

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
April 2007 Session

STATE OF TENNESSEE v. HERSHEL WAYNE GRIMES

**Direct Appeal from the Circuit Court for Grundy County
No. 4006 J. Curtis Smith, Judge**

No. M2006-01531-CCA-R3-CD - Filed June 8, 2007

A Grundy County jury convicted the Defendant, Hershel Wayne Grimes, of first degree murder, and he was sentenced to life in prison. On appeal, the Defendant contends that: (1) the evidence is insufficient to sustain his conviction; (2) at trial, the State presented testimony it knew to be false; (3) the trial court improperly excluded testimony about the victim's prior bad acts; (4) the trial court erred when it excluded testimony about the mental stability of two prosecution witnesses; (5) the trial court erred when it allowed the State to question a defense witness about her prior marriages; (6) the trial court erred when it did not admit as substantive evidence the prior statements of a State witness; (7) the trial court erred when it allowed the State to cross-examine the Defendant about a previous statement; (8) the cumulative effect of these errors requires that the conviction be reversed. Finding that there exists no reversible error, we affirm the judgment of the court.

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

ROBERT W. WEDEMAYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JOHN EVERETT WILLIAMS, JJ., joined.

Paul D. Ross, Monteagle, Tennessee, for the appellant, Hershel Wayne Grimes.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; J. Michael Taylor, District Attorney General; Steve Strain, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION
I. Facts**

This case arises from the murder of William Doyle Pressley. At the Defendant's trial for the first degree murder, the following evidence was presented: Sharon Pressley Lynch testified that her husband, the victim, was killed in December of 1998. The victim met and befriended the Defendant while they both were employed with Tennessee Consolidated Coal Company. During the course of their friendship, the Defendant married Patty Grimes, and the two families became close. Around

1986, Tennessee Consolidated closed, and the victim began working full time in the construction business. The victim and the Defendant worked together some, but they were not partners.

In 1997, Lynch began working as the Defendant's bookkeeper. Lynch said that the Defendant would stop by and "show up" on his way to work. This upset the victim because the victim felt the Defendant showed up every time he was not at home. In August of 1998, Lynch and the victim moved to Monteagle and were preparing to build a new house. In the summer of 1998, she told the Defendant she would no longer be keeping his books, and he asked her not to quit. Lynch had spoken with the victim and told him that her keeping the Defendant's books was causing problems because people were starting to talk about the fact that the Defendant stopped by her house so much. Lynch boxed up all of the Defendant's books and planned to give them to him the next morning when he stopped by for coffee. She gave him back his books, and he said that he wished she would not. She also attempted to give him back the computer that he had bought for her for work, but he would not take it, and he gave it to Lynch's daughter.

Around the time that Lynch and the victim moved to Monteagle, the Defendant separated from his wife. After she moved, the Defendant still came by her home quite frequently if her husband was working. He would stop by for coffee or just to talk. Lynch said that, most of the time, she was there by herself, and she felt uncomfortable knowing that the victim would be upset if he knew the Defendant had come by. If she did not answer the door when the Defendant came by, he would continue to bang on the door or her window. She recalled that, one time, she got scared because she did not answer the door and the Defendant was standing at the back door saying, "Why are you doing this to me? Please let me in." He left and then drove up and down the road. He also would call her on his cell phone trying to get her to answer, and then he would come back to the house. Lynch said that she would eventually answer the door so that he would stop and leave. Lynch testified that during the time before her husband was killed, the Defendant made no sexual advances towards her, and they were not romantically involved.

Lynch testified that the victim knew that the Defendant was coming by the house and that this was the reason that Lynch was no longer keeping the Defendant's books. When her husband was killed, December 13, 1998, the Defendant was staying at the Budget Host hotel in Monteagle. The Defendant was still coming to her house for breakfast and was also coming often for dinner. If the Defendant did not come for dinner, the next time her husband saw him, her husband would say "Where you at? [sic] Is [your wife] keeping you at home now." The victim would tell him that there was no reason for the Defendant to sit in a motel room alone and that as long as they were home the Defendant could come sit with them.

Lynch recalled that, the day before her husband disappeared, the Defendant came to Lynch's house while she and the victim were finishing supper. Lynch offered the Defendant some supper, which the Defendant ate. The Defendant and the victim discussed hunting, which they had done together in the past. The victim's regular hunting area was one called "Million Dollar View." On this occasion, the victim asked the Defendant if he wanted to hunt with him the next day in that area, and the Defendant said he was unsure of whether he could go. After supper, the Defendant stayed

at the house and watched television with them. After the victim fell asleep, the Defendant pulled a note out of his pocket and showed it to Lynch. The Defendant then hid the note underneath the chair. Between 10:00 and 11:00 p.m., Lynch woke the victim up and said it was time for bed. The victim again discussed hunting with the Defendant, and the Defendant again said that he was unsure of whether he could go the following day.

Lynch said that, after her husband went to bed, Lynch got the note and read it. The note asked her to go by the Defendant's motel room after she dropped off her husband to hunt. Lynch said that she tore the note up and flushed it down the toilet. She never told her husband about the note because she was scared.

Lynch testified that, the next morning, Lynch took her husband to his hunting spot, and she identified that spot on a map for the jurors. While it was the last day of "muzzle loader" season, the victim did not bring his "muzzle loader" gun but brought a 270 high powered rifle. Lynch questioned him about this and about the fact that he was not wearing his orange vest, and the victim said that he was not going to need his vest. Lynch said that, after dropping her husband off, she went back to her home. She sat there for a few moments because she did not want to go to the Defendant's motel room, but she knew, if she did not, he would come to her house. Therefore, she drove to the motel but did not see the Defendant's car. After driving through Monteagle, she then circled back by the room.

The Defendant came up to her car window, and she opened the door. The Defendant got in, and he seemed to be "very emotional." Lynch asked the Defendant what was the matter, and the Defendant asked her to "[j]ust drive, just get out of here." She started driving, and the Defendant told her that he went into the woods where the victim was hunting. He saw the victim start climbing a tree, and the victim looked over at him and raised his gun like he was going to shoot. The Defendant said he had no choice but to shoot the victim. The Defendant told her that he walked close enough to the victim to tell that he was not moving, and he saw that the victim's gun was sticking in the ground near the tree that was close to his body. He then told Lynch that she should not tell anyone about this and that she should take this information "to the grave with [her]." She said that, at this point, she did not actually believe the Defendant.

Lynch went to pick up her husband where she was supposed to meet him, near a small clump of trees near an Exxon station. Her husband did not arrive. He had previously told her that if he did not show up at their designated meeting area she should drive around for fifteen minutes and come back to the designated spot. Lynch said that she did this all evening. She also called her daughter and left several messages telling her daughter that the victim had not come out of the woods. She took her son and her son-in-law to the spot where she had dropped the victim off, and they looked for him but did not find him.

Lynch and her daughter went to the police department and reported that the victim had not come out of the woods. She did not tell the police that the Defendant said that he had shot the victim. She said she did not say anything because the Defendant had told her not to, and she was scared of

him. A search was organized, and the victim's body was found the next day. Lynch said that she was interviewed by Agent Davis, an agent with the Tennessee Bureau of Investigations ("TBI"), but she did not tell him what the Defendant had told her. In fact, she never told him that she had gone by the Defendant's motel. She was advised to, and did, hire a criminal defense attorney to represent her. Lynch was again interviewed but did not mention what the Defendant had said.

After her construction van had been broken into multiple times, Lynch decided to move back to Gruetli-Laager from Monteagle. Lynch said that her next contact with the Defendant was after the victim's funeral. He came to her house while her family was there, and he assisted her by putting in a dead bolt lock on her door. He did not mention her husband's death at that time.

Lynch said that, for about a month after her husband's death, the Defendant did not come by her house. Then, he began to come by again and ask her if she was okay and if there was anything that she needed. He also gave her between twelve and fifteen thousand dollars. He would give her money and tell her that if she could pay it back that was okay, but it was also okay if she could not. She said that she hoped she could pay him back. Lynch said that the Defendant continued to come to her house and bang on the doors to get in. If he saw her out at a store he would follow her home.

Lynch testified that, sometime in October or November, she was intimate with the Defendant on three different occasions. She said that she felt like she was being controlled, so she decided to move to Texas. Additionally, she moved to Texas to be near a prisoner, Steve Groves, that she had met through a Christian pen pal website. She had previously visited Groves in prison twice. The day that she moved, the Defendant kept driving back and forth in front of her house. When in Texas, she gave Groves all the money that she had inherited from the victim's death so that she and Groves could start a business, which ultimately failed, together. Lynch told Groves about what the Defendant had said to her the morning of her husband's murder. She was shortly thereafter contacted by Agent Davis with the TBI, and he told her that he was considering indicting her for murder unless she came forward. She then testified before the grand jury.

Lynch testified that, in May of 1998, she had back surgery and she was not allowed to drive for six months and was also incapable of firing a gun. She said that she did not kill her husband, and she was not involved in planning or plotting to have him killed.

On cross-examination, Lynch conceded that the Defendant was not present when she gave her statement to the Assistant District Attorney ("ADA"). She agreed that, in her statement, she did not mention the note that the Defendant had given her or his confession to her. She agreed that she had taken her husband to hunt in the Million Dollar View area quite a few times. She testified that her son came by her house at 12:30 p.m. on the day that her husband was killed, and she did not tell him that his father had been killed. She said that her daughter also came by her house earlier that day, at 9:30 a.m., and she did not tell her daughter that she had been to pick up her father, but he had not come out of the woods. Lynch conceded that, in her statement, she told the ADA that the Defendant had nothing to do with killing the victim.

Lynch testified that the victim had had a “run-in” with some boys over stealing his tree stand, and he was hopeful that the boys would be in the woods on the day that he was murdered. Lynch agreed that she went to Texas to marry Groves, but he misled her. Lynch testified that her husband also knew about a large drug transaction that had taken place, and she told the ADA that she thought that he had been killed over a drug deal. She said that she told them this despite of the fact that the Defendant had confessed that he had killed the victim.

Lynch admitted that, after her surgery, she still worked with her husband doing paperwork and some painting. She said that her surgery did not impede her working as long as she did not hold her neck back too much. Lynch agreed that she previously liked to hunt and that she had a deer head mounted from a deer that she had killed.

Louie Ladd testified that, in December of 1998, he lived in Monteagle near the Million Dollar View area, and he recalled that the morning of December 13, 1998, was “a dreary foggy morning.” He said that, that morning, he heard a gunshot a little bit after 6:00 a.m. He said that he remembered hearing the gunshot because he thought it was unusual for someone to be hunting in the fog.

Carl Condra, Jr., testified that he was working for the City of Monteagle when the victim’s body was found. He said that he was asked to go look for a missing hunter. He came across the victim’s body, and he identified a photograph of the body. Condra also described how a rifle was stuck into the ground near the body when he found the body. Condra testified that he started searching for the body on Monday morning, the day after the victim was killed. On cross-examination, Condra said that he is also a deer hunter and that the tree near where they found the victim’s body was not the type of tree that one would put a tree stand in.

Larry Davis, a special agent with the TBI, testified that, on December 14, 1998, the Sheriff contacted him and asked him to assist in the victim’s death investigation. He arrived at Monteagle before noon and went to the Million Dollar View area. There, at the base of a forked tree, he saw the victim’s body. The victim was not wearing an iridescent orange hunting vest, and, near his body, there appeared to be a rifle or a weapon, the barrel of which was sticking in the ground. When he examined the gun he noted that the safety was in the “safe” position and would have had to be pushed before the trigger could be pulled. When the agent examined the victim’s body, he saw a gunshot wound that appeared to have traveled through the left arm up next to his shoulder. He also saw a secondary wound from that projectile that went into the victim’s body on the left side with no exit wound. Agent Davis looked for, but did not find, any expended cartridges or other weapons in the area near the victim’s body. The agent sent the victim’s body for an autopsy. He received from the pathologist who performed the autopsy a bullet found in the victim’s body.

Agent Davis identified pictures of the scene, and he noted that the Budget Host Inn Motel was across the interstate from where the victim’s body was found. The agent also identified pictures that he took from room 113 of the Budget Host Inn Motel looking at the Million Dollar View area. The Defendant was assigned to room 113 at the motel on the day of the murder.

Agent Davis testified that he spoke with the Defendant, who had voluntarily come to the Grundy County Jail, on the day that the victim's body was found. The Defendant told him that, on the morning of December 13, 1998, he stayed at the Budget Host Inn Motel. He said that he got up before daylight and went to a nearby city to check on a house that he was building for his brother. He said that he left the house around 8:00 a.m. and went to a restaurant and had breakfast. The Defendant said that he then went to the house where his wife and son live and asked his son if he wanted to go to Chattanooga. He went to church and then back to the house where his wife and son live. His wife let him in, and he stayed for ten minutes until his son was ready. The two stopped at a friend's house and then went to Chattanooga for dinner. When he returned, he learned that the victim was missing.

In his statement, the Defendant said that Lynch had kept his books for the last couple of years but that she stopped after his wife accused him of "going with" Lynch. He also said that, about two weeks before the victim's murder, he noticed two boys in the Million Dollar View area. He noticed that they did not have guns and that the victim's tree stand was missing. He asked the boys about the tree stand, and they said that they found it in the road, and their dad took it to a blue house. He talked to the man who had the tree stand, and the man told him the story of how he came to get it. The Defendant then told the victim what had happened, and the victim said that he was going to confront the man. The Defendant told him not to, but the victim told him, "[I]f I make them afraid of me then they will leave me alone." Agent Davis testified that he did not find a tree stand in the area around the victim's body. He also interviewed both boys with whom the Defendant spoke, and neither of them owned a .43 caliber rifle like the one used to kill the victim.

Agent Davis testified that, during the course of this investigation, he learned about Steve Groves. The agent went to Texas to the Federal penitentiary to interview Groves. Based upon this conversation, he contacted Lynch again and asked her to give another statement. Agent Davis also obtained her agreement to testify before the grand jury.

On cross-examination, Agent Davis agreed that he wrote a memo that indicated that he thought he had enough evidence to indict Lynch for first degree murder. He also said in the memo that he had discussed the case with the District Attorney, who was willing to make a deal with Lynch if she testified against the Defendant. On redirect examination, Agent Davis said that he did not have from his investigation any evidence to substantiate the claim that Lynch shot the victim.

Dr. Charles Harlan testified that he performed the autopsy of the victim's body. He said that the victim had multiple gunshot wounds caused by a single bullet. The bullet entered the outside portion of the left arm, then exited the arm and re-entered the body on the left side of the chest. The bullet traveled through the left lung, the heart, and the right lung, and it traveled at an upward angle. The victim did not test positive for the presence of drugs or alcohol. These gunshot wounds caused the victim's death. Further, the doctor said that a person who had sustained a wound such as this would live for a short period of time while bleeding to death. Dr. Harlan opined that this was not a survivable injury, even if the victim had received immediate medical treatment.

Steve Scott, a TBI employee in the division of firearms examination and identification, testified by deposition that, in December of 1998, Agent Davis sent him the bullet removed from the victim's body. He said that the bullet was a Winchester bullet and was designed to be fired from a .243 Winchester caliber rifle or a 6 millimeter Remington rifle. Scott said that, while this bullet could have been fired from either rifle, the Winchester cartridge and rifle combination were popular. Further, he testified that the lands and grooves on the bullet indicated that it was fired from a Winchester .243 rifle. Scott testified that the bullet was either a soft point rifle bullet or a hollow point bullet, both of which were designed to assist the bullet in expanding and creating further damage when striking a target.

Joey Nunley testified that he worked for the Defendant approximately eight years ago, and he had known the Defendant since he was young. Nunley and the Defendant went shooting, and the Defendant had several guns. He recalled the Defendant firing a .243 rifle on one of the job sites where they worked. Nunley took Agent Davis to the location where the Defendant shot the .243 rifle, but he did not know if any bullets were recovered. Nunley said that he had previously been married to the Defendant's current wife, Rhonda Kay Grimes Watts. On cross-examination, Nunley agreed that the last time that he worked with the Defendant was around December of 1997. Nunley conceded that he was related to the Defendant's previous wife, Patty Grimes.

Patty Grimes testified that she was previously married to the Defendant and that they had two children. She and the Defendant divorced around 2003. Grimes testified that she met the victim and the victim's wife through the Defendant and that the two families became friends. At the time that the victim was killed, Grimes and the Defendant were separated and he was staying at the Budget Host Inn Motel. After the victim was killed but before their divorce, the Defendant moved back in with her.

Grimes was aware that Lynch kept the Defendant's books and that the Defendant frequently stopped by Lynch's house. Before the victim was killed, the Defendant talked about Lynch as his bookkeeper, and he spoke positively about her. He did not, however, speak well of the victim during this time. Grimes testified that she and the Defendant separated because the Defendant was giving Lynch attention and not treating Grimes the way she thought that she should be treated.

Grimes testified that, after she learned of the victim's death, she thought that her husband might have been involved. She said that he owned a .243 rifle that was black with a silver handle. She testified that she confronted the Defendant multiple times about the possibility that a .243 rifle was used to kill the victim. One time, the Defendant said he had gotten rid of the gun a long time ago, and another time he told her that he never had a .243 rifle despite the fact that Grimes had seen him with such a rifle. Grimes said that she also asked the Defendant about a rumor that she had heard that the TBI had obtained a cast of a boot print at the scene of the murder. She said that the Defendant went straight into their bedroom and got his boots out of the closet, cut them up in pieces, and put gas on them and burned them. He then shoveled them into a five-gallon bucket and dumped the remnants in a creek.

On cross-examination, Grimes testified that she gave a statement to Agent Davis in 2003. She

said that her marriage to the Defendant was stormy, and she did not trust him at all. She suspected that he was having many affairs with other women in 1998. She said that the Defendant told her that they were getting a divorce but that she did not need a lawyer, and he would take care of her. She said that she did not “fall for” the Defendant’s claims. Grimes denied that she ever said that she would get back at the Defendant. She conceded that, at one point, she attempted to run the Defendant over with her car. She also conceded that she has sought treatment for chronic depression.

Grimes said that, in 1998, her son was a senior in high school, and he lived at home with his girlfriend. She said that she did not get along with him well at the time because he and the Defendant were “doing things behind [her] back.” Grimes said that her son did not usually lock his doors, but he got a lock on his door and started locking it and was whispering with the Defendant in his room. Grimes found a tape-recorder under the stairway, so she forcibly went into her son’s room to obtain the recording. Grimes denied that she ever tried to poison the Defendant. She testified that she was bitter, mad, and upset at the Defendant for a number of things. On redirect examination, Grimes testified that she never told Agent Davis that the Defendant admitted to killing the victim.

Teresa Marlene Curtis testified that, in 1998, she owned a hair salon and tanning bed business in Grundy County, and she recalled the victim being killed. Curtis had known the victim and his family through the community and through her business. She also knew the Defendant and the Defendant’s wife. The Defendant got his hair cut at her hair salon. Curtis recalled that, on the Monday after this murder, the Defendant came by her house while her husband was not home and her business was closed. He asked her to say that she had seen him at a Coke machine located in front of her beauty shop at a certain time early in the morning on the day the victim was killed. She said that she had not, in fact, seen the Defendant at the Coke machine, and she told him that she would not say that she had seen him. Curtis described the Defendant as nervous and upset and said that he left shortly after this conversation. After this conversation, Curtis learned that the victim had been shot. Curtis said that she was approached by a law enforcement in 2004 to give a statement, which she did. On cross-examination, Curtis testified that, prior to giving her statement, she told other people about this incident. She said that she did not come forward sooner because she was friends with both families involved.

The Defendant called Venettia Harelson to testify, and she said that she met the Defendant when he built a house for her and her ex-husband, before their divorce. She said that she developed a personal relationship with the Defendant in November of 1997, which lasted off and on until September of 2000. Harelson testified that, on December 12, 1998, she saw the Defendant at a Waffle House and went back to his motel with him at about 9:30 p.m. Harelson stayed the night with the Defendant and did not leave until about 5:15 the next morning. She said she was not very good at driving in the fog and she was scared, so she followed the Defendant to Gruelti-Laager. She said that she got back to her house between 6:00 and 6:30 a.m.

On cross-examination, Harelson testified that she was married when she met the Defendant, and she did not get divorced until 2002. Harelson said the Defendant is currently building her another house approximately 800 feet from the last house that he built for her. Harelson said she knew the

Defendant was married at the time of their relationship, and she was also married. Harelson said that she and the Defendant were together about twice a week, over 100 times a year, and they would always meet at her house. The only time that they did not meet at her house was the night of December 12th. The Defendant had told her that he would be staying at the Budget Host Inn Motel, she did not contact the Defendant before she left her house around 9:00 p.m., and she saw him in the parking lot. She said that the two had never spent the night together before this day.

Harelson testified that the Defendant told her that he had been indicted for murder. She did not go to Agent Davis or to the sheriff when she learned this to tell them that the Defendant was with her. She said that she told only the Defendant's lawyer, and she did not tell him until April of 2005, over a year after the Defendant had been indicted.

Earl Grimes, the Defendant's brother, testified that he was the oldest of twelve children. He said that he lived in Gruetli-Laager in December of 1998, and the Defendant was building him a house at that time. He said that during the afternoon of Saturday the 12th he was at the house that was being constructed with his brother. The Defendant had put a heater in the house to dry out some sheetrock. Grimes left the house around dark, and the Defendant was still there checking on the heater. The next morning, Grimes awoke around 6:00 a.m., and he went down to the house to check on the heater, arriving at around 6:20 a.m. Grimes said that the Defendant was at the house dressed in jeans and a pullover shirt. He said that the Defendant had already changed the propane cylinder in the heater, and, when Grimes left at around 7:00 a.m., the Defendant was still at the house.

On cross-examination, Grimes agreed that he went to check on his house almost everyday. Grimes said that he knew the victim, and he knew that the victim and the Defendant were friends. He said that he learned that the victim was missing on the Sunday after the victim's murder in church during the prayer requests. He learned on Monday at his work that the victim had been killed. He agreed that he did not think that his brother was involved in this crime and that his brother was not charged until almost six years after the incident.

Brenda Grimes testified that she is married to Earl Grimes and is the Defendant's sister-in-law. She said that at around 6:00 a.m. on December 13th, her husband went to check on the house that they were building. He returned home at around 7:00 a.m. On cross-examination, she said that she did not know the victim and that she learned of his death from the news.

Christopher Doyle Pressley, the son of the victim and Lynch, testified by deposition. He said that the Defendant's investigator came to speak with him while he was incarcerated in Texas for passing a stolen check. Pressley testified that, in December of 1998, he was living in an apartment with his then wife and their two children. He was working at the time as a carpenter for his father, the victim. His parents were living in Monteagle about five minutes from the main highway. Pressley said that he had gone hunting many times with both his father and his mother.

Pressley testified that he had known the Defendant since he was ten years old, and he lived with his parents within walking distance from the Grimes family. Pressley recalled that the victim

and the Defendant were good friends and did a lot of things together.

Pressley recalled that, on December 13, 1998, he saw his mother at around 9:00 a.m. when he went by her house to pick up his check. When he got there, Lynch told him that she could not write his check until his father returned. She said that they needed to pick up his father before 10:00 a.m. Pressley put his two children in his mother's Cadillac and went to the Million Dollar View area to pick up his father a little after 10:00 a.m. His father was not waiting at the designated spot, and Lynch said that she had to go back to the house. Pressley told Lynch that he would go back to his apartment, leave his kids with a baby-sitter, get his other car, and go back to get his father. After Pressley got his other car, he went back to his parents' trailer and told Lynch he was going to look for his father. At this time, he said that he was the only one looking for his father. Pressley recalled that he was riding on some roads when he was blocked by a red truck sitting in the middle of the road. Pressley ran into his brother-in-law between 12:00 p.m. and 1:00 p.m., and he then parked his car and rode around with his brother-in-law for a few hours. Pressley said that no one else helped them look for his father. Pressley's brother-in-law left to tell his mother to call the rescue squad while Pressley continued to look for his father.

Pressley said that he did not see the Defendant until the following morning. At that time, he also saw his mother in the rescue squad van. His mother then left with Sheriff Meeks to show the sheriff where the victim may have been hunting. Shortly thereafter, the rescuers found Pressley's father. He said that he did not know at the time whether his father was alive. He remembered that the Defendant was there crying as was his mother. The Defendant told him that his father had been shot and was dead. Pressley said that, over the next couple of days, it seemed as if his mother was "hurting."

Pressley recalled that the Defendant helped his mother with the bills because she did not have any money. The Defendant and his mother were like brother and sister, and his mother never seemed scared of the Defendant. In the days after his father's death, the Defendant and Lynch acted the same towards each other. Pressley testified, "He always treated her with respect." Pressley said that his mother moved from Monteagle because she was scared as a result of a few break-ins. After she moved, she showed him some correspondence between she and multiple pen pals, one of whom was in England and another man, Steve Groves, who was in prison in Texas. Six months to one year after the victim's death, Lynch moved to Texas to meet Groves and get married.

Pressley said that his father was an experienced hunter and that he would not go into the woods without an orange vest. He said that he took his vest off when he got into his tree stand.

Pressley testified that the first time that he learned that the Defendant may have had something to do with his father's death was in 2003 or 2004. While he was in Texas, his "new wife" called him and said that she had something to show him. When he got home, she showed him a picture on the computer of the Defendant in handcuffs and an article saying that he had been indicted for murder. He looked at Lynch, who said "you do not do wrong and get away with it . . . We finally found him." Pressley learned from someone else that, shortly after this, Lynch went back to Tennessee to testify

at a grand jury. He asked Lynch why she had not told him about what she knew before this, and she said that the Defendant had threatened her.

On cross-examination, Pressley recalled that in May of 1998 his mother had to have surgery. As a result of this surgery, his mother could not go hunting or shoot a gun because she has screws and a plate in the back of her neck. Pressley had previously seen the Defendant with rifles and numerous other long guns.

Dean Lay testified that he lived in Monteagle, and he ran a funeral business. He said that, in the fall of 1998, the victim and Lynch were working on a house that he was building, and they were remodeling some funeral homes for him. Lay testified that he attempted to call the victim at 6:30 or 7:00 a.m. on December 13th to ask the victim to repair a leaky roof for him. He said that Lynch answered the phone. That evening, around 4:30 or 5:00, Lynch went to Lay's house and said that the victim was missing. He said that Lynch was not "really visibly upset."

Carolyn Shipley, the Defendant's sister, testified that the Defendant's ex-wife, Patty Grimes, made statements to her in 2001 that she hated the Grimes family, and she was going to get even with them and ruin their family name. The Defendant's ex-wife also said that she hated the Defendant. In another incident Shipley recalled, Patty Grimes said that she hated the Defendant and the victim. Shipley testified that she would not believe any testimony offered by Patty Grimes. On cross-examination, Shipley agreed that the Defendant's marriage to Patty Grimes had its ups and downs, but she was unaware that the Defendant was having an adulterous relationship with Harelson. She agreed that she did not want her brother to be convicted of first degree murder.

Joshua Jones testified that he assisted the Defendant's counsel in investigating this case. He said that, as part of such, he went to the woods and found the tree where the victim was found. Jones timed how long it took to walk from the tree to the power line, which was four minutes. It then took him three minutes to walk to the main road. From there, it was a six minute drive to the home of the victim and Lynch. Total, it took him thirteen minutes to travel from the tree where the victim was found to the victim's house.

The Defendant testified that he agreed that his marriage to Patty Grimes was "stormy," and he could not recall how many times they had separated while they were married. The Defendant met the victim in 1977 while the two were working in the coal mines, and they became best friends. The Defendant's family and the victim's family both got along well, but, in the six or eight months before the victim's death, Patty Grimes became jealous of Lynch.

The Defendant said that he had hunted with both the victim and Lynch. Lynch also kept his books for him beginning after his daughter was killed in 1996. The Defendant recalled that he had been hunting with the victim and Lynch multiple times, and, in 1998, he had hunted in the Million Dollar View area between six and eight times. Of these times, only once did he go by himself, and that was only to look for the victim. He testified that Lynch was present every other time. The Defendant agreed that there was a time when the victim lost a tree stand, and he assisted getting that

back to the victim. He did not know, however, whether the stand was ever put back into the tree. The Defendant said that he hunted with a “pump 30-06” that he had since 1998. He said that he did own a .243 for a period of time but that was in November or December of 1997. The Defendant traded this gun to the victim, who was going to give it to Lynch. The last time that he saw the rifle was at the victim’s house the night before he was murdered. The Defendant said that a .243 rifle does not have as much kick as other guns, including a shotgun.

The Defendant described his ex-wife, Patty Grimes, saying that she had been diagnosed as bipolar and had told him previously that if he knew what went on in her head and the voices she heard he would know she was crazy. The Defendant recalled that she had been hospitalized for her mental problems and that she had severe mood swings. The Defendant said that he thought that Patty Grimes had attempted to poison his food and water.

In December of 1998, the victim was working on a house in Monteagle, and he had borrowed a lift truck from the Defendant for which the Defendant was charging him \$100 per day. The Defendant would go to the victim’s house on Fridays to collect a check for the money that the victim owed him, and he did this on Friday December 11th. While at the victim’s house, the victim said that he and Lynch were going to go deer hunting the next morning. The victim asked the Defendant to go on Saturday morning and see if there was anyone hunting in that area. The victim told the Defendant to come by for breakfast after he looked. The next morning, the Defendant awoke around 5:00 a.m. and went and looked at the hunting area and saw that there were no fresh tracks, and he went to the victim’s house to tell him so and to have breakfast.

While at breakfast, the victim told the Defendant that Lynch did not want to go hunting because she was scared of the Thomas boys, who were the boys involved in the tree stand incident. After breakfast, the Defendant went to the house that he was building for his brother in Gruetli-Laager. The Defendant recalled that it was drizzling, and he wanted to get the sheetrock dried out so that he could get his crew back into the house and working the following Monday. The Defendant placed a heater in the house, but the heater was not functioning properly, which concerned him. He said that he left the job site at dark and went to his motel in Monteagle. He then showered and went back to the victim’s house to get the money the victim owed him. He agreed that he stayed at the house for approximately thirty minutes, and he denied he ever passed Lynch a note. The Defendant said that there was no discussion of hunting the next day; rather, the victim said that he was going Christmas shopping and then by his foster mother’s house.

The Defendant said that, after he left the victim’s home, he went to the Waffle House near his motel. There, he saw Harelson, and he spent the night with her. He said that he woke up at around 5:00 a.m., and the weather was very foggy and drizzly. Harelson told the Defendant that she had trouble seeing in the fog and was not familiar with the area, so Harelson followed the Defendant to Gruetli-Laager. He said that the two left at around 5:30 a.m., and he arrived at the house that he was building for his brother at around 6:00 a.m. He went to the house to check on the heater, and there he saw his brother, Earl Grimes. He changed the gas in the heater, then left the house and went to the cemetery where his daughter is buried.

The Defendant said he did not have anything else to do, so he rode around thinking he may see a deer from the truck. Then, he had breakfast at Larry and Joan's Restaurant, where he left at around 9:00 or 9:30 a.m. The Defendant then went to his son's house to see if his son wanted to go to Chattanooga as they had previously planned. His son said yes but did not want to go until after church. The Defendant went to church, where his friend told him that he had shot a six point deer. After church, the Defendant went to his friend's house to look at the deer, and then he went back to get his son. He and his son went to Chattanooga and did not return until 5:00 or 6:00 p.m. When he got back, he learned that the victim was missing, and he and his friend went to the Monteagle Police Department to see what was going on.

The Defendant said that he took his friend home, borrowed some coveralls, and went back to the woods to search for the victim. He stayed searching until the search party was disbanded for the evening. He then went to his motel. The next morning, he woke up at 5:00 a.m. and went back to the house that he was building for his brother. He got his crew working and then went back to help find the victim. When he got there, the rescue squad had just found his body. The Defendant went back to the victim's house to talk with the family. There, Lynch asked him to put a dead bolt on her door, which he did. The Defendant described Lynch as acting like a "very happy woman" that day.

The Defendant said that he was asked to go to the police department and give a statement, which he did. He said that his wife called him and told him that she was the one that told law enforcement that he may have committed this crime. She then asked him to move back in with her, and he agreed.

The Defendant said that, before the victim's death, the victim was having financial problems and that he had borrowed money from the Defendant. The Defendant also offered to help the victim replace a work truck that he had lost. After the victim's death, Lynch started asking the Defendant for money. He said that she borrowed \$11,000 and kept telling him that she would pay him back.

The Defendant said that Lynch's testimony that she was supposed to come to his motel room was not true. He said that he did not jump into her car and that he never told Lynch that he had killed the victim. The Defendant said that, within two weeks of the victim's death, he saw a picture of another man at Lynch's house. Further, Lynch sold everything that belonged to the victim. Lynch gave the Defendant some of the victim's tools to help pay back the money that she owed him. She told him she would pay him the rest of the money when she received the insurance check from the truck that they lost, the victim's worker's compensation claim, and his insurance policy. She never, however, paid him. The Defendant denied that he ever threatened Lynch and that she was not telling the truth about him banging on her door or window.

The Defendant said that he never went to Curtis and asked her to be an alibi for him. He said that they did have a conversation when he was at her shop where he told her that he had been questioned for this crime. He told her that there was no way that he could have done it because he was not in Monteagle. Further, he said that, had he done it, he would have gone to the L&L Market or would have stood out front of her shop at her Coke machine so that everyone would know where

he was.

The Defendant said that he never cut up any boots in front of his ex-wife. He said that the two had a hostile relationship at times and that she had even tried to run him over with a car. She also told him that even though she knew that he had not killed the victim she was going to tell Agent Davis lies about him if the Defendant did not move back in with her. The Defendant said that his ex-wife asked him one time if she really had a daughter or if that was just a person in her mind. The Defendant denied that he shot the victim.

On cross-examination, the Defendant denied that he was in an inappropriate relationship with Lynch before the victim's death. He said that he did not know whether he had ever been to Lynch's house when the victim was not there, and the victim never indicated to him that he was jealous of his relationship with Lynch. The Defendant said that the only extra-marital affair that he was having was with Harelson, and he always went to her house except the one time she came to the motel the night before the victim's murder.

The Defendant said that he had hunted in the Million Dollar View area and that he knew where the victim had kept his tree stand. The Defendant said that he owned a .243 rifle for a couple of weeks in 1997 but that he had purchased it for the victim. The Defendant said that Nunley lied when he said that they shot a .243 rifle together. He said that Nunley may have gotten the Defendant's gun out of his truck and shot it, but the .243 was only in his truck for a couple of days. He said that he saw the .243 at the victim's house the day before the victim was killed. He picked up the gun to move it and saw that there was a scope on it.

The Defendant said that his ex-wife suffered from depression and attempted to kill herself. He agreed that one can drive from the motel where he was staying to the area where the victim was found in approximately five minutes. The Defendant agreed that he had not told Agent Davis in his initial interview that he went to the cemetery or that he rode around looking for deer the morning of the murder. He additionally agreed that he did not tell the agent that he had been with his girlfriend the night before the murder and the morning of the murder.

The Defendant said he tried to take the rescuers to the tree where the victim's tree stand was at one time located, but it was dark and foggy, and he could not find it. He said that he checked out of the motel the day after the victim was found because some members of the Pressley family were there, and they were suspicious of him. He said that he had been questioned by Agent Davis on the 14th about his involvement in this murder. The Defendant said that he went by the victim's house to check on his family after the victim's murder, but he did not bang on the doors and windows. He denied that he was intimate with the victim's wife, Lynch, after the murder.

The Defendant said that he spoke with Agent Davis a second time, on December 17th. He said that the agent asked him what type of gun he hunted with. He denied that the agent ever asked if he had a .243 rifle.

Jonathan Grimes, the son of the Defendant and Patty Grimes, testified that his father bought a .243 rifle and a 30-06 rifle, and let Jonathan pick what gun he wanted. He picked the 30-06, and the Defendant traded the .243 to the victim for a .45 caliber pistol. Jonathan said that he was present when this trade took place. Jonathan said that he lived in his parents' home until he was eighteen, and he did not see a .243 rifle in the house after the Defendant traded his to the victim.

Jonathan said that while he lived with his parents his mother accused his father of cheating on her. She also suffered from severe depression and she had insecure thoughts. She would not remember things, and she "would have in her head . . . stuff that . . . never happened . . ." He recalled that his mother was on medication for her problems. Jonathan recalled that, at one point in time, his mother cooked the Defendant's food separately from Jonathan's, and the Defendant would get very sick after eating the food, which his mother thought was funny. Jonathan said that he moved out of the house with his mother because he feared for his own safety and the safety of his wife and child.

Jonathan said that his mother threatened his father, saying that she would get back at him for hurting her emotionally, regardless of what it took. From his experience with his mother, he would not believe her when she testified under oath.

Tami Poston Ross testified that she was an attorney and represented the father of Marlene Curtis's child. He lived in Texas and retained her services to attempt to obtain custody of their son. Her representation lasted from 2000 to late 2002 or early 2003. During the course of this lengthy representation, she heard Curtis testify at hearings and listened to various taped conversations between Curtis and her client. From these interactions, she did not think that Curtis could be believed under oath.

Edith Kelly testified that she has been married to Lynch's father for eleven years and was married to him at the time of the victim's murder. Kelly said that Lynch did not cry when the victim was killed, and she seemed to be happy at the time after she learned of his death. Kelly recalled that Lynch had been hunting with the victim, even up to the weeks before his death, and she had previously killed a deer. Kelly also recalled that Lynch said that she would never be buried by her husband. Kelly said that she did not think that Lynch was honest or could be believed.

The Defendant introduced, and the trial court admitted, Patty Grimes' medical records and the records showing the time that it was logged that the victim was missing.

In rebuttal, the State recalled Agent Davis, who testified that in the interrogatories filed in the Defendant's divorce from Grimes the Defendant was asked to state any and all persons with whom he had engaged in sexual intercourse in the two years prior to 2001. The Defendant responded to those interrogatories saying that he had not had any relations with anyone other than his wife. The agent also said that he recovered the rifle that the victim had used when he was hunting, and there was a clip and a shell that had come out of the chamber and also shells in the clip.

Based upon this evidence, the jury convicted the Defendant of first degree murder, and the trial court sentenced him to life in prison. It is from this judgement that the Defendant now appeals.

II. Analysis

On appeal, the Defendant contends that: (1) the evidence is insufficient to sustain his convictions; (2) at trial, the State presented testimony it knew to be false; (3) the trial court improperly excluded testimony about the victim's prior bad acts; (4) the trial court erred when it excluded testimony about the mental stability of two prosecution witnesses; (5) the trial court erred when it allowed the State to question a defense witness about her prior marriages; (6) the trial court erred when it did not admit as substantive evidence the prior statements of a State witness; (7) the trial court erred when it allowed the State to cross-examine the Defendant about a previous statement; (8) the cumulative effect of these errors requires that the conviction be reversed.

A. Sufficiency of the Evidence

The Defendant contends that the evidence presented at trial is insufficient to sustain his convictions because the only direct evidence offered by the State Lynch's testimony that the Defendant confessed to her, and Lynch should not have been believed. When an accused challenges the sufficiency of the evidence, this Court's standard of review is whether, after considering "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 also* Tenn. R. App. P. 13(e); *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004). This rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999). If the State's evidence is based upon wholly circumstantial evidence, that evidence must be both consistent with guilt and inconsistent with innocence. *Pruitt v. State*, 460 S.W.2d 385, 390 (Tenn. Crim. App. 1970).

In determining the sufficiency of the evidence, this Court should not re-weigh or re-evaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. *State v. Buggs*, 995 S.W.2d 102, 105 (Tenn. 1999); *Liakas v. State*, 286 S.W.2d 856, 859 (Tenn. 1956). Questions concerning the credibility of the witnesses, the weight and value of the evidence, and all factual issues raised by the evidence are resolved by the trier of fact. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). This Court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record, as well as all reasonable inferences which may be drawn from the evidence. *Goodwin*, 143 S.W.3d at 775. Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. *See State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000).

First degree murder includes a “premeditated and intentional killing of another.” T.C.A. § 39-13-202(a)(1) (2003). Premeditation is defined as follows:

As used in subdivision (a)(1) “premeditation” is an act done after the exercise of reflection and judgment. “Premeditation” means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

T.C.A. § 39-13-202(d) (2003).

Premeditation may be established by any evidence from which a rational trier of fact may infer that the killing was done “after the exercise of reflection and judgment” as required by Tennessee Code Annotated section 39-13-202(d). *State v. Leach*, 148 S.W.3d 42, 53 (Tenn. 2004) (citing *Davidson*, 121 S.W.3d at 615). The element of premeditation is a question for the jury and may be established by proof of the circumstances surrounding the killing. *State v. Bland*, 958 S.W.2d 651, 660 (Tenn. 1997). The Tennessee Supreme Court previously has identified the following circumstances as supporting a finding of premeditation: the use of a deadly weapon upon an unarmed victim; the particular cruelty of a killing; the defendant’s threats or declarations of intent to kill; the defendant’s procurement of a weapon; any preparations to conceal the crime undertaken before the crime is committed; destruction or secretion of evidence of the killing; and a defendant’s calmness after a killing. *See Id.* (citing *State v. Bland*, 958 S.W.2d 651, 660 (Tenn. 1997)). However, these factors are not exhaustive. *Davidson*, 121 S.W.3d at 615. Establishment of a motive for the killing is a factor from which the jury may infer premeditation. *State v. Nesbit*, 978 S.W.2d 872, 898 (Tenn. 1998). This Court has previously held that a defendant who lay in wait for a victim to return demonstrated the capacity for premeditation. *State v. Mabel J. Longmire*, No. 1999-00260CCA-R3-CD, 2001 WL 128561, at *5 (Tenn. Crim. App., at Jackson, Feb. 15, 2001), *perm. app. denied* (Tenn. June 4, 2001).

The evidence, in the light most favorable to the State, proves that the Defendant was visiting Lynch frequently, and, the night before the murder, he left a note for her to come by his hotel room. He had, at this time, not been speaking well of the victim to Patty Grimes. The victim told the Defendant that he would be hunting at the Million Dollar View area, which was located across the highway from the motel where the Defendant was staying. From the testimony, the jury could have inferred that the Defendant traveled from his motel room to the Million Dollar View area to wait for the victim. After Lynch dropped the victim off to hunt, the Defendant shot him. Lynch went to the Defendant’s motel room, he jumped in her car and confessed that he had shot the victim. The Defendant then went about his day, going to church, to breakfast, and taking his son to Chattanooga. In the days after the murder, the Defendant asked Curtis to provide him an alibi for the morning of the murder. After hearing that the police had recovered a boot print from the crime scene, the Defendant destroyed his boots. This evidence is sufficient to prove that the Defendant acted with

premeditation. Further, while the Defendant contends on appeal that the witnesses providing the testimony upon which his conviction is based should not be believed, we again note that credibility determinations are made by the jury. Accordingly, we conclude that this evidence is sufficient to support the Defendant's conviction.

B. Allegedly False Testimony

The Defendant next contends that the trial court should have granted his motion for new trial because the State presented at trial testimony of Lynch that it knew to be false. The Defendant points out that Lynch was interviewed twice by Agent Davis, and she never implicated the Defendant in this crime. It was not until after she was told that she might be indicted for first degree murder that she said that the Defendant had confessed to her. Further, he asserts that her testimony is "in crucial places . . . ludicrous." The Defendant also cites to portions of the prosecutor's closing argument to support his claim that the prosecutor did not believe Lynch's testimony.

It is without question that the State may not knowingly present false testimony and that it has an affirmative duty to correct false testimony presented by State's witnesses. *State v. Cureton*, 38 S.W.3d 64, 74-75 (Tenn. Crim. App. 2000) (citing *State v. Spurlock*, 874 S.W.2d 602, 617 (Tenn. Crim. App. 1993)). To obtain a new trial, the defendant must demonstrate that the State presented false testimony, the State knew the testimony was false, and the testimony was material. *Id.* (citing *State v. Ricky Alexander Nabors*, No. 02C01-9404-CC-00065, 1994 WL 716247, at *2 (Tenn. Crim. App., at Jackson, Dec. 28, 1994)).

In the case under submission, the Defendant has not met his burden of showing that the State presented false testimony. There is no evidence in the record that Lynch has recanted, and although the Defendant has denied confessing to her that he shot the victim, credibility determinations are to be made by the jury. The Defendant points out that, in closing argument, the State questioned Lynch's testimony. We agree that the prosecutor expressed his desire to have sufficient evidence to prosecute Lynch also for this crime. He did not, however, state that her testimony regarding the confession was false. Further, his expression of skepticism that Lynch was not also involved in the murder does not amount to the State knowingly eliciting false testimony. Accordingly, we conclude that the Defendant is not entitled to relief on this issue.

C. Prior Bad Act Testimony

The Defendant asserts that the trial court erred when it excluded testimony that the victim had, fifteen years prior, been convicted of raping his own daughter. At trial, the Defendant attempted to cross-examine Lynch about her knowledge of this conviction and to prove that this knowledge was a possible motive for her to kill her husband. The Defendant sought to establish that, the night before this crime, the victim and Lynch had an argument about their daughter spending the night at their home and that Lynch told the victim that he was not going to get between her and her daughter again.

At trial, the trial court ruled that this evidence was arguably relevant. However, it ruled that given that the statement was indefinite, the length of time since the conviction, and the confusion of the issues, the probative value did not outweigh the prejudicial effect. The trial court told the Defendant he could question Lynch about whether the victim and Lynch argued the night before the murder, but he could not question Lynch about the victim's prior conviction.

Determinations made about the admissibility of evidence rests within the sound discretion of the trial court. *See State v. James*, 81 S.W.3d 751, 760 (Tenn. 2002). We will not disturb a trial court's ruling regarding the admissibility of evidence absent an abuse of that discretion. *See id.* We will not find an abuse of discretion unless it appears that the trial court applied an incorrect legal standard, or reached a decision which is against logic or reasoning and caused an injustice to the party complaining. *See id.*

It is always appropriate for a defendant, under indictment for a criminal offense, to prove that another person had a motive to commit the offense for which he is charged. *State v. McAlister*, 751 S.W.2d 436, 439 (Tenn. Crim. App. 1987) (citing *Sawyers v. State*, 83 Tenn. 694, 695 (1885)). However, the evidence by which the guilt of a third party is to be established must conform to all the rules regulating the admission of evidence. Thus, the third person's motive cannot be established by irrelevant or prejudicial evidence. *See State v. Powers*, 101 S.W.3d 383, 395 (Tenn. 2003). For evidence to be admissible, it must be relevant. Tenn. R. Evid. 402. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Tenn. R. Evid. 401. Under Rule 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

In the case under submission, we conclude that the trial court did not abuse its discretion when it determined that any probative value of the evidence sought to be introduced by the Defendant was outweighed by its prejudicial effect. While extremely remote, it is true that the evidence that the victim had, fifteen years prior, been convicted of raping Lynch's daughter had some probative value to Lynch's motive to commit this crime. Any probative value, however, is clearly outweighed by its prejudicial effect considering that this conviction occurred fifteen years before the trial, that it would mislead and confuse the jury, and that it could potentially inflame the jury. Accordingly, the Defendant is not entitled to relief on this issue.

D. Testimony Regarding Mental Stability

The Defendant sought to introduce lay testimony about the mental stability of two State witnesses: Marlene Curtis and Patty Grimes. Marlene Curtis testified that the Defendant asked her to say that she saw him at a Coke machine outside her business on the morning of the murder, but she refused. The Defendant sought to introduce testimony from a lawyer who had represented Curtis's ex-husband. The lawyer would have testified about multiple specific instances, including tape-recorded conversations, that led her to believe that Curtis was mentally unstable. The trial court

excluded this evidence, finding that any probative value was outweighed by its prejudicial effect. On appeal, the Defendant contends that Curtis's testimony at trial was not credible and that her behavior, as the attorney would have testified, was bizarre. Further, the Defendant contends this evidence was admissible pursuant to Tennessee Rule of Evidence 617.

Secondly, the Defendant contends that he should have been permitted to introduce testimony about Patty Grimes' mental state. Patty Grimes testified that the Defendant destroyed his boots after she falsely told him that the police had found a boot print at the scene of the crime. The Defendant sought to introduce evidence that Grimes was biased against the Defendant's family, stating that the family was "against her." Further, the Defendant argues that evidence of her specific acts would have shown her mental instability and would have been admissible pursuant to Tennessee Rule of Evidence 617. Finally, he contends that this evidence would have proven that Grimes was not a credible witness. The trial court ruled that the Defendant could introduce evidence showing that Patty Grimes was biased against the Defendant and that she had sought mental treatment. The court allowed the Defendant to introduce Grimes' medical records from her stay in a mental institution, which showed that she suffered from auditory hallucinations. The trial court found, however, that the other instances of Grimes' behavior that the Defendant sought to introduce were prejudicial and of little probative value.

Virtually all witnesses may be allowed to testify, including mentally incompetent persons. Tenn. R. Evid. 601, Advisory Comm'n Cmt. Of course, a party may attempt to impeach a witness by demonstrating his impaired capacity either at the time of the occurrence which is the subject of his testimony or at the time of his testimony. Tenn. R. Evid. 617; *State v. Barnes*, 703 S.W.2d 611, 617-18 (Tenn. 1985). If the witness' mental processes are so disturbed that he cannot recall the evidence in question, distinguish between reality and make-believe, or even understand his oath or affirmation, the evidence should be stricken. *State v. Carroll*, 36 S.W.3d 854, 866 (Tenn. Crim. App. 1999); see also Neil P. Cohen et al., *Tennessee Law of Evidence* § 603.4, at 318-319, 320-321 (3d ed. 1995); Tenn. R. Evid. 401, 403, 603. In the final analysis, however, the competency of a witness is a matter entrusted to the sound discretion of the trial judge, who has the opportunity to observe the witness firsthand. *State v. Caughron*, 855 S.W.2d 526, 537-538 (Tenn. 1993); *State v. Garrett Raines*, No. 01C01-9704-CC-00127, 1998 WL 211737, at *3 (Tenn. Crim. App., at Nashville, Apr. 30, 1998), *perm. app. denied* (Tenn. 1998); see also *Carroll*, 36 S.W.3d at 866. We will not find an abuse of discretion unless it appears that the trial court applied an incorrect legal standard, or reached a decision which is against logic or reasoning and caused an injustice to the party complaining. *James*, 81 S.W.3d at 760.

Testimony of mental stability or instability may also be admissible pursuant to Tennessee Rule of Evidence 701 :

If a witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness, helpful to clear understanding of the witness's testimony, or their determination of a fact at issue, or value.

Lay witnesses may give testimony in the form of an opinion where the testimony is “(1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue.” *Id.* 701(a). The admission of lay opinion testimony is limited to those situations wherein the jury could not readily draw its own conclusions on the ultimate issue, without the aid of the witness’s opinion testimony. *Blackburn v. Murphy*, 737 S.W.2d 529, 533 (Tenn. 1987). Put another way, the lay witness may express an opinion to describe her observations if that is the only way in which she can effectively communicate her observations to the jury. *State v. Brown*, 836 S.W.2d 530, 550 (Tenn. 1992). Again, when the admission or exclusion of opinion evidence is challenged on appeal, it is reviewable only for abuse of discretion. *See, e.g., State v. Gray*, 960 S.W.2d 598, 606 (Tenn. Crim. App. 1997).

The authors of *Tennessee Law of Evidence* state, “Tennessee law permits a lay witness to testify regarding the insanity of an individual if a factual foundation is laid that is sufficient to justify the lay opinion and to give it credibility.” Cohen, Paine & Shepherd, *Tennessee Law of Evidence*, § 701.4, (2d ed. 1990) (citing *Edwards v. State*, 540 S.W.2d 641 (Tenn. 1976)). To be reliable, a lay opinion regarding sanity must be based on the knowledge of facts which reflect the person’s mental condition.

Consequently, observation by a lay witness for a short period of time rarely can constitute a reliable foundation for the expression of an opinion about the mental condition of the person observed. *State v. Sparks*, 891 S.W.2d 607, 614 (Tenn. 1995). On the other hand, a household member, a near neighbor, a close friend, a fellow worker, anyone who is well acquainted with the person observed, probably will have sufficient knowledge on which to express a reliable opinion. *Id.*

The Advisory Commission comments to Rule 701 state:

As a condition to admitting lay opinions on insanity or another’s illness, courts have required a factual foundation

The symptoms or indicia of sanity or insanity, observable by non-experts in mental health, are the usual activities and personal interactions which can be described readily, accurately, and adequately by a lay witness without resort to the expression of an opinion.

Another condition for the admissibility of lay opinion testimony is that it “will not mislead the trier of fact” Tenn. R. Evid. 701.

With regard to Marlene Curtis, we conclude that the trial court did not abuse its discretion when it determined that the proposed evidence was inadmissible. The evidence offered concerned Curtis’s behavior as observed by Curtis’s ex-husband’s attorney between 2000 to late 2002 or early 2003. The murder in this case occurred in 1998, and Curtis testified at the Defendant’s trial in 2005. Clearly, the offered testimony was not about her impaired capacity either at the time of the occurrence which is the subject of her testimony or at the time of her testimony. Further, it was not offered by

someone so close to Curtis that she would have sufficient knowledge on which to express a reliable opinion. Accordingly, the trial court did not abuse its discretion.

With respect to Patty Grimes, we also conclude that the trial court did not abuse its discretion by excluding evidence sought to be admitted by the Defendant. In his appellate brief, the Defendant contends that the excluded evidence (her declarations that all the Grimeses are against her, screaming at the Defendant, statements that she would retaliate for a letter sent to her, and false accusations against her son) showed Patty Grimes's mental instability and bias. This testimony, however, was not helpful to a clear understanding of the witness's testimony or the determination of a fact in issue. Further, the fact that Patty Grimes suffered from mental problems was adequately conveyed to the jury through the Defendant's cross-examination of Grimes about her mental problems, the introduction of the medical records from her stay in a mental institution, and the questioning of Grimes' son about her mental history. The few specific instances of Grimes' behavior sought to be introduced by the Defendant and excluded by the trial court were not the "only way in which [the witnesses] c[ould] effectively communicate [their] observations to the jury." *Brown*, 836 S.W.2d at 550. Further, the trial court was within its discretion when it determined that the admission of this evidence would mislead the jury. Accordingly, the Defendant is not entitled to relief on this issue.

E. Cross-examination About Prior Marriages

The Defendant next contends that the trial court erred when it allowed the State to question a defense witness about her prior marriages. The Defendant called Edith Kelly, who was Lynch's step-mother, to testify that Lynch was able to shoot a gun after her surgery and had been hunting recently with the victim. On cross-examination, the State asked Kelly how many times she had previously been married. The Defendant objected, and the State told the trial court that it would tie this information in if allowed to proceed. The trial court overruled the objection, and the State elicited testimony that Kelly had previously been married three times before she married Lynch's father.

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Tenn. R. Evid. 401. After reading the transcript in the case under submission, we fail to see how this information was relevant. The State asserts in its brief on appeal that this information was used to "establish[] how well [Kelly] knew the witness she sought to impeach." However, it does not appear that the testimony regarding her prior marriages shed any light on Kelly's relationship with Lynch. Accordingly, we conclude that it was error to admit this evidence. However, this error was clearly harmless considering that this evidence was of little consequence and did not touch on any issue important to the Defendant's trial. Tenn. R. App. P. 36(b); Tenn. R. Crim. P. 52(a).

F. Statements of Sharon Lynch

The Defendant next contends that the trial court erred when it did not admit as substantive evidence Lynch's prior statements to police. The Defendant concedes that Tennessee Rule of Evidence 803 provides that such statements should be used for impeachment purposes only but he notes that Federal law allows the admission of such statements under certain circumstances. Further, he contends that these statements were "testimonial" as defined in *Crawford v. Washington*, 541 U.S. 36 (2004), and as such should be admitted.

Tennessee Rule of Evidence 613(b) provides:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice require otherwise. This provision does not apply to admissions of a party opponent as defined in Tennessee Rule of Evidence 803 (1.2).

See also State v. Reece, 637 S.W.2d 858, 861 (Tenn. 1982). Tennessee Rule of Evidence 613(b) allows the introduction of otherwise inadmissible extrinsic evidence for impeachment. *State v. Martin*, 964 S.W.2d 564, 567 (Tenn. 1998). A prior inconsistent statement introduced for purposes of impeachment may be considered only on the issue of credibility and not as substantive evidence. *Reece*, 637 S.W.2d at 861. Extrinsic evidence of a prior inconsistent statement remains inadmissible when a witness unequivocally acknowledges having made the prior statement. *Martin*, 964 S.W.2d at 567. When presented with a prior inconsistent statement a "witness has several possible responses: the witness can admit, deny, or not remember making all or part of the statements." Neil P. Cohen, Sarah Y. Sheppard & Donald F. Paine, *Tennessee Law of Evidence* § 613.4 (3d ed. 1995 & Supp.1998). If the witness admits making the prior inconsistent statement, any extrinsic proof of the statement would be cumulative. *Id.*

In the case under submission, Lynch admitted that she made the prior statements about which the Defendant questioned her. Therefore, admitting extrinsic proof of those statements would be cumulative. Further, we find the Defendant's argument as it relates to *Crawford v. Washington* unpersuasive. The Defendant had the opportunity to cross-examine Lynch about these prior statements, and he was not denied his right of confrontation by the non-admission of these statements as substantive proof. Accordingly, the Defendant is not entitled to relief on this issue.

G. Defendant's Prior Statement

The Defendant next contends that the trial court erred when it allowed the State to cross-examine him about a prior statement. The statement at issue was when Agent Davis asked the Defendant if he had ever owned a .243 caliber rifle, and the Defendant responded negatively. This statement would have contravened the Defendant's assertion that he owned one briefly and sold it to the victim. At trial, the State sought to ask Agent Davis about this statement. The Defendant objected, and the State discovered that it had not disclosed this oral statement in discovery. It, therefore, withdrew the question. When the Defendant testified, the State sought to ask him whether

he had told Agent Davis that he had never owned a .243 rifle. The Defendant objected. The trial court allowed the question, and the Defendant responded that he did not recall being asked whether he specifically owned a .243 rifle. On appeal, the Defendant contends that the use of his oral statement by the State, when the State had not disclosed this statement during discovery, violates Tennessee Rule of Criminal Procedure 16(a).

Tennessee Rule of Criminal Procedure 16(a)(1)(A) provides:

Upon request of a defendant the statement shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant . . . ; the substance of any oral statement which the state intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogations by any person then known to the defendant to be a law-enforcement officer;

To enforce the rule, Rule 16(d)(2), provides that if there has been noncompliance, the trial court may order the offending party to permit the discovery or inspection, grant a continuance, prohibit the introduction of the evidence not disclosed or enter such other order as the court deems just under the circumstances. *See State v. Leon Goins*, No. W1999-01681-CCA-R3-CD, 1999 WL 1531111, at *2 (Tenn. Crim. App., at Jackson, Dec. 27, 1999), *perm. app. denied* (Tenn. July 17, 2000). “Thus, it is clear that the court has wide discretion to fashion a remedy that is appropriate for the circumstances of each case and the sanction must fit the circumstances of that case.” *Id.* (citing *State v. Dennie Ray Loden*, No. 03C01-9311-CR-00380, 1995 WL 23351, at *2 (Tenn. Crim. App., at Knoxville, Jan. 19, 1995), *perm. to appeal denied* (Tenn. 1995) (citing *State v. James*, 688 S.W.2d 463, 466 (Tenn. Crim. App. 1984))). However, evidence should not be excluded except when it is shown that a party is actually prejudiced by the failure to comply with the discovery rules and the prejudice cannot be otherwise eradicated. *Loden*, 1995 WL 23351, at *2 (citing *State v. Garland*, 617 S.W.2d 176, 185 (Tenn. Crim. App. 1981)). “The exclusionary rule should not be invoked merely to punish the state or the defendant for deliberate conduct in failing to comply with [Rule 16(a)(1)(A)].” *Loden*, 1995 WL 23351, at *2.

In *State v. Underwood*, 669 S.W.2d 700 (Tenn. Crim. App. 1984), this Court held that a trial court properly admitted evidence of the defendant’s oral statements even though the State had not complied with Rule 16(a)(1)(A). This Court held that admission was proper because the defendant was already aware of the statements and introduction of the statements placed no undue burden on the defendant. *Id.* at 704.

The Defendant made a pre-trial request for any oral statements, and this statement should have been disclosed. Upon realizing that, the State withdrew its question to Agent Davis. The State did, however, question the Defendant about this statement. We conclude that exclusion of this evidence was not required by Rule 16. The Defendant did not request a continuance at trial and sought only exclusion of this evidence. Further, the Defendant has not shown how he was prejudiced by the statement. In fact, the only evidence before the jury was that the Defendant did not recall ever being

questioned about whether he owned a .243 rifle. The Defendant has not provided how he would have prepared differently for trial had he known of this statement. Accordingly, he is not entitled to relief on this issue.

H. Cumulative Error

Finally, the Defendant contends that the cumulative effect of these errors requires that the case be reversed because he was denied his right to a fair trial. Taking the record as a whole, having evaluated each issue and finding any error to be harmless, we conclude that the defendant was not denied a fair trial.

III. Conclusion

In accordance with the foregoing reasoning and authorities, we affirm the trial court's judgment.

ROBERT W. WEDEMEYER, JUDGE