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Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs January 14, 2026

STATE OF TENNESSEE v. JAMES ANDREW PAIGE

Appeal from the Criminal Court for Davidson County
No. 2018-B-1017 Cheryl A. Blackburn, Judge

No. M2024-01550-CCA-R3-CD

Defendant, James Andrew Paige, appeals from his convictions for three counts of rape, for which he is serving an eleven-year sentence in confinement. On appeal, Defendant argues that the trial court erred by (1) denying his motion for judgment of acquittal because the evidence was insufficient to support his convictions; (2) admitting the victim's hearsay statements; and (3) failing to inquire into defense counsel's unintentional contact with a juror or declare a mistrial. Defendant also avers that the cumulative effect of these errors entitles him to relief. We affirm.

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 JILL BARTEE AYERS, JJ., joined.

Nathan S. Moore (on appeal) and Paul J. Walwyn (at trial), Nashville, Tennessee, for the appellant, James Andrew Paige.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; Glenn R. Funk, District Attorney General; and Megan M. King and Patrick A. Newport, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural History

This case arises from Defendant's forcing the victim,[1] to perform oral sex on him on three occasions in 2012. Defendant was a counselor with the Behavioral Health Group

[1] It is the policy of this court not to refer to victims of sexual offenses by their names.

(BHG) outpatient methadone substance abuse treatment program in Nashville, and the victim was one of his assigned patients. The April 2018 term of the Davidson County Grand Jury charged Defendant with four counts of rape, a Class B felony; at a pretrial hearing, the State noted that it was only proceeding to trial on Counts 1-3. *See* Tenn. Code Ann. § 39-13-503.

At trial, the victim testified that she struggled with opioid addiction, which began after she took prescribed medication for a broken foot, cervical cancer, and injuries from a car accident and related surgery. The victim acknowledged that she had a previous conviction for "False Report" about twenty years before the trial.

The victim testified that, in 2012, she was fighting for custody of her son and attended a weeklong "detox program" at the recommendation of the Department of Children's Services (DCS). After being discharged from the program, the victim continued to suffer from withdrawal symptoms and went to the emergency room. A nurse there referred her to BHG.

The victim testified that BHG's program required her to come in daily to receive and take her dose of methadone. She was also required to take regular drug tests and attend weekly counseling sessions to receive her medication. The victim stated that Defendant was her assigned counselor from March through May of 2012.

The victim testified that Defendant had a private office and that she would sign in, attend the session, and take her methadone afterward. No one else was ever present during the sessions. The victim stated that Defendant had closed the door during sessions before the incidents in this case, but he had never locked it.

The victim testified that, during her first counseling session on March 5, 2012, Defendant stated that his initial evaluation involved questions that "were going to . . . sound personal or inappropriate[.]" Defendant asked the victim if she "had ever been with a [B]lack[2] man" and whether she had ever exchanged sex for drugs or money. When the victim stated that she had spent the night with an ex-boyfriend in exchange for Lortab, Defendant asked "if [she] enjoyed it." The victim said that she was taken aback by the questions but did not tell anyone about them because she was afraid of being "kicked out" of the program or not receiving her medication. The victim noted that, during one of their first sessions, Defendant told her that he knew her DCS caseworker through work.

[2] The record reflects that Defendant is Black.

The victim testified that, on April 9, 2012, she came to her session upset about her child custody issues. She was sitting in a chair, looking down, and crying when she saw Defendant's feet in front of her. Defendant unzipped his pants, pulled out his erect penis, and put it up to her mouth. The victim said that Defendant "grabbed" her head and put his penis inside her mouth. The victim stated that Defendant moved back and forth for less than two minutes before ejaculating into his hand and cleaning himself with a tissue. At that point, Defendant unlocked the office door, and the victim realized that he had locked it before the incident. The victim stated that Defendant apologized and said that "he didn't know what had come over him." Defendant asked, "You are not going to tell, are you?" The victim said that she responded negatively and that Defendant walked her out to the lobby so that she could receive her medication. She denied that she was under the influence of narcotics on the day of the incident.

The victim testified that she did not try to leave Defendant's office during the incident because she was afraid for her safety, noting that Defendant was about six inches taller than she was. She added that she was also afraid that she would not get her medication, which was "the most important thing to [her.]" The victim stated that she was in shock and that she did not want to perform oral sex on Defendant. She denied that she ever "flirted" with Defendant or expressed romantic interest in him. The victim said that she did not ask for a supervisor or call the police because she was afraid of being kicked out of the program; she noted that she had been in the program for three or four weeks and that she felt unstable in her recovery.

The victim testified that the next incident occurred on April 23, 2012. She stated that Defendant had R&B music playing in his office when she walked in and that he locked the door and stood in front of her before again pulling out his penis and putting it in her mouth. Defendant told her that he "couldn't stop thinking about [her] lips." The victim stated that she "felt obligated . . . . That's what [she] had to do to get [her] medication." The victim said that the remainder of the incident was similar to the first, although she did not see what Defendant did after he ejaculated into his hand.

The victim testified that BHG allowed her to substitute group counseling sessions for individual counseling up to three times per month and that she began going to group sessions instead of seeing Defendant. On April 30, 2012, Defendant pulled the victim out of the medication line and said that he needed to show her his new office; she did not have an appointment with him that day. The victim noted that the new office was in the back of the building. The victim said that, once inside, Defendant grabbed her genital area over her clothes and "said he wanted some of that"; the victim told him, "Maybe some other time," because she wanted him to leave her alone and considered vaginal penetration to be worse than oral sex. The victim stated that Defendant had already taken out his penis, sat

in a chair and made her kneel in front of him and that the victim understood that he wanted oral sex. The incident proceeded similarly to the first two.

The victim testified that, on other occasions, she checked in for medication and was informed that Defendant had placed a "hold" on her, meaning that she had to see him before receiving her medication. The victim applied to be transferred to another counselor, and she was ultimately assigned a female counselor around May 24, 2012.

The victim testified that, on August 14, 2012, she was walking to her car when the manager for BHG, Derrick Walsh, and BHG's program director, Vincent Russo, approached her and asked if she would speak with them inside. The victim stated that Defendant was also in the parking lot and looked "distressed." The victim went inside with Mr. Walsh and Mr. Russo and spoke to them in an office; while she was doing so, Defendant knocked on the office door and stated that he needed to talk to them, but they did not let him inside. The victim stated that Mr. Walsh and Mr. Russo asked whether Defendant had acted inappropriately toward her and that she "[told] them what he did to [her]." Mr. Walsh asked the victim to write a statement and encouraged her to file a police report.

The victim testified that, on August 15, 2012, she met with Metropolitan Nashville Police Department (MNPD) Detective Eric Fitzgerald, who told her "that because [she was] a drug addict and [Defendant] was a professional that it would be difficult for people to believe [her.]" The victim decided not to pursue the case because she was concerned that a pending court case might interfere with her child custody matter.

The victim testified that, in 2016, she obtained custody of her son and was struggling with the fact that Defendant "had gotten away with it[.]" She returned to the MNPD and told her story to Detective Woodrow Ledford, who said that he would follow up with her; however, he never did. The victim left voicemails for Detective Ledford and eventually called the Davidson County District Attorney's Office on February 21, 2018, and spoke to an investigator.

The victim testified that she began attending sexual abuse counseling after speaking to Detective Fitzgerald and continued until the COVID pandemic. The victim was still being treated at BHG at the time of trial. The victim stated that she had recurring nightmares about being raped.

On cross-examination, the victim testified that, at any given time, BHG had several staff members working at the center, including three to five "dosing" nurses, a doctor, two to four front desk staff, and about fifteen counselors. The victim explained that only a counselor could complete the paperwork for a patient to increase his or her methadone

dose. She acknowledged that Defendant did not control whether she received her medication. The victim stated that Defendant never threatened to give her DCS caseworker bad information; she noted, though, that Defendant told her that she should not have been honest with DCS about her addiction. The victim stated that it was possible that she asked Defendant to write a letter to DCS or the juvenile court on her behalf in March or April of 2012. She did not recall Defendant's refusing to write such a letter.

The victim agreed that holds were common and that "[a]lmost everybody gets a hold at some point." She explained that holds were "how your counselor sees you" and that it did not indicate that the person was in trouble. The victim agreed that, during the time Defendant was her counselor, she saw other counselors and patients at group counseling. The victim further agreed that, on the days of the first two incidents, after she left Defendant's office, she walked past multiple people on her way to receive her medication. The victim affirmed that, on the day of the third incident, Defendant said that he wanted to show her his office in front of ten to fifteen people in the medication line.

The victim testified that, during the initial assessment, she answered the questions she found to be offensive. She noted that she saw the question about exchanging sex for drugs or money printed on the intake form. The victim said, though, that she knew the follow-up question about whether she "enjoy[ed] it" was not on the form.

The victim acknowledged that she did not tell anyone at BHG about the incidents. She said that, between the first and second incidents, the sessions proceeded normally. The victim stated that, during the second incident, the overhead lights in the office were turned off, but a lamp was on; she said that she had never told anyone that detail before. The victim did not remember if Defendant grabbed the back of her head like he had done during the first incident. The victim testified that it would not surprise her to learn that, in her prior statements, she said that Defendant "didn't force [her] head" during the first two incidents; she noted that she "might not have wr[itten] it down."

The victim testified that, when Defendant grabbed her genital area over her clothing during the third incident, Defendant was standing up; after the victim declined his advances, Defendant sat down in his office chair. When asked what she was wearing, the victim stated that she did not remember. The victim also did not remember when Defendant unzipped his pants. The victim stated that Defendant "just guided [her] to do it again," referring to oral sex, and that Defendant asked her during the oral sex "if that's how [she did] it to [her] boyfriend." The victim acknowledged that she had not included in her prior statements that she knelt during the incident. The victim stated that Defendant did not ask her to kneel but that she felt she had to do so. The victim explained, "I felt like, by him saying . . . that he 'wanted some of that' that I had better give him the other, or I wouldn't have a choice." The victim denied that Defendant attempted to take off her

clothing during the incident. When asked whether she remembered anything about Defendant's penis, the victim stated that it was "very large." The victim acknowledged that, during the third incident, Defendant was not blocking the door.

The victim testified that, due to the passage of time, it was difficult for her to remember details of the incidents. She agreed that the version of events she told Detective Fitzgerald were more accurate. The victim stated that, after Detective Fitzgerald told her that she did not have a good case, he told her to think about it and that she later called him and said that she did not want to pursue the case.

The victim testified that, in 2018, she gave District Attorney General's Office Investigator David Zoccola her written August 2012 statement. The victim stated that, although Defendant could not direct the medical provider not to administer her medication, she could not receive her medication without meeting with him. The victim denied that she ever asked Defendant for money or that Defendant offered to give her money.

On redirect examination, the victim testified that, on August 14, 2012, she told Mr. Walsh that Defendant had locked the door, exposed himself to her, and forced her to perform oral sex on three occasions. She agreed that she told Mr. Walsh that she had been afraid to come forward because she was worried Defendant would have her expelled from treatment and because Defendant knew her DCS caseworker.

Mr. Walsh testified that, in August 2012, he was BHG's regional director; he identified Defendant as one of BHG's counselors. Mr. Walsh stated that, on August 14, 2012, he received information from a third party that prompted him to call the victim to his office. Mr. Walsh said that, after meeting with the victim, he wrote a memorandum detailing the conversation. Mr. Walsh stated that, when he asked the victim if Defendant had "been inappropriate" toward her, the victim became "visibly upset and uncomfortable." He said that the victim disclosed that "something had happened" with Defendant. Mr. Walsh noted that the meeting occurred in the presence of another employee and that he made clear to the victim that discussing any issues would not have repercussions for her treatment. When asked whether, in his experience, patients were worried about expulsion from the program or access to medication, Mr. Wash responded, "Absolutely. It is a very vulnerable population. They do their best to ensure they don't get into any sort of what they would perceive to be trouble, or something that would create an issue with their continued participation in therapy."

Mr. Walsh testified that, during the meeting, someone knocked on the office door; when he called out that he was in a meeting, the person knocked again and identified himself as "James." The person said, "I need to talk to you immediately." Mr. Walsh described the person's tone as "urgent." Mr. Walsh stated that the victim, who was in the

middle of discussing the situation, "froze up[.]" Mr. Walsh described that the victim's eyes "got wide," and she became "visibly tense" and "immediately fearful of continuing the conversation." Mr. Walsh did not permit the person to enter.

Mr. Walsh testified that he asked the victim to write a statement and encouraged her to file a police report. When asked whether the victim "actually [told him] what happened," Mr. Walsh responded affirmatively. When asked "what she specifically said about each of the incidents," Mr. Walsh stated,

> I can recall each of the instances, and this is referencing her [written] statement and me reaching for my memory of the conversation, that they were similar in nature; they were forced oral sex in his office during both scheduled and unscheduled client interviews, or client sessions, that would be occurring in the formal course of her therapy.

Mr. Walsh stated that the victim indicated that Defendant asked her in her initial session whether she had ever slept with a Black man and whether she had traded sex for drugs or money. Mr. Walsh said that he asked the victim why she did not immediately report the incidents; he noted that he was unsurprised at her answer, which was that she was unsure how she would be treated and whether her enrollment in the program could be interrupted or discontinued for "bringing, really, any allegation against staff to light." Mr. Walsh added that the victim was concerned about the potential impact of discontinuing treatment on her DCS case. Mr. Walsh stated that he fired Defendant the same day as his discussion with the victim.

When asked whether the decision to fire Defendant was based solely on the conversation with the victim, Mr. Walsh responded that it was based upon "what we believed to be credible evidence of misconduct with a client over a period of time."

At this point, the proceedings were adjourned for the evening. The following morning before the jury entered, the following exchange occurred:

> [DEFENSE COUNSEL]: I had forgotten to bring it up when you came out, and I talked to a (inaudible) couple of the court officers this morning. When I came in[,] one of the jurors was in the elevator area. It was pretty early, because I came in to file some stuff. She was already standing there, but I didn't recognize her because she had her back to me. And, then, I think when she saw me she turned around and went around the corner. So, I -- I didn't know what to do. So, when Stephanie Krivcher came in she was, like: "Hey, Paul, how you doing today? Good morning, Stephanie." She got on the elevator[,] I decided to step back out to let the juror --

THE COURT: But you didn't have any contact with her.

[DEFENSE COUNSEL]: No. No contact, but I just wanted to let you know that that happened.

[THE STATE]: And I saw one, too, Paul, coming in, but no contact.

[DEFENSE COUNSEL]: I just wanted to make sure that was on the record.

THE COURT: Okay. Well, we'll say it again at the next break. How's that[?]

[DEFENSE COUNSEL]: Okay.

Scarlett Bright testified that she began working for BHG as a counselor in 2011. She said that, generally, a patient needed to come in daily for thirty days to receive his or her medication. After that, if a patient passed drug screens, followed the treatment program, saw his or her counselor, and kept doctors' appointments, the patient would receive progressively larger amounts of medication to take home.

Ms. Bright testified that, in April 2018, she was BHG's Executive Director and Acting Program Director. Ms. Bright said that Defendant was the victim's counselor from March to May 2012 and that the victim's file contained documentation Defendant created. Ms. Bright stated that counselors were expected to make file notes each time they provided a service to patients.

Ms. Bright testified that the victim's file did not include as many individual counseling notes as she expected. When asked to elaborate, Ms. Bright stated, "That there were just so few of them . . . . , but there were . . . extensive group notes. Typically we have a hard time getting patients to go to group. So, it stood out[.]" Ms. Bright agreed that the victim was "actively seeking out group counseling instead of individual counseling" while Defendant was the victim's counselor. She agreed that patients still had to attend individual counseling even if they participated in group counseling.

Ms. Bright testified that, according to the victim's medical records, Defendant met with the victim on the following dates in 2012: March 5, 9, and 16; April 10, 23, and 26; and May 7. Ms. Bright stated that a counselor might see a patient outside of scheduled sessions and that those encounters would not be noted in the patient's record; for example, a counselor might see a patient in the lobby or parking lot "and just call them back" or "put a hold on the patient's . . . profile, so that the front desk holds the patient[.]" Ms. Bright

noted that a "hold" would "inhibit the patient from being able to get their medication and leave." She further noted that company policy provided that a hold could only be removed by the person who placed it. Ms. Bright stated that different types of holds existed and that ten of the twelve holds Defendant placed on the victim were "red" holds, meaning that the medical staff was "not to dose the patient until that hold has been removed." Ms. Bright said that the victim's record reflected that Defendant placed holds on the victim on the following dates: March 1, 8, 21, and 29; April 2, 10, 11, 16, and 23; and May 7, 15, and 22.

Ms. Bright testified that providers generally made a note of the reason for the hold but that Defendant's notes were inconsistent in this regard. She explained that he did not make a note on March 1 or 8 but that he entered a note on March 5. Ms. Bright stated that the victim requested a different counselor "in, possibly, April and in March." Ms. Bright said that the victim was assigned to another counselor on May 24, 2012.

Ms. Bright testified that counselors would perform a "bio-psycho-social sexual assessment" with patients during the first couple of sessions. Ms. Bright said that the assessment did not include questions about sexual relationships with people of a certain race and that, although the assessment included a question about whether a person had exchanged sex for drugs or money, it did not include whether the person enjoyed it.

Ms. Bright testified that Defendant's first office was beside hers and that, one Monday in April or May of 2012, she came to work and learned Defendant had moved his office to a "remote" location in the back of the building over the weekend. She explained that no other counselors used the offices in the back and that "there was hardly any activity back there." Ms. Bright stated that counselors had to obtain approval from management to change offices and that, to her knowledge, Defendant did not have permission to move. Ms. Bright said that company policy was for counselors to shut their office doors when meeting with patients for confidentiality purposes.

Former MNPD Detective Fitzgerald testified that he worked as a police officer for twenty-nine years and that, in August 2012, he was a detective in the sex crimes unit. Detective Fitzgerald stated that he interviewed the victim on August 15, 2012, and that he reviewed his report and a recording of the interview prior to his testimony. Detective Fitzgerald stated that the victim recounted Defendant's concerning questions in her initial session; that the first incident occurred when she was upset and crying about "some family issues"; that Defendant locked the door, walked over to her, undid his pants, grabbed her head, and forced her to perform oral sex on him; that he ejaculated into his hand and cleaned up with a tissue; and that the victim told him about other similar rapes that occurred, including one that occurred when music was playing and one when the victim did not have an appointment and Defendant wanted to show her his new office. The victim told

Detective Fitzgerald that she did not consent to any of the acts. Detective Fitzgerald stated that he did not ask for details about the third incident.

Detective Fitzgerald testified the victim explained that she did not report the incidents immediately because she was afraid no one would believe her, and the program had "saved her life." Detective Fitzgerald noted that the victim also expressed fear that reporting would hurt her chances of obtaining custody of her child because Defendant knew her DCS caseworker. Detective Fitzgerald said that he explained to the victim that, if she "cho[]se to prosecute," the defense attorney would "attack [her] character by whatever means they can" and that she needed to tell him "everything on the front end so we're not . . . blind-sided by it later on."

Detective Fitzgerald testified that he went to BHG and spoke to Mr. Russo, who informed him that Defendant was no longer employed there. Detective Fitzgerald also reached out to Defendant but was unable to make contact. Detective Fitzgerald said that, ultimately, he spoke to the victim and that she decided "to leave it as a report[.]"

On cross-examination, Detective Fitzgerald testified that he did not recall the victim's telling him that she knelt during any of the incidents or that Defendant sat down in a chair and exposed his penis. Detective Fitzgerald said that, relative to the reason the victim did not "say anything to anybody or walk out, or leave, or do anything" after the rapes, in addition to the reasons related to treatment and her DCS case, the victim told him that she was in shock and could not believe it had happened. Detective Fitzgerald testified that the victim said that Defendant "grabbed" her head during the first incident and that she may have used the word "forced," although "it could have been he just pushed her head." Detective Fitzgerald stated that, when describing the other incidents, the victim "just said it was the same in the others."

Former MNPD Detective Ledford testified that he worked with the police department for twenty-five years and that he worked in the sex crimes unit in 2016. He stated that he spoke to the victim on December 16, 2016. Detective Ledford also recounted the questions Defendant asked the victim during her initial assessment. Detective Ledford stated that the victim described the first, second, and third incidents. Specifically, the victim stated that, during the first incident, she was crying and heard Defendant's zipper and belt before Defendant pushed her head onto his penis; Defendant ejaculated into his hand and cleaned himself with a tissue. The victim said that, during the second incident, R&B music was playing; Defendant commented on her lips before making her perform oral sex on him. The victim stated that, during the third incident, Defendant had moved to an office further back in the building. Detective Ledford testified that the victim described that she sat in a chair during the incident.

Detective Ledford said that the victim told him that she did not want to perform oral sex. The victim told him that she did not tell anyone out of embarrassment and because she was afraid of being expelled from the program and it negatively impacting her child custody case.

Detective Ledford testified that he went on vacation for two and a half weeks afterward and that, when he returned, he "just forgot about it." He said that, other than looking up Defendant to see "what he looked like," he did nothing to investigate the case.

Investigator Zoccola testified that he became an investigator for the District Attorney's Office after a thirty-two-year career with the MNPD, including eleven or twelve years as a sex crimes detective. He stated that he spoke to the victim by telephone on February 21, 2018. Investigator Zoccola stated that the victim "talked in general terms that she had been assaulted" at BHG and gave him a "general description of what she had endured there." Investigator Zoccola said that the victim also discussed her 2012 interview with Detective Fitzgerald and told him that she felt she was not taken seriously. Investigator Zoccola watched the recording of that interview and noted that "there was a lot of time spent during that interview with Detective Fitzgerald pointing out more problems associated with the case than actually listening to her[.]" Investigator Zoccola stated that Detective Fitzgerald "talked to her at length about how her past would be a problem and her credibility would be attacked."

Investigator Zoccola testified that the victim also told him about her 2016 police interview and stated that she had tried "multiple times" to contact Detective Ledford but never received a response. The victim did not know if the investigation was still open. Investigator Zoccola said the victim told him that she "continued to have a rough time" emotionally because of the rapes and that she was seeing a counselor. Investigator Zoccola emailed Detective Ledford, who did not reply. Investigator Zoccola saw Detective Ledford at the courthouse several weeks later and spoke to him about the victim's case. He said that Detective Ledford "told [him] that some things had been going on with him" and that he "had not followed through with any additional investigation on the case." Investigator Zoccola stated that he decided to take over the investigation.

On cross-examination, Investigator Zoccola testified that Detective Fitzgerald wrote in his police report that the victim did not "want to prosecute" and that "if she decides to change her mind in the future she'll let us know."

Upon this evidence, the jury convicted Defendant as charged. After a sentencing hearing, the trial court imposed an eleven-year sentence in confinement.

The judgments of conviction were entered on November 8, 2021. On November 21, 2021, Defendant filed a motion for new trial that was not originally made part of the appellate record. On August 30, 2024, Defendant filed a "motion for new trial" not reflecting that it was an amendment. The trial court filed an order denying the motion on October 9, 2024. On October 10, 2024, Defendant filed a notice of appeal in this court.

On March 2, 2026, this court issued an opinion dismissing the appeal as untimely. *State v. Paige*, No. M2024-01550-CCA-R3-CD, 2026 WL 575150 (Tenn. Crim. App. Mar. 2, 2026), *reh'g granted* (Tenn. Crim. App. Apr. 23, 2026). On March 12, 2026, appellate counsel filed a "Motion to Correct/Modify Record and a Petition to Rehear," attaching a copy of the November 21, 2021 motion for new trial. By order filed March 26, 2026, appellate counsel was given ten days to amend his pleadings to explain why he failed to reply to the State's brief requesting the appeal be dismissed as untimely. Appellate counsel filed an "Amended Motion to Correct/Modify Record" on April 5, 2026. The Amended Motion added the following paragraph to explain the prior omissions:

> 7. Counsel respectfully states that he failed to identify, before submission of this appeal, that the record omitted the Defendant's timely filed Motion for New Trial, and counsel further failed to respond to the State's waiver argument after that omission was pointed out in the State's brief. Counsel does not offer excuse, but candidly acknowledges that this was counsel's oversight. Counsel mistakenly assumed the record would reflect the timely filed motion and that no separate reply was necessary to address the State's position. Once the omission was recognized, counsel promptly moved to amend the record and petitioned for rehearing with the file-stamped motion attached.

Thereafter, this court granted the petition to rehear and ordered the trial court clerk to supplement the record with the November 21, 2021 motion for new trial. Because the record, as supplemented, establishes that Defendant's motion for new trial and notice of appeal were timely filed, we will address Defendant's issues in turn.

<u>Analysis</u>

On appeal, Defendant asserts the trial court erred by (1) denying his motion for judgment of acquittal and affirming the jury's verdict as the thirteenth juror because the evidence was insufficient to support his convictions; (2) admitting the victim's hearsay statements; and (3) failing to inquire into defense counsel's unintentional contact with a juror or declare a mistrial. Defendant also argues that the cumulative effect of these errors entitles him to a new trial.

As a preliminary matter, the State argues that Defendant has waived consideration of his issues because his appellate brief does not contain a statement of the issues presented for review as required by Tennessee Rule of Appellate Procedure 27(a)(4). Additionally, we observe that Defendant has omitted from his brief the applicable standard of review for each issue. *See* Tenn. R. App. P. 27(a)(7)(B) (providing that an appellant's brief "shall contain . . . [a]n argument . . . setting forth . . . for each issue, a concise statement of the applicable standard of review"). However, because Defendant's brief does not prejudice the State or "otherwise frustrate [this court's] ability to conduct meaningful appellate review," we will consider Defendant's issues notwithstanding his brief's technical deficiencies. *DiNovo v. Binkley*, 706 S.W.3d 334, 336 (Tenn. 2025).

I. Sufficiency of the Evidence

Defendant contends that the trial court erred by denying his motion for judgment of acquittal and by declining to reject the jury's verdict as the "thirteenth juror" because the evidence was insufficient to support his convictions. Defendant argues that the "sole evidence" was the victim's testimony and that she had "significant credibility concerns"; that the State provided no corroborating evidence in the form of "medical examination, DNA evidence, video surveillance, phone records, eyewitness testimony, or contemporaneous complaints to third parties"; that other witnesses "undermined" the victim's testimony; and that the victim did not disclose the abuse "during the period when it supposedly occurred."

Under Tennessee Rule of Criminal Procedure 29, a trial court "shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, presentment, or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses." Tenn. R. Crim. P. 29(b). Whether to grant a motion for judgment of acquittal is a question of law, and the trial court must look at the State's evidence in the light most favorable to the State and must "allow all reasonable inferences from it in the State's favor; to discard all countervailing evidence, and if . . . there is any dispute as to any material determinative evidence, or any doubt as to the conclusion to be drawn from the evidence of the State," the trial court must deny the defendant's motion for judgment of acquittal. *State v. Hall*, 656 S.W.2d 60, 61 (Tenn. Crim. App. 1983). In ruling on a motion for judgment of acquittal, the trial court looks at the legal sufficiency of the evidence and does not weigh the evidence. *Id.* "The standard by which the trial court determines a motion for judgment of acquittal is, in essence, the same standard that applies on appeal in determining the sufficiency of the evidence after a conviction." *State v. Little*, 402 S.W.3d 202, 211 (Tenn. 2013) (citing *State v. Ball*, 973 S.W.2d 288, 292 (Tenn. Crim. App. 1998)); *State v. Anderson*, 880 S.W.2d 720, 726 (Tenn. Crim. App. 1994), *abrogated on other grounds by State v. Thomas*, 687 S.W.3d 223, 242-43 (Tenn. 2024). Because "[t]he standard by which the trial court determines a motion for

judgment of acquittal at the end of all the proof is, in essence, the same standard which applies on appeal in determining the sufficiency of the evidence after a conviction," we will resolve Defendant's challenge to the denial of the motion for judgment of acquittal and sufficiency of the evidence together. *State v. Thompson*, 88 S.W.3d 611, 614-15 (Tenn. Crim. App. 2000).

Rule 33(d) of the Tennessee Rules of Criminal Procedure states, "The trial court may grant a new trial following a verdict of guilty if it disagrees with the jury about the weight of the evidence." This rule is the modern equivalent of the "thirteenth juror rule" and requires the trial court to weigh the evidence and grant a new trial "if the evidence preponderates against the weight of the verdict." *State v. Blanton*, 926 S.W.2d 953, 958 (Tenn. Crim. App. 1996). Our supreme court has stated that this rule "imposes upon a trial court judge the mandatory duty to serve as the thirteenth juror in every criminal case[ ] and that approval by the trial judge of the jury's verdict as the thirteenth juror is a necessary prerequisite to imposition of a valid judgment." *State v. Carter*, 896 S.W.2d 119, 122 (Tenn. 1995). When a trial judge overrules a motion for new trial, absent any evidence that the trial court expressed dissatisfaction or disagreement with the weight of the evidence or the verdict, this court presumes that the trial judge has served as the thirteenth juror and approved the jury's verdict. *Id*. Once the trial court fulfills its duty as the thirteenth juror and imposes a judgment, appellate review is limited to determining the sufficiency of the evidence. *State v. Moats*, 906 S.W.2d 431, 435 (Tenn. 1995) (citing *State v. Burlison*, 868 S.W.2d 713, 719 (Tenn. Crim. App. 1993)). Here, the trial court approved the jury's verdict by denying the motion for new trial, and we will consider the sufficiency of the evidence below.

Our standard of review for a sufficiency of the evidence challenge 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); *see also* Tenn. R. App. P. 13(e). Questions of fact, the credibility of witnesses, and weight of the evidence are resolved by the fact finder. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh the evidence. *Id.* Our 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) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)) (internal quotation marks omitted).

A guilty verdict removes the presumption of innocence, replacing it with a presumption of guilt. *Bland*, 958 S.W.2d at 659; *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). The defendant bears the burden of proving why the evidence was insufficient to support the conviction. *Bland*, 958 S.W.2d at 659; *Tuggle*, 639 S.W.2d at 914. On appeal, the "State must be afforded the strongest legitimate view of the evidence

and all reasonable inferences that may be drawn therefrom." *State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007).

Rape is defined, in relevant part, as "unlawful sexual penetration of a victim by the defendant" without the victim's consent when "the defendant knows or has reason to know at the time of penetration that the victim did not consent." Tenn. Code Ann. § 39-13-503(a)(2).

In the light most favorable to the State, the victim testified that Defendant orally raped her on three occasions in 2012. The first incident occurred when the victim was upset and crying about her child custody case; Defendant stood in front of her, grabbed the back of her head, and put his penis in her mouth, ejaculating into his hand and cleaning himself with a tissue. The second incident occurred when Defendant had R&B music playing in his office, locked the door, and commented on the victim's lips before again exposing himself and putting his penis in her mouth, ejaculating into his hand. The third incident occurred when the victim was in line to receive her medication; Defendant pulled her out of line and said that he wanted to show her his new office. Once there, Defendant grabbed the victim's genital area over her clothing and stated that he "wanted some of that"; when she declined, Defendant sat in a chair, and the victim understood that she was to kneel and perform oral sex on him. The victim stated that she did not want to perform oral sex on any of these occasions and felt that she had to comply to receive her medication, stay in the rehabilitation program, and avoid trouble in her DCS case because Defendant knew her DCS caseworker. The victim disclosed the abuse and gave substantially similar descriptions of each incident to Mr. Walsh and Detective Fitzgerald in 2012, to Detective Ledford in 2016, and to Investigator Zoccola in 2018.

Defendant's corroboration argument fails because, as this court has repeatedly stated, "[i]t is well-settled law in Tennessee that the testimony of a victim, by itself, is sufficient to support a conviction." *State v. Bonds*, 189 S.W.3d 249, 256 (Tenn. Crim. App. 2005) (quoting *State v. Strickland*, 885 S.W.2d 85, 87 (Tenn. Crim. App. 1993)) (internal quotation marks omitted); *see State v. Hooper*, No. W2021-01069-CCA-R3-CD, 2022 WL 2718863, at *4 (Tenn. Crim. App. July 13, 2022) (citing *State v. Elkins*, 102 S.W.3d 578, 582-83 (Tenn. 2003) (noting that the victim's testimony regarding sexual contact was sufficient, standing alone, to support the defendant's convictions for rape of a child and aggravated sexual battery), *no perm. app. filed*. Defendant's remaining arguments relate to the jury's credibility determinations and the weight it gave the evidence, neither of which we will disturb on appeal. *Bland*, 958 S.W.2d at 659. Defendant is not entitled to relief on this basis.

II. Hearsay

Defendant contends that "the prosecution elicited statements from law enforcement and clinical personnel that recounted out-of-court assertions" made by the victim and that the statements should have been excluded as hearsay pursuant to Tennessee Rule of Evidence 802. Defendant identifies the following statements:

(1) Mr. Walsh's testimony that the victim was "visibly upset" and that she told him that "something inappropriate had happened between her and [Defendant]";

(2) Mr. Walsh's testimony that the victim's "emotional state appeared consistent with a trauma disclosure";

(3) Detective Fitzgerald's testimony regarding the details of the victim's statements during her August 2012 police interview;

(4) Investigator Zoccola's testimony that the victim told him about Defendant's asking her during their first meeting whether she enjoyed the sex she exchanged for drugs or money.

Defendant also argues that his constitutional right to confront witnesses was violated. He contends the statements should have been excluded "unless [the victim] was unavailable and [Defendant] had a prior opportunity to cross-examine her[.]"

The State responds that Defendant has waived this issue for failure to contemporaneously object. We agree with the State that Defendant's issues are waived because he made no contemporaneous objection at trial. In addition, we note that Defendant's confrontation issue has also been waived because it was raised for the first time on appeal. In his amended motion for new trial, Defendant's only statement relative to this issue, which was not supported by any argument or citation to authority, was as follows: "This [h]onorable [c]ourt ruled in error by allowing hearsay testimony during Defendant's trial." We cannot conclude that Defendant has preserved a constitutional issue with this statement. *See State v. Deshields*, No. W2024-01694-CCA-R3-CD, 2025 WL 3023733, at *6 (Tenn. Crim. App. Oct. 29, 2025) (concluding that a defendant did not preserve a confrontation issue for appeal when he failed to make a constitutional argument in his motion for new trial or at the hearing on the motion and noting that "an objection

that evidence constitutes inadmissible hearsay does not, by itself, preserve a separate confrontation claim") (citations omitted), *no perm. app. filed*.[3]

Defendant acknowledges that he made no contemporaneous objection at trial and requests plain error relief. Defendant's plain error argument, in its entirety, is as follows:

> In this case, the cumulative introduction of hearsay testimony concerning the central issue at trial—whether [Defendant] committed the alleged rapes—so infected the proceeding as to constitute plain error. The improper admission of testimonial hearsay statements without confrontation or limiting instruction deprived [Defendant] of the basic protections guaranteed by the Sixth and Fourteenth Amendments.

Plain error relief is "limited to errors that had an unfair prejudicial impact which undermined the fundamental fairness of the trial." *State v. Adkisson*, 899 S.W.2d 626, 642 (Tenn. Crim. App. 1994). In order to be granted relief under plain error review, five criteria must be met: (1) the record must clearly establish what occurred in the trial court; (2) a clear and unequivocal rule of law must have been breached; (3) a substantial right of the accused must have been adversely affected; (4) the accused did not waive the issue for tactical reasons; and (5) consideration of the error is "necessary to do substantial justice." *Id.* at 640-41; *see also State v. Smith*, 24 S.W.3d 274, 282-83 (Tenn. 2000) (Tennessee Supreme Court formally adopting the *Adkisson* standard for plain error relief). When it is clear from the record that at least one of the factors cannot be established, this court need not consider the remaining factors. *Smith*, 24 S.W.3d at 283. The defendant bears the burden of persuasion to show that he is entitled to plain error relief. *State v. Bledsoe*, 226 S.W.3d 349, 355 (Tenn. 2007).

Defendant's plain error argument falls far short of persuading this court that he is entitled to plain error relief, as it does not address any of the five factors beyond a bare assertion that Defendant's confrontation rights were adversely affected. This assertion is easily disproven because the victim testified at trial and was cross-examined about her prior statements. *See Crawford v. Washington*, 541 U.S. 36, 59 n.9 (2004) (stating that "when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements"). Defendant is not entitled to relief on this basis.

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[3] We briefly note that the victim testified and was cross-examined about her prior statements. *See Crawford v. Washington*, 541 U.S. 36, 59 n.9 (2004) (stating that "when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements").

III. Mistrial/Juror Contact

Defendant contends that the trial court erred by failing to inquire further about defense counsel's inadvertently seeing, but not speaking to, a juror in the elevator bank at the courthouse. Defendant argues that the trial court should have identified the juror, conducted "voir dire to assess potential bias," and given a curative instruction to the jury. Defendant also argues that the trial court should have declared a mistrial. The State responds that Defendant has waived this claim for failure to contemporaneously object or request a mistrial.

Defendant has not responded to the State's waiver argument or requested plain error review. "Where a defendant fails to respond to a waiver argument, only particularly compelling or egregious circumstances could typically justify our sua sponte consideration of plain error relief." *State v. Morgan*, 727 S.W.3d 182, 198 (Tenn. Crim. App. 2025) (quoting *State v. Ruiz*, 716 S.W.3d 439, 454 (Tenn. Crim. App. 2024) (citation and quotation marks omitted)).

We conclude that no such "particularly compelling or egregious circumstances" exist here. *Id.* Defendant is not entitled to relief on this basis.

IV. Cumulative Error

The cumulative error doctrine recognizes that there may be many errors committed in trial proceedings, each of which constitutes mere harmless error in isolation but that "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). To warrant review under the cumulative error doctrine, there must have been more than one actual error during the trial proceedings. *Id.* at 77. In other words, only where there are multiple deficiencies does this court determine whether they were cumulatively prejudicial. In this case, we have identified no errors; therefore, no cumulative error exists.

Conclusion

In light of the foregoing and the record as a whole, we affirm the judgments of the trial court.

s/ *Robert L. Holloway, Jr.*

ROBERT L. HOLLOWAY, JR., JUDGE