

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
December 18, 2025 Session

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STATE OF TENNESSEE v. DESMON PAUL RHEA

Appeal from the Criminal Court for Knox County
No. 117355 G. Scott Green, Judge

No. E2024-01415-CCA-R3-CD

A Knox County jury convicted the Defendant, Desmon Paul Rhea, of two counts of first degree felony murder, one count of second degree murder, one count of employing a firearm during the commission of a dangerous felony, and two counts of aggravated burglary of a habitation. The trial court imposed an effective sentence of life imprisonment without the possibility of parole plus thirty-seven years. On appeal, the Defendant raises six groups of issues: (1) whether the trial court erred in denying his motions for judgment of acquittal and whether the evidence is legally sufficient to support his convictions for premeditated murder and the burglary-related offenses; (2) whether the trial court violated his constitutional right to present a defense by conditioning the presentation of an insanity defense on the admission of his previously suppressed statements; (3) whether the State’s destruction of potentially exculpatory evidence required a new trial under *State v. Ferguson*, 2 S.W.3d 912 (Tenn. 1999); (4) whether the trial court committed multiple evidentiary errors, each independently warranting reversal and cumulatively depriving him of a fair trial; (5) whether prosecutorial misconduct during the State’s closing argument rendered the trial fundamentally unfair; and (6) whether the trial court’s jury instructions were erroneous. Upon our review, we respectfully affirm the judgments of the trial court.

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

TOM GREENHOLTZ, J., delivered the opinion of the court, in which KYLE A. HIXSON and STEVEN W. SWORD, JJ., joined.

Wade V. Davies (at trial and on appeal) and Georgia A. Miller (on appeal), Knoxville, Tennessee, for the appellant, Desmon Paul Rhea.

Jonathan Skrmetti, Attorney General and Reporter; Garrett D. Ward, Senior Assistant Attorney General (at argument) and Ronald L. Coleman, Senior Assistant Attorney General (on brief); Charme P. Allen, District Attorney General; Leland Price and Cameron Williams, Assistant District Attorneys General (at trial), and Sean Deitrick and Hector Sanchez, Assistant District Attorneys General (at pre-trial motions), for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

In the early morning hours of March 8, 2020, officers with the Knoxville Police Department (“KPD”) responded to a 911 call that a woman was deceased in the middle of the street. The officers identified the victim as Ms. Juliana White¹ and dispatched an officer to her residence on Trousdale Road. At the Trousdale residence, two more victims—Ms. White’s mother, Mildred Blackwell, and their roommate, Barbara Rogers—were found shot and deceased. The investigation led police to suspect the Defendant as the perpetrator, and he was arrested later that evening.

A. THE HOMICIDES AND SURROUNDING EVENTS

About six months before the homicides, the Defendant began dating Ms. White and moved into her residence on Trousdale Road. Ms. White lived there with her mother, a roommate, and her two minor children. The Defendant was addicted to methamphetamine, which his family described as making him grow more violent and strange over time. In the weeks before the homicides, the Defendant procured a .45 caliber pistol.

¹ In this opinion, the individuals involved in these events are identified by their roles rather than by name. This convention is intended to assist the reader in following the narrative and understanding how each person relates to the others—not to diminish the individuality of any person described. We depart from this convention for Juliana White, whom we identify by name throughout. We do so because describing her solely by her relationship to the Defendant would define her identity in terms of the person convicted of killing her, rather than in her own right.

The Defendant, Ms. White, and three of their friends—including the Defendant’s cousin²—regularly ingested methamphetamine together. In the days before the homicides, the group used methamphetamine at the Trousdale residence on more than one occasion. During one of these gatherings, the Defendant’s behavior became “[v]ery erratic” because he thought he “heard something” outside. He directed Ms. White and his cousin to call the police. The responding officer found no evidence of a “potential prowler” but noticed that Ms. White seemed “a little nervous” and “uneasy.”

The following afternoon, the group again used methamphetamine at the Trousdale residence. Later that night, the Defendant became agitated and “started acting differently.” He told his cousin and Ms. White to join him for a drive because he heard noises again.

As they walked to the car, Ms. White fell behind, and the Defendant construed her behavior as suggesting “she knew something [they] didn’t know.” The Defendant drove with his cousin in the passenger seat and Ms. White in the backseat. Ms. White initially sat behind the Defendant, but he told her to move and sit behind his cousin. As he drove, the Defendant asked Ms. White if she was trying to “set [him and his cousin] up.”

The cousin was listening to music through headphones when he suddenly heard a “loud bang.” When he turned around, he saw Ms. White “slumped over holding her side” and the Defendant holding a black .45 caliber pistol. The Defendant pulled the car over near Liberty Street, pulled Ms. White’s body from the car, and drove to the Trousdale residence. During the drive, he said to his cousin, “F[***] them b[*****]s, bro.”

When they arrived at the Trousdale residence, the Defendant went upstairs, broke down at least one door, and yelled, “KPD,” referring to the Knoxville Police Department, before shooting Ms. White’s mother and their roommate. The cousin remained in the home while the other friends fled, feeling “stuck” and unable to move. Ms. White’s roommate, who had initially survived, called 911. The Defendant returned upstairs, said, “Oh, you’re still alive?” and shot her again. The Defendant and his cousin then left and spent the night at a friend’s house.

Later that afternoon, police located the Defendant hiding at his family’s home and took him into custody.

² The Defendant’s cousin testified at trial that he and the Defendant were cousins by marriage.

B. TRIAL, SENTENCING, AND APPEAL

On March 11, 2020, a Knox County grand jury charged the Defendant by presentment with the first degree murder of Ms. White; felony murder of Ms. White's mother and their roommate; first degree murder of Ms. White's mother and roommate; two counts of aggravated burglary of the habitations of Ms. White's mother and roommate; and employing a firearm during the commission of a dangerous felony.³

The case proceeded to a jury trial on April 11, 2023. The jury found the Defendant guilty of second degree murder of Ms. White, a lesser included offense, and guilty of all other offenses as charged. The trial court merged the felony murder charges with the first degree premeditated murder charges and imposed an effective sentence of imprisonment for life without the possibility of parole plus thirty-seven years.

The Defendant filed a timely motion for a new trial, which the trial court denied by written order on August 26, 2024. He filed a timely notice of appeal twenty-three days later. *See* Tenn. R. App. P. 4(a).

ANALYSIS

In this appeal, the Defendant raises six groups of issues for our consideration. More specifically, he contends as follows:

- (1) the trial court erred in denying his motions for judgment of acquittal, and the evidence is legally insufficient to support his convictions for premeditated murder and the burglary-related offenses;
- (2) the trial court violated his constitutional right to present a defense by ruling that, if he chose to present an insanity defense, an expert could reference his previously suppressed statements;

³ As noted above, Ms. White also had two minor children living in the Trousdale residence. Officers found one child asleep on the living room couch, and the other was not present at the time of the homicides. The grand jury charged the Defendant with aggravated child endangerment, but the State dismissed this charge prior to trial.

- (3) the State destroyed potentially exculpatory evidence in violation of *State v. Ferguson*, 2 S.W.3d 912 (Tenn. 1999), requiring a new trial;
- (4) the trial court committed multiple evidentiary errors, each of which he asserts independently warrants reversal, and the cumulative effect of those errors deprived him of a fair trial;
- (5) prosecutorial misconduct during the State’s closing argument rendered the trial fundamentally unfair; and
- (6) the trial court provided erroneous jury instructions.

We address each group of issues in turn.

A. LEGAL SUFFICIENCY OF THE EVIDENCE

In this first group of issues, the Defendant raises four arguments. He first asserts that the trial court erred in denying his motions for judgment of acquittal under Tennessee Rule of Criminal Procedure 29. He next argues that the evidence is legally insufficient to support his first degree murder convictions of Ms. White’s mother and their roommate because the State failed to prove premeditation. He further contends that the evidence is legally insufficient to support his burglary-related convictions—specifically, the aggravated burglary and felony murder convictions—because the State failed to establish that he entered the habitations with the intent to commit an assault. Finally, he maintains that the evidence is legally insufficient to support his conviction for employing a firearm during the commission of a dangerous felony.

The State responds that the Defendant waived his first motion for judgment of acquittal by presenting evidence after the trial court denied it, that the proof established premeditation, that he entered the Trousdale residence with the intent to commit an assault, and that the firearm conviction claim has been inadequately briefed. We agree with the State on all four arguments and address each in turn.

1. Motion for Judgment of Acquittal

A motion for judgment of acquittal challenges whether the evidence is legally sufficient to support a conviction beyond a reasonable doubt. *See* Tenn. R. Crim. P. 29(b).

When a trial court denies a Rule 29 motion midtrial, a defendant may preserve appellate review of the denial only by resting after the State's proof and declining to present further evidence. See *Finch v. State*, 226 S.W.3d 307, 316 (Tenn. 2007); *State v. Collier*, 411 S.W.3d 886, 893 (Tenn. 2013), *abrogated on other grounds by State v. Thomas*, 687 S.W.3d 223, 242 (Tenn. 2024). If the defendant offers proof after the Rule 29 motion has been denied, he or she waives appellate review of the trial court's denial. See *Collier*, 411 S.W.3d at 893.

Here, after the State rested, the Defendant moved for a judgment of acquittal, arguing that the evidence was insufficient to support the convictions for any of the counts charged in the presentment. The trial court denied the motion and permitted the jury to consider the charges. The Defendant then elected to present a witness in his case-in-chief before resting. Because the Defendant presented evidence following the denial of this Rule 29 motion, he waived any right to appellate review of that ruling. *Collier*, 411 S.W.3d at 893.

The Defendant's second motion for judgment of acquittal, made at the close of all proof, raises the same challenge to the legal sufficiency of the evidence. We therefore address both claims together under the well-recognized standards for reviewing the legal sufficiency of the convicting evidence.

2. Standard of Appellate Review

"The standard for appellate review of a claim challenging the sufficiency of the State's evidence is 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Miller*, 638 S.W.3d 136, 157 (Tenn. 2021) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard of review is "highly deferential" in favor of the jury's verdict. See *State v. Lyons*, 669 S.W.3d 775, 791 (Tenn. 2023). Indeed, when making that determination, the State "is entitled to the strongest legitimate view of the evidence and any reasonable inferences that may be drawn from it." *State v. Rimmel*, 710 S.W.3d 640, 645 (Tenn. 2025) (citation and internal quotation marks omitted).

To that end, "[w]e do not reweigh the evidence, because questions regarding witness credibility, the weight to be given the evidence, and factual issues raised by the evidence are resolved by the jury as the trier of fact." *State v. Curry*, 705 S.W.3d 176, 183 (Tenn. 2025) (citations omitted). "The standard of review is the same whether the conviction is

based upon direct or circumstantial evidence.” *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (citation and internal quotation marks omitted).

3. First Degree Premeditated Murder Convictions

The Defendant first challenges his convictions for first degree murder of Ms. White’s mother and their roommate, asserting that the State failed to elicit proof of premeditation. He maintains that the evidence of his mental state—including testimony that the Defendant was acting “schizophrenic,” had shot up “too much” methamphetamine, and could not tell whether the arresting officers were real police—negated his ability to act with reflection and judgment. The State responds that the circumstances around the homicides support the jury’s finding of premeditation. We agree with the State.

“The first step in evaluating the sufficiency of the evidence is to identify the elements of the offense.” *Rimmel*, 710 S.W.3d at 646. Counts 4 and 5 of the presentment charged the Defendant with the first degree premeditated murder of Ms. White’s mother and roommate, respectively. As charged in this case, first degree premeditated murder is “[a] premeditated and intentional killing of another[.]” Tenn. Code Ann. § 39-13-202(a)(1) (2025). A person acts intentionally “when it is the person’s conscious objective or desire to engage in the conduct or cause the result.” *Id.* § 39-11-302(a) (2025). Our General Assembly has defined “premeditation” to mean:

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 preexist 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.

Tenn. Code Ann. § 39-13-202(e). Like any other element of an offense, “the State must prove premeditation beyond a reasonable doubt.” *Miller*, 638 S.W.3d at 159.

The question of “[w]hether premeditation is present in a given case is a question of fact to be determined by the jury from all of the circumstances surrounding the killing.” *State v. Davidson*, 121 S.W.3d 600, 614 (Tenn. 2003). As our supreme court has observed,

Several factors are considered to infer premeditation: the use of a deadly weapon upon an unarmed victim, the particular cruelty of the killing, declarations by the defendant of an intent to kill, evidence of procurement of a weapon, preparations before the killing for concealment of the crime, and calmness immediately after the killing. Additional considerations include a lack of provocation on the victim's part and a defendant's failure to render aid to a victim.

State v. Clayton, 535 S.W.3d 829, 845 (Tenn. 2017) (citations omitted). In addition, “[e]stablishment of a motive for the killing is a factor from which the jury may infer premeditation.” *State v. Leach*, 148 S.W.3d 42, 54 (Tenn. 2004). Although the trier of fact “may not engage in speculation,” premeditation may be proved by circumstantial evidence because it “involves the defendant’s state of mind, concerning which there is often no direct evidence.” *Davidson*, 121 S.W.3d at 614-15; *see State v. Reynolds*, 635 S.W.3d 893, 918 (Tenn. 2021).

Applying these principles, the record contains ample evidence from which a rational juror could find premeditation beyond a reasonable doubt. A few weeks before the homicides, the Defendant procured a .45 caliber pistol. On the night of the offenses, he first shot Ms. White and dumped her body in the roadway before driving directly to the Trousdale residence, where Ms. White’s mother and their roommate were asleep. While en route, he told his cousin, “F[***] them b[*****]s, bro.” Upon arrival, the Defendant tried to impersonate law enforcement by yelling “KPD,” then went upstairs and fired multiple shots into each victim’s bedroom as they slept. When Ms. White’s roommate attempted to call 911, he returned upstairs, remarked, “Oh, you’re still alive?” and shot her again.

These circumstances reflect a deliberate and targeted use of deadly force against unarmed, unsuspecting victims. The Defendant armed himself before arriving at the residence, impersonated law enforcement to disorient the victims, and targeted victims who were asleep and defenseless. He fired multiple shots, and when he discovered that Ms. White’s roommate had survived, he returned to deliver a fatal shot. Taken together, these acts support a rational inference that the Defendant acted with reflection and judgment rather than under the influence of excitement and passion. *See State v. Adams*, No. W2020-00566-CCA-R3-CD, 2021 WL 1743031, at *4 (Tenn. Crim. App. Apr. 30, 2021) (concluding that the evidence supported a finding of premeditation, in part, when the defendant noticed that the victim was not yet dead after walking away and was overheard to say that he should shoot the victim again), *perm. app. denied* (Tenn. Sept. 22, 2021); *see*

also *State v. Coyne*, No. E2020-01655-CCA-R3-CD, 2022 WL 414355, at *11 (Tenn. Crim. App. Feb. 11, 2022) (concluding that the evidence supported a finding of premeditation, in part, when the defendant took a firearm to confront the victim at his home and fired multiple shots at the victim), *perm. app. denied* (Tenn. June 9, 2022); *State v. Corbin*, No. W2019-01229-CCA-R3-CD, 2020 WL 6018760, at *11 (Tenn. Crim. App. Oct. 9, 2020) (concluding that the evidence supported a finding of premeditation, in part, when the defendant traded two handguns for a high-powered assault rifle before driving to a populated street and firing two shots out of his car window), *perm. app. denied* (Tenn. Mar. 23, 2021); *State v. Stitts*, No. W2017-00209-CCA-R3-CD, 2018 WL 2065043, at *8 (Tenn. Crim. App. Apr. 27, 2018) (concluding that the evidence supported a finding of premeditation, in part, when the defendant procured a shotgun and went to the victim's home), *perm. app. denied* (Tenn. Aug. 8, 2018).

The Defendant's conduct after the homicides further supports the jury's finding. After shooting the victims, the Defendant went downstairs, sat on the couch, and eventually left to hide—first at a trailer park and later at his family's home—making no attempt to render aid or contact the authorities. In the hours that followed, he exchanged messages with another woman, saying “mane im on a spree” and “well I'm Pretty positive that it's just me and [my cousin] now.” When the woman asked about news reports of the homicides, the Defendant replied, “idk baby” with a smiling devil face emoji, followed by “[Ms. White]s family lol[.]” He also sent a message saying “3 dead” with an emoji of someone shushing and sent a photograph of a Knoxville Police Department report on the homicides with the caption “Nooooo cap I gotta move” and a shocked face emoji.

These messages and posts are wholly inconsistent with conduct driven by excitement and passion. Rather, they demonstrate composure, awareness of what he had done, and the ability to monitor law enforcement's response while taking deliberate steps to evade detection. *See State v. Allen*, No. E2020-00632-CCA-R3-CD, 2021 WL 1561579, at *10 (Tenn. Crim. App. Apr. 21, 2021) (concluding that the evidence supported a finding of premeditation, in part, when the defendant exchanged Facebook messages with another person about the homicide), *perm. app. denied* (Tenn. Aug. 6, 2021); *State v. Wooten*, No. W2022-00315-CCA-R3-CD, 2022 WL 16919957, at *7 (Tenn. Crim. App. Nov. 14, 2022) (concluding that the evidence supported a finding of premeditation, in part, when the defendant exchanged Facebook messages showing “that he was calm and, through the repeated use of the laughing emojis, appeared to find humor somehow in [the victim]’s death”), *perm. app. denied* (Tenn. Mar. 8, 2023).

The Defendant argues that the evidence of his mental state—including testimony that he was acting “schizophrenic,” that he had ingested too much methamphetamine, and

that he could not distinguish the arresting officers from impostors—negated his ability to act with reflection and judgment. Viewed in the light most favorable to the State, the record demonstrates otherwise. It shows that the Defendant engaged in deliberate, sequential acts reflecting planning, selection of vulnerable targets, and persistence in achieving a lethal result. His argument effectively asks this court to reweigh the proof and substitute its judgment for that of the jury. We respectfully decline to do so.

Considering all of the proof, a rational trier of fact could find beyond a reasonable doubt that the Defendant acted intentionally and after the exercise of reflection and judgment. Accordingly, we conclude that the evidence is legally sufficient to sustain his convictions for first degree premeditated murder.

4. Burglary-Related Offenses

The Defendant next contends that the proof is legally insufficient to convict him of any of the burglary-related offenses, including felony murder. We address each conviction below.

a. Aggravated Burglary Convictions

The Defendant first argues that the evidence is legally insufficient to support his convictions for aggravated burglaries in Counts 8 and 9 because the State failed to prove that he entered the habitations of Ms. White’s mother and roommate with the intent to commit an assault. The State responds that a rational trier of fact could find that the Defendant entered the house with the intent to commit an assault. We agree with the State.

Counts 8 and 9 of the presentment charged the Defendant with aggravated burglary. Under Tennessee law, aggravated burglary is when a person enters a habitation without the effective consent of the property owner “with intent to commit a[n] . . . assault[.]” Tenn. Code Ann. §§ 39-13-1002, -1003 (2025). A person commits assault when he “intentionally or knowingly causes another to reasonably fear imminent bodily injury.” *Id.* § 39-13-101(a)(2) (2025). A person acts intentionally “when it is the person’s conscious objective or desire to engage in the conduct or cause the result.” *Id.* § 39-11-302(a) (2025).

Applying these principles, the record contains ample evidence from which a rational juror could find that the Defendant entered the habitations with the intent to commit an assault. The proof showed that the Defendant armed himself with a deadly weapon before entering in the middle of the night, announced his presence in a manner calculated to startle

and disorient the victims, and broke down at least one of the victims' doors—all while Ms. White's mother and roommate were defenseless and unsuspecting. The jury may infer from these circumstances that the Defendant intended to cause the victims to reasonably fear imminent bodily injury. *See State v. Smith*, No. W2011-01630-CCA-R3-CD, 2013 WL 3702369, at *9 (Tenn. Crim. App. July 12, 2013) (concluding that the evidence supported a finding of intent to commit assault when the defendant broke down a door to get to an unnamed victim), *no perm. app. filed*.

The Defendant raises three objections to this conclusion. He first argues that the assault here was the killing itself, and that applying the felony murder rule on this record would mean that every killing inside a habitation necessarily constitutes both aggravated burglary and felony murder—a result he contends is inconsistent with the statute's purpose. He next contends that *Smith* is distinguishable because it did not involve a murder. Finally, he argues that the evidence failed to establish the requisite intent. We respectfully disagree on all three points.

The record establishes that the Defendant's assault-predicate conduct—entering armed, announcing his presence to disorient the victims, and breaking down a door—preceded and was independent of the killings. The assault was not the killing; it was the deliberate intimidation of defenseless, unsuspecting victims in the moments before the killings. The Defendant's broader statutory argument is likewise unavailing: the aggravated burglary statute does not require that an assault actually occur, only that the defendant enter with the intent to commit one. Where, as here, the record supports a finding that the defendant harbored that intent at the moment of entry, the statute is satisfied regardless of what follows.

As for *Smith*, we view the Defendant's distinction as being immaterial. *Smith's* holding—that entry accompanied by door-breaking establishes intent to commit an assault—does not depend on whether a killing subsequently occurred. The relevant question is the Defendant's intent at the moment of entry, which the record supports regardless of what followed. *See Smith*, 2013 WL 3702369, at *9.

Viewed in the light most favorable to the State, the record demonstrates that the Defendant armed himself, entered the residence in the early morning hours, announced his presence in a manner intended to disorient the victims, and broke down a door. These acts reflect a conscious objective to cause fear of imminent bodily injury. From this proof, a rational trier of fact could find beyond a reasonable doubt that the Defendant entered the habitations with the intent to commit an assault. Accordingly, we conclude that the evidence is legally sufficient to sustain his convictions for aggravated burglary.

b. First Degree Felony Murder Convictions

The Defendant next challenges his felony murder convictions, arguing that the State failed to prove entry with intent to commit an assault—the essential element of the underlying aggravated burglary offense. He further contends that the State was required to prove that the killing occurred during the perpetration of an assault, rather than during the perpetration of the burglary. The State responds that the jury could reasonably find that the homicides occurred during the perpetration of an aggravated burglary, and that felony murder does not require completion of the underlying assault. We agree with the State.

Counts 1 and 2 of the presentment charged the Defendant with first degree felony murder of Ms. White’s mother and their roommate, respectively, predicated on the aggravated burglaries of their habitations. Under Tennessee law, first degree felony murder occurs when a person kills another “in the perpetration of or attempt to perpetrate” certain specified felonies, including any burglary. Tenn. Code Ann. § 39-13-202(a)(2) (2025). The offense requires no mental state beyond the intent to commit the underlying felony, and the killing satisfies the statute if it occurs as part of a continuous sequence of events closely connected in time and place to the underlying felony. *See State v. Buggs*, 995 S.W.2d 102, 106-07 (Tenn. 1999).

The Defendant’s argument conflates two distinct concepts. Aggravated burglary, as charged here, required proof that the Defendant entered the victims’ habitations with the intent to commit an assault; it did not require that the assault actually occur. *See* Tenn. Code Ann. §§ 39-13-1002, -1003. The felony murder convictions, in turn, are predicated on the perpetration of the aggravated burglary itself, not on the completion of the underlying assault. *See Buggs*, 995 S.W.2d at 106-07. Accordingly, the Defendant’s challenge to the felony murder convictions rises or falls entirely with his challenge to the underlying aggravated burglaries.

As previously discussed, the record contains ample evidence from which a rational juror could find that the Defendant committed the underlying aggravated burglaries. The killings occurred as part of a continuous sequence of events closely connected in time and place to those burglaries. Viewed in the light most favorable to the State, the record demonstrates that the Defendant’s only challenge—whether he entered with intent to commit an assault—does not entitle him to relief. From this proof, a rational trier of fact could find beyond a reasonable doubt that the killings occurred during the perpetration of the aggravated burglaries. Accordingly, we conclude that the evidence is legally sufficient to sustain his felony murder convictions.

c. Employing a Firearm During the Commission of a Dangerous Felony

Finally, the Defendant challenges the sufficiency of the evidence supporting his conviction for employing a firearm during the commission of a dangerous felony. Count 7 of the presentment charged the Defendant with employing a firearm during the commission of a dangerous felony—specifically, during the commission of aggravated burglary. We conclude that this issue has been waived.

Tennessee Rule of Appellate Procedure 27(a)(7)(A) requires an appellant to set forth the contentions “with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on[.]” Reinforcing this requirement, Rule 10(b) of the rules of this court cautions that “[i]ssues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.” *See State v. Molthan*, No. M2021-01108-CCA-R3-CD, 2022 WL 17245128, at *2 (Tenn. Crim. App. Nov. 28, 2022) (concluding that a claim was waived when the defendant did not “make any argument in support of this issue in his brief” and did not “cite to any authorities or appropriate references in the record”), *no perm. app. filed*. Of course, “simply raising an issue is not sufficient to preserve it for appellate review.” *State v. Cunningham*, No. M2023-00909-CCA-R3-CD, 2024 WL 3634259, at *2 (Tenn. Crim. App. Aug. 2, 2024) (citation omitted), *no perm. app. filed*.

In his brief, the Defendant lists Count 7 among a group of counts he contends are not supported by sufficient evidence. He argues that the “proof was also insufficient to convict [him] of any of the burglary-related offenses, including felony murder. (Counts 1, 2, 7, 8, 9.)” Although Count 7 appears in that parenthetical, it appears nowhere else. The brief identifies no elements of the offense, references no caselaw, and provides no record citations in support of the claim. It offers no explanation of which element of the offense the evidence fails to establish, no discussion of why the proof is legally insufficient, and no argument as to why relief is warranted.

To address the claim on the merits, we would need to identify the applicable legal standard, examine the record, and assess whether the evidence is sufficient—efforts that fall outside our role as an error-correction court. *See City of Memphis v. Edwards by & Through Edwards*, No. W2022-00087-SC-R11-CV, 2023 WL 4414598, at *2 (Tenn. July 5, 2023) (Order) (“[D]ecades of caselaw and the very foundations of our adversarial justice

system dictate that courts cannot and should not shoulder the burden of fashioning the arguments of the parties who have chosen not to do so for themselves.” (citation omitted)). Because the Defendant’s challenge to Count 7 does not comply with Tennessee Rule of Appellate Procedure 27(a)(7), we conclude that he has waived appellate consideration of this issue. *See State v. Hamilton*, No. W2023-01127-CCA-R3-CD, 2024 WL 4130757, at *5 (Tenn. Crim. App. Sept. 10, 2024), *perm. app. denied* (Tenn. Feb. 20, 2025).

5. Conclusion

Viewed in the light most favorable to the State, the evidence is legally sufficient to sustain the Defendant’s convictions for first degree premeditated murder of Ms. White’s mother and roommate, as the record supports a finding that the Defendant acted intentionally and after the exercise of reflection and judgment. The evidence is likewise legally sufficient to sustain his aggravated burglary convictions, as the record supports a finding that the Defendant entered the habitations with the intent to commit an assault. The evidence is also legally sufficient to sustain his felony murder convictions, as the record supports a finding that the killings occurred during the perpetration of those aggravated burglaries. Finally, the Defendant has waived his challenge to his conviction for employing a firearm during the commission of a dangerous felony for failure to comply with Tennessee Rule of Appellate Procedure 27(a)(7). We conclude that the Defendant is not entitled to relief on the issues raised in this section.

B. RIGHT TO PRESENT A DEFENSE

The Defendant next argues that the trial court interfered with his constitutional right to present a defense by allowing the mental health experts to reference the Defendant’s suppressed statement. In particular, he contends that the ruling forced him to choose between his right to present a defense and his constitutional right to counsel, asserting that one constitutional right should not have to be surrendered in order to assert another. He further asserts that the trial court used an improper procedure when determining the admissibility of the suppressed statement.

The State responds that the Defendant has waived this claim by failing to object at the pretrial hearing. It further asserts that, waiver notwithstanding, the Defendant has not shown that he was deprived of his right to present a defense. Specifically, the trial court did not exclude the expert testimony, nor did it prohibit him from calling the expert witness; rather, it held that the experts would be subject to cross-examination regarding the

Defendant's suppressed statement. Finally, the State argues that the Defendant waived his procedural argument by failing to request that the court make such findings.

We agree with the Defendant that his right to present a defense argument has been preserved for appellate review. However, we agree with the State that the Defendant was not denied his constitutional right to present a defense. Further, we conclude that the Defendant has waived his argument regarding the trial court's procedure when determining the admissibility of the suppressed statement.

1. Background

As background for this issue, the Defendant invoked his right to counsel during his post-arrest interrogation, stating to law enforcement, "I need my lawyer." Following that invocation, the Defendant admitted responsibility for the physical acts underlying the charges. The trial court ruled that the post-invocation statements were taken in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966), because the Defendant had made a clear and unequivocal request for counsel. The court accordingly granted in part the Defendant's motion to suppress, excluding from trial the statement the Defendant had made after invoking his right to counsel.

The Defendant also filed a notice of his intent to present a defense of insanity at the time of the offense—a result of a methamphetamine-induced psychosis—during trial. The State later provided its expert report on the Defendant's mental evaluation, prompting the Defendant to file a motion to exclude the State's expert's references to the Defendant's suppressed post-arrest statement.

At the motion hearing, the Defendant expressed concern that, because both parties' experts had reviewed the suppressed statement when forming their opinions, the State could use Rules 702, 703, and 705 to compel disclosure of that statement during cross-examination of the mental health experts. The Defendant stated that his expert signed an affidavit affirming that he could discuss the Defendant's mental condition without mentioning the suppressed statement.

The trial court ultimately denied the motion, holding that all materials reviewed by the experts would be "fair game" for use at trial. The Defendant responded that he understood the ruling and appreciated getting clarity before finalizing his defense.

Shortly thereafter, the Defendant filed a withdrawal of his notice of intent to present an insanity defense pursuant to Rule 12.2(a) and (b). The withdrawal reflected the Defendant's determination that the trial court's ruling rendered the presentation of an insanity defense incompatible with his interest in keeping the suppressed statement from the jury.

2. Right to Present a Defense

It is well established that the right to present a defense is a "fundamental element of due process of law." *State v. Brown*, 29 S.W.3d 427, 432 (Tenn. 2000) (citation and internal quotation marks omitted). Nevertheless, this right is not absolute and must be exercised in accordance with the rules of evidence and procedure. *See State v. Flood*, 219 S.W.3d 307, 316 (Tenn. 2007). So long as those rules are not applied "arbitrarily or disproportionately to defeat the purposes they are designed to serve," their application does not infringe on a defendant's constitutional rights. *Id.* When evaluating whether the exclusion of evidence violates due process, courts consider (1) whether the excluded evidence is critical to the defense; (2) whether the evidence bears sufficient indicia of reliability; and (3) whether the interest supporting the exclusion of the evidence is substantially important. *Id.*; *see State v. Nunez*, No. M2024-00179-CCA-R3-CD, 2025 WL 1892446, at *12 (Tenn. Crim. App. July 9, 2025) (citations omitted), *perm. app. denied* (Tenn. Nov. 20, 2025).

a. Preservation for Appellate Review

The State contends that the Defendant waived this claim by failing to object at the pretrial hearing. Because our court may only review what is properly before it, we address this argument first.

A motion in limine preserves an issue for appeal, even without a contemporaneous objection, when it "clearly presents an evidentiary question and [when] the trial judge has clearly and definitively ruled." *State v. Deshields*, No. W2024-01694-CCA-R3-CD, 2025 WL 3023733, at *6 (Tenn. Crim. App. Oct. 29, 2025) (citing *State v. McGhee*, 746 S.W.2d 460, 462 (Tenn. 1988)), *no perm. app. filed*. That rule, however, has an important qualification. When "'issues are only tentatively suggested or the record [is] only partially and incompletely developed in connection with a motion in limine,' the failure to lodge an objection during trial carries with it the risk that the issue has not been properly preserved." *State v. Gray*, No. E2022-01000-CCA-R3-CD, 2023 WL 3916272, at *6 (Tenn. Crim. App. June 9, 2023) (citations omitted), *perm. app. denied* (Tenn. Nov. 17, 2023); *see State v. Walls*, 537 S.W.3d 892, 900 (Tenn. 2017).

Here, the Defendant satisfied both requirements to preserve his issue on appeal. In his motion, the Defendant argued that allowing the State to expose the jury to suppressed evidence through expert testimony would violate his rights. More specifically, he contended that a *Miranda* violation cannot be used to overcome an insanity defense. At the pretrial motion hearings, he reiterated that presenting expert testimony would not inadvertently open the door to the suppressed statement. He also requested a definitive ruling before finalizing his defense strategy. The trial court, in turn, made a clear and definitive ruling, expressly stating it would make its ruling “as clear as [it could].” Accordingly, the Defendant properly preserved his issue for appeal, and we address the merits below.

b. Strategic Decision Not to Present a Defense

Although the Defendant has preserved the issue, he has not shown a violation of his right to present a defense. As a threshold matter, no evidence was excluded. Because the *Flood* test applies only where evidence has actually been excluded from a defendant’s case, it is not triggered here. Rather, the trial court denied the Defendant’s motion in limine to exclude the State’s expert’s reference to the statement taken in violation of his *Miranda* rights. The Defendant’s decision not to call an expert witness does not transform the trial court’s evidentiary ruling into a constitutional deprivation of his right to present a defense.

This court rejected a similar argument in *State v. Hickman*, No. E2021-00662-CCA-R3-CD, 2022 WL 13693116 (Tenn. Crim. App. Oct. 24, 2022), *perm. app. denied* (Tenn. Mar. 8, 2023). In that case, the trial court ruled that a recording the defense sought to admit was admissible, but it also permitted the State to introduce other portions of the recording as well. *Id.* at *21. Consequently, defense counsel opted not to admit the recording. *Id.* *Hickman* ultimately held that “defense counsel’s strategic decision to forgo introducing the [evidence] in order to avoid opening the door to more damaging evidence did not violate [the d]efendant’s right to present a defense.” *Id.* Similarly, in *State v. Carter*, this court opined that “the mere fact the defense strategically chose not to ask questions after being proactively warned about the consequences by the trial court does not amount to the denial of his right to present a defense.” *State v. Carter*, No. W2020-00478-CCA-R3-CD, 2021 WL 4811943, at *16 (Tenn. Crim. App. Oct. 15, 2021), *perm. app. denied* (Tenn. Feb. 9, 2022).

The same principle applies here. The Defendant intended to call an expert witness to testify about his state of mind at the time of the offense to establish an insanity defense. He then moved to exclude the State’s rebuttal witness’s references to his suppressed

statement. The trial court determined that, if the Defendant called an expert witness, the State could challenge the basis of the expert's opinion using the suppressed statement. The Defendant's subsequent election to withdraw his mental health defense and not call an expert witness was a strategic decision—a routine and constitutionally permissible feature of the adversarial process.

Pushing against this conclusion, the Defendant makes several arguments. He first attempts to distinguish *Hickman* from his case because defense counsel in *Hickman* conceded that the trial court's ruling was correct, whereas the Defendant makes no such concession here. See 2022 WL 13693116, at *21. We view that distinction, respectfully, as being immaterial. The holding in *Hickman* did not rest upon the defense counsel's concession, but rather on the determination that the trial court's ruling did not preclude the defendant from presenting his defense. The Defendant's concession argument, therefore, does not advance his claim of constitutional deprivation.

Similarly, the Defendant asserts that *Carter* illustrates the fundamental issue that the trial court failed to narrowly limit or tailor the scope of the rebuttal evidence in his case, as was done in *Carter*. See 2021 WL 4811943, at *16. However, *Carter* does not stand for the proposition that a trial court is required to restrict the scope of a cross-examination into the bases of an expert's opinion once the defendant elects to place that opinion before the jury. Instead, *Carter* echoes *Hickman* in determining that a defendant's strategic decision does not violate his or her constitutional right to present a defense. *Carter*, 2021 WL 4811943, at *16; *Hickman*, 2022 WL 13693116, at *21. Thus, *Carter* does not support the Defendant's argument or entitle him to relief on this ground.

We also respectfully disagree with the Defendant's reliance on *Wainwright v. Greenfield*, 474 U.S. 284 (1986). In *Wainwright*, the prosecutor used a defendant's post-arrest, post-*Miranda* silence and his requests for counsel as affirmative proof in the State's case-in-chief that the defendant was sane. *Id.* at 286-87. The United States Supreme Court held that such use violated due process because it breached the implicit assurance in the *Miranda* warnings that the exercise of constitutional rights would carry no penalty. *Id.* at 292-95.

By contrast, the State here did not use, and did not intend to use, the Defendant's suppressed statement in its case-in-chief. Rather, the trial court ruled only that the statement would be available for cross-examination of a defense expert who had reviewed it in forming his opinion—a use *Wainwright* did not address. Accordingly, we conclude that the Defendant is not entitled to relief on this ground.

3. The Trial Court's Procedural Determinations

Finally, the Defendant argues that the trial court did not follow the proper procedure to determine whether his suppressed statement was admissible. Citing Tennessee Rules of Evidence 703 and 705, he asserts that the trial court did not make any specific findings about the probative value substantially outweighing the prejudicial effect.

Ordinarily, before a party can challenge the admission of evidence on appeal, the party must have preserved the issue in the trial court. To preserve an issue, the party should first assert a timely objection identifying a specific ground. The party then must later raise that issue in a motion for a new trial. Tenn. R. Evid. 103(a)(1); Tenn. R. Crim. P. 51(b); Tenn. R. App. P. 3(e). Otherwise, the party waives the issue on appeal and cannot seek plenary review. *See, e.g., State v. Ruiz*, 716 S.W.3d 439, 453 (Tenn. Crim. App. 2024); *State v. Thompson*, No. W2022-01535-CCA-R3-CD, 2023 WL 4552193, at *3 (Tenn. Crim. App. July 14, 2023) (citations omitted), *no perm. app. filed*.

Our supreme court has emphasized “the importance of a contemporaneous objection to *procedures* utilized by the trial court in addition to evidentiary issues.” *See Walls*, 537 S.W.3d at 899 (emphasis in original). “Objections to improper procedure must be voiced contemporaneously to give the trial judge the opportunity to correct the error on the spot. In the absence of a contemporaneous objection, any error was waived.” *State v. Estes*, 655 S.W.2d 179, 186 (Tenn. Crim. App. 1983) (citations omitted).

As discussed above, the Defendant properly raised a right to present a defense claim before trial and at the motion for a new trial. However, no argument was advanced, either in the motion or at the hearing, as to the merits of the *procedure* used by the trial court in its determination. These omissions are important, as raising an evidentiary claim does not preserve a separate claim that the trial court employed an improper procedure. *See Walls*, 537 S.W.3d at 899. The Defendant now asks us to fault the trial court for failing to apply the proper procedure, even though it was never presented to the trial court for its consideration. We respectfully decline to do so. *See Thompson*, 2023 WL 4552193, at *4 (Tenn. Crim. App. July 14, 2023) (“[W]e have been extremely hesitant to put a trial court in error where its alleged shortcoming has not been the subject of a contemporaneous objection.” (citation and internal quotation marks omitted)), *no perm. app. filed*.

Because the Defendant has waived plenary review of this issue, his only potential avenue for relief would be through the plain error doctrine. *See State v. Dotson*, 450 S.W.3d 1, 54 (Tenn. 2014). To invoke plain error review, however, a party “must generally raise

and argue the issue in the party’s briefing, just as the party would do with all other issues in the ordinary course of an appeal.” *Ruiz*, 716 S.W.3d at 453. Here, the Defendant has neither requested plain error review nor analyzed the factors necessary to obtain such relief. *See State v. Enix*, 653 S.W.3d 692, 701 (Tenn. 2022) (identifying plain error factors). In the absence of such a request, therefore, we respectfully decline to address the issue sua sponte. *See, e.g., State v. Gardner*, 716 S.W.3d 388, 417 (Tenn. Crim. App. 2024).

4. Conclusion

We conclude that the Defendant’s decision to withdraw his insanity defense was a constitutionally permissible strategic choice that did not constitute a deprivation of his right to present a defense. The Defendant has likewise waived his challenge to the procedure the trial court used in assessing the admissibility of the suppressed statement. The Defendant is not entitled to relief on this issue.

C. DESTRUCTION OF POTENTIALLY EXCULPATORY EVIDENCE

Citing *State v. Ferguson*, 2 S.W.3d 912 (Tenn. 1999), the Defendant next asserts that the trial court failed to provide an adequate remedy for the State’s loss of two items of potentially exculpatory evidence: the Nissan Sentra in which Ms. White was shot and the DNA swabs taken from a magazine found at the Trousdale residence. He argues that the appropriate remedy was either dismissal of the charges or his proposed jury instruction directing the jury to find specific facts in his favor, and that the pattern instruction given by the trial court was insufficient to protect his right to a fundamentally fair trial.

The State responds that the trial court properly exercised its discretion in determining that the pattern instruction was an adequate remedy. We agree with the State.

1. Background

a. The Nissan Sentra

On the afternoon of March 8, 2020, police found the Nissan Sentra—the vehicle in which Ms. White was shot—at a home near the Trousdale residence. The vehicle was sealed, towed to the forensics laboratory garage, and processed by the lab the same day.

On January 4, 2022, the Defendant filed a motion to dismiss the presentment, claiming the State destroyed the crime scene by releasing the vehicle from the KPD impound lot. At a pretrial hearing, Investigator Chas Terry testified that the parties had scheduled a vehicle inspection; shortly thereafter, he informed the Defendant that KPD no longer possessed the vehicle. Investigator Terry had not checked the vehicle’s status between March 2020 and November 2021, and the vehicle was inadvertently returned to Enterprise Rental.

Investigator Thomas Thurman testified that KPD routinely releases impounded vehicles when the lot gets too full. Enterprise Rental contacted Investigator Thurman to request the vehicle’s release. Although the impoundment form indicated the vehicle was on hold for a homicide investigation, Investigator Thurman did not consult the form and believed he was releasing a different car involved in another case. He estimated that the vehicle was released in mid-June 2021. Defense counsel had been appointed to represent the Defendant since November 2020 and had already requested access to the vehicle before it was released.⁴

At a later hearing, the State conceded that it had a duty to preserve the vehicle and that its inadvertent release constituted a failure of that duty. The trial court acknowledged the State’s concession and deferred its determination of a remedy, expressing its inclination to address the matter through a jury instruction after the proof was heard. At trial, Investigator Jason Booker testified that the vehicle was not tested for gunshot residue because KPD does not receive vehicle-specific gunshot residue testing kits from the Tennessee Bureau of Investigation (“TBI”). However, law enforcement did test the vehicle for blood before releasing it. The TBI’s forensic biology report indicated that no blood was

⁴ The record reflects that defense counsel was appointed to represent the Defendant in November 2020 and that the vehicle was released to Enterprise Rental in mid-June 2021.

present, and the DNA profiles obtained from multiple interior locations were inconclusive for comparison purposes.

b. The DNA Swabs

The Defendant renewed his motion to dismiss on April 10, 2023, after learning that the State had lost the DNA swabs used to test the .45 caliber magazine found next to one of the victims at the Trousdale residence. At trial, Crime Scene Technician Nicole Sauls testified that police recovered the magazine and that she swabbed it for DNA, but she could not recall whether she sent the swabs to the TBI for testing.

Technician Sauls's understanding was that the evidence went missing "at one point [when] several of the items of evidence had been unsealed and then returned to property unsealed." The swabs were never found, so she sent the magazine itself to the TBI. The DNA profile from the magazine came back "inconclusive for comparison purposes."

The trial court found that the State had a duty to preserve both the vehicle and the DNA swabs, that it failed in both duties, and that both failures resulted from simple negligence. Having made those findings, the trial court determined that a pattern jury instruction was the appropriate remedy for both losses.

2. Legal Framework and Standard of Appellate Review

Ferguson recognized that the loss or destruction of potentially exculpatory evidence may violate a defendant's right to a fair trial. *Ferguson*, 2 S.W.3d at 915-16; *State v. Merriman*, 410 S.W.3d 779, 785 (Tenn. 2013). The central inquiry is whether "a trial, conducted without the [lost or] destroyed evidence, would be fundamentally fair." *Merriman*, 410 S.W.3d at 785 (quoting *Ferguson*, 2 S.W.3d at 914). The inquiry is a practical one: a trial is fundamentally fair when the defendant "was not hindered in the full and complete exposition of his theory to the jury." *Ferguson*, 2 S.W.3d at 918.

A reviewing court approaches that inquiry in three steps. The first is whether the State had a duty to preserve the evidence. *Merriman*, 410 S.W.3d at 791. That duty arises only when the evidence "potentially possess[es] exculpatory value" and be "of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." *Ferguson*, 2 S.W.3d at 917; *Merriman*, 410 S.W.3d at 792.

The second step is whether the State failed in that duty. *Merriman*, 410 S.W.3d at 791. If the State has failed in its duty, the court proceeds to the third step: balancing three factors to determine whether a trial without the evidence would be fundamentally unfair. Those factors are (1) the degree of negligence involved; (2) the significance of the destroyed evidence, considered in light of the probative value and reliability of secondary or substitute evidence that remains available; and (3) the sufficiency of the other evidence used at trial to support the conviction. *Ferguson*, 2 S.W.3d at 917; *Merriman*, 410 S.W.3d at 785. We review the trial court’s fundamental fairness determination de novo. *Merriman*, 410 S.W.3d at 791; *State v. Rimmer*, 623 S.W.3d 235, 256 (Tenn. 2021).

Only if the court concludes that a trial without the missing evidence would be fundamentally unfair may it “impose an appropriate remedy to protect the defendant’s right to a fair trial, including, but not limited to, dismissing the charges or providing a jury instruction.” *Merriman*, 410 S.W.3d at 785-86. *Ferguson* does not establish separate factors to guide the trial court’s choice of remedy, but a more severe remedy may be warranted when the conduct is egregious or the evidentiary value of the lost evidence is more significant. *Id.* at 796. We review the trial court’s choice of remedy for an abuse of discretion. *Merriman*, 410 S.W.3d at 791-92; *State v. Crass*, 660 S.W.3d 506, 514 (Tenn. Crim. App. 2022).

3. Application

The first two steps of the *Ferguson* analysis are not in dispute. The State conceded it had a duty to preserve the vehicle and failed in that duty by releasing it to Enterprise Rental. The trial court likewise found that the State had a duty to preserve the DNA swabs and failed in that duty when the swabs were lost. The Defendant’s renewed motion sought dismissal of the charges as the primary remedy. In the alternative, he requested the following jury instruction:

The State alleges that Ms. White was shot in the Nissan Sentra that was recovered on March 8, 2020. The State negligently caused the parties not to have access to the Nissan Sentra. The defense requested access to the Nissan Sentra to test for blood or gunshot residue. The Court instructs you as a matter of law that you must find that there was no blood or gunshot residue found in the Nissan Sentra.

The State further took swabs from the [.45 caliber magazine that was found at the scene on Trousdale Road in order to test for DNA. The State lost those

swabs. The Court instructs you as a matter of law that [the Defendant]’s DNA was not on the magazine.

We therefore turn to the third step of the *Ferguson* analysis and balance the three factors to determine whether, without the missing evidence, the Defendant’s trial would have been fundamentally unfair. We then consider, in the alternative, whether the trial court’s selection of the pattern instruction was within its discretion.

a. Degree of Negligence

The trial court found that both losses resulted from simple negligence—not intentional conduct, bad faith, or gross negligence. The record confirms that finding. The vehicle was inadvertently released when Investigator Thurman approved Enterprise Rental’s request without consulting the impoundment form, which indicated that the vehicle was on hold for a homicide investigation. The DNA swabs likely went missing when several items of evidence were unsealed and returned to property without being resealed. Both circumstances reflect simple administrative error rather than deliberate disregard.

As in *Rimmer*, the release here resulted from storage limitations and was consistent with established departmental policy. *Rimmer*, 623 S.W.3d at 259-60. The trial court found that the loss of the vehicle was simply a mistake, unsupported by any nefarious intent. Accordingly, the degree of negligence involved was minimal, and the first factor weighs in the State’s favor.

b. Significance of the Lost Evidence

Ferguson does not impose a duty on law enforcement to collect evidence in a particular manner—only to preserve evidence that has been collected. *See State v. Franklin*, 585 S.W.3d 431, 461 (Tenn. Crim. App. 2019); *State v. Hollingsworth*, No. E2015-01463-CCA-R3-CD, 2017 WL 111331, at *14 (Tenn. Crim. App. Jan. 11, 2017), *perm. app. denied* (Tenn. May 24, 2017). The failure to conduct gunshot residue testing before the vehicle’s release is therefore not itself a failure of the duty to preserve—the duty attaches to the vehicle that was collected, not to additional testing that was not performed.

The Defendant argues specifically that gunshot residue testing of the vehicle’s interior could have undermined the credibility of his cousin—the State’s primary

eyewitness—by casting doubt on whether Ms. White was shot inside the car. The TBI’s gunshot residue expert confirmed that vehicle testing was technically feasible. We acknowledge that the vehicle, therefore, had potential exculpatory value in this respect. The question under *Ferguson* is not whether the missing items might have helped the defense, but whether their absence rendered the trial fundamentally unfair. *Ferguson*, 2 S.W.3d at 917. Neither the loss of the vehicle nor the DNA swabs crossed that threshold.

The significance of the untested gunshot residue question is substantially diminished by substitute evidence already in the record. The testing actually conducted before the vehicle’s release was neutral on precisely the question the Defendant raises: no blood was found in the backseat where Ms. White was alleged to have been shot, and the DNA profiles from multiple interior locations were inconclusive for comparison purposes. Indeed, the Defendant had access to that existing evidence, which did not corroborate his cousin’s account, and he argued it to the jury. As the *Rimmer* court held in analogous circumstances, where thorough processing preceded the vehicle’s release and the results were preserved for the defense, the vehicle itself has “little apparent exculpatory value.” *Rimmer*, 623 S.W.3d at 259.

Even assuming a negative gunshot residue result, the probative weight of that finding would not have been decisive. The cousin’s credibility was already contested at trial through the gunshot residue hand-swab results, which showed the cousin positive for residue while the Defendant had only two consistent particles. The jury considered and rejected that theory on the basis of that evidence. A vehicle gunshot residue result would have been one additional data point on a question the jury had already resolved. Moreover, a negative vehicle result would not have explained the other substantial evidence of guilt—including the eyewitness testimony, the post-crime text messages, and the physical evidence described in the sufficiency section above. *See Hollingsworth*, 2017 WL 111331, at *15 (“[E]ven if third party DNA was found inside the victim’s car, it would not have explained the other substantial evidence of the [d]efendant’s guilt.”).

The Defendant was not hindered in the full and complete exposition of his theory to the jury. Defense counsel challenged the cousin’s account directly, presented the gunshot residue hand-swab results, and argued the cousin’s credibility extensively—all without the vehicle. The State’s own pre-release testing, which found no blood in the backseat and produced inconclusive DNA profiles from multiple interior locations, was available to the defense and was argued to the jury. Although the jury rejected his theory of the crime, the Defendant was able to present it fully. As the trial court observed, the Defendant already had “zero that corroborates his testimony within the car,” and a defense expert “would not have placed the Defendant in a better position than that established by the evidence at trial.”

As to the DNA swabs, “[t]he mere possibility of exculpatory content does not trigger a finding that the State failed in its general duty to preserve evidence under *Ferguson*.” *Hollingsworth*, 2017 WL 111331, at *15 (citation and internal quotation marks omitted). The magazine itself was sent to the TBI as substitute evidence, and the resulting DNA profile was “inconclusive for comparison purposes.” The loss of the swabs did not deprive the Defendant of a favorable result; it produced a neutral one.

c. Sufficiency of the Remaining Evidence

The evidence of guilt was substantial, multifaceted, and did not depend on either the vehicle or the magazine swabs. As discussed in the sufficiency section above, the record contains substantial proof of the Defendant’s guilt, including eyewitness testimony, post-crime communications, and physical evidence. Even if some potentially exculpatory result had been obtained from either item, it would not have explained away that substantial proof. *See Rimmer*, 623 S.W.3d at 259-60; *Hollingsworth*, 2017 WL 111331, at *15.

Applying these three factors de novo, we conclude that the Defendant was not hindered in the full and complete exposition of his theory to the jury. *Ferguson*, 2 S.W.3d at 918. Because the absence of either item did not render the trial fundamentally unfair, no remedy was strictly required.

d. Adequacy of the Remedy

Even assuming, contrary to our holding above, that the three balancing factors supported a finding of fundamental unfairness, we conclude that the trial court acted within its discretion in selecting the pattern instruction. Under *Ferguson*, the trial court is “afforded wide discretion in fashioning a remedy.” *Merriman*, 410 S.W.3d at 796. The trial court is “in the best position to fashion a remedy for a *Ferguson* error.” *State v. Forte*, No. E2022-01216-CCA-R3-CD, 2025 WL 1420366, at *15 (Tenn. Crim. App. May 16, 2025), *perm. app. denied* (Tenn. Oct. 8, 2025).

The pattern instruction authorized by *Ferguson* directs the jury that, if it finds the State failed to gather or preserve evidence the production of which “would more probably than not be of benefit to the defendant,” it may infer that the absent evidence would have been favorable to the defendant. *Ferguson*, 2 S.W.3d at 917. That instruction gave the jury a meaningful tool for evaluating the significance of the missing evidence. A remedy beyond a jury instruction is not warranted when only minor negligence was involved, the evidence had minimal significance to the defense, and strong additional evidence existed

in the record. *Merriman*, 410 S.W.3d at 796; *see also State v. Reece*, No. E2020-01589-CCA-R3-CD, 2022 WL 484569, at *11 (Tenn. Crim. App. Feb. 17, 2022), *perm. app. denied* (Tenn. June 8, 2022).

These circumstances support the trial court’s use of the pattern instruction here. First, both losses resulted from simple administrative error with no intentional or egregious conduct. Second, the significance of the lost evidence was minimal, as the vehicle had been thoroughly processed before its release with neutral results, and the DNA magazine profile likewise returned an inconclusive result. Third, the remaining evidence of guilt was substantial, multifaceted, and independently reliable, including eyewitness testimony, post-crime text messages, and physical evidence, none of which depended on any inference from the missing items.

The Defendant argues that the trial court should have given his specific proposed instruction directing the jury to find as a matter of law that no blood or gunshot residue was found in the vehicle and that his DNA was not on the magazine. That instruction, however, would have directed the jury to treat unestablished facts as legally proven. The vehicle was never tested for gunshot residue before its release—so no test result, favorable or otherwise, exists in the record. Directing the jury to find no gunshot residue would have imposed a legal fiction in favor of the Defendant that the evidence did not support. Similarly, the magazine DNA profile came back “inconclusive for comparison purposes”—not as exonerating evidence—meaning the record does not establish that the Defendant’s DNA was absent from the magazine. The pattern instruction’s permissive inference was the appropriate response to genuinely uncertain facts; the Defendant’s mandatory instruction would have converted that uncertainty into an established finding that the record did not support.

The Defendant further contends that the curative effect of the pattern instruction was undermined by the prosecutor’s rebuttal closing argument, in which the prosecutor suggested the State had no duty to preserve the vehicle and questioned why the Defendant had not tested it himself. As addressed in our analysis of the closing argument, that argument was not preserved for plenary review. For purposes of the analysis of the *Ferguson* issue here, the relevant question is whether the pattern instruction was within the range of acceptable remedies for the losses themselves. We conclude that it was.

Merriman recognized that “[i]t is logical that a more severe remedy may be warranted when the conduct is egregious or the evidentiary value of the lost evidence is more significant.” *Merriman*, 410 S.W.3d at 796. Neither condition is present here. The trial court applied the correct legal standards, weighed the relevant factors, and selected a

remedy well within the range of acceptable alternatives. The Defendant is not entitled to relief on this ground.

4. Conclusion

The State had a duty to preserve both the vehicle and the DNA swabs, and it failed in both duties. Upon our *de novo* review of the three *Ferguson* balancing factors, however, we conclude that the absence of either item did not render the Defendant's trial fundamentally unfair and that no remedy was therefore strictly required. In the alternative, even if a remedy were required, the trial court acted within its discretion to use the pattern jury instruction. The losses resulted from simple negligence; the missing items had minimal exculpatory value; and the remaining evidence of guilt was substantial. The Defendant is not entitled to relief on this issue.

D. ADMISSION OF PRIOR ACT EVIDENCE AND RELATED PHOTOGRAPHS

The Defendant next asserts that the trial court erred in admitting evidence of three separate incidents pursuant to Tennessee Rules of Evidence 404(b) and 403. More specifically, he challenges (1) the admission of a photograph of the Defendant holding a firearm accompanied by testimony from forensic examiner Brian Dalton; (2) testimony from Elizabeth Jenkins regarding a February 14, 2020 incident in which the Defendant struck Ms. White with a pistol and knocked her unconscious; and (3) testimony from Ms. Jenkins regarding a verbal altercation between the Defendant and Ms. White occurring the week before the homicides. As to the photograph, the Defendant argues that the trial court failed to find the proof clear and convincing and that the evidence was not relevant. As to the other two incidents, he contends that the autopsy report undermines Ms. Jenkins's credibility, that the trial court failed to find the verbal altercation established by clear and convincing evidence, and that the trial court applied an incorrect balancing standard under Rule 404(b)(4).

The State responds that Rule 404(b) does not govern the photograph, that the photograph was relevant under Rules 401 and 403, and that the trial court properly admitted Ms. Jenkins's testimony after substantially complying with all procedural requirements of Rule 404(b). We agree with the State.

1. Background

On April 4, 2023, the State filed a notice of intent to introduce Rule 404(b) evidence. In its notice, the State outlined an incident occurring on February 14, 2020, in which the Defendant struck Ms. White several times with a pistol and knocked her unconscious. The notice also included a separate instance occurring the week before the murders, in which the Defendant and Ms. White engaged in a verbal altercation.

The trial court also entered an order adding Brian Dalton, a forensic firearm and toolmark examiner, to the State's witness list. The State intended to admit photographs of the Defendant holding a gun and to have Mr. Dalton testify regarding the firearm depicted therein. Six days after the State filed its notice, the Defendant moved to exclude any photograph of the Defendant with a firearm unless that specific firearm could be shown to have been used in the charged offenses.

The trial court conducted the Rule 404(b) hearings outside the jury's presence on April 12, 2023. To establish proof of the two incidents involving Ms. White, the State called Elizabeth Jenkins, a long-time friend of Ms. White. Ms. White had called Ms. Jenkins shortly after the first incident, and Ms. Jenkins personally witnessed the second altercation. The trial court ruled that the February 14, 2020, incident was relevant to the parties' relationship, the Defendant's intent, and premeditation, and that its probative value was not outweighed by the danger of unfair prejudice. As for the second incident, the court found the evidence admissible as circumstantial proof of "a fissure within the strength of the relationship." Regarding the photographs, the trial court denied the Defendant's motion to exclude, conditioned on Mr. Dalton being able to testify that the firearm depicted was consistent with the murder weapon.

At trial, Ms. Jenkins testified regarding the two incidents, and Dr. Amy Hawes, a forensic pathologist, testified about performing Ms. White's autopsy. Ms. Jenkins testified that Ms. White called her on February 14, 2020, sounding "traumatized" and "very monotone," and that when she visited Ms. White later that afternoon, she observed fingerprint marks, scratches, bruises, and head wounds. Regarding the week-before incident, Ms. Jenkins testified that the Defendant—who appeared to be intoxicated—came to the Trousdale residence screaming at Ms. White and demanding to know where she had put his Xanax. Dr. Hawes, who conducted Ms. White's autopsy in March 2020, testified that her report did not document any contusions on Ms. White's scalp, and she acknowledged on cross-examination that she always records such findings when they are present.

In addition, Mr. Dalton testified about the photograph. He said that a magazine recovered in one of the victims' rooms was consistent with the magazine base plate of a Ruger American Duty pistol. Although he could not confirm the caliber of the firearm in the photograph or match it definitively to the crime scene casings, he identified numerous class-level similarities and concluded that everything visible about the gun "appears to be consistent in class" with a Ruger American Duty pistol.

2. Evidence of Other Crimes, Wrongs, or Acts

Tennessee Rule of Evidence 404(b) provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity with the character trait." The rationale underlying this rule is that the "admission of such evidence carries with it the inherent risk of the jury convicting the defendant of a crime based upon his bad character or propensity to commit a crime, rather than the conviction resting upon the strength of the evidence." *State v. Gilley*, 297 S.W.3d 739, 757 (Tenn. Crim. App. 2008). However, such evidence may be admissible for "other purposes." Tenn. R. Evid. 404(b). Those purposes are identified in the Rule's advisory commission comments and include motive, intent, identity, absence of mistake, or a common scheme or plan. *Id.*

Before a trial court may admit evidence of other crimes, wrongs, or acts, Rule 404(b) specifies that the following conditions must be satisfied:

- (1) The court upon request must hold a hearing outside the jury's presence;
- (2) The court must determine that a material issue exists other than conduct conforming with a character trait and must upon request state on the record the material issue, the ruling, and the reasons for admitting the evidence;
- (3) The court must find proof of the other crime, wrong, or act to be clear and convincing; and
- (4) The court must exclude the evidence if its probative value is outweighed by the danger of unfair prejudice.

Tenn. R. Evid. 404(b)(1)-(4); *Rimmer*, 623 S.W.3d at 261.

Notably, Rule 404(b)'s balancing test is more demanding than the general balancing test under Rule 403. Under Rule 403, relevant evidence may be excluded only when its probative value is *substantially* outweighed by the danger of unfair prejudice—a standard that favors admission. Rule 404(b)(4), by contrast, requires exclusion whenever probative value is merely *outweighed* by the danger of unfair prejudice, making Rule 404(b) a more restrictive admissions test that excludes evidence more frequently. *State v. James*, 81 S.W.3d 751, 759 (Tenn. 2002).

Generally, a trial court's decision to admit or exclude evidence will not be disturbed absent an abuse of discretion. *State v. Thacker*, 164 S.W.3d 208, 240 (Tenn. 2005) (citing *State v. DuBose*, 953 S.W.2d 649, 654 (Tenn. 1997)) (appendix). “However, when we consider evidence that implicates Tenn. R. Evid. 404(b), we review the trial court's admissibility ruling de novo unless the trial court substantially complied with the procedures outlined in Rule 404(b).” *State v. Clark*, 452 S.W.3d 268, 287 (Tenn. 2014). “If the trial court substantially complied with Tenn. R. Evid. 404(b), we will overturn the ruling only if the trial court abused its discretion.” *Id.* (citing *State v. Kiser*, 284 S.W.3d 227, 288-89 (Tenn. 2009)). “A court abuses its discretion when it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence.” *Reynolds*, 635 S.W.3d at 921 (citation and internal quotation marks omitted).

3. Brian Dalton's Testimony

The Defendant argues that the trial court erred in admitting the photograph of the Defendant holding a firearm because the trial court failed to find the proof clear and convincing and because the evidence was not relevant. The State responds that Rule 404(b) does not govern the photograph, that no clear-and-convincing finding was required, and that the photograph was relevant under Rules 401 and 403 because the firearm depicted was consistent with the murder weapon. We agree with the State.

Our supreme court and this court have consistently recognized that evidence of simple firearm possession is not a prior bad act as contemplated by Rule 404(b), because the mere ownership of a firearm, standing alone, does not constitute a crime or wrongful act. *State v. Reid*, 213 S.W.3d 792, 814 (Tenn. 2006) (holding that testimony that a witness observed the defendant in possession of weapons similar to those used in the crimes “did

not necessarily constitute evidence of a bad act” because “the ownership of these weapons, standing alone, does not constitute a crime”), *abrogated on other grounds by State v. Miller*, 638 S.W.3d 136 (Tenn. 2021); *see also State v. Bolden*, No. W2022-01127-CCA-R3-CD, 2024 WL 466168, at *23 (Tenn. Crim. App. Feb. 7, 2024), *perm. app. denied* (Tenn. Sept. 12, 2024); *State v. Robinson*, No. M2016-02335-CCA-R3-CD, 2017 WL 4693999, at *7 (Tenn. Crim. App. Oct. 18, 2017) (concluding that a photograph of the defendant holding two handguns did not constitute evidence of a prior bad act as contemplated by Rule 404(b)), *perm. app. denied* (Tenn. Feb. 14, 2018). Accordingly, the admissibility of evidence depicting the Defendant holding a firearm is governed not by Rule 404(b) but by Rules 401 and 403. *See James*, 81 S.W.3d at 759; *see also State v. Wright*, No. M2019-00082-CCA-R3-CD, 2020 WL 3410247, at *18 (Tenn. Crim. App. June 22, 2020) (citations omitted), *perm. app. denied* (Tenn. Oct. 13, 2020). The trial court was therefore not required to make a clear-and-convincing finding under Rule 404(b).

The Defendant alternatively contends that the photograph was irrelevant and therefore inadmissible under *State v. Frazier*, No. E2018-00202-CCA-R3-CD, 2019 WL 2750138 (Tenn. Crim. App. July 1, 2019), *no perm. app. filed*. This argument is unavailing for two reasons. First, evidence that the Defendant possessed a firearm consistent with the murder weapon was plainly relevant: the photograph was taken only a few weeks before the homicides, and .45 caliber casings were recovered throughout the Trousdale residence. Although Mr. Dalton could not confirm the caliber from the photograph alone or definitively match the firearm to the crime scene casings, he identified sufficient class-level characteristics to establish that the Defendant’s possession of a weapon consistent with the murder weapon was more probable than it would have been without the photograph. *See Robinson*, 2017 WL 4693999, at *8 (concluding that a photograph is “clearly probative [when] it tended to connect the Defendant to the handgun used” in the homicides); *see also Reynolds*, 635 S.W.3d at 927.

Second, *Frazier* is distinguishable on relevance grounds. In *Frazier*, this court concluded that the prior gun possession evidence was inadmissible because “no evidence connected the [d]efendant’s previous gun possession to the gun used in the victim’s shooting”—a relevance failure under Rules 401 and 402. *Frazier*, 2019 WL 2750138, at *21 (citing *Reid*, 213 S.W.3d at 813-14). Here, by contrast, Mr. Dalton testified to identifiable class characteristics establishing that the firearm in the photograph “appears to be consistent in class” with the murder weapon. Unlike *Frazier*, the connection between the Defendant’s prior possession and the weapon used in the homicides here was not absent or speculative—it was established through expert testimony identifying class-level consistency. The Defendant is not entitled to relief on this ground.

4. Elizabeth Jenkins's Testimony

The Defendant raises three arguments against the admission of Ms. Jenkins's testimony. First, regarding the February 14, 2020, incident in which the Defendant struck Ms. White with a pistol and knocked her unconscious, he maintains that the autopsy report did not reveal head wounds as described by Ms. Jenkins and that she was therefore not credible. Second, regarding the verbal altercation the week before the homicides, he asserts that the trial court failed to find clear and convincing evidence that it occurred. Third, he contends that the trial court did not make specific findings that the probative value was not outweighed by the danger of unfair prejudice.⁵

Our review of the record confirms that the trial court substantially complied with the procedural requirements of Rule 404(b). The court held a jury-out hearing as required. For the first incident, the court found the evidence relevant to a material issue other than conduct conforming to a character trait—specifically, the nature of the parties' relationship, the Defendant's intent, and premeditation. For the second incident, the court identified relevance as evidence of “a fissure within the strength of the relationship.” By describing Ms. Jenkins as being “very, very credible,” the trial court made the required finding that the proof of both prior acts was clear and convincing. The trial court finally noted that it would not admit the evidence if its probative value were outweighed by the danger of unfair prejudice. Because the trial court substantially complied with the Rule 404(b) procedures, we review its rulings for an abuse of discretion.

a. Admission of the February 14, 2020, Incident

The Defendant argues that the trial court could not have found Ms. Jenkins credible because the autopsy report did not document the head wounds she described. The State responds that the trial court expressly credited Ms. Jenkins as “very, very credible” and that the absence of contusions in the autopsy report does not undermine that finding. We agree with the State.

⁵ The Defendant also asserts that the trial court erred in not limiting the testimony about the second incident because “[t]he presence of another woman with [the Defendant] in the car was not relevant and was substantially prejudicial.” However, he offers no further argument or mention of this issue anywhere else in his principal or reply briefs. Of course, “simply raising an issue is not sufficient to preserve it for appellate review.” *Cunningham*, 2024 WL 3634259, at *2. As such, we conclude that the Defendant has waived this argument. *See* Tenn. Ct. Crim. App. R. 10(b); *Molthan*, 2022 WL 17245128, at *2.

This argument asks the court to do precisely what the applicable standard of review generally does not permit. When reviewing the admission of evidence under Rule 404(b), this court is bound by the trial court’s credibility findings and may not substitute its own inferences for those drawn by the trial court as the finder of fact. *State v. Vasquez*, No. E2024-00317-CCA-R3-CD, 2025 WL 1203100, at *10 (Tenn. Crim. App. Apr. 25, 2025) (citations omitted), *no perm. app. filed*; see also *State v. Jones*, 450 S.W.3d 866, 893 (Tenn. 2014) (explaining that an appellate court “may not substitute [its] own inferences for those drawn by the trial court, which acted as the finder of fact” in assessing clear-and-convincing evidence under Rule 404(b)). There is no requirement that a witness’s testimony be corroborated before it may clearly and convincingly establish a fact. See *Vasquez*, 2025 WL 1203100, at *10. The trial court twice found Ms. Jenkins to be “very, very credible,” and the record as a whole does not preponderate against that assessment. See *State v. Brown*, No. W2015-00990-CCA-R3-CD, 2016 WL 1446221, at *9 (Tenn. Crim. App. Apr. 12, 2016) (rejecting argument that a witness was not credible where the trial court credited her testimony under Rule 404(b) and the record did not preponderate against that assessment), *perm. app. denied* (Tenn. Sept. 22, 2016).

Given the trial court’s specific and unequivocal crediting of Ms. Jenkins’s testimony, we can reach no conclusion other than that the February 14, 2020, incident was established by clear and convincing evidence. The Defendant is not entitled to relief on this ground.

b. Admission of the Incident Involving a Verbal Altercation

The Defendant next asserts that the court failed to find clear and convincing evidence that the verbal altercation occurred, arguing in particular that the incident involved no physical contact and therefore lacks the indicia of reliability necessary to satisfy the standard. In our view, the record does not support this contention.

Rule 404(b) does not limit admissible prior acts to those involving physical contact. The Rule reaches any “crime, wrong, or act,” and the trial court expressly found this incident relevant as circumstantial evidence of “a fissure within the strength of the relationship” between the Defendant and Ms. White. The absence of physical contact does not undermine the relevance of a volatile confrontation occurring the week before the homicides, nor does it bear on whether Ms. Jenkins’s account of what she personally witnessed was credible.

A clear-and-convincing finding need not be expressed; in some cases, the finding may be implicit in the trial court’s reasoning for admitting the evidence. See *Clark*, 452

S.W.3d at 291; *State v. Allman*, 712 S.W.3d 467, 547 (Tenn. Crim. App. 2024). The trial court’s repeated and unequivocal crediting of Ms. Jenkins’s testimony as a whole—without differentiating between the two incidents—makes that implicit finding unmistakable here. The Defendant is not entitled to relief on this ground.

c. Rule 404(b)(4) Balancing

Finally, the Defendant contends that the trial court applied an incorrect balancing standard under Rule 404(b)(4) when it analyzed the second incident. Specifically, he argues that the trial court’s reasoning—that if evidence of the Defendant’s affection for Ms. White would be admissible, then evidence of his hostility must equally be so—demonstrates that the court applied a comparative relevance test rather than directly weighing the probative value of the evidence against the danger of unfair prejudice. We respectfully disagree.

As we read the record, the trial court’s inverse-hypothetical observation was a means of explaining why the verbal altercation was relevant to a non-propensity purpose—specifically, to show the nature of the parties’ relationship and the Defendant’s intent. It was not a substitute for the Rule 404(b)(4) balancing test. Indeed, the record confirms that the trial court conducted the required balancing separately and expressly: it acknowledged its obligation to weigh probative value against the danger of unfair prejudice and stated that it would exclude the evidence if that balance favored exclusion. That statement confirms the balancing was conducted and resolved in favor of admission. Rule 404(b)(4) does not require the court to articulate detailed findings enumerating every consideration it weighed; it requires only that the balancing be performed. *See James*, 81 S.W.3d at 759.

When reviewing a trial court’s decision for an abuse of discretion, we must maintain “awareness that the decision being reviewed involved a choice among several acceptable alternatives.” *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010). We may not “second-guess a trial court’s exercise of its discretion simply because the trial court chose an alternative that [we] would not have chosen,” *State v. McCaleb*, 582 S.W.3d 179, 186 (Tenn. 2019), nor may we substitute our judgment simply because we believe another choice would have been the “best decision.” *State v. Willis*, 496 S.W.3d 653, 729 (Tenn. 2016).

The trial court identified and applied the correct legal standard, made findings supported by the record, and made a reasoned choice among acceptable alternatives. Even if we disagreed with the trial court’s balancing—and we do not—we cannot conclude that

the court acted outside its discretion in admitting evidence of both incidents as relevant to the Defendant's intent in committing the homicides. The Defendant is not entitled to relief on this ground.

5. Conclusion

The trial court substantially complied with the procedural requirements of Rule 404(b), identified proper non-propensity purposes for the challenged evidence, made credibility findings supported by the record, and conducted the required balancing of probative value against the danger of unfair prejudice. With respect to the photograph and Mr. Dalton's testimony, the court correctly determined that the evidence was governed by Rules 401 and 403 rather than Rule 404(b), and reasonably concluded it was relevant because the firearm depicted was consistent in class with the murder weapon. Because the Defendant has not demonstrated that the trial court applied an incorrect legal standard, reached an illogical decision, or relied on a clearly erroneous assessment of the evidence, we conclude that he is not entitled to relief on these issues.

E. ADDITIONAL EVIDENTIARY ISSUES

The Defendant next contends that the trial court committed multiple evidentiary errors that deprived him of a fair trial. More specifically, he raises eight distinct claims.

He first challenges two rulings that he contends restricted his ability to test the State's primary witness: (1) the exclusion of a social media post he sought to use to impeach his cousin and to advance a theory of third-party guilt; and (2) the exclusion of his cousin's prior inconsistent statements as substantive evidence under Tennessee Rule of Evidence 803(26). He next challenges three rulings admitting evidence of his own conduct and statements: (3) evidence that particles on his hands were consistent with gunshot residue; (4) portions of the Defendant's and his cousin's police interviews offered for purposes of demeanor comparison; and (5) a video recording of his transport to the police station.

The Defendant further argues that (6) the trial court erred in denying his motion for mistrial after the State inadvertently played a portion of his police interview in which he invoked his right to counsel. As part of claim (7), he raises a four-part challenge to the trial court's rulings on life-in-being evidence, including a constitutional challenge to the governing statute, procedural and relevance objections to the admission of a life-in-being photograph, a challenge to the admission of a crime-scene photograph of a driver's license,

and a challenge to testimony he characterizes as excessive. Finally, he contends that (8) the cumulative effect of these errors deprived him of a fair trial.

The State responds that the trial court made proper evidentiary rulings on each challenge raised. We address each issue in turn.

1. Exclusion of Impeachment Evidence to Establish Third-Party Guilt

The Defendant first asserts that the trial court improperly prohibited him from cross-examining his cousin about a social media post containing rap lyrics. He contends that the exclusion of this line of questioning deprived him of his constitutional right to present a defense of third-party guilt.

The State responds that the Defendant has waived this issue by failing to present an adequately developed argument on appeal. We agree and conclude that the Defendant is not entitled to relief.

a. Background

Approximately one month before trial—and nearly three years after the homicides—the Defendant’s cousin posted on Instagram a photograph of himself holding a gun, accompanied by the following caption: “Don’t put yo trust up in no b[****], put em in your bullets,” a lyric from a rap song by Quando Rondo.

Outside the jury’s presence, defense counsel questioned the cousin about the post. The Defendant’s cousin confirmed that the photograph depicted him and that he was holding a gun. Defense counsel asked whether the caption was a statement the cousin was adopting as his own, and his cousin answered, “Yes, sir.”

The trial court asked defense counsel to explain how the post affected his credibility, given that his cousin admitted making it. Defense counsel responded that the cousin knew he was a witness in a homicide case, yet was willing to post a statement about violence on social media.

The trial court declined to admit the evidence but stated that it was “not foreclosing the possibility that [the post] be admitted at some point in time” if the defense presented

an alternate theory of relevance. The Defendant did not renew the request to admit the post at any later point during trial.

b. Waiver and Insufficient Appellate Argument

In his brief, the Defendant contends that he was denied the right to present a defense because cross-examination of his cousin about the post would have both impeached his cousin's credibility and supported a theory of third-party guilt under *Holmes v. South Carolina*, 547 U.S. 319 (2006). He further contends that the jury would have seen that his cousin had posted about driving in a vehicle and shooting people, with a specific reference to an armed individual in the backseat of a car.

Beyond these conclusory assertions, the brief does not cite authority supporting impeachment on this basis or offer a substantive argument, other than distinguishing *Frazier*, 2019 WL 2750138, and citing two cases addressing the right to present a defense. The brief does not explain how the post would affect the cousin's credibility, given that he admitted making it, how the post carries probative value, or what significance should be given to the three-year gap between the homicides and the post. To the extent the Defendant contends that the song's lyrical content specifically corroborated his third-party guilt theory, the brief likewise does not explain how lyrics from a song posted three years after the homicides—and which the cousin attributed to a song he simply enjoyed—constitute evidence connecting the cousin to the specific circumstances of the crime. Despite acknowledging that these issues are reviewed for an abuse of discretion, the brief offers no analysis of how the trial court's ruling failed to satisfy that highly deferential standard.

The brief also does not address the three considerations that govern whether the exclusion of defense evidence violates due process, such as whether the excluded evidence was critical to the defense, whether the interest supporting exclusion was substantially important, or whether any adequate alternative means of presenting the defense existed. *See Flood*, 219 S.W.3d at 316. Because the brief does not satisfy Tennessee Rule of Appellate Procedure 27(a)(7)(A), we conclude that the Defendant has waived plenary review of this issue. *See Hamilton*, 2024 WL 4130757, at *5.

Separately, the Defendant did not preserve this issue at trial. After the trial court stated that it was “not foreclosing the possibility that [the post] be admitted at some point in time” if the defense presented an alternate theory of relevance, the Defendant did not renew the request. Because the issue was not preserved at trial, any relief on this ground

would be available only through the plain error doctrine. *See Dotson*, 450 S.W.3d at 54. The Defendant has neither requested plain error review nor analyzed the factors necessary to obtain such relief. *See Ruiz*, 716 S.W.3d at 453; *Enix*, 653 S.W.3d at 701. In the absence of such a request, we respectfully decline to address the issue sua sponte. *See, e.g., Gardner*, 716 S.W.3d at 417. Accordingly, the Defendant is not entitled to relief on this ground.

2. Exclusion of Prior Inconsistent Statements Under Tennessee Rule of Evidence 803(26)

Next, the Defendant contends that the trial court erred by declining to admit, as substantive evidence, a portion of his cousin's recorded police interview in which the cousin denied seeing the Defendant holding a firearm in the vehicle. The Defendant maintains that the prior recorded statement was materially inconsistent with his cousin's trial testimony and, therefore, admissible for its truth under Tennessee Rule of Evidence 803(26).

The State responds that Rule 803(26) applies only to statements that are "otherwise admissible" under Tennessee Rule of Evidence 613(b), and that because the cousin unequivocally admitted making the prior statement, the Rule 613(b) threshold was not met. We agree and conclude that the Defendant is not entitled to relief.

a. Background

During its direct examination of the Defendant's cousin, the State asked him whether he saw a gun in the car. The cousin answered, "Yes, sir," and said he saw it in the Defendant's hand. He testified that he had seen the gun "a couple of weeks before" because the Defendant "had just got it," and described it as large, black, and a .45 caliber weapon.

Also on direct examination, his cousin initially stated that he had told the police "everything" he told the jury. He immediately corrected himself, however, acknowledging: "I told them that the first time I did not see it, but I did see it." He confirmed that he "told them something different" and explained that he had done so to keep the Defendant from being "in as much trouble."

On cross-examination, defense counsel asked the cousin to confirm that his trial testimony was that he saw the Defendant with a gun after the gunshot, to which the cousin answered, "Yes, sir." Counsel then confronted him with specific content from his recorded

interview with Investigator Booker—that he had not seen the Defendant with the gun because he “was looking outside the window . . . at the Pepsi sign”—and the cousin confirmed that this was what he told the investigator. He also confirmed that he told the investigator he did not turn around and see the Defendant holding a gun. Counsel referenced additional language from the interview describing the cousin’s reaction to the gunshot, and the cousin again confirmed those details.

Defense counsel then asked the cousin whether what he told Investigator Booker was “totally different” from what he told the jury about the gun. He answered, “Yes, sir,” and acknowledged that one of the two accounts was a lie. Following this cross-examination, the Defendant sought to introduce a portion of the recorded interview as substantive evidence under Tennessee Rule of Evidence 803(26). The trial court deferred its ruling until it could review the entire recording, noting that the middle of cross-examination was not an appropriate time to consider the issue. The Defendant renewed the offer at a later point during trial, but the trial court rejected it, concluding that the statements had to satisfy Tennessee Rule of Evidence 613 before they could be admitted as substantive evidence under Rule 803(26). On appeal, the Defendant challenges the trial court’s exclusion of the evidence.

b. Standard of Appellate Review

We review the trial court’s decision to permit or deny impeachment by a prior inconsistent statement for an abuse of discretion. *State v. Baker*, 785 S.W.2d 132, 134 (Tenn. Crim. App. 1989); *State v. Hughes*, No. E2019-01185-CCA-R3-CD, 2021 WL 3818135, at *25 (Tenn. Crim. App. Aug. 27, 2021), *perm. app. denied* (Tenn. Jan. 13, 2022). In addition, we review a trial court’s decision to admit extrinsic evidence of a prior inconsistent statement for an abuse of discretion. *See Hunter v. Ura*, 163 S.W.3d 686, 698 (Tenn. 2005); *State v. Bates*, No. E2014-01741-CCA-R3-CD, 2015 WL 9019818, at *6 (Tenn. Crim. App. Dec. 15, 2015), *perm. app. denied* (Tenn. May 5, 2016).

c. Legal Framework

Resolving this issue requires an understanding of two interrelated evidentiary rules and the relationship between them.

A witness’s testimony may be discredited, or impeached, in several ways. One method of impeachment is to show that the witness’s testimony is inconsistent with something the witness said at another time. *See State v. Bell*, 512 S.W.3d 167, 196 (Tenn.

2015). “The rationale behind this principle is that ‘[t]he presence of an inconsistent statement may convince the trier of fact that the witness has lied in one of the two statements or is careless in making statements.’” *Vasquez*, 2025 WL 1203100, at *10 (citing Neil P. Cohen, et al., *Tennessee Law of Evidence* § 6.13[2][a] (7th ed. 2024)).

Where a witness unequivocally admits to making a prior inconsistent statement, the jury may consider that admission and any explanation for the inconsistency to evaluate the credibility of the witness’s trial testimony. *Vasquez*, 2025 WL 1203100, at *10. Other times, however, the witness may deny making the prior statement or may be uncertain whether he or she did. In those situations, a party may wish to introduce extrinsic evidence, or outside proof, to show that the witness made the prior statement at issue for purposes of impeaching the credibility of the witness. *See State v. Foust*, 482 S.W.3d 20, 41-42 (Tenn. Crim. App. 2015).

Tennessee courts have long recognized that extrinsic evidence of a prior inconsistent statement is inadmissible when the witness unequivocally admits having made the statement. *State v. Martin*, 964 S.W.2d 564, 567 (Tenn. 1998); *State v. Colvett*, 481 S.W.3d 172, 200 (Tenn. Crim. App. 2014). Once the witness acknowledges the prior statement, the inconsistency is established, and the impeachment function is complete. The jury may then assess the witness’s credibility accordingly, rendering extrinsic proof both unnecessary and cumulative. *See Martin*, 964 S.W.2d at 567.

Tennessee Rule of Evidence 803(26) builds upon that foundation by permitting certain prior inconsistent statements to be admitted as substantive evidence rather than solely for impeachment. The rule applies only to a statement that is “otherwise admissible under Rule 613(b)” and imposes additional procedural safeguards. Tenn. R. Evid. 803(26); *Rimmer*, 623 S.W.3d at 292 (appendix). The threshold requirement—that the statement be “otherwise admissible under Rule 613(b)” —incorporates Rule 613(b)’s settled limitation: extrinsic evidence is inadmissible when a witness unequivocally admits making the prior statement. The Advisory Commission Comment confirms this reading, explaining that the statement “must first meet the traditional conditions of admissibility[,] which include the procedural aspects of inconsistent statements as addressed in Rule 613.” Tenn. R. Evid. 803(26), advisory comm’n cmt.

The interaction between the two rules has been addressed consistently by this court since the 2009 amendment. This court has repeatedly held that Rule 803(26) did not abrogate Rule 613(b)’s settled limitation on extrinsic evidence when a witness unequivocally admits making the prior statement. Indeed, where a witness unequivocally admits making the prior inconsistent statement, the Rule 613(b) pathway closes, and Rule

803(26) does not authorize substantive admission of the recording or other extrinsic proof. *See State v. Ackerman*, 397 S.W.3d 617, 638-39 (Tenn. Crim. App. 2012), *overruled on other grounds by State v. Sanders*, 452 S.W.3d 300 (Tenn. 2014); *State v. Cunningham*, No. M2012-02203-CCA-R3-CD, 2015 WL 173495, at *13 (Tenn. Crim. App. Jan. 14, 2015), *perm. app. denied* (Tenn. May 14, 2015); *State v. Swafford*, No. M2014-00421-CCA-R3-CD, 2015 WL 1543251, at *12 (Tenn. Crim. App. Apr. 2, 2015), *perm. app. denied* (Tenn. Aug. 12, 2015); *State v. Dixon*, No. M2016-01517-CCA-R3-CD, 2017 WL 6405153, at *14-15 (Tenn. Crim. App. Dec. 15, 2017), *perm. app. denied* (Tenn. Apr. 19, 2018); *State v. Pearson*, No. W2023-00254-CCA-R3-CD, 2024 WL 823060, at *9 (Tenn. Crim. App. Feb. 28, 2024), *perm. app. denied* (Tenn. July 17, 2024).

d. Application

Applying the framework above, the dispositive question is whether the Defendant's cousin unequivocally admitted making the prior inconsistent statements. The record leaves no doubt that he did.

On cross-examination, defense counsel confronted the cousin with specific questions and answers from his recorded interview with Investigator Booker. The cousin confirmed that, during the interview, he denied seeing a gun in the car when he heard the gunshot. He further confirmed that, when asked whether he turned around and saw the Defendant holding a gun, he answered, "No."

The Defendant's cousin also expressly acknowledged the inconsistency between his prior statement and his trial testimony. He agreed that what he told Investigator Booker was "totally different" from what he told the jury about the gun, and he admitted that one of the two accounts was a lie. These responses were neither equivocal nor qualified. The cousin did not deny giving the prior answers, claim an inability to remember, or express uncertainty about the interview's content.

His testimony on direct examination further confirms this conclusion. Although he initially stated that he had told the police "everything" he told the jury, he immediately corrected himself, acknowledged that he had "told them something different," and explained that he had done so to protect the Defendant. At no point did he deny or equivocate about having made the prior inconsistent statements.

Under *Martin* and *Ackerman*, the cousin's unequivocal admission foreclosed extrinsic proof and, by extension, substantive admission of that extrinsic evidence under

Rule 803(26). *Martin*, 964 S.W.2d at 567; *Ackerman*, 397 S.W.3d at 638-39. The trial court, therefore, acted within its discretion in declining to admit the recording.

Pushing against this conclusion, the Defendant offers several arguments.⁶ He first contends that, because the prior statement was recorded and inconsistent with his cousin's trial testimony, Rule 803(26) required its admission. We respectfully disagree. Rule 803(26) does not operate as an independent hearsay exception; it applies only to statements that satisfy the threshold requirement of Rule 613(b). *See Martin*, 964 S.W.2d at 567; *Ackerman*, 397 S.W.3d at 638-39. Because the cousin unequivocally admitted to making the prior statements, that threshold was not met.

The Defendant also asserts that his cousin's initial statement on direct examination—that he told the police “everything” he told the jury—constituted a denial sufficient to permit extrinsic proof. The record does not support that characterization. During the same examination, the cousin immediately acknowledged that he had told the police “something different” and explained why. He later confirmed the specific prior answers and admitted their inconsistency. This was not equivocation or memory loss; it was an admission.

Finally, to the extent the Defendant suggests that Rule 803(26) overrides Rule 613(b)'s limitation, our precedents foreclose that approach. *Ackerman* and its progeny make clear that Rule 803(26) did not abrogate the settled principle that extrinsic evidence is inadmissible when the witness unequivocally admits the prior statement. *See, e.g., Ackerman*, 397 S.W.3d at 638-39. The 2009 Advisory Commission Comment likewise reflects that the rule was designed for situations in which witnesses claim memory loss or otherwise refuse to acknowledge prior statements. Tenn. R. Evid. 803(26), advisory comm'n cmt. (2009). That is not the case here.

⁶ The Defendant argues in his reply brief that the State's reliance on *State v. Chapman*, No. M2023-01806-CCA-R3-CD, 2025 WL 1013406 (Tenn. Crim. App. Apr. 2, 2025), *perm. app. denied* (Tenn. Aug. 7, 2025), is misplaced. We respectfully disagree. The State cited *Chapman* to illustrate the circumstances in which Rule 803(26) applies—namely, where a witness does not admit the prior statement, such as by claiming a lack of memory. In *Chapman*, the witnesses claimed to have no memory of the events or their prior statements, which meant they had not admitted making those statements. *Id.* at *10. Extrinsic evidence was therefore admissible under Rule 613(b), and the trial court properly proceeded to consider Rule 803(26)'s additional safeguards. *Id.* That factual posture is absent here. The Defendant's cousin did not claim memory loss; he admitted making the prior statements and acknowledged their inconsistency with his trial testimony. *Chapman* thus confirms, rather than undermines, the conclusion that the Rule 613(b) pathway was closed in this case.

e. Conclusion

Because the Defendant's cousin unequivocally admitted making the prior inconsistent statements to Investigator Booker, extrinsic evidence of the recorded interview was inadmissible under Tennessee Rule of Evidence 613(b). The recording was therefore not "otherwise admissible under Rule 613(b)" within the meaning of Tennessee Rule of Evidence 803(26). Under *Martin*, *Ackerman*, and the express text of Rule 803(26), the recording was not admissible as substantive evidence. We conclude that the trial court acted within its discretion in declining to admit the recording. The Defendant is not entitled to relief on this ground.

3. Admission of Evidence that Particles on the Defendant's Hands Were Consistent With Gunshot Residue

In his third issue, the Defendant contends that the trial court erred in allowing evidence that particles on his hands were consistent with gunshot residue because the firearms analysis expert could not conclusively testify that the particles were gunshot residue. The State responds that the Defendant waived this claim by failing to raise a Rule 702 objection at trial, and that the trial court's ruling was in any event correct. We agree and conclude that the Defendant is not entitled to relief.

To preserve an issue, the party should first assert a timely objection identifying a specific ground. The requirement of a contemporaneous objection on a specific ground enables "the trial court [to have] an opportunity to address and/or correct the issue immediately." *Walls*, 537 S.W.3d at 900. A timely objection also places the other party on notice that the party may need to take corrective action, offer other or additional evidence, or develop its opposing positions fully on an issue. *Thompson*, 2023 WL 4552193, at *4. For these reasons, among others, we have been "extremely hesitant to put a trial court in error where its alleged shortcoming has not been the subject of a contemporaneous objection." *State v. Thompson*, 36 S.W.3d 102, 108 (Tenn. Crim. App. 2000).

TBI Special Agent Lindsey Anderson, a firearms analysis expert, testified at trial regarding the gunshot residue kit test results from the Defendant's hands. The Defendant objected to the admission of this testimony, and the trial court excused the jury and conducted a hearing outside their presence. During the bench conference preceding the jury-out hearing, the Defendant argued that the testimony was "non-conclusive" and that under Rule 403, the relevance was too low to justify admission given the test's inability to eliminate alternative explanations.

During the jury-out hearing, Special Agent Anderson testified that her analysis “revealed the presence of particles consistent with gunshot residue,” and that such particles may also derive from brake pads, discharged airbags, cartridge-operated tools, and fireworks. The Defendant again objected on the ground that the report was not conclusive and that the probative value of the evidence was “very low.”

On appeal, the Defendant does not argue that the evidence was inadmissible under Rule 403. Instead, he asserts that the testimony should not have been admitted under Rule 702 because it confused the jury more than it substantially assisted them. Because the Defendant objected at trial on Rule 403 grounds but advances a Rule 702 theory on appeal, neither the trial court nor the State was placed on notice of the claim he now presses. The Defendant thus asks this court to find error in a ruling the trial court was never asked to make. We respectfully decline to do so. *See Gardner*, 716 S.W.3d at 433.

Because the Defendant has waived plenary review of this issue, his only potential avenue for relief is through the plain error doctrine. *See Dotson*, 450 S.W.3d at 54. However, the Defendant has neither requested plain error review nor analyzed the factors necessary to obtain such relief. *See Ruiz*, 716 S.W.3d at 453; *Enix*, 653 S.W.3d at 701. In the absence of such a request, we respectfully decline to address the issue sua sponte. *See, e.g., Gardner*, 716 S.W.3d at 417.

Waiver notwithstanding, we conclude that the trial court correctly admitted the evidence. Under Tennessee Rule of Evidence 702, expert testimony is admissible when it will substantially assist the trier of fact to understand the evidence or to determine a fact in issue. The non-conclusive nature of the test results—that the particles were consistent with, but not characteristic of, gunshot residue—bears on the weight the jury should assign to the testimony, not on its threshold admissibility. As the trial court correctly observed, the expert’s testimony “goes to the weight[,] not the admissibility.” The Defendant is not entitled to relief on this ground.

4. Admission of Police Interviews

The Defendant next argues that the trial court erred in admitting his and his cousin’s police interviews because they were irrelevant, cumulative, and their probative value was substantially outweighed by prejudice. The State responds that the Defendant has not shown that the trial court abused its discretion in admitting the videos. We agree and conclude that the Defendant is not entitled to relief.

Outside the presence of the jury, the State disclosed its intent to play portions of the Defendant's and his cousin's police interviews taken the day after the murders so that the jury could evaluate their demeanor and state of mind. The Defendant objected to the admission of the videos on relevance grounds. The trial court ruled that the videos were admissible.

As a preliminary matter, the Defendant's objection was to the relevance of the evidence, and he did not raise a separate Rule 403 objection at trial. This court has recognized that a party is bound by the grounds asserted when making an objection. *State v. Adkisson*, 899 S.W.2d 626, 634-635 (Tenn. Crim. App. 1994). "An appellate court will limit its decision to the ground asserted when the trial court made its ruling." *State v. Howard*, No. M2020-01053-CCA-R3-CD, 2021 WL 5918320, at *6 (Tenn. Crim. App. Dec. 15, 2021) (citations omitted), *no perm. app. filed*. Because the Defendant did not raise a contemporaneous objection to Rule 403 during the trial, we conclude that he has waived plenary review of this issue on appeal. *See id.* Moreover, because the Defendant does not request plain error review, we respectfully decline to address the issue sua sponte on that basis. *See Ruiz*, 716 S.W.3d at 453. We therefore limit our discussion to the objection raised at trial.

However, addressing his preserved objection, we have recognized that "[t]o be admissible, evidence must first be relevant." *Ruiz*, 716 S.W.3d at 452 (citing Tenn. R. Evid. 402). The standard for relevance is a lenient one, requiring only that the proffered evidence tend to prove a material issue. *See* Tenn. R. Evid. 401, advisory comm'n cmt.; *State v. Gilliland*, 22 S.W.3d 266, 271 (Tenn. 2000). Evidence is relevant if it takes the trier of fact even "a small way toward resolving a proper factual issue." *State v. Brown*, No. M2017-00904-CCA-R3-CD, 2019 WL 1514551, at *56 (Tenn. Crim. App. Apr. 8, 2019) (quoting Neil P. Cohen, et al., *Tennessee Law of Evidence* § 4.01[4][a] (6th ed. 2011 & Supp. 2018)), *perm. app. denied* (Tenn. Aug. 15, 2019). Consistent with that standard, the law vests trial courts with broad discretion in making relevancy determinations. *State v. Carruthers*, 35 S.W.3d 516, 577 (Tenn. 2000).

The Defendant has not shown that the trial court abused its discretion here. The trial court admitted the interviews on the basis that the jury could use them to evaluate the demeanor and state of mind of the Defendant and his cousin in the immediate aftermath of the murders. This rationale—that the comparative demeanor of the two individuals present at the time of the murders was of some consequence to the jury's evaluation of the competing theories of responsibility—was neither illogical nor unreasonable under the lenient Rule 401 standard. To the extent the Defendant contends that the videos were cumulative, that characterization does not render the evidence irrelevant. *See State v.*

Clark, No. M2017-02525-CCA-R3-CD, 2019 WL 410705, at *6 (Tenn. Crim. App. Jan. 31, 2019) (citing *State v. Rogers*, 188 S.W.3d 593, 613 (Tenn. 2006)), *no perm. app. filed*.

The Defendant's assertion on appeal, in any case, does not identify a specific deficiency in the trial court's rationale, explain why the demeanor comparison was of no consequence to the determination of any fact at issue, or otherwise demonstrate that the trial court's decision fell outside the bounds of its discretion. Without more, the Defendant has not established an abuse of discretion. *See DuBose*, 953 S.W.2d at 652.

Accordingly, we conclude that the trial court acted within its discretion in admitting the interviews. The Defendant is not entitled to relief on this ground.

5. Admission of the Defendant's Transport Video

In his fifth issue, the Defendant contends that the trial court erred in admitting a patrol car video recording of his transport to the police station following his arrest. He argues that the video was irrelevant and that its probative value was substantially outweighed by the danger of unfair prejudice under Rule 403. The State responds that the video was highly relevant to the Defendant's state of mind and that he has not shown an abuse of discretion. We agree and conclude that the Defendant is not entitled to relief.

Outside the jury's presence, the State disclosed its intent to introduce the transport video into evidence. The defense objected on relevance and Rule 403 grounds, characterizing the video as showing the Defendant "acting extremely irrationally" during transport. The State responded that the video was relevant to the Defendant's state of mind at the time of the crime and that statements the Defendant made on the video constituted admissions against interest. The trial court overruled the objection and admitted the video.

The same standards of relevance and abuse-of-discretion review applicable in the previous subsection govern here. *See DuBose*, 953 S.W.2d at 652; *Reynolds*, 635 S.W.3d at 921; Tenn. R. Evid. 401-402. Under Rule 403, a trial court may exclude relevant evidence only when its probative value is substantially outweighed by the danger of unfair prejudice. Tenn. R. Evid. 403. Rule 403 is a rule of admissibility that places a heavy burden on the party seeking exclusion, and exclusion of evidence under this rule is an extraordinary remedy that should be used sparingly. *James*, 81 S.W.3d at 757-58. Prejudice becomes unfair only when the primary purpose of the evidence is to elicit emotions of bias, sympathy, hatred, contempt, retribution, or horror. *State v. Young*, 196

S.W.3d 85, 106 (Tenn. 2006). We review the trial court's Rule 403 balancing for an abuse of discretion. *State v. Mitchell*, 343 S.W.3d 381, 389 (Tenn. 2011).

The Defendant has not shown that the trial court abused its discretion. The trial court's ruling rested on the video's relevance to the Defendant's state of mind in the immediate aftermath of the murders. That rationale was neither illogical nor unreasonable. As a general principle, a defendant's statements that constitute party admissions carry significant probative value. *See State v. Zirkle*, 910 S.W.2d 874, 886 (Tenn. Crim. App. 1995); *see also McCaleb*, 582 S.W.3d at 188 (recognizing, in a review of the governing evidentiary rules, that "a criminal defendant's admissions that he engaged in the criminal conduct with which he is charged meet the definition of relevant evidence"). Moreover, this court has recognized that evidence of a defendant's demeanor during a police interaction is relevant to allow the jury to assess the credibility of the defendant's statements and to compare his conduct and demeanor with that of another individual identified as a potential alternative perpetrator. *See Hickman*, 2022 WL 13693116, at *23.

The Defendant's challenge on appeal is that the video's probative value was substantially outweighed by its prejudice under Rules 401 and 403. However, the brief does not demonstrate how the video is irrelevant to the Defendant's state of mind in the immediate aftermath of the homicides, what specific prejudice the video caused, or how that prejudice was unfair under the *Young* standard. Without that development, the brief does not demonstrate that the trial court's assessment of the video's probative value was illogical or unreasonable, or that any prejudice substantially outweighed that probative value. To the extent the Defendant contends that the video was inadmissible on hearsay grounds, he did not raise a hearsay objection at trial and has therefore waived that argument. *See Adkisson*, 899 S.W.2d at 634-35; *Howard*, 2021 WL 5918320, at *6. The Defendant has not met his burden of demonstrating an abuse of discretion. *See Reid*, 213 S.W.3d at 838.

Accordingly, the Defendant is not entitled to relief on this ground.

6. Denial of the Defendant's Motion for Mistrial

The Defendant next contends that the trial court erred in denying his motion for mistrial after the State inadvertently played a portion of his police interview in which he invoked his right to counsel pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). He argues that his prejudice was heightened because he had abandoned his mental health defense specifically to prevent his police statements from reaching the jury, yet the State's

failure to redact the transport video exposed the jury to his invocation of counsel regardless. The State responds that the Defendant waived this issue by failing to cite any authority in support of his argument, and that the trial court, in any event, properly denied the motion. We agree and conclude that the Defendant is not entitled to relief.

Tennessee Rule of Appellate Procedure 27(a)(7)(A) requires an appellant to support his arguments with citations to authority and appropriate references to the record. Rule 10(b) of the rules of this court provides that issues not supported by argument, citation to authority, or appropriate references to the record will be treated as waived. Tenn. Ct. Crim. App. R. 10(b); *see Molthan*, 2022 WL 17245128, at *2.

The Defendant's brief raises his mistrial claim but cites no statutes, cases, or other authority in support. Accordingly, we conclude that the Defendant has waived appellate consideration of this issue. *See* Tenn. Ct. Crim. App. R. 10(b); *Hamilton*, 2024 WL 4130757, at *5.

Waiver notwithstanding, the Defendant cannot show that the trial court erred. A trial court should declare a mistrial only upon a showing of manifest necessity—that is, when something has occurred that would prevent an impartial verdict, and there is no feasible alternative to halting the proceedings. *See Rimmer*, 623 S.W.3d at 276; *State v. March*, 494 S.W.3d 52, 78 (Tenn. Crim. App. 2010). The burden of establishing manifest necessity lies with the party requesting the mistrial. *See State v. Jones*, 568 S.W.3d 101, 126 (Tenn. 2019).

In determining whether manifest necessity exists in the context of the admission of prejudicial evidence, this court considers three factors: whether the State elicited the challenged testimony; whether the trial court gave a curative instruction; and the relative strength or weakness of the State's case. *See State v. Welcome*, 280 S.W.3d 215, 222 (Tenn. Crim. App. 2007); *Bell*, 512 S.W.3d at 187-88. However, these factors are not exclusive, and “no abstract formula should be mechanically applied to determine the propriety of a mistrial.” *State v. Nash*, 294 S.W.3d 541, 547 n.4 (Tenn. 2009).

Applying those factors here, the Defendant has not carried his burden. At two brief points in the transport video, the Defendant could be heard asking where his attorney was. The defense acknowledged that the State's failure to redact these references was unintentional. Accordingly, the first factor—whether the State elicited the testimony—weighs against a finding of manifest necessity, as the references resulted from an oversight rather than a deliberate choice. *See State v. Bartlett*, No. M2008-02408-CCA-R3-CD, 2010 WL 3488234, at *11 (Tenn. Crim. App. Sept. 7, 2010) (weighing against a mistrial that “the

State’s failure to timely stop the videotape was inadvertent and not intentionally done”), *no perm. app. filed*.

The second factor—whether a curative instruction was given—warrants careful attention in this case. The trial court offered a curative instruction, which the Defendant declined. Ordinarily, a defendant’s decision to decline a curative instruction weighs against a finding of manifest necessity. Here, however, the Defendant had previously obtained an order excluding his police statements, and the *Miranda* invocation reached the jury only because the video was not fully redacted. Where a defendant has successfully excluded evidence by court order and that evidence nonetheless reaches the jury inadvertently, defense counsel cannot be faulted for declining to emphasize the evidence further through a jury instruction. *See State v. Higgins*, No. W2021-00316-CCA-R3-CD, 2022 WL 1310831, at *7 (Tenn. Crim. App. May 2, 2022), *no perm. app. filed*. Accordingly, this factor weighs neither clearly for nor against a finding of manifest necessity on these facts.

The third factor—the relative strength of the State’s case—weighs against the Defendant. The trial court described the Defendant’s reference to his *Miranda* rights as brief and “innocuous.” And as discussed in our sufficiency and *Ferguson* analyses above, the State’s proof was substantial. It included eyewitness testimony and ballistics evidence connecting the Defendant to all three shootings, among other evidence. Given the strength of that proof, the brief and inadvertent exposure to the Defendant’s invocation of counsel did not create the kind of prejudice that would prevent an impartial verdict.

Considering all three factors, the Defendant has not established manifest necessity. His argument that his prejudice was heightened because he had foregone a mental health defense to keep his statements out does not change this conclusion. The record reflects that the exposure was brief, inadvertent, and, as characterized by the trial court itself, innocuous. These circumstances fall well short of the showing required to establish that no feasible alternative to halting the proceedings existed. *See Welcome*, 280 S.W.3d at 222; *State v. Land*, 34 S.W.3d 516, 527 (Tenn. Crim. App. 2000). The trial court acted within its discretion in denying the Defendant’s motion for mistrial.

Accordingly, we conclude that the Defendant is not entitled to relief on this ground.

7. Admission of Life-in-Being Testimony

As part of his seventh issue, the Defendant raises four distinct challenges to the trial court's evidentiary rulings on life-in-being evidence. First, he argues that Tennessee Code Annotated section 40-38-103(c) is constitutionally invalid as an impermissible legislative encroachment upon the judiciary's rulemaking authority. He further contends that the trial court failed to follow proper procedure before admitting the life-in-being photograph of Ms. White's mother and that the photograph was not offered for a purpose cognizable under the statute.

The Defendant also maintains that the trial court separately erred by admitting a crime-scene photograph of the mother's driver's license, which he characterizes as a second and unauthorized life-in-being image. Finally, he asserts that the State introduced excessive testimony under the guise of life-in-being evidence, testimony that served no purpose other than to elicit sympathy from the jury.

As we discuss below, we conclude that the life-in-being photograph of Ms. White's mother should not have been admitted, but that the error was harmless. We also conclude that the Defendant is not entitled to relief on his remaining issues.

a. Standard of Appellate Review

A trial court's evidentiary rulings are reviewed on appeal for an abuse of discretion. *See McCaleb*, 582 S.W.3d at 186. A trial court abuses its discretion when it causes an injustice to the challenging party by applying an incorrect legal standard, reaching an illogical or unreasonable decision, or basing its decision on a clearly erroneous assessment of the evidence. *Id.* (quoting *Lee Med., Inc.*, 312 S.W.3d at 524). The Defendant's first sub-argument—that the enabling statute is constitutionally infirm—presents a pure question of law that this court reviews *de novo* with no presumption of correctness. *See State v. McCoy*, 459 S.W.3d 1, 9 (Tenn. 2014).

b. Validity of Tennessee Code Annotated Section 40-38-103(c)

The Defendant first argues that Tennessee Code Annotated section 40-38-103(c), which authorizes the admission of an appropriate photograph of a homicide victim to show

the victim's general appearance and condition while alive, unconstitutionally encroaches upon the judiciary's exclusive authority to promulgate rules of evidence.

For legal background on this issue, our supreme court concluded in *State v. Adams*, 405 S.W.3d 641 (Tenn. 2013), that it was error to admit a portrait-style photograph of the victim into evidence in a criminal homicide prosecution. *Id.* at 657. The decision reflected the court's exercise of its authority over the Tennessee Rules of Evidence, which govern the admissibility of evidence in the courts of this state.

In the wake of *Adams*, the General Assembly enacted what is now codified at Tennessee Code Annotated section 40-38-103(c). That statute provides that, in a prosecution for any criminal homicide, "an appropriate photograph of the victim while alive shall be admissible evidence when offered by the district attorney general to show the general appearance and condition of the victim while alive." Tenn. Code Ann. § 40-38-103(c). The statute was enacted in response to the evidentiary framework that *Adams* established.

The Defendant argues that this legislative response was constitutionally impermissible. Under the framework established by our supreme court in *State v. Mallard*, 40 S.W.3d 473 (Tenn. 2001), the Tennessee Constitution vests exclusive authority in the supreme court to promulgate rules governing the practice and procedure of the courts of this state. *Id.* at 480-81; *see* Tenn. Const. art. II, § 2. The Defendant's position, in essence, is that section 40-38-103(c) impermissibly overrode *Adams* in violation of the separation-of-powers principles described in *Mallard*.

We respectfully disagree. This court has previously addressed and rejected this same constitutional argument. *State v. Reed*, No. E2019-00771-CCA-R3-CD, 2020 WL 5588677, at *24 (Tenn. Crim. App. Sept. 18, 2020) (citing *State v. Burgins*, 464 S.W.3d 298, 305 (Tenn. 2015)), *perm. app. denied* (Tenn. Feb. 5, 2021). Courts must "indulge every presumption and resolve every doubt in favor of constitutionality" and must "adopt a construction which will sustain a statute and avoid constitutional conflict if any reasonable construction exists that satisfies the requirements of the Constitution." *Id.*; *Lynch v. City of Jellico*, 205 S.W.3d 384, 390 (Tenn. 2006).

Applying that principle, this court has concluded that the statute does not impermissibly interfere with the judiciary's procedural authority. *State v. Donaldson*, No. E2019-00543-CCA-R3-CD, 2020 WL 2494478, at *10 (Tenn. Crim. App. May 14, 2020) (quoting *McCoy*, 459 S.W.3d at 9), *perm. app. denied* (Tenn. Sept. 16, 2020); *see also Reed*, 2020 WL 5588677, at *24 (reaching the same constitutional conclusion on plain error

review). The use of the word “appropriate” in the statute’s text neither mandates admission in all circumstances nor eliminates the trial court’s gatekeeping obligation. *Donaldson*, 2020 WL 2494478, at *10. Indeed, photographs offered pursuant to section 40-38-103(c) remain subject to Tennessee Rule of Evidence 403, and a photograph failing to meet its balancing test would be “inappropriate” and therefore excludable under the statute’s own terms. *See State v. Mosley*, No. W2022-01424-CCA-R3-CD, 2024 WL 1406156, at *19 (Tenn. Crim. App. Apr. 2, 2024), *perm. app. denied* (Tenn. July 18, 2024); *Donaldson*, 2020 WL 2494478, at *10.

The Defendant presents no argument or authority that would distinguish *Donaldson* or otherwise compel a different result here. As such, we conclude that section 40-38-103(c) does not violate separation of powers principles. The Defendant is not entitled to relief on this ground.

c. Relevance of the Life-in-Being Photograph

The Defendant next contends that the trial court both failed to follow proper procedure and admitted the life-in-being photograph of Ms. White’s mother, designated as Trial Exhibit 2, for a purpose not authorized by the statute. These two arguments are analytically related and are addressed together.

Under the framework established by *Adams* and applied in *Mosley*, a trial court must undertake a two-step inquiry when considering the admission of a life-in-being photograph. First, the court must determine whether the photograph is relevant by considering whether the purported use of the photograph corresponds to a genuinely disputed issue at trial. *Adams*, 405 S.W.3d at 658; *Mosley*, 2024 WL 1406156, at *19. If the purpose for which the photograph is offered does not correspond to a disputed issue, the photograph is not relevant and must be excluded. *Mosley*, 2024 WL 1406156, at *19; Tenn. R. Evid. 402.

Second, even if the photograph is relevant to a disputed issue, it must still survive the balancing test of Tennessee Rule of Evidence 403. *Mosley*, 2024 WL 1406156, at *19; *Donaldson*, 2020 WL 2494478, at *10. A desire merely to “personalize” the victim for the jury, standing alone, does not constitute a purpose cognizable under either *Adams* or the statute. *Mosley*, 2024 WL 1406156, at *19.

Our prior cases illustrate the kind of case-specific relevance that satisfies the first step of the *Adams* inquiry. In *State v. Reed*, for example, the State sought to admit a photograph depicting the victim’s facial profile before death to show the defendant’s intent

and premeditation. *Reed*, 2020 WL 5588677, at *25-26. The photograph depicted the victim’s facial profile before death, which the State used to show that an injury visible after death was inconsistent with her appearance in life, directly supporting its theory of how the killing occurred. *Id.* at *25-26. The photograph thus bore on a genuinely contested issue—the manner and force of the killing—in a concrete and identifiable way.

In this case, the trial court conducted a pretrial hearing, reviewed the three proposed life-in-being photographs, and permitted the State to introduce a photograph of each victim. The court considered defense counsel’s objections, inspected the photographs, and stated that the photographs had probative value to show that the victims had been “walking the earth amongst us” and were not “overly prejudicial” to the Defendant. It further found that the danger of unfair prejudice did not substantially outweigh the photographs’ probative value under Tennessee Rule of Evidence 403.

Unlike the life photograph in *Reed*, which was probative of a specific disputed question of intent and premeditation, no analogous case-specific purpose was articulated or apparent for Trial Exhibit 2. The trial court’s rationale—that the photographs demonstrated the victims were once living persons—does not survive scrutiny under *Adams* and *Mosley*. The existence of each victim as a living person was not a disputed issue at trial, and the Defendant did not contest that the victims had existed, that they had once been alive, or what they had generally looked like. The trial court’s rationale substantively serves the same purpose that *Mosley* identified as insufficient: personalizing the victims for the jury. *See Mosley*, 2024 WL 1406156, at *19. Because Trial Exhibit 2 was not offered for a purpose corresponding to any genuinely disputed issue, it was not relevant and should not have been admitted. *See Adams*, 405 S.W.3d at 657-58; Tenn. R. Evid. 402.

Despite this error, we conclude that the admission of the photograph was harmless. “Generally, photographs taken during the life of a victim are not so prejudicial as to warrant a new trial.” *Adams*, 405 S.W.3d at 658. The question is whether, absent the photograph, the jury would have reached the same verdict. *See Young*, 196 S.W.3d at 106-07. As described in our sufficiency and *Ferguson* analyses above, the evidence against the Defendant was substantial. Though Trial Exhibit 2 may have been capable of arousing some sympathy from the jury, there is no reasonable basis on this record to conclude that its admission contributed to the verdict.

We are satisfied that the jury would have reached the same conclusion had the photograph been excluded. The Defendant is not entitled to relief on this ground.

d. The Driver's License Photograph

The Defendant next argues that the trial court erred by permitting the State to introduce a photograph of the mother's driver's license, Trial Exhibit 93, which he characterizes as an impermissible second life-in-being photograph. The State responds that the photograph was not admitted as a life-in-being exhibit. Rather, forensic technician Bethany Simmons discovered the driver's license at the Trousdale residence during her investigation of the crime scene and photographed it as part of her evidentiary documentation of that scene. We agree with the State and conclude that the Defendant is not entitled to relief.

Trial Exhibit 93 was not a life-in-being photograph. It was crime-scene evidence establishing the presence and location of a personal item belonging to Ms. White's mother at the scene of the homicide. Tennessee Code Annotated section 40-38-103(c), which governs the admission of photographs offered to show a homicide victim's general appearance and condition while alive, does not apply because the photograph was not offered for that purpose. Its relevance derived instead from the general framework of Tennessee Rules of Evidence 401 and 402. The record does not support the Defendant's characterization of Trial Exhibit 93 as a life-in-being photograph, and the Defendant is not entitled to relief on this ground.

e. Alleged Excessive Testimony

Finally, the Defendant contends that the State introduced excessive and unnecessary testimony under the umbrella of life-in-being evidence—testimony offered solely to elicit an emotional response from the jury—and specifically refers to testimony concerning Ms. White's substance use. The State responds that the Defendant has failed to identify the specific testimony he challenges and has therefore waived this issue. We agree and conclude that the Defendant is not entitled to relief.

A party challenging an evidentiary ruling bears the obligation to identify with specificity the testimony it finds objectionable and to support that challenge with appropriate citations to the record. *See* Tenn. Ct. Crim. App. R. 10(b). The Defendant's brief does not identify any specific testimony that he contends was improperly admitted, nor does it provide citations to the portions of the transcript containing the alleged excessive testimony. His sole citation to the record does not reflect testimony concerning Ms. White's substance use.

Because the Defendant has not identified the objectionable testimony with the specificity required for appellate review and has not provided adequate record support for his claim, we conclude that this issue is waived. *See* Tenn. R. App. P. 27(a)(7); Tenn. Ct. Crim. App. R. 10(b); *State v. Morgan*, 727 S.W.3d 182, 197 (Tenn. Crim. App. 2025) (concluding that an argument about the inadmissibility of evidence was waived when the brief failed to identify the evidence at issue); *State v. Bonds*, 502 S.W.3d 118, 144 (Tenn. Crim. App. 2016) (concluding that a challenge to evidence is waived where an appellate brief fails to “specifically identify which evidence [the defendant] deems improper” and makes “only a general complaint”). The Defendant is not entitled to relief on this ground.

8. Cumulative Error

To conclude his allegations of trial error, the Defendant argues that the cumulative impact of the evidentiary errors in this case deprived him of a fair trial. The State responds that a single harmless error cannot support a finding of cumulative error. We agree and conclude that the Defendant is not entitled to relief.

The cumulative error doctrine applies when “multiple errors committed in trial proceedings, each of which in isolation constitutes mere harmless error, but which when aggregated, have a cumulative effect on the proceedings so great as to require reversal in order to preserve a defendant’s right to a fair trial.” *State v. Hester*, 324 S.W.3d 1, 76 (Tenn. 2010). The doctrine requires the existence of more than one actual error before it may be applied. *Id.* at 77. Because a defendant is not guaranteed a perfect trial, “the circumstances warranting the reversal of a conviction under the cumulative error doctrine are rare.” *Reynolds*, 635 S.W.3d at 933.

Upon our review of the issues presented, we have identified a single error—the admission of the life-in-being photograph of Ms. White’s mother—which we have determined to be harmless. Because the Defendant has not established the existence of more than one error in the trial proceedings, there are no errors to aggregate, and the predicate for applying the cumulative error doctrine is not satisfied. *See Allman*, 712 S.W.3d at 560 (“Because we have only found one error in this case, the cumulative error doctrine is inapplicable.”).⁷ The Defendant is not entitled to relief on this ground.

⁷ We also note that the Defendant raised cumulative error only in his issue statement without any supporting argument or authority, which independently constitutes a waiver of this issue. *See* Tenn. R. App. P. 27(a)(7)(A); Tenn. Ct. Crim. App. R. 10(b); *Molthan*, 2022 WL 17245128, at *2.

F. THE STATE’S CLOSING ARGUMENT

The Defendant argues that the State’s rebuttal closing argument contained a series of improper remarks that deprived him of a fair trial. The State responds that the challenged remarks were either permissible or harmless and that the Defendant preserved only four statements for plenary appellate review. After carefully reviewing the record and the parties’ arguments, we conclude that the Defendant preserved six statements for appellate review. Of those six, three were improper. Nevertheless, we conclude that none of the improper statements affected the jury’s verdict, and the Defendant is not entitled to relief on this issue.

1. Background

At the end of the trial, the State and the defense each presented closing arguments, and the State was afforded the opportunity for rebuttal. The State’s initial closing argument was delivered without contemporaneous objection. After the defense responded with its closing argument, the State presented its rebuttal argument.

The rebuttal covered a broad range of topics addressed in the Defendant’s closing argument. It addressed the identity of the murder weapon, the significance of the gunshot primer residue on the Defendant’s hands, the State’s handling of the destroyed vehicle and DNA evidence, the credibility of the eyewitness testimony, the Defendant’s conduct in the hours following the homicides, and the circumstances surrounding the death of Ms. White’s mother. Defense counsel made contemporaneous objections four times during the rebuttal—each time drawing the trial court’s reminder that arguments of counsel are not evidence and that the jury must look to the proof.

Before the trial court instructed the jury, defense counsel moved for a mistrial, identifying three specific grounds: the argument that the Defendant shot Ms. White’s mother while her grandchild slept beside her; the argument that the Defendant’s conduct in the patrol car and processing room amounted to an admission that he was present during the homicides; and the argument that the Rule 404(b) evidence established a propensity for violence. The trial court denied the motion. As to the propensity argument specifically, the trial court engaged with the merits, concluding that the prosecutor had self-corrected and that he “shouldn’t have argued that.”

The specific statements the Defendant now challenges on appeal are the following:

- (1) “The point of [the photograph of the Defendant with a handgun] is the fact that he was armed at this point with a handgun we discussed similar to the weapon that could have been—that left the marks on those bullets that killed [the victims]. . . . Did you see pictures of [the Defendant’s cousin] holding a handgun in his hands around that timeframe?”
- (2) “And Mimi certainly knows about [the] problems [between the Defendant and Ms. White]. That’s her mother. That’s [Ms. White’s] mother. So as soon as we discover—as soon as they discover that family, that she’s gone, that she’s been killed, what is Mimi going to say? . . . So he goes to that residence and he shoots Mimi while she’s lying there sleeping with her granddaughter.”
- (3) “And I’m sorry, you know, you should make your decisions based on the evidence and the law. But this case, it’s hard not to get upset about [it]. It’s hard not to be passionate about it because these are three dead women that didn’t have to—didn’t have to be killed like this. They didn’t have to go out like this.”
- (4) “Let’s talk a little bit about the magazine. Poor Nikki Sauls took these swabs and then I just assume that she forgot to put them in the box. And those were never sent off. And you’ll get an instruction about that.”
- (5) “[T]he District Attorney’s office, the State of Tennessee represents everybody including the [D]efendant. We are pursuing the truth.”
- (6) “The State has no duty to gather or indefinitely preserve evidence considered by all—for that person to have no exculpatory value. . . . The State is not required to indefinitely keep that car. It was over a year before the [D]efendant even asked to look at it. If it was so important to look at, to process that car, to do more testing, why wasn’t it done?”
- (7) “[T]he [D]efendant . . . tells you there’s no evidence that he purchased the weapon. That’s just not accurate. There he is with it. The murder weapon just weeks before the murders.”

- (8) “And he’s had an opportunity, what, from 12:00 a.m. until 5:00 p.m., he’s had plenty of opportunity to clean out that car, to clean any blood that may be in that car.”
- (9) “Because [defense counsel] is a good attorney, and he knows that it just takes one of you. It just takes one of you to go down one of those rabbit holes. To go down one of those rabbit holes, [the Defendant’s cousin] did it. Well, he had no motive whatsoever. He had no reason to kill these women.”
- (10) “The gunshot primer residue on the [D]efendant’s hands came from when he unloaded that .45 caliber Ruger into those innocent women. That’s where it came from.”
- (11) “And when he flips out, and when he gets angry, he gets dangerous. People get pistol whipped. They get beaten until they’re unconscious. At least that’s what happens to [Ms. White] when he gets mad and he gets all drugged up.”
- (12) “During this period of time where through his own admission, he was present during the homicide. Listen to those—listen to those videos of him back in that patrol car. Listen to the—watch and listen to the video everything was there of him in that processing room. He does everything except say he is there.”
- (13) “People aren’t shooting at [Ms. White in October 2019] because of anything [Ms. White]’s done. It’s because of this man. It’s because he’s got a new girlfriend.”
- (14) “There is direct evidence from these individuals that this man committed the crime. Direct evidence. This is uncontradicted testimony. There’s no other testimony in the record that contradicts what they say.”
- (15) “[The Defendant’s cousin] goes in and talks to the police around 5:00 on March the 8th. And he says that after the [D]efendant murdered [Ms. White], we went back to the Trousdale residence, that he went

upstairs after—that the [D]efendant went upstairs after we arrived, that he heard several gunshots, that he came back downstairs.”

- (16) “That is the same story, the same version that [Ms. White’s roommate] gives in that 911 [call]. They haven’t talked, [the roommate] and [the Defendant’s cousin]. [The Defendant’s cousin] hasn’t talked to [the other friends present at the Trousdale residence].”

The Defendant renewed his challenges to the rebuttal argument in his motion for a new trial. The trial court denied the motion.

2. Standard of Appellate Review

Trial courts have broad discretion in controlling the scope and content of closing argument, and a trial court’s rulings on closing argument may be reversed only when the court’s decision falls outside the range of acceptable alternatives. *See Enix*, 653 S.W.3d at 701; *Terry v. State*, 46 S.W.3d 147, 156 (Tenn. 2001). When a defendant makes a contemporaneous objection to the State’s closing argument, the claim is preserved for plenary review. *See Enix*, 653 S.W.3d at 700. However, when a defendant fails to make a contemporaneous objection, review is available, if at all, only under the plain error doctrine. *Id.*

3. Governing Law

“The basic purpose of closing argument is to clarify the issues that must be resolved in a case.” *State v. Sexton*, 368 S.W.3d 371, 418 (Tenn. 2012) (citing *State v. Banks*, 271 S.W.3d 90, 130 (Tenn. 2008)). Tennessee courts have consistently recognized closing argument as “a valuable privilege that should not be unduly restricted,” *Enix*, 653 S.W.3d at 701, and have afforded counsel wide latitude to argue the evidence, challenge the opposing party’s theory, and draw reasonable inferences from the proof.

That latitude, however, is bounded by the prosecutor’s fundamental obligations as a minister of justice. Prosecutors “must not lose sight of their duty to seek justice impartially and their obligation to see to it that the defendant receives a fair trial.” *State v. Hawkins*, 519 S.W.3d 1, 47-48 (Tenn. 2017) (citation and internal quotation marks omitted), *overruled on other grounds by Enix*, 653 S.W.3d at 701. While a prosecutor may “strike hard blows,” he is “not at liberty to strike foul ones.” *Berger v. United States*, 295 U.S. 78, 88 (1935).

Within those boundaries, the State’s closing argument should be “temperate,” “based on the evidence introduced at trial,” and “pertinent to the issues in the case.” *Banks*, 271 S.W.3d at 131 (citing *State v. Middlebrooks*, 995 S.W.2d 550, 557 (Tenn. 1999); *Russell v. State*, 532 S.W.2d 268, 271 (Tenn. 1976)). The State “must refrain from argument designed to inflame the jury and should restrict its commentary to matters in evidence or issues at trial.” *State v. Hill*, 333 S.W.3d 106, 131 (Tenn. Crim. App. 2010). The prosecution is likewise “not permitted to reflect unfavorably upon defense counsel or the trial tactics employed during the course of the trial.” *State v. Gann*, 251 S.W.3d 446, 460 (Tenn. Crim. App. 2007) (citation omitted). And “[i]t is unprofessional conduct for the prosecutor to express his personal belief or opinion as to the truth or falsity of any testimony or evidence or the guilt of the defendant.” *State v. Goltz*, 111 S.W.3d 1, 6 (Tenn. Crim. App. 2003); see *State v. Henley*, 774 S.W.2d 908, 911 (Tenn. 1989) (“any intentional effort to influence the members of a jury by expressions of personal opinion cannot be condoned”); see also Tenn. Sup. Ct. R. 8, § 3.4(e)(3) (“A lawyer shall not . . . in trial . . . state a personal opinion as to the justness of a cause, the credibility of a witness, . . . or the guilt or innocence of an accused.”).

Tennessee courts have recognized five categories of argument that are improper: (1) intentionally misstating the evidence or misleading the jury as to the inferences it may draw; (2) expressing personal beliefs or opinions as to the truth or falsity of any testimony or the guilt of the defendant; (3) inflaming or attempting to inflame the passions or prejudices of the jury; (4) injecting issues broader than the guilt or innocence of the accused; and (5) arguing or referring to facts outside the record that are not matters of common knowledge. *Jones*, 568 S.W.3d at 145 (appendix) (citing *Goltz*, 111 S.W.3d at 6).

With this framework in mind, we turn first to the threshold question of which of the Defendant’s sixteen challenged statements are properly preserved for appellate review, as the answer determines both the level of review and the scope of the merits analysis that follows.

4. Preservation of the Defendant’s Issues

As an initial matter, not all of the Defendant’s sixteen challenged statements are before this court on the merits. Whether a statement is subject to plenary review, limited review, or no review at all depends on whether and how the Defendant preserved the claim at trial. Ordinarily, a party must make a contemporaneous objection to an allegedly improper closing argument in order to preserve the issue for plenary appellate review. See *Enix*, 653 S.W.3d at 700. Absent a contemporaneous objection, a claim of improper closing

argument is waived for purposes of plenary review, and the defendant may obtain relief, if at all, only under the plain error doctrine. *Id.*

The Defendant made four contemporaneous objections during the rebuttal—to Statements (2), (10), (13), and (15)—and the trial court responded to each with the same curative reminder that comments made by the parties were arguments, not evidence. Those four contemporaneous objections are accordingly preserved for plenary appellate review.⁸

The Defendant also moved for a mistrial immediately after argument concluded, specifically identifying Statements (2), (11), and (12) as grounds for the motion. As to Statement (11)—the propensity argument—the trial court ruled on the merits rather than on waiver grounds, finding that the argument was improper but had been self-corrected. A post-argument mistrial motion does not generally preserve a closing argument claim absent a contemporaneous objection. *See State v. Malone*, No. M2003-02770-CCA-R3-CD, 2005 WL 1521788, at *6 (Tenn. Crim. App. June 27, 2005), *no perm. app. filed*. However, a narrower principle applies where the trial court itself rules on the merits of the mistrial motion rather than denying relief on waiver grounds. In that circumstance, the appellate court may similarly address the merits. *See State v. Burns*, No. M2008-01374-CCA-R3-CD, 2009 WL 2030425, at *5 (Tenn. Crim. App. July 13, 2009), *no perm. app. filed; see also State v. Reid*, 164 S.W.3d 286, 346-47 (Tenn. 2005) (appendix). Accordingly, Statements (11) and (12) are reviewable on appeal under the mistrial standard—that is, whether the denial of the mistrial motion was within the range of acceptable alternatives given the absence of manifest necessity. *See State v. Robinson*, 146 S.W.3d 469, 494 (Tenn. 2004).

The remaining ten statements—Statements (1), (3), (4), (5), (6), (7), (8), (9), (14), and (16)—were not the subject of a contemporaneous objection and were not specifically identified as grounds for the mistrial motion. Because those statements were never brought to the trial court’s attention, the court had no opportunity to assess their propriety or provide a targeted remedy. Defense counsel’s general renewal of “other matters” raised during argument did not identify any of those statements as grounds for the mistrial motion and therefore did not preserve them for plenary review. *See Walls*, 537 S.W.3d at 900 (recognizing that a tentative suggestion of an objection, coupled with an undeveloped record, “poses great risk of waiver on appeal”); *Malone*, 2005 WL 1521788, at *6. Because the Defendant does not request plain error review of these statements in his principal brief,

⁸ We note that Statement (2) was also identified as a ground for the post-argument mistrial motion, but that additional step was not necessary to its preservation; the contemporaneous objection sufficed.

we respectfully decline to address that doctrine on our own. *See Ruiz*, 716 S.W.3d at 453. We therefore address the six statements properly before us on appeal.

5. The Merits of the Six Preserved Statements

We turn to the merits of the six preserved issues, addressing Statements (2), (10), (13), and (15) under plenary review and Statements (11) and (12) under the mistrial standard. When evaluating allegations of improper closing argument, we consider the challenged remarks in the context of the entire argument as a whole rather than in isolation. *Banks*, 271 S.W.3d at 131. We will first address the propriety of each statement and then the collective harmfulness, if any, that those statements may have caused.

a. Statement (2): The Minor Child's Location

During the rebuttal argument, the prosecutor argued that the Defendant shot Ms. White's mother "while she's lying there sleeping with her granddaughter." Defense counsel objected immediately. The trial court reminded the jury that the evidence controls if the argument contradicts the proof. The prosecutor nonetheless repeated the argument after the trial court's instruction, stating, "There's a doll there. Does Mimi sleep with dolls? There's a side of the room that is completely devoted to this little girl. It's 1:00 a.m. in the morning. She's in bed with Mimi. That's an inference that you can draw from that."

The Defendant contends that this argument constituted an intentional misstatement of the evidence within the first *Goltz* category. The State responds that the argument represented a permissible inference from the physical evidence, including the presence of the minor child's toys and personal belongings in the mother's bedroom and the fact that the shooting occurred in the early morning hours.

We agree with the Defendant. The critical question is not whether the State's inference was superficially plausible in the abstract, but whether it was an inference the prosecutor was entitled to draw given what the State actually knew. The first *Goltz* category prohibits a prosecutor from "intentionally misstating the evidence or misleading the jury as to the inferences it may draw." *Jones*, 568 S.W.3d at 145 (citing *Goltz*, 111 S.W.3d at 6). This principle is consistent with the ABA Criminal Justice Standards for the Prosecution Function, which provide that a prosecutor "may argue all reasonable inferences from the evidence in the record, unless the prosecutor knows an inference to be false." ABA Criminal Justice Standards for the Prosecution Function, Standard 3-6.8(a) (4th ed. 2017) (emphasis added).

The record establishes that the State possessed a forensic interview of the minor child in which she described her location at the time of the shooting in terms that directly contradicted the prosecutor’s argument. In that interview, the minor child stated that she was on the living room couch, where she usually slept, and that she went to the bathroom before entering the bedroom. The interview had been the subject of pretrial litigation, and the court eventually permitted its introduction into evidence. The trial testimony of the responding officer further confirmed that the minor child was found on the living room couch, under a blanket, with a small dog beside her—not in the mother’s bedroom.

A prosecutor who possesses a forensic interview in which a witness describes the relevant facts cannot argue the opposite to the jury as though it were an established or inferable truth. The prosecution’s reliance on the presence of children’s items in the bedroom does not cure this defect. The presence of toys and belongings in the room was consistent with a child who spent time there; it was not evidence that the child was sleeping in that room at the precise moment of the shooting, particularly when the child herself had described her actual location. By asserting that the child was sleeping beside the victim—even after objection and after being reminded by the trial court to argue from the evidence—the prosecutor made a statement that he knew the evidence did not support. This constitutes improper argument within the first *Goltz* category. We address the impact of this error below.

b. Statement (10): Gunshot Primer Residue

At trial, TBI Special Agent Lindsey Anderson, a firearms analysis expert, testified that particles on the Defendant’s hands were *consistent with* gunshot primer residue. She explained that a “consistent” finding—meaning the particles contained two of the three elements required for a result to be considered “characteristic” of gunshot residue—was not conclusive. She further explained that such particles do not identify a shooter because they may result from firing a weapon, being in proximity when a weapon is discharged, or secondary transfer. During rebuttal, the prosecutor argued that “[t]he gunshot primer residue on the [D]efendant’s hands came from when he unloaded that .45 caliber Ruger into those innocent women. That’s where it came from.”

The Defendant argues that this was an intentional misstatement of the evidence because the State’s own expert had expressly declined to draw that conclusion, testifying only that the particles were consistent with gunshot residue and identifying several alternative sources for such particles. The State responds that the argument was a reasonable inference from the expert’s testimony.

As with Statement (2), the first *Goltz* category prohibits a prosecutor from misstating the evidence or drawing an inference that the prosecutor knows the evidence will not support. *See Jones*, 568 S.W.3d at 145; *Goltz*, 111 S.W.3d at 6; *see also* ABA Criminal Justice Standards for the Prosecution Function, Standard 3-6.8(a) (4th ed. 2017). The prosecutor did not argue that the residue was consistent with the Defendant having fired the weapon, or that it was evidence from which that inference could reasonably be drawn. He stated categorically that the particles came from the shooting—a declarative assertion of fact that the expert’s testimony, with its careful qualifications and enumeration of alternative sources, plainly did not support. We conclude that this statement was improper under the first *Goltz* category. We address the impact of this error below.

c. Statement (13): The October 2019 Shooting Incident

The prosecutor argued that people were not “shooting at [Ms. White in October 2019] because of anything [Ms. White]’s done” but rather “because of this man” and “because he’s got a new girlfriend.” Defense counsel objected. The Defendant contends that this argument constituted an intentional misstatement of the evidence. The State responds that the argument was a permissible advocacy of a factual inference from disputed trial testimony.

The timing of the Defendant’s relationship with Ms. White was disputed at trial. A witness testified on direct examination that the Defendant and Ms. White had met in October or November 2019, but on cross-examination acknowledged uncertainty about the precise date. That uncertainty cut in both directions: it left open the possibility that the Defendant and Ms. White were already in a relationship at the time of the October 2019 shooting incident, which in turn supported the inference that the shooting was connected to the Defendant rather than to anything Ms. White had done independently. When the evidence permits competing inferences, a prosecutor is entitled to argue in favor of the inference that supports the State’s theory of the case, provided the argued inference is grounded in the record. *See Banks*, 271 S.W.3d at 130-31. The prosecutor’s argument drew on that uncertainty and was supported by a reasonable reading of the disputed testimony. We conclude that this argument represented a permissible inference from disputed evidence and did not constitute improper argument under *Goltz*.

d. Statement (15): The Defendant’s Cousin’s Police Statement

During rebuttal, the prosecutor argued that the Defendant’s cousin “talks to the police around 5:00 on March the 8th” and recounted the substance of what he told the officers about the events at the Trousdale residence following the homicides. Defense counsel objected that the prosecutor was arguing from the Defendant’s cousin’s police statement, which had not been admitted into evidence. The trial court directed the prosecutor to argue only from the evidence. The prosecutor then clarified: “This is what [the Defendant’s cousin] said right here. . . . That’s what he told you he told the police.”

The Defendant contends that the initial reference to the police statement was an argument based on facts outside the record and that the correction did not cure the error. The State responds that the correction adequately reframed the argument as grounded in admitted trial testimony.

The Defendant’s cousin testified at trial to the same substantive account as summarized by the prosecutor. The prosecutor’s initial reference to the police statement was technically imprecise, but his immediate and specific clarification accurately reframed the argument as a summary of the cousin’s trial testimony—testimony already in evidence and heard by the jury. Even without the clarification, the substance of the argument was independently supportable from the cousin’s trial testimony, because the police statement added nothing to what the admitted testimony already established. We conclude that the clarification cured any initial imprecision and that this statement did not constitute improper argument under *Goltz*.

e. Statements (11) and (12): The Mistrial Motion

As noted above, Statements (11) and (12) were raised in the post-argument mistrial motion and are reviewed under the mistrial standard. A mistrial is warranted only when manifest necessity exists—that is, when “some event has occurred which precludes an impartial verdict,” and there is no feasible alternative to halting the proceedings. *Robinson*, 146 S.W.3d at 494; *Land*, 34 S.W.3d at 527. The determination of whether to grant a mistrial rests within the sound discretion of the trial court, and this court will not overturn that decision absent an abuse of discretion. *Robinson*, 146 S.W.3d at 494.

Statement (11) was the prosecutor’s argument that when the Defendant “gets angry, he gets dangerous” and that people “get pistol whipped” and “beaten until they’re

unconscious.” The trial court itself found this argument improper, noting the prosecutor “shouldn’t have argued that” because the Rule 404(b) evidence had been admitted for limited purposes. The court concluded, however, that the prosecutor had immediately self-corrected by acknowledging the limited purposes for which the evidence had been admitted. Statement (12) was the prosecutor’s characterization of the Defendant’s conduct in the transport vehicle and processing room as an admission of his presence at the homicides. The trial court denied relief on this ground without a specific ruling on the merits.

When viewed in the context of the overall argument and in light of the repeated curative instructions, neither statement rose to the level of a manifest necessity requiring the extraordinary remedy of a mistrial. As to Statement (11), the prosecutor’s prompt self-correction mitigated the improper remark before it could affect the jury’s consideration of the evidence. As to Statement (12), the argument was a characterization of circumstantial evidence from the videos that, however loosely framed, remained grounded in the proof. The trial court acted within its discretion in denying the mistrial motion.

6. Effect of the Improper Arguments

Three of the prosecutor’s statements warrant further discussion. In Statement (2), the prosecutor argued that the Defendant shot Ms. White’s mother “while she’s lying there sleeping with her granddaughter.” In Statement (10), the prosecutor argued that the Defendant had gunshot primer residue on his hands, overstating the expert’s non-conclusive finding. The trial court itself found Statement (11) to be improper, though self-corrected. We conclude that Statements (2) and (10) were improper under the first *Goltz* category, and we accept the trial court’s finding that Statement (11) was likewise improper. Even so, a conviction should not be reversed unless the argument was “so inflammatory or improper” that it affected the outcome of the trial to the defendant’s prejudice. *Banks*, 271 S.W.3d at 131.

Before evaluating the effect of those statements on the jury’s verdict, we must consider the nature of each error. *State v. Jackson*, 444 S.W.3d 554, 591 (Tenn. 2014). Each represents a departure from the standards governing closing argument under *Goltz* and *Jones*, but none implicates a constitutional guarantee in a manner sufficient to trigger the heightened constitutional harmless-error standard required by *Jackson*. In particular, the errors in Statements (2) and (10) were grounded in the evidentiary rules governing closing argument rather than in a constitutional right of the Defendant, and Statement (11) was a propensity characterization that the prosecutor immediately corrected. Accordingly,

we conclude that all three statements constitute non-constitutional errors subject to the standard harmless error analysis.

Because all three statements are non-constitutional errors, the Defendant bears the burden of demonstrating that the improper argument more probably than not affected the verdict. *Jackson*, 444 S.W.3d at 591; Tenn. R. App. P. 36(b). In assessing improper argument under that standard, courts typically consider five factors: (1) the conduct complained of, viewed in context and in light of the facts and circumstances of the case; (2) the curative measures undertaken by the trial court and the prosecution; (3) the prosecutor's intent in making the challenged statement; (4) the cumulative effect of the improper argument and any other errors in the record; and (5) the relative strength or weakness of the State's proof. *Judge v. State*, 539 S.W.2d 340, 344 (Tenn. Crim. App. 1976); see *Jackson*, 444 S.W.3d at 591 n.50 (recognizing that the *Judge* factors govern claims of improper prosecutorial argument not rising to the level of unconstitutional argument). We apply these factors below.

a. The Conduct

First, we consider the conduct in context and in light of the facts and circumstances of the case. The improper statements occupied a small portion of a wide-ranging rebuttal argument that addressed numerous topics over many pages of the transcript. Statement (2) appeared at the outset of the rebuttal; Statement (10) appeared mid-argument; and Statement (11) was brief and immediately self-corrected. None of the improper statements was dwelt upon, repeated throughout the argument, or woven into the overall theme of the rebuttal as a whole.

We recognize, however, that the rebuttal setting calls for particular care in assessing the effect of improper argument, as it is the prosecution's final word to the jury before deliberations begin, and the defense has no further opportunity to respond. Thus, "improper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none." *Sexton*, 368 S.W.3d at 419 (quoting *Berger*, 295 U.S. at 88). Our supreme court has observed that an improper argument made during the final rebuttal comes at "a critically important juncture in the trial" and that the defense's inability to respond can give such an argument "a potential for prejudice greater than would ordinarily be ascribed to a single remark made during a lengthy trial." *Jackson*, 444 S.W.3d at 592.

The rebuttal setting in this case presents the same procedural characteristic, and we take the heightened scrutiny it invites seriously. The improper statements here, however, did not carry the features that drove the *Jackson* Court’s concern: they were not the culminating theme of the rebuttal, organized into themes around which the argument was built, or stated without an immediate curative instruction.

More fundamentally, the proof in this case rested on multiple independent categories of evidence that, taken together, are materially stronger than the purely circumstantial proof in *Jackson*. That distinction carries considerable weight, because the concern animating *Jackson*’s rebuttal analysis was that an improperly argued inference might fill a gap left by otherwise inconclusive proof—a concern that does not arise with equal force when the evidence of guilt is substantial and multifaceted. Accordingly, this first factor weighs against a conclusion that the improper argument more probably than not affected the verdict.

b. The Curative Measures

Second, we consider the curative measures taken by the trial court and the prosecution. The trial court took curative action in response to each contemporaneous objection, promptly reminding the jury that argument is not evidence and that the jury must rely on the proof. The prosecutor’s self-correction of Statement (11)—that when the Defendant “gets angry, he gets dangerous”—provided a further layer of mitigation for that remark. Jurors are presumed to follow the trial court’s instructions. *Young*, 196 S.W.3d at 111. Accordingly, this second factor weighs against a conclusion that the improper argument more probably than not affected the verdict.

c. The Prosecutor’s Intent

With respect to the prosecutor’s intent, the analysis differs across the three statements. As to Statement (2)—the prosecutor’s assertion that Ms. White’s mother was lying with her granddaughter when she was shot—the record does not permit a conclusion that the argument was inadvertent. The State possessed the forensic interview of the minor child when it made that argument and repeated it after the trial court’s curative instruction. As to Statement (10), the prosecutor converted the expert’s carefully qualified, non-conclusive finding into an unqualified declaration of fact that the record did not support. That conversion suggests deliberate overstatement rather than inadvertence. As to Statement (11)—the prosecutor’s argument that the Defendant gets dangerous when angry—the prosecutor himself recognized the impropriety and corrected it within the same

argument, which mitigates the inference of deliberate misconduct. Accordingly, this third factor presents a mixed result—weighing in the Defendant’s favor as to Statements (2) and (10), but not as to Statement (11)—and must be weighed alongside the remaining factors.

d. The Cumulative Effect

Fourth, we consider the cumulative effect of the improper statements and any other errors identified in the trial proceedings. As established in the preceding section of this opinion, the only error identified across all trial proceedings was the admission of the life-in-being photograph of Ms. White’s mother, which we determined to be harmless. No other independent error compounds the effect of the improper closing argument.

As to Statement (2)’s reference to Ms. White’s minor child, the trial court granted the State’s request to dismiss the aggravated child endangerment charge with prejudice before trial. Because the jury was never instructed on, or permitted to consider, any offense involving the child, the prosecutor’s reference to the child’s location could not have contributed to any verdict with respect to that charge. The absence of any jury instruction on such an offense substantially limits the potential reach of Statement (2)’s impropriety.

As to Statement (10)’s overstatement of the gunshot primer residue evidence, substantial evidence independently connected the Defendant to the murder weapon—including the text messages documenting his acquisition of a .45 caliber Ruger, the photograph of the Defendant holding a firearm, and expert testimony establishing that the firearm in the photograph appeared consistent in class with a Ruger American Duty pistol. Because that independent evidence adequately established the connection to the weapon, Statement (10)’s overstatement of the residue evidence did not supply a link that the proof otherwise lacked.

For Statement (11)’s characterization of what happens when the Defendant “gets angry,” the remark exceeded the limited purposes for which the Rule 404(b) evidence was admitted. The prosecutor promptly acknowledged those limits within the same argument, and the trial court immediately reminded the jury that counsel’s statements are not evidence. The Defendant, for his part, had already emphasized the limited use of Rule 404(b) evidence in his closing, further framing how jurors should treat that evidence. The State did not return to or build its rebuttal around a propensity theme, and the contested issues submitted to the jury did not depend on such a characterization. In that posture—a brief comment, immediate self-correction, repeated reminders that argument is not evidence, and no repetition—the potential for prejudice was limited.

Because the only identified error in trial—admission of the mother’s photograph—was harmless, and the remaining challenged statements either had no bearing on the verdict or were supported by substantial independent evidence, there is no accumulation of prejudice. Accordingly, this fourth factor weighs against a conclusion that the improper argument more probably than not affected the verdict.

e. The Strength of the State’s Case

Fifth, the relative strength of the State’s proof weighs against a conclusion that the improper argument more probably than not affected the verdict. The evidence against the Defendant was substantial and multifaceted—it included testimony surrounding the homicides, the Defendant’s own statements in the patrol car and processing room, the text messages recovered from his phone, and the Defendant’s relationship history with the victims. The physical and forensic evidence, together with the eyewitness testimony, collectively presented a case of considerable strength.

That strength is why the concern animating *Jackson*—that an improperly argued inference might fill a gap left by inconclusive proof—does not apply here. The improper statements did not supply a missing link that the legitimate evidence could not. The gunshot residue evidence, which was overstated in Statement (10), was one component of a broader evidentiary picture, not the central or essential proof of the Defendant’s identity as the perpetrator.

Statement (2), while inflammatory in the way it characterized the circumstances of the mother’s death, did not bear on the central disputed question of who committed the homicides. The identity of the perpetrator was established through the eyewitness account of the Defendant’s movements in the hours surrounding the killings, the Defendant’s own conduct and statements, the text message evidence, and the corroborating physical evidence—none of which depended on whether Ms. White’s minor child was in the bedroom or on the living room couch at the time of the shooting. Accordingly, this fifth factor weighs against a conclusion that the improper argument more probably than not affected the verdict.

Considering all five *Judge* factors together, we conclude that the Defendant has not demonstrated that the improper statements more probably than not affected the jury’s verdict. The trial court’s repeated curative instructions, the self-correction of Statement (11)’s propensity characterization, the absence of a deliberate pattern of improper

argument, and the substantial strength of the proof collectively demonstrate that the impropriety was harmless.

7. Conclusion

We conclude that the Defendant preserved six statements from the State’s rebuttal closing argument for appellate review. The remaining statements were not subject to an objection or the mistrial motion and are not properly before us. Of the six preserved statements, three were improper: Statement (2), in which the prosecutor asserted that Ms. White’s mother was lying with her granddaughter when she was shot; Statement (10), in which the prosecutor overstated the gunshot residue evidence; and Statement (11), in which the prosecutor briefly characterized the Defendant as dangerous when angry, though he immediately self-corrected. The denial of the mistrial motion as to Statements (11) and (12) was within the trial court’s discretion. In each instance, however, the Defendant has not demonstrated that the improper argument more probably than not affected the verdict. He is therefore not entitled to relief on these grounds.

G. JURY INSTRUCTIONS

Finally, the Defendant argues that the trial court erred in declining to instruct the jury consistent with his requested instructions. Specifically, he argues that the trial court’s inclusion of a “knowingly” mens rea in the aggravated burglary instruction created a risk of jury confusion on his felony murder convictions—that the jury might have convicted him of felony murder without finding that he intended to commit the predicate burglary. He further argues that the trial court’s Rule 404(b) limiting instruction improperly incorporated a *res gestae* instruction by including the “complete story of the crime” subpart.

The State responds that the trial court properly instructed the jury in both respects and that the Defendant waived the 404(b) challenge through inadequate briefing. We agree with the State and conclude that the Defendant is not entitled to relief.

1. Standard of Appellate Review

“Questions involving the propriety of jury instructions are mixed questions of law and fact,” which this court reviews de novo with no presumption of correctness. *State v.*

Benson, 600 S.W.3d 896, 902 (Tenn. 2020); *State v. Hollon*, 671 S.W.3d 561, 564 (Tenn. Crim. App. 2023); *Gardner*, 716 S.W.3d at 424.

A defendant is entitled “to a correct and complete charge of the law so that each issue of fact raised by the evidence will be submitted to the jury on proper instructions.” *State v. Perrier*, 536 S.W.3d 388, 403 (Tenn. 2017) (citation and internal quotation marks omitted). In general, “trial courts have the duty, without request, to give proper jury instructions as to the law governing the issues raised by the nature of the proceeding and the evidence introduced at trial.” *State v. Hawkins*, 406 S.W.3d 121, 129 (Tenn. 2013) (citation omitted).

“[I]n order to determine whether a conviction should be reversed on the basis of an erroneous instruction to the jury, this [c]ourt must consider whether the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process.” *State v. James*, 315 S.W.3d 440, 446 (Tenn. 2010) (citation and internal quotation marks omitted). A jury charge “is erroneous if it fails to fairly submit the legal issues or if it misleads the jury as to the applicable law.” *Id.* (citation and internal quotation marks omitted). When an error occurs in jury instructions, it is generally subject to a harmless error analysis. *Hawkins*, 406 S.W.3d at 128.

2. Aggravated Burglary Instruction

The Defendant first argues that, when the trial court included a “knowingly” mens rea in the aggravated burglary instruction, it created a risk of jury confusion on his felony murder convictions. More specifically, he asserts that the jury might have convicted him of felony murder without finding that he intended to commit the predicate burglary.

The State responds that the felony murder instruction independently and expressly required the jury to find that the Defendant intended to commit the underlying burglary, and that no confusion was possible. We agree with the State.

The trial court instructed the jury on the essential elements of aggravated burglary as follows:

For you to find the defendant guilty of this offense, the State must have proven beyond a reasonable doubt the existence of the following essential elements:

- (1) that the [D]efendant entered a habitation, or any portion thereof, of [the mother]; and
- (2) that the [D]efendant entered with the intent to commit an assault; and
- (3) that the [D]efendant acted without the effective consent of the owner; and
- (4) that the [D]efendant acted either intentionally or knowingly.

The same charge was given as to Ms. White's roommate.

The dispositive answer to the Defendant's argument lies in the felony murder instruction itself. For each of the two felony murder counts, the trial court separately instructed the jury that "the State must have proven beyond a reasonable doubt . . . that the [D]efendant intended to commit the alleged crime of burglary." That instruction independently and unambiguously required the jury to find intentional conduct as to the predicate offense before it could convict on either murder count.

Moreover, the felony murder instruction further directed the jury that this intent "must exist prior to or concurrent with the commission of the act causing the death of the victim," and that proof of such intent was "a question of fact to be decided by the jury after consideration of all the facts and circumstances." The jury was thus not merely told that intent was required in the abstract—it was given a specific temporal framework for evaluating that question. The jury was expressly instructed on the precise mental state the Defendant contends was absent from the charge.

The aggravated burglary instruction itself provides an independent answer. Element (2) of that instruction required the jury to find that the Defendant "entered with the intent to commit an assault"—an intentionality requirement embedded within the burglary charge and wholly separate from element (4). To convict on the aggravated burglary counts at all, therefore, the jury was required to find that the Defendant acted with intent, regardless of what element (4) permitted with respect to the act of entry. The Defendant's theory—that the jury might have convicted him of felony murder based solely on the misinterpretation that a knowing mental state was the requisite mens rea—cannot be reconciled with the requirement that the jury find intentional conduct under element (2) as a predicate to any burglary conviction.

The structure of the instructions as a whole reinforces this conclusion. The felony murder instruction expressly directed the jury that “the elements of aggravated burglary are defined within counts eight and nine.” The jury was thus directed to read the two instructions together. A complete reading of the charge makes clear that the felony murder predicate required proof of all the elements of aggravated burglary—including entry with intent to commit an assault—in addition to the felony murder instruction’s own separate and explicit intentionality requirement. The record provides no basis to conclude that the jury conflated these inquiries, and the Defendant identifies none. Juries are presumed to follow the instructions they are given. *See State v. Harbison*, 539 S.W.3d 149, 163 (Tenn. 2018).

The Defendant has not established that the jury was misled or that the challenged instruction affected the verdict on the felony murder counts. Accordingly, we conclude that the Defendant is not entitled to relief on this issue.

3. Tennessee Rule of Evidence 404(b) Instruction

Finally, the Defendant argues that the trial court erred by including subsection (a)—the “complete story of the crime” subpart—in its Rule 404(b) limiting instruction. The Defendant does not challenge the admission of the prior bad acts themselves; rather, he contends that because the trial court admitted that evidence for the specific purposes of establishing the parties’ relationship, intent, and premeditation, the instruction should have been limited to those grounds. He argues that, because the acts were not “part of the same transaction” as the charged offenses or “necessary for a complete account thereof,” the instruction improperly framed those acts as contextual background evidence.

The State responds that the instruction accurately stated the permissible purposes for which the jury could consider the evidence and that the cases cited by the Defendant do not address the question presented. The State further argues that the Defendant waived this claim by failing to develop an adequate supporting argument. Without resolving the waiver question, we proceed to the merits because the governing authority directly controls the outcome, and we agree with the State.

As background for this issue, the trial court admitted two prior bad acts for the permissible purposes of contextualizing the relationship between the parties and establishing the Defendant’s intent and premeditation. While instructing the jury, the trial court provided the following limiting instruction:

If from the proof you find that the [D]efendant committed a crime other than that for which he is on trial, you may not consider such evidence to prove his disposition to commit such a crime as that on trial. The evidence may only be considered by you for the limited purpose of determining:

- (a) the complete story of the crime; that is, such evidence may be considered by you where the prior crimes and the present alleged crime are logically related or connected, or are part of the same transaction, so that proof of the other tends, or is necessary, to prove the one charged, or is necessary for a complete account thereof;
- (b) the [D]efendant's identity; that is, such evidence may be considered by you if it tends to establish the defendant's identity in the case on trial; and
- (c) the [D]efendant's intent; that is, such evidence may be considered by you if it tends to establish that the defendant actually intended to commit the crime for which he is presently charged.

Such evidence of other crimes, if considered by you for any purpose, must not be considered for any purpose other than that specifically stated.

In essence, the Defendant's argument is that subsection (a) gave the jury permission to use the evidence for a purpose, contextual background, that the trial court never established. However, our supreme court's decision in *State v. Leach*, 148 S.W.3d 42 (Tenn. 2004), forecloses that argument on materially indistinguishable facts.

In *Leach*, the trial court admitted prior bad act evidence under Rule 404(b) to show motive and then gave a limiting instruction that included both the motive purpose and the "complete story of the crime" subpart. The defendant argued, as the Defendant does here, that the "complete story" language was broader than the ground on which the evidence was admitted and effectively framed the evidence as contextual background that had never been established. The supreme court rejected that argument, holding that "[e]vidence proving motive necessarily serves the purpose of completing the story of the crime" and that the "complete story" subpart was therefore "superfluous" rather than erroneous. *Leach*, 148 S.W.3d at 58.

The same reasoning that *Leach* applied to motive applies with equal force to intent, premeditation, and the relationship of the parties. Those purposes all describe the mental and relational circumstances surrounding the commission of the charged offense; evidence bearing on any of them necessarily places the offense in its broader context. As in *Leach*, the presence of subsection (a) in the Rule 404(b) limiting instruction was superfluous at most—it described an aspect of the probative value the trial court had already recognized when it admitted the evidence, not an independent and unestablished basis for the jury’s consideration. See also *State v. Roshell*, No. M2007-02358-CCA-R3-CD, 2009 WL 890875, at *10 (Tenn. Crim. App. Apr. 2, 2009) (relationship-of-the-parties evidence “could easily be interpreted to mean that the evidence was relevant to [the defendant’s] intent and motive” and an instruction covering motive, intent, and the complete story of the crime was therefore proper), *perm. app. denied* (Tenn. Aug. 17, 2009).

When read as a whole, the instruction did not authorize propensity reasoning. Indeed, it expressly directed the jury that it “may not consider such evidence to prove [the Defendant’s] disposition to commit such a crime as that on trial.” Because we presume that the jury followed the court’s instruction, *Leach*, 148 S.W.3d at 58, we conclude that the Defendant is not entitled to relief on this issue.

CONCLUSION

In summary, we hold that the evidence is legally sufficient to sustain the Defendant’s convictions and that the trial court properly denied the Defendant’s motions for judgment of acquittal. The trial court likewise did not violate the Defendant’s constitutional right to present a defense by ruling that, should he elect to pursue an insanity defense, an expert could reference his previously suppressed statements.

We further hold that the Defendant has not established that the State’s destruction of potentially exculpatory evidence rendered the trial fundamentally unfair under *State v. Ferguson*, 2 S.W.3d 912 (Tenn. 1999), and that the trial court acted within its discretion in selecting the pattern jury instruction as the remedy.

On the evidentiary issues, we hold that the trial court should not have admitted the life-in-being photograph of Ms. White’s mother, but that the error was harmless. All remaining evidentiary challenges are either waived or, on the merits, do not entitle the Defendant to relief. Because only one error was identified, the cumulative error doctrine does not apply, and the Defendant is not entitled to relief on that ground.

Regarding the State's rebuttal closing argument, we hold that the Defendant preserved six statements for appellate review. Of those, three statements were improper under *State v. Goltz*, 111 S.W.3d 1, 6 (Tenn. Crim. App. 2003). Nevertheless, the Defendant has not demonstrated that the improper argument more probably than not affected the verdict. As such, the improper arguments were harmless.

Finally, we hold that the trial court properly instructed the jury on both the aggravated burglary mens rea and the Rule 404(b) limiting instruction, and that the Defendant has not shown that either instruction misled the jury or affected the verdict. Accordingly, we respectfully affirm the judgments of the trial court.

s/ *Tom Greenholtz*

TOM GREENHOLTZ, JUDGE