

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs February 1, 2023

**FILED**  
02/13/2023  
Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. WENDOLYN LEE**

**Appeal from the Criminal Court for Shelby County  
Nos. 17-03262, C1705602 Chris Craft, Judge**

---

**No. W2022-00626-CCA-R3-CD**

---

Following a trial, the jury convicted Wendolyn Lee, Defendant, of rape, statutory rape by an authority figure, and incest. After a sentencing hearing, the trial court sentenced Defendant to twelve years with 100% service for rape and five years as a Range I standard offender for both statutory rape by an authority figure and incest. The court ordered the sentences to be served consecutively, for a total effective sentence of twenty-two years, and ordered Defendant to be on community supervision for life for the rape and incest convictions. The court also sentenced Defendant to a consecutive term of 210 days for multiple counts of direct criminal contempt of court. On appeal, Defendant claims that he received ineffective assistance of counsel, that Tennessee courts lack territorial jurisdiction to try the indicted offenses, that the rape charge was untimely because “adult rapes must be reported within three years,” that he did not receive a speedy trial, that the jury was prejudiced because Defendant’s other stepdaughter testified in rebuttal that she was raped by Defendant, and that the court erred by not allowing Defendant to represent himself. After a thorough review of the record and applicable law, we affirm the judgments of the trial court.

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

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which TIMOTHY L. EASTER and KYLE A. HIXSON, JJ., joined.

Phyllis Aluko, District Public Defender; Robert Trent Hall, Assistant District Public Defender (pretrial); James Jones, Jr., Bartlett, Tennessee (pretrial); Ross A. Sampson, Assistant District Public Defender (at trial); and Wendolyn Lee, Memphis, Tennessee, pro se (pretrial and on appeal).

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; Steve Mulroy, District Attorney General; and Leslie Byrd and Abby Wallace, Assistant District Attorneys General, for the appellee, State of Tennessee.

## OPINION

### Procedural History

On July 25, 2017, the Shelby County Grand Jury indicted Defendant for the rape and statutory rape of his stepdaughter, T.M., and for incest.<sup>1</sup> Assistant District Public Defender Robert Trent Hall was appointed to represent Defendant at the February 22, 2018 arraignment. On April 10, 2018, an order was entered allowing Mr. Hall to withdraw and allowing James Jones, Jr., to “substitute as counsel.”<sup>2</sup> On May 11, 2018, Mr. Jones filed a Motion to Dismiss for Lack of Jurisdiction claiming that Tennessee courts did not have territorial jurisdiction over the indicted offenses because any alleged crimes occurred while Defendant and T.M. lived in West Memphis, Arkansas.

### Hearing on the Motion to Dismiss for Lack of Jurisdiction

On July 10, 2018, a hearing was held, during which proof was presented that T.M. and Defendant lived at three separate addresses in Shelby County during the dates alleged in the indictment. The trial court found that Defendant “was arrested on November 11, 2016, for committing sexual offenses on his stepdaughter.” The court noted that the affidavit of complaint alleged that Defendant had vaginal-penile sex with T.M. over thirty times while they were living together in Shelby County and that Defendant impregnated T.M. when she was sixteen years old. Defendant admitted that he was the biological father of T.M.’s then four-year-old child. The trial court found that “the two indictments<sup>3</sup> appear on their face to have no other procedural defects, and so it appears that the indictments give this court jurisdiction over [D]efendant’s alleged crimes” and orally denied the motion.

After the trial court denied the motion to dismiss the indictment, Defendant moved to represent himself. After a hearing, the court orally granted Defendant’s motion to proceed pro se.

---

<sup>1</sup> It is the policy of this court to protect the identity of minors who were the victims of sexual crimes. To further this policy, we refer to the minor victim by her initials only. We will also refer to the victim’s mother by her initials to protect the victim’s identity and refer to the victim’s half-sister, who was a minor at the time of the offenses, by her initials.

<sup>2</sup> An order appointing Mr. Jones to represent Defendant was signed on July 20, 2018.

<sup>3</sup> The second indictment was issued because Defendant failed to appear for his arraignment on September 7, 2017.

## Motion to Recuse

On August 14, 2018, before the trial court could enter a written order denying the motion to dismiss the indictment, Defendant filed a handwritten, pro se “Motion to Recuse Judge.” On August 30, 2018, the trial court entered an “Order Denying Motion to Recuse” in which it summarized the allegations of Defendant’s pro se motion as follows:

(1) that the District Attorney asked the alleged victim to come to Memphis,

(2) that the alleged victim stated [Defendant] assaulted her 10 years ago when she was 14, so that this court has no jurisdiction,

(3) that this court stated that “he don’t care what state it happened in,”

(4) [that D]efendant has “a[n] 80 million dollar law suit filed against [the trial judge] in Federal Court and many complaints filed,”

(5) that the state investigators, the[] TBI, FBI, United States prosecutor and State of Tennessee Attorney General state that this court has no jurisdiction due to the victim[’s] statement alleging that the crime happened in Arkansas,

(6) that the federal prosecutor stated that this court hated [D]efendant and has a “personal vendetta” against him, that his daughter has recorded all of the TBI, federal and state prosecutor statements,

(7) that this court allowed the alleged victim to come into court with outstanding warrants against her for “arm[ed] robbery and [at]tempted murder in Jackson, Mississippi,” after first ordering her arrested, but then allowing her to leave,

(8) that the alleged victim has criminal charges pending against the Memphis District Attorney in Grenada, Mississippi, and that

(9) the TBI stated that this court and the District Attorney are working together in an unlawful prosecution.

In the August 30, 2018 order, the trial court found that claims 1, 2, 5, and 8, whether true or false, presented no reason for recusal and that claims 3, 4, 6, 7, and 9 were “absolutely untrue.” Defendant appealed the trial court’s denial of the recusal motion

pursuant to Tennessee Supreme Court Rule 10B. By order entered on September 6, 2018, this court denied the request for relief and dismissed the appeal.

### **Defendant's Motion to Represent Himself**

The trial court delayed entry of a written order denying the motion to dismiss the indictment until a transcript of the recusal hearing was received and a written order denying the motion to recuse had been filed. Following a hearing on November 27, 2018, the court granted Defendant's motion to proceed pro se, but appointed James Jones, Jr., as advisory counsel.

Defendant filed numerous pro se motions, claiming again that Tennessee courts did not have territorial jurisdiction and seeking dismissal of the indictment pursuant to Tennessee Code Annotated section 40-6-205 and the Fourth Amendment to the United States Constitution. The court found that the motion to dismiss had been previously decided and denied the motions again. On July 27, 2021, the court allowed Mr. Jones to withdraw as counsel and again appointed the District Public Defender to represent Defendant.

### **Notice of Intent to Use Evidence of Other Crimes**

The State filed a notice "pursuant to Rule 404(b), T[ennessee] R[ules of] E[evidence], of its intent to use certain evidence of other crimes, wrongs, or acts for the purpose of rebuttal of accident or mistake, intent, and/or proving a common scheme or plan of rape." The notice stated that Defendant "is also charged with rape and incest" of his stepdaughter, D.Y., which occurred between October 22, 2010, and October 22, 2017.

### **Jury Trial**

**Sergeant Ivan Lopez.** Sergeant Lopez testified that he was a detective in the Memphis Police Department (MPD) Domestic Violence Unit during October of 2016, and that he was assigned to investigate a shooting that was alleged to have occurred at a residence on East Street in Memphis. The complainant, D.Y., came to the Domestic Violence Unit office accompanied by Defendant and alleged that T.M., her half-sister, shot at her while she was in her house. Defendant became angry when Sergeant Lopez told him to remain in the waiting room while he spoke with D.Y. alone. D.Y. said that T.M. shot at her at their house on East Street. She stated that she was not injured and that there was no damage to the house. Sergeant Lopez told D.Y. and Defendant that there was not enough evidence for a warrant and suggested that D.Y. seek an order of protection. Defendant became "very upset" and "stormed out" with D.Y.

Sergeant Lopez spoke with T.M., who stated that the shooting allegation was not true and that Defendant was trying to get custody of her child. T.M. said Defendant was the father of her four-year-old child and that Defendant had been molesting T.M. since she was fourteen. Sergeant Lopez contacted the MPD Sex Crimes Unit, and after speaking with the supervisor, he transferred the case to the Sex Crimes Unit.

On cross-examination, Sergeant Lopez said there was a female adult with D.Y. and Defendant when they sought the warrant. He said that he did not know who the person was at the time but that he now knew that it was E.M., Defendant's wife and T.M.'s and D.Y.'s mother.

**T.M.** T.M. testified that she was born on January 19, 1996, and was twenty-five years old at the time of the trial. She said that her mother is E.M., Defendant is her stepfather, D.Y. is her half-sister, and she has two half-brothers. She said Defendant and her mother married while they were living in Memphis when she was nine or ten years old. She said that the family moved to West Memphis, Arkansas, when she was fourteen and that Defendant began vaginally raping her with his penis. She said the family moved back to Shelby County when she was fifteen or sixteen and lived in a townhouse apartment on Ashwood Street in Memphis. She identified a photograph of the townhouse, which was entered as Exhibit 1. She attended American Way Middle School while living at the Ashwood townhouse. She said she did not have her own bedroom and slept on a couch in the living room. She said that there was a mattress on the floor in the dining room and that Defendant forced her to have intercourse on the mattress. She said that he kept a bottle of vegetable oil by the mattress and that he used the oil for lubrication "to help penetrate me." She said that she told him it hurt but that he would not stop.

T.M. said the family next moved to a house located on Greenwood Street in Memphis. She identified a photograph of the house, which was entered as Exhibit 2. She said she attended the ninth grade at Sheffield High School while living at the house on Greenwood. She said that Defendant did not work outside the house and that she and the other children were left with Defendant while her mother worked. She said she had a room in the back of the house. She said Defendant continued to force her to have intercourse in her room. She said he did not use a condom and ejaculated inside her. She said she knew he ejaculated because she went to the restroom after he finished and "I just [saw] it coming out of me." She said a pregnancy test came back positive. She told her mother that she was pregnant and that Defendant was the father. She said her mother "was excited" and told her that she was "doing a good thing and [] keeping the family together." T.M.'s

daughter was born on January 30, 2012.<sup>4</sup> T.M. said she was not permitted to go out alone because Defendant thought she might tell someone what had occurred.

T.M. testified that the family next moved to a house on East Street in Memphis. T.M. identified a photograph of the house, which was entered as Exhibit 3. She said that she attended East High School, but that when she became pregnant, she dropped out of public school. She finished high school at Gateway Christian Home School. She said she lived in the front part of the East Street house with her baby. She said her parents had a green van for transportation. She identified a photograph of herself and her daughter taken inside the green van when her daughter was around three years old and they were living on East Street. She said that the relationship with Defendant changed after she had her baby and that Defendant became physically violent. She said that he continued to sexually assault her, both inside the house and on the back seat of the green van. She identified a picture of herself in the van, which was entered as Exhibit 4. She said she was seventeen or eighteen when the picture was taken.

T. M. moved out of the family residence into a separate house on East Street, where she lived with a friend. She said she lived there for about a year before her friend moved out. After her friend moved out, T.M.'s family moved into the house. She said Defendant continued to sexually assault her at this second East Street house. She finally moved out and into an apartment on Adams Street when she was twenty years old. She said her daughter continued to stay at the East Street house because Defendant would not let her stay overnight with T.M. She said she tried to keep her daughter overnight, but Defendant came to her house and tried to kick down the door. She called the police and filed for an order of protection.

She said Defendant and D.Y. attempted to have her charged with a criminal offense by alleging that she fired a gun at their house. She said the allegation was untrue. When she spoke with Detective Lopez about the alleged shooting incident, she told him about the sexual abuse. He arranged for her to speak with Lieutenant Carolyn Bryant of the MPD Sex Crimes Unit. On November 2, 2016, Lieutenant Bryant showed T.M. a photographic array of six men. T.M. identified Defendant as the person who raped her.

**MPD Lieutenant Carolyn Bryant.** Lieutenant Bryant said that, in 2016, she was assigned to the Special Victim's Unit Sex Crimes. She was asked to investigate the allegations of rape, statutory rape, and incest allegedly committed by Defendant. She met with T.M., who stated that the sexual assaults began when she was fourteen and continued

---

<sup>4</sup> T.M. testified that she was born on January 19, 1996, and her daughter was born on January 30, 2012. If those dates are correct, T.M. would have been fifteen when she became pregnant, and she would have turned sixteen shortly before her daughter was born.

until she was nineteen and that the sexual assaults occurred both in Memphis, Tennessee, and in locations outside of the state. T.M. said that, when she was sixteen, she became pregnant by Defendant, and she gave birth to a baby girl when she was seventeen. She said the sexual assaults involved penile-vaginal penetration. Lieutenant Bryant arranged for DNA samples to be obtained from T.M. and her baby. She said that, after speaking with T.M., she obtained criminal charges against Defendant. After Defendant signed a release, she arranged for a DNA sample to be obtained from Defendant.

**D.Y.** D.Y. testified that T.M. was fifteen months older than her. She said that, after her mother and Defendant married in Memphis, the family lived in West Memphis, Arkansas. The family moved back to Memphis when she was in the fifth grade, and she attended Sheffield Elementary School. She said Exhibit 1 was a photograph of the townhouse on Ashwood, which she said was the first place the family lived when they moved back to Memphis. She identified their house on Greenwood Street, shown in Exhibit 2, as the second location, and the first house on East Street, shown in Exhibit 3, as the third location where they lived in Memphis. She said they were living at the house on Greenwood Street when T.M. became pregnant. She said that T.M. moved into her own apartment on East Street but that Defendant insisted that the baby stay with Defendant at his house. She said Defendant decided he wanted custody of T.M.'s baby and had D.Y. make a phone call to the police and state that T.M. shot at her. She said she met with the police, but they would not issue a warrant. She said that the incident was made up by Defendant and that T.M. never shot at her. She said she was afraid of Defendant and always did what Defendant told her to do.

**MPD Officer Lindsey Flores.** Officer Flores testified that she was a criminologist responsible for collecting evidence, processing crime scenes, and submitting evidence to laboratories for testing. She collected DNA samples from T.M., T.M.'s daughter, and Defendant and submitted the samples for testing.

**Derek Cutler.** Mr. Cutler testified that he was a Senior DNA Analyst and that he worked for Sorenson Forensics in Salt Lake City, Utah, in 2016. He said that Sorenson Forensics was a private laboratory specializing in forensic DNA testing. Mr. Cutler said that paternity testing "is the same type of testing that we use for human identification for forensic purposes." He explained that, if he had DNA from the child and both parents, he could determine whether or not an individual is the parent of a child.

After voir dire by the State and Defendant, Mr. Cutler was allowed to testify as an expert in the field of DNA analysis. He explained that each case was assigned a specific case number and each item of evidence was assigned a package number. He said that three items were submitted by MPD in Defendant's case and that they "were asked to do a criminal paternity type of test." Item one consisted of swabs collected from T.M.'s child,

and item two consisted of swabs collected from T.M. Testing was performed to generate “a DNA profile that genetically types as female.” Item three consisted of swabs collected from Defendant, and testing was performed to obtain a male DNA profile. He explained that, once he obtained the DNA profiles, he could “determine whether or not that individual can be excluded as the father.” He said Defendant could not be excluded as the father. He opined that, based on the profiles, there was a 99.99% probability that Defendant was the father of T.M.’s child.

**Momon Hearing.** During an extensive *Momon* hearing, counsel for Defendant explained that, if Defendant testified, certain evidence that was not introduced during the State’s case in chief, including the statements he made during numerous recorded telephone calls from jail and testimony by D.Y. that Defendant sexually abused and raped her, could be used to impeach his testimony. Despite the warning from counsel, Defendant elected to testify.

**Defendant.** Defendant testified he moved to Memphis in 2003 and that he met E.M. in 2005. He said they moved to New Orleans, Louisiana, and then to West Memphis, Arkansas. He said his wife had been diagnosed with cancer and had surgery to “remove[] the fallopian tube, the ovaries, the uterus, half of the bladder, half of the colon, and a lot of the support.” He said she was unable to have sexual intercourse or children as a result.

Defendant said the family traveled to Cairo, Illinois, to get T.M. emancipated “because she was a teenager and she agreed to have a child for us.” He claimed that he paid \$100 to a chancery court to have T.M. emancipated and that he paid \$4,500 to a woman that “deal[s] with lesbians” to have T.M. artificially inseminated. He said that, after T.M. became pregnant, his wife and T.M. were excited because T.M. was having a baby. He said they stayed in Cairo for about three months and then returned to West Memphis, Arkansas. He said that, after getting behind on rent, he decided to move the family to Southaven, Mississippi. He said that, while in Southaven, twin girls stayed with them. He said that, after he found out the girls had run away from home, “we just kept them with us.” He said the girls were reported as being kidnapped, and he was arrested by U.S. Marshals.

Defendant claimed that T.M. got pregnant when she was fifteen and the family was living in West Memphis, Arkansas. Defendant stated:

[T.M.] was born January 19, 1996. If you add that up, she had the baby January 30, 2012. You add that up, ain’t no way in the hell she could’ve got pregnant at 16. But what me and [T.M.] and them did, [T.M.] and [D.Y.] agreed to come in here and tell a false statement that I laid [T.M.] down at



[the house on] Greenwood Street, I penetrated her, she got pregnant at age 16, and she had took a pregnancy test two weeks after that.

Defendant claimed that, when he was arrested in Southaven, Mississippi, T.M. was with him and that she was eight months pregnant. He said she was fifteen, not sixteen. He claimed that he had not lived in Tennessee since 2009. He said:

There's no record of us being here. Any document of the houses, you ain't got no light bill, no phone bill, cable bill, none of that. You can't connect us to the -- those locations at all. We ain't been here since . . . 2009, we hadn't been nowhere living in the State of Tennessee. And [D.Y.] come in -- [D.Y.] testified to the same thing [T.M.] did because we tired of this. We want to just get back with our family because it -- my wife got cancer and dying and -- but anyway, [D.Y.] testified to the same thing [T.M.] -- I laid her back, had sex with her at [the house on] Greenwood Street. The prosecutor know that was a lie. She know that girl didn't get pregnant no 16 years old. But . . . they told her to say that to try to put the case in Memphis, Tennessee. And now another thing is, is this. [T.M.] testified that -- and the prosecutor said it too, that she went to school at Sheffield here at 16 years old. You won't find that. That's not true, that the prosecutor lied again.

Defendant then stated:

Right. And another thing is that I went to jail. I stayed four months. [T.M.] and them had . . . cars at -- I bought them all a car at the age of 16. [T.M.] moved out the house at age 18. She was living in Marion, Arkansas, and she had a girl with her named Carla. And now, I'm going to be honest. I ain't going to tell no lie because I held my hand up to swear to tell the truth and nothing but the truth. I never slept with them underage, but when they became 18, I slept with my stepdaughters. But they ain't my stepdaughters 'cause I'm not really married to [their] mother. But I guess we probably went too far. I don't know, but they -- that's what we did. We did that. I mean, [T.M.] gave -- she would bring girls to the -- to her apartment and call me. I got them text messages and all that, but I can't introduce it.

.....

Well, anyway, when [T.M.] called me over there, she had these women over there between the age 19 and 25, and they'd be like got dildos and everybody just freaking it. And that's how it was. And it'd been like that for a long time. But people might say our family was crazy, but it started

out to try to have kids to get blood ties. But then, we -- you know, it just went a little further. We just started having sex, you know. But now we were never here when no -- it was never no forceful. They could've always [gotten] away from me if they wanted to 'cause I was in jail four months. They the ones bond me out and signed me out. I went again. I stayed three months. They the ones bond me out and signed me out. I went again. They the one bond me out and signed me out.

And they had their own apartments and they had their own cars, they own jobs. Every one of them had they own jobs. I can get the, you know, timeclocks where they, you know. And that just the way it was, you know.

I never raped anybody. I never had to force -- then why I had to force them? All I gotta do is ask, you know -- I mean, because we -- that's how we are. I didn't got -- why would I got to take them and beat them up and all?

Now understand this, they -- nobody ever went to -- you don't have no report on us nowhere with Children Service, or ain't no school. All this happened because [T.M.] married a woman named Delexis Pritchard. And they ask me could they keep the baby. I said, ["Well, yeah, y'all can keep the baby."] Delexis wanted the baby because the baby real high yellow, look half white. And she couldn't have no kids, so she wanted the baby. And I said, ["Well, yeah, y'all keep the baby."]

....

That's all I'm going to say. You done lied to the jury and they know this. That's what hurts me, that they know you lying and ain't saying nothing or doing nothing. You know that girl was not no 16 years old. She was 15. You had the dates of it, and we were not here. We ain't never lived here since 2009.

Outside the presence of the jury and before the State's cross-examination of Defendant, the State moved to allow D.Y. to testify in rebuttal. The trial court stated that it would

allow in the fact that they had sexual activity prior to 18. I'll give the jury a curative instruction that they can't consider that evidence, prove his disposition to commit the crime, just like those on trial, but can only consider it for the purpose of this effect on his credibility as a witness. Because I find

that the probative value substantially outweighs unfair prejudice, since he's already admitted to having sex with his -- with that stepdaughter.

During cross-examination, Defendant agreed that he was interviewed by MPD Officer Bryant in November 2016. In the statement he provided to Officer Bryant, Defendant said that he was living on Greenwood Street in Memphis and that he was fifty-seven years old. When asked if he remembered telling Officer Bryant that he had been married to E.M. for thirteen years, Defendant answered: "I could've said 14 and a half. I don't know, but I lie like that when it come to our relationship." He then testified that E.M. was not really his wife, explaining that it was a common law marriage. When questioned further about lying, Defendant said, "Naw, we don't just lie. That's what y'all do. What we do is what you call survive. She -- we -- sometime we have to claim we married to do -- get things and sometimes we just tell the truth." The following exchange between the State and Defendant, with the trial court intervening, then occurred:

Q. So sometimes you tell the truth and sometimes you scheme and lie to survive; is that right?

A. I just said that that's what you do. Y'all just did it in here when you said that she was 16 and got pregnant in Greenwood when you know that was a lie.

Q. Sir, I --

A. Y'all lied to the jury, I didn't.

Q. Sir, I'm just trying to understand your testimony that you just gave, that sometimes you tell the truth but other times you have to lie and scheme in order to survive; right?

A. You do too.

THE COURT: Now, sir --

DEFENDANT: I answered the question.

THE COURT: -- sir -- sir, you did not --

DEFENDANT: You always getting mad, man.

THE COURT: Sir, stop. Stop. You did not answer the question. You said, [y]ou do too. You did not answer the question. So I'm going to let her ask the question again and you have to answer the question. Ask the question again, please[.]

Q. Was it your testimony just moments ago, sir, that sometimes you tell the truth, but sometimes you have to lie and scheme to survive?

A. I ain't --

Q. -- and that's what y'all do?

A. I don't remember saying scheme. I said, yes, sometime we have to tell the -- a lie in order, you know, to get things. I wouldn't say scheme.

Q. I'm sorry. And I guess that's my word. Because the lies you're telling are in order to get things you want; right?

A. Yeah.

Q. Okay. Like out of jail or beating charges; right?

A. Well, I would say so, yeah.

Q. And that's where this story, this ever-evolving story about -- let's see. It first starts with a family friend and mistaken artificial insemination; right? That's the first story the police get; right?

A. Yeah.

Q. And that's with J[.]J[.] who is the same person as Fatima somebody; right?

A. Right.

Q. Okay. And then that story evolves some more. Do you remember when you were in jail, that you made almost a hundred calls to [D.Y.] and [your wife] while you were in jail?

A. Yeah.

Q. Okay. And so that story evolves even more while you're in jail; right?

A. Correct.

Q. And that story is you instructing [your wife] and [D.Y.] to tell that story but in a slightly different way; right? Because we've moved on from the cup on the table to rubbers in a bag; right? Condoms in a bag?

A. I can't remember that.

Q. You don't remember that?

A. Unh-unh.

Q. You don't remember telling [D.Y.] to make up an affidavit to claim that the girls had done these things to themselves, that the -- that [T.M.] had done this to herself?

A. I didn't tell [D.Y.] to -- [D.Y.] and them wants me -- they wants me out of jail, so they did that on they own.

Q. They did that all by themselves.

A. Yeah. They was grown. These are grown women. These -- this is not no children I'm talking to. I'm in jail so I don't have any control over them.

Q. You just had no control in jail at all; right? But you were the one calling out. They couldn't call into the jail for you; right?

A. Yeah, I called out.

Q. You called out over a hundred times; right?

A. Probably more than that. I mean, I been here four years. I ain't been outside.

Q. And you were the one calling them; right?

A. Yeah.

Q. And you don't recall being the one telling them what they should say?

A. I don't tell them what they should say. I -- but if you play the recorder, you're going to always see me say y'all tell the truth. And they'll say, ["Well, how should we write it up?"] and I said, ["Well, I'll tell you how you can write it up, but tell the truth."] That's all you're going to catch on there. You'll never catch me saying on there --

Q. All right. We'll go through.

A. -- this what I need you to write right here. I need you to do that. I don't do that. I tell them -- well, she said I told her you need to write out a[n] affidavit because -- and send it to me so I can give it to the D[.]A.

Q. Right.

A. She don't know how to write out a[n] affidavit. So she said, ["How do I write it out?"] I said, I'm going to tell you how [to write] it out, but make sure you tell the truth in there. And I guarantee that's what you going to hear on there.

Q. Okay. But we've evolved from that today to a group of lesbians you paid \$4500 to in Cairo, Illinois; right?

A. I didn't say a group of lesbians. I said that I had sex with a group of lesbians at [T.M.]'s house. She was 18, living in Marion, Arkansas, and she'll tell you that, with her girlfriend named Carla. And she called me over and asked me did I want to get involved with them. You know, did I want to do it with them, you know. And, you know, my wife can't do nothing. I -- they all grown, and I went over there.

Defendant said he did not remember telling Officer Bryant that T.M. was his daughter, but after reviewing the written statement, Defendant agreed that he told Officer Bryant that he was T.M.'s stepfather. He then said he lied about being T.M.'s stepfather and even lied about the address where he lived. He testified that he was actually living in West Memphis, Arkansas, and "putting them in school over here." He claimed they would come to Memphis and see a vacant house, get the address, get a friend to compose a lease, and use the lease to get the kids in school.

Defendant agreed that, after he was arrested in this case, he was released on bail. One condition of his bail was that he wear an ankle monitor. He testified that D.Y. cut the ankle monitor off while he was asleep in his van en route to Mississippi. He said when he “woke up it was cut off, and we threw it in the woods because it ain’t no slave day. I didn’t want nobody tagging me.” When asked about signing paperwork agreeing to wear the ankle monitor, he said, “I lied. Ain’t no -- I don’t -- ain’t -- I don’t want no white peoples tagging me. I’m a Muslim. We don’t agree with that.” He agreed that was “another lie of survival.” When asked why he did not go back to Memphis, turn himself in, and explain what happened to the ankle monitor, Defendant said, “If they had a came around me, I’d have shot they ass.” Defendant admitted going to Louisiana after the monitor was removed and avoiding apprehension for almost a year and a half. He said he “wasn’t running because if I didn’t want you to catch me, you couldn’t have got me.” He said the way he “looked at it, it’s a free country. I go where I want, so I cut it -- I didn’t cut it off, she did.” When asked if wearing the monitor was a condition of his being released on bail, Defendant said, “They don’t put -- they don’t put condition[s] on me.”

Defendant was asked if he called his wife from jail and told her to go to the police station and take responsibility for the girls’ getting pregnant. He was also asked if he remembered “getting upset and telling [his wife] not to be scared” and that “she has to do what [Defendant] tell[s] her to do.” Defendant answered:

If I said that -- see, one thing about black people. We have a toxic relationship with white folks that been going on for years. So there’s something about us that we have a unconscious -- I want to say, a unconscious reflex when it comes to white people. So I have to try to get the fear out of her because we have unconscious fear when it comes to white people. That’s much -- how black people are. It’s a unconscious fear. It’s something like, I want to say a trained fear to the point that white people just scare a lot of black people, you know. When they -- like a judge -- see, like the judge right here, he probably glad to have this black person in here scared of him. But I’m not.

Defendant was asked if he remembered calling D.Y. from jail and telling her what to say in an affidavit and having her write it down and read it back to him. Defendant responded:

What I recall is telling [D.Y.] how to write the statement. But all -- make sure you tell the truth. And I-- that’s not what she done wrote down there probably, but that’s what I told her. I tell them that all in there. If you would -- I always told them when you write a statement out, I can tell you how to write it. But make sure you put the truth in there.

Defendant agreed that, at some point, he realized that his wife and D.Y. were not going to do what he told them to do, so he started telling D.Y. to call T.M. to get her to drop the matter.

Defendant repeatedly denied raping his stepdaughters, stating:

I mean . . . myself and most blacks, we're more like seducers, not rapists. Seducers is somebody like might -- we might get a prostitute and pay her with counterfeit money, and then she get angry and come put rape charges on us. Most of us as blacks with these rape charges really are seduce charges. Seducers. Rape is to take by force, and a lot of time if you take somebody by force, it's going to be some type of injury, whether it's a mental injury. And none of that is with these girls, these women. They're not girls.

. . . .

Now, if I'm a black man and I sleep -- which I didn't-- but if I slept with a 14-year-old, she would be too young and don't understand what she doing. But if I was a white man and slept with her, then she would be treated as a black prostitute. And you got them in jail right now, 14-year-olds, for prostituting with white mans. You charge us with rape because you're trying to break down the black population. That's my opinion. But you -- when white people rape -- because [D.Y.] was raped by a white man, and they dropped the charges. They locked him up and they dropped the charges. But when black men are sleep -- are caught sleeping with young -- with a young lady now -- because really 14 and stuff like that they can be considered as teenagers, not babies eight and nine years old.

. . . .

Okay, if they did what I asked and then they wasn't -- they -- I never raped a woman in my -- a girl in my life under the age of 18. I just told you they was artificially inseminated. You ain't proved it wrong. But anyway, I'm saying this: that if I ask a woman to sleep with me, and she move in position, whether she say yes or no, I'm going to think she wants to have sex. Because if I raise my hand at you, you going to automatically throw up a block, but I might not even finish swinging. That's called natural reflex.

When asked why he lied to the police, Defendant said:



Well, I lied to the police because, like I said, again, I didn't want them to go over there and mess with my wife that got cancer over in Arkansas because -- I gave them the . . . Greenwood Street [address]. And I give that to everybody because by me being a civil rights activist, and they nailed a cross in my yard one time over there in West Memphis.

The following dialogue between the Assistant District Attorney and Defendant then occurred:

Q. Sir, my question -- if you'll listen to my question. That was the first lie of survival that you told, and in that lie of survival that you told to the police it was a cup. In the second lie of survival that you tell . . . [D.Y.] and [your wife] to say it's sperm in a used condom; right?

A. I'm telling them how to write it.

Q. Yeah. You're telling them how to write it.

A. That's right. They don't know how to write it. It ain't like I'm making up something or got them lying. I'm telling them to tell the truth, and they don't know how to write up a[n] affidavit, so --

Q. Today we got a totally different version of the lie of survival; right?

A. Yeah.

When asked if he denied that T.M.'s daughter was his child, Defendant answered, "I never deny my kids."

**D.Y.'s rebuttal testimony.** D.Y. agreed that her mother had cancer but said that she was doing better now. She said she saw her mother and Defendant married in the living room of their apartment by a preacher they hired to perform the ceremony. She said she later saw the marriage license. She said the family never lived in Cairo, Illinois, but that they went there "for a couple of days." She said that two childhood friends, D.J. and J.J., went with them and that the police were looking for D.J. and J.J. She denied that Defendant attempted to have T.M. emancipated. She said Defendant wanted the twins, D.J. and J.J., to be emancipated.

D.Y. said that, when Defendant was released on bail, they drove to the address where T.M. lived. She said Defendant asked her and her mother to "stake out" T.M.'s house so they "could kill her." She said Defendant had an "off market" handgun in the

van, which he handed to her. D.Y. said about a week after going to T.M.'s house, the family left Tennessee. D.Y. said Defendant cut the ankle monitor off. She said that they were gone for almost a year before Defendant was apprehended and brought back to Memphis. D.Y. said Defendant called her from jail numerous times on her cell phone telling her what to put in an affidavit. He had her write it down and read it back to him. She said Defendant tried to get her mother to go down to the police station and "say she did everything so he could be released." She said Defendant told her mother that she did not "have one single felony" so she did not "have anything to worry about" related to what she told the police.

D.Y. said that, while they lived in Memphis, Defendant "would have somebody hotwire the meter for us to have lights," and for that reason, there was never electric service in Defendant's name. She said that, during the time they lived at on Greenwood and on East Street, Defendant raped her almost every day. She said it started when she was twelve or thirteen and stopped when Defendant was incarcerated. D.Y. said she did what Defendant wanted because she "was very afraid of him."

**Defendant Recalled as a Witness.** When asked what he wanted to tell the jury, Defendant stated:

What I want to tell them, that I've never in my life dated anyone -- slept with anybody under the age of 18. I never forced anyone because old as I am, I never had a rape case. I never forced anyone.

....

I -- what I want to say is -- I'm going to answer your question is: No, I didn't do that. I -- I didn't do that, and I want to say this and finish answering it, that that is that, you know, nobody would stay with you so long, you know, like, 14 and half years if you abusing them. If you don't feed a dog it'll leave, you know. So I'd rather -- I'm going to say it again, and then -- no, I never do that.

....

And by being a Muslim, if I'd have did that they would kill me.

**Jury Verdict and Sentencing.** The jury convicted Defendant as charged. Following a sentencing hearing, the trial court sentenced Defendant to twelve years with 100% service for rape, five years as a Range I standard offender for statutory rape by an authority figure, and five years as a Range I standard offender for incest. The court ordered

the sentences to be served consecutively for a total effective sentence of twenty-two years. The court ordered Defendant to be on community supervision for life for the rape and incest convictions. The court also sentenced Defendant to a consecutive term of 210 days for contempt of court.

**Motion for New Trial.** Defendant raised the following three issues in his Motion for New Trial:

1. That the weight and sufficiency of the evidence do[] not support the jury's verdict.
2. That the [c]ourt erred in not allowing [D]efendant to exercise his right to represent himself at his criminal trial.
3. That the [c]ourt erred in sentencing [D]efendant to serve twenty[-]two (22) years as a Range I offender. The court sentenced [D]efendant to twelve (12) years on his [r]ape conviction, five (5)years for [s]tatutory [r]ape by an[] [a]uthority [f]igure and five (5) years for [i]ncest, all sentences to be served consecutively. The court erred in it[s] failure to find any mitigating factors under the sentencing statu[t]es. The court erred in applying consecutive sentencing in this matter.

**Notice of Appeal.** On May 13, 2022, after the trial court denied Defendant's motion for new trial, counsel for Defendant filed a notice of appeal. Defendant also filed a pro se "Motion to Dismiss Any Appeal by the Shelby County Public Defender[]'s Office and to Put the Appeal Filed by Me to be the Only Appeal to be Heard." This court remanded the case back to the trial court "to conduct a hearing to determine whether [Defendant] knowingly and intelligently waives his right to counsel on appeal."

Following a hearing on remand, the trial court entered an order on July 26, 2022, stating that the court "explained to [Defendant] that he had a constitutional right to be represented by counsel [and] that the appeal was governed by the Tennessee Rules of Appellate Procedure[.]" The order further stated that the trial court "read the waiver to [Defendant] and [Defendant] freely and voluntarily waived his right to an attorney, stated he had no questions and signed a written waiver to this effect in the courtroom[.]"

### **Analysis**

Defendant raises six issues on appeal: (1) that he received ineffective assistance of counsel; (2) that Tennessee lacks jurisdiction; (3) that "adult rapes" must be reported within three years; (4) that the State violated his right to a speedy trial; (5) that the jury was

prejudiced because D.Y. was allowed to testify that she was sexually assaulted and raped by Defendant; and (6) that the trial court erred by not allowing Defendant to represent himself. The State responds that the ineffective assistance of counsel issue should be treated as waived because Defendant failed to include the issue in his motion for new trial. The State argues that Tennessee courts had territorial jurisdiction and that Shelby County was the appropriate venue. The State further argues that the indictment for rape was filed within the time allowed under the applicable statute of limitations and that Defendant's right to a speedy trial was not violated; that the trial court properly allowed D.Y. to testify in rebuttal; and that Defendant failed to include in the record sufficient documents for this court to determine if the trial court properly precluded Defendant from representing himself.

The Tennessee Rules of Appellate Procedure and the Rules of the Court of Criminal Appeals set forth rules regarding appellate practice, specifically, the form and contents of a party's brief. Rule 27 of Tennessee Rules Appellate Procedure provides that the Brief of the appellant shall contain the following:

- (1) A table of contents, with references to the pages in the brief;
- (2) A table of authorities, including cases (alphabetically arranged), statutes and other authorities cited, with references to the pages in the brief where they are cited;
- (3) A jurisdictional statement in cases appealed to the Supreme Court directly from the trial court indicating briefly the jurisdictional grounds for the appeal to the Supreme Court;
- (4) A statement of the issues presented for review;
- (5) A statement of the case, indicating briefly the nature of the case, the course of proceedings, and its disposition in the court below;
- (6) A statement of facts, setting forth the facts relevant to the issues presented for review with appropriate references to the record;
- (7) An argument, which may be preceded by a summary of argument, setting forth the contentions of the appellant 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; [and]

(8) A short conclusion, stating the precise relief sought.

The brief filed by Defendant does not contain a table of contents with references to the pages in the brief; a table of authorities, including cases (alphabetically arranged), statutes and other authorities cited, with references to the pages in the brief where they are cited; a statement of the case; or a short conclusion, stating the relief sought. Most of Defendant's brief is an incoherent, rambling, and salacious criticism of the trial judge and the Shelby County District Attorney General. According to Defendant's brief, basically everyone associated with the case—the police, the victims, his lawyers, the district attorneys, and the trial judge were either liars or racist or both. Defendant's brief does not substantially conform to the requirements of the Tennessee Rules of Appellate Procedure.

Rule 10 of Tennessee Rules of the Court of Criminal Appeals states:

(a) If a brief does not substantially conform to the requirements of the Tennessee Rules of Appellate Procedure, the court may order the same stricken and direct the filing, within a fixed time, of a new brief, and it may impose costs or order payment by the offending attorney or party of costs in such amount as the circumstances require.

(b) Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.

We will exercise our discretion and not order the brief stricken and require the filing of a new brief. We will, however, treat issues which are not supported by argument, citation to authorities, or appropriate references to the record as waived.

We note that Defendant attached numerous documents to his brief. “The law is clear that statements of fact made in or attached to pleadings, briefs, and oral arguments are not evidence and may not be considered by an appellate court unless they are properly made part of the record.” *Threadgill v. Bd. of Prof'l Responsibility of Supreme Ct.*, 299 S.W.3d 792, 812 (Tenn. 2009), *overruled on other grounds by Lockett v. Bd. of Prof'l Responsibility*, 380 S.W.3d 19 (Tenn. 2012); *see Edgar Bailey, Jr. v. Dwight Barbee, Warden*, No. W2012-01729-CCA-R3-HC, 2013 WL 865329, at \*3 (Tenn. Crim. App. Mar. 5, 2013) (documents attached to appellate briefs cannot be considered by appellate courts if they are not properly part of the certified record). The attachments to Defendant's brief were not introduced as evidence and were not properly made part of the record. Thus, they may not be considered by this court.

**Ineffective Assistance of Counsel.** Defendant claims he received ineffective assistance from Mr. Jones and Mr. Sampson. The State argues that Defendant waived this

issue by failing to include it in his motion for new trial. “[I]n all cases tried by a jury, no issue presented for review shall be predicated upon error in . . . [any] ground upon which a new trial is sought, unless the same was specifically stated in a motion for a new trial; otherwise such issues will be treated as waived.” Tenn. R. App. P. 3(e). Defendant raised this issue for the first time in his appellate brief. There has been no hearing on the issue, and the trial court has not made any findings or conclusions as to this claim. Therefore, we will treat the issue as waived, and we decline to review it.

**Venue and Territorial Jurisdiction.** In his brief, Defendant claims that T.M. became pregnant when she was fourteen years old and living in West Memphis, Arkansas. He also claims that T.M. “came to Memphis” in 2016 and “fill[ed] out a police report stating [Defendant] sexually assaulted her in West Memphis, Arkansas” and not in Memphis, Tennessee, and that Tennessee courts lacked territorial jurisdiction over the indicted offenses and that Shelby County was not the proper venue. We determine that this issue is encompassed by Defendant’s motion for new trial claim that the evidence is not sufficient to support the jury’s verdict.

“[B]efore a court may exercise judicial power to hear and determine a criminal prosecution, that court must possess three types of jurisdictions: jurisdiction over the defendant, jurisdiction over the alleged crime, and territorial jurisdiction.” *State v. Legg*, 9 S.W.3d 111, 114 (Tenn. 1999). A Tennessee court has territorial jurisdiction and the power to punish criminal conduct occurring within the borders of Tennessee. *Id.* The Tennessee Constitution guarantees criminal defendants the right to a trial “by an impartial jury of the county in which the crime shall have been committed.” Tenn. Const. art. I, § 9. “Proof of venue is necessary to establish the jurisdiction of the court, but it is not an element of any offense.” *State v. Young*, 196 S.W.3d 85, 101 (Tenn. 2006) (quoting *State v. Hutcherson*, 790 S.W.2d 532, 535 (Tenn. 1990)). Venue is a jury question and must be proven by a preponderance of the evidence. *Id.*; T.C.A. § 39-11-201(e). “Like venue, territorial jurisdiction is a factual question for the jury’s determination.” *State v. Kelley Hufford*, No. M2018-01823-CCA-R3-CD, 2019 WL 6768717, at \*6 (Tenn. Crim. App. Dec. 12, 2019) (citing *State v. Beall*, 729 S.W.2d 270, 271 (Tenn. Crim. App. 1986)). Unlike venue, “[t]erritorial jurisdiction must be proven beyond a reasonable doubt. *State v. Willard Hampton*, No. W2018-00623-CCA-R3-CD, 2019 WL 1167807, at \*6 (Tenn. Crim. App. Mar. 12, 2019), *no perm. app. filed*.”

Count 1 of the indictment alleged that T.M. was raped by Defendant between January 19, 2010, and January 18, 2016, in Shelby County, Tennessee. For count one, the State elected the alleged penetration of T.M.’s vaginal opening by Defendant’s penis at the Greenwood address when he ejaculated inside her vagina. T.M. testified that the family moved to a townhouse apartment on Ashwood Street in Memphis and then moved to a house located on Greenwood in Memphis. She identified a photograph of the Greenwood

house and said she attended Sheffield High School. She said Defendant forced her to have intercourse in her room. She said he did not use a condom and ejaculated inside her. She said she knew he ejaculated because she went to the restroom after he finished and “I just seen it coming out of me.” She said she had a pregnancy test that came back positive and that her daughter was born on January 30, 2012.

Count 2 alleged that T.M. was sexually penetrated by Defendant, who had parental authority over T.M., between January 19, 2010, and January 18, 2014, in Shelby County, Tennessee. For count two, the State elected the alleged penetration of T.M.’s vaginal opening by Defendant’s penis at the Ashwood address when he called her over to the mattress in the dining room. T.M. testified that the family moved back to Shelby County when she was fifteen or sixteen and lived in a townhouse apartment on Ashwood in Memphis. She identified a photograph of the townhouse and testified that she attended American Way Middle School while living there. She said there was a mattress on the floor in the dining room where Defendant forced her to have sexual intercourse. She said Defendant kept a bottle of vegetable oil by the mattress and that he used the oil for lubrication “to help penetrate [her].” She said that she would tell him it hurt but that he would not stop.

Count 3 alleged that Defendant sexually penetrated T.M. between January 19, 2010, and January 18, 2016, in Shelby County, Tennessee. For count three, the State elected the alleged penetration of T.M.’s vaginal opening by Defendant’s penis at the East Street address, when he took her to the green van parked outside the house. T.M. identified a picture of the house on East Street and said she lived in the front part of the house with her baby. She said her parents had a green van for transportation. She said that the relationship with Defendant changed and that he became physically violent and continued to sexually assault her both inside the house and on the back seat of the van. She identified a picture of herself in the green van, which was entered as Exhibit 4. She said she was seventeen or eighteen years old when the picture was taken.

The trial court instructed the jury as follows:

It is therefore incumbent upon the State, before you can convict a defendant, to establish to your satisfaction beyond a reasonable doubt that the crime charged in this indictment has been committed, that the same was committed within the County of Shelby and State of Tennessee before the finding of the indictment and that [D]efendant committed the crime in such manner that would make him guilty under the law here defined and explained to you.

“Juries are presumed to follow the trial court’s instructions.” *State v. Banks*, 271 S.W.3d 90, 134 (Tenn. 2008). There is nothing in the record to indicate that the jury failed to follow the instruction.

We conclude that the proof was sufficient to establish beyond a reasonable doubt that the Criminal Court for Shelby County, Tennessee, had territorial jurisdiction over each of the offenses for which Defendant was convicted. The proof was also sufficient to establish that Shelby County was the appropriate venue for Defendant’s criminal trial. This issue is without merit, and Defendant is not entitled to relief.

**Statute of Limitations for Rape.** As part of his ineffective assistance of counsel argument, Defendant alleges that counsel was ineffective because “[n]o motion was filed to dismiss for in Tennessee adult rapes must be reported within three years of the incident [or] it would be barred by the statute of limitations[.]” This issue was not raised in the Motion for New Trial, the issue is not supported by argument, there is no citation to authorities, and there is no appropriate references to the record in Defendant’s brief. We determine the issue is waived. Waiver notwithstanding, the issue is without merit. Rape is a Class B felony, and the statute of limitation for prosecution of a Class B felony is eight years. Tenn. Code Ann. § 39-13-503(b); § 40-2-101(b)(2). However, when a child is raped, the State may prosecute a defendant “no later than twenty-five years from the date the child becomes eighteen (18) years of age.” Tenn. Code Ann. § 40-2-101(h)(2). Defendant is not entitled to relief.

**Speedy Trial.** “Both the United States Constitution and the Tennessee Constitution guarantee criminal defendants the right to a speedy trial.” *State v. Moon*, 644 S.W.3d 72, 77 (Tenn. 2022), *cert. denied*, 143 S. Ct. 254 (2022); *see* U.S. Const. amend. VI; Tenn. Const. art. 1 § 9. In determining whether a criminal defendant was denied a speedy trial, an appellate court should examine and balance four factors: “(1) the length of the delay; (2) the reason for the delay; (3) whether there was a demand for a speedy trial; and (4) the presence and extent of prejudice to the defendant.” *Id.* at 79; *Barker v. Wingo*, 407 U.S. 514, 530 (1972). Defendant was indicted on July 25, 2017, and his trial commenced on December 6, 2021. A fifty-two-month delay between the return of the indictment and Defendant’s trial is sufficient to trigger a speedy trial inquiry.

During this fifty-two-month time period, Defendant absconded after cutting off his ankle monitor and fleeing to Louisiana. It took approximately one and a half years for the bonding company to apprehend Defendant and to return him to Tennessee. In addition, numerous attorneys were appointed then allowed to withdraw. Defendant also represented himself for a period of time, during which he filed numerous motions, including multiple motions to dismiss the indictment, that were basically identical to the pretrial motion filed by Mr. Jones that the trial court denied after a hearing. Defendant was responsible for a



substantial portion of the delay. There is no proof in the record that the delay was intentionally caused by the State to gain a tactical advantage or to harass Defendant or that the delay was caused by bureaucratic indifference or negligence. *See State v. Simmons*, 54 S.W.3d 755, 759 (Tenn. 2001) (stating that speedy trial delays generally fall into four categories: “(1) intentional delay to gain a tactical advantage or to harass the defendant; (2) bureaucratic indifference or negligence . . . ; (3) delay necessary to the fair and effective prosecution of the case . . . ; and (4) delay caused, or acquiesced, in by the defense”). The reason for the delay weighs heavily against Defendant.

The record on appeal does not contain a motion for speedy trial, and Defendant does not claim that one was filed. The failure of a defendant to assert the right to a speedy trial “ordinarily will make it difficult to prove that the right has been denied.” *Id.* at 760. This factor also weighs heavily against Defendant.

“The final and most important factor in the analysis is whether the accused suffered prejudice from the delay.” *Id.* (internal citations omitted). “[W]hen evaluating this factor courts must be aware that the speedy trial right is designed: (1) to prevent undue and oppressive incarceration prior to trial; (2) to minimize anxiety and concern accompanying public accusation; and (3) to limit the possibilities that long delay will impair the defense.” *Id.* Defendant was incarcerated because he absconded after being released on bail, resulting in his being incarcerated from the time he was brought back to Tennessee to the date of his jury trial. Defendant’s repeated refileing of the motion attacking the territorial jurisdiction of Tennessee’s courts was responsible for some of the delay. Defendant has not presented any proof as to how the delay impaired his ability to defend against the charges.

After balancing the four factors, we conclude that Defendant has “failed to establish that his statutory and constitutional right to a speedy trial was violated.” *Id.* at 761. Defendant is not entitled to relief.

**Prejudice to the Jury.** Defendant claims that the jury was prejudiced by D.Y.’s testifying that Defendant raped her. The State filed a notice pursuant to Tennessee Rule of Evidence 404(b) of its intent to use “certain evidence of other crimes, wrongs, or acts for the purpose of rebuttal of accident or mistake, intent, and/or proving a common scheme or plan” of rape. The notice stated that Defendant “is also charged with rape and incest” of D.Y., which occurred between October 22, 2010, and October 22, 2017. D.Y. was not questioned about the sexual abuse during the State’s case in chief and did not testify about her rape or incest.

During his direct examination, Defendant testified, “I never raped a woman in my -- a girl in my life under the age of 18. I just told you they was artificially inseminated.

You ain't proved it wrong." D.Y. was allowed to testify in rebuttal that when she was twelve or thirteen years old, Defendant penetrated her vagina with his penis "almost every day" without her consent. "A party opens the door to evidence when that party 'introduces evidence or takes some action that makes admissible evidence that would have previously been inadmissible.'" *State v. Vance*, 596 S.W.3d 229, 249 (Tenn. 2020) (quoting 21 Charles Alan Wright et al., *Federal Practice & Procedure Evidence* § 5039 (2d ed. 1987)). Defendant opened the door to D.Y.'s rebuttal testimony by testifying that he had never raped an underage girl and that the State had not proven that his stepdaughters were not artificially inseminated, and the trial court properly admitted her testimony. Defendant is not entitled to relief.

**Right to Self-Representation.** As part of his ineffective assistance of counsel argument, Defendant claims the trial court denied him the right to represent himself. After the trial court orally denied the Motion to Dismiss for Lack of Jurisdiction filed by Mr. Jones, Defendant requested that he be allowed to represent himself. According to the "Order Denying Motion to Recuse" entered on August 30, 2018, the court granted Defendant's request "after a lengthy voir dire in which [D]efendant was asked the questions in *Smith v. State*, 987 S.W.2d 871 (Tenn. Crim. App. 1998)" and "with the consent of [D]efendant, th[e] court appointed his counsel of record, attorney James Jones, as stand-by counsel[.]" The court entered a written "Order Allowing Defendant to Represent Himself, and Appointing Advisory Counsel" on August 31, 2018. The order stated that the "court finds that [Defendant] has freely and voluntarily waived his constitutional right to counsel, and will allow him to proceed pro se, subject to future developments."

Defendant was found competent a second time and was allowed by the trial court to proceed pro se. The order noted that, if Defendant "continues a pattern of persistent abuse and contempt in the courtroom, this court may deem that he has waived his right to self-representation and order that his advisory counsel become once again appointed counsel of record."

On July 27, 2021, the trial court entered an order stating that "upon motion of Defendant to be appointed a new attorney," Mr. Jones was allowed to withdraw as counsel and the District Public Defender was substituted as counsel of record to represent Defendant. Based on the record, Defendant requested that new counsel be appointed, and the trial court honored that request. Defendant is not entitled to relief on this issue.

### **Conclusion**

The judgments of the trial court are affirmed.

---

ROBERT L. HOLLOWAY, JR., JUDGE