

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs March 28, 2023

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STATE OF TENNESSEE v. GABRIEL ENRIQUE TURCIOS

Appeal from the Circuit Court for Sevier County
No. 27206-III Rex H. Ogle, Judge

No. E2022-00711-CCA-R3-CD

A Sevier County jury convicted Defendant, Gabriel Enrique Turcios, of first-degree premeditated murder. At sentencing, the jury found that the murder was especially heinous, atrocious, or cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, and sentenced him to life imprisonment without the possibility of parole. On appeal, he claims the evidence is insufficient to support the application of the aggravating circumstance for the sentence. After a thorough review of the record and the parties' briefs, we affirm the judgment of the trial court.

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

JILL BARTEE AYERS, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and KYLE A. HIXSON, J., joined.

William L. Wheatley, Sevierville, Tennessee, at trial and on appeal, for the appellant, Gabriel Enrique Turcios.

Jonathan Skrmetti, Attorney General and Reporter; Garrett D. Ward, Assistant Attorney General; Jimmy B. Dunn, District Attorney General; and Rolfe Strausfogel, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural History

On January 8, 2020, in the back parking lot of the Sunliner Diner in Pigeon Forge, Defendant stabbed his co-worker, Savannah Burford, sixteen times. Several people, including the victim's mother who was waiting in her car outside the restaurant to pick up the victim, witnessed the attack. The stabbing was also captured on the Sunliner Diner's

multiple surveillance cameras. The victim was flown to University of Tennessee Medical Center where she died. On June 1, 2020, the Sevier County Grand Jury returned a two-count indictment charging Defendant with first-degree premeditated murder and aggravated assault. The State later entered an order of nolle prosequi on the aggravated assault charge before the case went to trial.

Prior to trial, Defendant underwent several medical and psychological evaluations to determine his competency to stand trial and whether an insanity defense could be asserted. To that end, Defendant was evaluated by Dr. Andrew H. Demick, a clinical psychologist, and Dr. James Sidney Alexander, a psychiatrist. Both testified at trial. Dr. Alexander testified for the defense; Dr. Demick testified as a State rebuttal witness.

On May 5, 2021, the State filed a notice that it was seeking a sentence of life without the possibility of parole relying on the aggravating circumstance in Tennessee Code Annotated section 39-13-204(i)(5), that “[t]he murder was especially heinous, atrocious, or cruel in that it involved torture or serious physical abuse beyond that necessary to produce death.” Defendant filed a notice of the following mitigating factors: he had no significant history of prior criminal activity; the murder was committed while he was under the influence of extreme mental or emotional disturbance; his youth at the time of the crime; and although insufficient to establish a defense, his capacity to appreciate the wrongfulness of his conduct was substantially impaired as a result of mental disease. *See* T.C.A. § 39-13-204(j)(1), (2), (7), (8).

Trial – State’s Proof

At trial, the victim’s mother, Julia Cutter, testified that she drove to the Sunliner Diner on the evening of January 8, 2020, to pick up the victim after she finished her shift. Ms. Cutter parked in the diner’s back parking lot, messaged the victim that she had arrived, and remained in her car as she waited for the victim. She watched Defendant approach the victim as she exited the diner. Ms. Cutter was aware that the victim and Defendant had become friends and that Defendant had given the victim some money. Ms. Cutter testified that after Defendant approached the victim, “the next think I know, he was doing his arm, and then she fell. Then I knew something was wrong, and I ran over there.” Defendant ran past Ms. Cutter and fled the scene. Ms. Cutter yelled for someone to dial 9-1-1 while she tried to help the victim. She recalled that there were “a lot of people” in the parking lot.

One of those people was Amanda Black. Ms. Black and her family were on vacation and had pulled into the diner parking lot when they saw “a man run past us and then heard screaming.” They ran to where the person was screaming and saw the victim on the ground with “blood everywhere” and the victim’s mother kneeling on the ground beside the victim.

Ms. Black called 9-1-1 and started administering CPR when it was determined the victim had no pulse.

Joshua Griffin was dining with his fiancée at the Sunliner Diner on the night of the stabbing. Mr. Griffin encountered Defendant in the restroom and observed Defendant laughing while looking at his phone. When Mr. Griffin turned to dry his hands, he saw that Defendant had a knife pulled out. He asked Defendant, “are you all right?” Defendant asked Mr. Griffin to help him close the knife which he did. According to Mr. Griffin, this interaction occurred around 8:30 p.m. Earlier in the evening, Mr. Griffin had seen Defendant busing the tables in the diner and observed that “he didn’t seem in, like, any bad mood or anything was wrong with him at the time.”

Tiffany Mozeika was working with the victim and Defendant at the Sunliner Diner on the night of the stabbing. Defendant had confided in Ms. Mozeika that he had a “crush” on the victim and had hoped that they would become “more than just coworkers and get to know her deeper.” Ms. Mozeika was aware that Defendant had given the victim money to help with financial issues at home. The day before the stabbing Defendant told Ms. Mozeika that he had a “surprise” for the victim the following day. He would not reveal the “surprise.” Ms. Mozeika thought Defendant would make some romantic gesture. On the day of the stabbing, Ms. Mozeika saw Defendant at work and asked him what kind of “surprise” he had in store for the victim. Defendant again declined to reveal his plans and replied instead, “You will know soon enough. You will know when it happens. Trust me. You will know.” According to Ms. Mozeika, Defendant appeared to be “completely normal. He was smiling. There was nothing different. It was just the same.” She testified that this conversation occurred close to seven o’clock in the evening. She learned later that Defendant was not scheduled to work that day.

Officer Joseph Duncan of the Pigeon Forge Police Department was dispatched to the diner after the attack. Several officers were already there when he arrived so he focused on locating Defendant who had fled the scene. Officer Duncan found him in the area of the Riverbend Campground, approximately three-quarters of a mile away from the diner. Defendant was apprised of his *Miranda* rights and then placed in Officer Eric Maynard’s patrol car. Officer Duncan agreed that Defendant was cooperative and was already on his knees with his hands in the air when officers found him at the campground. Defendant told the officers that he had two knives and was going to use one of them to kill himself. Defendant’s arrest was documented on Officer Duncan’s patrol car camera and body camera. Both recordings were played for the jury during Officer Duncan’s testimony.

Officer Eric Maynard testified that he was the second officer to encounter Defendant after the stabbing. Footage from Officer Maynard’s body camera and patrol car camera were played during his testimony. After Defendant was placed in Officer Maynard’s patrol

car, Defendant told him he would show him where he dropped the knife, so they drove in the direction of the Sunliner Diner. Defendant also explained that he had two knives and told Officer Maynard he used the blue one to stab the victim. Both knives were later found and were exhibited to the jury during trial. Officer Maynard agreed that Defendant was oriented and clear in his directions. Defendant told Officer Maynard, "Once I actually did it, I regretted it[,]" and that he was not certain he wanted her "actually dead." He also said, "It might sound crazy, but I think the devil got inside my head, as stupid as it sounds."

Detective John Thornton testified that the diner had thirty-two security cameras and was among "[t]he best" surveillance systems he had ever seen. Footage from inside and outside the diner was played during Detective Thornton's testimony. One video showed the kitchen area where the victim is seen clocking out from work and Defendant following her to the back exit of the diner to the parking lot. The second video documented the same area but from a different camera angle which showed Defendant following the victim with a knife in his hand, pulled out and opened. Detective Thornton testified that Defendant appeared to be "trying to get the knife, after he had opened it or tried to open it, back in his pocket." The third video showed the manager's office and the back exit door. In this video Defendant is seen pulling out the blue knife, opening the blade, and putting the knife back in his pocket.

The fourth and last video shown to the jury covered the back parking lot of the diner and showed the entire stabbing incident as described by the witnesses. It also showed Defendant tossing the knife he used to stab the victim into a grassy area as he fled. Detective Thornton explained that Defendant ran in the direction of Riverbend Campground and the Music Road Hotel, an area closed off by the river.

Detective Thornton interviewed Defendant at the Pigeon Forge Police station less than an hour after the stabbing. The station did not have an interview room or an office with a recording device so Detective Thornton recorded the interview using his body camera. The interview was played for the jury in two parts. Defendant was advised of his rights and agreed to waive them and talk to Detective Thornton without an attorney.

Defendant, age eighteen and a senior in high school, in the interview stated that he began working at the diner as a food runner one month before the stabbing. He sought the job because he was "bored" playing video games at home. He met the victim while working at the diner. He stated that he and the victim were "just friends." He had given the victim money to help her pay her bills and not for "sexual favors." Defendant denied that he and the victim dated, spent time outside of work socially, or were sexually intimate.

Defendant could not offer an explanation as to why he stabbed the victim. He stated that he first thought about stabbing the victim on Saturday, or four days before the stabbing

when the victim last communicated with him. Defendant and the victim communicated via direct messaging on Instagram. He and the victim had only spoken in person “about five times.” He recalled no reason for her to be angry with him or for him to be angry with her. In the last series of messages before the victim stopped messaging Defendant, the victim thanked Defendant for giving her money. She wanted to remain friends. Defendant told the victim that he liked her and cared for her, but respected her decision for them to remain friends.

Despite the lack of tension or animosity in the messages, Defendant did not understand why the victim stopped communicating with him. After the messages between Defendant and victim stopped, Defendant purchased two knives on Amazon, one blue and one yellow. He ordered them on January 6, the day after the victim stopped messaging him. His original plan was to stab the victim on February 24, two weeks after her birthday. Both knives were delivered on January 8, 2020, around five p.m. The stabbing occurred at 6:40 p.m. that same day. The knives were ballistics spring assist folding knives, one blue, one yellow. The Amazon extraction report detailing Defendant’s purchase was admitted as an exhibit. Defendant was not scheduled to work on January 8; however, he went to the diner to work because he wanted to see the victim. He arrived at the diner with both knives. He recalled asking a patron in the restroom for help in closing one of the knives.

Defendant became alarmed when he overheard the manager give the victim permission to leave early. He explained that “it [stabbing] was supposed to happen at 10:30.” When he saw the victim walking down the hall to leave the diner, Defendant decided to follow her and opened the blue knife.

Once outside, Defendant called out to the victim. She turned around and smiled at him. Defendant said that he tried to close the knife and put it away in his right pocket. Defendant told Detective Thornton he had immediate misgivings about stabbing the victim when she smiled at him. He could not close the knife and the other knife was in his left pocket along with his cell phone. According to Defendant, he feared that the victim saw the knife in his right hand, so he began stabbing her.

Defendant demonstrated to Detective Thornton how he stabbed the victim. When the victim looked down at his right pocket, he stabbed her on the left side of her neck with the knife in his right hand. Defendant stated that the victim immediately fell to the ground. Defendant recalled stabbing the victim again in the same place on her neck. He showed Detective Thornton how he stabbed the victim in the stomach area as she tried unsuccessfully to push him away. Defendant told Detective Thornton that he thought the victim rolled over to protect her stomach and her neck. When she did so, Defendant stabbed her in the back. Defendant estimated that he stabbed the victim five times

altogether including twice in the neck, once in the stomach, and once in the back. Defendant maintained that the stab to the stomach and the back did not “go through” her dress.

Defendant admitted that he was going to continue stabbing the victim but “realized” that he was going to kill her so he stopped stabbing her and fled. His intent was to stab himself in the neck like he had just stabbed the victim. He also stated that he fled because he thought someone would grab him and kill him with the knife. Because Defendant “assumed” that hell was “infinite” and worse than jail, he decided not to take his own life, and instead fled the parking lot and ran toward the river past a nearby hotel.

Defendant stabbed the victim with the blue knife. He did not use the yellow knife because it was harder to open. As he ran through the parking lot, he dropped the blue knife in the grass near the sidewalk. His intent was to stab the victim and then stab himself with the same knife. He purchased two knives “in case” he dropped one or so he would have another knife if someone grabbed it and tried to use it to stab him.

Defendant thought he was being chased by a police car so he thought he would try to swim over the river to avoid being caught; however, he determined the river was too deep for him to cross. Defendant dropped the yellow knife near the river because he “had a feeling” that if someone caught up to him, the knife would be used to kill him. He went to the hotel parking lot and raised his hands and came face to face with the car he thought was following him. The car was not a police car and eventually left.

Defendant then started to walk back in the direction of the diner because he wanted to know whether the victim was still alive. However, he was afraid there would be a lot of police presence and he did not want to be shot, so he decided to wait by the river to be found by the police. After he was apprehended, he heard one of the arresting officers say that the victim’s mother was at the hospital, so he assumed the victim was still alive.

During the interview, Detective Thornton asked for permission to search Defendant’s phone. Defendant agreed and encouraged Detective Thornton to look at the Instagram messages between him and the victim. Defendant provided commentary as he read some of the messages aloud to Detective Thornton.

Toward the end of the interview, Defendant informed Detective Thornton that he was supposed to be taking medication for sickle cell anemia but had not taken it in eight years because his mother believed the medication made him sick. Defendant was asked to make a written statement, but he declined to finish because “it would take too long.”

Detective Thornton executed a search warrant of Defendant's phone to obtain the last series of Instagram messages between Defendant and the victim. The messages were shown to the jury during the trial. In the messages, the victim thanked Defendant "for helping us out and giving me money when you really don't have to." Defendant told the victim that he had a "crush" on her and had never actually liked a girl before, "[b]ut I don't want to make it weird. Sooo¹ I will not going to ask you out or anything because I actually just want to be friends." The victim replied, "Nobodies ever really had a crush on me before and I really don't talk to a lot of guys cause they just end up treating me like garbage but you're honestly the first one not to so thank you 😊" She later messaged Defendant ". . .we can be friends first and maybe more if it goes well. you're really sweet." Defendant expressed enthusiasm and surprise by the possibility of their relationship progressing beyond a friendship and replied, "I Cant believe you just said that last part." "I didn't think you would consider more then friends. I'm awkward but I could happen."

Even though they had agreed to stop messaging because the victim had to work the next morning, Defendant then messaged again asking if the victim was "serious" regarding "what we just talked about" because he was "100 percent." He also told her that some coworkers had warned him she was "just using [him]." When pressed for more information, Defendant explained that he was told he should get something in return for helping her such as "sex;" otherwise Defendant was "wasting his time." The victim was offended by what the co-workers said, but Defendant would not tell her who had made the statements. Defendant maintained that he was not expecting anything in return for giving her money and that he was helping her because he wanted to. The victim reiterated that she would never have sex with someone who helped her out at "WORK," and scolded Defendant for believing something "gross and inappropriate." The victim eventually told Defendant that she was thinking of reporting the comments to "Jeannette." Defendant asked her not to for fear that the co-workers would know he told her what they had said. The victim stated that she would "think about it" and decide the next day.

The next day, Defendant sent the victim his username and password for his Disney + account. The password was "SavannahIsBeautiful19." The victim replied, "Okay, also I think we should just be friends. I'm sorry to have maybe lead you on and that wasn't my intention." This was their last communication before her death.

As he wrote the warrants for Defendant's arrest, Detective Thornton learned from the victim's mother that the victim had passed away shortly after the interview had finished. He testified that Defendant did not have a reaction upon learning that the victim had died.

¹ We have quoted the messages as written by the victim and Defendant.

Dr. William Russell Oliver conducted the victim's autopsy. The victim had seventeen wounds. Sixteen wounds were inflicted by Defendant and one was a therapeutic wound caused by medical personnel for treatment. Dr. Oliver testified that "a number of the stab wounds would have been fatal." He also observed some "defensive" wounds on the victim's hands. He concluded that the cause of death was multiple stab wounds. He testified that the victim was stabbed in the neck, in the chest, in the back, in the arms, and in the back of her skull. He explained that the stab wounds to the neck severed several prominent blood vessels and would have caused the victim to "bleed[] to death." He testified that the stabbing of the victim's upper back punctured a lung which, by itself, would have been fatal had the victim not first died of blood loss from the stab wounds to the neck. Likewise, the stab to the back of the victim's skull penetrating her brain would also have been fatal had the victim not first died from the stab wounds to the neck and the back. Dr. Oliver testified that he had watched the video of the stabbing "at length" after he had completed the autopsy. Dr. Oliver opined within a reasonable degree of medical certainty, that the first stab wound to the neck would have been sufficient to have caused the victim's death.

Defense Proof

Defendant's mother, Dalia Rivas, testified about Defendant's medical, family, and educational history and confirmed that Defendant had sickle cell anemia which had been treated with blood transfusions and medication. Ms. Rivas separated from Defendant's father when Defendant was four years old because the father was physically abusive. She testified that Defendant's three uncles and one cousin all have mental health issues. She recalled that Defendant began hearing voices and saw "monsters and witches" when he was eleven. She testified that the voices and hallucinations "would come and go." Defendant was also diagnosed with a learning disability and worked with a psychologist when he was twelve or thirteen years old. For a two-year period when Defendant was in high school, a counselor visited Defendant at home. The counselor told Ms. Rivas that Defendant did not know the difference between what was right and wrong and the consequences of his actions. Ms. Rivas confirmed that at the time of the stabbing, Defendant was in high school, on track to graduate, had friends, and worked a full-time job. She agreed that "things . . . were going pretty well for him." Ms. Rivas testified that four months before the stabbing, Defendant "acted nervous," appeared to be "really sad and depressed," and said that "things [were] chasing him."

Stacy Schroth, the nurse administrator at the Sevier County Jail in Sevierville, testified that because Defendant had been diagnosed with sickle cell anemia he was given medication and his blood count was monitored with routine blood draws while in jail. Defendant was also treated for depression. Ms. Schroth recalled that Defendant displayed "several erratic behaviors and outbursts" while housed in the Sevier County Jail. The

parties stipulated to the admission of Defendant's jail incident reports. Ms. Schroth noted that the incidents involved either threats of suicide or suicide attempts. She clarified that Defendant had been placed on suicide watch six times during a two-year period and that there was a five-month period when he was not placed on suicide watch. Ms. Schroth acknowledged, however, that Defendant was never successful in actually harming himself. On March 8, 2022, just before trial, Defendant was temporarily transferred to DeBerry Special Needs Facility, a special needs prison.

The parties stipulated that Dr. James Sidney Alexander was a physician and an expert in psychiatry. To prepare for his testimony, Dr. Alexander interviewed Defendant and Defendant's mother, reviewed Defendant's school and medical records, and watched all the videos in the case. Dr. Alexander opined that Defendant was suffering from severe mental disease and severe mental defect based on paranoid schizophrenia in combination with the effects of sickle cell anemia as evidenced by an abnormal MRI, parasomnias, possible partial complex seizures, sleep deprivation, and periods of mind-altering low hemoglobin blood levels.

Dr. Alexander found Defendant's sickle cell disease to be the most "significant" issue in Defendant's case and requested Defendant undergo diagnostic testing. The results of Defendant's MRI showed white matter lesions or defects in the right frontal lobe and the left parietal lobe. According to Dr. Alexander, the lesions suggested that Defendant had experienced some strokes. It was unclear, however, when the strokes occurred. Dr. Alexander opined that Defendant's sickle cell anemia had caused brain damage. Dr. Alexander testified that he arrived at the diagnosis of paranoid schizophrenia upon talking to, and observing Defendant, talking to his mother, and obtaining "various pieces of information" about Defendant. Defendant began to have delusions as early as eight years of age. Dr. Alexander found Defendant's behavior in the county jail reflected schizophrenic-like behavior.

As for sleep deprivation, Defendant's work records showed that he worked six "double-double" or back-to-back shifts in a twenty-nine-day period in December. Dr. Alexander acknowledged that Defendant was largely out of school in December for the holidays and that he did not know how much sleep Defendant was getting at the time of the murder. Dr. Alexander also testified that partial complex seizures had to be considered in Defendant's case based on the presence of lesions on his brain and Defendant's self-reported history of parasomnias, sleep disturbances, and failure to account for periods of time.

Dr. Alexander testified that Defendant's self-reported episodes of delusions and hallucinations warranted a diagnosis of schizophrenia. Defendant told Dr. Alexander that he and the victim had to die so that they would be together in heaven. Such a thought

constituted a delusion which was active at the time of the stabbing according to Dr. Alexander. Dr. Alexander testified that Defendant “flipped” into a paranoid state on January 4, 2020, after communicating with the victim in a series of direct messages:

On January the 3rd they had started texting, . . . and briefly concluded at 12:30, one o'clock, but then continued on in the three o'clock hour, even to four o'clock. And it was the material later on in the texting that I think was responsible for him switching from being a guy that's helping her, communicating with her, texting each other in a fashion that looked like they were liking each other and might even date, to suddenly beginning to look at her, watch her, not interact with her, and be very suspicious of her.

Dr. Alexander agreed that based on the direct messages, it was possible Defendant felt used by the victim and felt pressured by his co-workers to get something from the victim in exchange for giving her money and helping her at work. Dr. Alexander opined that due to his mental illness, Defendant misinterpreted the victim's gesture of smiling at him in the parking lot of the diner. Dr. Alexander described Defendant's actions as “a combination of his distorted thinking and inability to process this conflict and make a way better choice.” Dr. Alexander agreed that Defendant understood the nature and consequences of his actions but only before and after he stabbed the victim. Defendant's awareness of his actions was reflected in his decision not to kill himself and the decision to flee the diner.

State's Rebuttal

On rebuttal, the State called Dr. Andrew Demick, a clinical psychologist who had met with Defendant three times in order to evaluate him. Dr. Demick found Defendant to be cooperative, polite and engaging in all three interviews. Dr. Demick testified that Defendant did not express paranoid tendencies, nor did he express homicidal or suicidal ideations. Defendant denied experiencing visual or auditory hallucinations or demonstrating any symptoms of psychosis. Dr. Demick testified that Defendant's speech was organized and did not reflect formal thought disorder. Dr. Demick was “surprised” that Defendant was “not the least bit anxious” considering his potential sentence if convicted. Defendant mentioned in a “somewhat joking[[]] manner” that he was going to kill himself on the victim's birthdate or the anniversary of her death. Defendant described himself as a “socially deprived adult.” Dr. Demick explained that Defendant felt “less of a man because he was still a virgin.” Dr. Demick observed that this “impacted him a great deal.”

In Dr. Demick's last interview with Defendant on April 6, 2022, Defendant fully cooperated and had no difficulty remembering what occurred at the time of the stabbing.

Defendant had no problems paying attention in general and exhibited no signs of paranoia. Defendant denied having any visual or auditory hallucinations or delusions. Defendant did not demonstrate symptoms of psychosis. Dr. Demick recalled that Defendant was worried about returning to the county jail because he liked the treatment he received at the DeBerry Special Needs Facility. Dr. Demick was aware that Defendant had been placed on suicide watch multiple times. Defendant revealed to Dr. Demick that he expected to make statements that would require the jail to place him on suicide watch because he got better food when he did.

As a clinical psychologist, Dr. Demick confirmed that he was not offering an opinion on schizophrenia, nor did he possess expertise in sickle cell anemia or physical brain malformations. Based on his three interviews with Defendant, review of Defendant's police interview, and Defendant's records, Dr. Demick testified that there was no evidence to show that Defendant suffered from a mental defect or disease at the time of the crimes.

The State called Michelle Hardesty to testify about Defendant's schedule at the Sunliner Diner. She was the assistant general manager working the night Defendant stabbed the victim. Ms. Hardesty was Defendant's direct supervisor and interacted with him "frequently." She described Defendant as an "outstanding" employee. She did not notice anything "odd" about Defendant's behavior generally or on the day of the stabbing. She recognized the previously admitted exhibit of Defendant's timesheet of a twenty-eight-day period in December 2019. Of those days, she confirmed that Defendant worked six double shifts which equated to 188 regular hours and 78.52 overtime hours, for a total of 266 hours during the twenty-eight-day period, or equal to two full-time job hours in a four-week work period.

Based on the evidence, the jury convicted Defendant of first-degree murder as charged in the indictment.

Sentencing Hearing

At sentencing, the State relied on the testimony of Dr. Oliver, the medical examiner who performed the victim's autopsy, to prove the sole aggravating circumstance: "The murder was especially heinous, atrocious, or cruel in that it involved torture or serious physical abuse beyond that necessary to produce death." *See* T.C.A. § 39-13-204(i)(5).

Dr. Oliver reiterated his general conclusion that the cause of death was multiple stab wounds and the manner of death was homicide. Within a reasonable degree of medical certainty, Dr. Oliver testified that there were sixteen assault wounds inflicted by Defendant and one therapeutic wound by medical professionals in treating the victim. Five of the

sixteen wounds were considered superficial. Dr. Oliver described each of the assaultive wounds in the order in which they were photographed during the autopsy:

- #1 Perforation of the skull. The laceration at the base of the skull showed that the knife had a single edge blade.
- #2 Penetration of the soft tissues in the back. A superficial wound.
- #3 “Deeper” wound to the right breast immediately below and to the side of the areolae. The laceration showed that the knife was a single edge blade.
- #4 Three superficial, therapeutic wounds to reach the subclavian artery.
- #5 Deep incised wound to the soft tissues of the right forearm.
- #6 Wound to the right forearm near but separate from wound #5.
- #7 Therapeutic wound inside the left elbow.
- #8 “Through-and-through” stab wound of the lateral aspect of the left upper arm.
- #9 Superficial stab wound into the soft tissues of the anterior upper arm.
- #10 Superficial wound to the anterior chest.
- #11 “Very large” incised wound to the lateral right neck, below the ear, down to the midline.
- #12 Another wound separate from #11 but part of the same stabbing action.
- #13-#14 Immediately lateral and slightly posterior to the large wounds of #11 and #12. Incision of a large number of small vessels and small arteries in the lateral posterior neck.
- #15-16 Back of the right hand: index and middle finger.

- #17 Posterior right chest.

Using a video capturing two camera angles of the stabbing, Dr. Oliver explained the nature and gravity of each of the stab wounds as they occurred with the corresponding autopsy photographs on the screen. He then testified that “collectively, the stab wounds to the neck is the fatal injury – are the fatal injuries.” He summarized the fatal “certainty” of the wounds:

[T]he neck wounds are high, high certainty. The breast wound is high certainty. The wound to the back is relatively low certainty. The wound to the chest is high certainty. The necks are high certainty. The wounds to the arms here are moderate certainty, in that you can see where she’s guarding with her arm. And for this wound up here, you can see the wound appear in later frames. For this wound down here, it mostly has to do with the fact that you can see a blow coming down and the left arm here. It goes through the arm and the chest. That’s the one place where it fits the best. So those are moderately high.

Defendant did not testify or offer proof. The State argued that the number of stab wounds was clearly excessive beyond what was necessary to kill the victim. Defendant argued that because the victim died of multiple stab wounds, the stabbings were not beyond what was necessary to cause the victim’s death. The defense also argued the mitigating factors previously set out in its notice. The jury found that the murder was “especially heinous and atrocious in that it involved physical abuse beyond that necessary to produce death” and imposed the sentence of life imprisonment without the possibility of parole. It is from this judgment Defendant filed a timely notice of appeal.

Analysis

In this appeal, Defendant’s sole issue is whether the evidence is sufficient to support the sentence of life imprisonment without the possibility of parole based on the jury’s finding that “the murder was especially heinous, atrocious, or cruel, in that it involved torture or serious physical abuse beyond that necessary to produce death.” T.C.A. § 39-13-204(i)(5). Defendant argues that because the medical examiner testified that the victim died of multiple stab wounds, the sixteen assaultive stab wounds sustained by the victim did not exceed that necessary to cause her death. The State contends the record demonstrates otherwise. We agree with the State.

The State has the burden of proving beyond a reasonable doubt that a statutory aggravating circumstance exists. *See id.* § 39-13-204(i). In determining whether the evidence supporting the existence of an aggravating circumstance is sufficient, “the proper

inquiry for the appellate court is whether, after reviewing the evidence in the light most favorable to the State, a rational trier of fact could have found the existence of the aggravating circumstance beyond a reasonable doubt.” *State v. Carpenter*, 69 S.W.3d 568, 574 (Tenn. Crim. App. 2001) (citing *State v. Suttles*, 30 S.W.3d 252, 262 (Tenn. 2000)). The sole aggravating circumstance in this case was whether “[t]he murder was especially heinous, atrocious, or cruel in that it involved torture or serious physical abuse beyond that necessary to produce death.” T.C.A. § 39-13-204(i)(5). “Serious physical abuse beyond that necessary to produce death” means just that; there must be serious physical, not mental, abuse. *State v. Odom*, 928 S.W.2d 18, 26 (Tenn. 1996). “Serious” alludes to a matter of degree. *Id.* “‘Abuse’ is defined as an act that is ‘excessive’ or which makes ‘improper use of a thing,’ or which uses a thing ‘in a manner contrary to the natural or legal rules for its use.’” *Id.* (quoting *Black’s Law Dictionary* 11 (6th ed. 1990)). “Serious physical abuse” must be “beyond” or more than what is “necessary to produce death.” *Id.*; see also *State v. Vann*, 976 S.W.2d 93, 104 (Tenn. 1998).

In the sentencing phase, the State relied on the testimony of the medical examiner, Dr. Oliver. Dr. Oliver’s testimony was accompanied by autopsy photographs of the victim’s stab wounds and a slow motion video of the stabbing from two different camera angles. Based on Dr. Oliver’s general finding that the victim died of multiple stab wounds, Defendant argues that because all of the stab wounds caused the victim’s death, the evidence is insufficient for the application of aggravating circumstance (5). However, Dr. Oliver testified specifically that the neck wounds were fatal. Additionally, he testified that a number of the other stab wounds, standing alone, possessed a “high certainty” of death. After Defendant inflicted the fatal neck wounds, he next “sliced” the victim from below the right ear down to her midline. Dr. Oliver testified that this stab wound was also fatal. Likewise, he testified that the stab wound to the chest puncturing the right breast possessed a “high certainty” of death. He testified further that the stab wound to the back of the head puncturing the skull was fatal. Finally, he testified that the stab wound to the chest, which punctured the lung, possessed a “high certainty” of death. See *State v. Robert Earl Johnson*, No. M2000-01647-CCA-R3-CD, 2001 WL 1180524, at *2 (Tenn. Crim. App. Oct. 8, 2001) (victim’s cause of death was determined to be the combined result of forty-one stab wounds to the head, neck, torso, and extremities; some of the wounds were superficial, but others, such as the wounds to the lung and liver, were termed “critical”).

Moreover, the record indicates that Defendant understood that the first stab wound to the neck was fatal. He told Detective Thornton that he had originally planned to stab himself in the same area on his neck to kill himself. Defendant’s repeated stabbing of the victim as she fell to the ground clearly exceeded stab wounds necessary to cause her death. The evidence supports the jury’s finding of the aggravating factor of a “heinous, atrocious or cruel . . . serious physical abuse beyond that necessary to produce death.” Defendant is not entitled to relief.

Conclusion

Based on the foregoing reasons, the judgment of the trial court is affirmed.

JILL BARTEE AYERS, JUDGE