IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs December 20, 2022

STATE OF TENNESSEE v. MARK ERIC HOWARD

Appeal from the Criminal Court for Hamilton County
No. 300194 Don W. Poole, Judge

No. E2021-01195-CCA-R3-CD

Defendant, Mark Eric Howard, was convicted after a jury trial of second degree murder, a Class A felony, and sentenced to twenty-five years in confinement. On appeal, Defendant argues that the evidence was insufficient to support his conviction for second degree murder. After a thorough review of the record, we affirm the judgment of the trial court.

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

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and TOM GREENHOLTZ, JJ., joined.

Donna Miller (on appeal); Hilary E. Hodgkins (at motion for new trial hearing); and Zachary Newman and Blake Gilbert (at trial), Chattanooga, Tennessee, for the appellant, Mark Eric Howard.

Jonathan Skrmetti, Attorney General and Reporter; David H. Findley, Senior Assistant Attorney General; Neal Pinkston, District Attorney General; and AnCharlene Davis and Crystle Carrion, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural History

This case arises from the March 22, 2016 strangulation death of Jeanette Scholten (the victim). The Hamilton County Grand Jury indicted Defendant for first degree premeditated murder.

At trial, Linda Post testified that she lived in Rossville, Georgia, and that the victim was her daughter. The victim was thirty-four years old at the time of her death. Ms. Post stated that, in the nineteen years she had lived in Georgia, the victim periodically lived with

her. Eventually, the victim lived on her own in Georgia and moved in with a boyfriend, Micah Adams.

Ms. Post testified that the victim struggled with "some things" in her life and that she smoked, drank "[m]ostly beer," and used drugs "[o]n and off." Ms. Post stated that the victim and Mr. Adams ended their relationship, and the victim moved into the Chatt Inn, an extended-stay hotel in Hamilton County. Ms. Post noted that, the night before the victim moved into the Chatt Inn, the victim's dog died, which impacted the victim "terribl[y]."

Ms. Post testified that the victim worked as a cook in different restaurants. The victim did not own a car and used cars owned by her brother and Ms. Post or took the bus to get to work.

Ms. Post testified that she communicated with the victim by telephone and text messages almost every day. Ms. Post agreed that it was easy to reach the victim, and she denied that the victim's cell phone was ever turned off or not charged. Although Ms. Post did not recall the last time she saw the victim in person, she noted that the victim visited her home regularly.

Ms. Post testified that, on March 21, 2016, the victim called her and stated that she had a job interview at a restaurant the following day. Ms. Post was supposed to pick up the victim at noon at the Chatt Inn, and she told the victim that she would call at 11:00 a.m. and make sure the victim was awake. Ms. Post noted that she visited the victim at the Chatt Inn many times and was familiar with the victim's room. Ms. Post said that the victim sounded excited and optimistic about the interview.

Ms. Post testified that she called the victim as planned on March 22 but that the call went directly to voicemail, which was unusual. Ms. Post became nervous and called the victim's phone numerous times, with each call also going directly to voicemail. Ms. Post stated that her son, Carl Scholten, was living with her at the time and told her to "be cool and wait because she's a grown woman and let's wait and call her tomorrow." Ms. Post said that she agreed because she did not want to be "the meddling mother." When Ms. Post called the victim the following day, the call again went directly to voicemail. Ms. Post did not reach out to any of the victim's friends, although she continued to discuss the situation with Mr. Scholten.

Ms. Post testified that, on March 24, she and Mr. Scholten drove to the Chatt Inn between 10:00 and 11:00 a.m. They "banged" on the door repeatedly; a neighbor came out, who told them that she had not seen the victim. Ms. Post and Mr. Scholten went to the front desk, and an employee escorted them to the victim's room and opened the door. The employee discovered the deceased victim lying on the bed.

Carl Scholten testified that he was the victim's younger brother. Mr. Scholten stated that the victim was one of his best friends and that he called the victim and saw her multiple times per week at Ms. Post's home. He also communicated with the victim by text message and Facebook.

Mr. Scholten testified that the victim consistently held a job. Mr. Scholten stated that the victim was "trying to get back into" her relationship with Mr. Adams; he noted that he had worked with Mr. Adams for two and a half years.

Relative to the victim's drug use, Mr. Scholten testified that "it was off and on . . . . I wouldn't say she was an addict, but if somebody put something in front of her, she would [use it] . . . . She struggled with it her whole life, but she was doing so much better[.]" He stated that the victim used drugs like antidepressants and anxiety medication instead of street drugs. Mr. Scholten said that the victim drank beer. He also testified that the victim would use cocaine if someone "threw it in front of her," but that she did not seek out cocaine.

Mr. Scholten testified that the victim had been living at the Chatt Inn for several months at the time of her death. He stated that it was atypical for the victim to live at an extended-stay hotel. He explained that the victim was "trying to get herself to be independent and be able to take care of herself" and that he and Ms. Post provided emotional support, although they did not like her living there. The last time Mr. Scholten spoke to the victim was the day before her scheduled job interview.

Mr. Scholten testified that he became concerned about the victim when calls to her cell phone went directly to voicemail for two days in a row because "people don't let their phones die. No one does anymore." He did not attempt to contact the victim's friends or coworkers; he noted that it was easier to drive to the hotel. A neighbor at the hotel told Mr. Scholten that she had not seen the victim in three days.

Mr. Scholten testified that he entered the victim's room with the hotel employee for five to ten seconds and that he saw the victim lying on the bed. When asked to describe the victim, Mr. Scholten stated as follows:

> She looked like she was naked underneath the blanket that she was disheveledly [sic] covered up in. Her left hand . . . was swollen purple as if she had, you know, been punching something recently. She didn't look like the way that she normally slept, you know. I've known her my whole life, she didn't sleep like that.
>
> . . . .

> She slept fully clothed . . . . And I could tell . . . I know she didn't sleep like that. It just looked wrong, it looked completely wrong.

He added that the position of the victim's body "just didn't look like the way somebody would be sleeping[.]" Mr. Scholten agreed that he did not have an opportunity to look around the room.

Mr. Scholten testified that, when the police returned the victim's personal property to them, jewelry, a tablet computer, and other items were missing. He stated that they later found two of the victim's rings, which she had sold at a pawn shop, but that the other missing items were never recovered.

Micah Adams testified that he and the victim were in a romantic relationship for about ten months in 2015. He stated that they lived together for between three and four months before they broke up and the victim moved into the Chatt Inn. Mr. Adams said that he occasionally saw the victim at the Chatt Inn and that their relationship remained sexual in nature. When asked whether he noticed any broken or cut appliance cords in the victim's room, Mr. Adams stated that his attention was not drawn to any of the room's appliances.

Mr. Adams testified that the victim occasionally asked him to tie her up and choke her during sex; he characterized it as not "outside of what is typical for many women." He denied ever actually tying the victim up or using force to hold her down. Mr. Adams stated that he would put his hand on the victim's neck "[a]s a matter of placement and the fantasy of control, rather than actual asphyxiation." He denied that the victim ever asked him to use force to choke her and said that he never did so. Mr. Adams denied that the victim ever asked him to be "violent" with her.

Mr. Adams did not recall the last time he was intimate with the victim or spoke with her. He stated that the police contacted him a "matter of days" after the victim's body was found and that he gave a statement. Mr. Adams said that, on March 21, 2016, he was at a bar, the Bitter Alibi, with coworkers. He stated that the victim was a smoker and that she owned a cigarette rolling machine to save money. Mr. Adams said that the victim loved her dog and was upset when the dog died.

On cross-examination, Mr. Adams testified that he and the victim frequently fought during their relationship. He agreed that the victim had mood swings, would become angry, and that a "physical" incident occurred when he asked the victim to leave their shared apartment.

Mr. Adams did not recall showing the police a photograph of a woman the victim was dating. He noted that he did not doubt the accuracy of the police interview documentation but stated that "any details [he] may have given them would have been

under extreme duress." Mr. Adams acknowledged that the victim cheated on him a few times during their relationship. He denied that he ever tried to tie up the victim or that he told Defendant's previous counsel that he used nylon cords to tie up the victim on one occasion but "wasn't very good at it." Mr. Adams agreed that the victim liked him to be "forceful" during sex, including holding her down, but he stated that he never left bruises on her. Mr. Adams stated that the victim was commonly depressed.

Mr. Adams testified that the victim had two cell phones, one provided by Ms. Post and one he had given the victim "to help her get on her feet." Mr. Adams stated that the victim usually drank Milwaukee's Best Ice beer in thirty-two-ounce plastic bottles. Mr. Adams stated that she did not drink "all the time." He said that the victim had a fixed schedule and that "[t]here were predictable times when she wouldn't respond" to text messages.

When asked if the victim became angry when he did not comply with demands to choke her during sex, Mr. Adams responded that the victim was easily angered and that "[t]here were lots of disappointing things that she got angry about, and pointing just one [out] is not only difficult, but I feel somewhat inappropriate." He agreed, though, that the victim became irrationally angry when he declined to put his hand on her neck. Mr. Adams did not think the victim's sexual requests were "out of the ordinary" or alarming. He stated that he had other partners who requested similar behavior. Mr. Adams declined to answer whether he and the victim engaged in anal intercourse.

Mr. Adams testified that he was only familiar with the Chatt Inn because of the victim and that he occasionally spent the night there with the victim. He agreed that, on more than one occasion when he visited the victim, an unidentified person called the room telephone, did not speak when the telephone was answered, and hung up. Mr. Adams acknowledged a portion of the police interview, in which he recounted an incident at the victim's hotel room in which someone "banged on the door" for several minutes without stopping but said that he did not remember that incident at the time of trial.

Mr. Adams testified that the Chatt Inn was a "typical . . . stay-by-the-week hotel" and that few people would choose to live there. When asked if unknown people would follow Mr. Adams and the victim when they walked to the Chatt Inn from a nearby Waffle House at night, Mr. Adams stated that it did not sound out of the ordinary for that area.

Trester Payne testified that, in 2016, he was the property manager at the Chatt Inn and lived onsite. Mr. Payne stated that most of the hotel's guests were long-term residents who could not afford a house or an apartment due to a lack of means or poor credit. Mr. Payne identified Defendant in the courtroom and stated that he stayed at the Chatt Inn for two or three months in early 2016. Mr. Payne stated that two or three weeks before the victim's death, he evicted Defendant.

Mr. Payne testified that he "had words with" Defendant two or three times during Defendant's stay. He described Defendant as "a little skittish, would run from [him]," and he noted that Defendant left in the morning and returned in the evenings after Mr. Payne was off work. Mr. Payne stated that Defendant was evicted due to drug use. He said that Defendant's room contained garbage and several bottles of prescription medication, which were all prescribed to Defendant. Mr. Payne stated that Defendant was also banned from the property, but surveillance footage showed he returned and went to the victim's room. Mr. Payne noted that Defendant came on the property in the evenings when Mr. Payne was not working.

Mr. Payne testified that the victim moved to the Chatt Inn in late 2015, that she had been there for several months by the time Defendant moved in, and that Mr. Payne interacted with the victim almost daily. He described the victim as a "quiet, shy" woman who kept to herself and was "kind of skittish of people at the hotel." Mr. Payne noted that the victim was "a little depressed" and had lost her dog. He stated that he had no problems with or complaints about the victim. Mr. Payne denied that the victim was violent, loud, or aggressive; he had never seen the victim with Defendant. Mr. Payne stated that Defendant stayed on the same side of the hotel as the victim, that Defendant was on the first floor, and that the victim had a second floor corner room. He estimated that Defendant could have reached the victim's room in a minute and a half.

Mr. Payne testified that, on March 24, 2016, one of the maintenance workers called him and relayed that Ms. Post and Mr. Scholten had shown up because they had not heard from the victim. Mr. Payne stated that he and the maintenance worker went inside the victim's room, and Mr. Payne walked to the bathroom. Upon exiting the bathroom, he saw the victim "strowed across the bed with the cover across her"; Mr. Payne checked for a pulse, noted that the victim's body was cold, exited the room, and called the police.

Mr. Payne testified that, after the police finished inspecting the room and removed the victim's body, Mr. Payne entered the room to pack up the victim's belongings and return them to Ms. Post. He noted that a chair was in the middle of the floor that "had a piece of string tied to the bottom of it, and hair all over it[.]" Mr. Payne thought it was odd because the victim no longer had a dog. He said that, after he began packing up the victim's belongings, he had to leave to attend to an unrelated situation. Thirty minutes later, the police returned and told Mr. Payne that the room was a crime scene.

On cross-examination, Mr. Payne testified that he did not know whether Defendant was working when he left the hotel or where he worked. Mr. Payne stated that he "would have never suspected" that the victim used drugs, and he noted that she was not "like the majority that [he] had to deal with." He noted that the hotel's owners wanted to help people, that they "turned the hotel around" and "put a lot of people through drug programs,"

and that, at the time Defendant lived there, they had "cameras in place everywhere" that Mr. Payne installed.

Lorraine Blevins testified that, in March 2016, she was living at the Chatt Inn. Ms. Blevins was familiar with the victim in passing but never met her. Ms. Blevins lived on the opposite end of the building, about four rooms down from the victim. Ms. Blevins did not know Defendant. She stated that, on March 24, 2016, she noticed many police onsite and that she learned of the victim's death while watching the local news. The police interviewed her later in the afternoon or evening of March 24.

Ms. Blevins testified that she told the police that, "a couple days prior[,]" she woke up after going to bed and heard a man and a woman arguing. She stated that the sound came from the direction of the victim's room. Ms. Blevins stated that she looked outside in response to the noise and that her roommate walked around in the breezeway. She described the argument as loud and "aggressive" in tone, although she could not hear what they were saying. The argument lasted about forty-five minutes and occurred after dark. Ms. Blevins estimated that the argument occurred between late Monday night and early Tuesday morning; the victim's body was found on Thursday of that week. She said that it eventually became quiet, but she could not recall whether the argument ended suddenly or "trail[ed] off." She later stated, though, that the end of the noise was "abrupt" and that the argument did not resume throughout the night. Ms. Blevins noted that she and her roommate decided to watch a movie and "were trying not to pay attention" to the argument. She said, though, that she did not hear any doors open or close or any cars start or pull away. Ms. Blevins agreed that the walls were thin at the hotel and that she would have heard any such sounds.

Robin Combs testified that she lived at the Chatt Inn in March 2016. Ms. Combs knew the victim in passing as the "[l]ittle red-headed girl," which was how people in the hotel referred to her. The victim lived on the second floor of the hotel, whereas Ms. Combs and Defendant lived on the first floor. Ms. Combs stated that Defendant told her that he was evicted because Mr. Payne "had it out for him" but that other people said Defendant was evicted due to drugs. Ms. Combs stated that Defendant began living with friends at a different hotel and that she saw him "here and there throughout town, just scattered about."

Ms. Combs testified that she saw Defendant at the bus stop near the Chatt Inn on the night of March 21, 2016. Defendant told Ms. Combs that he would stay overnight in "Jeanene[']s" apartment at the Chatt Inn; when Ms. Combs asked who that was, Defendant clarified, "The little red-headed girl." Defendant said that he would enter the hotel after dark or when the front desk employees left for the night.

Ms. Combs testified that she customarily rode the bus to work at 6:00 a.m. and that, on the morning of March 22, Defendant was at the bus stop when she arrived. Ms. Combs

noted that this was unusual and that, when Defendant was working, he would get a ride to work or travel by bicycle. Ms. Combs stated that Defendant had two large duffle bags with him and that he was pacing and "more nervous than he normally [was]." She explained that Defendant was "kind of a nervous type[.]"

Ms. Combs described the following interaction:

> [Defendant] kept on talking about the little red-headed girl and he was like . . . "I'm never going back there again, I'm never going back there again."
>
> I'm like, ["]Well, what happened?["]
>
> He's like, ["]She told me to leave.["]
>
> Which I thought, ["]Well, get gone.["]
>
> . . . .
>
> He just said she's crazy. I mean that's a one-off; when somebody's not happy with somebody's behavior, they'll normally characterize them as something like that. He said she was acting crazy.

Ms. Combs said that Defendant did not indicate whether he left or why the victim asked him to leave. When asked whether Defendant had ever spoken about the victim in a similar manner, Ms. Combs responded, "Never. He had always held her in high esteem."

Ms. Combs testified that she and Defendant boarded the same bus and that, during the trip, Defendant "kept going back talking about [the victim], just conversation kept going back to her." She stated that Defendant was falling asleep mid-sentence and "just kept on talking about . . . you know, she's crazy, I'm not going back there, stuff like that, I mean." She said that Defendant also talked about his mother, whom they had discussed on previous occasions.

Ms. Combs stated that they were at the bus stop for five to ten minutes and on the bus for twenty to thirty minutes. Ms. Combs and Defendant transferred to a different bus before Defendant exited "to go to Work Force." Ms. Combs advised Defendant not to go to Work Force because he would "lose all prospects of getting a job in the future because [he was] obviously not [him]self, something's not right here." Ms. Combs told Defendant to get some sleep, but Defendant exited the bus and stated that he was going to drink some coffee. Ms. Combs testified that she contacted the police after seeing a news article on the internet about the victim's death.

On cross-examination, Ms. Combs testified that she typically saw Defendant on Saturday nights when she used the Chatt Inn's laundromat. Defendant would sit with her and talk while she did laundry. She was aware that Defendant worked for a "heat and air unit place."

Chattanooga Police Department (CPD) Sergeant Taylor Walker testified that, on March 24, 2016, he was working in the violent crimes division and was dispatched to the Chatt Inn. Sergeant Walker, a crime scene investigator, and an investigator with the medical examiner's office entered the victim's room together just before 1:00 p.m.

Sergeant Walker testified that he saw the victim lying partially on her back and partially on her right side on the bed; her head was on a pillow. The victim was wearing a grey sweatshirt, and a blanket covered her lower body. She was wearing a sock on her right foot, but not on her left. Sergeant Walker noted "some sort of dark stain liquid" on the corner of the pillow. Sergeant Walker described the hotel room as "very odd and strange," and he stated the following:

> [I]n between the bed and the nightstand, there was a black device which we later found out was a cigarette rolling machine . . . . Plus, the telephone had a cord severed. And it was just very strange that there was a cord severed to these two devices in between the nightstand and the bed. And there was a chair that was next to the bed that also had dis-cordage [sic] from, I'm assuming the cigarette machine, and from the phone, that were sitting on the chair next to the bed. And then there was another piece of cord or string or something that was like on the foot of the chair.

Sergeant Walker stated that, to the right of the nightstand, clothing was on the ground that had the same dark stain as the pillow.

Sergeant Walker testified that the victim had an abrasion on her forehead and that it appeared she had been there "for a little while." After moving the blanket covering the victim, Sergeant Walker observed that she was nude from the waist down. A pair of women's underwear was "crumpled up" on the victim's upper right thigh, and her right leg was extended, whereas her left leg was "sort of pulled up to her chest." Sergeant Walker stated that feces were smeared on different parts of the victim's thighs. He added that they found feces near clothing on the floor near the nightstand and on the victim's pillow. Sergeant Walker said that, although it was common to find feces when a person had passed away, the placement of the fecal smears on the victim's body was odd. Other than the forehead abrasion, Sergeant Walker did not observe any injuries to the victim.

Sergeant Walker testified that they also found pieces of hair on the victim's legs and in the victim's underwear, which he described as "hair like perhaps from her head or from

another location; not heavy clumps, but just hair." Relative to the pieces of cord around the chair, he stated that they were tied together "like they were ready to be used for something."

Sergeant Walker opined that there appeared to have been a struggle in the room, although it was unusual that the victim had no obvious injuries. Sergeant Walker stated that, generally, once the crime scene investigators and medical examiner were finished with a crime scene, he would release the crime scene. He said, though, that in this case, he instructed a patrol officer to "hold" the scene until the medical examiner had examined the victim. Sergeant Walker noted that everything at the crime scene felt "out of place" and that he had not held a crime scene in a similar manner before or since. Around 2:40 p.m., the medical examiner called Sergeant Walker and conveyed that the preliminary examination had not revealed additional injuries; Sergeant Walker allowed the patrol officer to leave the crime scene. However, the medical examiner's office called Sergeant Walker again at about 3:47 p.m., and as a result of that conversation, Sergeant Walker referred the case to the homicide unit.

On cross-examination, Sergeant Walker testified that he learned from the victim's family that she was an alcoholic. He agreed that he saw beer cans in the victim's room. Sergeant Walker affirmed that he saw no injuries to the victim that were consistent with a struggle.

CPD crime scene investigator Gregory Mardis testified that he processed the crime scene. Investigator Mardis stated that the room "was cluttered, to an extent, but it . . . seemed to be disturbed more than just cluttered." He elaborated that electrical cords were on top of a chair, that "cordage and small . . . nylon-type cord" was on the floor next to the bed, and that a dog leash was tied to an electrical cord from a space heater. Investigator Mardis opined that it was odd to see bits of cord tied together "for no obvious reason."

Investigator Mardis identified a video recording of the crime scene and photographs he took. The video was played for the jury and reflected that the victim was lying with her head and torso facing upward, and her hips and legs were turned such that her left leg was bent forward and her right leg was extended behind her; her right foot was hanging off the bed beside the back of a chair. A piece of blue and white plaid-patterned cloth was underneath the victim's ankle and tied to the chair, which was touching the side of the bed. Investigator Mardis stated that the cloth was similar to a pillowcase. A length of black electrical cord, including a plug, was visible in the seat of the chair. A purple cloth was visible on top of the victim's right upper inner thigh, which Investigator Mardis identified as women's underwear. Investigator Mardis noted that fecal stains were found on the pillow beneath the victim's head, the victim's face, leg, and back, and a pillow further down on the bed near the victim's legs.

Investigator Mardis pointed out a piece of electrical cord in the floor that had been cut off of an appliance, which was tied to a piece of nylon cord similar to a shoelace; he noted that it "ha[d] a lot of hair tied into the knot." He agreed that a black sneaker visible in the video did not appear to have shoelaces. Investigator Mardis identified additional fecal stains on a space heater and a gray jacket; the cord from the space heater, the jacket, and a dog leash had been tied together to form a long string. The room's telephone cord and the cigarette rolling machine's cord had been severed. Investigator Mardis noted that the rolling machine's cord could have been unplugged from the machine without cutting it. The rolling machine, which was black, had what appeared to be the end of a telephone jack and a short portion of white cord tied around its arm. Investigator Mardis testified that behind the bathroom door, they found a pair of orange women's underwear and a blue dress.

Investigator Mardis identified crime scene photographs he took, which depicted the victim's body in more detail. The photographs reflected a large abrasion taking up most of the center of the victim's forehead.

Investigator Mardis stated that they took swabs of a stain on the outside of the room's exterior door and the wall near the door. He agreed that the beer bottles in the room were all Milwaukee's Best brand, and to his recollection the beer cans in the room were all Bud Ice brand. Investigator Mardis opined that the electrical cords had been "clean cut," and he noted that a scalpel was found in the victim's bedding. He collected a blue LG cell phone from the top of the nightstand, and the evidence log reflected that a ZTE cell phone was collected from the nightstand's drawer.

Investigator Mardis testified that, after investigators collected some of the evidence, they were informed that they could release the room; however, within five minutes, the investigators were sent back to the room to collect additional evidence. Investigator Mardis also collected a latent fingerprint from a pack of cigarettes in the room, which tested as belonging to the victim.

On cross-examination, Investigator Mardis testified that a leather jacket was hanging on a rack near the door. He did not obtain fingerprints from the hotel telephone, the cigarette rolling machine, or the chair; he noted that they attempted unsuccessfully to dust the chair for fingerprints. Investigator Mardis agreed that a towel was near the victim's side on the bed. He acknowledged that he did not perform biological testing to identify fecal matter. He further acknowledged that he did not know what caused the abrasion to the victim's forehead.

Investigator Mardis testified that the scalpel was "evidently wrapped up in something" and was only found later; consequently, he did not photograph it at the crime

scene. He agreed that the victim's body had no visible bruising. He did not collect an anal swab from the victim.

CPD Sergeant David Franklin, an expert in latent fingerprint examination, testified that he identified a latent print taken from a cigarette pack as belonging to the victim. He agreed that the fingerprint was the only one he received to analyze. He stated that fingerprints might not be deposited when a person wore gloves or did not perspire, when the air was "not conducive to leaving prints," or when the prints had been wiped off.

CPD Officer Dennis Nelson testified that, on March 24, 2016, he collected fingerprints from Mr. Adams. The following day, he collected personal items that had been seized from Defendant—a green backpack, a "plastic Burlington bag," and a black computer bag. Officer Nelson identified a photograph of the items inside Defendant's backpack, which included several pieces of clothing, baseball hats and knit caps, three cell phones, two wallets, two pairs of gloves, a cell phone charger, fifty-five dollars in cash, medication bottles, and a piece of paper with a brown stain.

On cross-examination, Officer Nelson testified that several packets of instant coffee were among Defendant's belongings. Officer Nelson did not know if the brown stain on the piece of paper was coffee or whether the paper was sent to the Tennessee Bureau of Investigation (TBI) for testing. He did not believe the LG cell phone was swabbed for DNA or tested for fingerprints.

Hamilton County Sheriff's Office Detective Ed Merritt testified that on September 2, 2019, CPD asked him to assist them in Defendant's case; he explained that the CPD employee who performed forensic downloads on cell phones had retired recently. Detective Merritt was asked to analyze two of Defendant's cell phones. The first phone, a Kyocera, did not function due to an issue with the battery. He was able to generate a report from data on the second phone, an LG. Detective Merritt noted that the report was 2,824 pages.

Mark Hamilton, an expert in forensic technology, testified that, in 2016, he assisted CPD in their investigation of the victim's death by analyzing the victim's two cell phones. He stated that he was unable to download the data on the ZTE phone and that he instead performed a "scroll analysis" in which he took photographs of the phone's screen. In the second phone, an LG, the "contacts that transferred electricity from the battery to the phone were damaged." Mr. Hamilton noted that the LG was missing its battery when he received it and that he soldered wires to the phone to power it.

Mr. Hamilton testified that the LG had "quite a bit of activity" on March 21, 2016, which ended just before midnight. The last incoming call was from a telephone number labeled in the phone's contacts as "Mark."

Mr. Hamilton testified that, on two occasions, he went to the Chatt Inn and obtained surveillance recordings. He stated that the system was set to "motion record" on multiple cameras, which started recording in response to a change in light. Mr. Hamilton explained that setting the cameras to motion record saved hard drive space in comparison to continuous recording. He noted that motion recording was identifiable because the system contained files of different sizes, whereas continuous recording would be broken up into identically-sized files. Mr. Hamilton stated that the hotel's owner "actually pulled just [video of] the incident" because a longer file was taking too long to download.

Mr. Hamilton testified that he created a "compilation" using the surveillance footage and the victim's cell phone data. He stated that no outgoing communication came from the victim's cell phone after a man, later identified as Defendant, was visible on the surveillance footage leaving the victim's room at 5:48 a.m. Mr. Hamilton noted that he identified the man as Defendant because Defendant sent the victim a text message asking her to open her door at 7:43 p.m., the same time at which the man in the recordings entered the victim's room.

In surveillance footage showing a first-floor courtyard, Defendant was wearing a dark jacket with a light-colored collared shirt, light-colored long pants, and a cap, and he was carrying a duffle bag in one of his hands. Mr. Hamilton identified Defendant in footage from the Chatt Inn's second floor; in this segment, he was wearing a backpack and carrying a similar bag in his hand. Mr. Hamilton noted that the timestamp in the surveillance footage was off by one hour and that daylight savings time occurred just prior to March 21, 2016. He stated that, after Defendant left the victim's room, Defendant attempted to open the door to the hotel office shortly after 5:48 a.m.; he was still wearing a backpack and carrying a duffle bag.

On cross-examination, Mr. Hamilton testified that he and detectives directed the hotel owner on how to download the recording. Mr. Hamilton acknowledged that he did not inspect the surveillance system settings or watch the entire recording depicting the seventy-two hours between the time Defendant left the victim's room and when Ms. Post and Mr. Scholten arrived. He agreed that he did not know if anyone entered the room during that time.

Mr. Hamilton testified that, generally, he placed cell phones inside a box before downloading their contents, which insulated them from connecting to the telephone network. However, Mr. Hamilton worked on the victim's LG cell phone at a workbench in order to connect it to electricity via the soldered wires. Mr. Hamilton noted that the phone connected to the network when it powered up and that it downloaded messages "that were sitting in queue at the provider." He stated that the messages in the report reflected the date and time the victim's cell phone received them, not the date they were sent. The inbound messages to which he referred were dated March 24, 2016.

The data report from Defendant's LG cell phone, which had a number ending in -9548, reflected that a telephone number ending in -7290 corresponded to a contact labeled "Jeannette 236."[1] The data report from the victim's LG cell phone, which had a number ending in -7290, reflected that a telephone number ending in -9548 corresponded to a contact labeled "Mark."

CPD Investigator Lucas Fuller testified that he responded to the crime scene and that no evidence of forced entry existed. The victim's room was only accessible by the front door. After speaking to the victim's neighbors, Investigator Fuller contacted Mr. Adams, who reported that he was in recent contact with the victim but had not been able to reach her in the days prior to March 24. Mr. Adams informed the police that the victim had two cell phones, which they confirmed. Mr. Adams also consented to be processed, which involved giving a buccal swab and being photographed and fingerprinted.

Investigator Fuller testified that the victim's LG cell phone was missing its battery and "it appeared that it had been manipulated, the actual battery portion of the phone had been damaged[.]" Investigator Fuller used Facebook to cross-reference the contact number ending in -9548, which led him to Defendant. The police could not initially locate Defendant.

Investigator Fuller testified relative to the surveillance recordings that Defendant entered the Chatt Inn property at about 7:43 p.m. on March 21, that Defendant was carrying a backpack and duffle bag, that Defendant appeared to be texting someone, and that he entered the victim's room. Investigator Fuller stated that, at about 6:00 a.m. on March 22, Defendant exited the victim's room and attempted to enter the locked lobby. Investigator Fuller said that no outgoing messages were sent from the victim's cell phone after Defendant's departure.

Investigator Fuller testified that, after speaking to Ms. Combs, he reviewed surveillance recordings of the bus she and Defendant rode to corroborate her account. Additionally, Investigator Fuller submitted a request to Defendant's cell phone provider to obtain the locations at which his cell phone "pinged" a cell tower or WiFi. Police located Defendant and executed a search warrant to obtain a buccal swab, photographs, and fingerprints. Defendant's belongings included a baseball cap that was similar to the one he was seen wearing in the Chatt Inn surveillance recordings; a baseball cap bearing the logo of a restaurant at which the victim worked; and Defendant's two cell phones.

[1] The trial testimony indicated that the victim's hotel room at the Chatt Inn was number 236.

Investigator Fuller read[2] into the record text messages exchanged between Defendant and the victim. On February 18, 2016, Defendant stated, "No wonder you said if he comes, though, let you know. Otherwise you wouldn't have any use to visit me . . . . Manipulate me. I felt a connection and I know you did too. You can't help that you are a fri[gi]d cold b--ch." The victim replied,

> I apologize, I wasn't feeling very well earlier, in a lot of pain. I'm not trying to manipulate you, no needing for the name calling, I'm already aware of my faults. And I did pay for that piece of wafer you gave me, don't you remember? I am not looking for a relationship, I recently broke up with my ex and want to be single for a while. I like hanging out with you, you are a good friend.

Defendant responded,

> I want to be single to get my life on balance, we can help each other with that, give each other advice. If we are mature adults, we can be single but still share an intimate moment two or three times every couple of weeks. Knowing that it's a physiological need and knowing that it's just for now and there's no commitments, just two adults going through life's growing process. We do have some emotional and physical needs. Knowing that we can share intimacy once every week or so, it will help us both to grow and also help us get out of our shell. We can be close friends to each other. I'm going to need feedback on my resume. I think you are an intelligent person, I respect you. I'll need help with my interview clothes and tie. I have a big engineering interview coming up, I need your help. Anything you ever want or need, I'll be there for you.

The victim did not respond. A couple of hours later, Defendant sent the following:

> What time do you get off? I think we had a good night two nights ago, we had some very pleasant moments of intimacy, but at the same time, we're respectful of each other's boundaries. I could tell you enjoyed the physical contact. Even a few of the heartfelt kisses I gave you, you smiled. You let me continue with touching your breasts and at one point, I was touching you in your crotch and you let me continue for a few minutes. You were even

[2] Our review of the data extraction reports of the victim's and Defendant's cell phones reflects that Investigator Fuller's testimony accurately conveys the meaning of the messages; we have recited the testimony, rather than the messages as originally written, because the messages contain multiple typographical errors.

> pressing your p---y up toward my hand. We were on the verge of hinching [sic].

The victim did not respond.

On February 25, 2016, Defendant called the victim's cell phone for forty-two seconds. The victim sent a text message asking if he had called her and asked, "What's up?" Defendant responded, "Whatever you need." The victim replied,

> I am walking home from work right now and boy am I grumpy, I'm absolutely broke until Monday, I don't have for anything. Been walking to and from work for the past few days, even tried to pawn my nice Eddie Bauer jacket but the pawnshop has too many leather jackets already. I have your hat too. You said you wanted it back.

Defendant stated, "Last time I tried to give you a hug, you acted like I had the plague or something. I'm fine." The victim replied, "Mark, I've been pushing people away my whole life, I've had some very unfortunate things happen to me. I apologize if you feel that way." Defendant stated,

> Okay. Bye. You have succeeded in pushing me away. But since you were my friend and I got you . . . this other fleece, I'll bring it up. I just tried to bring you the fleece last night, I came up to you. Text me. Then won't answer your door. I'll smoke it myself again, I guess.

The victim responded, "I am still walking home, calm down, I have plenty of fleeces, I don't need anymore, thank you. You said some really hurtful things to me and said bye. Why are you bothering me?" Defendant replied, "You texted me."

On March 17, 2016, the victim texted Defendant, asking, "Hey stranger, how are you?" Defendant replied, "Good, I have drugs, I am downtown. You home?" The victim stated, "Yeah, drugs are always good[.]" After an exchange in which Defendant conveyed his location and the types of drugs he had, the victim stated, "If I can get a few and smoke with you, for sure, come by and chill for a while." The victim asked if he could bring beer and followed up in messages asking if he was coming over. Defendant gave an estimated arrival time, then texted another contact, labeled as "Latoya," asking, "Can you come to Chatt Inn, a twenty-dollar, I'm near there. I was above my old room with my girl." Defendant also texted an additional contact, labeled as "Grey Dirty," stating, "I'm on 23rd Street on foot, need a 20. At my girl's room. I will walk to gas station."

On March 18, 2016, Defendant messaged the victim, "It felt good sharing your bed. The comfort of you beside me made me feel complete, a sense of being where I belong. I

was good. I think I put one hand on your shoulder twice all night." The victim did not respond.

On March 19, 2016, at about 9:00 p.m., Defendant texted the victim, asking, "When you going home?" The victim responded, "I'm home. My brother is coming to pick me up after he gets off work. What's up?" Defendant stated, "I am freezing. Nowhere to sleep, walking the street. Give you two Xanax bars and . . . three[]dollars to crash on the floor. I got a Klonopin. Help, it's freezing." The victim responded, "I thought you were staying with that chick. D--n." Defendant stated, "She has some guy up there. Me and her weren't really like that. Just told me. I was on street tonight." The victim responded, "I am not looking for a relationship either, Mark. I have told you time and time again." Defendant stated, "Me either. Did I touch you inappropriately last night? No, because I don't want to ruin our friendship." The victim said, "I don't know, I was sleeping. You come on really strong when you're over here, why can't you stay with that lady, because she has a guy over?" Defendant continued, "I don't mind sleeping on the floor. I did very good last night, I did not touch you wrong once yesterday. I'm so cold and sleepy."

The following morning, at about 7:00 a.m., the victim texted Defendant, "Where are you sleeping tonight, sleeping at that lady's place?" Defendant responded, "I slept in [an] abandoned building on [the] floor." The victim stated, "Sorry, but it's not my fault." Defendant stated, "I did not say it was your fault. You asked me where I slept, I told you the truth." A little before 6:00 p.m., the victim texted Defendant again, stating that he should "make up" with the woman so that he had a place to sleep because it was going to be cold that evening.

On March 21, 2016, a little before 5:00 p.m., Defendant texted the victim and asked if she was working. The victim responded negatively, saying that she was "sitting here bored and broke." A brief conversation occurred, which Investigator Fuller testified was a discussion of illegal narcotics. Defendant stated that he had a "goody bag" for the victim and that he would travel to her location. Defendant then sent another message: "You have to admit I was very respectful two days ago. True?" The victim responded, "So what's it going to be? You bring 20 hard, a piece, some green, maybe a xany bar and we got a deal."

About five minutes later, Defendant texted a contact labeled as "19newcell1," stating,

> This red head wants me to spend night at Chatt Inn, great p---y, I'm broke. You give me a five for a couple more good chunks of Xanax so an old guy can get some p---y? She's a waitress at that ritzy cocktail bar, STIR[3], at the

[3] Other trial testimony reflected that the victim worked at STIR.

> Choo-Choo, three-story bar. I can line you and your old lady up with 20 percent discount.

Defendant continued messaging the victim, stating, "Checking now on trading for the 20. I have a 10 I can let you have right now. One small, have my 20, I have everything else. Text you in five to ten minutes . . . . Working on it 'friend[.]'" The victim responded, "Last time, you promised all that but didn't come through. At least have the 10 and a xany with a piece[. I] let you stay here." Defendant then texted that he did not have the variety of drugs he originally mentioned and that some drugs he had "distintegrated" in his pocket, the victim stated, "You just said it disintegrated, that's what you said the other night. Please. Look, dude, you promised that the other night and reneged. Not again."

During a subsequent text conversation with Defendant on March 21, the victim complained that Defendant had been "BS-ing [her] all night" and that his "lying [was] aggravating [her]." The victim also warned him not to "come here with nothing after you promised a whole lot of s--t." Defendant, meanwhile, reported that he was "on the way with a 20 and a shooter." He noted that he was carrying two heavy bags. The victim asked Defendant to bring her a beer, and Defendant stated that he had one beer and would try to get change to buy a second. A few minutes later, the victim asked, "Well, d--n, how much longer? You've been saying this for an hour and you're going to smoke it before you get it. So what?" Defendant stated that he was waiting on a bus, then stated that he was walking and was fifteen to seventeen minutes away. The victim responded, "More BS. You were supposed to be walking an hour ago. I'm giving you 15 minutes. Do what you said, bring the shooter and a xany."

At 7:43 p.m. on March 21, Defendant texted the victim, "Open door." Investigator Fuller agreed that the time corresponded to the time on the surveillance recording showing Defendant's entering the victim's room at the Chatt Inn.

Investigator Fuller testified that Defendant subsequently sent text messages to 19newcell1, which were as follows: "This girl has fifty-dollar Eddie Bauer leather jacket and she says she'll show you her boobs for a good rock . . . . This red-headed girl wants to talk to you. She works at th[at] ritzy cocktail bar, STIR, at the Choo-Choo." Defendant sent additional messages with similar content to 19newcell1, Latoya, and contacts labeled as "Tunnel Mike" and "Cash Taz." The messages ended at 10:28 p.m.

On March 22, 2016, the next day, Defendant texted the victim at 7:05 p.m., asking if she was okay.[4] On March 24, the same day the victim's body was found, Defendant sent an email with the subject line, "Re: Position in Nashville." Defendant wrote,

[4] Defendant also sent the victim a series of brief text messages during the day on March 22, some of which were only one word or letter. All of the messages Defendant sent the victim on March 22 were

> I don't know if we can Skype an interview because of time constraints. It would be impractical for me to travel just for the interview. Is there going to be a small relocation package, a room for two weeks till I get my first paycheck? I want the job and am ready to come there. I'm going to have to dedicate a whole day if I make the trip for an interview, and that is very costly. Respectfully, [Defendant].

Investigator Fuller testified that he and other members of the CPD violent crimes unit watched the surveillance recordings from the Chatt Inn. He stated that he did not see anyone other than Defendant entering or exiting the victim's room.

Investigator Fuller testified that, on March 30, 2016, Defendant made a recorded statement. An audio recording was played for the jury, which reflected Defendant's speaking to a police officer; it was apparent from background noise that they were in a police cruiser. The exchange was as follows:

> [Defendant:] I was just living at the wrong place, had moved out, and something happened to somebody, evidently, where I had been living at, that lived above me at that motel, at the Chatt Inn, and they knew, I guess, evidently, that I may have known this person, or something, I . . . that's all I can figure. Just being one hundred with you, you know what I mean? It's not no mystery at this point why they're going through all this, you know what I mean?
>
> Well [cross-talk with the officer and what sounded like a police radio] I don't know why they're even taking me down here unless they're trying to offer me some kind of deal for me to make a, some kind of statement or something, you know what I mean? All my mental health medication's down here in my backpack, everything Joe Johnson gives me is down here in the [indecipherable] in my backpack. I can't even get them to call Joe Johnson here, the nurses won't even give me an ibuprofen. Hell, if they'd give me one of my mental health medications out of each bottle, I'd almost be willing to give . . . them a few statements, you know what I mean? Just so I felt normal. My IDs and forty dollars of my money and put it on my darn books out of my wallet, I might tell them something.
>
> Now I know something I can tell that'll help, I really do, I know something about this situation that would really help to lead them to the person they really need to know about. I do know something. But they're

---

marked on the victim's data report as having been received on March 24, 2016, and some of the messages were marked as "read."

not offering me anything, you know what I mean? That's a bargaining chip, you know what I mean? They have it. I know something, but not about what happened, but I know something about a person who was very close to the person that this thing happened to, you know what I mean? This is probably the key person they need to be focused on in this investigation they got going, I know the person they need to focus on. I can tell them who that is. I can tell you that right now. Straight up, I know the person they need to focus on. But . . . they weren't trying to . . . I gave them some good information. You heard what I said, didn't you?

[Officer:] Yeah

[Defendant:] Opinion, I mean . . . nothing you say is going to be held against you, obviously, you know what I mean, because you're not guilty of anything, opinion, did I try to give them some good information? I mean, without --

[Officer:] Well, uh . . . I don't know anything about the investigation, I'm not a part of it.

[Defendant:] But I mean I tried to tell them something, didn't I, that would help them, I thought, didn't I?

[Officer:] It'd be, uh, inappropriate for me to say.

[Defendant:] God, I don't even know why I even said anything, but other than trying to—because they ain't even gonna give me my money, I'm trying to give them some kind of direction to go on their investigation is all I was trying to do, you know what I mean? If they would have come to me straight up and said look, we need your help and we're not going to, you know, slam you in the damn jail right now, you know what I mean? If they had approached me in the right way different than they did, they would've got a whole different Mark Howard than they did the other day when they throwed [sic] me in that little room, that cold little room for five hours.

On cross-examination, Investigator Fuller testified that he requested TBI testing of evidence but that he had no control "of what they determine once it's up there." He acknowledged that he did not watch all seventy-two hours of surveillance footage. He stated that he watched "a bunch of clips . . . of the second level catwalk . . . that would have covered [the victim's] room." He said that the video he watched was not in continuous order; however, he acknowledged his preliminary hearing testimony that he viewed segments in continuous order. Investigator Fuller did not recall what he watched or the

time period it covered, only that it was multiple segments of video. He denied having watched the surveillance recordings depicting different angles around the Chatt Inn property. Investigator Fuller agreed that, in the compilation video played for the jury, the Chatt Inn's lobby had a flashing light in the window. Investigator Fuller did not recall what the sign said. He agreed that Defendant requested medication during his recorded statement. He further agreed that, in the text messages, the victim asked for "hard" and a "shooter," which Investigator Fuller knew to be crack cocaine and a cocaine smoking device.

Investigator Fuller acknowledged additional March 21 text messages from the victim to Defendant, in which she told him to "man up" and "be a grown a-- man" when asking him to come over and bring drugs. He also acknowledged March 21 text messages in which the victim offered to sell her leather jacket to an unidentified person for $40, as well as messages from the victim to a contact labeled as "Lee" seeking cocaine. Investigator Fuller acknowledged that four of Defendant's text messages on the victim's cell phone report were received after Defendant left the victim's hotel room and that they were marked "read."

On redirect examination, Investigator Fuller testified that he assigned portions of the surveillance recordings to different officers. He agreed that the officers were expected to report anything they observed on the recordings to him, that their observations would have affected his investigation, and that he did not receive any such reports relating to anyone else's entering or exiting the victim's room. He said that, to his understanding, the 2,000 video clips were in chronological order.

TBI Special Agent forensic scientist Marla Newport, an expert in forensic biology and serology, testified that she tested items from the victim's hotel room, as well as known DNA standards from the victim, Defendant, and Mr. Adams. Agent Newport tested a black nylon cord, a white telephone cord, a "rolling cord," and a heater cord for DNA; she noted that the DNA of the person who tied the cords might have been found at their ends, and the DNA of the person who was bound might have been found at the cords' middles. The nylon cord contained no DNA at the middle, and an insufficient amount of DNA at its end to be conclusive. The end and middle of the telephone cord, as well as the end of the rolling machine cord, contained two DNA profiles, one of which was male and inconclusive; the other DNA profile matched the victim. The middle of the rolling machine cord contained only the victim's DNA. The heater cord tested negative for blood, but contained three DNA profiles, one of which was male; Agent Newport stated that "due to the complexity of the mixture and the unknown number of potential contributors," the results were inconclusive.

Agent Newport testified that she also tested four plastic bottles of Milwaukee's Best Ice beer, one plastic bottle of Brisk iced tea, one plastic bottle of Powerade, and one can of

Bud Ice beer. The can contained at least two DNA profiles, one of which matched Defendant, and one of which matched the victim. The iced tea bottle also contained Defendant's DNA, as well as a DNA profile for which the victim and Mr. Adams were excluded as contributors.

Agent Newport testified that the victim's clothing tested negative for semen. She stated that the sock the victim was wearing tested positive for blood; the blood, which was on the toe of the sock, matched the victim's DNA. Agent Newport also swabbed the inside of the sock and determined that the victim's DNA and an inconclusive male profile were present. The victim's tank top tested positive for blood; a blood stain on the shoulder matched the victim's DNA, and a blood stain on the lower back contained a mixture of the victim's DNA and an inconclusive contributor. The victim's sweatshirt tested positive for blood at multiple locations, all of which matched the victim's DNA. Agent Newport noted that an "additional allele was obtained at one of the loci" and that an inconclusive profile with "no indication of a male individual" was obtained on the lower back of the sweatshirt. Agent Newport stated that the victim's dress tested positive for spermatozoa and contained a "limited DNA profile of at least two individuals," one of which was male, and that the profile was inconclusive. She noted that semen could last for years on fabric and that it was impossible to determine when the semen was deposited onto the dress.

Agent Newport testified that the victim's vaginal and oral swabs tested negative for semen. Agent Newport stated that the swabs were not tested for DNA, which was consistent with TBI policy in 2016. She noted that, although a rape kit commonly included an anal swab, the packaging of the victim's oral and vaginal swabs indicated that no rape kit was submitted to the TBI. Agent Newport stated that, if anal swabs had been collected after an individual defecated, the swabs would only have reflected the victim's DNA "because . . . the white blood cells in feces . . . would have overwhelmed any other contributor."

Agent Newport testified that one of the swabs taken from the hallway outside the victim's room tested positive for blood with male DNA, but that Mr. Adams and Defendant were excluded as contributors. She noted that no blood with a matching DNA profile was found inside the victim's room, and she agreed that no reason existed to believe that a suspect had been bleeding. Agent Newport stated that, if Defendant was known to have been inside the victim's room, it was unsurprising that Defendant's DNA was found there; conversely, she said that the absence of DNA on some of the items tested did not indicate that Defendant was not inside the room.

On cross-examination, Agent Newport testified that the unidentified male corresponding to the hallway blood swab could have been inside the victim's room. She acknowledged that the unidentified male's DNA profile was not entered into the Combined DNA Index System (CODIS). Agent Newport agreed that, relative to the iced tea bottle

and the beer can, her report's conclusion that "[a]t least two individuals[']" DNA profiles were present meant that it could have contained more than two people's DNA. She agreed that she tested a swab from the mouth of the bottle and can. Agent Newport stated that the can contained the victim's and Defendant's DNA in addition to an allele that "could not be attributed to" either of them. Agent Newport agreed that the victim's dress contained sperm from an unknown person and an additional allele in the "nonsperm fraction." Agent Newport stated that the telephone cord contained "multiple extra alleles." She acknowledged that she did not examine the base of the telephone or the receiver.

Agent Newport testified that she also analyzed fifty-five cigarette butts from an ashtray in the victim's room, three of which reflected only the victim's DNA, one of which contained the victim's DNA "with an additional allele," and one of which was a mixture of the victim's DNA and an inconclusive minor contributor. Agent Newport agreed that a knife and a scalpel from the room were not examined. She acknowledged that she did not receive swabs from the victim's neck, wrists, anus, or ankles, or a sheet of paper for testing. She further agreed that no "toolmark analysis" was conducted to determine what may have cut the cords. Agent Newport stated that she was not requested to do testing relative to fecal matter.

On redirect examination, Agent Newport clarified that the blood swab from the hallway was ineligible to be entered into CODIS because it had not been connected to the victim's room or her murder. Agent Newport acknowledged that her office received a paper containing a brown substance, which was not examined or tested. Agent Newport stated that she was unsurprised by extra alleles found on clothing; she noted that if clothing was laundered with other items, DNA could transfer to it. Similarly, she was unsurprised to find extra alleles on a hotel landline telephone. She could not determine when DNA had been deposited.

Hamilton County deputy chief medical examiner Dr. Steven Cogswell, an expert in forensic pathology, testified that he conducted the victim's autopsy. He estimated that the victim died between one and a half and two and a half days before she was discovered. Dr. Cogswell stated that the victim had no "significant" external injuries, that the victim's body had cooled to room temperature, and that there was "some drying artifact that's associated, probably, with the air conditioning blowing on." Dr. Cogswell noted that discoloration of the victim's fingertips reflected the drying, which was a "postmortem change that [was] not an injury." He said that the victim had areas on her central forehead and above her right eyebrow that "were probably pre-existing abrasions that had been altered somewhat by insects[.]" Dr. Cogswell added that insects did not typically begin feeding on forehead skin, which was not soft or delicate; he opined that the insects chose the victim's forehead because "it was wet for some reason, and that reason would be that she's already got an abrasion there, the skin is already damaged there[.]" He noted that "there were some

impressions of a ligature around the left wrist." Dr. Cogswell elaborated that the skin was "dented in" and stated,

> These are an eighth of an inch apart and they run parallel to each other, which basically tells you that there is a single thin object . . . . And we're getting these impressions at the margins of that object because that's where the skin is stretched a bit. On the back of the hand, back of the wrist, in that same area, we have . . . just above the base of the thumb, an abrasion. And then as it extends upward, going toward the little finger side of the wrist, there's also a small contusion.

Dr. Cogswell noted that a strap or ligature had been around the wrist with "some force applied" along the back of the arm; however, he also characterized the force required to cause the abrasion and bruise as "not a lot." Dr. Cogswell also found contusions to the knuckles of the right index and middle fingers, on the left hip, and the right groin area. He opined that the ligature marks were caused by the victim's pulling against the item wrapped around her wrist and that her right knuckles were bruised by an impact of some kind.

Dr. Cogswell testified that the victim had had "an episode of diarrhea" that stained her buttocks, thighs, the panties placed on the victim, and some of the bedding, including the pillow upon which her head was lying. He explained that, for purposes of a sexual assault examination, an anal swab would not have "pick[ed] up" useful evidence because "anything that's there ha[d] now been flushed out[.]" He noted that a release of the bowels was consistent with the dying process.

Dr. Cogswell testified that his internal examination revealed two areas of hemorrhage in the right side thyroidal hyoid and omohyoid muscles, which were deep muscles in the victim's neck. He stated that "the superior horn" of the thyroid cartilage was broken and that some hemorrhaging occurred around it. Dr. Cogswell explained that cartilage became more brittle as a person aged but that one would "have to produce a fair amount of force" to break cartilage in a thirty-year-old person's body. Dr. Cogswell noted that the injuries occurred before the victim's death and that they were consistent with manual strangulation. Dr. Cogswell also observed petechial hemorrhages in the victim's eyelids and eyes. He opined that it was possible to create the neck injuries and petechiae using one or two hands. Dr. Cogswell estimated that a person being strangled in this manner would lose consciousness within thirty seconds and die within a couple of minutes. Dr. Cogswell concluded that the cause of death was strangulation, and the manner of death was homicide.

Dr. Cogswell testified that he conducted a urinalysis, which reflected what drugs or alcohol a person had used for about one day before death, and that he sent blood for a toxicology analysis. The victim's urine tested positive for cocaine, cocaine metabolites,

and marijuana metabolites. Her blood toxicology tested positive for nicotine; cocaine; cocaine metabolites; marijuana metabolites; alprazolam; gabapentin; and clonazepam. Dr. Cogswell noted that the alprazolam and gabapentin were in "low to therapeutic concentrations." The victim's blood alcohol level was .107.

On cross-examination, Dr. Cogswell acknowledged that estimating a time of death was imprecise and depended upon many variables. He stated that, if a struggle occurred, decomposition would begin more quickly due to a higher amount of lactic acid in the victim's muscles; conversely, having a smaller body or having air blown on the body would slow decomposition. He agreed that the drugs in the victim's system would affect the estimated time of death as well.

Dr. Cogswell testified that, because the victim died days before her body was found, it was impossible to determine whether she was under the influence of cocaine at her death, as opposed to having taken cocaine the day before. Dr. Cogswell agreed that gabapentin was an "abused street drug." He did not take swabs of the victim's neck, ankles, or wrist.

On redirect examination, Dr. Cogswell testified that he took all variables into account when estimating the victim's time of death for the autopsy report. He stated that he did not take swabs from the victim's neck because the evidence of strangulation was not apparent until he was conducting the internal examination, at which point the skin of the neck had been contaminated.

After the close of the State's evidence, Defendant presented proof. Bradleigh Dunn testified that she was the general manager of the Bitter Alibi bar and had been a manager there since 2015. She stated that, on a Monday night, the bar closed at midnight. Ms. Dunn said that she was unfamiliar with the victim or this case.

Jessica Finger, an investigator and office manager at the Hamilton County Public Defender's Office, testified that she was assigned to Defendant's case when he was represented by the Public Defender's Office. Ms. Finger reviewed the victim's cell phone extraction report and identified a photograph from the report, which showed a bed with bindings attached to the four corners of the bed.

Ms. Finger testified that she also reviewed the Chatt Inn surveillance recordings. She stated that the copy of the recordings they received from the prosecutor did not initially function; she explained that "it was just a formatting system [issue]. It just took several attempts to try to get a playable version[.]" Ms. Finger stated that the recording was composed of 2,043 "very small clips" of different lengths covering a long period of time; she estimated that the clips were between three seconds and several minutes in length. Ms. Finger said that the clips were not in sequential order and that she reviewed each clip to obtain the start and stop timestamp, which was to ensure that the entire seventy-two-hour

period had been disclosed to the defense. Ms. Finger composed a spreadsheet documenting gaps she found in the video. She stated that she found the following gaps: March 21, 2016, between 4:11 p.m. and 6:43 p.m.; March 22, 2016, at 10:59 p.m., for ten minutes, followed by another clip, then a second eight-minute gap; March 23, 2016, at 5:00 a.m., during which Ms. Finger counted twenty-seven gaps; and March 23 at 9:23 p.m., which had four gaps. Defense counsel played assorted clips, which he described by the number Ms. Finger assigned to them in her spreadsheet.[5]

Ms. Finger testified that some of the clips ended while motion was occurring on camera or, likewise, that some clips began when no motion was occurring. She recalled one clip depicting no motion at all. Ms. Finger stated that she did not review the clips for their content and that she did not pay attention to where people in the clips went.

On cross-examination, Ms. Finger testified that she had no training in technology, that the clips provided to her were copies, and that she did not know if her computer settings might have accounted for the scrambled order of the clips. She acknowledged that she did not work with the recording program and did not know how it was set to record. Similarly, she did not know if clips ever existed for the gaps in time she found, only that she did not receive them. She agreed that none of the clips played for the jury on her direct examination showed individuals entering the victim's room. She denied seeing anyone else entering the room during her review of the clips.

The State recalled Mr. Hamilton as a rebuttal witness. Mr. Hamilton testified that, based upon the varying sizes of the surveillance clips, the system was set to motion record and that the system would correctly contain gaps in the recording.

Relative to the victim's cell phone data extraction, Mr. Hamilton explained that he connected the phone to a computer and started the "logical" download process on March 24, 2016, just before 8:17 p.m., the time the phone received the four text messages from Defendant marked as "read." Mr. Hamilton recalled that, after he connected the phone to power, the phone repeatedly beeped to indicate that messages were being received one at a time. Mr. Hamilton noted that the LG was an "old flip phone[]" and that the messages were not received until the LG connected to the network. He stated that, in order to navigate to the main screen, he may have had to exit from a text message alert, which could have marked the messages from Defendant as "read." Mr. Hamilton also stated that, in a circumstance when multiple messages were "stacked up" waiting to be read, reading one text message from a contact might also mark all messages from that contact as having been

[5] Relative to the surveillance footage, the trial exhibits contained one disc with thirty-seven individual clips and another with the compilation Mr. Hamilton produced for the jury. The full 2,048 clips were not entered into evidence. Likewise, the spreadsheet and video clips played at this juncture were not entered as an exhibit, and it is unclear from the record what the clips depicted. We glean that at least some of the clips showed unidentified people walking through the frame.

read. Mr. Hamilton said that a "physical" download of a phone's data, which involved data extraction by a software program, reflected when messages from that phone were sent, whereas a "logical" download, which occurred by plugging the phone into a computer and selecting messages, video, or call logs to download, would reflect when a message was received by that phone.

Upon this evidence, the jury convicted Defendant of the lesser-included offense of second degree murder. After a sentencing hearing, the trial court imposed a twenty-five-year sentence. After the court denied the motion for new trial, Defendant timely appealed.

Analysis

Defendant contends that the evidence is insufficient to establish his identity as the person who killed the victim, arguing that (1) "contrary to what the State's witnesses told the jury," the surveillance video was a continuous recording, and gaps existed in the video during the window in which the victim was killed; (2) the police did not watch the entire video; (3) Mr. Adams' alibi was disproved because the bar in which he claimed to be at the time of the killing was closed; (4) Mr. Adams and the victim had previously engaged in bondage and choking during sex at the victim's request; (5) on the night of the murder, the victim had texted several people offering to show her breasts to them in exchange for cocaine; (6) the beer can and tea bottle in the hotel room contained third parties' DNA in addition to that of the victim and Defendant; (7) text messages Defendant sent the victim after he left the hotel room were marked as read on the victim's phone; and (8) the State failed to test sperm found on the victim's dress and blood found outside the hotel room. The State responds that the evidence is sufficient.

Our standard of review for a sufficiency of the evidence challenge is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); *see also* Tenn. R. App. P. 13(e). Questions of fact, the credibility of witnesses, and weight of the evidence are resolved by the fact finder. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh the evidence. *Id.* Our standard of review "is the same whether the conviction is based upon direct or circumstantial evidence." *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)) (internal quotation marks omitted).

A guilty verdict removes the presumption of innocence, replacing it with a presumption of guilt. *Bland*, 958 S.W.2d at 659; *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). The defendant bears the burden of proving why the evidence was insufficient to support the conviction. *Bland*, 958 S.W.2d at 659; *Tuggle*, 639 S.W.2d at 914. On appeal, the "State must be afforded the strongest legitimate view of the evidence

and all reasonable inferences that may be drawn therefrom." *State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007).

Second degree murder is "[a] knowing killing of another[.]" Tenn. Code Ann. § 39-13-210(a)(1) (2018). Second degree murder is a "result of conduct" offense. *See State v. Brown*, 311 S.W.3d 422, 431-32 (Tenn. 2010); *State v. Ducker*, 27 S.W.3d 889, 896 (Tenn. 2000). Accordingly, the appropriate statutory definition of "knowing" in the context of second degree murder is as follows: "A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result." Tenn. Code Ann. § 39-11-302(b) (2018). In other words, "[t]he State is not required to prove that the defendant wished to cause his victim's death but only that the defendant knew that his or her actions were reasonably certain to cause the victim's death." *Brown*, 311 S.W.3d at 432.

The identity of the perpetrator is "an essential element of any crime." *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006). Identity may be established with circumstantial evidence alone, and the "jury decides the weight to be given to circumstantial evidence, and [t]he inferences to be drawn from such evidence . . . ." *Id.* (internal quotation marks omitted). The question of identity is a question of fact left to the trier of fact to resolve. *State v. Crawford*, 635 S.W.2d 704, 705 (Tenn. Crim. App. 1982).

Viewing the evidence in the light most favorable to the State, the evidence was sufficient for a rational juror to find that Defendant knowingly killed the victim. In the days preceding the victim's death, she and Defendant exchanged text messages indicating that Defendant wanted a romantic or sexual relationship with the victim, which she did not reciprocate, and that he "c[a]me on really strong" when he was in the victim's room. Despite Defendant's objections that he had treated the victim respectfully, he referred to the victim in text messages to third parties as his "girl" and asked for help obtaining drugs so that he could have sex with her. The Chatt Inn's surveillance recordings showed Defendant entering the victim's room early in the evening on March 21, 2016, and leaving shortly before 6:00 a.m. on March 22, 2016. Defendant's DNA was present on drink containers in the room. Investigator Fuller testified that he directed officers to review all of the surveillance footage between the time Defendant left and when the victim's body was found and that no one was seen entering or leaving the victim's room after Defendant's departure.

On the morning of March 22, Ms. Combs encountered Defendant at the bus stop, and she testified that he was acting more nervous than usual, falling asleep mid-sentence, and repeatedly talking about the victim's acting "crazy" and asking him to leave. Ms. Combs noted that Defendant had always held the victim in high esteem and had never discussed her in this manner before. Defendant texted the victim on the evening of March

22, asking if she was ok. He also emailed a prospective employer in Nashville on March 24, inquiring about whether they could pay for him to move immediately for the position.

The medical examiner estimated that the victim died between one and a half and two and a half days before she was found on the morning of March 24. The victim died of manual strangulation caused by at least a couple of minutes of significant pressure to her neck; she was undressed from the waist down; she had been restrained by her left wrist and had pulled against the restraint with enough force to cause ligature marks, an abrasion, and a bruise; her right middle and ring fingers had bruised knuckles; she had two abrasions on her forehead; and she had bruises to her left hip and right groin area. Nylon cords and electric cords cut from appliances in the room had been tied together, and the victim's foot appeared to have been tied to a chair using a pillowcase. The victim's cell phone did not send any text messages or make calls after Defendant left her room, and the police discovered that the cell phone's battery had been removed and that the battery compartment had been damaged.

We note that several of Defendant's contentions in his brief are factually incorrect—Investigator Fuller testified that he assigned portions of the lengthy surveillance recording to different officers for review; Mr. Adams testified that he never used restraints on the victim or applied pressure to her neck during sex; Defendant, not the victim, texted multiple people stating that the victim would show them her breasts in exchange for cocaine; and the TBI tested the sperm on the victim's dress and the blood found outside the hotel room, but the DNA sample was either insufficient to make a conclusive profile (the sperm), or unconnected to the victim's room (the blood). Nevertheless, all of Defendant's sufficiency arguments relate to the weight of the evidence and witness credibility. Defense counsel thoroughly cross-examined the State's witnesses regarding each of the pieces of evidence listed on appeal, and the jury, by its verdict, elected to credit the State's theory of guilt. We note that the jury convicted Defendant of a lesser-included offense. It is not the purview of this court to reweigh evidence or substitute our judgment for that of the factfinder. *See Bland*, 958 S.W.2d at 659. Defendant is not entitled to relief on this basis.

Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed.

_____

ROBERT L. HOLLOWAY, JR., JUDGE