across the street, then went back to the hotel. He stayed about an hour; then he left and walked to Hackerd's apartment to visit her. He did not stop anywhere on his way. He got to Hackerd's apartment around 7:00 p.m. or 8:00 p.m. She seemed aggravated, but invited him in. She was by herself.

The recording shows that when Sergeant Emery asked the Appellant about showing Hackerd a gun and giving her a shell casing, he insisted that he did not have a gun. Sergeant Emery told the Appellant that they were going to search Hackerd's apartment and he was "pretty confident [they were] going to find [the gun][.]" The Appellant maintained that he did not have a gun, nor did he fire a gun. Sergeant Emery told the Appellant that a gunshot residue test would tell them that he fired a gun that night. The Appellant responded, "I haven't shot anybody." Sergeant Emery said he only asked about shooting a gun, not

shooting somebody. The Appellant then admitted that he had shot his cousin's "nine" earlier in the woods.

Sergeant Stokes then asked the Appellant if he was still being tracked via an ankle monitor. The Appellant indicated he was, and Sergeant Stokes asked if he knew the "GPS is good from one [foot]." Sergeant Emery asked whether the Appellant was near the Community Kitchen around 7:00 p.m., and the Appellant said he "passed through," but still denied shooting anyone.

Sergeant Emery then told the Appellant that there were video cameras out there and "[v]ideo cameras don't lie." The Appellant said that there was "a whole bunch of guys out there [] that wear [] camouflage pants with [a] black shirt." Sergeant Emery responded, "But, listen, there's not everybody out there that wears that [] on video shooting another person." The Appellant denied shooting a man, to which Sergeant Emery responded, "What man? I didn't say anything about who got shot."

Shortly after, Sergeant Emery told the Appellant that the ankle monitor said he was there. The Appellant continued to deny any involvement, but eventually confessed to shooting Bacon forty-five minutes into the interview, in the following exchange:

> Sergeant Emery: That's not what your GPS says. You're at 11th and Baldwin, . . . your GPS shows you [], after the shooting, going over to [Hackerd's] house []. And then she gets this [information], it scares her and she calls police. And I'm asking you what went on between you and that man. You can't get out of this at this point, Jamaal. You can explain it --
>
> [The Appellant:] I'm not trying to get out of this.
>
> Sergeant Emery: You can explain it, but you can't get out of it.
>
> [The Appellant:] So y'all [are] going to send me to jail?
>
> Sergeant Emery: Do you want to explain it or [do] you just want to leave it as-is?
>
> [The Appellant:] All right. Dude threatened my life. There.
>
> Sergeant Emery: The guy that you shot?

[The Appellant:] He pulled a knife on me, like "I'll kill you."

Sergeant Emery: Okay.

[The Appellant:] Over a couple of dollars.

The Appellant later said he had loaned Bacon, who he only knew as "Color Eyes," forty or fifty dollars and was trying to get his money back. Bacon had gotten a check and used it to buy drugs instead of paying the Appellant back. He claimed that Bacon actually had the gun, and they "tussled" over it. It went off once. When Sergeant Emery insisted that was not how it happened and told the Appellant there was a camera nearby, the Appellant said he shot Bacon after Bacon pulled out a knife. After confessing, the Appellant asked whether he was under arrest. Sergeant Emery indicated that he was, and the Appellant began pleading with him not to send him to prison and insisting that he was not wrong for defending himself.

After the recording was played, Sergeant Stokes testified that, despite his statements to the Appellant, there was no surveillance footage of a person in camouflage pants at the crime scene. He insisted, however, that he did not lie to the Appellant. On cross-examination, he stated that he had seen cameras near the scene but he later learned they were inoperable. He had already retrieved the GPS information from the Appellant's ankle monitor. When asked about the protocol of lying to defendants, Sergeant Stokes said, "There's not really a protocol where we lie. I think we can still use things that we believe [] could be true, possibly."

The State then introduced the Appellant's certified convictions. The Appellant previously pled guilty to attempted rape of a child, attempted second degree murder, attempted especially aggravated robbery, violation of community supervision for life, and three violations of the sex offender registry.

The Appellant introduced documentation of the Appellant's competency evaluations. The Tennessee Department of Intellectual & Developmental Disabilities report outlined each of the Appellant's four competency evaluations before determining that, after competency training, the Appellant was competent to stand trial. The report also detailed historical information about the Appellant's intellectual disability. In 1992, the Appellant's IQ was 63, placing him within the mild range of intellectual disability. Later assessments found similarly. The Appellant attended special education classes in school. He completed daily tasks independently, though he sometimes needed help shaving or doing laundry.

The Appellant testified that he received disability payments because of his "[m]ental retardation, schizophrenia, post[-]traumatic stress [disorder], [bipolar disorder][,]" and schizoaffective disorder. When the Appellant reported to the probation office, he sometimes brought someone with him to help him. Other times, he would have other people sitting in the lobby help him. He understood the basics, but had someone explain the rest. Though the Appellant was thirty-eight years old, he "was always told [he] had the IQ of a child." He took medication "to help [him] cope and maintain self-awareness" but did not take the medication the day of his police interview. Without the medication, he cannot focus and "just [agrees] to [things] without knowing what [he is] agreeing to."

On cross-examination, the Appellant acknowledged that he had pled guilty to offenses on more than three occasions. When asked whether he remembered going over his rights each time, the Appellant responded, "I don't remember going over my rights[.] I just remember agreeing . . . signing to the deal." He did, however, remember the names of the attorneys that represented him. He had written "quite a few" letters to the court in this case to find out "what was going on with [his] situation [and] why [he] [had not] made any court appearances." The State asked about his request for a copy of his rule docket, and the Appellant stated that he did not know what a rule docket was. An inmate advisor explained it to him and "put it together[.]" The Appellant acknowledged that he wrote a letter to this court in a prior case appealing a denial of post-conviction relief. The Appellant also clarified that he thought he got a GED based on what the program staff told him, but his record did not show that he did.

The trial court issued an order denying the motion to suppress. The court found that "the [Appellant's] IQ of 63 represents a substantial disability." Although the court "[could not] easily dismiss the inference of incompetence to waive Miranda rights that arises from the inference of incompetence to stand trial[,]" it found that the totality of the circumstances showed a valid waiver. The trial court found that "the [Appellant] is able to read, write, and appreciate his rights" given the numerous pro se motions he filed, including motions for removal of counsel, reduction of bond, and a speedy trial. During the recorded interview, the Appellant "was able to read and initial his rights, ask appropriate questions, and sign the waiver," and his attempts to justify his actions "reflect an appreciation of the distinction between inculpatory and exculpatory statements and their consequences. The totality of the circumstances therefore demonstrated that "the [Appellant] was competent to waive [his] Miranda rights and his statement to police was voluntary and intelligent."

Trial. At trial, eighteen witnesses testified for the State. The Appellant testified for the defense. Below is a summary of the proof as relevant to the issues raised in this appeal.

Officer Hunter Abbott testified that he was dispatched to the crime scene after the shooting. When he arrived, medical personnel were assisting Bacon. His job was to secure the scene and gather information for the detectives. He denied seeing any weapons near Bacon. He took names of individuals standing near Bacon but did not check the Community Kitchen for witnesses.

Jean Bartley testified that she was a 911 communications record specialist. At 7:17 p.m. on the day of the shooting, a person called 911 about an unconscious party on Baldwin Street. When responders arrived on scene, the call type changed to a shooting. At 7:44 p.m., a person who identified herself as Jessica called 911 about an incident on 12th Street.

Jessica Hackerd testified that she met the Appellant at the Salvation Army a month or two before the shooting and knew him only as "Omar." The Appellant knew she lived at College Hill Courts because he walked her home the day they met. At "[s]even something" on the day of the shooting, she heard a "really loud banging on [her] back door." She opened the door and saw the Appellant standing there. He walked into her apartment and asked how she was doing.

After telling the Appellant about her day, the Appellant "[looked] at [her] and [] [told] [her] that he just shot somebody" near the Community Kitchen. He then pulled a shell casing out of his pocket and handed it to her. He showed her the gun and told her it was a .22. The Appellant said that if the man had not died, "he was going to go back and finish the job." He planned to shoot the gun in the woods when he left her apartment because it was jammed.

Hackerd said she believed the shooting was over forty dollars. She remembered the Appellant saying that the man was begging the Appellant not to shoot him and telling the Appellant that he would have the money in a couple of days. She assumed the money was for a drug transaction. The Appellant went to a nearby store to get a drink, and Hackerd called the police. When the Appellant came back, she made up an excuse to leave her apartment and met the police outside. She gave an officer the shell casing that the Appellant had given her. About fifteen to twenty minutes later, the Appellant came out of the apartment and was detained.

On cross-examination, the Appellant's counsel asked her about her perception of the Appellant. She said that "he held a conversation well[,]" but he "definitely felt off." She initially thought that he was autistic.

Officer Rachel Crider testified that she and Officer Daniel White were dispatched to College Hill Courts the day of the shooting. When she arrived, Hackerd approached her car and handed her a .22 shell casing. Additional officers arrived to assist. Another officer

was speaking to the Appellant, who remained in Hackerd's apartment, through his loudspeaker. She saw the Appellant in the back of a police car approximately fifteen minutes later.

Sergeant Corey Stokes testified that he was assisting at the crime scene when he learned that "connected parties" were discovered near 12th Street. He interviewed Hackerd, who confirmed the Appellant was the individual who had been in her apartment. He and Sergeant Emery then interviewed the Appellant. He had the Appellant read the rights listed on the rights waiver form aloud. He answered any questions the Appellant had, and the Appellant initialed next to each right. The Appellant agreed to speak with Sergeant Stokes and signed the form.

The recording of the interview during which the Appellant confessed, summarized above, was played for the jury.

Sergeant Stokes testified that though the Appellant alleged that Bacon had a knife, no weapons were recovered by the crime scene unit. Surveillance footage near the incident was played for the jury. The footage from Baldwin Street showed Bacon stumbling to the ground but did not show who shot him. The footage from 11th Street, where the Community Kitchen is located, showed the Appellant walking by.

On cross-examination, Sergeant Stokes acknowledged that Clarence Cordell provided him names of individuals Cordell thought were involved, and he did not investigate those individuals. When asked about the Appellant's interview, he stated that, though the Appellant was not under arrest, he was not free to leave. And though the GPS data in the Appellant's ankle monitor could only determine the Appellant's location within one hundred meters, he told the Appellant it could determine his location within one foot. He acknowledged that thirty-two minutes passed between the time Bacon collapsed and the fire department's arrival. During that period, many people were around his body, and he did not know if they removed evidence from the scene.

Mark Hamilton, a technical investigator for the district attorney's office, testified that, on the day of the shooting, the ankle monitor assigned to the Appellant was at the Community Kitchen for a period of time, then at College Hill Courts. A recording illustrating the movement of the ankle monitor was played for the jury. It showed the ankle monitor near the location where Bacon's body was discovered just before 7:00 p.m., and at College Hill Courts around 7:21 p.m. On cross-examination, Hamilton acknowledged that at 6:51 p.m., the GPS was not next to the location of the victim's body but on the other side of a fence.

Investigator Jerry McElroy testified that he processed the crime scene and Hackerd's apartment. No knife or blade was found at the scene of the shooting. During the search of Hackerd's apartment, he lifted up a mattress and discovered a small caliber pistol and a "bag of leafy green substance." The pistol was not visibly jammed.

Russell Davis testified that he previously worked for the Tennessee Bureau of Investigation ("TBI") and analyzed the gunshot residue kit collected from the Appellant. He did not find gunshot residue on the samples taken from the Appellant's hands. Another analyst, Lindsey Anderson, testified that she found gunshot residue on the Appellant's pants.

Joseph Kennedy testified that he previously worked for the TBI in the firearms and tool mark identification unit and analyzed the firearm and cartridge case in this case. Five of the six times he test-fired the firearm, it did not properly eject any of the cartridge cases. He had to pull the slide back and manually remove the cartridge cases. He concluded that the cartridge case investigators provided him had been fired from the firearm investigators provided him. The bullet recovered from Bacon was a .22 caliber, but there were insufficient individual characteristics to determine if it was fired from the firearm investigators provided him. Based on analysis of the hole in Bacon's clothing, Kennedy estimated that the clothing was less than twenty-four inches away from the barrel of the gun that shot it.

Doctor Steven Cogswell testified that he performed the autopsy of Bacon and indicated that the gunshot wound was not immediately fatal—meaning Bacon could have continued to walk and move for "[p]robably about a minute."

The Appellant testified that he was homeless and had attended programs at the Community Kitchen. The Community Kitchen had shelters that he would stay in during bad weather. He acknowledged he previously pled guilty to attempted second degree murder and attempted especially aggravated robbery.

He was in special education classes in school because of his "IQ and disabilities." He had an intellectual disorder, post-traumatic stress disorder, schizoaffective disorder, and "hallucination." He took medication but was out of pills on the day of the shooting. He can read and write "a little bit." He would struggle reading a newspaper "[b]ecause he [would not] understand a lot [of] [what was] being said in it."

The Appellant said on the day of the shooting, he woke up at a hotel on Broad Street with his then girlfriend. Around 7:30 a.m., he left to go to a religious service at the Salvation Army. When the service ended around 11:00 a.m. or 12:00 p.m., he went to the Community Kitchen and "hung out with the rest of the homeless people down there." He

stayed there for less than two hours, then went to a hair salon where a woman he calls his mom worked. She gave him some money, and he went across the street to get something to eat. Then, he went back to the hotel room. He claimed he stayed there until noon, but "[he] [does not] know the difference between noon or evening" and just "[knew] . . . the day was going down." When it got dark, he went back towards the Community Kitchen.

He testified that he was hanging out with some homeless people in front of the Community Kitchen. He saw Antonio Smith and Amear Richards, along with some more homeless people, talking to Bacon. He left to get to the Salvation Army, and "bumped heads with Antonio Smith and Amear Richards." He saw them confronting Bacon, who he only knew as "Fat Head," "about some money he owed them for drugs they had been selling him . . . on credit." Smith "got real physical" and as the Appellant was walking off "he was like, no, I need to holler at you." Smith kept asking Bacon about the money, and Bacon said that he was trying to get it but needed more time. Smith and Richards "were like, you playing . . . you done had enough time." Smith then told Richards to "[h]andle that, cuz" and a gun was fired. The Appellant ran.

The Appellant testified he caught the nearest shuttle bus and went to Hackerd's apartment. Hackerd let him in, and he told her what happened. He did not give her a shell casing. There was a knock at the door, and Richards came in. Richards asked Hackerd what the Appellant was doing there, and she told Richards that the Appellant was a friend of hers from the Community Kitchen. Hackerd and Richards went upstairs for "five, six, [or] seven minutes." They came back down and left. The Appellant had told Hackerd that Richards was the one who just shot Bacon. On cross-examination, the Appellant acknowledged he sent a letter to the judge that said Richards was already at Hackerd's when he got there. He claimed an inmate legal advisor wrote it for him and that was not "the way [he] explained it" to the inmate.

The Appellant said he became scared and confused when he heard people screaming outside, "Come out, Omar." He went outside, and there were police officers everywhere. They placed him in a police car and took him to the police station. He told them he did not shoot anyone. Eventually, he told police that he had "[b]ecause that [is] what they wanted to hear." He denied shooting Bacon, having a gun, or giving Hackerd a shell casing.

On cross-examination, the Appellant acknowledged that the surveillance tape played for the jury showed him walking down 11th Street near Community Kitchen. He did not tell officers about going back to the Community Kitchen initially because "[he] was nervous . . . and knew they [were not] going to believe [him] no matter what [he] would have said" and described freezing up when he was approached by law enforcement. He acknowledged that he told law enforcement that he had loaned Bacon forty or fifty dollars and that Bacon pulled a knife on him "but none of it was necessarily true."

The jury found the Appellant guilty of second degree murder and possession of a firearm with a prior violent felony conviction. The trial court sentenced the Appellant to an effective sentence of forty-eight years' imprisonment. The Appellant filed a motion for new trial, which the court denied. This timely appeal followed.

ANALYSIS

I. Motion to Suppress. The Appellant argues that the trial court erred in denying the motion to suppress his statements to police because the Appellant did not validly waive his Miranda rights and his confession was involuntary. In support of this argument, he emphasizes his intellectual disability, the initial determination that he was not competent to stand trial, and the lies police told him. The State responds that, despite the Appellant's intellectual disability and the incompetency determination, the totality of the circumstances shows a valid waiver and voluntary statement. We agree with the State.

Suppression issues present mixed questions of law and fact. State v. Garcia, 123 S.W.3d 335, 342 (Tenn. 2003). "[A] trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). The trial court's application of law to the facts, however, is reviewed de novo with no presumption of correctness. State v. Echols, 382 S.W.3d 266, 277 (Tenn. 2012) (citing State v. Walton, 41 S.W.3d 75, 81 (Tenn. 2001)). When evaluating a trial court's ruling on a motion to suppress, appellate courts may consider the proof offered at the suppression hearing and at trial. State v. Williamson, 368 S.W.3d 468, 473 (Tenn. 2012) (citing State v. Henning, 975 S.W.2d 290, 297-99 (Tenn. 1998)). The prevailing party "is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." Odom, 928 S.W.2d at 23.

Though the Appellant combines the two issues in his brief, the validity of a Miranda waiver and the voluntariness of a statement are two separate inquiries. State v. McKinney, 669 S.W.3d 753, 765 (Tenn. 2023). While the "Miranda-waiver inquiry analyzes the knowing and voluntary nature of the *waiver*," "the due process voluntariness inquiry is broader in scope and analyzes whether a defendant was coerced into providing a statement." Id. at 766. Therefore, we will analyze the issues separately.

A. Miranda Waiver. Both the Fifth Amendment to the United States Constitution and article I, section 9 of the Tennessee Constitution guarantee the criminally accused the right against compelled self-incrimination. To protect this right, the United States Supreme Court created procedural safeguards. Miranda v. Arizona, 384 U.S. 436, 444 (1966). Prior

to a custodial interrogation, law enforcement must warn an individual that he has the following rights:

> [T]he right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed to him prior to any questioning if he so desires.

Id. at 479; see also State v. Lowe, 552 S.W.3d 842, 866 (Tenn. 2018).

A criminally accused, however, may waive his right against self-incrimination if the waiver is made "voluntarily, knowingly[,] and intelligently." Miranda, 384 U.S. at 444; see also Echols, 382 S.W.3d at 280. "A valid waiver 'has two distinct dimensions.'" State v. Climer, 400 S.W.3d 537, 564 (Tenn. 2013) (quoting Moran v. Burbine, 475 U.S. 412, 421 (1986)). First, the waiver must be "'voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.'" Id. (quoting Moran, 475 U.S. at 421). Second, the waiver must have been "'made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'" Id. (quoting Moran, 475 U.S. at 421).

The State must prove the validity of a defendant's waiver by a preponderance of the evidence. State v. Bush, 942 S.W.2d 489, 500 (Tenn. 1997) (citing Colorado v. Connelly, 479 U.S. 157, 168 (1986)). In determining whether a waiver is valid, the court must consider the totality of the circumstances. Echols, 382 S.W.3d at 280. Circumstances relevant to this determination include:

> [T]he age and background of the defendant; his education and intelligence level; his reading and writing skills; his demeanor and responsiveness to questions; his prior experience with the police; any mental disease or disorder; any intoxication at the time of the waiver; and the manner, detail, and language in which the Miranda rights were explained.

Id. at 280-81 (citing State v. Blackstock, 19 S.W.3d 200, 208 (Tenn. 2000)). If the totality of the circumstances surrounding the interrogation reveals "'both an uncoerced choice and the requisite level of comprehension[,]'" the waiver is valid. Climer, 400 S.W.3d at 564-65 (quoting Moran, 475 U.S. at 421).

"'[N]o single factor, such as IQ, is necessarily determinative in deciding whether a person was capable of knowingly and intelligently waiving, and [did] so waive,'" his Miranda rights. Blackstock, 19 S.W.3d at 208 (quoting Fairchild v. Lockhart, 744 F.Supp. 1429, 1453 (E.D. Ark. 1989)). Though a defendant with an intellectual disability "may be

less likely to understand the implications of a [Miranda] waiver," the intellectual disability "must be considered along with the totality of the circumstances." Id.

Certain factors in this case weigh in favor of finding that the Appellant's waiver was invalid. The Appellant attended special education classes in high school. He did not complete high school or obtain a GED. He has an IQ of 63 and was found incompetent to stand trial nearly two and a half years after the shooting.

These factors, however, are outweighed by the factors supporting the validity of his waiver. Despite the Appellant's intellectual disability, the record supports the trial court's finding that he can read, write, and understand his rights. The Appellant wrote and filed numerous pro se motions in the trial court, including motions for removal of counsel, reduction of bond, and a speedy trial. Though he told officers he could read a "little bit," he read the rights waiver form aloud with minimal difficulty. He asked questions about the rights and the officers provided further explanations. He initialed next to each right and signed the form indicating that he understood his rights and wished to waive them. He communicated clearly throughout the interview, was responsive to the officers' questions, and had substantial prior experience with the police. Therefore, the totality of the circumstances shows a valid waiver.

The Appellant argues that the determination that he was not competent to stand trial necessarily means he was not competent to waive his Miranda rights. In support of this argument, he relies on Godinez v. Moran. 509 U.S. 389, 398-400 (1993). This reliance is misplaced. Godinez held that the standard for competence to waive the Sixth Amendment, not the Fifth Amendment, right to counsel is the same as the standard for competence to stand trial. Id. In other words, though a defendant not competent to stand trial cannot be competent to represent himself, he may be competent to waive his Miranda rights. The Appellant also points to State v. Benton, in which this court ruled both that a defendant was not competent to stand trial and had not validly waived his Miranda rights. 759 S.W.2d 427, 431-32 (Tenn. Crim. App. 1988). The determination that the waiver was invalid, however, was based on the totality of the circumstances—not the incompetency finding alone. Id.

Though the determination that the Appellant was initially incompetent to stand trial weighs in the Appellant's favor, it is not alone determinative of whether his waiver of Miranda rights was valid. State v. McDaniel, No. E2021-00565-CCA-R3-CD, 2022 WL 17333095, at *7, *18 (Tenn. Crim. App. Nov. 30, 2022), no perm. app. filed (affirming the validity of the defendant's waiver despite initial determination that the defendant was not competent to stand trial). The totality of the circumstances shows that the Appellant possessed the requisite level of comprehension and made an uncoerced choice to waive his

Miranda rights. Accordingly, the trial court did not err in finding that the Appellant's waiver was valid.

B. Voluntary Statement. A confession given after a valid Miranda waiver must still be suppressed if the confession was involuntary. McKinney, 669 S.W.3d at 766 ("[A]lthough it may be rare, it is possible for a defendant to be coerced into providing a statement after validly waiving his or her Miranda rights."). Under the Fifth Amendment to the United States Constitution, a confession is involuntary if it is the result of coercive action on the part of the State. Connelly, 479 U.S. at 163-64. "The test of voluntariness for confessions under Article I, § 9 of the Tennessee Constitution is broader and more protective of individual rights than the test of voluntariness under the Fifth Amendment." State v. Smith, 933 S.W.2d 450, 455 (Tenn. 1996). The essential inquiry is "whether a suspect's will was overborne so as to render the confession a product of coercion." Climer, 400 S.W.3d at 568 (citing Dickerson v. United States, 530 U.S. 428, 433-35 (2000)).

The State must establish the voluntariness of a confession by a preponderance of the evidence. State v. Willis, 496 S.W.3d 653, 695 (Tenn. 2016). In determining whether a confession was involuntary, the court must consider the totality of the circumstances, including the "characteristics of the accused and the details of the interrogation." State v. Davidson, 509 S.W.3d 156, 189 (citing Dickerson, 530 U.S. at 434). Circumstances relevant to this determination include:

> "[T]he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured[,] intoxicated[,] or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep [,] or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse."

Climer, 400 S.W.3d at 568 (quoting State v. Huddleston, 924 S.W.2d 666, 671 (Tenn. 1996)).

Many facts discussed in the Miranda-waiver analysis are also relevant to the voluntariness analysis, including the initial incompetency determination and the Appellant's IQ of 63, minimal education, and significant previous experience with the police. In analyzing the voluntariness of the Appellant's statements, however, we must also consider additional details of the interrogation.

The Appellant confessed to shooting Bacon forty-five minutes into the interrogation, and after only twenty-two minutes of questioning related to the offense. The entire interrogation lasted approximately an hour. There is no evidence that the Appellant was injured, intoxicated, drugged, or in ill health when he gave his statements. Nor is there evidence that the Appellant was deprived of any essential needs, was threatened with abuse, or suffered physical abuse. The Appellant instead alleges that police coerced him by making him believe that he could go home if he confessed, and "[taking] advantage of [the Appellant's] mental state by lying to [him] about pieces of evidence that they said existed[,] [but] knew did not exist." During the interview, the officers made no promises that the Appellant would go home if he confessed. The officers tried to elicit a confession by emphasizing the overwhelming evidence—Hackerd's statement, the shell casing, the Appellant's GPS data, and video footage of the shooting. Officers had in fact obtained a statement from Hackerd, the shell casing that the Appellant gave to Hackerd, and the Appellant's GPS data. They had not, however, checked the surveillance cameras at the scene. They also exaggerated the accuracy of the GPS data from the Appellant's ankle monitor.

Still, these misrepresentations did not overbear the Appellant's will so as to render the confession a product of coercion. See State v. Sanders, No. W2014-01513-CCA-R3-CD, 2015 WL 9433473, at *9-10 (Tenn. Crim. App. Dec. 23, 2015), perm. app. denied (Tenn. May 10, 2016) (finding the defendant's confession voluntary when officer's misrepresented video evidence, despite the defendant's low IQ); State v. Green, No. 01C01-9510-CC-00351, 1996 WL 741551, at *4-5 (Tenn. Crim. App. at Nashville, Dec. 30, 1996), no perm. app. filed (finding the defendant's confession voluntary despite officers lying about finding his fingerprints at the scene and the victim identifying him). The totality of circumstances shows that the Appellant's confession was voluntary, and therefore the trial court did not err in denying the motion to suppress.

II. Sufficiency of Evidence. The Appellant also argues that the evidence is insufficient to support his convictions for second degree murder and possession of a firearm with a prior violent felony conviction. Specifically, he challenges the proof of his identity as the perpetrator, arguing that "[t]here was a complete lack of evidence linking [the Appellant] to the killing of [Bacon][.]" The State responds, and we agree, that the evidence is sufficient to support his convictions.

"Because a verdict of guilt removes the presumption of innocence and raises a presumption of guilt, the criminal defendant bears the burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict." State v. Hanson, 279 S.W.3d 265, 275 (Tenn. 2009) (citing State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992)). When evaluating the sufficiency of the evidence, this court "must determine whether 'any

rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" State v. Parker, 350 S.W.3d 883, 903 (Tenn. 2011) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). The State is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence. State v. Davis, 354 S.W.3d 718, 729 (Tenn. 2011) (citing State v. Majors, 318 S.W.3d 850, 857 (Tenn. 2010)). This court "neither re-weighs the evidence nor substitutes its inferences for those drawn by the jury." State v. Wagner, 382 S.W.3d 289, 297 (Tenn. 2012) (citing State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997)). "The identity of the perpetrator is an essential element of any crime." State v. Rice, 184 S.W.3d 646, 662 (Tenn. 2006) (citing State v. Thompson, 519 S.W.2d 789, 793 (Tenn. 1975)). The State must establish the identity of the defendant as the perpetrator beyond a reasonable doubt. State v. Cribbs, 967 S.W.2d 773, 779 (Tenn. 1998). The identity of the defendant as the perpetrator may be established by direct evidence, circumstantial evidence, or a combination of the two. Thompson, 519 S.W.2d at 793. The identification of the defendant as the perpetrator is a question of fact for the jury after considering all the relevant proof. State v. Thomas, 158 S.W.3d 361, 388 (Tenn. 2005).

The evidence presented at trial, viewed in the light most favorable to the State, is sufficient to support the Appellant's convictions. Hackerd testified that, on the day of the offense, the Appellant came to her apartment and confessed to shooting a man. He showed her the gun and handed her the shell casing. The police apprehended the Appellant at Hackerd's apartment. Though police did not find a gun on the Appellant's person, police found a .22 caliber pistol under Hackerd's mattress after the Appellant had been alone in Hackerd's apartment for a brief period. Later testing revealed that the shell casing the Appellant gave Hackerd had been fired from the .22 caliber pistol found under the mattress. The bullet recovered from Bacon was also a .22 caliber. During the police interview the night of the offense, the Appellant himself confessed to shooting Bacon. GPS data from the Appellant's ankle monitor and video surveillance placed the Appellant near the location where Bacon's body was discovered around the time of the shooting. Gunshot residue was found on the pants the Appellant was wearing the night of the shooting. Based on the Appellant's confessions and the corroborating evidence, a rational trier of fact could have identified the Appellant as the perpetrator of the offenses. Therefore, the evidence is sufficient to sustain the Appellant's convictions and he is not entitled to relief.

CONCLUSION

For the foregoing reasons, we affirm the judgments of the trial court.

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CAMILLE R. MCMULLEN, PRESIDING JUDGE