

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
May 14, 2024 Session

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**STATE OF TENNESSEE v. SANQUEZ KESHAWN JONES AND
DEION JAMAAR GLOVER**

**Appeal from the Criminal Court for Davidson County
No. 2020-A-408 Cheryl A. Blackburn, Judge**

No. M2023-00799-CCA-R3-CD

In this consolidated appeal, the Defendants, Sanquez Keshawn Jones and Deion Jamaar Glover, appeal their convictions for aggravated kidnapping, aggravated robbery, attempted carjacking, and employing a firearm during the commission of a dangerous felony. For these convictions, both Defendants received an effective sentence of twenty-four years' incarceration. Relative to Defendant Jones's appeal, he contends the trial court violated Tennessee Rule of Evidence 404(b)'s general prohibition on propensity evidence by admitting a photograph depicting him possessing a firearm as a juvenile because such behavior is a criminal act. As to Defendant Glover, he first argues the evidence was insufficient to support his convictions because the State's proof failed to establish his identity as one of the perpetrators of these offenses. He further alleges the trial court erred by admitting a photograph showing him possessing a firearm, arguing this photograph was irrelevant under Tennessee Rule of Evidence 402, unfairly prejudicial under Tennessee Rule of Evidence 403, and propensity evidence violative of Tennessee Rule of Evidence 404(b). Next, Defendant Glover contends he is entitled to plain error relief because his right to confrontation was violated when his cell phone data was extracted by a non-testifying Federal Bureau of Investigation agent and admitted against him at trial. Finally, he challenges the trial court's imposition of consecutive sentencing based upon the dangerous offender classification of Tennessee Code Annotated section 40-35-115(b). After review, we affirm the judgments of the trial court in all respects.

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

KYLE A. HIXSON, J., delivered the opinion of the court, in which J. ROSS DYER and TOM GREENHOLTZ, JJ., joined.

Jesse Lords (on appeal), Franklin, Tennessee, and David Hopkins (at trial), Nashville, Tennessee for the appellant, Sanquez Keshawn Jones.

Will Allensworth (on appeal), and Annie Berry and Kristin Neff (at trial), Nashville, Tennessee, for the appellant, Deion Jamaar Glover.

Jonathan Skrmetti, Attorney General and Reporter; Lacy E. Wilber, Senior Assistant Attorney General; Glenn R. Funk, District Attorney General; and Megan King and Wilmoth Baker, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

The charged offenses arose from Defendant Glover, Defendant Jones, and Codefendant Orlando Harris¹ perpetrating a number of violent crimes against Jeremy Oliver, the victim, on the night of August 7, 2018. From this incident, a Davidson County grand jury returned an indictment against the Defendants, charging each with especially aggravated kidnapping, aggravated robbery, aggravated assault, attempted aggravated burglary, attempted carjacking, and employing a firearm during the commission of a dangerous felony in both the attempted aggravated burglary and attempted carjacking offenses. *See* Tenn. Code Ann. §§ 39-12-101; -13-102, -305, -402, -404; -14-403²; -17-1324. Prior to trial, the aggravated assault and attempted aggravated burglary charges were dismissed.

The State filed a pretrial motion seeking to introduce photographs pursuant to Tennessee Rule of Evidence 402 that showed the Defendants in possession of firearms consistent with the firearms used in commission of the charged offenses. On January 18, 2022, a hearing was held on the motion. Defendant Jones argued that because he was a juvenile when the photographs³ were taken, their admission would violate Tennessee Rule of Evidence 404(b)'s general prohibition on propensity evidence, as Tennessee Code Annotated section 39-17-1319 criminalized, subject to certain exceptions, possession of a firearm by a juvenile. Defendant Glover argued that the photograph showing him in

¹ Codefendant Harris was tried with the Defendants and found guilty of facilitation of aggravated kidnapping, facilitation of aggravated robbery, and facilitation of attempted carjacking. However, he is not a party to this appeal.

² The current statute criminalizing this offense can be found at Tennessee Code Annotated section 39-13-1003 (2021).

³ Pursuant to its motion, the State sought to introduce three separate photographs of Defendant Jones in possession of a firearm consistent with that used during the offenses. However, at trial, only one of these photographs was admitted as an exhibit.

possession of a firearm was irrelevant, noting that firearms were fungible in nature, the photograph was taken over a month prior to the offenses, and the limited visibility of the firearm in the photograph would lead to conjecture and jury confusion.

In a post-hearing brief, Defendant Jones continued his argument by contending that because admission of evidence was the trial court's decision, admissibility of the photographs did not hinge on whether the jury would know of Defendant Jones's status as a juvenile when the photographs were taken. Since the jury's knowledge of his juvenile status was "irrelevant," the trial court's analysis was still governed by Rule 404(b). He further submitted that given the similarity of the charged firearm possession offenses with the portrayal in the photographs, and their general propensity nature, the photographs should be excluded as their probative value was outweighed by the danger of unfair prejudice.

On February 16, 2022, the trial court entered an order stating the photographs were admissible conditioned upon the State's laying the proper foundation at trial, such that the victim's testimony established the firearms in the photographs were consistent with the firearms used in the offenses. The trial court held the photographs were relevant and acknowledged that, while they had some prejudicial effect, this prejudicial effect did not substantially outweigh the photographs' probative value. As to Defendant Jones's status as a juvenile when the photographs were taken, the trial court determined that a Rule 404(b) analysis was not required because the jury would not know Defendant Jones's age. Nevertheless, assuming *arguendo* that Rule 404(b) did apply, the trial court conducted a Rule 404(b) analysis and found the photographs were still admissible. The trial court determined that the photographs clearly and convincingly showed Defendant Jones committing a crime by possessing a firearm as a juvenile. However, it found that the photographs were relevant to the material issue of identity and that their probative value was not outweighed by the danger of unfair prejudice.

At trial, the following evidence was adduced. The victim testified that on the night of August 7, 2018, he returned home from work around 10:30 p.m. and parked his vehicle in the attached garage of his residence. When he opened his vehicle door, he was attacked by two individuals. The first individual, later identified as Defendant Glover, struck the victim on the head with a gun and told the victim to "shut the f--- up." Defendant Glover demanded the victim's wallet, cellphone, and keys and then told the victim to put his hands on the steering wheel. The victim complied with these demands while Defendant Glover held a black semiautomatic pistol to the victim's head. Defendant Glover handed the victim's belongings to the second individual, who had a silver semiautomatic pistol with a black grip, and whom the victim later identified as Defendant Jones. Defendant Glover punched the victim in the back of his head, grabbed him by his shirt collar, pulled him out

of the vehicle, slammed his body against the wall, and punched him three times. As the Defendants looked through the victim's wallet, they continued to tell the victim to "shut the f--- up" and asked how much cash the victim was carrying. The victim informed the Defendants that he did not carry cash, to which the Defendants became "increasingly angry and aggressive with their assault" and continued to punch the victim.

The victim identified his debit card inside his wallet and told the Defendants to take it to an ATM. The victim repeatedly gave the Defendants his PIN, but they could not remember it and became "increasingly agitated." Defendant Glover looked toward the door of the victim's house and asked in a "very sinister tone" who was inside the house. The victim said his wife and children were inside asleep and pleaded with the Defendants to leave his family "out of this." As the Defendants began to walk toward the victim's house with their firearms still pointed at the victim, they asked whether there was any cash inside the house. The victim said that nothing valuable was inside, that all his cash was in the bank, and that any jewelry was inside a security box at the bank. Trying to prevent the Defendants from going into his house, and prepared to sacrifice himself for his family, he convinced the Defendants to take him to Regions Bank where he had an account and would make a withdrawal. The victim testified that, at that moment, he had three goals: (1) to protect his family, (2) to survive the ordeal, and (3) to "try to gather as much information as [he] could if [he] survived."

The victim said the altercation in the garage lasted approximately 30 to 120 seconds. During this time, he was "face-to-face" with Defendant Jones and was even closer to Defendant Glover, comparing it to being within the confines of the witness box together. Additionally, the garage was as well-lit as the courtroom, according to the victim.

While walking the victim to the Defendants' vehicle, Defendant Glover walked behind the victim with one hand on the victim's shoulder and the other holding his gun against the victim's back. Defendant Jones walked ahead with his gun pointed back toward the victim. Defendant Jones would occasionally wait for Defendant Glover and the victim to catch up, and once they did, he would put his gun to the victim's forehead. The Defendants threatened to kill the victim, saying that they would "blow a hole" through the victim's head if he tried to escape and that, if he called the police, they would return to his house and murder his wife and children while he watched. The victim testified that he believed he would never see his family again. The area along this forced march was illuminated by neighbors' exterior lights, landscaping lights, and streetlights. The victim indicated that despite his being struck multiple times in the head, he was not "dizzy" and was "paying attention."

The Defendants and the victim arrived at the Defendants' vehicle, which was a mid-2000s Nissan sedan. The victim was not sure whether it was a Nissan Maxima or Nissan Altima. The vehicle was a "unique" color of black or dark gray with a matte finish. Three other individuals were inside the vehicle. The victim got into the back seat beside one of the other individuals in the vehicle. Defendant Glover sat beside the victim. Before Defendant Jones entered the vehicle, Defendant Glover told him to go back and get the victim's car. Defendant Jones left and returned "very frantic." He leaned through the vehicle's window, pointed his gun at the victim, and asked how to drive the victim's car. When the victim informed Defendant Jones his car was a stick shift, Defendant Jones said, "s---" and that he did not know how to drive it. No one else in the Defendants' vehicle knew how to drive a stick shift either, and the driver, later identified as Codefendant Harris, told Defendant Jones to get inside the vehicle, noting that this interaction was taking too long. Defendant Jones then sat beside Defendant Glover in the back seat of the vehicle, and they drove off. The victim acknowledged having previously given inconsistent statements as to which Defendant went back to the victim's garage to steal his vehicle and which Defendant sat next to him in the vehicle and held a gun against him during the drive to Regions Bank.

As the victim directed the Defendants to Regions Bank, Defendant Glover "shoved" the victim's head between the victim's knees and kept his gun either against the victim's ribcage or head. However, the victim had a view of the vehicle's dashboard and observed that the glass between the steering wheel and speedometer was "foggy and bubbly." The victim noted the route to Regions Bank was illuminated by streetlights and well-lit intersections. The victim also heard one of the individuals in the car say the name "Jimmy." Either Defendant Jones or Codefendant Harris responded by saying, "[D]on't say my f---ing name." During this drive, the victim was directed to turn off the location services on his cellphone, but when he could not, his phone was thrown from the vehicle, and he was hit again. The victim's Apple Watch was also removed and thrown from the vehicle.

Once they arrived at Regions Bank and became concerned about an ATM camera, the Defendants and other individuals in the vehicle argued amongst themselves over which of them would withdraw the money from the ATM. Sensing an opportunity to escape, the victim offered to make the withdrawal. The Defendants refused, saying they were "not through" with the victim. The victim pointed out that the Defendants were "rolling six [deep] in an old Nissan in the middle of Green Hills at eleven o'clock at night, sitting in a bank parking lot." If the Defendants were stopped with the victim in the vehicle, they would be "done." Codefendant Harris said to let the victim out to make the withdrawal and that, afterwards, they would take the victim home. The victim said to leave him at the bank, noting he did not have a cell phone and could not call the police.

As the victim exited the vehicle, the Defendants said if the victim ran or yelled out, they would shoot him in the back and then kill his family. The victim had previously informed the Defendants that he had \$1,500 in the bank. However, when he attempted to make the withdrawal, he was only permitted to withdraw \$800. The victim started to “panic” but then folded the money to create the appearance of a larger stack. As he walked back to the front passenger side of the vehicle, the window was cracked with a muzzle of a gun pointed toward him. Once the victim handed the money to the individual in the front passenger seat, the car drove away. The victim said the entire encounter, beginning with the attack in the garage, lasted approximately fifteen minutes.

A video recording of the victim’s withdrawing money from the ATM was entered as an exhibit. The video recording showed four angles. While the victim can be seen walking from a vehicle, the poor quality of the recording prevents any other individuals inside the vehicle from being seen. The video depicts the victim’s making a withdrawal and, for a moment, appearing frustrated. During this time, the vehicle remains behind the victim with its headlights on. The victim then briefly returns to the vehicle and appears to hand something to a passenger before the vehicle speeds away, revealing the dark color of the vehicle.

As the Defendants’ car drove away, the victim observed the license plate number and attempted to memorize it. He did not notice whether the vehicle was missing a rear bumper. He then jumped a fence and walked to an open business. From there, he wrote down what he remembered of the license plate number and called his wife. As he was unsure whether the Defendants would return to his house, he gave his wife specific instructions on how to get their children and exit their house. Once the victim’s wife picked up the victim, he instructed her to drive to the area where the Defendants had thrown his cell phone from the vehicle. After searching the area, he located his cell phone and, hoping it would have the Defendants’ fingerprints on it, used a Kleenex to retrieve it.

Not wanting to return home, the victim and his family went to his wife’s parents’ house. At first, the victim refused to call the police because he was “terrified” of the threats the Defendants had made against his family. However, his father-in-law convinced him to “do what’s right,” so he called the police.

Once law enforcement arrived at his wife’s parents’ house, the victim gave the police a brief description of what had happened, attempting to leave the names of his family members out of the report. He also gave the police the license plate number he had written down. He described the Defendants as young, African American males and said that the first individual who had struck him in the garage had short curly hair. When he attempted to give the police his cell phone to use for obtaining potential fingerprints, he was instructed

to keep it, as fingerprints were difficult to lift from cell phones. Two officers drove the victim back to his house. Once at the victim's house, the officers located the victim's wallet, returned it to him, and lifted fingerprints from the victim's vehicle's window and house doorknob. The victim affirmed that the police did not take his debit card into evidence. The victim declined medical attention.

The victim testified that when he awoke the next day, August 8, 2018, he had contusions and swelling on the left side of his face and head from his being repeatedly "pistol-whipped" and punched.

Over the renewed objection of both Defendant Glover's and Defendant Jones's attorneys, the State sought to introduce two photographs, one showing Defendant Jones possessing a firearm, and another showing Defendant Glover in possession of a firearm. The State noted that, while the victim provided the descriptions of the firearms, another witness would testify as to when the photographs were taken. Relative to the photograph involving Defendant Glover, Defendant Glover's lawyer again noted the fungible nature of firearms and argued that because the photograph was taken on June 5, 2018, two months prior to the incident, the photograph was not indicative of recent ownership. She further contended that the barrel of the gun was not visible, so no particular markings were viewable in the photograph, making it substantially misleading. Regarding the photograph of Defendant Jones, Defendant Jones's lawyer argued that the victim gave too generic a description of the firearm and, as the photograph depicting Defendant Jones in possession of a firearm was taken August 14, 2018, a week after the incident, it was too removed in time from the incident to be relevant. The trial court admitted the photographs subject to certain redactions and found the photographs were close in time to the offenses and the firearms in the photographs were similar enough to the victim's description of the weapons used.

The "selfie" of Defendant Glover that was admitted into evidence showed him with a neutral expression on his face wearing a shirt with a cartoon teddy bear and casually pointing a handgun with a visible black barrel at the camera. The victim stated the gun in the photograph was "very similar" to the gun Defendant Glover had used during the commission of the offenses. The photograph of Defendant Jones showed him in a crouched position, wearing a red jersey, and holding a silver handgun with a black grip in one hand pointed upward. The victim affirmed this was a similar gun to the one Defendant Jones had used during the incident. Tennessee Bureau of Investigation Special Agent Chet Mason testified that he recovered the photograph taken from Defendant Jones's cell phone and noted it was dated August 14, 2018.

Detective Patrick Cuthbertson of the Metropolitan Nashville Police Department (“MNPd”) testified that, from the victim’s description of the Defendants’ vehicle and the license plate number given by the victim, Defendant Glover was quickly developed as a suspect. He further noted that Defendant Glover matched the description the victim had given him regarding one of the perpetrators, though Det. Cuthbertson could not recall at trial the precise description given. While the license plate number was “off a little,” Det. Cuthbertson got a match to a white 2009 Nissan Maxima. Police incident reports detailing various traffic stops of this vehicle indicated it had been spray-painted a matte black or gray. During some of these previous stops, Defendant Glover, who was driving the vehicle, identified himself as the owner of the vehicle and gave his cellphone number and home address. Other reports where Defendant Glover was not the driver generally showed Codefendant Harris as the driver of the vehicle with Defendant Glover as a passenger.

From this information, Det. Cuthbertson was able to prepare a photographic lineup, and the day after the incident, Det. Cuthbertson called the victim and requested that he come to the police station to review the lineup. The victim testified that upon viewing the photographic lineup, he “immediately” recognized Defendant Glover but, still fearful of the Defendants’ threats to kill his family, did not disclose this to the detective. He asked to review the photographic lineup later once he was more rested. During his drive home from the police station, he passed Regions Bank where the incident had taken place and decided he could not “give up.” The victim then called Det. Cuthbertson and said he had recognized an individual in the photographic lineup shown to him.

Det. Cuthbertson went to the victim’s house later that day, showed the victim a second photographic lineup with the same photographs arranged in a different order, and the victim identified Defendant Glover within “seconds.” Det. Cuthbertson affirmed the second photographic lineup conducted at the victim’s house “was a pretty quick identification . . . within ten seconds.”

No recordings were made of either photographic lineup because, at the time, it was not MNPd’s policy to do so. Det. Cuthbertson acknowledged following standard police procedures and explained that he had used a “single-blind” procedure during the identification process. He explained that a single-blind procedure was when the officer who created the photographic lineup presented it to the victim, whereas a “double-blind” procedure was when an officer other than the one who created the lineup presented it to the victim. He stated a single-blind procedure was more commonly used at the time of the victim’s identification of Defendant Glover. After the victim’s identification, an arrest warrant was issued for Defendant Glover.

Three days later, the victim identified Codefendant Harris as the driver.

Further investigation led Det. Cuthbertson to the Facebook page of “Jimmy Earl.” Defendant Jones was shown in the majority of photographs on this Facebook page and the name “sanquez.jones” was included in the domain name. On August 17, ten days after the incident, Det. Cuthbertson showed the victim another photographic lineup, and he “immediately” identified Defendant Jones as the second individual in the garage that used the black and silver handgun. A warrant was issued for Defendant Jones’s arrest, and he was subsequently taken into custody.

The victim testified he was a “hundred percent” confident in his identification of the Defendants.

Officer Jaren Breece of the MNPD located the 2009 Nissan at the home address Defendant Glover had given during a previous traffic stop. Officer Breece observed Defendant Glover exit the residence, gain access to the 2009 Nissan, and then gain access to another vehicle that was associated with Codefendant Harris. As Officer Breece did not have adequate backup, Defendant Glover was not taken into custody at that time, but once Defendant Glover had left that location, the 2009 Nissan was towed to the police vehicle impound lot.

Once the 2009 Nissan was impounded, Det. Cuthbertson inventoried the vehicle and took photographs. These photographs were entered as exhibits and showed a Nissan Maxima that was spray-painted a dark gray or black with a matte finish. The right rear bumper was missing and the glass covering the control panel appeared foggy, spotted, and bubbly. Inside the vehicle, a handwritten bill of sale was located reflecting the vehicle was sold to Defendant Glover on July 4, 2018.

When Defendant Glover was arrested on August 14, 2018, he had in his possession the key fob for the 2009 Nissan and an LG Cricket cellphone. From Defendant Glover’s Facebook page, with the account name “Oso DaMan,” a photograph was entered showing Defendant Jones and Defendant Glover standing in front of a dark Nissan with a matte finish and having a license plate number partially consistent with the victim’s description.

Det. Cuthbertson affirmed that black and silver are the two dominant colors for handguns. The firearms, as well as the victim’s \$800 in cash and Apple Watch, were never recovered.

Jessica Davis, a forensic analyst with MNPD, testified as an expert in the field of fingerprint identification. She analyzed the fingerprints lifted from the victim’s vehicle’s window and house doorknob and compared them with the Defendants’ fingerprints, but

did not find any corresponding match. However, she stated the lack of a match did not exclude the possibility that the Defendants had touched these items.

Detective Chad Gish of the MNPD testified as an expert in the field of digital forensic analysis. Det. Gish stated Agent Rich Campbell from the Federal Bureau of Investigation had performed the extraction of Defendant Glover's LG Cricket cellphone using Cellebrite software. As Agent Campbell had taken a new position, the State requested Det. Gish review the extraction and report created by Agent Campbell. Det. Gish had training in Cellebrite and explained that Cellebrite was a forensic platform that extracted information from a cellphone in a searchable format. When this information was extracted from the cellphone, Cellebrite compiled the data into certain areas, such as regular phone calls made through the cellphone and calls made through applications, and it also provided labels for data coming from application sources, such as Facebook. According to Det. Gish, this Cellebrite extraction produced "significant data," and if a hard copy was produced, it would likely fill several binders and span thousands of pages.

Det. Gish reviewed the extraction data from Defendant Glover's cellphone and was asked by the State to look for information from the report indicating ownership of the cellphone. Det. Gish familiarized himself with Defendant Glover's appearance and directed his attention to Chrome Autofill. He explained that Chrome Autofill is an "artifact" used to remember user data and input this data when a user accesses a certain website. He stated, through Chrome Autofill, the owner of the phone could usually be identified, and in this case, the data on the cellphone mostly traced back to Defendant Glover. Det. Gish pointed out the autofill information which showed Defendant Glover's name, Gmail account email address, phone number, and home address, as well as other password information that contained components of Defendant Glover's name. The phone number and home address matched those given by Defendant Glover during previous traffic stops and the residence where Defendant Glover was observed accessing the 2009 Nissan before his subsequent arrest.

Det. Gish was asked to locate communications between the Defendants. While he was asked to focus his search on a certain time range prior to the date of the incident, he could not recall the exact time frame requested. During his search, he located text messages and phone calls between Defendant Glover and "Jimmy Earl." He also found seventy-one Facebook Messenger communications, including both messages and phone calls, between the Defendant and "Jimmy Earl." Det. Gish was able to link the "Jimmy Earl" Facebook page with Defendant Jones, as a Facebook account by the name "Jimmy Earl" was synced to the cell phone. Det. Gish explained that while a Facebook display name can be changed, the unique account number does not change, and the username used to set up the Facebook account was Sanchez Jones. He stated that during the time the incident was in progress,

no communications occurred between the Defendants. An exhibit showing some of the Facebook communications between the Defendants was entered as an exhibit. Det. Gish had redacted the contents of these messages.

Det. Gish additionally located communications between Codefendant Harris and Defendant Glover, although no communications between Defendant Glover and Codefendant Harris occurred around the time of the offenses. However, Det. Gish acknowledged this was a “targeted” report only showing phone calls between Defendant Glover and Codefendant Harris and not the totality of phone calls made from the cellphone.

Det. Gish located photographs of Defendant Glover on the cellphone, including the photograph, previously entered as an exhibit, of Defendant Glover and Defendant Jones standing in front of the 2009 Nissan. He also located the photograph of Defendant Glover holding a firearm. A review of the metadata of the photograph depicting Defendant Glover with the firearm revealed it was located in the Facebook folder, indicating that it had been stored on that platform. Det. Gish could not conclusively say whether this photograph was uploaded to Facebook from the cellphone, downloaded to the cellphone from Facebook, or if it had been previously sent through a text message. Though the photograph was saved to the cellphone on June 5, 2018, it was likely taken at a different time.

The State rested, and the Defendants did not present any proof. The jury found the Defendants guilty of the lesser included offense of aggravated kidnapping, aggravated robbery, attempted carjacking, and employing a firearm during the commission of a dangerous felony as it related to the attempted carjacking offense.

A sentencing hearing was held on June 10, 2022, and Defendant Glover’s presentence report was entered as an exhibit. The trial court considered the purposes and principles of sentencing and Tennessee Code Annotated section 40-35-102, stating that the punishment imposed must be justly deserved in relationship to the seriousness of the offense. It applied enhancement factors (1), (2), (6), and (8), as codified in Tennessee Code Annotated section 40-35-114, but found no mitigating factors applicable.

Defendant Glover was sentenced to twelve years for both his aggravated kidnapping and aggravated robbery offenses. These were ordered to run consecutively. He was sentenced to six years for his offenses of attempted carjacking and employment of a firearm during the commission of a dangerous felony. These offenses were ordered to run consecutively to each other but concurrently to his other two offenses for a total effective sentence of twenty-four years.

As to its consecutive sentencing decision, the trial court found that the dangerous offender factor was “absolutely” applicable under these circumstances. *See* Tenn. Code Ann. § 40-35-115(b)(4). The trial court found that Defendant Glover’s behavior indicated little or no regard for human life and that he had no hesitation about committing a crime in which the risk to human life was high. The trial court further found that the aggregate term was necessarily related to the severity of the offenses and was necessary to protect the public from further serious criminal conduct by Defendant Glover. Supporting its reasoning, the trial court noted that the victim was “minding his own business” when he pulled into his garage. He was beaten by two individuals who not only hit him but also put guns to his head. The victim was then forced to determine how to keep these individuals from harming his family and managed to convince them to take him to the bank.

Both Defendants filed a motion for new trial. Defendant Glover argued, *inter alia*, that the jury verdict weighed against the evidence and that the trial court erred by admitting a photograph from social media showing him possessing a firearm approximately one month before the incident and by imposing an excessive sentence. Defendant Jones argued that the trial court erred by admitting the photograph of him possessing a firearm because it violated Tennessee Rule of Evidence 404(b). A hearing was held on the Defendants’ motions, and the trial court subsequently entered a written order denying both. This timely appeal followed.

II. ANALYSIS

A. Defendant Jones

1. Tennessee Rule of Evidence 404(b)

Defendant Jones argues that the trial court erred by admitting a photograph depicting him as a juvenile possessing a firearm. He alleges that because Tennessee Code Annotated section 39-17-1319(b) makes it an offense for a juvenile to possess a handgun, the photograph showed him committing a crime and, thus, its admission must have complied with Tennessee Rule of Evidence 404(b). The State responds that a Rule 404(b) analysis was not required because the jury was unaware of Defendant Jones’s status as a juvenile, but, nevertheless, the trial court performed a Rule 404(b) analysis and acted within its discretion by admitting the photograph.

To be admitted into evidence, a photograph must be relevant to an issue at trial. *See State v. Banks*, 564 S.W.2d 947, 949 (Tenn. 1978). “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the

evidence.” Tenn. R. Evid. 401. Generally, relevant evidence is admissible. Tenn. R. Evid. 402. The court may, however, exclude relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Tenn. R. Evid. 403. The decision regarding the admissibility of photographs lies within the sound discretion of the trial court and that ruling will not be overturned on appeal absent a clear showing of an abuse of that discretion. *Banks*, 564 S.W.2d at 949.

The admission of evidence of other bad acts by an individual is governed by Tennessee Rule of Evidence 404(b). Generally speaking, “[e]vidence of a person’s character or trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion[.]” Tenn. R. Evid. 404(a). Such evidence may, however, be admitted for other purposes if the following conditions are met prior to admission of this type of proof:

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

Tenn. R. Evid. 404(b). “Other purposes” include the defendant’s motive, intent, guilty knowledge, identity, absence of mistake or accident, a common scheme or plan, completion of the story, opportunity, and preparation. *State v. Berry*, 141 S.W.3d 549, app. 582 (Tenn. 2004). When the trial court substantially complies with the procedural requirements of Rule 404(b), this court will overturn the trial court’s ruling only when there has been an abuse of discretion. *State v. Thacker*, 164 S.W.3d 208, 240 (Tenn. 2005).

Here, while the trial court found that a Rule 404(b) analysis was not required for the photograph depicting Defendant Jones as a juvenile possessing a firearm, it nevertheless conducted the analysis. After a pretrial hearing, the trial court issued a written order finding that the photograph was clear and convincing proof that Defendant Jones had committed a crime pursuant to Tennessee Code Annotated section 39-17-1319(b). The trial court then

determined that the photograph was relevant to the material issue of identity. Finding that the probative value of the photograph was not outweighed by the danger of unfair prejudice, the trial court ruled the photograph was admissible conditioned upon the State's laying the proper foundation. As the trial court substantially complied with the requirements of Rule 404(b), our review is for an abuse of discretion.

We conclude that the record supports the trial court's decision. The victim testified that Defendant Jones used a silver handgun with a black grip during the incident. The victim was in close proximity to Defendant Jones throughout the encounter and had this firearm pointed at his head multiple times, giving him ample time to observe it. As identity was a key issue in this case, any evidence connecting Defendant Jones to the crimes was especially probative. Thus, this photograph showing Defendant Jones possessing a similar firearm to that used in the offenses dated only a week after the incident was indeed relevant to prove Defendant Jones was one of the perpetrators identified by the victim. *See State v. Carmody*, No. E2018-02115-CCA-R3-CD, 2020 WL 2931947, at *12-13 (Tenn. Crim. App. June 3, 2020) (holding the trial court did not err by finding testimony regarding the defendant, a felon, possessing a firearm consistent with the one used in the offense was relevant to the issue of identity and was admissible under Rule 404(b)).

Furthermore, possession of a firearm generally standing alone is not overly prejudicial. *See, e.g., State v. Reid*, 213 S.W.3d 792, 813-14 (Tenn. 2006), *abrogated on other grounds by State v. Miller*, 638 S.W.3d 136, 150-51 (Tenn. 2021); *State v. Wright*, No. M2019-00082-CCA-R3-CD, 2020 WL 3410247, at *18 (Tenn. Crim. App. June 22, 2020); *State v. Brown*, No. M2017-00904-CCA-R3-CD, 2019 WL 1514551, at *56-57 (Tenn. Crim. App. Apr. 8, 2019). Although Defendant Jones was a juvenile at the time the photograph was taken, elevating his possession of a firearm to a criminal offense, the jury was not informed of this. Thus, any danger of unfair prejudice was lessened. As such, we discern no abuse of discretion by the trial court's admission of the photograph. Defendant Jones is therefore not entitled to relief on this issue.

B. Defendant Glover

1. Sufficiency of the Evidence

Defendant Glover argues that the evidence was insufficient to establish his identity as one of the perpetrators of these offenses. As to this contention, he reasons that the victim failed to identify him in the first photographic lineup, that a double-blind procedure was not used at either lineup to ensure the integrity of the identification, and that no audio recording of either lineup was made. He further notes the alleged inadequacies of law enforcement's investigation: (1) law enforcement failed to test for his fingerprints on the

victim's cellphone, wallet, debit card, and on the vehicle's steering wheel; (2) law enforcement failed to retrieve his location information during the incident from his cellphone data; (3) the stolen items were not found in his possession; (4) he was excluded as a contributor from the fingerprints found on the victim's vehicle's window; and (5) no evidence was presented linking the firearm used in the offenses to the one he is shown holding in a photograph admitted into evidence. The State contends that the evidence was sufficient to support the Defendant's convictions.

The United States Constitution prohibits the states from depriving "any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend. XIV, § 1. A state shall not deprive a criminal defendant of his liberty "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). In determining whether a state has met this burden following a finding of guilt, "the relevant question 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). Because a guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt, the defendant has the burden on appeal of illustrating why the evidence is insufficient to support the jury's verdict. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). If a convicted defendant makes this showing, the finding of guilt shall be set aside. Tenn. R. App. P. 13(e).

"Questions concerning the credibility of witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). Appellate courts do not "reweigh or reevaluate the evidence." *Id.* (citing *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978)). "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). Therefore, on appellate review, "the State is entitled to the strongest legitimate view of the trial evidence and all reasonable or legitimate inferences which may be drawn therefrom." *Cabbage*, 571 S.W.2d at 835.

The identity of the perpetrator is an essential element of any crime. *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006) (citing *State v. Thompson*, 519 S.W.2d 789, 793 (Tenn. 1975)). The State has the burden of proving the identity of the defendant as the perpetrator beyond a reasonable doubt. *State v. Sneed*, 908 S.W.2d 408, 410 (Tenn. Crim. App. 1995) (citing *White v. State*, 533 S.W.2d 735, 744 (Tenn. Crim. App. 1975)). Identity is a question of fact for the jury's determination upon consideration of all competent proof. *State v. Thomas*, 158 S.W.3d 361, 388 (Tenn. 2005). As with any sufficiency analysis, the State is entitled to the strongest legitimate view of the evidence concerning identity

contained in the record, as well as all reasonable inferences which may be drawn from the evidence. *See id.* (citing *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992)); *see also State v. Miller*, 638 S.W.3d 136, 158-59 (Tenn. 2021).

Despite the Defendant's assertion to the contrary, we conclude that the State presented sufficient evidence to establish Defendant Glover's identity as a perpetrator in these offenses. While the victim had never met Defendant Glover prior to this incident, the two were in close proximity in well-lit areas for approximately fifteen minutes. The victim testified that one of his goals was to remember as many details as possible if he survived and, as such, he was "paying attention." Due to his concern for his family's safety, the victim was understandably hesitant to identify Defendant Glover initially but quickly made a subsequent identification within "seconds." The victim was one hundred percent certain of his identification. Moreover, the jury heard during Det. Cuthbertson's cross-examination that he followed standard police procedure, a double-blind procedure was not used nor required, and neither lineup was recorded.

Additionally, although Defendant Glover alleges that the multiple investigation failures further demonstrate that the State failed to prove his identity as a perpetrator of these offenses, he fails to acknowledge the evidence discovered during the investigation. Law enforcement identified a partial match from the license plate number given by the victim to a vehicle Defendant Glover owned, and this vehicle matched the unique description the victim gave of the vehicle used in the offenses. Defendant Glover matched the description of one of the perpetrators the victim gave to Det. Cuthbertson. Reports associated with this vehicle connected Defendant Glover to Codefendant Harris, an individual also identified by the victim as being a perpetrator. Furthermore, Defendant Glover's cell phone records connected him to Codefendant Harris and Defendant Jones, who was also identified by the victim. These records showed that while Defendant Glover communicated with his codefendants with some frequency, no communications were reflected during the time these offenses were taking place. Additionally, the jury heard that the victim's stolen items were not recovered, that many of the items Defendant Glover allegedly touched were not tested for fingerprints, and that Defendant Glover was excluded from those fingerprints discovered on the victim's vehicle's window.

It is for the jury to decide what weight to give to the evidence and to determine the credibility of witnesses. *Bland*, 958 S.W.2d at 659. Furthermore, evidence does not need to exclude every other reasonable hypothesis except that of guilt, provided that a reasonable trier of fact could find a defendant's guilt was established beyond a reasonable doubt. *See State v. Davis*, 466 S.W.3d 49, 70 (Tenn. 2015) (citing *State v. Dorantes*, 331 S.W.3d 370, 381 (Tenn. 2011)). Based on the evidence, it is clear that a rational trier of fact could have found Defendant Glover was a perpetrator of these offenses.

2. Admission of Photograph

Defendant Glover contends that the trial court erred by admitting a photograph depicting him holding a firearm. He first alleges the admission violated Tennessee Rule of Evidence 402. As to this argument, he claims the photograph was irrelevant because of (1) the general, unspecific description of the firearm given by the victim; (2) the State's failure to present proof that the firearm in the photograph was the one used in the offenses; (3) the fact that the gun was not found in Defendant Glover's possession; and (4) the two-month timespan between the date reflected on the photograph's metadata and the date the offenses occurred. Defendant Glover next argues the photograph's admission violated Tennessee Rule of Evidence 403 because the photograph was unfairly prejudicial, again due to the State's failure to connect the firearm in the photograph to the firearm used in these offenses. Lastly, he contends the admission of the photograph violated Tennessee Rule of Evidence 404(b), claiming that, while possessing a firearm is not a crime, the violent circumstances depicted in the photograph had similar prejudicial potential and, as such, the trial court failed to substantially comply with Rule 404(b) requirements. He requests we conduct a de novo Rule 404(b) analysis.

The State responds that the trial court did not err by admitting the photograph, as it was relevant and its probative value was not outweighed by the danger of unfair prejudice. Regarding Defendant Glover's Rule 404(b) argument, the State claims it is waived for Defendant Glover's failure to contemporaneously object on this ground and include the issue in his motion for new trial. Alternatively, the State argues that mere possession of a weapon is not a bad act implicating Rule 404(b) and that the circumstances depicted in the photograph do not create a risk for propensity evidence of violence requiring review under Rule 404(b).

We first address Defendant Glover's Rule 404(b) argument. We agree with the State that the issue is waived for failing to contemporaneously object to the photograph's admission on this ground either at the pretrial motion hearing or during trial. *See* Tenn. R. App. P. 36(a); *see also State v. Copenny*, 888 S.W.2d 450, 456 (Tenn. Crim. App. 1993) (ruling that a Rule 404(b) issue is waived when a defendant failed to make a timely objection). Moreover, an objection by a codefendant does not relieve the other defendant of the obligation to enter a contemporaneous objection in order to preserve an issue for an appeal on his behalf. *See State v. Thomas*, 158 S.W.3d 361, 400-01 (Tenn. 2005). Accordingly, Defendant Glover waived plenary review and may obtain relief, if at all, pursuant to the plain error doctrine. *See State v. Dotson*, 450 S.W.3d 1, 54 (Tenn. 2014). However, our supreme court has cautioned that our discretionary authority to review unpreserved issues for plain error must be "sparingly exercised." *See State v. Bledsoe*, 226

S.W.3d 349, 354 (Tenn. 2007). In this case, we respectfully decline to exercise that discretion because the Defendant did not request plain error review and failed to respond to the State's waiver argument.

We turn to addressing Defendant Glover's argument as it pertains to the admissibility of the photograph under general principles of relevancy found in Rules 401, 402, and 403. Here, the trial court held that this photograph was relevant conditioned upon the State's laying the proper foundation. The victim testified that the first individual who attacked him in the garage, identified as Defendant Glover, used a black semiautomatic firearm. Although no firearm was found in relation to Defendant Glover, this photograph showed him accessing a similar gun at some point prior to the offenses. This court has upheld the admission of firearm evidence based on generic descriptions when the firearms were described as similar to those used during the offenses in question. *See Brown*, 2019 WL 1514551, at *56 (finding a photograph of the defendant's holding a black and silver gun relevant as it was consistent with the victim's description of the gun used in the offense); *State v. Bailey*, No. M2018-00018-CCA-R3-CD, 2019 WL 2453278, at *4 (Tenn. Crim. App. June 12, 2019) (upholding admission of a firearm as relevant when the victim described the gun as "small," "dark," and "not silver"); *State v. Robinson*, No. M2016-02335-CCA-R3-CD, 2017 WL 4693999, at *6-8 (Tenn. Crim. App. Oct. 18, 2017) (upholding the admission of a photograph as relevant showing the defendant's holding a gun when there were "well over a million" similar guns in existence).

We note that Det. Gish could not conclusively say whether this photograph was uploaded to Facebook from the cellphone, downloaded to the cellphone from Facebook, or if it had been previously sent through a text message. He testified that though it was saved to Defendant Glover's cellphone on June 5, 2018, it was likely taken at a different time. However, the photograph was clearly relevant as it tended to connect Defendant Glover to the firearm used during the offenses and supported the victim's identification of Defendant Glover as one of the perpetrators. Moreover, the photograph was not rendered irrelevant despite the State's failure to locate the firearm in Defendant Glover's possession, conclusively connect the firearm in the photograph to the one used during the offenses, or establish the precise time the photograph was taken. *See Brown*, 2019 WL 1514551, at *56 (affirming as relevant a photograph of the defendant's holding a gun similar to that used in the offense despite no definitive link between the two guns); *State v. Reed*, No. W2009-00589-CCA-R3-CD, 2010 WL 4544777, at *7-8 (Tenn. Crim. App. Nov. 10, 2010) (holding as relevant testimony of the defendant's owning a gun four months prior to the commission of a murder although a description of the firearm was not provided and the firearm was not recovered). Additionally, the State's failure to establish a definitive link between the two firearms goes more toward the weight than the admissibility of the evidence. *See State v. Rogers*, No. E2011-02529-CCA-R3CD, 2013 WL 5371987, at *29

(Tenn. Crim. App. Sept. 23, 2013) (holding law enforcement’s failure to conclusively connect the photographed tire marks to defendant’s vehicle went to the weight the jury would give the photograph and not to its admissibility).

Furthermore, in the instant photograph, Defendant Glover is wearing a shirt with a cartoon teddy bear, has a neutral expression, and while the firearm is pointed toward the camera, the photograph is taken from a “selfie” angle. Although this photograph may have had some prejudicial effect, we cannot conclude that it substantially outweighed the photograph’s probative value. *See Brown*, 2019 WL 1514551, at *57 (holding a photograph depicting the defendant in possession of firearm consistent with that used in the offense was relevant and that the defendant failed to meet his burden showing any prejudicial effect substantially outweighed the photograph’s probative value); *Robinson*, 2017 WL 4693999, at *6-8 (holding the probative value of a photograph showing the defendant with a firearm and supporting the victim’s identification of the defendant as the perpetrator was not substantially outweighed by the danger of any unfair prejudice). Accordingly, the trial court acted within its discretion by admitting it.

3. Confrontation Clause

Defendant Glover argues that his right to confront witnesses against him was violated when information contained on his cellphone was extracted by a non-testifying agent. While Defendant Glover acknowledges this issue is waived for failing to contemporaneously object and for failing to raise it in his motion for new trial, he asserts he is still entitled to relief under the plain error doctrine. The State counters that it was not plain error for an expert to testify to the information on Defendant Glover’s cellphone based on an extraction conducted by another individual because no clear and unequivocal rule of law was breached.

Our court will reverse for plain error only if the five following prerequisites are satisfied:

- (a) the record must clearly establish what occurred in the trial court; (b) a clear and unequivocal rule of law must have been breached; (c) a substantial right of the accused must have been adversely affected; (d) the accused did not waive the issue for tactical reasons; and (e) consideration of the error is ‘necessary to do substantial justice.’

State v. Smith, 24 S.W.3d 274, 282 (Tenn. 2000) (quoting *State v. Adkisson*, 899 S.W.2d 626, 641-42 (Tenn. Crim. App. 1994)). All five factors must be present in the record before an appellate court will recognize the existence of plain error, and complete consideration

of all the factors is not necessary when it is clear from the record that at least one factor cannot be established. *Id.* at 283. In order to warrant plain error relief, the magnitude of the error must have been so significant “that it probably changed the outcome of the trial.” *Adkisson*, 899 S.W.2d at 642 (quoting *United States v. Kerley*, 838 F.2d 932, 937 (7th Cir. 1988)). Plain error relief should be “sparingly exercised[,]” see *State v. Bledsoe*, 226 S.W.3d 349, 354 (Tenn. 2007), and is only appropriate for errors that are “especially egregious in nature, striking at the very heart of the fairness of the judicial proceeding,” *State v. Page*, 184 S.W.3d 223, 231 (Tenn. 2006). A defendant has the burden of persuading the appellate court that plain error exists. *Bledsoe*, 226 S.W.3d at 355.

The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI. The right of confrontation is fundamental and applies to the states through the Fourteenth Amendment. *Pointer v. Texas*, 380 U.S. 400, 403 (1965); *State v. Henderson*, 554 S.W.2d 117, 119 (Tenn. 1977). The Tennessee Constitution contains a similar provision stating “[t]hat in all criminal prosecutions, the accused hath the right . . . to meet the witnesses face to face.” Tenn. Const. art. I, § 9. “The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact.” *Maryland v. Craig*, 497 U.S. 836, 845 (1990). Our supreme court has held that in reviewing confrontation issues under our state constitution, we apply the same analysis used to evaluate confrontation claims under our federal constitution. *State v. Hutchinson*, 482 S.W.3d 893, 905 (Tenn. 2016). Accordingly, “we ‘unitarily analyze the [D]efendant’s federal and state constitutional claims, as the same standards govern both.’” *Id.* (quoting *Dotson*, 450 S.W.3d at 62).

Defendant Glover provides no Tennessee caselaw—and we know of none—that squarely addresses these types of reports in the Confrontation context. Our supreme court in *Hutchinson* provided a framework to determine whether a statement is testimonial in these types of situations. See generally 482 S.W.3d 893 (Tenn. 2016). The issue involved in *Hutchinson* concerned an autopsy report being testified to by a medical examiner who was not involved in its preparation. *Id.* at 900-01. In determining whether a statement is testimonial, the court held that the threshold question is whether the out-of-court statement’s primary purpose is to prove past events that are potentially relevant to a criminal prosecution. *Id.* at 910. Once this is determined, a court must consider “whether: (1) the [statement] has “indicia of solemnity” or (2) the primary purpose of the [statement] was to accuse a targeted individual[.]” *Id.* If the statement “meets the threshold standard and either of the latter two standards, it is considered testimonial within the meaning of the Confrontation Clause.” *Id.* at 910-11. The *Hutchinson* court held that, while the autopsy

report was objectively “meant to serve as evidence in a potential criminal trial[,]” thereby satisfying the threshold issue, it was nontestimonial because it was prepared in the normal course of business and did not have a primary purpose of targeting an accused defendant. *Id.* at 911-12, 914.

This court has previously held testimony concerning fingerprint evidence similarly situated as not being testimonial. In *State v. Johnson*, an officer testified that the defendant’s fingerprint was lifted from the crime scene but had been lifted by an officer who had since passed away. No. M2014-01494-CCA-R3-CD, 2015 WL 5310910, at *2, 13 (Tenn. Crim. App. Sept. 10, 2015). The defendant challenged this testimony as violating his right to confrontation because he could not cross-examine the officer who had lifted the fingerprint. *Id.* at *17. A panel of this court held this testimony was not a Confrontation Clause violation because the defendant was not a suspect at the time—*i.e.*, he was not a targeted individual—and the officer who collected the fingerprint was unaware it would be relevant at trial—*i.e.*, the primary purpose of the statement was not evidentiary. *Id.* at *20. Furthermore, the court reasoned that the latent fingerprint, without an expert’s testimony connecting it to the defendant, shed no light on the defendant’s guilt, and the expert who matched the fingerprint to the defendant was available for cross-examination. *Id.*

This court has also previously determined that computer-generated phone records, such as call logs, did not implicate hearsay concerns. See *State v. Meeks*, 867 S.W.2d 361, 376 (Tenn. Crim. App. 1993). In a footnote, the *Meeks* court also noted that the defendants raised a Confrontation issue on appeal. *Id.* 376 n.2. Waiver notwithstanding, the *Meeks* court stated that the defendants confronted and cross-examined the witnesses who testified about the computer system’s functioning and resulting printouts; accordingly, there were no other witnesses to confront. *Id.*

Moreover, other jurisdictions have addressed this issue and found a Cellebrite report extracted by a non-testifying agent to be nontestimonial. See *State v. Green*, 543 P.3d 484, 489-93 (Idaho 2024) (finding no Confrontation Clause violation where a non-testifying agent extracted data from defendant’s cell phone because the testifying agent performed an independent analysis of the raw data); *United States v. Arce*, 49 F.4th 382, 391-94 (4th Cir. 2022) (noting a Cellebrite extraction, as machine-generated data, does not constitute a “statement” under the Confrontation Clause); *United States v. Rubio*, No. 21-50886, 2022 WL 17246937, at *2 (5th Cir. Nov. 28, 2022) (unpublished) (holding a defendant’s Confrontation challenge to the entire Cellebrite report failed because cell phone extraction reports are not testimonial as they are “machine-generated results”).

Any relevance to the present offenses established from the extraction report came from Det. Gish's analysis of the data, who was at trial and available for cross-examination. Accordingly, we conclude that Defendant Glover has failed to establish that a clear rule of Confrontation law was breached by the admission of Det. Gish's testimony concerning the Cellebrite extraction.

Additionally, we cannot conclude that consideration of any error in the admission of the testimony is necessary to do substantial justice. As we have outlined above, there was significant additional evidence establishing Defendant Glover's guilt for these offenses other than what was testified to in the extraction report. As such, Defendant Glover is not entitled to plain error relief on this issue. *See State v. Vance*, 596 S.W.3d 299, 256-57 (Tenn. 2020) (holding a defendant did not establish a Confrontation Clause violation required substantial justice relief because the remaining evidence consisted of witnesses' identifications and descriptions of the defendant along with incriminating statements the defendant made to other individuals).

4. Consecutive Sentencing

Defendant Glover argues that the trial court erred by imposing consecutive sentences for his aggravated kidnapping and aggravated robbery convictions. Specifically, Defendant Glover contends that while the trial court recited the required *Wilkerson* considerations, it did not explain how the aggregate sentence was necessary to protect the public from further criminal acts by him. He further argues the State's proof did not establish that he was a dangerous offender. The State argues the trial court made the appropriate findings and acted within its discretion by ordering consecutive sentences.

When an accused challenges the length of a sentence or manner of service, this court reviews the trial court's sentencing determination under an abuse of discretion standard accompanied by a presumption of reasonableness. *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). The *Bise* standard of review also applies to consecutive sentencing determinations. *State v. Pollard*, 432 S.W.3d 851, 860-61 (Tenn. 2013). The party challenging the sentence imposed by the trial court has the burden of establishing that the sentence is erroneous. Tenn. Code Ann. § 40-35-401, Sentencing Comm'n Cmts.; *see also State v. Arnett*, 49 S.W.3d 250, 257 (Tenn. 2001).

A trial court may order multiple offenses to be served consecutively if it finds by a preponderance of the evidence that a defendant fits into at least one of the categories in Tennessee Code Annotated section 40-35-115(b). "Any one of these grounds is a sufficient basis for the imposition of consecutive sentences." *Pollard*, 432 S.W.3d at 862 (citing *State v. Dickson*, 413 S.W.3d 735, 748 (Tenn. 2013)). This court must give "deference to

the trial court's exercise of its discretionary authority to impose consecutive sentences if it has provided reasons on the record establishing at least one of the . . . grounds listed in Tennessee Code Annotated section 40-35-115(b)." *Id.* at 861. "So long as a trial court properly articulates reasons for ordering consecutive sentences, thereby providing a basis for meaningful appellate review, the sentences will be presumed reasonable and, absent an abuse of discretion, upheld on appeal." *Id.* at 862 (citing Tenn. R. Crim. P. 32(c)(1); *Bise*, 380 S.W.3d at 705). When imposing consecutive sentences, the court must still consider the general sentencing principles that each sentence imposed shall be "justly deserved in relation to the seriousness of the offense," "no greater than that deserved for the offense committed," and "the least severe measure necessary to achieve the purposes for which the sentence is imposed." Tenn. Code Ann. §§ 40-35-102(1), -103(2), -103(4); *State v. Imfeld*, 70 S.W.3d 698, 708 (Tenn. 2002). Additionally, when the imposition of consecutive sentences is based upon the trial court's finding the defendant to be a dangerous offender, the court must also find "that the terms imposed are reasonably related to the severity of the offenses committed and are necessary in order to protect the public from further criminal acts by the offender." *State v. Wilkerson*, 905 S.W.2d 933, 938 (Tenn. 1995); *see also Pollard*, 432 S.W.3d at 863-64.

Relative to the applicable standard of review, Defendant Glover contends that the trial court abused its discretion by failing to explain how an aggregate sentence of twenty-four years in prison was necessary to protect the public from further criminal acts by him. We cannot agree. After considering the purposes and principles of sentencing, the trial court found that the dangerous offender category "absolutely" applied and made the additional *Wilkerson* findings that the aggregate sentence reasonably related to the severity of the offenses and that it was necessary to protect the public from further criminal acts by Defendant Glover. In support of its decision to apply these factors, the trial court found that the victim was minding his own business in his garage when he was beaten and held at gunpoint by two individuals, one of whom was Defendant Glover. The victim was then forced to determine how to keep these individuals from entering his home to save his wife and children and, in doing so, convinced the perpetrators to take him to the ATM. As such, the trial court made the appropriate *Wilkerson* findings. *See Wilkerson*, 905 S.W.2d at 938; *Pollard*, 432 S.W.3d at 863-64. Accordingly, the trial court's sentencing decision is afforded the presumption of reasonableness.

Defendant Glover also argues that the proof did not support the trial court's finding that he was a dangerous offender whose actions indicated little or no regard for human life and that he had no hesitation about committing a crime in which the risk to human life was high. *See* Tenn. Code Ann. § 40-35-115(b)(4). As to this contention, he acknowledges that he punched the victim and struck the victim once with the firearm. However, Defendant Glover claims that because he never discharged his firearm or caused the victim

serious bodily injury, he does not qualify as a dangerous offender. However, he provides no legal authority in support of this point. *See* Tenn. R. App. P. 27(a)(7); Tenn. Ct. Crim. App. R. 10(b). Regardless, this court has upheld a defendant’s classification as a dangerous offender when the defendant only pointed a firearm at unarmed victims but never discharged the weapon. *See State v. Murdock*, No. W2021-01529-CCA-R3-CD, 2022 WL 17489136, at *3 (Tenn. Crim. App. Dec. 7, 2022), *no perm. app. filed*; *State v. Anderson*, No. M2020-00120-CCA-R3-CD, 2021 WL 809769, at *16 (Tenn. Crim. App. Mar. 3, 2021); *State v. Duncan*, No. W2017-00529-CCA-R3-CD, 2018 WL 1182579, at *11 (Tenn. Crim. App. Mar. 6, 2018). By contrast, Defendant Glover “pistol-whipped” and punched the unarmed victim causing the victim to suffer contusions and swelling. Furthermore, Defendant Glover pointed his firearm at the victim multiple times and repeatedly threatened to kill both the victim and the victim’s family. As such, the record supports the trial court’s finding that Defendant Glover was a dangerous offender.

Accordingly, the trial court acted within its discretion ordering consecutive sentences.

III. CONCLUSION

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

KYLE A. HIXSON, JUDGE