

Capital Punishment: A Shelby County Case Study

Annie Minor

2013 Rhodes Institute of Regional Studies

I. INTRODUCTION

“I have concluded that our system of imposing the death penalty is inherently flawed. The evidence presented to me by former prosecutors and judges with decades of experience in the criminal justice system has convinced me that it is impossible to devise a system that is consistent, that is free of discrimination on the basis of race, geography, or economic circumstance, and that always gets it right.” – Governor Pat Quinn of Illinois (signing bill abolishing the death penalty in the state of Illinois, 2011)

Ever since the United States Supreme Court reinstated the death penalty as the most severe form of criminal punishment in 1976, capital punishment has been a controversial means of punishing the most heinous cases in the United States. Many factors have influenced the use of the death penalty, the initial being location. In 1976, the United States Supreme Court held in *Gregg v. Georgia* that each state could choose whether or not to implement the death penalty and could, furthermore, create individual statutes determining which crimes were death-eligible. Because 32 states currently endorse capital punishment as penalty for especially heinous crimes and a continually

increasing number of states, currently 18, have found the death penalty an unconstitutional, unreliable means of criminal punishment, cases with similar circumstances inevitably receive dramatically different penalties depending on the state in which they occur.

Numerous studies have found that few of the many cases initially charged with the death penalty actually result in death sentences, while race, demographics, and geography largely influence which defendants are ultimately sentenced to death. For instance, an early study published by Hugo Adam Bedau and Michael L. Radelet in the *Stanford Law Review* in 1987 found that “two dozen cases in which persons sentenced to death since *Furman* later [were] released because of doubts about guilt” (Pierce, Radelet). This study showed that an unacceptable number of cases in which a jury imposed a death sentence in the early years of the death penalty’s reinstatement were later overturned due to insufficient evidence gathered and presented in trial. A. Walsh-Higgins conducted a more recent comprehensive study in 2005 on capital cases in Ohio and found that around half of the 1,936 cases studied “ended with a plea bargain to a sentence less than death, including 131 cases in which the crime involved two or more victims and 25 involving at least 3 victims.” (Deiter 33). After ultimately accounting for a jury’s critical decision to impose a death sentence on a defendant they find guilty beyond reasonable doubt and the proportionality review processes of capital case sentences, few of the cases sought as death-eligible and receiving a death sentence end in an execution.

Advocates for the death penalty believe that the death penalty is a form of retribution and justice for the irrevocable loss of the murdered victims’ lives that the defendants inflict. Many arguments against the death penalty focus on the life of the

murderer and his constitutional rights to a fair trial, while the victim's loss of life is curtailed. Public figures and legal experts have expressed concern for this oversight; for instance, former Attorney General of Indiana, Theodore L. Sendak, quoted in a speech in May 1971,

“Our system of criminal law is to minimize human suffering by works or order primarily to forestall violence or aggression. In the question of the death penalty, we must ask ourselves which action will serve the true humanitarian purpose of criminal law. We should weigh the death of the convicted murders against the loss of life of his victims and the possibility of potential victims to murder” (Isenberg 129, Ornellas).

Arguments like these emphasize the need for murder to be punished in the most severe manner possible in order to honor the victims' lost lives and to prevent the perpetrator from committing additional murders. Another advocate for the fairness of the death penalty, Professor van den Haag, a psychoanalyst and professor at New York University was asked why he favored the death penalty and answered, “...I feel that anyone who takes some one's life should know that thereby he forsakes his own and does not just suffer an inconvenience about being put into prison for sometime (Isenberg 135, Ornellas). The death penalty as a means of retribution for the taking of another's life is a powerful rationale for its use in the eyes of many who value the individual lives as sacred and hold the taking of a life as a crime worthy of a penalty that inflicts an equal repercussion on the perpetrator. But while the death penalty is the closest “eye-for-an-

eye” form of punishment for first-degree murder cases and satisfies the need for retribution for those who seek it, more times than not, a small number of cases result in a death sentence among many eligible cases with similar aggravating circumstances, whose only differences lie in the demographic traits of the people involved and the location of where the case is tried. Decades of consistent and conclusive evidence has showcased inherent flaws in the system, and many prominent legal officials, organizations, and even public opinion polls have shown continual concern for its controversial complexities and pushed for the form of punishment to be declared unconstitutional due to its proven inconsistent nature, yet the death penalty’s use as the upmost form of punishment for the most heinous crimes enables its continuing practice.

Because of the death penalty’s nationally controversial nature, I was curious as to how the death penalty was sought and imposed in my own community, Memphis, Tennessee. Shelby County not only has the highest population of every county in Tennessee, but also has the highest crime rates of any metropolitan area in the state. It also has the highest number of capital cases and current occupants of death row. After completing an internship with the Shelby County Public Defender’s capital defense team last summer, I was interested in following up on my experience and chose to research the distribution of the death penalty in Shelby County over the last 20 years, from 1992 – 2012. Specifically, I wanted to perform a study that uncovered racial classifications of defendants and victims and to look for any demographic or racial patterns that consistently result in a decision to seek the death penalty by the Shelby County District Attorney’s Office and jury decisions to impose the death penalty. But in order to understand the history of the death penalty and its specific contentions, I will begin by

discussing the history of capital punishment in the United States and its controversial aspects.

II. HISTORY AND CONTENTIONS

In 1972, the United States Supreme Court found in *Furman v. Georgia* that the death penalty was being distributed in unacceptable arbitrary and discriminatory manners that violated the Eighth amendment's guarantee of protection against cruel and unusual punishment and the Fourteenth amendment by challenging all persons' equal protection under the law (procon.org). The landmark case caused the distribution of the death sentence to momentarily cease until 1976, when *Gregg v. Georgia* declared capital punishment constitutional after reforms had been enacted to reduce possibilities of discrimination. Capital trials were split into guilt and penalty phases, jurors were given a specific list of aggravating and mitigating factors to consider when deciding a defendant's death penalty eligibility, and states were ordered to perform proportionality appellate reviews of capital cases to ensure similar cases were sentenced correspondingly across a state. Additionally, the only crime eligible for the death penalty was murder ("Introduction to the Death Penalty").

Although *Gregg v. Georgia* instilled a system for distributing the death penalty that was meant to relieve past problems with arbitrariness and discrimination, problems with the system have been caused by vague language in capital penalty statutes and changing perceptions of the death penalty's rationales. The judiciaries in *Gregg v.*

Georgia found that capital punishment was acceptable under the justifications of incapacitation, deterrence, and retribution, but thirty-seven years of evidence after the ruling have proved that these rationales are inconsistent with society's reaction to the practice of capital punishment. For instance, a 2008 poll indicated that when life without parole is presented as an alternative penalty to death, support for a death sentence significantly drops (Justice Stevens, from statement in *Baze v. Rees*). The opportunity for a criminal to commit a second heinous murder is mostly eliminated with a life without parole sentence, and the modern public is less apt to support the irrevocable and definitive measure of sentencing a criminal to death when an alternative option preventing future crime is available.

The evidence of the death penalty's existence as a deterrence, or mechanism to make people less likely to commit a capital offense, has no evidence to support its success. Since the reinstatement of the death penalty, there has been no statistical evidence that the threat of a death sentence has deterred crime, lowered murder rates, or scared possible offenders from disobeying the law. On the contrary, states with the death penalty have had consistently higher murder rates than states that do not practice the death penalty, as shown in Appendix A. These statistics show that in a twenty-year period, states without the death penalty always had lower murder rates than those that enforced capital punishment, which lends strong evidence that the use of the death penalty as a means of deterrence is insubstantial.

Finally, the death penalty as a means of retribution is generally strong, but also subjective. To many, the death penalty is a fair punishment for one who willingly and heinously takes the life of another. The argument for its legitimacy lies in the "cruel

treatment of victims” spurring the need for vengeance in heinous crimes. While this is a strong rationale for its use, execution means have become more humane and less painful for the convicted because of the public’s demand for updated methods in sync with evolving cultural perceptions of decency. Moreover, the current national method of execution, lethal injection, inflicts no pain upon the victim. A painless death is unequal to most of the circumstances of the victims’ deaths in capital cases, and the “eye-for-an-eye” reasoning does not equal the wrongful, violent taking of a victim’s life by the perpetrator, even if it does satisfy the need for retribution in the families involved (Justice Stevens, from statement in *Baze v. Rees*).

In addition to the three moral rationales that ensured the reinstatement of capital punishment, the subject of exoneration and subjecting criminals to severe and irrevocable punishment is controversial and involves great risk in ensuring a defendant’s guilt before sentencing him to death. Over 130 people have been released from death row after conviction due to evidence of their innocence since *Furman v. Georgia* in 1972 (“Staff Report”). Between 2000-2011, there was a national average of 5 exonerations per year, which may be a small number, but represents 5 wrongfully convicted people whose lives were disconcerted by the failures of the US capital punishment system to function properly (“Facts About the Death Penalty”). However, death penalty advocates argue that several mistakes in the system should not mean that the whole system should be dismembered. Hugo Bedau, author of *Death Penalty in America*, claims that its benefits outweigh its few failures by stating

“The execution of the innocent believed guilty is a miscarriage of justice that must be opposed whenever detected. But such miscarriages of justice do not warrant abolition at the death penalty. Unless the moral drawbacks of an activity practice, which include the possible death of innocent lives that might be saved by it, the activity is warranted. Most human activities like medicine, manufacturing, automobile, and air traffic, sports, not to mention wars and revolutions, cause death of innocent bystanders. Nevertheless, advantages outweigh the disadvantages, human activities including the penal system with all its punishments are morally justified” (Bedau 323, Ornellas).

Bedau claims the death penalty provides assurance that a perpetrator will not commit additional crimes, thereby saving lives, a benefit that outweighs the problems with its inconsistent distribution. Still, according to public opinion polls, the majority of citizens polled supported alternative penalties to capital punishment. For instance, a 2010 public opinion poll performed by Lake Research Partners found that support for alternative punishments to the death penalty outweighed the 33% support for the death penalty by finding that a majority of 61% of voters would choose an alternative punishment to the death penalty, with a 39% vote for life without parole plus restitution (“Facts About the Death Penalty”). Diminishing public support for capital punishment reflects the overall complexity, controversial nature, and arbitrary results of capital punishment cases.

III. NATIONAL RACIAL STATISTICS

Regarding racial discrepancies, startling discriminatory statistics in the distribution of the death penalty have been uncovered. Numerous proportionality reviews and key studies have determined that in a given region studied, a defendant is far more likely to receive the death penalty if the victim is white than if the murdered victim is of a minority race. In 1990, the US General Accounting Office reviewed studies on race in relation to the death penalty and declared

In 82% of the studies [reviewed], race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found more likely to be sentenced to death than those who murdered blacks. This finding was remarkably consistent across data sets, states, data collection methods, and analytic techniques (Deiter 21,22).

In the most renowned and comprehensive study of race and the death penalty, Professor David Baldus of the University of Iowa performed a regression analysis of over 2000 murder cases in Georgia that were eligible for capital punishment. He tested them with 230 variables that represented circumstances that could affect the chances of a defendant receiving the death penalty and found that the chances of receiving capital punishment in Georgia was 4.3 times greater if the victim was white than if the victim was black (Deiter 22). In another study, he found that 96% of states shed light on patterns of discrimination in race of victim, defendant, or both when reviewing their race and death penalty statistics (Prof. Baldus report to the ABA, 1998, Deiter 22).

Of the 1337 death penalty cases occurring since the reinstallation of the death penalty in 1976, over 75% of the victims in cases resulting in a capital sentence were white, while nationally, only 50% of murder victims on average are white (“Facts about the Death Penalty”). After *Furman v. Georgia*, discriminatory concerns with capital punishment have subverted from the race of the defendant to race of the victim in determining the chances of a capital sentence. Regardless of which factor is addressed for discriminatory evidence, the discoveries of patterns of racial influence in any area of the complex capital case process show problems with current policy regarding the capital punishment system.

IV. TENNESSEE AND SHELBY COUNTY

Although capital punishment is problematic on a national scale, its contentions are especially evident in Memphis, Tennessee, due to the city’s high crime rate, its racial demographics, and the relatively high number of capital convictions dispensed in Shelby County in comparison with other metropolitan counties in the state. According to the Tennessee Department of Correction, 39% percent of the current death row occupants in Tennessee are from Shelby County, which not only accounts for a larger percentage than any other metropolitan city in the state, but also constitutes nearly half of Tennessee’s recent capital convictions. Correspondingly, Shelby County has the highest population of any metropolitan county in Tennessee, the lowest per capita income, and the greatest percentage of its population below poverty level, according to demographic data from the United States Census Bureau. Shelby County’s demographic make-up is unique to the

other metropolitan counties in Tennessee due to its vast population and the African American racial majority of its population. Charts 1- 4 below show demographic and crime data statistics of the four major metropolitan counties in Tennessee that contain the cities of Memphis, Nashville, Knoxville, and Chattanooga; the numbers reveal the relatively high crime rates and indigent conditions of Shelby County in comparison to the other regions.

Chart 1: Tennessee Metropolitan County Population Statistics

County	2012 Population	2011 % White Population	2011 % Black Population	2007-2011 Per Capita Income	2007-2011 Median Household Income	2007-2011 % Population below Poverty Level
Shelby	940,764	43.6	52.3	\$25,470	\$46,102	20.1
Davidson	648,295	66.2	27.9	\$28,526	\$46,737	17.7
Knox	441,311	86.7	9.0	\$28,042	\$47,277	13.7
Hamilton	345,545	75.8	20.2	\$26,924	\$45,826	15.9

Data collected from United States Census Bureau

Chart 2: Reported Offenses per 100,000 Population

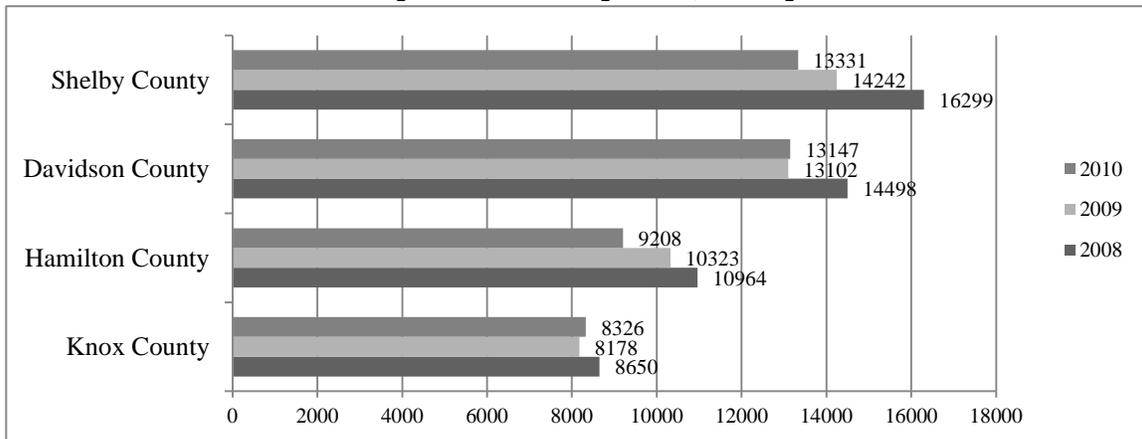


Chart 3: Reported Murders per 100,000 Population

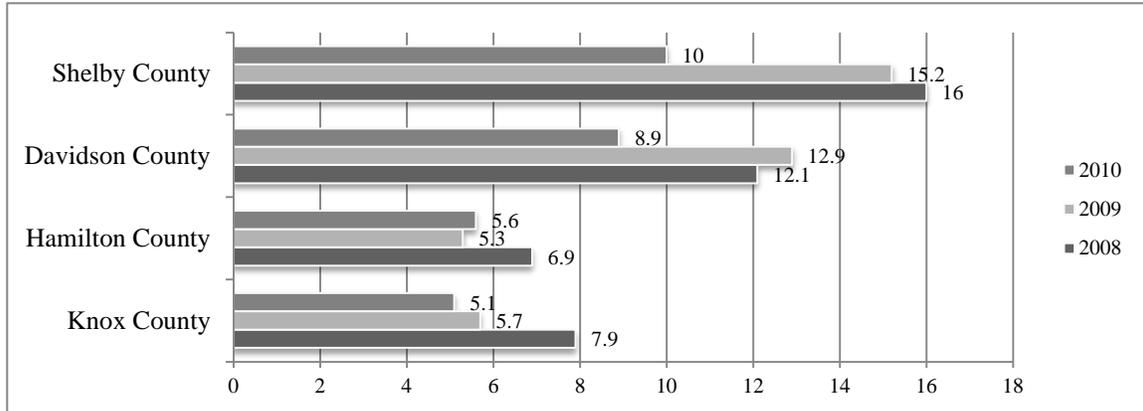
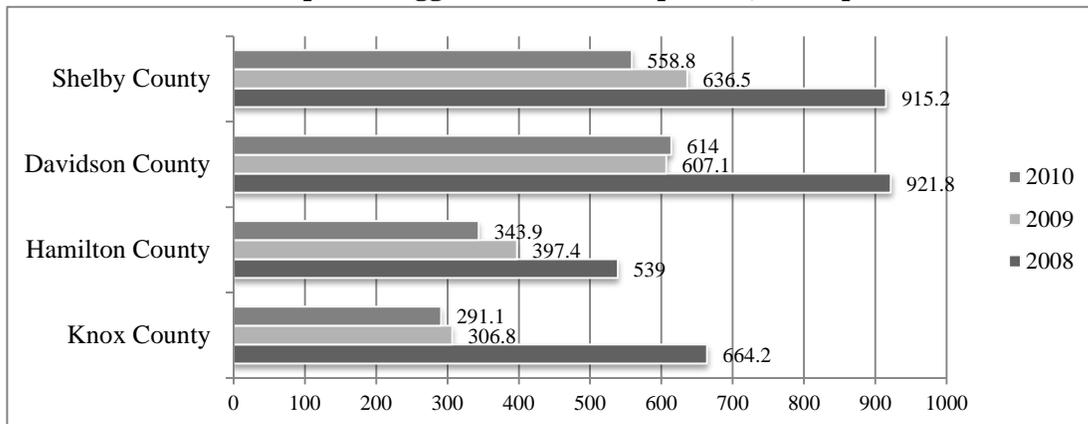


Chart 4: Reported Aggravated Assaults per 100,000 Population



Charts from *Shelby County District Attorney 2011 Annual Report*; source of data: TN Bureau of Investigation Incident Based Reporting System; county populations gathered from US Census Bureau

While its relatively high crime rates and urban demographic attributes affect the high number of annual murders and capital punishment cases in Shelby County, the manner in which the death penalty is sought varies across the counties in Tennessee, which also affects the capital punishment caseload in each county. At the national level, there is no national case review that reserves the death penalty for the worst of the worst offenders, which allows states who choose to implement the death penalty to create their own statutes regarding how it is used, including if the manner must be uniform in all counties.

In order to be eligible for capital punishment, *Tennessee Code Annotated* § 39-13-202(c) states “at least one of the statutory aggravating factors must be present in order to seek the death penalty” in the event of a first-degree murder, which *Tennessee Code Annotated* § 39-13-202(a) prescribes as:

- (1) A premeditated and intentional killing of another; (2) A killing of another committed in the perpetration of or attempt to perpetrate any first-degree murder, arson, rape, robbery, burglary, theft, kidnapping, aggravated child abuse, aggravated child neglect or aircraft piracy; or
- (3) A killing of another committed as the result of the unlawful throwing, placing, or discharging of a destructive device or bomb (as cited in Sharma et al.).

Additionally, a list of the statutory aggravating factors defined by *Tennessee Code Annotated* § 39-13-204(i) is located in Appendix B. While all counties in Tennessee look to this statute for a basic overview of a defendant’s eligibility for the death penalty, each District Attorney’s office has the choice to form an additional policy to guide its attorneys in deciding which cases are most consistent with the Tennessee statute’s death-eligibility guidelines. The Shelby County District Attorney General’s office has no additional policy to guide its lawyers’ deliberations on death penalty case eligibility, so their decisions are solely based on the minimal guidelines prescribed in the above sections of the Tennessee law code. In other words, if the Shelby County prosecution team finds a case consistent with the statute’s standards of death penalty eligibility, the

DA office correspondingly files a notice to seek capital punishment with the court and informs the defendant's legal counsel of their decision.

Meanwhile, Davidson County has a detailed procedure that the Davidson District Attorney General claims is "intended to establish a professional benchmark and to assist in the exercise of prosecutorial discretion" ("Death Penalty Guidelines"). After an initial finding of one or more statutory aggravating factors that would legally justify seeking the death penalty or life without parole, a first-degree murder evaluation form is filed; the victim's family is consulted; and the defendant's counsel is notified to submit any mitigating information relevant to the case for the prosecutors to consider. If after a final review, the Davidson County District Attorney believes the case is death-eligible, he then files a notice to seek the death penalty and informs the defendant's counsel of his decision ("Death Penalty Guidelines"). Because the United States law leaves the full decision of whether to seek the death penalty or a life sentence for a first-degree murder charge to individual district attorney offices, local sentiment, regional demographic make-up and inconsistent policy guidelines of when to seek the death penalty influence a defendant's likelihood of receiving the death penalty. Additionally, the actual decision of whether one receives a death sentence is left to a panel of twelve jurors who are screened for death penalty case eligibility and given a set of legal guidelines to adhere to when making their decision. The margin of their personal bias and problems with juror demographic make-up also inherently influence the number of case inconsistencies.

Due to the lack of studies performed on capital case consistency in Shelby County, I have performed a case study of the dynamics of death-eligible cases in Shelby County over the last 20 years from 1992 to 2012, analyzing demographical data,

circumstantial crime aspects, evidence against the defendant, and victim traits in association with conviction statistics to determine which death-eligible cases are more likely to receive a capital charge from the Shelby County District Attorney and a death sentence from a jury. I chose to analyze cases in this time frame in order to rule out the effects of racial tensions in Memphis around the death of Martin Luther King Jr. in 1968, and the ardent civil rights activism that inevitably affected the first cases after *Gregg v. Georgia* that followed this monumental time in Shelby County history. I have based most of my methodology on work done by Hemant Sharma, John M. Scheb II, David J. Houston, and Kristin Wagers, who performed an empirical analysis of race and the death penalty in Tennessee death-eligible cases from 1977 to 2007, in “Race and the Death Penalty: An Empirical Assessment of First Degree Murder Convictions in Tennessee after *Gregg v. Georgia*,” and I have performed two additional tests to determine the significance of socioeconomic factors in the outcomes of capital cases in Shelby County. Ultimately, my goal is to determine if the distribution of the death penalty is consistently and fairly applied to crimes committed in Memphis, or if there are racial discrepancies in the prosecutor’s decision to seek the death penalty and a jury’s decision to impose a death sentence. These results will conclude whether capital punishment is efficient for our community or if there is room for policy reform.

V. DATA SOURCE & METHOD

In order to analyze all death-eligible cases in Shelby County from 1992 to 2012, I used the data from the Tennessee Supreme Court Rule 12 archive, which holds

comprehensive records of all first-degree murder convictions, regardless of sentencing outcome, dating from 1977 - July 2013. The Tennessee Supreme Court Rule 12 mandates that trial judges submit reports on all first-degree murder convictions, which includes extensive information on the defendant, victim, aggravating and mitigating circumstances of the crime, case chronology, data on the trial of the offense, representation of the defendant, and other general considerations relevant to each conviction. Like Sharma et al., I have no reason to believe that any cases during my chosen 20-year time frame are missing from the database, and I analyzed the 268 first-degree murder conviction files that occurred between 1992 and 2012 for general statistics on how often the death penalty is imposed and sought, while focusing on the presence of factors that likely result in a prosecutor's decision to seek the death penalty and a jury's decision to impose a death sentence.

Of the 268 cases, the Shelby County District Attorney General's Office chose to seek the death penalty in 73 (27.23%) of the 268 cases, and of those 73 capital cases, a jury imposed the death penalty in 28 (10.44%). Additionally, 256 of these 268 cases tried male defendants, while only 12 cases tried female defendants. I chose to perform my empirical data analysis on only the Caucasian and African American races because they make up the majority of the Shelby County population and found that 24 (8.96%) of the defendants charged were documented as white, while 226 (84.32%) of the defendants charged with first-degree murder were black. Although I focus on the African American and Caucasian races, 3 of the 268 cases involve Asian or Pacific Islander defendants, 1 involves a Hispanic defendant, and the races of 14 defendants were undocumented.

Finally, 54 (20.15%) of the cases are listed as murders of white victims, while 178 (66.42%) of the cases involve the deaths of black victims.

Like previous studies on race and the death penalty and, specifically, as in Sharma, et al. whose binary logistic regressions I reference, I determined the impact of race in the prosecution and jury stages of a death-eligible case by compiling a probit regression model and ordinary least squares model that use control variables to show the significance of certain independent variables with chosen dependent variables. However, Sharma et al. used a unique method to previous studies performed on race and the death penalty in their analysis of Tennessee by accounting for both the Shelby County District Attorney General's decision to seek the death penalty and a jury's decision to impose a death sentence by creating a regression model for each stage, rather than relying on one of the two facets to provide conclusive evidence for a fair application of the death penalty over a given period of time. I started by recreating a narrowed version of their logistic regression tables on Tennessee data to only those occurring in Shelby County: one models the prosecutor's decision to seek the death penalty, whose dependent variable I coded '1' for each case in which the death penalty is sought, and '0' in which it was not, and the other models jury decisions to impose the death penalty in those cases that the prosecutor sought capital punishment, whose dependent variable I coded '1' for each case in which a jury imposed the death penalty, and '0' in which it did not.

After reading the results of previous studies on race and the death penalty, I decided that my initial hypotheses for race relevancy for Shelby County were the same that Sharma et al. held when studying the state of Tennessee, regardless of the demographic differences of Shelby County, and were as follows:

Hypothesis #1: Prosecutors will be more likely to seek the death penalty when the victim of a first-degree murder is white.

Hypothesis #2: A jury will be more likely to impose a death sentence in a capital case when the victim of the crime is white (Sharma et al. 13).

VI. RESULTS AND DISCUSSION

VI.A. CROSS-TAB ANALYSIS

Upon running an initial cross-tab analysis of the 268 Shelby County first-degree murder cases in the Rule 12 data, the Shelby County District Attorney sought the death penalty in 27.23% of the cases. In those 73 capital cases that went to trial, 10 death sentences were returned by juries, or in 38.36% of the cases. In all, 10.5% of the first-degree murder convictions in this sample resulted in a death sentence. Concerning demographics, an overwhelming 84.32% majority of the defendants convicted were black, while only 8.96% were white. This varies greatly from the racial statistics that Sharma et al. found when studying all Tennessee first-degree murder convictions, which indicated that 50% were white defendants and 45% were black (Sharma et al. 22). Contrary to sentiments in early studies of cases occurring before and soon after the reinstatement of the death penalty in 1976, the Shelby County District Attorney was actually more likely to seek the death penalty in white defendants' cases (45.83%), and juries were also more likely to impose a death sentence in the cases of white defendants, as shown in Table 1 below. Moreover, only 6.64% of black defendants were dealt a death sentence, while juries sentenced 37.5% of the white defendants to death.

Although the results of the defendant's race show that white defendants have been

% of All First-Degree Murder Convictions in Database	% of Cases in which Prosecutor Sought Death Penalty	% of Death Penalty Cases in which Jury Returned Death Sentence
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more likely to receive the death penalty in Shelby County, the race of murdered victims shows a different scenario. The results in Table 1 show that prosecutors sought the death penalty in 50% of the cases involving white victims, and they were 20.22% less likely to seek the death penalty in cases involving black victims. Furthermore, juries returned death sentences in 20.37% of cases involving the death of a white victim; in comparison, 7.87% of the cases involving a black victim's death received a death sentence. These results are similar to those found in the Tennessee model, as well.

Table 1: Racial Classification of Defendants and Victims

White Defendant	8.96%	45.83%	37.50%
Black Defendant	84.32%	23.01%	6.64%
White Victim	20.15%	50.00%	20.37%
Black Victim	66.42%	20.22%	7.87%
White Defendant, White Victim	6.34%	58.82%	25.00%
White Defendant, Black Victim	1.49%	25.00%	47.06%
Black Defendant, Black Victim	50%	19.64%	7.14%
Black Defendant, White Victim	10.82%	44.83%	3.33%

Although many of the racial combinations of defendant and victim are insignificant, the cross-tab shows that 58.82% of the cases involving a white defendant and white victim were sought as death penalty cases, which could mean that crimes involving white defendants and white victims were more heinous or passionate than the crimes of other racial combinations in this sample. This is the only combination that returned a percentage over 50% more likely to be sought as a death penalty case or to impose a death sentence. In order to further investigate these results and additional considerations, the probit and OLS regression models show the numerical significance and insignificance of more characteristics.

VI.B. SHARMA ET AL. METHOD

When recreating Sharma et. al's logistic regression tables on capital cases in Tennessee for a sample only using Shelby County cases from 1992 - 2012, the primary independent variables used are race of the defendant, shown as *Black Defendant*, and the victim race, shown as *White Victim*. In addition to these variables, Sharma, et al. chose to

include 23 characteristic variables from previous literature in order to produce “well-controlled” tests and divided the variables into the following four categories: Characteristics of the Homicide, Evidence Against the Defendant, Victim Traits, and Defendant Traits (Sharma et al. 13). First, differing homicide characteristics can make cases appear more or less heinous to a prosecutor and jury, depending on what aggravating or mitigating insight they lend into the homicide. In order to account for their presence in the decision-making process, this model accounts for crimes involving *Three or More Victims, Three or More Perpetrators, Dangerous Concurrent Crimes, and Abnormal Methods of Killing*. Variables controlling for evidence against the defendant are used to determine if certain types of evidence suggesting a defendant’s guilt are more persuasive than others, or if the presence of certain kinds are more likely to influence a capital case’s fate. Defendant *Confessed* and *Co-Perpetrator Testified* are used in this model to control for various natures of evidence that a prosecutor and jury consider when deliberating to seek and impose a death sentence. *White Victim, Female Victim, Victim Stranger, Elderly Victim, and Victim Under 12* are used as independent variables to control for general victim characteristics of each capital case. Finally, this model controls for six traits of the defendant accused of a crime: *Black Defendant, Defendant Unemployed, Previous Violent Felony Conviction, Potential for Rehabilitation, Showed Remorse, and Learning Disability*. Sharma et al. also controlled for the variables *Male Defendant, Victim Law Agent, Rape* as a separate category from the other danger concurring crimes, *Strong Witness ID, and Scientific Evidence* in their logistic regression models, but there are no cross-variations in these variables in the Shelby County data. They are, therefore, insignificant and omitted in my models.

VI.B.1. MODEL OF PROSECUTOR’S DECISION TO SEEK THE DEATH PENALTY

In order to account for possible racial discrepancies or case traits that are significant in the Shelby County District Attorney’s decision to seek a capital charge and a jury’s decision to impose a death sentence, I ran a probit regression test on each primary independent variable, while “controlling for other variables that impact prosecutorial and/or jury behavior,” modeled after the logistical regression tests of Sharma et. al on the state of Tennessee (Sharma et al. 23). Table 2 depicts a model of the Shelby County District Attorney’s decision to seek the death penalty in relation to variables that signify the likelihood of this decision. Each time the prosecutor seeks the death penalty, the dependent variable is coded ‘1.’ The ‘Probit Coefficient’ column represents the variable’s z score, or how many standard deviations the variable lies from the mean. The ‘Probit Marginal Effects’ column indicates the impact of change in an independent variable, or a percentage likelihood of a variable while holding all other factors constant at the mean. The Least Ordinary Squares columns are included because they are easy to interpret, but they are a less thorough indicator of significance.

Table 2: Model of Shelby County District Attorney's Office's Decision to Seek the Death Penalty in Shelby County, Tennessee, 1992 – 2012 (Probit Regression and Ordinary Least Squares Regression)

Dependent Variable = Death Penalty was Sought (“1”)

	Probit	Probit	Probit	OLS	OLS
Independent Variables	Coefficient	Standard Error	Marginal Effects	Coefficient	Standard Error
Victim Traits					

White Victim	0.7445***	0.2477	0.2626	0.2233***	0.0704
Female Victim	0.5305**	0.2197	0.1763	0.1584**	0.0612
Victim Stranger	-0.1441	0.2194	-0.0447	-0.0390	0.0583
Elderly Victim	-0.8636	0.7575	-0.1888	-0.2072	0.1886
Victim Under 12	0.4082	0.6541	0.1436	0.1222	0.1953
Defendant Traits					
Black Defendant	-0.4988*	0.2799	-0.1738	-0.1446*	0.0801
Defendant Unemployed	-0.3431	0.2060	-0.1042	-0.0800	0.0536
Previous Violent Felony Conviction	0.5486***	0.2007	0.1793	0.1501***	0.0550
Potential for Rehabilitation	0.6492	0.5943	0.2373	0.2103	0.1748
Showed Remorse	-0.4559	0.5309	-0.1212	-0.1550	0.1494
Learning Disability	0.2138	0.7561	0.0719	0.0445	0.2402
Crime Traits					
Three or More Victims	0.5852	0.6971	0.2126	0.1846	0.2223
Three or More Perpetrators	0.7889***	0.2601	0.2829	0.2456***	0.0746
Abnormal Method of Killing	-0.1368	0.2380	-0.0421	-0.0299	0.0645
Dangerous Concurrent Crime	-0.0094	0.2045	-0.0030	.0147	0.0554
Evidence					
Co-Perpetrator Testified	0.3483	0.2959	0.1189	0.0934	0.0846
Confessed	0.4133	0.4440	0.1448	0.1124	0.1330
CONSTANT	-0.7444	0.3202		-0.0433	0.1375
Total Number of Decisions	250		Total Number of Decisions	268	
LR Chi-Square	53.22		R-Squared	0.2391	
Pseudo R Square	0.1795		Adjusted R-Squared	0.1708	

@= victim was police officer, District Attorney, or judge

#= stabbing, throat-slashing, drowning, beating, strangle/suffocate, poisoning, burning, pushing off high building, or hitting with a vehicle

^= arson, robbery, burglary, kidnap, aircraft piracy, child abuse, or bombing

*=p<.10; **=p<.05; ***=p<.01; two-tailed test

According to the model, several variables appear to be significant predictors of the prosecutor's decision to seek the death penalty. The Shelby County District Attorney is more likely to seek the death penalty when the victim is white; thus, like Sharma et al., I reject the null for my first hypothesis. This model shows that holding all factors constant at the mean, a defendant is 26% more likely to have the death penalty sought

against him if he kills a white victim. Similarly, the model shows that one is 17.6% more likely to receive a capital charge if one murders a female victim. Contrary to popular sentiment, this model shows that a black defendant is 17.4% less likely to receive a capital charge in Shelby County. This result differs from the results of Sharma et al., who found no “race-of-defendant effect” when analyzing statewide data (Sharma et al. 26). This could possibly show the Shelby County District Attorney’s attempt to be unbiased toward black defendants, or it could show that most black defendants were not charged with crimes that did not seem especially heinous or death-eligible to the prosecutor. This model also shows that a defendant convicted of a previous violent felony is 17.9% more likely to receive a capital charge, which signifies a prosecutor is more likely to seek the death penalty when the accused has been convicted of a previous violent crime.

When testing evidence against the defendant variables, this model indicated that none were significant in predicting the Shelby County District Attorney’s decision to seek a capital charge. This differs from the Tennessee model, which indicated a case in which a defendant confessed was 1.8 times more likely to receive a capital charge; a case coupled with scientific evidence linking the accused to the crime 1.9 times more likely to receive a capital charge; and a case in which a co-perpetrator testified 1.76 times more likely to receive a capital charge (Sharma et al. 26).

VI.B.2. MODEL OF JURY DECISIONS TO IMPOSE A DEATH SENTENCE

The next model shown in Table 3 is my recreation of Sharma et al.’s model indicating the significance of variables in jury decisions to impose a death sentence in Tennessee, narrowed to a 20 year Shelby County sample. Unlike the previous model of

the Shelby County District Attorney’s decision to seek a death sentence, the killing of a white victim does not significantly affect a jury’s decision to impose a death sentence. This is consistent with the statewide results; therefore, like Sharma et al, I must fail to reject the null for my second hypothesis. Sharma et al. indicates that this result differs from all previous literature, which “indicated an overall race-of-victim effect related to capital punishment” (Sharma et al. 28). Previous researchers may not have controlled for the same variables in their studies, or it could be possible that juries respond to race of victim in various ways in different states. Sharma et al. even suggest that this result could indicate that jurors possibly “correct the mistakes of prosecutors who seem to be prone to considering extra-legal criteria in the application of capital punishment” (Sharma et al. 28).

Next, this model shows that a black defendant is even more unlikely to be sentenced to death than to receive a capital charge, as shown in the previous model. A black defendant is 23.3% less likely to receive the death penalty, holding all other factors constant, which is a highly significant find. As stated before, this could show a jury’s attempt to be unbiased toward black defendants, or it could show that most black defendants were not charged with crimes that were especially heinous or death-eligible to the deliberating jurors.

Table 3: Model of Jury’s Decision to Impose a Death Sentence in Shelby County, Tennessee, 1992 – 2012 (Probit Regression and Ordinary Least Squares Regression)

Dependent Variable = Jury Imposed a Death Sentence (“1”)

	Probit	Probit	Probit	OLS	OLS
Independent Variables	Coefficient	Standard Error	Marginal Effects	Coefficient	Standard Error
Victim Traits					
White Victim	0.1275	0.3612	0.0143	0.0399	0.0473

Female Victim	0.4252	0.3015	0.0512	0.0804*	0.0411
Victim Stranger	0.0643	0.3102	0.0069	0.0140	0.0391
Elderly Victim	-0.7121	0.8271	-0.0429	-0.0229	0.1267
Victim Under 12	0.3311	0.9031	0.0448	0.0550	0.1312
Defendant Traits					
Black Defendant	-1.1772***	0.3725	-0.2332	-0.2023***	0.0538
Defendant Unemployed	-0.4814	0.3147	-0.0462	-0.0209	0.0360
Previous Violent Felony Conviction	1.1277***	0.3056	0.1564	0.1533***	0.0369
Potential for Rehabilitation	0.2194	0.6878	0.0272	0.0350	0.1174
Showed Remorse	-0.1841	0.7793	-0.0168	-0.0405	0.1004
Crime Traits					
Three or More Victims	1.3831***	0.7700	0.3438	0.3312**	0.1494
Three or More Perpetrators	0.0118	0.3865	0.0013	-0.0173	0.0502
Abnormal Method of Killing	-0.1305	0.3392	-0.0130	-0.0105	0.0433
Dangerous Concurrent Crime	0.0542	0.2971	0.0057	0.0241	0.0372
Evidence					
Co-Perpetrator Testified	0.6872	0.3760	0.1095	0.1344**	0.0569
Confessed	0.7420	0.6261	0.1299	0.1418	0.0893
CONSTANT					
Total Number of Decisions	247		Total Number of Decisions	268	
LR Chi-Square	48.77		R-Squared	0.2723	
Pseudo R Square	0.2934		Adjusted R-Squared	0.207	

@= victim was police officer, District Attorney, or judge

#= stabbing, throat-slashing, drowning, beating, strangle/suffocate, poisoning, burning, pushing off high building, or hitting with a vehicle

^= arson, robbery, burglary, kidnap, aircraft piracy, child abuse, or bombing *=p<.10; **=p<.05; ***=p<.01; two-tailed test

*Learning Disability omitted due to lack of variance in Shelby County sample

The model shows a defendant convicted of a previous violent felony is 15.6% more likely to receive a death sentence, while holding all other factors constant. In Shelby County, jurors are allowed to consider a defendant's previous violent felony conviction as an aggravating factor in his current case if the previous felony is enumerated in *Tennessee Code Annotated § 39-13-204(i)*. This could show that prior violent felony convictions, or

that multiple aggravating factors, make a defendant appear more violent or worthy of a death sentence to a jury. The killing of three or more victims also indicates a defendant is 34.4% more likely to receive a death sentence from a jury, holding all other factors constant. Ultimately, these results indicate that jurors are most swayed by the killing of multiple victims, a defendant's violent felony record, and the presence of a black defendant in Shelby County.

V.I.C. CONCENTRATED PROBIT MODEL OF SHELBY COUNTY

In addition to remodeling the work of Sharma et al. on their analysis of death penalty cases in Tennessee from 1977 – 2007, I was interested in narrowing the number of control variables used in a probit regression test to look specifically at factors that I found most relevant to painting a clear depiction of significant case characteristics in Shelby County. My first two hypotheses concerned effects of race, but I wanted to look beyond a race correlation at what type of person is typically convicted of first-degree murder. Specifically, I wanted to analyze a defendant's socioeconomic background in relation to how likely he is to receive a capital charge or death sentence; however, controlling for socioeconomic characteristics is difficult because little information is gathered on the defendant's economic status, and the trial reports that judges submit do not include defendant income level. In order to account for a broader demographic than only the presence of the *Defendant Unemployed* variable, I decided to include *Defendant High School Graduate* in order to control for the demographic of Shelby County that chooses to drop out of secondary school, which accounts for a typically poverty-level population. I will now introduce two additional hypotheses to my analysis:

Hypothesis #3: A defendant's race does not significantly affect the Shelby County District Attorney's decision to seek capital punishment when education level is controlled.

Hypothesis #4: A defendant's race does not significantly affect jury decisions to impose a death sentence when education level is controlled.

I predict that after accounting for demographics that possibly correlate with race, race will be an insignificant variable in condensed probit models of the prosecutor's decision to seek the death penalty and a jury's decision to impose a death sentence. I chose to use the following crime circumstance independent variables in condensed models of Tables 2 and 3:

Dangerous Concurrent Crime is coded with a '1' when the first-degree murder case occurred during one or more of the following transgressions: arson, rape, robbery, burglary, kidnapping, aircraft piracy, child abuse, or bombing. Each of these variables is listed under separate field codes in the Rule 12 database, and I compiled them into one category on Excel in which I coded the presence of one or more as '1' and the absence as '0.' I did not find it important to test each crime separately because they all carry harsh connotations, and I find it less important to differentiate between what kinds of concurrent crimes lead a jury to impose and death sentence and the prosecutor to seek the death penalty than to simply determine if the presence of one of the concurrent crimes makes a crime appear more worthy of the death penalty than those without one of the aggravating circumstances listed in the first-degree murder statute, *Tennessee Code*

Annotated § 39-13-202(a).

Abnormal Method of Killing is coded with a '1' if the homicides were conducted in any of the following manners: stabbing, throat slashing, drowning, beating, strangling/suffocating, poisoning, burning, pushing off high building, hitting with a vehicle (Sharma et al. 16). I chose to include this variable because, like dangerous concurrent crimes, I believe an abnormal method of killing makes a murder appear more death-eligible than prevailing 'run-of-the-mill' methods in Shelby County, such as shooting.

Next, I chose to account for defendant traits that I thought would uncover basic statistics of the demographics most correlated with the Shelby County District Attorney's decision to seek the death penalty and a jury's decision to impose a death sentence. In addition to *Black Defendant*, I chose to use defendant committed one or more *Previous Violent Felonies*, *Defendant Unemployed* at time of crime, and *Defendant High School Graduate* in my regression models.

Previous Violent Felony is coded with a '1' if the defendant in a given case has a previous violent felony conviction on his record. Often, the prosecutor is more likely to seek a harsher sentence if the defendant has a violent history prior to the first-degree murder under consideration, and, again, jurors are allowed to consider a defendant's previous violent felony conviction as an additional aggravating factor in his current case if the previous felony is enumerated in *Tennessee Code Annotated § 39-13-204(i)*.

Defendant Unemployed is coded with a '1' in each case that a defendant was unemployed at the time the crime was committed. I chose to use this variable to account for socioeconomic traits of the defendant. Due to the high poverty level in Shelby

County, I was curious to see if a defendant's income affects his trial, which could also possibly correlate with race. Sharma et al. cite Cheatwood as noting that socioeconomic status and the death penalty has not been researched extensively, due to the difficult attempt to "establish reliable data to measure the wealth or poverty level of an offender" and "one of the few (and by default of the best) measures we have is occupation" (Sharma et al. 20). In order to account for as much of a socioeconomic level as possible given the information available in the Rule 12 database, the unemployment variable lends fair insight into this trait.

Defendant High School Graduate is coded with a '1' if a defendant graduated from high school. In addition to the variables that Sharma et al. used, I was interested in determining if education level affected a prosecutor's decision to seek the death penalty and a jury's perspective on a defendant's death sentence eligibility. I was also interested in calculating the percentage of defendants that committed a first-degree murder and dropped out of school. I believe this also lends valuable insight into the defendant's socioeconomic background, which goes beyond the presence or absence of an income at the time of a given crime.

In addition to defendant characteristics, I also chose victim characteristics that could uncover patterns of victim traits that are often coupled with a decision to seek the death penalty and a death sentence by a jury. Again, I use *White Victim* as one of my primary independent variables because I believe evidence will show that cases in which white victims were killed are more likely to become capital cases and receive death sentences. I also include *Female Victim* and *Stranger Victim* in my analysis.

Female Victim is coded with a '1' for every case in which a female is the victim of first-degree murder. Sharma et al. note, "White females are perceived as a subgroup deserving of special protection and this has often led to differential responses to their victimization," which could grant a case involving a female victim a higher likelihood of receiving a death sentence (Sharma et al. 18).

Stranger Victim is coded with a '1' if the defendant illegibly killed someone he was unacquainted with prior to the crime. Previous research that included this variable had differing results determining its significance, and I am curious to see how it affects capital cases and death sentences in Shelby County.

The last category of variables I chose to account for includes evidence against the defendant that a jury and prosecutor consider, which Sharma et. al claim that many previous studies have failed to address (Sharma et al. 17). I chose to code *Strong Witness ID* with a '1' if the defendant is established as the killer "by either a police officer or, as the Rule 12 database says, a 'familiar person'" (Sharma et al. 18). Lastly, I coded *Confessed* with a '1' if the defendant is documented as confessing to the homicide.

The data in Table 4 depicts the Shelby County District Attorney's decision to seek a death sentence while controlling for the concentrated set of dependent variables. First, the model shows that the murder of a white victim is 20% more likely to receive a death charge, which is 6% less likely than the first model's results. The murder of a female victim is 17.6% more likely to be deemed a death penalty case, holding all other factors constant. When controlling for *Defendant High School Graduate*, the model indicates that a black defendant is still 14.5% less likely to receive the death penalty, but by a smaller percentage than in the first model that controlled for more variables and

lacked control for education level. Thus, I must fail to reject the null for my third hypothesis. Furthermore, the model shows that a high school graduate is 11% less likely to receive a death sentence, which could indicate that certain demographics that do not finish secondary school are more likely to commit first-degree murders. This result supports my assumption that a simple correlation with race and the death penalty does not thoroughly address how the death penalty is distributed. This model also indicates that a defendant is 11.4% less likely to receive a death charge if he is unemployed, which could suggest that a prosecutor views unemployment as an unofficial mitigating circumstance when deciding case death-eligibility. Finally, a defendant convicted of a previous violent felony proved to be 15.3% more likely to receive a death charge, holding all other factors constant, which is a similar statistic to the first model of the Shelby County District Attorney’s decision to seek a death sentence (Table 2).

Next, the data in Table 5 above depicts jury decisions to seek a death sentence in Shelby County, while controlling for the concentrated set of dependent variables. To begin with, this model, unlike the other three probit models in this paper, does not indicate that the murder of a white victim is significant in a defendant’s case.

Table 4: Model of Shelby County District Attorney's Office's Decision to Seek the Death Penalty in Shelby County, Tennessee, 1992 – 2012 (Probit Regression and Ordinary Least Squares Regression)

Dependent Variable = Death Penalty was Sought (“1”)

	Probit	Probit	Probit	OLS	OLS
Independent Variables	Coefficient	Standard Error	Marginal Effects	Coefficient	Standard Error

Victim Traits					
White Victim	0.5802***	0.2265	0.2000	0.1996***	0.0701
Female Victim	0.5304***	0.2020	0.1757	0.1682***	0.0599
Victim Stranger	-0.0821	0.2039	-0.0255	-0.0260	0.0584
Defendant Traits					
Black Defendant	-0.4244*	0.2513	-0.1450	-0.1375*	0.0780
Defendant Unemployed	-0.3795**	0.1939	-0.1139	-0.0990*	0.0542
Defendant High School Graduate	-0.3847*	0.2253	-0.1107	-0.1071*	0.0629
Previous Violent Felony	0.4707**	0.1867	0.1533	0.1390**	0.0543
Crime Traits					
Dangerous Concurring Crime	0.0400	0.1859	0.0125	0.0168	0.0542
Abnormal Method of Killing	-0.2052	0.2199	-0.0621	-0.0522	0.0629
Evidence					
Confessed	0.4309	0.4214	0.1510	0.1193	0.1303
CONSTANT	-0.5243	0.2859		0.3087	0.0886
Total Number of Decisions	266		Total Number of Decisions	268	
LR Chi-Square	39.37		R-Squared	0.1659	
Pseudo R Square	0.1276				

#= stabbing, throat-slashing, drowning, beating, strangle/suffocate, poisoning, burning, pushing off high building, or hitting with a vehicle

^= arson, robbery, burglary, kidnap, aircraft piracy, child abuse, or bombing

*=p<.10; **=p<.05; ***=p<.01; two-tailed test

*strong witness ID was omitted due to lack of variance in the sample

Table 5: Model of Jury’s Decision to Impose a Death Sentence in Shelby County, Tennessee, 1992 – 2012 (Probit Regression and Ordinary Least Squares Regression)

Dependent Variable = Jury Imposed a Death Sentence (“1”)

	Probit	Probit	Probit	OLS	OLS
Independent Variables	Coefficient	Standard Error	Marginal Effects	Coefficient	Standard Error
Victim Traits					

White Victim	-0.0297	0.3239	-0.0035	0.0212	0.0467
Female Victim	.5103*	0.2693	0.0713	.0910**	0.0399
Victim Stranger	0.1296	0.2778	0.0161	0.0228	0.0389
Defendant Traits					
Black Defendant	-.9700***	0.3208	-0.1889	-.1898***	0.0519
Defendant Unemployed	-0.3969	0.2791	-0.0439	-0.0304	0.0361
Defendant High School Graduate	-0.1368	0.2969	-0.0154	-0.0030	0.0419
Previous Violent Felony	.9058***	0.2586	0.1360	.1492***	0.0362
Crime Traits					
Dangerous Concurring Crime^	0.1379	0.2585	0.0166	0.0324	0.0361
Abnormal Method of Killing#	-0.0504	0.2869	-0.0059	-0.0109	0.0419
Evidence					
Confessed	0.5964	0.5433	0.1062	.1447*	0.0867
CONSTANT	-1.1583	0.3664		0.1574	0.0589
Total Number of Decisions	266		Total Number of Decisions	268	
LR Chi-Square	36.62		R-Squared	0.2172	
Pseudo R Square	0.215		Adjusted R-squared	0.1836	

#= stabbing, throat-slashing, drowning, beating, strangle/suffocate, poisoning, burning, pushing off high building, or hitting with a vehicle

^= arson, robbery, burglary, kidnap, aircraft piracy, child abuse, or bombing

*=p<.10; **=p<.05; ***=p<.01; two-tailed test

The marginal effects of this variable were possibly cancelled out when controlling for fewer characteristics. Next, the model shows that a jury is 7.3% more likely to impose a death sentence on a defendant who murders a female victim, as consistent with my previous results. Unlike the condensed model of the Shelby County District Attorney's

decision to seek the death penalty, these results show that a jury is 19% less likely to impose a death sentence on a black defendant, holding all other variables constant. This shows that controlling for defendant’s education level did not lessen the marginal effects of defendant’s race; thus, I must also fail to reject the null for my fourth hypothesis. The inclusion of high school graduate in a condensed model does not appear to reduce the significant correlation of a black defendant and a less likely chance of receiving a death sentence.

Lastly, the model shows that a defendant convicted of a previous violent felony is 13.6% more likely to receive a death sentence from a jury, holding all other factors constant. This variable has appeared highly significant in all four probit regression models concerning capital defendants in Shelby County and could also be considered another aspect of unaccounted insight into a defendant’s demographic. For instance, a defendant with a prior violent felony on his record may also fit into categories such as defendant unemployed and defendant dropped out of high school. In order to test this theory, I classified white and black defendants into groups reported as a *High School Graduate*, *Unemployed*, and convicted of a *Previous Violent Felony* as shown in Chart 5. These results show that when race is controlled for the demographic characteristics of *Unemployed* and *Previous Violent Felony* conviction, a similar percentage of both the

Chart 5: Socioeconomic Classification of Defendants and Victims

Total 24 White Defendants		
High School Graduate	10	(41.6%)
Unemployed	7	(29.2%)
Previous Violent Felony Conviction	9	(37.5%)
Total 226 Black Defendants		
High School Graduate	45	(20%)
Unemployed	84	(31.3%)
Previous Violent Felony Conviction	84	(31.34%)

*70 did not report education level

black and white defendants fell into each category. Although 41.6% of white defendants graduated high school and only 20% of black defendants were high school graduates, the percentages are nonetheless comparable, especially when acknowledging the difference in sample size of 24 white defendants convicted of first-degree murder and the majority 226 black defendants convicted. It is also notable that 60% of the white defendants and 80% of black defendants dropped out before finishing high school. This is evidence that the demographic that drops out of school is more likely to commit a first-degree murder in Shelby County. In 2009, high school students from low-income families dropped out of school “five times more than students from high-income families” (“Facing the School Dropout Dilemma”). The 60% of the white defendants and 80% of black defendants that dropped out of school in Shelby County are, statistically, probably living around poverty level and make up the demographic that is more likely to commit violent crimes in our community. This result shows that racial correlation aside, it is a certain demographic that is more likely to be convicted of a death-eligible crime in Shelby County. This finding is significant because lessening the likelihood of this demographics’ chances of committing crime could be possible by implementing programs to encourage these people to graduate high school, to pursue a job with a reliable income rather than temporary work, to abstain from drug use, and to stay away from gang and other violent activities that are prominent in the poverty level population in Shelby County. Ultimately, one should also analyze the demographic of the defendant indicated more likely to commit a first-degree murder, rather than only emphasizing race in the likelihood of

receiving the death penalty without considering other factors in order to paint a more conclusive image of the distribution of the death penalty.

VII. CONCLUSION

The first primary finding in this study is that the Shelby County District Attorney is more likely to seek the death penalty when a white victim is murdered. This result is consistent with previous studies conducted on race and the death penalty in Sharma et al.'s Tennessee model (1977 – 2007), Radelet and Pierce's study on death-eligible cases in Florida (1976 – 1987), and Pasternoster's study on capital cases in South Carolina (1977-1981) (Sharma et al. 5). This finding signifies that the Shelby County District Attorney accounts for extra-legal factors when deciding to seek the death penalty, seeking harsher punishments when a white victim is murdered for possible political reasons or to satisfy local sentiment.

My second primary finding is that a black defendant is significantly less likely to receive a capital charge and a death sentence by a jury in Shelby County. This result could insinuate that black defendants have typically been charged with less heinous forms of first-degree murder than the white defendants represented in the 1992 – 2012 Shelby County sample, or that the deliberating prosecutors attempt to be unbiased against black defendants, resulting in an actual reverse bias to seek lesser forms of punishment in their cases. It could also imply that juries are sympathetic or attempting to be unbiased toward black defendants, due to popular attempts to sensationalize the discrimination against the African American race in the US legal system. Or again, their lesser likelihood to receive

a death sentence could indicate that the typical crimes they have committed in this sample were less heinous in the jurors' eyes. Either way, this finding too suggests that extra-legal factors are considered in the Shelby County District Attorney's decision to seek the death penalty and in the typical Shelby County jury's decision to impose a death sentence in cases occurring during the last twenty years.

Both of these findings show a disproportionate distribution of capital punishment in Shelby County and should be accounted for in the Tennessee Proportionality Review of cases. In response to *Furman v. Georgia*'s mandate that states perform comparative proportionality reviews of their death sentences, Tennessee instated *Tenn. Code Ann. § 39-13-206* which requires "reviewing courts to determine whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering the nature of the crime and the defendant" (Brayton & Sayle 3). However, this review has failed to effectively regulate a fair distribution of the death sentence among defendants, and in December 2012, the Tennessee Supreme Court ordered supplemental briefing and oral argument on the proportionality review policy to consider amending the aspects that are failing to function properly. The Court ordered the following issues to be investigated:

- (1) Whether the proportionality review of *State v. Bland*, 958 S.W.2d 651, 664-68 (Tenn. 1997) should be modified. Currently, a court must only decide "whether a case 'plainly lacks' circumstances found in similar cases in which the death penalty has been imposed" (*State v. McKinney*, *State v. Godsey*). Therefore, Tennessee's current procedure only determines whether a particular defendant is death-eligible and not if that defendant is among the worst murderers.

(2) Whether the absence of intent to kill should render the death penalty disproportionate. It was found that ‘causing harm intentionally must be punished more severely than causing the same harm unintentionally’ in *Enmund v. Florida*, 1982; therefore, a defendant’s culpability must be considered due to case law, while the current Tennessee statute on eligibility does not account for the defendant’s intent.

(3) Whether the pool of cases considered in proportionality review should be broadened. Currently, cases “in which the State did not seek the death penalty or where a sentence other than death was agreed upon as part of a plea bargain agreement are not included in the pool of cases for comparison” (Brayton & Sayle 4). Therefore, cases with similar circumstances are currently subject to wholly different punishments, due to the discretion of the jury and prosecutor (Brayton & Sayle 2,4).

After investigating the Tennessee review system by comparing cases that were not usually paired under the current guidelines of the statute, such as similar cases in which one received a life sentence and the other the death penalty, the Shelby County Public Defenders concluded that the current system is not consistently and reliably performing in accordance with the standards of the Federal and Tennessee Constitutions. They suggested that all three investigated issues be reformed in that the court should “adopt a proportionality protocol in which the case at issue is compared to factually similar cases to determine whether the case is more consistent with life or death cases,” emphasize

“personal culpability and intent of the defendant in finding that in an absence of an intent to kill a sentence of death is disproportionate,” and broaden the case pool “used for comparison to include all cases in which the defendant was indicted for first-degree murder, including those cases in which the State did not seek the death penalty, regardless of the actual ... penalty imposed” (Brayton & Sayle 30).

This appellant brief, in addition to other current investigations into the current Tennessee Proportionality Review, are fighting to revise the current portions of the statute that are failing to ensure reliably consistent outcomes among cases by attempting to the revise the Tennessee capital punishment system to dispense fair and proportionate death sentences. If this appeal is passed, the likelihood of extra-legal factors affecting Shelby County death penalty cases will likely decrease. My study ultimately shows that the murders of white victims are more likely to go to trial as capital cases and black defendants are less likely to receive capital charges and death sentences. In terms of policy reform at the county level, if the Shelby County District Attorney adopted an additional protocol to accompany the Tennessee statute when deciding case death-eligibility to lessen the influence of extra-legal factors in their decision-making process, the significance of racial influence in this stage of the capital case process would also likely decrease. The current racial significance in the distribution of the death penalty in Shelby County could be due to its majority black population and relatively high crime rate in comparison with other metropolitan counties in Tennessee, but justice will not be equally served in Memphis until this bias is eliminated.

VIII. OTHER CONSIDERATIONS

A number of case files in the Rule 12 Database were not completed in their entirety by the appropriate parties assigned to their respective sections. This limits research on Tennessee first-degree murder cases to only the available case information in the database, which prevents researchers from analyzing the presence of certain factors in all cases in the database. Trial judges, defendant representation, and other parties responsible for submitting sections of Rule 12 forms should be held to the statute outlining its use, which mandates, “The report, a copy of which is appended to this rule, shall be completed in the entirety in all cases.” Each case should be properly documented so that Tennessee legal records are consistent and complete. Future research should analyze demographic traits more thoroughly in comparison with race in Shelby County. Rule 12 forms include limited demographic information, but finding ways to make up for this lack of background information in a study would present a compelling and more thorough account of the death penalty distribution in Shelby County.

Appendix A: Murder Rates in Death Penalty States and Non-Death Penalty States

Year	Murder Rate in Death Penalty States	Murder Rate in Non-Death Penalty States	Percentage Difference
1991	9.94	9.27	7%
1992	9.51	8.63	10%

1993	9.69	8.81	10%
1994	9.23	7.88	17%
1995	8.59	6.78	27%
1996	7.72	5.37	44%
1997	7.09	5.00	42%
1998	6.51	4.61	41%
1999	5.86	4.59	28%
2000	5.70	4.25	35%
2001	5.82	4.25	37%
2002	5.82	4.27	36%
2003	5.91	4.10	44%
2004	5.71	4.02	42%
2005	5.87	4.03	46%
2006	5.90	4.22	40%
2007	5.83	4.10	42%
2008	5.72	4.05	41%
2009	5.26	3.90	35%
2010	5.00	4.01	25%
2011	4.89	4.13	18%

* Includes Kansas and New York in the years after they adopted the death penalty, 1994 and 1995 respectively. New Jersey and New York ended the death penalty in the latter part of 2007 and will not be counted as death penalty states in 2008.

Populations are from the U.S. Census estimates for each year.

Murder rates are from the FBI's "Crime in the United States" and are per 100,000 population.

The murder rate for the region (death penalty states or non-death penalty states) is the total number of murders in the region divided by the total population (and then multiplied by 100,000)

Table from deathpenaltyinfo.org

**Appendix B: Summary of Statutory Aggravating Factors in Tennessee; Adapted from Tennessee Code Annotated § 39-13-204(i)
(Taken from Appendix A of Sharma et al.)**

- 1) Murder of a person less than 12 years of age when the defendant was at least 18 years of age;
- 2) Defendant was previously convicted of one or more felonies that involve the use of violence to persons;

- 3) Defendant knowingly created a great risk of death to two or more persons, other than the victim murdered;
- 4) Defendant committed the murder for remuneration or the promise of remuneration;
- 5) Murder was heinous, atrocious, or cruel in that it involved torture necessary to produce death;
- 6) Murder was committed to prevent an arrest or prosecution of the defendant or another;
- 7) Fleeing after first-degree murder, arson, rape, robbery, burglary, theft, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb;
- 8) Murder was committed while the defendant was in lawful custody or in a place of lawful confinement;
- 9) Murder was committed against any law enforcement officer, corrections official, corrections employee, emergency medical or rescue worker, emergency medical technician, paramedic, or firefighter, who was engaged in the performance of official duties, and the defendant knew or reasonably should have known that such a victim was a person engaged in the performance of official duties;
- 10) Murder was committed against judge, district attorney general or state attorney general, assistant district attorney general or assistant state attorney general due to or because of the exercise of the victim's official duty or status and the defendant knew that the victim occupies said office;
- 11) Murder was committed against an elected official, due to or because of the official's lawful duties or status, and the defendant knew that the victim was such an official;
- 12) Defendant committed mass murder (three or more persons within the same episode or within a period of 48 months);
- 13) Defendant knowingly mutilated the body of the victim after death;
- 14) Victim was seventy (70) years of age or older; or victim of the murder was particularly vulnerable due to a significant handicap or significant disability (mental or physical), and at the time of the murder the defendant knew or reasonably should have known or such handicap or disability;
- 15) Murder was committed during the course of an act of terrorism;
- 16) Murder of a pregnant woman where the killing was intentional and the perpetrator knew that the woman was pregnant.

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