IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs at Knoxville May 23, 2023

STATE OF TENNESSEE v. KENNETH BENARD HUDSPETH

Appeal from the Circuit Court for Montgomery County
No. 2019-CR-444 Jill B. Ayers, Judge (motion to suppress)
Robert E. Lee Davies, Judge (trial and post-trial)

No. M2022-00888-CCA-R3-CD

The Defendant, Kenneth Benard Hudspeth, was convicted by a Montgomery County Circuit Court jury of first degree felony murder, second degree murder, and two counts of aggravated rape. *See* T.C.A. §§ 39-13-202(2) (Supp. 1998) (subsequently amended) (felony murder in perpetration of rape); 39-13-210 (1997) (subsequently amended) (second degree murder); and 39-13-205 (1997) (subsequently amended) (aggravated rape). After the appropriate merger, the trial court sentenced the Defendant to life imprisonment plus twenty years. On appeal, the Defendant contends that (1) the evidence is insufficient to support his convictions, (2) the trial court erred by denying his motion to suppress his police statement, and (3) the court erred by ordering consecutive service of his sentences. We affirm the judgments of the trial court.

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

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and J. ROSS DYER, J., joined.

John D. Parker, Franklin, Tennessee, for the Appellant, Kenneth Benard Hudspeth.

Jonathan Skrmetti, Attorney General and Reporter; Brooke A. Huppenthal, Assistant Attorney General; Robert J. Nash, District Attorney General; Arthur F. Bieber, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The Defendant's convictions relate to the October 28, 1996 sexual assault and homicide of a neighbor. The trial began nearly twenty-five years later on September 20, 2021.

Jeff Pennington testified that, in 1996, he and his family owned and lived at Sunnydale Mobile Home Park (Sunnydale), which no longer existed at the time of the trial. He said he worked in the office, performed routine maintenance, and collected rent payments. He recalled that at the time of the homicide, the victim lived at lot forty-five in Sunnydale and that he went to her home twice. Mr. Pennington said that he knocked on the victim's door in the morning, that nobody answered, and that he heard the television from inside when he and an employee returned later in the afternoon. He thought he might have returned around 1:00 p.m. but was uncertain. Mr. Pennington said that he retrieved a key to the victim's home, went inside, and found the victim's naked body lying on the floor near the sofa. A photograph of the victim's body as Mr. Pennington found her was received as an exhibit. The photograph reflects that the victim's body lay on the floor near the sofa, that her legs were apart, that a bra lay near her feet, and that blood was on her face and neck.

Retired Clarksville Police Crime Scene Officer Gary Hodges testified that he processed the crime scene. He identified photographs of the victim and the home, which were received as exhibits. The photographs, in relevant part, reflected a knife with hair on it, the contents of a trash can, a bra with an unknown stain, two Budweiser beer bottles, an ashtray containing cigarette butts, one Busch beer can, and a sofa cushion with torn fabric. Mr. Hodges said the knife was found inside the trash can. The items in the photographs were received as exhibits, along with carpet samples and a pillow from where the victim had been found.

Retired Clarksville Police Detective Cheryl Anderson testified that she responded to the crime scene and that she canvassed the neighborhood and a nearby neighborhood. She said that the Defendant's name never arose during her investigation, which ended when she retired in 2017.

On cross-examination, Ms. Anderson testified that she was present for the autopsy and that she asked the medical examiner to look for hair evidence on the victim's body. She recalled that hair was recovered. She interviewed several people during her investigation and said that "everyone [was] a suspect" in this case, including everyone who lived at Sunnydale. On redirect examination, she stated that a rape kit was performed during the autopsy. Although she did not recall the results, she believed the victim had been sexually assaulted based upon the position of the victim's body.

Tennessee Department of Health Chief Medical Examiner Adele Lewis, an expert in forensic pathology, testified that Dr. Charles Harlan performed the 1996 autopsy but that she reviewed the autopsy materials. Dr. Lewis stated that Dr. Harlan concluded that the victim's cause of death was suffocation by a pillow and that the manner of death was homicide. Dr. Lewis said that the victim's neck sustained superficial incisions or cut wounds and that the wounds could have been caused by the knife recovered from the trash

can. The toxicology report showed that the victim's blood alcohol concentration was 0.043, and the victim measured five feet, two inches and weighed 138 pounds. Dr. Lewis concluded that the victim's cause of death was "homicidal violence, just taking into account the entirety of the scene and the fact that . . . a person can be suffocated without any real physical evidence of that. But it certainly is consistent with her having been suffocated." She determined the manner of death was homicide. She said that the records she reviewed did not contain "anything definitive" to determine that the victim had been raped but that she concluded the victim had been raped based upon "the circumstances and with the statements and things[.]"

Dr. Lewis testified that Dr. Harlan's report did not state that the victim had been raped. Dr. Lewis said, though, that rape was not a determination that could be made during an autopsy because rape was not a cause or manner of death. She said that although Dr. Harlan's report did not indicate any vaginal tearing, an examination did not have to reveal "any demonstrable, visible injury to conclude that someone was raped." After reviewing a crime scene photograph of the victim's body, Dr. Lewis said that the victim's being nude with sperm inside her vaginal area, cut wounds to the neck, and suffocation by a pillow "could be clues that . . . there was an element of nonconsensual sex going on in this scene."

Mark Squibb, an expert in forensic biology, testified that he analyzed the evidence in this case for the presence of semen and DNA near the time of the offenses. He said that DNA profiles were obtained from the vaginal swabs and the knife. He said that the victim's blood was found on the knife blade. He said that semen was found on the bra and that a DNA profile was obtained. He said that two cigarette butts contained saliva and DNA from the same person and that the profiles did not match the victim's profile. He said that five cigarette butts reflected the victim's saliva and DNA. He said that he compared the DNA profile obtained from the two cigarettes with the DNA profile found on the vaginal swabs and that the profiles were consistent with their being from the same person.

Mr. Squibb testified that his analysis of the pillow and pillowcase showed that the items were negative for semen but positive for the victim's blood. He said that his analysis of the carpet samples indicated the presence of blood consistent with that of the victim but that the analysis did not indicate the presence of semen. He said that he was provided five to ten DNA samples from known persons with which to compare to the evidence and that each person who provided a sample was excluded as a contributor. He recalled that ten people, including Wayne Campbell and Darrell Black, were excluded as having been the source of the DNA found on any of the evidence. Mr. Squibb clarified that the items containing DNA evidence consistent with that of the victim were the knife, two pieces of carpet, and five cigarette butts. He said that the items containing DNA from an "unknown donor" were the bra, two cigarette butts, and the vaginal swabs.

Mr. Squibb testified that he was provided a shirt belonging to Mr. Campbell, that blood was present on the cuffs and forearms of the sleeves, and that a DNA profile was obtained from the blood. Mr. Squibb said that a mixture of blood was found on the shirt but that he was unable to attribute it to one person. He said that it was possible the victim's blood could have been included in the mixture. He did not know the shirt's location at the time of the trial but said that with the advancements in DNA analysis since 1996, it was possible he could have analyzed the blood again. Mr. Squibb said Mr. Campbell provided the shirt for analysis on April 4, 1997. Mr. Squibb agreed that the Defendant's DNA was not found on the carpet samples. Mr. Squibb said that he only analyzed the tip of the knife blade for DNA evidence and that the handle was analyzed for latent fingerprints by a different forensic scientist.

Mr. Squibb testified that in the 1990s, crime laboratories did not analyze evidence for the presence of skin cells but that the analysis could be performed now. He did not know if the pillow had been analyzed for skin cells. He could not determine if the Defendant's DNA was present on the pillow and pillowcase because the Defendant's DNA was not submitted to him at the time of the analyses. On redirect examination, Mr. Squibb stated that Mr. Campbell was excluded as a contributor to the DNA found on the vaginal swabs, the bra, and two cigarette butts.

Gloria Perry testified that her sister was Michelle Hughes, who had been in a romantic relationship with the Defendant "at some point." Ms. Perry said that she lived in Clarksville during the late 1990s and that Ms. Hughes and her children, who lived in Arkansas, came to live with her in late 1996 or early 1997. Ms. Perry said that around Christmas 1997, Ms. Hughes returned to Arkansas and that Ms. Hughes returned to Clarksville with the Defendant. Ms. Perry said that Ms. Hughes and the Defendant rented a home at Sunnydale where the victim lived.

Tennessee Bureau of Investigation (TBI) Forensic Scientist Michael Turbeville, an expert in forensic biology, testified that in 2005, he reexamined the DNA evidence initially analyzed by Mr. Squibb near the time of the homicide because of advancements in DNA technology. Mr. Turbeville said that he examined the vaginal swabs, a swatch of the victim's blood, and a cigarette butt.

Mr. Turbeville identified a February 13, 2019 Combined DNA Index System (CODIS) report that reflected the Defendant was a potential match to DNA evidence in this case. Mr. Turbeville stated that in March 2019, he reexamined the bra and two cigarette butts found in the living room and that a partial DNA profile on the bra was consistent with the DNA profile from the vaginal swab. He said that a partial DNA profile was found on one of the cigarette butts and that the partial profile was consistent with the DNA profile from the vaginal swab and bra.

Mr. Turbeville testified that in April 2019, he performed the Y insertion-deletion marker test on a DNA sample provided by the Defendant. Mr. Turbeville compared the Defendant's DNA profile to the partial profile from the vaginal swabs and concluded that the partial profile from the swabs was consistent with the Defendant's profile. Mr. Turbeville concluded that the probability of randomly selecting an unrelated individual who had been included as a contributor of the profile was greater than the current world population, which was nearly eight billion people. He concluded that the Defendant's DNA was in the sperm fraction. Mr. Turbeville likewise compared the Defendant's profile to the partial profile on the cigarette butt and concluded that the partial profile was consistent with the Defendant's profile. Mr. Turbeville concluded that the probability of randomly selecting an unrelated individual who had been included as a contributor of the profile was greater than the current world population.

Mr. Turbeville testified that in May and June 2019, he analyzed the knife and pillow from the crime scene. He concluded that the victim's DNA was on the knife blade, which he confirmed in a subsequent analysis in August 2019. He stated that although a limited profile was obtained from the pillow, the analysis was inconclusive.

Mr. Turbeville concluded that the Defendant's DNA was on the vaginal swabs and the bra and that no other male contributor's DNA was on either item.

On cross-examination, Mr. Turbeville testified that the limited DNA found on the knife handle was most likely skin cells and that he could not determine whose DNA was on the handle. He did not analyze the hairs found on the knife blade. He agreed that at least two DNA contributors were found on the pillow, that one contributor was male, and that the analysis was inconclusive. He agreed that no evidence from the pillow indicated the Defendant touched it. Mr. Turbeville said semen was not found on the anal swab.

Upon examination by the trial court, Mr. Turbeville testified that sleeping on a pillow would leave behind epithelial cell DNA. He agreed that it was possible using a pillow to suffocate a person would leave behind skin cell DNA but that it depended on the duration the pillow was in contact with facial skin. He explained that DNA broke down due to time, heat, and humidity and that he analyzed the pillow twenty-three years after the victim's death. He said that blood and semen samples broke down over time, as well, but that the process was slower.

Clarksville Police Sergeant Michael Ulrey testified that in February 2019, he was a "cold case" detective and that he began his investigation after receiving a TBI report, which indicated the Defendant was a possible DNA match in this case. Sergeant Ulrey said that he learned the Defendant had an Arizona driver's license and lived in Phoenix, that he contacted the Phoenix Police Department for assistance, and that he traveled to Phoenix to obtain the Defendant's DNA pursuant to a court order.

Sergeant Ulrey testified that he was familiar with Wayne Campbell and the shirt provided by Mr. Campbell. Sergeant Ulrey said that Mr. Campbell had been eliminated as a suspect, along with more than a dozen people, and that the shirt was provided six months after the victim's death. Sergeant Ulrey said that, as a result, he determined the shirt did not have probative value.

Sergeant Ulrey testified that on April 16, 2019, he obtained the Defendant's DNA and interviewed the Defendant in Phoenix, that the Defendant consented to the interview, that the Defendant was read his *Miranda* rights, that the Defendant read silently the *Miranda* warning, and that the Defendant signed the waiver of rights form. Sergeant Ulrey recalled that the interview began around 4:40 p.m. and said that the Defendant did not invoke his constitutional rights. Sergeant Ulrey said that he showed the Defendant a photograph of the victim taken at an unspecified time before the homicide, that the Defendant recognized the victim from Sunnydale where the homicide occurred, and that the Defendant admitted he and the victim had smoked crack cocaine one evening. Sergeant Ulrey recalled that he and the Defendant "got along just fine," that the Defendant answered questions, and that they had "a very good conversation."

A video recording of the three-hour interview was received as an exhibit and played for the jury. In the recording, Sergeant Ulrey as a detective informed the Defendant of the court order authorizing him to obtain a DNA sample, and the Defendant asked multiple times for the detective to explain why the detective wanted to speak with him. The detective read the Defendant his *Miranda* rights, and the Defendant said he understood his rights and signed the waiver of rights form. The detective asked about the Defendant's time in Clarksville, and the Defendant responded that it had been "awhile" and that his children were young when he was there. The Defendant stated that in the late 1990s, his family moved to Clarksville because his then-wife, Ms. Hughes, had family there, that they stayed with his brother-in-law initially, and that they later moved to a mobile home park and an apartment, respectively. He said that they only lived at one mobile home park, which he initially thought was Belleglade. He described the neighborhood as being "pretty bad" because a shooting occurred "right beside your window." He said that they stayed at Sunnydale for a couple of days before moving to Belleglade. He was ultimately uncertain about which mobile home park they lived. He complained that it was hot inside the interview room, and the detective agreed and suggested the Defendant remove his "sun cap." The Defendant agreed that removing the cap might help.

The detective informed the Defendant that the detective was investigating a 1996 homicide that occurred at Sunnydale. The Defendant said that in 1996 he smoked crack cocaine and that "we" lived in a home for about two months before moving to an apartment. He thought, but was uncertain, that he and his family stayed for a couple of days at another mobile home park before moving to Belleglade. He recalled purchasing crack cocaine

from a man who also lived at Belleglade. The Defendant said he had been sober for twelve to fifteen years.

The Defendant stated that he did not know why the detective wanted to speak with him about a 1996 homicide and that he was "freaked out." The detective told the Defendant that the detective was not trying to make the Defendant any more nervous and that he was "just sitting . . . [and] talking to you, partner." The detective said he would not raise his voice or do anything to make the Defendant uncomfortable. The Defendant said he would help the detective as much as he could. When asked if the victim's name meant anything, the Defendant said, "No." The Defendant said that he remembered the victim and thought that it was possible he smoked crack cocaine with her. He said the victim looked familiar after reviewing her photograph.

After reviewing the photograph, the Defendant said that "everything comes to me." He said he knew the victim's home. He said that a man, whose name he could not recall but thought was called "Black," took him to the victim's home and introduced him to the victim, that he bought "dope" from the man, and that they smoked crack cocaine inside the victim's home. The Defendant said this was the only time he used drugs with the victim.

The Defendant said that the victim lived at Sunnydale and that the man took him to the victim's home after work. The Defendant said later, though, that the man was already at the victim's home when he arrived and that the man provided him with directions. The Defendant recalled that at this time, his employer paid him daily in cash and that he looked for "dope" after work. The Defendant said that the man "hung around" the neighborhood all the time and "work[ed] the neighborhood." The Defendant said that when he arrived at the victim's home, the man opened the backdoor. The Defendant recalled that his home was not far from the victim's home, that her home was one to four homes down the street from his home, and that he lived at Sunnydale for a very short time because "they was doing the shooting and killing." He said that the victim's home was on the right and that his home was on the left.

The Defendant stated that he went inside the victim's home after the man opened the backdoor. The Defendant said he had never seen the victim previously, and he recalled he had only been at Sunnydale for a few days. The Defendant explained that he remembered the victim because she was the only "white girl" to whom he spoke at Sunnydale. The Defendant said that after he entered the victim's home, he gave the man $40 in exchange for crack cocaine, that he placed a piece of the drug inside his pipe, and that he "hit it and was high almost. That's it for me." The Defendant said that the three of them sat in the living room, that nobody else was there, and that the victim used his pipe to smoke drugs. The Defendant said that, at some point, he went home to determine if his wife were there and that he returned to the victim's home to "finish my crack" when he learned his wife was not home. The Defendant said he went home because he did not want

to "get caught . . . not being at the house after work." He said that the victim wanted him to return to her home because she wanted to smoke more drugs, that the man was gone when he returned, that he and the victim smoked more drugs, and that he left. He said this was "the only time I saw her, one, two, maybe a couple of times just like seeing her like that. But that's the first time I met her[.]"

The Defendant said that he smoked cigarettes in the 1990s but that he could not recall if he smoked cigarettes inside the victim's home. He recalled drinking Budweiser beer while there. He said that he and the victim never had sex, although he "wanted to mess with her." When asked if he "propositioned" the victim, the Defendant said, "Oh, I mean, yeah, of course." He recalled that the victim "didn't say, no," and said that he "couldn't do it right then, but [the victim] wanted me to find some more dope." He said he went home and did not return to the victim's home. He said he and his family moved out of Sunnydale about a week later, at which time his wife mentioned to him that a homicide occurred there. He conceded that he could have moved three or four days later.

The Defendant denied ever having sex with the victim and asked what happened to her. The detective told the Defendant that the victim was dead. Upon learning of the victim's death, the Defendant said that he "didn't want . . . [to] hear that, but I had to ask." The Defendant asked, "And I did it?" The detective replied, "You tell me," and the Defendant stated, "No, sir. Don't . . . do that. I watch too much T.V." When the detective pressed the Defendant to provide additional information about the night he met the victim, the Defendant requested water. The Defendant realized that the previously provided water belonged to him. The detective explained that he had been a homicide detective for ten years and had been a police officer for seventeen years and that he knew people "get caught up in s--- . . . when they're doing drugs." The Defendant said he did not remember having sex with the victim and said, "We didn't have no sex." The detective said, "Now, listen, I'm here to tell you, you had sex with the girl." The Defendant denied having sex with the victim, and the detective told the Defendant to be honest. The detective showed the Defendant a photograph of the victim from the crime scene and stated, "She's in a f----- up position, is she not?" The Defendant agreed but denied any involvement in her death. The detective asked, "Would you not agree, looking at that, whoever was f------ this girl killed this girl?" The Defendant said he would agree but denied any involvement.

The detective told the Defendant that his DNA was found in the victim's vagina and asked, "And you know that, don't you?" The Defendant said, "Yeah, but I mean, it was -- I just don't want no part of that." The Defendant agreed that he had been at the victim's home but stated that something else happened to the victim because he and the victim were "just getting high. . . . I didn't do that. I know that part. I didn't do this." When the detective stated that the Defendant's semen was in the victim's vagina, the Defendant repeatedly insisted that he did not recall having sex with the victim. When confronted

again with his semen being on the victim, he said, "Okay. . . . I was smoking crack, but I don't remember having sex . . . with her."

The Defendant stated that the victim smoked "dope," too. When the detective informed the Defendant that the victim's toxicology analysis was negative for cocaine, the Defendant responded, "Oh, Jesus." He maintained that the victim smoked drugs and said that he was telling the truth. He said that he finished smoking crack cocaine and left the victim's home. The Defendant complained of being hot, removed his shirt, and said, "Lord have mercy. This girl is dead. . . . And I'm in the middle of it." He denied killing the victim. The detective asked the Defendant if it were possible "this happened" but he did not remember it, and the Defendant responded, "I was doing the dope bad, but . . . I'm trying to help you, sir." The Defendant agreed that the person who killed the victim was having sex with her. The detective stated that only the Defendant's semen was on the victim, and the Defendant said, "Wow. . . . I don't know what to tell you, man." The detective said that he wanted to know "the why," and the Defendant said that he could not tell the detective why and that he did not remember "this." The Defendant stated that "it could be so f----- up that where you don't remember." When the detective asked if the Defendant meant that he could "have been so f----- up as you had sex with this girl and killed her," the Defendant said he did not kill the victim. The Defendant said that it was possible he had been to the victim's home more than once but that he did not kill the victim. The detective said the person who killed the victim was not a monster, and the Defendant said he did not remember "doing this." The Defendant said that he did not "know what the truth is myself" but that he did not kill the victim. He said that even if he had sex with the victim, he did not kill her. When the detective asked the Defendant to tell him what to believe, the Defendant said that the detective should believe the Defendant "did it . . . with what you're telling. I mean, the semen inside of her." The detective stated that although the Defendant could recall events on the night of the victim's death, the Defendant could not recall "when it comes down to the part where she was --." The Defendant interjected, "[r]aped and murdered. That wasn't me." The detective said that he had not mentioned rape, and the Defendant said, "I mean, this is rape. You don't have to say it."

The Defendant stated, "I guess we had sex . . . I don't remember having sex with her. Wow. I just don't know." When asked, again, if he had been too intoxicated by the drugs to remember raping and killing the victim, the Defendant said, "I just don't see myself raping and killing this woman. I don't. I pray that I didn't. I hope I didn't." He agreed that he could not state with any certainty that he did not rape and kill the victim because of the presence of his semen but said that he knew he did not "do this. I mean, I pray to God I didn't . . . do it anyway." When the detective accused the Defendant of rape, the Defendant said, "Even if we did have sex, why does it have to be rape?" Although the photograph of the victim at the scene led the Defendant to believe the victim had been raped, he said he was not stating he "did it." The Defendant did not think someone had

"planted" his semen and said he "obviously . . . had sex with her." He maintained, though, that he did not recall having sex with her.

The detective said the Defendant's stating that the victim smoked crack cocaine, that his not recalling having sex with her, and his claiming he did not kill the victim was "bulls---." The Defendant said that he did not recall but that he did not "want to know that I did this here and can't own up to it. But I don't want to . . . remember this." He said he was "f----- up bad" and that he was "always chasing" drugs. He said the drugs in Tennessee were "stronger" than the drugs in Arkansas. He said, "I just don't know if I did it or not. How about that?" He said, though, he could not admit to raping and killing the victim because he did not know if he had. He said that the detective's evidence made him "feel like I'm guilty" but that he did not know.

The detective stated that the Defendant's moving quickly after the victim's homicide implicated him in the crimes. The Defendant said, though, that he and his family were moving from Sunnydale before the victim's death. He said that he wished he had the opportunity to rest before speaking with the detective because his brain was not "working right" after having been awake all night cleaning and undergoing an inspection at work. He said that he "might be saying things that might be f------ me up." He said later during the interview, "And if I did that, God forgive me."

The Defendant stated that a couple of weeks after the victim's death, the man from whom the Defendant had bought drugs on the night of the offenses told the Defendant that the police questioned the man. The Defendant said that at this time, he and his family had already moved from Sunnydale. He said, though, he returned to Sunnydale to purchase and to use drugs.

The detective said that the Defendant was the last person to see the victim alive, but the Defendant said, "I don't know that part." The detective said he wanted to give the victim's family closure but could not discuss leniency because "we don't have a why here." The detective said that if the Defendant were "not remorseful, you just ain't remorseful." The Defendant responded, "[I]f I did it, I would be remorseful, you know what I'm saying?"

The detective asked if the Defendant had any "stressors" in his life that "could have gotten [the Defendant] hopped up on drugs and done something like . . . this to happen." The Defendant denied having any stressors and anger issues toward women. The detective told the Defendant that the victim was suffocated with a pillow and asked if the Defendant's DNA would be on the pillow. The Defendant said that he did not know because he had been inside the victim's home. He said that if he returned to the victim's home to have sex, he did not kill her. He said that he did not remember "if he did or not. That's what's

f----- up about it." He said that if he had raped and killed the victim, he would have remembered it.

The Defendant stated that he was trying to help the detective but that he was "really sorry." He said that "I want to give -- it's my heart that's going to live with it. . . . So I don't want my . . . heart to hurt." He continued that he wanted to "make sure before I let something come out of my mouth, my mind is working; what did you do this for. And I'm thinking. I'm trying to find it." He said that his mind was telling him that he was unsure if he "did this. It's not telling me I did it. It's not telling me I didn't do it." He said, "I don't have a fifth grade education, and I'm trying [to] get it all in and see." He said he was not "smart enough to be even sitting here dealing with this." He said that he did not think having sex with someone would lead to a murder accusation and that the victim had "all kinds of people in and out" of her home. He said, though, he did not know the identity of these people.

The Defendant stated that he returned to the victim's home at 7:00 or 8:00 p.m. on the night of the homicide and that it was dark outside. He said that he should have slept if he had known he would be talking to the detective because he was tired. He said his head was "hurting, banging trying to get it together. I had no idea I may have killed her." He said that if he had killed the victim, "there's no way I could have lived with myself all these years." The Defendant did not deny having sex with the victim but denied raping and killing her. However, he later said that he did not remember having sex with her and that he knew they did not have sex.

When the detective asked the Defendant what the detective should do, the Defendant said, "Kill me. Lock me the f--- up. I mean . . . I don't know if I did this. . . . It's all bad. It's hard to tell you what to do. I don't know. . . . I don't know if I'm truthful." He said that he did not kill the victim but that he thought he "did so much other s---. . . . I think I did so much other s--- that implicates me and got me in this right here."

The detective left the interview room. Afterward, when the Defendant was alone, he stated, "Oh, s---. This is some bulls---. Twenty-three years of smoking crack and I got a murder charge and I don't know s--- about it. Oh, f--- it. I should have never been in that b---- house. I'm tired of living my life anyway. It's stressful. D---, I don't even remember that s---. I'm trying to give them something. I don't f------ know. I don't even know I was f------ there. This is crazy."

The Defendant was asleep when the detective returned to the interview room. The detective arrested the Defendant. The Defendant said that "it is what it is" but that he did not kill the victim. The detective said that the Defendant needed to explain it, and the Defendant stated that he did not know how to explain it because he did not remember everything that happened that night. The detective said that there had to be some kind of

rage built up in the Defendant. The Defendant, though, denied feeling any rage. He said he did not know if he wanted to ask the victim to have sex with him.

The detective asked the Defendant if he had ever put a knife to his former wife's neck, and the Defendant said he had not put a "knife to women. I didn't do it, no." The Defendant asked how the victim died, and the detective said the victim was suffocated. The Defendant said he "had to ask" because he did not know. The detective suggested that the Defendant propositioned the victim for sex, that the victim declined, that the Defendant became enraged, that the Defendant was high on drugs, and that he raped the victim. The Defendant said that was what the detective "came up with" and that, as a result, the Defendant was facing a murder charge.

The detective left the interview room, again, and the Defendant spoke aloud. He said, "I just have to figure it out. I'm a dumba--, because I don't remember s---. What am I supposed to say to [my girlfriend]? What am I supposed to say? I f----- the girl and I'm never coming back." The detective returned to the interview room and called the Defendant's then-girlfriend in order for the Defendant to tell her that he was being extradited to Tennessee and to tell her about his finances. After the call, the detective wrote telephone numbers from the Defendant's cell phone on paper in order for the Defendant to contact his family while in custody. The Defendant asked to view the crime scene photograph of the victim. When asked why he wanted to view it again, the Defendant said, "It's just . . . the way she's laying there. . . . I would remember this. I mean, it is what it is, man, but . . . it's not there. I just want to see." The Defendant said that he had changed as he had aged, that he was not the same person he was twenty-five years ago, and that he had "strength" and was probably "a lot meaner, a lot rougher . . . but, yeah, you change as you get older." He said he had been in Phoenix for about two years.

The Defendant stated that he smoked crack cocaine in Arkansas before moving to Clarksville and that his then-wife suspected he used drugs, although he attempted to conceal it. He said he stopped using drugs fourteen years before the interview.

Sergeant Ulrey testified that the Defendant stated, "I don't remember this," approximately 100 times after being told about the physical evidence. Sergeant Ulrey said that it was "striking" the Defendant recalled minute details, including the amount of money he spent on drugs and how he knew to go to the victim's home, leading up to the time of the rape and murder. Sergeant Ulrey said that the Defendant recalled drinking Budweiser beer and that the same beer bottles were found at the scene. Sergeant Ulrey stated that initially, the Defendant did not recall a murder having occurred at Sunnydale but that he later admitted knowing about the murder because the police had been at Sunnydale and not wanting to be involved in the investigation.

Sergeant Ulrey testified that although the Defendant mentioned he had "blacked out" around the time of the offenses, the Defendant's reported blackout "only consumed the raping and the killing, not before it all and not after it all."

On cross-examination, Sergeant Ulrey testified that the original case file contained approximately 1,500 pages and that the file did not contain any reference to the Defendant. Sergeant Ulrey agreed that the Defendant was only interviewed because of the DNA evidence. Sergeant Ulrey agreed that the original investigation included multiple potential suspects but that he did not recall whether their fingerprints were found inside the victim's home. Relative to the drug dealer the Defendant knew as Black, Sergeant Ulrey stated that Darrell Black had been a suspect during the original investigation. Sergeant Ulrey was unfamiliar with Mr. Black's having pawned a women's gold ring "shortly" after the victim's killing. Sergeant Ulrey said that Mr. Campbell's shirt was not analyzed for DNA by Mr. Turbeville because Mr. Campbell had been excluded as the perpetrator. Sergeant Ulrey agreed that the original analysis was inconclusive as to whose blood was on the shirt.

Sergeant Ulrey testified that his theory was that the person who raped the victim also killed her. He did not dispute the expert testimony that DNA belonging to multiple people other than the Defendant was found on the pillow. Sergeant Ulrey agreed that hairs found on the victim during the autopsy were not analyzed but said that the hairs were in the evidence locker and could have been analyzed. He agreed that although he believed the victim had been raped anally, the Defendant's DNA was not found in the anal cavity. When asked if he knew what occurred inside the victim's home between 8:00 p.m., when the Defendant claimed he went home, and 1:00 p.m. the following day, Sergeant Ulrey said the Defendant reported going home.

Sergeant Ulrey testified that Arizona police officers conducted a traffic stop of the Defendant's vehicle and that the Defendant was brought to the police station for the interview. Sergeant Ulrey did not recall offering the Defendant food and drink and agreed the Defendant fell asleep toward the end of the interview. Sergeant Ulrey agreed that the Defendant reported having been awake all night and having been tired at the time of the interview. Sergeant Ulrey agreed that the Defendant was not free to leave the interview room and said that the Defendant was cooperative, willing to speak throughout the interview, and did not invoke his rights to remain silent and to counsel. Sergeant Ulrey did not believe the Defendant felt intimidated during the interview, based upon the Defendant's body language.

The Defendant testified that in April 2019, two unmarked police cars stopped his vehicle as he drove his then-girlfriend to work. He said that officers pointed their firearms, including an AR-15 assault rifle, at them and that he was scared. He said that he did not know what was happening and that he was at the police station within thirty to thirty-five minutes. He said that he asked the officers why he was in custody and that nobody told

him what was happening. He said that, before his arrest, he had planned to go home and sleep because he was "dead tired" from having been awake for one and one-half days performing maintenance work at an apartment complex.

The Defendant testified that although the detective identified himself as a Clarksville cold case homicide detective, the Defendant did not know initially what case the detective was investigating. The Defendant recalled being scared and nervous and wanting to know why he was being questioned. He said that he recognized the victim in the photograph taken before her death and admitted that he had sex with the victim. He said that during the interview, he denied having sex with the victim because he did not want to be involved, was scared, and did not know what to say. He admitted that he lied because he feared the victim's murder "was going to get turned around" on him. The Defendant admitted he had known the victim had been murdered. He said he had a fifth-grade education and had not obtained a GED.

The Defendant testified that because he had been awake for one and one-half days, he could not "keep up with the detective. . . . Well, he was taking me for a circle. I mean, I was confused. I was lost. I couldn't keep up with him." He said that the officers' pointing firearms at him about thirty-minutes before the interview affected him, that he was "shook up" when he arrived at the police station, that he did not know what was happening, that seven or eight detectives were waiting on him at the police station, and that he was rushed into an interview room. When asked how he remembered the specific brand of beer he drank at the victim's home, he said he drank Budweiser beer for many years and that it was the only beer he drank.

The Defendant testified that during the interview, he was nervous and "all over the place" because he had already lied about having sex with the victim. When asked if his lies "spiraled out of control," he said that his mind was all over the place and that he was out of control. He said he would have remembered killing someone but that by the end of the interview, "I already feel like he maybe feel like I had did it, you know what I'm saying? Made me feel like -- change my words, you know." When asked if he was somehow convinced that he had killed the victim, he said, "There you go. I was somewhat convinced that I had -- was guilty." He said he was nervous, afraid, and confused at the end of the interview.

The Defendant testified that viewing the crime scene photograph of the victim impacted the interview because he knew he had sex with the victim and that the photograph showed the victim in a way he had not known her. He said seeing the victim in that manner made him want to "help in some form, try to give [the detective] something, but . . . I didn't know what to really tell him. I mean, I was really hurting myself more than I was helping myself." When asked why he did not exercise his right to remain silent, the Defendant said "it's not every day you have a gun pointed in your face and pulled out of your vehicle and

rushed into an interrogation room and being questioned. I felt obligated to talk to [the detective]. I mean, I wanted to know what was going on." Regarding his right to counsel, he said "that wasn't running through my mind like that. I didn't know when to ask to stop. . . . I just didn't stop it. I wanted to hear more." He said that, in hindsight, he would have told the truth and asked for an attorney.

The Defendant testified that in October 1996, his daily routine involved waking at 5:30 a.m., leaving for work, returning home around 6:30 p.m., and using crack cocaine. He said that the drugs "wires you up" and "keeps you chasing drugs." He recalled that he saw he victim periodically at Sunnydale and that she asked for cigarettes and beer. He said that he spoke to her previously, that her home was not far from his home, and that he sometimes saw people at her home. He said that on the day he went inside her home, he went to work and returned home around 6:30 p.m., that he looked for "this dude" from whom he could buy drugs, that the man happened to be at the victim's home, that he was invited inside, and that he went inside to buy drugs from the man. The Defendant said he used cocaine at her home and had assumed at the time that the victim used the drugs, too. He admitted he was unsure if the victim used drugs that night because of the passage of time and because of his drug use. He said he "messed with her a little bit and joked a little bit."

The Defendant testified that he gave the man $100 and that he and the victim talked while the man provided him $60 change. The Defendant said that he and the victim had been familiar with each other, waving and speaking periodically, that he gave her cigarettes previously, and that he "propositioned her." He said he returned to the victim's home that night because she asked him to return. He noted he told her that he would give her $60 in exchange for sex. He agreed that he referred to "sneaking" around during the interview but said that he was referring to sneaking around to prevent his then-wife from catching him. He said that he was worried about his then-wife and that he was "trying to get away from the house, go down there and do my dirt and get back home before she got off from work."

The Defendant testified that when he returned to the victim's home, the drug dealer was gone because the victim "had him leave." The Defendant thought he drank a beer, smoked "a joint," and smoked a couple of cigarettes and said that he kissed the victim's neck and that they "messed around." The Defendant said that the victim "got the money first, though, before any of this went down." He said that after he gave her the money, they went to the bedroom to have consensual sex. He said that he did not rape the victim and that she never asked him to stop or to leave. He said that although he knew why his DNA was found on the victim, he did not know how his DNA came to be on her bra. He said that he dressed after having sex, that she still lay in bed when he left her home, that she was alive when he left, and that he went home to "clean up and go to bed." He said that the next morning he left for work at 6:30 a.m. and returned home at 6:30 p.m., at which

time he saw police cars at Sunnydale. He said that initially, he did not know why the police were there but that he learned later "somebody got murdered." He said he learned the following day that the victim had been murdered.

The Defendant testified that he and his family moved to another home within one week, that the move had been planned before the victim's death, and that they moved to another neighborhood or to an apartment. He denied that the move was an attempt to evade the police and noted that the police were not looking for him. When asked why he initially did not admit during the interview that he had sex with the victim, he said he had been awake for days, his mind was not working properly, and he was scared. He said that he did not rape or kill the victim and that he was not involved in her death.

On cross-examination, the Defendant testified that he was age fifty-one but that he was age twenty-six at the time of the offenses. When asked about his statement in the interview that he was meaner and rougher at the time of the offenses, he said he had never been mean in his life. He said he was afraid to tell the truth during the interview and admitted he omitted his interactions with the victim before the offenses. He agreed he deceived the detective in an attempt to "get me out of it."

The Defendant testified that at the time of the offenses, he knew the police questioned Sunnydale residents but said that he did not know DNA samples were obtained from some residents. He said that at the time of his arrest and interview, he had been taking Xanax and smoking marijuana, although he had not used cocaine in fifteen years. He said that the drugs and his being tired impacted his ability to think but that he had since stopped using Xanax and marijuana. He said that he took one Xanax before the interview because he intended to go home and sleep after work. Although the Defendant stated he paid the victim $60 for sex on the night of the murder, he acknowledged the police did not find any money at the scene.

Upon this evidence, the jury convicted the Defendant of first degree felony murder, second degree murder as a lesser included offense of first degree premediated murder, and two counts of aggravated rape. The trial court imposed a life sentence for first degree felony murder, twenty years for second degree murder, and twenty years for each aggravated rape conviction. The trial court merged the second degree murder with the first degree felony murder conviction and merged the aggravated rape convictions. The court ordered the aggravated rape sentence be served consecutively to the life sentence, for an effective sentence of life imprisonment plus twenty years. This appeal followed.

I. Sufficiency of the Evidence

The Defendant contends that the evidence is insufficient to support his convictions. The State responds that the evidence is sufficient.

In determining the sufficiency of the evidence, the standard of review is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007). The State is "afforded the strongest legitimate view of the evidence and all reasonable inferences" from that evidence. *Vasques*, 221 S.W.3d at 521. The appellate courts do not "reweigh or reevaluate the evidence," and questions regarding "the credibility of witnesses [and] the weight and value to be given the evidence . . . are resolved by the trier of fact." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *see State v. Sheffield*, 676 S.W.2d 542, 547 (Tenn. 1984).

"A crime may be established by direct evidence, circumstantial evidence, or a combination of the two." *State v. Hall*, 976 S.W.2d 121, 140 (Tenn. 1998); *see State v. Sutton*, 166 S.W.3d 686, 691 (Tenn. 2005). "The 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)).

"The identity of the perpetrator is an essential element of any crime." *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006). Circumstantial evidence alone may be sufficient to establish the perpetrator's identity. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002). The identity of the perpetrator is a question of fact for the jury to determine. *State v. Thomas*, 158 S.W.3d 361, 388 (Tenn. 2005). "The jury decides the weight to be given to circumstantial evidence, and '[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt[.]'" *Rice*, 184 S.W.3d at 662 (quoting *Marable v. State*, 313 S.W.2d 451, 457 (Tenn. 1958)).

A. Aggravated Rape

The Defendant was convicted of two counts of aggravated rape as alternative theories of the offense. As relevant to this appeal, aggravated rape is defined as the

> unlawful sexual penetration of a victim by the defendant . . . accompanied by any of the following circumstances:
>
> (1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon; [or]
>
> (2) The defendant causes bodily injury to the victim[.]

T.C.A. § 39-13-502(a)(1), (2). "'Sexual penetration' means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's, the defendant's, or any other person's body, but emission of semen is not required[.]" *Id*. § 39-13-501(7) (1997) (subsequently amended). "'Bodily injury' includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty[.]" *Id*. § 39-11-106(a)(2) (Supp. 1995) (subsequently amended).

In the light most favorable to the State, the record reflects that the victim's naked body was discovered inside her home where she and the Defendant had been the previous night. The Defendant admitted he had a sexual encounter with the victim. The Defendant's DNA was found on the vaginal swabs, the victim's bra, and two cigarette butts. The victim lay naked on the living room floor with her legs apart and her genitals exposed, her bra near her feet, and blood on her face and neck. Carpet where the victim lay contained the victim's blood. She sustained superficial cuts to her neck, and a knife found inside the home contained the victim's blood. Dr. Lewis concluded that the victim suffered homicidal violence and that the evidence was consistent with the victim's having been suffocated with a pillow. The victim's blood was found on the pillow. Although the medical records did not contain a definitive determination that the victim had been raped, such a conclusion is not a determination to be made during an autopsy because rape is not a cause or manner of death. In any event, Dr. Lewis concluded that the victim's having been found naked with sperm inside her vaginal area, cut wounds to the neck, and suffocation by a pillow were circumstantial evidence of "an element of nonconsensual sex." Based upon this evidence, a rational jury could have found beyond a reasonable doubt that the Defendant sexually penetrated the victim without her consent. In reaching this conclusion, we have considered the Defendant's account of having had consensual sexual intercourse with the victim and his denial of killing the victim. The jury rejected the Defendant's testimony in favor of the State's evidence demonstrating his identity as the perpetrator of an aggravated rape. We may not invade the province of the jury as the trier of fact. *See Bland*, 958 S.W.2d at 659. Further, the jury could have found beyond a reasonable doubt that the Defendant accomplished the act by use of force and with a deadly weapon, a knife, and that the Defendant caused bodily injury upon the victim. The evidence is sufficient to support the Defendant's aggravated rape convictions. The Defendant is not entitled to relief on this basis.

B. First Degree Felony Murder

As relevant to this appeal, first degree felony murder is defined, in relevant part, as the "killing of another committed in preparation of or attempt to perpetrate any . . . rape[.]" T.C.A. § 39-13-202(a)(2). A culpable mental state is not required for a conviction, except the intent to commit the underlying felony. *Id*. at (b).

As we have discussed, the State presented sufficient evidence of the Defendant's guilt of aggravated rape. The evidence also shows that the victim died of suffocation and that it occurred at the time of a rape. A rational jury could have found beyond a reasonable doubt that the Defendant was guilty of first degree felony murder in the perpetration of a rape. The evidence is sufficient to support the first degree felony murder conviction. The Defendant is not entitled to relief on this basis.

C. Second Degree Murder

Second degree murder is defined as a knowing killing of another. T.C.A. § 39-13-210(a)(1); *see id.* § 39-11-106(a)(20) ("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[.]") (Supp. 1995) (subsequently amended). Second degree murder is a result-of-conduct offense. *State v. Page*, 81 S.W.3d 781, 787 (Tenn. Crim. App. 2002). Therefore, a person acts knowingly "when the person is aware that the conduct is reasonably certain to cause the result." T.C.A. § 39-11-302(b) (2018). "[T]he 'nature of the conduct' that causes death is inconsequential." *Page*, 81 S.W.3d at 787. A knowing intent is shown if the defendant acts with an awareness that his conduct is reasonably certain to cause the victim's death. *See id.* at 790-93.

In the light most favorable to the State, the record reflects that during the perpetration of a rape, the Defendant used a knife to inflict wounds to the victim's neck and, ultimately, used a pillow to suffocate the victim resulting in her death. Dr. Lewis concluded that the victim sustained homicidal violence and that the evidence was consistent with the victim's having been suffocated with a pillow. The victim's blood was found on the pillow. The act of using a pillow to deprive a person of oxygen is reasonably certain to cause death. The evidence is sufficient to support the second degree murder conviction. The Defendant is not entitled to relief on this basis.

II. Suppression

The Defendant contends that the trial court erred by denying his motion to suppress his police statement. He asserts that he did not knowingly, intelligently, and voluntarily waive his *Miranda* rights because of the lack of sleep. He argues that he did not understand the consequences of his decision to continue the interview. The State responds that the trial court did not err by denying the Defendant's motion to suppress because his statement was knowing and voluntary.

A trial court's findings of fact on a motion to suppress are conclusive on appeal unless the evidence preponderates against them. *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996); *State v. Jones*, 802 S.W.2d 221, 223 (Tenn. Crim. App. 1990). Questions about the "credibility of the witnesses, the weight and value of the evidence, and resolution of

conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *Odom*, 928 S.W.2d at 23. The prevailing party is entitled to the "strongest legitimate view of the evidence and all reasonable and legitimate inferences that may be drawn from that evidence." *State v. Keith*, 978 S.W.2d 861, 864 (Tenn. 1998); *see State v. Hicks*, 55 S.W.3d 515, 521 (Tenn. 2001). A trial court's application of the law to its factual findings is a question of law and is reviewed de novo on appeal. *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997). In reviewing a trial court's ruling on a motion to suppress, this court may consider the trial evidence as well as the evidence presented at the suppression hearing. *See State v. Henning*, 975 S.W.2d 290, 297-99 (Tenn. 1998); *see also State v. Williamson*, 368 S.W.3d 468, 473 (Tenn. 2012).

The Fifth Amendment of the United States Constitution, which applies to the states via the Fourteenth Amendment, provides that "no person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. Similarly, Article I, section 9 of the Tennessee Constitution states that "in all criminal prosecutions, the accused . . . shall not be compelled to give evidence against himself." Tenn. Const. Art. I, § 9. "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); *see State v. Northern*, 262 S.W.3d 741, 763 (Tenn. 2008). To be considered voluntary, a statement must not be the product of "any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence." *State v. Smith*, 42 S.W.3d 101, 109 (Tenn. Crim. App. 2000) (quoting *Bram v. United States*, 168 U.S. 532, 542-43 (1897)). A defendant's subjective perception is insufficient to establish the existence of an involuntary confession. *Id*. The essential inquiry is "whether the behavior of the State's law enforcement officials was such as to overbear [the defendant's] will to resist and bring about confessions not freely self-determined [.]" *State v. Kelly*, 603 S.W.2d 726, 728 (Tenn. 1980) (quoting *Rogers v. Richmond*, 365 U.S. 534, 544 (1961)). A confession is involuntary if it is the product of coercive state action. *See, e.g.*, *Colorado v. Connelly*, 479 U.S. 157, 163-64 (1986). "The State has the burden of proving 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 is voluntary, a trial court examines the totality of the circumstances, which encompasses "both the characteristics of the accused and the details of the interrogation." *State v. Climer*, 400 S.W.3d 537, 568 (Tenn. 2013) (quoting *Dickerson v. United States*, 530 U.S. 428, 434 (2000)). Relevant circumstances include the following:

> [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.

State v. Huddleston, 924 S.W.2d 666, 671 (Tenn. 1996) (quoting *People v. Cipriano*, 429 N.W.2d 781, 790 (Mich. 1988)).

At the suppression hearing, Sergeant Michael Ulrey testified that in February 2019, the TBI notified him that there had been a "CODIS hit" from the victim's vaginal swab and that he arranged to interview the Defendant in Phoenix, Arizona, and to execute a search warrant to obtain the Defendant's DNA. Sergeant Ulrey stated that the interview began at approximately 4:30 p.m. on April 16, 2019, after the Defendant was apprehended by local law enforcement officers. A video recording of the interview was received as an exhibit. Sergeant Ulrey stated that he read a *Miranda* waiver to the Defendant, that the Defendant agreed to speak with him, and that the Defendant signed the waiver of rights form, which was received as an exhibit and reflects as follows:

> Before we ask you any questions, you must understand your rights.
>
> You have the right to remain silent.
>
> Anything you say can be used against you in court.
>
> You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.
>
> If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.
>
> If you decide to answer any questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

The waiver form, likewise, reflects that the Defendant signed it on April 16, 2019, at 4:40 p.m.

Sergeant Ulrey testified that the Defendant did not "indicate" that he wanted an attorney during the interview or that he did not want to answer questions. Sergeant Ulrey

stated that the Defendant's demeanor was "fine" and that the Defendant talked openly and wanted to help the investigation. Sergeant Ulrey said the Defendant wanted to cooperate and described the interview as a "very casual conversation."

Sergeant Ulrey testified that during his nine-year-career as a police officer, he had learned the characteristics of an impaired person. He said that the Defendant did not appear impaired and that the Defendant did not state during the interview that he had recently been intoxicated or used narcotics. Sergeant Ulrey recalled that the Defendant stated he had stopped using drugs. Sergeant Ulrey said that the Defendant provided appropriate answers to questions asked of him and asked appropriate questions about the case.

Sergeant Ulrey testified that the Defendant's version of events of the night of the homicide was that he went to the victim's home to buy drugs from a drug dealer, that he and the victim smoked crack cocaine, that he went home to find out if his wife had arrived home, and that he returned to the victim's home after learning his wife was not home. Sergeant Ulrey said that the victim was alone when the Defendant returned to the victim's home but that the Defendant denied having sex with the victim. Sergeant Ulrey said that after the Defendant's denial, he showed the Defendant the CODIS report, which reflected the Defendant's DNA was on the vaginal swabs. Sergeant Ulrey said that the Defendant continued to deny having sexual relations with the victim but later admitted to having consensual sex.

Sergeant Ulrey testified that the Defendant discussed his previous convictions and his time in Texas and Arkansas. An interview sheet completed by Sergeant Ulrey based upon information provided by the Defendant was received as an exhibit. The document contains the Defendant's personal information, including his address, place of employment, and place of birth, and the names and addresses of his mother, sister, and a friend. Sergeant Ulrey agreed that when he left the interview room, the Defendant laid his head on the table and slept and that after the interview, the Defendant lay on the floor and slept.

On cross-examination, Sergeant Ulrey testified that he and the Defendant discussed the Defendant's drug use and that the Defendant reported having "been off" drugs for years. Sergeant Ulrey said he did not ask the Defendant if he were under the influence of alcohol. Sergeant Ulrey agreed that the Defendant mentioned during the interview that he had been awake all night and was tired. When asked if he investigated the details of the Defendant's statement, Sergeant Ulrey said that interviews of other people were conducted and that the information obtained during the interviews supported the Defendant's statement.

The trial court denied the Defendant's motion to suppress the police statement. The court found that the interview lasted 3.5 hours and that during the interview, the Defendant answered questions clearly and did not appear impaired. The court found that the

Defendant did not state he was impaired and that Sergeant Ulrey, who had experience with impaired individuals, did not observe any indication the Defendant was impaired. The court found that the Defendant stated he had stopped using drugs years before the interview, that he did not ask for the interview to stop or for an attorney, that he was provided a drink when he requested it, and that he was provided a bathroom break when requested. The court found that the Defendant appeared alert, answered and asked questions, and provided detailed information about his previous convictions in Texas and Arkansas.

The trial court found that after one hour and forty-six minutes, the Defendant stated that his head "was not clear" and that he had not slept. The court found that the Defendant likewise stated that he was "not smart enough to be here" but that the Defendant continued talking and answering questions. The court found that the Defendant did not request an attorney or for the interview to stop. The court found that after two hours, the detective left the interview room, that the Defendant placed his head on a table, and that the Defendant slept until the detective woke the Defendant twenty minutes later. The court found that after the interview, the Defendant was permitted to use the restroom and was asked if he wanted something to drink. The court found that after using the restroom, the Defendant lay on the floor and either slept or rested until police officers removed him from the interview room.

The trial court found that the Defendant was read his *Miranda* rights and signed the waiver of rights form before answering questions. The court determined that no evidence was presented establishing that the Defendant's will was so overborne as to render the statement a product of coercion. The court determined that the Defendant had previous experience with law enforcement based upon the Defendant's discussing his previous convictions in other states. The court noted that the Defendant answered the questions asked of him and asked questions about the case. The court determined that the interview occurred in the afternoon hours, was not unduly lengthy, and did not extend late into the evening. The court determined that the Defendant was not threatened and was not promised anything in exchange for his statement. The court found that the Defendant's physical needs were met during the interview and that the evidence did not reflect that the Defendant was under the influence of an intoxicant. The court, likewise, found that although the Defendant mentioned his lack of sleep, he did not appear sleepy or incoherent during the interview and continued answering questions after mentioning his lack of sleep. The court determined that the Defendant demonstrated his understanding of his rights and waiver of his rights. The court concluded that the Defendant's statement was voluntary and was not obtained in violation of his *Miranda* rights.

The record reflects that the trial court considered the totality of the circumstances in denying the motion to suppress. Our review of the recording reflects that although the interview spanned more than three hours, the interview began around 4:30 p.m. and did not

extend late into the evening. The Defendant showed no signs of impairment or intoxication during the interview, which was conversational and non-threatening. The Defendant was not promised anything in exchange for his statement. Although the Defendant mentioned twice during the interview that he was tired, he did not appear sleepy or incoherent while talking to the detective and continued asking and answering questions. The Defendant received a drink and was permitted to use the restroom. The Defendant was advised of his *Miranda* rights, and he signed a written waiver. The Defendant did not attempt to end the interview. In fact, the Defendant continued to ask questions after the detective had ended the interview. The Defendant, likewise, did not request an attorney. At the trial, the Defendant was asked about his not ending the interview and not asking for an attorney. The Defendant testified that he did not invoke his right to remain silent because he "felt obligated to talk to [the detective]. I mean, I wanted to know what was going on." Regarding his right to counsel, the Defendant testified that his right to counsel "wasn't running through my mind like that. I didn't know when to ask to stop. . . . I just didn't stop it. I wanted to hear more." The record supports the trial court's determination that the State established by a preponderance of the evidence that the Defendant's statement was knowing, intelligent, and voluntary. The trial court did not err by denying the motion to suppress. The Defendant is not entitled to relief on this basis.

III. Sentencing

The Defendant contends that the trial court erred by ordering consecutive service of his twenty-year sentence for aggravated rape with his life sentence and asserts that the court "did not go over all of the [statutory] factors" for imposing consecutive service. The State responds that the court did not err by ordering consecutive service.

At the sentencing hearing, the presentence report was received as an exhibit. The report reflects that the Defendant had previous convictions in Texas for assault and casual exchange. He had previous convictions in Arkansas for failure to use a "safety belt/child restraint," domestic violence, aggravated assault, and robbery. The Defendant's previous criminal history spanned from 1988 to 2010. The Defendant had previously received probation, and no probation violations were found during the presentence investigation. The Defendant completed the eighth grade and later dropped out of school. He reported being suspended from school for attempting to sell marijuana while on the football team and being placed on probation for stealing a bicycle. Although the Defendant reported no learning disabilities, he reported difficulty reading and writing.

The Defendant reported having good mental health and fair physical health. He stated that he had a bullet lodged in his back that required over-the-counter pain medication and that he had hypertension. He reported drinking alcohol before entering high school and stated he was "a fun drinker." He reported first using illegal drugs, including cocaine, in his twenties and last using drugs on the day of his arrest. He stated he had a "marijuana

card" and had not used marijuana unlawfully. He reported first using prescription medication in his early thirties and last using it the night before his arrest. He denied abusing prescription medications but admitted he had purchased them from another person "to help them out financially." He reported using methamphetamine in 2016 a few times but said he did not like the way it made him feel. He reported completing all of the steps for Alcoholics Anonymous in 2007. The Defendant reported having a good childhood living with his grandparents.

The risk and needs assessment conducted during the presentence investigation resulted in a "risk score of low, with a high or moderate needs in education, residential, attitudes/behaviors, and alcohol/drug."

In determining the Defendant's sentence, the trial court considered the trial evidence, the presentence report, the principles of sentencing, arguments by counsel, the nature of the offenses, and the mitigating and enhancement factors. The court determined that the Defendant was a Range I, standard offender, which was agreed upon by the parties.

The trial court declined to apply any mitigating factors. *See* T.C.A. § 40-35-113 (2019). The court applied four enhancement factors. The court applied factor (1) based upon the Defendant's previous convictions. *See id.* § 40-35-114(1) (2019) ("The defendant had a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range[.]"). The court, likewise, applied factors (5) and (6) to the aggravated rape convictions because the Defendant suffocated and inflicted significant knife wounds on the victim. *See id*. § 40-35-114(5) (2018) ("The defendant treated . . . a victim . . . with exceptional cruelty during the commission of the offense[.]"); -114(6) ("The personal injuries inflicted upon . . . the victim was particularly great[.]"). The court applied factor (9) because the Defendant used a knife during the commission of the aggravated rape causing bodily injury. *See id.* § 40-35-114(9) (2018) ("The defendant possessed or employed a . . . deadly weapon during the commission of the offense[.]"). The Defendant does not challenge the court's application of these factors.

The trial court found that the Defendant had prior felony convictions after the present offenses were committed and that he had previously received the benefit of probation. The court determined that since the commission of the present offenses, the Defendant had continued to display a clear disregard for the laws of society and had been a danger to society. The court determined that as a result of the Defendant's disregard for the laws, the Defendant was "caught in this case." The court imposed a life sentence for first degree felony murder, twenty years for second degree murder, and twenty years for each aggravated rape. The court merged the murder convictions and merged the aggravated rape convictions.

In ordering consecutive service, the trial court applied two statutory classifications. The court determined that the Defendant was an offender whose record of criminal activity was extensive and that he was a dangerous offender whose behavior indicated little or no regard for human life and no hesitation about committing a crime in which the risk to human life was high. *See id.* § 40-35-115(b)(2), (b)(4) (2018). After consideration of the Defendant's conduct in this case and the criminal convictions obtained afterward, the court imposed consecutive service, for an effective sentence of life imprisonment plus twenty-years.

This court reviews challenges to the length of a sentence within the appropriate sentence range "under an abuse of discretion standard with a 'presumption of reasonableness.'" *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). A trial court must consider any evidence received at the trial and sentencing hearing, the presentence report, the principles of sentencing, counsel's arguments as to sentencing alternatives, the nature and characteristics of the criminal conduct, any mitigating or statutory enhancement factors, statistical information provided by the Administrative Office of the Courts as to sentencing practices for similar offenses in Tennessee, any statement that the defendant made on his own behalf, the potential for rehabilitation or treatment, and the result of the validated risk and needs assessment. T.C.A. §§ 40-35-103 (2019), -210 (2019); *State v. Ashby*, 823 S.W.2d 166, 168 (Tenn. 1991); *State v. Moss*, 727 S.W.2d 229, 236 (Tenn. 1986); *State v. Taylor*, 744 S.W.2d 919 (Tenn. Crim. App. 1987)); *see* T.C.A. § 40-35-102 (2019).

Likewise, a trial court's application of enhancement and mitigating factors are reviewed for an abuse of discretion with "a presumption of reasonableness to within-range sentencing decisions that reflect a proper application of the purposes and principles of our Sentencing Act." *Bise*, 380 S.W.3d at 707. "[A] trial court's misapplication of an enhancement or mitigating factor does not invalidate the sentence imposed unless the trial court wholly departed from the 1989 Act, as amended in 2005." *Id*. at 706. "So long as there are other reasons consistent with the purposes and principles of sentencing, as provided by statute, a sentence imposed . . . within the appropriate range" will be upheld on appeal. *Id.*

The abuse of discretion with a presumption of reasonableness standard also applies to the imposition of consecutive sentences. *State v. Pollard*, 432 S.W.3d 851, 859 (Tenn. 2013). A trial court has broad discretion in determining whether to impose consecutive service. *Id*. A trial court may impose consecutive sentencing if it finds by a preponderance of the evidence that one criterion is satisfied in Tennessee Code Annotated section 40-35-115(b)(1)-(8) (Supp. 2022). In determining whether to impose consecutive sentences, though, a trial court must ensure the sentence is "no greater than that deserved for the offense committed" and is "the least severe measure necessary to achieve the purposes for

which the sentence is imposed." T.C.A. § 40-35-103(2), (4) (2019); *see State v. Desirey*, 909 S.W.2d 20, 33 (Tenn. Crim. App. 1995).

The Defendant does not argue that the trial court erred by imposing consecutive service after determining that he had an extensive record of criminal activity and that he is a dangerous offender. *See* T.C.A. § 40-35-115(b)(2), (b)(4). He merely argues that the trial court was required but failed to "go over all of the factors in Tenn. Code. Ann. § 40-35-115. Said statute outlines the factors that the Court is to use to determine if sentences are to be served concurrently or consecutively." He does not cite to any legal authority to support his assertion that trial courts are required to consider on the record each statutory basis for imposing consecutive service. In any event, the "prerequisite" to imposing consecutive sentences pursuant to section 40-35-115 is that the court "must find by a preponderance of the evidence that the defendant qualifies for consecutive sentencing under one of the classifications" in the statute. *State v. Perry*, 656 S.W.3d 116, 127 (Tenn. 2022). The court determined that the Defendant qualified for consecutive service based upon two classifications and imposed consecutive service based upon the Defendant's conduct in this case and upon his criminal convictions obtained afterward.

The record reflects that the trial court followed the statutory guidelines for sentencing, including its reflection upon the appropriate considerations and factors. *See* T.C.A. §§ 40-35-103, -210; *Ashby*, 823 S.W.2d at 168. Affording the court the presumption of reasonableness, we conclude that the court did not abuse its discretion by ordering consecutive service. *Perry*, 656 S.W.3d at 127-29. Before the 1996 rape and killing of the victim, the Defendant was convicted of robbery in 1988 and aggravated assault in 1991. After 1996, the Defendant was convicted of domestic violence in 2001, failure to use a safety belt or child restraint in 2005, and causal exchange and assault in 2010. The Defendant's criminal convictions included crimes of violence and occurred between 1988 and 2010 in two states. The Defendant received the benefit of probation in 2001 but continued to commit criminal offenses. In addition to the Defendant's extensive criminal history, the Defendant committed a violent rape with the use of a knife, inflicting injuries to the victim's neck, and used a pillow to suffocate the victim. The Defendant fled the crime scene, leaving the victim's naked and bloody body on the floor. The Defendant's conduct indicated little regard for human life and a lack of hesitation about committing the offenses when the risk to life was high and likewise established he was a danger to society. *See State v. Wilkerson*, 905 S.W.2d 933, 938 (Tenn. 1995); *see also Desirey*, 909 S.W.2d at 33; *State v. Moore*, 942 S.W.2d 570, 574 (Tenn. Crim. App. 1996). The Defendant is not entitled to relief on this basis.

In consideration of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

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ROBERT H. MONTGOMERY, JR., JUDGE