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

STATE OF TENNESSEE v. BRIAN R. GADBOIS

Appeal from the Criminal Court for Wilson County
Nos. 20-CR-533, 21-CR-246 Brody N. Kane, Judge

No. M2024-00427-CCA-R3-CD

Following a trial, a jury found Defendant, Brian R. Gadbois, guilty of ten counts of rape of a child, three counts of aggravated assault, seven counts of aggravated sexual battery, and four counts of indecent exposure, for which the trial court imposed an effective sentence of 475 years. On appeal, Defendant contends that: (1) the trial court erred in not granting his request for a mistrial; (2) the trial court abused its discretion when it denied his motion to sever offenses while simultaneously granting the State's motion to proceed on both of his indictments during the same trial; (3) the trial court committed plain error when it allowed the State to introduce two reports that were prepared by individuals who did not testify at trial; and (4) the trial court erred in imposing consecutive sentences. Following a thorough review, we affirm the judgments of the trial court.

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

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which TIMOTHY L. EASTER and JILL BARTEE AYERS, JJ., joined.

Daniel J. Murphy (on appeal), Lewisburg, Tennessee; Michael L. Freeman (at motion for new trial hearing), Nashville, Tennessee; Shelley Thompson Gardner, District Public Defender; and Kelly Skeen, James Clemmons, and Brittany Davis (at trial), Assistant District Public Defenders, for the appellant, Brian R. Gadbois.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Jason Lawson, District Attorney General; and Thomas Swink, Justin Harris, and Laura Bush, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. Factual and Procedural Background

In June 2020, the Wilson County Grand Jury issued an indictment, in case number 20-CR-533, charging Defendant with the following offenses:[1]

Count	Offense	Classification	Victim
1	Rape of a Child	Class A felony	M.G.[2]
2	Rape of a Child	Class A felony	M.G.
3	Rape of a Child	Class A felony	M.G.
4	Rape of a Child	Class A felony	M.G.
5	Rape of a Child	Class A felony	M.G.
6	Rape of a Child	Class A felony	M.G.
7	Rape of a Child	Class A felony	M.G.
8	Rape of a Child	Class A felony	M.G.
9	Rape of a Child	Class A felony	M.G.
10	Rape of a Child	Class A felony	M.G.
11	Aggravated Assault	Class C felony	M.G.
12	Aggravated Assault	Class C felony	Ni.G.
13	Aggravated Assault	Class C felony	Na.G.
14	Child Abuse	Class A misdemeanor	M.G.
15	Child Abuse	Class A misdemeanor	M.G.
16	Child Abuse	Class A misdemeanor	Ni.G.
17	Child Abuse	Class A misdemeanor	Ni.G.
18	Child Abuse	Class A misdemeanor	Na.G.
19	Child Abuse	Class A misdemeanor	Na.G.

In April 2021, the Wilson County Grand Jury indicted Defendant, in case number 21-CR-246, with the following offenses:

Count	Offense	Classification	Victim
1	Aggravated Sexual Battery	Class B felony	M.G.
2	Aggravated Sexual Battery	Class B felony	M.G.
3	Sexual Activity with an Animal	Class E felony	

[1] The trial court later granted Defendant's motion for judgment of acquittal on counts 14-19 at the close of the State's proof.

[2] It is the policy of this court to refer to minor victims by their initials only.

4	Aggravated Sexual Battery	Class B felony	M.G.
5	Aggravated Sexual Battery	Class B felony	M.G.
6	Aggravated Sexual Battery	Class B felony	M.G.
7	Indecent Exposure	Class A misdemeanor	
8	Aggravated Sexual Battery	Class B felony	M.G.
9	Indecent Exposure	Class A misdemeanor	
10	Indecent Exposure	Class A misdemeanor	
11	Aggravated Sexual Battery	Class B felony	M.G.
12	Indecent Exposure	Class A misdemeanor	

The record reflects that the Wilson County Grand Jury also issued a one-count indictment, in case number 20-CR-638, charging Defendant with a violation of the sex offender registry.[3]

Motions to Join and Sever Offenses

The State subsequently filed a motion to join offenses, as well as a motion to consolidate the indictments, requesting that the trial court join Defendant's three cases for trial. The State alleged that the offenses could be joined pursuant to Rule 8 of the Tennessee Rules of Criminal Procedure because they were "part of a common scheme or plan" and because they were of "the same or similar character."

Defendant then filed a motion to sever offenses pursuant to Rule 14 of the Tennessee Rules of Criminal Procedure. Specifically, Defendant requested that the trial court: (1) sever counts 1-10 (Rape of a Child) from all remaining counts in case number 20-CR-533; (2) sever count 3 (Sexual Activity with an Animal) from all remaining counts in case number 21-CR-246; and (3) sever counts 7, 9, 10 and 12 (Indecent Exposure) from all remaining counts in case number 21-CR-246. Defendant asserted that the counts should be severed and multiple trials set because the offenses were not of the same or similar character; that the offenses were not part of a common scheme or plan; and that severance was "appropriate to promote a fair determination of . . . [D]efendant's guilt or innocence of each offense and protect his due process rights[.]"

At a hearing on the competing joinder and severance motions, the State called CeCe Ralston, a forensic interviewer with the 15th Judicial District Child Advocacy Center. Ms. Ralston testified that in April 2020, she interviewed Defendant's three children— daughter M.G., and sons Ni.G., and Na.G. She first interviewed M.G. and then interviewed Ni.G. and Na.G. four days later. Ms. Ralston stated that the children "talked very straight-forwardly [and] . . . in great detail" and that she saw no indication of them having a motive

[3] Case number 20-CR-638 is not a part of the instant appeal.

to falsify or distort their disclosures. Ms. Ralston testified that, at the time of the interview, M.G. was eleven years old. She said that M.G. "was able to tell [her] about incidents in detail and in sequence[.]" Ms. Ralson recalled that Ni.G. was ten years old, that Na.G. was nine years old, and that both boys were "very articulate[.]"

When M.G. was interviewed by Ms. Ralston, M.G. disclosed that Defendant's abuse began when she was ten years old but "on the edge of being eleven." Ms. Ralston testified that M.G.:

> disclosed progressive sexual abuse, beginning when she was ten or eleven that began with fondling of her vaginal area, over her clothing, rubbing her vaginal area by her father with his leg between her legs. She disclosed oral sex performed on her father by her. She wrote that down on a piece of paper. She said he licked my private part with his tongue.

M.G. also disclosed multiple incidents of vaginal intercourse, "describing positions[,]" and she said that the abuse happened every time she went to see Defendant. M.G. said that the last incident of abuse had happened a few weeks earlier. During the interview, M.G. described Defendant's ejaculate as "white stuff" and said it tasted "nasty" and "salty." She said that, on one occasion, Defendant ejaculated inside of her and directed her to take a pregnancy test. M.G. told Ms. Ralston about one instance of oral sex that Defendant had her perform on him and one instance of anal sex. M.G. stated that Defendant showed her pornography and told her, "that's what she should be doing." She said that Defendant would put lotion "on his private part, for sex with her" and that "it burned." M.G. also said that Defendant always had white rags in the bottom drawer of his nightstand that he used to clean up with.

Ms. Ralston testified that M.G. disclosed physical abuse by Defendant when she resisted his sexual advances by squirming and squeezing her legs together. She said that Defendant would strike her on the face and lock her outside of the house "in the cold, naked from the waist down for about [thirty] minutes." M.G. also described times when Defendant whipped her with a belt, threw her to the ground and put his foot on her face, attempted to suffocate her with a pillow, and threatened her with a knife. M.G. said that she saw Defendant physically abuse her younger brothers, as well as her mother and that Defendant often threatened to kill her and members of her family. Defendant told M.G. that he had killed people before, specifically someone who used to live beside him at a motel in Murfreesboro.

According to M.G., Defendant tried to convince her that she was having a sexual relationship with her stepfather, but she was not. M.G. disclosed that Defendant would hit and beat her until she agreed that she was having sex with her stepfather. M.G. said that,

one time, Defendant told her that her vagina was "loose" because she had sex with her stepfather.

During the forensic interview, M.G. described Defendant's tattoos and drew pictures of them, specifically a panda bear that was partially covered by a cross and the phrase "to die for." She also drew a picture of Defendant's "private part."

Regarding her interview with Ni.G., Ms. Ralston stated that he was "very straight forward[.]" Ni.G. said that Defendant told him his stepfather was "doing things to his sister[,]" but Ni.G. denied that it was true. He said that Defendant was the one who had "S-E-X" with M.G, which he stated was "what people do to have a baby." Ms. Ralston testified that, when she asked Ni.G. how he knew that Defendant had sex with M.G., Ni.G. said that she had told him. Ni.G. disclosed that he saw Defendant and M.G. in Defendant's bed together under the covers and recalled that the bed was "shaking." Ni.G. said that, on two other occasions, Defendant locked him and Na.G. out of the house for about forty-five minutes. Ni.G. believed that Defendant locked them out so that he could have sex with M.G.

Ms. Ralston testified that Ni.G. disclosed numerous acts of physical abuse by Defendant. Ni.G. said that Defendant threatened him and his siblings with a knife and that Defendant told M.G. he was "going to cut her body up and burn and bury her body." Ni.G. said that, one time, Defendant beat M.G. so badly with a belt that he put her in a cold shower to reduce the swelling. He also described hearing what sounded like M.G. being choked by Defendant in the next room. Ni.G. stated that, on one occasion, Defendant ordered him to stay in his bedroom for two days and only allowed him out to eat, use the restroom, and go to church. Another time, Defendant picked him up by his neck and slammed him downwards. Ni.G. said that Defendant "threatened" them all the time and that he told Ni.G. that he shot and killed a woman in a bathtub. Ms. Ralston recalled that Ni.G. also told her that he looked inside Defendant's bedroom one night when he got up to use the bathroom; he said that Defendant and M.G. were "under the covers . . . and that the bed was shaking."

Regarding Na.G.'s forensic interview, Ms. Ralston recalled that he told her Defendant had slapped and punched all three of the children and that he "threatened [their stepfather] all the time." Na.G. reported that Defendant would ask M.G. if she was having sex with their stepfather and that Defendant would beat her until she "told a bold-face lie that he wanted to hear." Na.G. recalled an incident in which Defendant had all the children sit on the couch while he rubbed the blades of two knives together and said they were "going to die today." Na.G. said that Defendant had smacked all three of the children and had punched M.G. He described Defendant's pushing M.G.'s face into a pillow and trying to suffocate her. He said that Defendant spanked him and his siblings with a leather belt

and that it left bruises on him and Ni.G. Na.G. also recalled times when Defendant locked him and Ni.G. out of the house while Defendant was inside alone with M.G.

Ms. Ralston testified that children who have been physically or sexually abused are "often warned by their abuser not to tell" and are "sometimes told specifically what will happen if [they] do tell." Ms. Ralston explained:

> And so, threats are a very common part of abuse, sex abuse. Sex abuse is mostly what I interview children about, but also physical abuse as well. And in many of those cases, it's the threats and the actual physical violence, they're employed to keep the child quiet and to keep them under control. The children talked about, you know, sometimes children will talk about, well, why didn't you tell? Well, because he said this would happen if I did, he would hurt my family, he would hurt me, he would hurt, you know, the pet or whatever.
>
> And so, it's a way to control children and control what they say and do. I think with these children, they experienced it firsthand and witnessed with each other what would happen if they do what their father wanted them to do. [M.G.] talked about it and [Na.G.] talked about their father beating [M.G.] until she said what he wanted to hear, which was, yes, [my stepfather's] having sex with me, even though they said that wasn't true.

Ms. Ralston concluded that Defendant's physical abuse of M.G. and her younger brothers "tie[d] in as a measure of controlling her and not only making her do what he wanted her to do, but also preventing her from telling anybody."

Ms. Ralston stated that the three children's interviews were "striking" in that the children's stories "were so consistent" and "corroborat[ed] each other." She testified that they "didn't seem rehearsed" and that they "gave very specific details."

Detective Jennifer Mekelburg-Edwards of the Wilson County Sheriff's Office (WCSO) testified that, based upon M.G.'s disclosures of sexual abuse, she obtained a search warrant for Defendant's house. She said that, during the execution of the search warrant, officers found rags in Defendant's nightstand that were consistent with M.G.'s statements in her forensic interview. Detective Mekelburg-Edwards explained that officers took portions of Defendant's mattress and collected a bottle of cherry-scented lotion from Defendant's nightstand, which M.G. specifically mentioned as being used by Defendant as a lubricant. Detective Mekelburg-Edwards testified that she also located a pellet rifle propped up against the wall beside Defendant's nightstand and a pellet pistol in the nightstand.

Detective Mekelburg-Edwards explained that Defendant had cameras "on the front side of the house . . . over the front door; one between the kitchen and the living room; and one over [Defendant's] bedroom door, facing out into the hallway." She said there was also a monitor in Defendant's bedroom that showed two camera views and a DVR system, which contained all the videos. She stated that the DVR system was analyzed by Special Agent Joel Wade of the Tennessee Bureau of Investigation (TBI).

Detective Mekelburg-Edwards testified that she and other officers viewed "many, many hours of video footage" extracted by Agent Wade from the DVR system and made notes of things on the footage that corroborated the statements made by the children during their forensic interviews. She explained that the camera on the counter between the kitchen and the living room faced into the living room; the camera view showed the front door, the living room couch, and the door to the boys' bedroom. She testified that the camera over Defendant's bedroom door showed a view of the hallway, a portion of a washer and dryer, the edge of the kitchen, the bathroom door, and the inside of the bathroom when the door was open.

Detective Mekelburg-Edwards then identified and described a series of video clips from the DVR system shown to the court. The first clip was from December 14, 2019, at 16:41 hours.[4] Detective Mekelburg-Edwards explained, "So, this is the view from the camera that's between the kitchen and the living room, facing obviously the living room and the couch, the door to the kids' bedroom and then front door with the blinds on. And you can see [M.G.] on [Defendant's] lap." She said that the clip helped to corroborate one of the allegations of aggravated sexual battery and possibly that of child rape "based on the hand going to the mouth." She stated that "it appeared his hand was between her legs under the covers, in that general area, and he removed it, licked his fingers and then put it back in the same area."

The second clip played was from November 6, 2019, at 22:17 hours. Detective Mekelburg-Edwards described, "This is a view from the camera that was over [Defendant's] bedroom. You can see them going into the kitchen, a good portion of the bathroom. [M.G.] and [Defendant] are going into the bathroom together." She said that it showed "[Defendant] coming out of the bathroom, naked, and going back in" and M.G. "also naked, and they're getting out of the shower." Detective Mekelburg-Edwards stated that the clip would help corroborate the offenses of child rape and indecent exposure.

[4] Detective Mekelburg-Edwards explained that, during the investigation, it was discovered there was a two-hour difference in the time on the DVR system, meaning that the time listed on the video clips was two hours ahead of real time.

The State next played a video clip from January 26, 2020, at 01:35 hours. Detective Mekelburg-Edwards testified that the clip showed "[Defendant] coming out of the bedroom, naked, to pee in the bathroom. And [M.G.] going in the bathroom with him, shirt on, unsure of what kind of bottoms, if she has any on." She said that the clip would help establish Defendant's guilt for rape of a child, indecent exposure, and aggravated sexual battery.

Detective Mekelburg-Edwards testified that the next video clip shown was from October 26, 2019, at 23:41 hours. She stated, "That's [M.G.] coming out of [Defendant's] bedroom, naked, going into the bathroom, fixing her hair. Going back into [Defendant's] bedroom." She again said that this clip would corroborate the offenses of rape of a child and aggravated sexual battery.

The State next showed a video clip from December 9, 2019, at 00:44 hours. Detective Mekelburg-Edwards testified that the clip showed M.G. "coming naked from [Defendant's] bedroom into the bathroom with clothing. And [Defendant] coming from [his] bedroom into the bathroom, where he has boxers on."

She stated that the next clip shown was dated November 25, 2019, at 17:44 hours. She said, "At the very beginning, it's what appears to be a rag going over the camera, which was a disclosure that was made." She explained that M.G. made a disclosure that, when a sexual incident in the living room happened, Defendant would put a rag over the camera and that this clip would corroborate her statement.

Detective Mekelburg-Edwards next identified a video clip from November 6, 2019, at 21:28 hours. She said that the clip showed a "living room view" of M.G. and Defendant coming in the front door of the house. She testified, "I believe this was on a Wednesday. [M.G.] made statements that there [were] occasionally times where it was just her that went to [Defendant's] house and it was usually on a Wednesday if she did that." Detective Mekelburg-Edwards said that, later in the day, "the shower incident happened, where they were both getting out of the shower together, and also . . . both cameras were turned off later in the evening." The next video clip shown was from the same night at 23:39 hours and depicted M.G. on the living room couch before "something appears to go over the camera" and then "the camera cuts to black." Detective Mekelburg-Edwards stated that there was no additional video footage from that camera until later the next day.

Detective Mekelburg-Edwards next identified a video clip from December 28, 2019, at 13:44 hours. She said that it depicted M.G. on the living room couch with Defendant beside her. She continued, "And he's reaching around, grabbing her bottom. And she has her leg thrown over him. They're cuddling, and then, jump up when [Ni.G.] walks out of the bedroom."

Detective Mekelburg-Edwards then identified and described a video clip from February 10, 2020, at 15:54 hours. She said that the clip showed a view of the living room where M.G. and Defendant were on the couch and Ni.G. and Na.G. were on the floor. She testified:

> [Defendant] gets on the floor, they're all playing at this point. And [M.G.'s] lying there beside of them[.]
>
> . . . .
>
> [Y]ou can see [Defendant's] hand going underneath her bottom and appears to be touching her vagina. And is rubbing her bottom there. In the back of her pants.

Next, the State showed another video clip of the living room dated March 30, 2020, at 17:28 hours. Detective Mekelburg-Edwards described the clip as depicting Defendant lying across the ottoman with M.G. lying on top of him. She said, "You can see on her left side, [Defendant's] hand goes up the back of her shorts[.]"

Detective Mekelburg-Edwards testified that, in a video clip from December 20, 2019, at 01:55 hours, Defendant was standing in the kitchen and then going into the bathroom. She said that the clip showed M.G. "going in there with him, while he's urinating. She's dancing beside him, he grabs her and holds her bottom while he's urinating, and kisses her. And then puts his hand in the front of her pants."

The State next showed a video clip from February 1, 2020, at 18:26 hours. Detective Mekelburg-Edwards described the clip as showing Defendant "sitting on the toilet, with [M.G.] sitting on the floor in front of him, with his pants down. He hugs her and shakes her butt with his hands." She then identified a video clip from December 12, 2019, at 19:11 hours, which showed M.G. on the couch with Defendant beside her. She said that Defendant was hugging M.G. and then started kissing her.

Detective Mekelburg-Edwards testified that the next video clip showed a view of the hallway and was dated October 28, 2019, at 07:54 hours. She stated that Defendant was in the bathroom and appeared to be urinating. She continued, "And [M.G.] comes in the bathroom with him, sits on his lap and hugging him, appearing to be kissing as well." She said that, when M.G. got up, Defendant "grabbed" her bottom.

The State then showed a video clip from March 27, 2020, at 19:44 hours. Detective Mekelburg-Edwards described the clip as showing:

> [M.G.] clearly upset, in the living room. . . . [Na.G.] is first on the couch. [Ni.G.] runs in as well, on the couch. [Defendant] appears to be yelling at them, making motions to them, goes back to the kitchen, comes out of the kitchen, strikes [M.G.] on the couch, strikes her again. She's got her hands up. Strikes her again. Pulls the ottoman out of the way, goes over to both of the boys, hits [Ni.G.], hits him again, hits [Na.G.], hits [Ni.G.] again, hits [Na.G.] again.

Detective Mekelburg-Edwards said that the next clip was from the same day a minute later and depicted Defendant's grabbing M.G. by her neck and swinging "her around, pushing her down on the couch while the boys are on the couch, puts her down to the floor, by her neck[.]" She testified that Defendant then got up and began yelling at the boys before going into the kitchen. She stated that "all of the kids are jumping up and down, appear to be screaming, begging" and that Defendant "comes back from the kitchen with knives in his hands, both hands."

The State then played a video clip showing the living room and dated September 8, 2019, at 17:39 hours. Detective Mekelburg-Edwards described the clip as showing M.G. on the couch, appearing to be upset, and that Defendant was "in the front door[.]" She stated, "[M.G.] puts her hands up, he puts his hands around her neck, pushing her into the couch, and pulls her off the couch and drags her back towards the kitchen area."

Detective Mekelburg-Edwards testified that the next video clip was from October 19, 2019, at 12:49 hours and showed M.G. "being pushed from the kitchen and thrown on the couch by [Defendant]. He's on top of her, hitting her." She identified another video clip, dated November 23, 2019, at 00:34 hours that depicted M.G. on the couch in the living room; it showed Defendant going over to her and hitting her.

The State next presented a video clip from October 26, 2019, at 10:08 hours. Detective Mekelburg-Edwards stated that it was a "hallway view" that showed M.G. in the bathroom using the toilet with Defendant "in there with her[.]" Detective Mekelburg-Edwards continued, "[M.G.] hands [Defendant] something that she had been urinating on. He sets it on the back of the toilet, has now pulled his pants down, sitting on the toilet. [M.G.] is still in there with him." The next video clip was from the same day, a minute later, and showed M.G. and Defendant hugging while Defendant was "still on the toilet." Detective Mekelburg-Edwards explained, "[M.G.] picks up the thing on the back of the toilet, which is what we believe to be a pregnancy test that she disclosed in her interview."

Detective Mekelburg-Edwards identified another video clip dated October 5, 2019, at 23:05 hours. She explained that it showed Defendant placing pillows on the living room couch with blankets over them and that this clip corroborated M.G.'s statement in her

interview that "when the boys go to their bed, . . . [Defendant] would place pillows and blankets to make it appear like she was sleeping on the couch, but she would be in the bed with him."

Detective Mekelburg-Edwards summarized:

> There [are] multiple videos where [Defendant] and [M.G.] go into the bedroom together, close, at night; multiple videos of her laying on the couch, and then the boys go to bed and she either tiptoes in [Defendant's] bedroom or he comes and gets her throughout the night. They go into the bedroom and come out it to go to the bathroom, either partially clothed or completely naked. There was video of the one disclosure . . . that [M.G.] said that she was being punished, I believe it was for resisting the advances and was put outside. We did find one [video clip] where [M.G.] was . . . just in a shirt and was put out the back door for a little while . . . visibly upset.

Detective Mekelburg-Edwards testified that, when M.G. made the disclosures, it had been over a week since the last instance of sexual abuse. She said that the video clips recovered from the DVR system went back to September of 2019.

Detective Mekelburg-Edwards testified that no camera was found in Defendant's bedroom. She said that M.G. disclosed that she went to Defendant's house every weekend and that the abuse happened every weekend she was there; M.G. said that she usually went to Defendant's house with her brothers, but sometimes, she went by herself.

At the conclusion of proof, defense counsel stated, "Judge, what we're asking for today is by my count, at least six trials." Counsel denied that any of the offenses were part of a continuous plan and claimed that the allegations "kind of jump around." For its part, the State agreed that a severance was appropriate for the charges related to Defendant's violating the sex offender registry and his sexual activity with an animal but insisted that the physical abuse inflicted by Defendant on the victims was "part and parcel" of his ability to continue to rape M.G.

The trial court stated that it would grant Defendant's motion for severance as to the charges of violation of the sex offender registry and sexual activity with an animal but deny the motion as to the remaining charges. The trial court explained, "The aggravated assault, the child abuse stuff, all that stuff is very intertwined. I think the evidence of one would go into the evidence of the other." The court concluded that the events were all part of a common scheme or plan of behavior against Defendant's three young children, that the video evidence involved all three victims, and that, if separate trials were held, the trials

would be "very nearly exactly the same." The trial court also noted its concerns about requiring the minor victims to testify about the same set of facts multiple times.

Accordingly, the trial court ordered that case number 20-CR-638 (Violation of Sex Offender Registry) and count 3 (Sexual Activity with an Animal) in case number 21-CR-246 be severed from all other counts. The court granted the State's request to join and consolidate the remaining counts and indictments and denied Defendant's request to sever the indictments and counts into at least six different trials.

Jury Trial

Detective Jennifer Mekelburg-Edwards testified that her involvement in the case began on April 9, 2020, when the sheriff's office received a report of sexual abuse that had occurred at Defendant's house on Neal Road in Watertown. She explained that a worker with the Department of Children's Services (DCS) scheduled a forensic interview for the victim, M.G., on April 16, 2020. Detective Mekelburg-Edwards said that, although she was not present when the interview occurred, the interview was recorded, and she later viewed the recording. She recalled that, based upon M.G.'s interview and the allegations in the initial report, she also scheduled forensic interviews for Ni.G. and Na.G.

Detective Mekelburg-Edwards testified that she obtained a search warrant for Defendant's house, and she identified photographs taken from inside of the residence during the execution of the warrant. She stated that the following items were collected during the search of the house: a white rag located in Defendant's nightstand drawer; black cherry body lotion also located in the nightstand drawer that M.G. asserted had been used as lubricant; swabs of the drawers of the nightstand; a teal pair of "girl's panties" in Defendant's bedroom; a Pink SanDisk USB drive; a GoPro camera with memory card; a gray fitted sheet and navy blue comforter taken from Defendant's bed; a gray rag located in the washing machine in "a load of unlaundered clothing"; a yellow, pink, and white hand towel; a bottle of baby oil; four samples from Defendant's mattress; and a Night Owl DVR system found in Defendant's bedroom.

She said that, at the time of the report, Defendant was thirty-eight years old. He consented to the collection of a DNA sample at the time of the search warrant; she said that a DNA sample was later taken from M.G., and both samples were sent to the TBI crime laboratory.

Detective Mekelburg-Edwards said that, at the time the offenses were reported, it had been at least three days since M.G. had been sexually assaulted by Defendant. She stated that M.G. was taken to Our Kids Center ("Our Kids") in Nashville for a physical examination about a month after her disclosures.

Detective Walker Woods of the WCSO testified that he assisted Detective Mekelburg-Edwards with the investigation. Detective Woods explained that eleven-year-old M.G. had reported physical and sexual abuse by Defendant, who was her biological father, and that her younger brothers—ten-year-old Ni.G. and nine-year-old Na.G.—reported that they had been physically abused by Defendant. Detective Woods explained that, specifically, M.G. made accusations that:

> [Defendant] had both physically assaulted her by slapping, striking, hitting, and even possibly choking at times, that he had brandished knives against her, that he had had sexual intercourse with her in which he inserted his penis into her vagina, that he had digitally penetrated, that he had touched her in different places of her body.

He further explained that both Ni.G. and Na.G. reported that Defendant "had physically punched, and struck them, and choked them, and thrown them around the house."

Detective Woods testified that he supervised the execution of the search warrant at Defendant's house on April 22, 2020. He identified a series of photographs taken during the search, and he described the location of several surveillance cameras found inside the house. Detective Woods explained that items of evidence collected during the search were brought back to the sheriff's office where they were "logged into evidence."

Detective Woods identified the Night Owl 3.0 DVR system seized from Defendant's house. He explained that he sent the DVR system to the TBI and asked for a full digital extraction of any data located on it. He said that he later received a written report from the TBI and an external hard drive containing video extracted by the TBI from the DVR. Detective Woods stated that the video spanned the period of September 16, 2019, to April 22, 2020.

Special Agent Heather Lenzy, a forensic scientist manager at the TBI crime laboratory, testified that she was assigned to the Forensic Biology Unit. Agent Lenzy explained that the TBI lab received several items of evidence in the case for testing; she clarified, however, that she did not conduct the testing. Agent Lenzy stated that another forensic scientist, Melissa Kennedy, tested the evidence but that she was currently on maternity leave. Agent Lenzy explained that she was Ms. Kennedy's manager; she said that she had reviewed Ms. Kennedy's report and that she concurred in the results of the testing.

Agent Lenzy identified Ms. Kennedy's report dated June 3, 2020, and the State introduced the report as an exhibit to her testimony without objection from Defendant. Regarding the rag found in Defendant's bedroom, Agent Lenzy said that it tested "positive

for spermatozoa" and that the DNA profile "obtained from the sperm fraction matche[d] . . . the standard from [Defendant]." She said that the swabs from Defendant's nightstand drawer were "negative for semen." Agent Lenzy stated that a small, light gray towel was tested but was "negative." She said that a gray, red, and yellow-striped rag tested positive for sperm and that the DNA profile matched Defendant.

Agent Lenzy testified that one of the pieces from Defendant's mattress tested positive for sperm, which matched Defendant's DNA profile. She explained, "That happened to be a mixture of at least two individuals. [Defendant] was the major contributor to that mixture, meaning there was a lot of his DNA there, but there was also DNA from a secondary person; however, that DNA was inconclusive." The following exchange then occurred:

> [THE STATE:] If two people are related, is it more difficult to find a, a second type of DNA?
>
> [AGENT LENZY:] It is
>
> [DEFENSE COUNSEL:] I object --
>
> [AGENT LENZY:] -- because
>
> [DEFENSE COUNSEL:] -- to leading.
>
> [THE STATE:] I don't think that was a leading question.
>
> THE COURT: I'm going to overrule. I . . . don't think it was.
>
> [THE STATE:] Go ahead.
>
> [AGENT LENZY:] It is only because they share a marker at each location.
>
> [THE STATE:] Because they're related?
>
> [AGENT LENZY:] Correct.
>
> [THE STATE:] And half DNA -- and how much, how much comes from each parent for, for a child?
>
> [AGENT LENZY:] Correct.

[THE STATE:] Comes, each comes half; is that correct?

[AGENT LENZY:] Half.

On cross-examination, Agent Lenzy agreed that M.G.'s DNA was not found on any of the items of evidence tested.

Special Agent Joel Wade testified that he was a digital forensics examiner and was assigned to the Cybercrime and Digital Evidence Unit of the TBI. Agent Wade said that, in this case, the WCSO turned over the Night Owl DVR system to the TBI. He said that he removed the hard drive from the DVR and made a forensic copy through a "write blocker" onto a separate hard drive medium. He explained that the WCSO provided an external hard drive so that he could give the agency a copy of the file that he generated.

Sarah Beecham testified that Defendant was the father of three of her five children—M.G., Ni.G., and Na.G. She said that M.G. was born in June 2008; Ni.G. was born in May 2009; and Na.G. was born in June 2010. She explained that she and Defendant's relationship ended in 2010.

Ms. Beecham testified that in 2018-2020, the children routinely visited Defendant on weekends. She stated that they typically went to his house every weekend but that, if "they had different events or things to do with friends, they would not go." She explained that, during the summer and on school breaks, Defendant "would have [the children] some during the week."

Ms. Beecham said that she made a report to the WCSO on April 9, 2020, after M.G. disclosed "some things" to her. She then contacted and reported M.G.'s claims to DCS. She recalled that, a few days later, she took the children for forensic interviews and took M.G. to Our Kids for a physical examination.

She testified that, during 2019 and 2020, she noticed changes in the children's behavior. She said that "[t]hey did things that were not of their character[,]" that M.G.'s and Ni.G.'s grades declined, and that there was "some behavior issues in school that [she was] contacted about." Ms. Beecham stated that she did not recall having seen any marks or bruises on the children after they had been with Defendant.

CeCe Ralston testified that she was the forensic interviewer at the 15th Judicial District Child Advocacy Center in Lebanon. Regarding the purpose of the Child Advocacy Center, she said, "[I]f there's been an allegation of abuse towards a child, to have that child interviewed, to give them a chance to talk about what may have happened to them in a safe,

neutral comfortable, child-focused setting." She said that her primary role at the center was to conduct forensic interviews with children.

Ms. Ralston testified that Ms. Beecham brought M.G. to the forensic interview on April 16, 2020. Ms. Ralston explained that she did not meet privately with Ms. Beecham; she said that, while she conducted M.G.'s forensic interview, a family advocate met with Ms. Beecham. Ms. Ralston testified that M.G. was eleven years old at the time of the interview. She said that M.G. disclosed that Defendant's sexual abuse began when she was ten, about to turn eleven. Ms. Ralston noted that M.G. did not immediately report the abuse when it began. Ms. Ralston, who had worked with children for forty-six years, said that there were a lot of reasons why a child might delay disclosing abuse. She explained:

> They may be afraid that they won't be believed, they may be afraid that they'll be blamed for what happened, it could be that they think that they will get in trouble and might even go to jail, and often these kinds of ideas are given to them by the alleged perpetrator, they're the ones who tell the child these things, sometimes.
>
> They might be afraid they're going to be taken away from their family. But primarily, I would say, that the main reason for -- delay of disclosure was fear, and by that, I mean they may be afraid of those things that I just mentioned happening, but also, it's very common for abusers to verbally and physically threaten children, threaten them or family members, or both. And so, that's very typical and that can delay because they're afraid of what might happen if they do tell, they've been warned about that sometimes.
>
> They may actually care for the offender, because, very often, it's a family member. With younger children, sometimes they don't even understand what's happening to them and they don't have the words to describe it. And then another thing that we see is that it becomes, you know, the, the abuse becomes normalized over time.

Ms. Ralston testified that, early in M.G.'s interview, M.G. wrote on a piece of paper that Defendant "li[c]ked my private part with his tongue"; Ms. Ralston explained that M.G. had not wanted to say this out loud. Ms. Ralston said that she asked M.G. if Defendant had any distinctive marks or tattoos; M.G. then described Defendant's back tattoo and drew a picture of it. Ms. Ralston recalled that, when she asked M.G. what Defendant's penis looked like, M.G. drew a picture of Defendant's penis and testicles. She explained that M.G. spontaneously drew Defendant's tattoo and "private part[.]" She testified that M.G. did not say that she had sexual contact with anyone other than Defendant.

Fourteen-year-old M.G. testified that she was eleven in April 2020. M.G. stated that she remembered speaking to Ms. Ralston at the Child Advocacy Center and affirmed that everything she said to Ms. Ralston was "true and correct[.]" A recording of M.G.'s forensic interview with Ms. Ralston was then played for the jury.

M.G. said that she went to Defendant's house "[e]very single weekend" and that there were a few times she went during the week. She said that her younger brothers were not always with her when she went to stay with Defendant.

M.G. explained the location of the surveillance cameras at Defendant's house, and she was then shown a series of video clips recorded by those cameras and recovered from the DVR system. Regarding the clip dated March 27, 2019, at 00:44 hours, M.G. said that it hurt when Defendant hit her. When shown the clip dated March 17, 2020, at 19:45 hours, M.G. testified that, in the clip, Defendant picked her up and then "slammed [her] to the ground[,]" which she said hurt. She stated that Defendant had two knives in his hands and that he threatened to kill her and her brothers.

M.G. testified that, in the video clip from March 19, 2020, at 18:23 hours, Defendant "was talking about moving dead bodies into a hole, and he was talking about [my stepfather], me, [Ni.G.], and [Na.G.]." She said that a clip from five minutes later showed Defendant with his hands around her neck; she said that this hurt and that she "couldn't breathe."

When shown the video clip from October 26, 2019, at 23:18 hours, M.G. explained that her pillow was placed on the living room couch because that was where she was supposed to sleep; she stated, however, that she never slept there. She stated that, when she walked off screen in the clip, she was going into Defendant's bedroom. She then identified herself in a video clip from the same night at 23:41 hours; she testified that the clip showed her walking into the bathroom naked and explained that she did not have on any clothes because "before that, [Defendant] raped me." She stated, "He put his private part in mine."

M.G. testified that the video clip dated October 27, 2019, at 09:55 hours, showed her in the bathroom without clothes on from the waist down. She stated that Defendant had raped her just prior to when this clip was recorded. She identified another video clip that was dated November 6, 2019, at 22:18 hours. She said that the clip showed her and Defendant in the bathroom and that they had been in the shower together. M.G. explained that, when she was in the shower with Defendant, he touched her on the inside and outside of her "private part" with his hand. M.G. said that a video clip from later the same night showed the screen "go black" because Defendant covered the camera. She stated that he did this because "he was going to rape [her] on the couch in the living room[.]"

M.G. was then shown a video clip dated March 22, 2020, at 01:10 hours. She said that the clip showed Defendant "trying to make it look there's a body under the blanket" on the couch so that "the boys thought . . . I was sleeping on the couch instead of in [Defendant's] room." M.G. explained that a video clip from March 22, 2020, at 02:11 hours showed her going to get a rag for Defendant to use to "wipe up stuff." She stated that Defendant typically kept rags in his nightstand, so "we could wipe up his stuff that was on his stomach." She explained that Defendant had raped her just prior to her going to get the rag.

M.G. stated that she and Defendant were often in the bathroom together at night, and she identified several video clips showing this. She explained that, in one of the clips, she was not wearing pants because Defendant had "just raped [her]." She identified a clip from December 9, 2019, at 00:44 hours in which she had on no clothes because Defendant had raped her. M.G. then identified a clip from March 20, 2020, at 02:41 hours. She explained that it depicted Defendant's grabbing a rag; she said that Defendant used the rag to "wipe up his stuff" after he raped her.

M.G. identified a video clip from January 26, 2020, at 01:35 hours, explaining that she had no pants on in the clip. She stated that Defendant had just raped her. M.G. testified that a video clip from March 28, 2020, at 10:29 hours showed her coming into the bathroom and that she was not wearing any pants or panties. She said that Defendant had just raped her.

M.G. recalled that Defendant locked her brothers out of the house several times and said that he would rape her after doing so. M.G. testified that a video clip from March 28, 2019, at 13:39 hours depicted Defendant locking the front door while her brothers were outside. M.G. said that a video clip from March 28, 2020, at 14:38 hours showed her in the bathroom; she said that Defendant had raped her just prior to her entering the bathroom. When shown a series of video clips from the night of March 29, 2020, M.G. testified that they showed Defendant locking her brothers out of the house. She said that Defendant raped her while the boys were outside. She said that the clips also showed her brothers trying to get back inside the house. When shown a video clip dated April 5, 2020, at 16:01 hours, M.G. stated that it showed Defendant locking the front door; she said that she and Defendant went into his bedroom after that. She testified that in a clip from about forty minutes later the same evening, Defendant could be seen unlocking the front door; she stated that Defendant had raped her during the time between the two clips.

M.G. next identified a video clip from December 14, 2019, at 16:40 hours; she said that it showed Defendant with his hand "[d]own [her] private part" and specified that he touched her on the inside. She stated that another clip, dated March 30, 2020, at 17:28 hours also showed Defendant touching her "private parts."

When shown a video clip dated December 26, 2019, at 01:55 hours, M.G. said that it depicted Defendant's using the bathroom and touching her on her "butt." M.G. also testified that video clips from December 28, 2019, at 13:44 hours and February 1, 2020, at 18:26 hours showed Defendant's touching her "butt."

M.G. testified that Defendant often used the bathroom in front of her and that she would see his penis when he did so. M.G. testified that a video clip from November 24, 2019, at 23:55 hours showed Defendant using the bathroom in front of her; she said that she saw his penis. When asked about a video clip dated March 28, 2020, at 13:35 hours, M.G. stated that Defendant was using the bathroom and that she saw his penis.

M.G. said that Defendant made her take several pregnancy tests. M.G. said that a video clip dated October 26, 2019, at 10:08 hours depicted her handing Defendant a pregnancy test, which showed a negative result. In another video clip dated January 31, 2020, at 23:07 hours, M.G. identified a bowl that Defendant wanted her "to pee in for the pregnancy test."

M.G. stated that the video clips did not show all the times that Defendant raped her. She said that it happened every time she was at his house.

On cross-examination, M.G. described how, in April 2020, she told her mother that Defendant had touched her "private parts." As the cross-examination continued, the trial court stated, "Hold on. We're going to take a break. Let me have counsel approach." During a bench conference, the court said, "That woman in black is giving a motion on how to answer." After a brief discussion, the court concluded the bench conference and said, "Young lady in the black, I need you to exit the courtroom, ma'am." The court explained, "I'm sorry, folks. That woman was giving head motions to the witness on how to answer, so I've asked her to leave the courtroom." Defendant then said, "That's a mistrial[,]" after which the court excused the jury.

During a jury-out hearing, the trial court stated:

> For the record, this is what I observed. I glanced up, she happened to be sitting behind my father, who's actually watching, she scooted over to be in full view of the witness. I saw her make some kind of motion at the first time, not really a yes or no, a motion, so that's why I continued to watch her. The next question she made no move, the next question, she shook her head no.

Defense counsel requested a mistrial. The trial court denied the request, noting that it occurred early on in the cross-examination and that it was "the first time the lights have

been on all afternoon[.]" The court described defense counsel's request for a mistrial as "making a mountain out of a molehill"; the court noted that it had "taken care of the problem," excused the woman, and explained what happened to the courtroom. Defense counsel then asserted that M.G. had conferred with her therapist during breaks in her testimony; the trial court advised counsel that he could cross-examine M.G. about this concern and that the jury could consider the sequence of events when it deliberated.

When the jury returned to the courtroom, the following exchange took place:

> [DEFENSE COUNSEL:] [M.G.], if you notice, we just took a break.
>
> [M.G.:] Yes.
>
> [DEFENSE COUNSEL:] Now, would you please tell the Court who that lady was that was in the, that was in the audience.
>
> [M.G.:] Yes. Her name is Christy Ward.
>
> . . . .
>
> [DEFENSE COUNSEL:] And who is she?
>
> [M.G.:] She's my therapist.
>
> [DEFENSE COUNSEL:] Okay. And was she instructing you on how to answer questions?
>
> [M.G.:] No. I was not even looking at her.
>
> [DEFENSE COUNSEL:] And how long have you known Ms. Christy?
>
> [M.G.:] Since I've told my mom, so since, I guess, the forensic interview.
>
> [DEFENSE COUNSEL:] And Ms. Ward's been with you through this trial?
>
> [M.G.:] Yes.

[DEFENSE COUNSEL:] And you've been speaking with her during breaks?

[M.G.:] Yes.

[DEFENSE COUNSEL:] Do you -- have you discussed your testimony with her?

[M.G.:] No.

[DEFENSE COUNSEL:] Okay. So, I assume as a part of being in therapy you do discuss with Ms. Ward your, your, these allegations against [Defendant]?

[M.G.:] Not really, no. I don't like talking about it, I'm not comfortable talking about it, so I don't.

M.G. said that Defendant had accused her of having sex with her stepfather and that she had agreed with him. She explained that this was because Defendant would hit her if she denied she had sex with her stepfather; she clarified, however, that her stepfather had never touched her inappropriately. M.G. denied that the reason Defendant gave her a pregnancy test was because he was concerned she was pregnant by her stepfather.

M.G. testified that there were a couple of times when Defendant placed his fingers inside her "private areas." She recalled that there were times when Defendant was naked, would touch himself, and then use a rag without having intercourse with her. She stated that she could only recall having oral and anal sex with Defendant one time. M.G. stated that Defendant used physical abuse to force her to comply with the sexual abuse.

Hollye Gallion testified that she was employed as a nurse practitioner at the Our Kids Center in Nashville where she conducted pediatric forensic medical evaluations. Ms. Gallion said that the primary purpose of Our Kids was to examine and evaluate children when there were concerns of sexual abuse. She explained that she tailored a child's examination based upon the type of allegations made. She testified that "[m]ost kids do not disclose being touched right away" and that it can be "weeks, months, or years from the last time something potentially happened to them[.]" Ms. Gallion stated that, in most cases, she finds no hymenal injury in girls she examines. She defined a "normal exam" as one where "there's no injury, there's no signs of infection, basically . . . that that child looks totally healthy and you can't tell by looking at their body what's happened to them."

Ms. Gallion testified that M.G. came to Our Kids for an examination on May 11, 2020. Ms. Gallion explained that her colleague, Heidi Dennis, had performed M.G.'s exam but that Ms. Dennis had since moved to Connecticut. Ms. Gallion said that she reviewed Ms. Dennis's report and photographs taken during the examination. She testified that, after reviewing those items, she was able to form her own opinion regarding the results of M.G.'s examination, and she said that she concurred in Ms. Dennis's conclusions. The report prepared by Ms. Dennis was then introduced as an exhibit to Ms. Gallion's testimony.

Ms. Gallion stated that there were two medical histories in the report—one collected from M.G. and one from Ms. Beecham. She noted that M.G. provided descriptions of "penile-genital, penile-anal, and penile-oral penetration, digital genital contact, and digital breast contact" to Ms. Dennis. She said that Ms. Dennis's examination revealed that "everything was normal" and that M.G. appeared healthy. She stated that M.G. had no injuries and that there was nothing that would indicate trauma[.]" Ms. Gallion testified, "About [ninety-five] percent of the children we see every year have an exam just like that. The vast majority of children, there's no signs of injury or infection, or, or anything." She stated that the findings were not inconsistent with the allegations made by M.G.

Lisa Milam testified that she was a social worker at the Our Kids Center in Nashville. Ms. Milam said that her responsibilities included "collecting information from parents and caretakers when they arrive with their children" and "collecting medical history from children who are presenting there when there are concerns of child sexual abuse."

Ms. Milam explained that M.G. came to Our Kids in May 2020, following a referral from DCS. Ms. Milam testified M.G. reported to her that she had been experiencing genital discomfort, which M.G. described as "itching, burning pain[.]" M.G. said that she thought the discomfort "was because of . . . some things [Defendant] had been doing to her[.]" M.G. reported that Defendant had been physically and sexually abusing her. Ms. Milam testified that, when she asked M.G. to describe the abuse, M.G. said that Defendant had punched and hit her and her brothers. M.G. stated,

> [T]he last time we were there, he was telling us he was going to kill us. He said he was going to put us in the bathroom, he actually took us in the bathroom, and said he was going to get a knife and kill us and put us in the tub.

M.G. also recounted that, one night when Defendant was sexually abusing her, he got mad because she was "squirming" and he locked her out of the house for about thirty minutes; she said that she had nothing on and that it "was freezing" outside.

Ms. Milam testified that she then asked M.G. to describe what she meant when she used the term "sexually abusing" her; in response, M.G. said, "[Defendant] put his front private part in my front and back private part and was touching on my breasts. And he would make me, like, rub his and, like, put my mouth on his front private part." M.G. also said that Defendant would rub her vagina with his hand.

Ms. Milam testified M.G. reported "that she saw something come out of [Defendant's] private part sometimes." When Ms. Milam asked her to describe that, M.G. said, "I saw, like, watered-down milk looking, maybe, come out." She said that "what she saw come out of his private part . . . sometimes it went on his stomach, or the bed, or sometimes he would put it in [her] front private part." Ms. Milam said that she asked M.G. if Defendant's "front private part" touched any other part of her body, M.G. stated, "He put it in my back private part, too, and that also hurt." Ms. Milam then asked M.G. if she had experienced any other type of sexual contact "by any other person[,]" and M.G. said no.

Ni.G. testified that he was thirteen years old and that Defendant was his father. Ni.G. was shown a series of previously introduced video clips, and he described what the clips showed. He said that the first clip showed Defendant's hitting him, M.G., and Na.G. in the living room of Defendant's house; he said that it had hurt when he had been hit and that he had been scared. Ni.G. described the next clip as showing Defendant's holding two knives. Ni.G. testified that Defendant said that he was going to kill them.

When shown the next video clip, Na.G. recalled that Defendant had brought him, Na.G., and M.G. into Defendant's bedroom, made them pull down their pants, and "spanked" them with a belt. Defendant then said that "he was going to kill [them] in the bathtub and then put [their] bodies in a bag and burn the bag and throw them in a hole and just leave the bones down there so there was no evidence." Ni.G. testified that another clip from the same night showed Defendant's holding him and Na.G. with his hands around their necks. Ni.G. said that Defendant hit him in the face in the next clip.

On cross-examination, Ni.G. agreed that, when Defendant had the two knives, Defendant was upset because he "thought there was a situation going on with [M.G.] and [her stepfather.]" Ni.G. further agreed that Defendant would sometimes play "pranks" on him and that those pranks included locking him out of the house.

Na.G. testified that he was twelve years old and that Defendant was his father. Na.G. testified that there had been times when Defendant had hurt him, and he described some of these instances when shown some of the previously introduced video clips. Na.G. said that the first clip showed Defendant's hitting him in the face. He stated that, in the next clip, Defendant had two knives in his hands, and he recalled fearing Defendant. When

shown another video clip, Na.G. stated that Defendant had just hit him, M.G., and Ni.G. with a belt. Na.G. stated that the next clip showed Defendant's pulling him up by the shirt. He testified that Defendant threated to kill him.

On cross-examination, Na.G. agreed that, on the night Defendant had the two knives, Defendant had been upset because he had thought something was going on between M.G. and her stepfather.

At the close of proof and after the State's election of offenses, Defendant requested a motion for judgment of acquittal on the charges. After finding that the State had offered no proof of injury for the charges of child abuse, the trial court granted the motion for judgment of acquittal as to Counts 14 through 19.

Defendant did not testify or offer any proof.

Following deliberations, the jury found Defendant guilty as charged on all remaining counts.

Sentencing Hearing

At a subsequent sentencing hearing, the State introduced certified copies of Defendant's prior convictions and a copy of his presentence report. David Stanfield, a probation and parole officer with the Tennessee Department of Correction, testified that he prepared Defendant's presentence report. Mr. Stanfield then went through the report and identified Defendant's prior convictions. He said that Defendant had been convicted of aggravated kidnapping in 2010; two counts of aggravated statutory rape in 2009; two counts of statutory rape by authority figure in 2009; misdemeanor evading arrest in 2001; two counts of robbery in 2000; three counts of felony theft of property in 1999; and conspiracy to commit robbery in 1999. Mr. Stanfield testified that, in all, he counted three Class C felonies, one Class B felony, and several Class E felonies. Mr. Stanfield stated that he had attached copies of impact statements prepared by the victims and Ms. Beecham.

Ms. Beecham testified that Defendant should receive no mercy from the court as he showed no mercy "in his constant, brutal attacks" against M.G., Ni.G., and Na.G. She asked that Defendant receive consecutive sentences and that he be ordered to have no contact with her family.

M.G. testified that she had been an "innocent little girl who did absolutely nothing to [Defendant] and . . . [had] wanted absolutely nothing from [him], except for [him] to be a good father" to her. She said that, instead of doing that, "[Defendant] raped her, . . . beat her, [and] did very many unpleasant things to her[.]"

Defendant made an allocution statement, in which he said that he was sorry for the crimes he committed and for the pain that he caused the victims. He asked that they forgive him, "not just for [his] benefit but for [their] own benefit to be able to . . . move further on in life."

At the conclusion of the hearing, the trial court stated that, in determining the appropriate sentence for each offense, the court considered the evidence presented at the trial and sentencing hearing, the presentence report, the principles of sentencing, arguments made as to sentencing alternatives, the nature and characteristics of the criminal conduct involved, the evidence and information offered by the parties on applicable mitigating and enhancement factors, any statistical information provided by the administrative office of the courts for those similarly convicted, Defendant's statement of allocution, and Defendant's potential for rehabilitation.

The trial court found that Defendant was a Range II offender for purposes of his convictions for rape of a child. As to the remaining convictions, the court found that Defendant was a Range III offender based upon his prior felony convictions.

Regarding enhancement factors, the court first considered that "Defendant has a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range." *See* Tenn. Code Ann. § 40-35-114(1). The court stated, "I've always applied a great amount of weight to that factor, because I think the best predictor of future behavior is past performance, and this is a long and extensive criminal record here." The court also considered that "[a] victim in the offense was particularly vulnerable because of age or physical or mental disability." *See id.* § 40-35-114(4). The court found that M.G. was ten years old when the abuse began and that Ni.G. and Na.G. "were even younger" and "certainly vulnerable, much, much smaller than [Defendant]."

The trial court next considered that the "injuries inflicted upon . . . the victim was particularly great[,]" citing the victim impact statements that were made part of the presentence report. *See id.* § 40-35-114(6). The court noted that M.G. said in her impact statement that "she consistently felt the need to wear turtlenecks when all this was going on because of all the physical abuse and the bruising he . . . left on her. [She] [s]tarted having insomnia, physically ill, consistently threw up, anxiety . . . as a result of this[.]" The court further noted that all three children were in counseling and that M.G. had been diagnosed with PTSD. The court found that there were a great number of injuries to the three victims.

The trial court explained that it also considered that the offenses involved a victim and "was committed to gratify . . . [D]efendant's desire for pleasure or excitement[,]" commenting, "Well, that's obviously there." *See id*. § 40-35-114(7). The court next

considered the enhancement factor that Defendant had failed to comply with the conditions of a sentence involving release into the community, finding that Defendant had previously been placed on probation and had violated his probation. *See id*. § 40-35-114(8).

Next, the trial court considered the enhancement factor that, at the time Defendant committed the instant felonies, he was on the sex offender registry. *See id.* § 40-35-114(13). The court said that it also considered the factor that Defendant abused a position of private trust. *See id.* § 40-35-114(14). The court noted that Defendant abused M.G. instead of nurturing and protecting her "as any father should." The trial court explained that it placed "a significant amount of weight" on each of the applicable enhancement factors.

The trial court then reviewed each of the mitigating factors and found that none of those factors applied.

Regarding the issue of consecutive sentencing, the trial court found by a preponderance of the evidence that several of the discretionary consecutive sentencing factors found in Tennessee Code Annotated section 40-35-115(b) applied. Specifically, the court found that Defendant was a "professional criminal who has knowingly devoted [his] life to criminal acts as a major source of . . . livelihood." The court explained:

> As we sit here today, [Defendant] is 41 years old, born August of '81. We have, by my count, there's . . . 11 prior felonies in the presentence report, plus there's a judgment . . . for [an] aggravated domestic assault.
>
> And this runs from, started age 18, the first robbery conviction, conspiracy to commit robbery occurred when he was 18. We have several charges, 18, 19 years of age. He then goes to jail for a period of time, gets out.
>
> We have another string of felonies at 27 and 28. Again, does a significant period of time. I think he got 10 years on one case and then he comes out at mid-30s and all these offenses occur beginning at age 37.
>
> So, the only thing that's stopped [Defendant] from having a more extensive record is pretty significant prison sentences that you've already served.
>
> So, we have a 19-year period of continuous criminal conduct, convictions of . . . the very worst kind, so.

> I think you have devoted your life to criminal acts. There's numerous thefts, which I'm assuming you did to provide [a] source for your livelihood.

Likewise, the court found that Defendant was an offender whose record of criminal activity was extensive, noting that Defendant had a "litany of felony convictions" out of three different counties.

The trial court next found that Defendant was convicted of two or more statutory offenses involving sexual abuse of a minor with consideration of the aggravated circumstances arising from the relationship between the defendant and victim or victims, the time span of his undetected sexual activity, the nature and scope of the sexual acts, and the extent of the residual, physical, and mental damage to the victim or victims. The court noted that M.G. was Defendant's biological daughter and that the sexual abuse went on for a significant period of time. Regarding the nature and scope of the sexual acts involved and the extent of the residual damage to M.G., the court recounted:

> But I look at some of this testimony that [M.G.] gave, ["]He licked my privates with his tongue,["] this is from a 9th grader. She . . . was 11 at the time the abuse began, and then later on, she did say maybe 10 but at least 11. [Defendant] would hit me a bunch. [Defendant] would try to blame the stepfather for the very acts he was committing upon her.
>
> . . . .
>
> There was a video of [Defendant] when he had [M.G.] on the couch under the, under a blanket, and he licks his hands and put his, put his fingers and put his hands down there. She said, ["]It hurt really bad.["] He yanked her legs open -- she was trying to squirm away from him and he yanked her leg open, and she said, ["]It hurt really bad.["]
>
> One time [Defendant] put her outside in the cold without any clothes on to punish her. Told her she was the worst daughter in the world. He'd hit her in the face . . . [p]ut a knife to her neck in front of the brothers for them to see. [Defendant] would . . . make sure the boys saw her in bed on the couch at night, bring her into [his] room, commit these acts upon her, and then make sure she was back on the couch under the blanket by morning before the boys got up. He's thinking.
>
> One time she tried to close her legs real tight and [Defendant] put it in her rear end. . . . [Defendant] showed her a video and told her that's what she's supposed to be doing.

After making those findings, the trial court said, "If there's ever a sentence that requires consecutive sentencing, . . . it's this one." The court sentenced Defendant as follows in case number 20-CR-533:

Count	Offense	Offender Classification	Sentence
1	Rape of a Child	Multiple Offender	40 years at 100%
2	Rape of a Child	Multiple Offender	40 years at 100%
3	Rape of a Child	Multiple Offender	40 years at 100%
4	Rape of a Child	Multiple Offender	40 years at 100%
5	Rape of a Child	Multiple Offender	40 years at 100%
6	Rape of a Child	Multiple Offender	40 years at 100%
7	Rape of a Child	Multiple Offender	40 years at 100%
8	Rape of a Child	Multiple Offender	40 years at 100%
9	Rape of a Child	Multiple Offender	40 years at 100%
10	Rape of a Child	Multiple Offender	40 years at 100%
11	Aggravated Assault	Persistent Offender	15 years at 45%
12	Aggravated Assault	Persistent Offender	15 years at 45%
13	Aggravated Assault	Persistent Offender	15 years at 45%

In case number 21-CR-246, the court imposed the following sentences:[5]

Count	Offense	Offender Classification	Sentence
1	Aggravated Sexual Battery	Persistent Offender	30 years at 100%
2	Aggravated Sexual Battery	Persistent Offender	30 years at 100%
3	Aggravated Sexual Battery	Persistent Offender	30 years at 100%
4	Aggravated Sexual Battery	Persistent Offender	30 years at 100%
5	Aggravated Sexual Battery	Persistent Offender	30 years at 100%
6	Indecent Exposure		11 months/29 days
7	Aggravated Sexual Battery	Persistent Offender	30 years at 100%
8	Indecent Exposure		11 months/29 days
9	Indecent Exposure		11 months/29 days
10	Aggravated Sexual Battery	Persistent Offender	30 years at 100%
11	Indecent Exposure		11 months/29 days

[5] After count 3 (Sexual Activity with an Animal) of case number 21-CR-246 was severed, several of the remaining counts of the indictment were renumbered for purposes of trial.

The trial court ordered counts 1-13, in case number 20-CR-533, to run consecutively to one another. In case number 21-CR-246, the court ordered counts 1-5, 7, and 10 to run concurrently with one another but consecutively to case number 20-CR-533 and ordered counts 6, 8-9, and 11 to run concurrently with all other counts in case number 21-CR-246, for a total effective sentence of 475 years to serve in the Tennessee Department of Correction. In sentencing Defendant, the court commented, "I know this is a, a long sentence, but it's absolutely justified based on what I observed, and what the jury heard, and what the jury decided[.]"

Defendant filed a timely motion for new trial and an amended motion for new trial, to which the State filed a written response. Following a hearing, the trial court entered a written order denying the motion for new trial. This timely appeal follows.[6]

II. Analysis

A. Failure to Declare a Mistrial

Defendant contends that the trial court erred by not granting his motion for a mistrial "when it was discovered that M.G's therapist was attempting to coach her testimony while she was testifying at trial." He argues that it was unknown how long the therapist had been "making these hand motions," that the trial court happened to see the therapist engaging in the conduct by chance, and that it was unclear whether the therapist had been coaching M.G. prior to the dimming of the lights in the courtroom. He asserts that the trial court should have allowed the parties to cross-examine the therapist in a jury-out hearing regarding the extent of and the reason for the attempts to coach M.G. Defendant insists that the proof offered by the State to establish the rape of a child counts "was questionable at best" and that "because of the unknowns regarding M.G.'s therapist and the questionable nature of the State's proof for the child rape charges, [he] was prejudiced to the extent that a mistrial was well warranted."

The State responds that the trial court properly refused to grant Defendant's request for a mistrial based upon gestures made by M.G.'s therapist from the gallery. The State asserts that Defendant has failed to establish manifest necessity for a mistrial, noting that the State did not take part in the sequence of events at issue, that the trial court took swift curative action, and that the case against Defendant was strong.

[6] After the filing of his notice of appeal, Defendant filed a motion requesting that this court supplement the appellate record with "the trial court's copy of the June 26, 2022 proceedings in this matter." In an order dated June 27, 2025, this court denied Defendant's motion to supplement the record but indicated that the motion could be renewed "in [Defendant's] appellate brief if necessary." In his appellate brief, Defendant has renewed his motion to supplement, but for the reasons set forth below, we conclude that supplementation of the record is not necessary or appropriate and deny Defendant's request.

A mistrial is appropriate "to correct damage done to the judicial process when some event has occurred which precludes an impartial verdict." *State v. Williams*, 929 S.W.2d 385, 388 (Tenn. Crim. App. 1996). Normally, a mistrial should be declared only in the event that a manifest necessity requires such action. *State v. Millbrooks*, 819 S.W.2d 441, 443 (Tenn. Crim. App. 1991). "In other words, a mistrial is an appropriate remedy when a trial cannot continue, or a miscarriage of justice would result if it did." *State v. Land*, 34 S.W.3d 516, 527 (Tenn. Crim. App. 2000). The burden to show the necessity for a mistrial falls upon the party seeking the mistrial. *Id*. This court will not disturb the trial court's decision unless there is an abuse of discretion. *State v. Adkins*, 786 S.W.2d 642, 644 (Tenn. 1990).

In this case, the record reflects that, near the beginning of M.G.'s cross-examination, the trial court paused the questioning and asked the parties to approach the bench. During the bench conference, the court explained that a woman in the gallery—later identified as M.G.'s therapist—was "giving a motion on how to answer." After a brief discussion, the court asked the therapist to leave the courtroom and explained to the jury that the "woman was giving head motions to the witness on how to answer, so I've asked her to leave the courtroom."

When defense counsel requested a mistrial, the trial court described what occurred for the record:

> I glanced up, she happened to be sitting behind my father, who's actually watching, she scooted over to be in full view of the witness. I saw her make some kind of motion at the first time, not really a yes or no, a motion, so that's why I continued to watch her. The next question she made no move, the next question, she shook her head no.

The court also noted that it was "the first time the lights have been on all afternoon[.]" When defense counsel raised concerns that M.G. had conferred with her therapist during breaks in her testimony; the trial court advised counsel that he could cross-examine M.G. about this issue and that the jury could consider the sequence of events when it deliberated.

Defendant failed to show that there was a manifest necessity for a mistrial. First, there is no indication in the record that anyone other than the trial court saw the therapist's gestures. When questioned about it, M.G. denied seeing the therapist attempting to instruct her on how to answer; she testified that she had not even been looking at the therapist. Second, the trial court took swift curative action. The court immediately halted the trial, held a bench conference, excused M.G.'s therapist from the courtroom, and then explained what had happened. Once the trial resumed, the court allowed defense counsel to cross-

examine M.G. about the events. The jury heard from M.G. about this brief moment in the trial and, by its verdict, believed her when she said, "I was not even looking at her."

In his brief, Defendant contends that the trial court "ought to have allowed the parties to cross-examine the therapist in a jury-out hearing so that they could ascertain how long the therapists [sic] had been in the courtroom and why she was coaching M.G." However, Defendant made no request for such a jury-out hearing, and nothing in the record suggests that the trial court's description of the event was inaccurate.

Defendant further contends that, in addition to the "unknowns regarding M.G.'s therapist[,]" the evidence used to establish the rape of a child charges was "questionable." We disagree. The jury heard M.G. describe how her father had raped her "every single weekend" that she visited him and watched numerous video clips that showed her naked "because before that, [Defendant] raped [her]." Although Defendant points out that the State "could not find a single clip of [him] actually engaging in child rape[,]" M.G. explained at trial that the rapes occurred in places of relative privacy and out of view of the video cameras positioned throughout Defendant's house. Other times, Defendant covered video cameras to avoid being recorded, as shown in one of the video clips in which the screen went black.

The trial court's decision to deny Defendant's request for a mistrial was not an abuse of discretion. Accordingly, Defendant is not entitled to relief.

B. Denial of Defendant's Motion to Sever Offenses

Defendant asserts that the trial court abused its discretion when it denied his motion to sever offenses while simultaneously granting the State's motion to proceed on both of his indictments during the same trial. Defendant concedes that there is a "certain thread of logic" that ties the counts of aggravated sexual battery and indecent exposure together with the counts of child rape, but he insists that "the same cannot possibly be said for the aggravated assault charges[.]" He asserts that video clips of incidents in which he appeared "to choke the three . . . victims in this case, brandish[ed] knives in their presence and otherwise threaten[ed] to kill them had absolutely nothing to do with [Defendant's] allegedly engaging in child rape against M.G., aggravated sexual battery against M.G., or the multiple counts of indecent exposure." He argues that the trial court's conclusion that the offenses were part of the same common scheme or plan was "utterly contrary to the evidence" and that the court's error in refusing to sever offenses was not harmless. Defendant maintains that his convictions should be reversed and the case remanded "so that sexual crime charges against M.G. and the aggravated assault charges against M.G., Ni.G., and Na.G. may be tried separately."

The State responds that the trial court acted within its broad discretion by denying Defendant's motion for severance of offenses. The State argues that the record established Defendant "committed a series of offenses against his children for the purpose of maintaining control and ensuring their silence"; that the trial court correctly determined that "the offenses were part of a larger, continuing plan"; and that Defendant was not entitled to a severance of offenses, save for the charges of violation of the sex offender registry and sexual activity with an animal.

Rule 8(b) of the Tennessee Rules of Criminal Procedure provides that "[t]wo or more offenses may be joined in the same indictment, presentment, or information, with each offense stated in a separate count, or consolidated pursuant to Rule 13, if: (1) the offenses constitute parts of a common scheme or plan; or (2) they are of the same or similar character." Tenn. R. Crim. P. 8(b). Tennessee courts recognize three types of common scheme or plan evidence: "(1) offenses that reveal a distinctive design or are so similar as to constitute 'signature' crimes; (2) offenses that are part of a larger, continuing plan or conspiracy; and (3) offenses that are all part of the same criminal transaction." *State v. Shirley*, 6 S.W.3d 243, 248 (Tenn. 1999); *State v. Moore*, 6 S.W.3d 235, 240 (Tenn. 1999). A larger, continuing plan or conspiracy "involves not the similarity between the crimes, but [rather] the common goal or purpose at which they are directed." *State v. Denton*, 149 S.W.3d 1, 15 (Tenn. 2004) (quoting *State v. Hoyt*, 928 S.W.2d 935, 943 (Tenn. Crim. App. 1995), *overruled on other grounds by Spicer v. State*, 12 S.W.3d 438, 447 n. 12 (Tenn. 2000)). In other words, crimes that are part of a larger plan or conspiracy must be committed "in furtherance of a plan that had a readily distinguishable goal, not simply a string of similar offenses." *Id*. The Tennessee Supreme Court explained that "a common scheme or plan for severance purposes is the same as a common scheme or plan for evidentiary purposes." *Moore*, 6 S.W.3d at 240 n.7.

In *State v. Allman*, 712 S.W.3d 467, 552-53 (Tenn. Crim. App. 2024), this court explained:

> Under Rule 14(b)(1), a defendant has "an absolute right" to a severance of the offenses unless the State can establish that (1) the offenses are part of a common scheme or plan; (2) evidence of each offense would be admissible in the trial of the other offenses if severed; and (3) the probative value of the evidence of the other offenses is not outweighed by the prejudicial effect that admission of the evidence would have on the defendant. *State v. Eady*, 685 S.W.3d 689, 709 (Tenn. 2024); *State v. Toliver*, 117 S.W.3d 216, 228 (Tenn. 2003); *Spicer*, 12 S.W.3d at 443-45 (citing Tenn. R. Crim. P. 14(b)(1), Tenn. R. Evid. 404(b)(2), and (4)).

> Under the first prong, crimes which are part of a larger, continuing plan or conspiracy constitute evidence of a common scheme or plan under Rule 14(b). *[Hoyt]*, 928 S.W.2d [at] 943 . . . , *overruled on other grounds by Spicer*, 12 S.W.3d at 447, n.12; *see also State v. Hallock*, 875 S.W.2d 285, 289-90 (Tenn. Crim. App. 1993).
>
> Under the second or "primary" prong, multiple offenses tried together is an issue of evidentiary relevance and thus invokes Rule 404(b). Rule 404(b) excludes evidence of other crimes which amount to nothing more than propensity evidence unless the evidence serves some "other purpose" such as identity, motive, intent, absence of mistake or accident, if that is a defense, and a common scheme or plan for commission of two or more crimes so related to each other that proof of one tends to establish the other. *Moore*, 6 S.W.3d at 239; Tenn. R. Evid. 404(b), Advisory Comm'n Cmts; *Toliver*, 117 S.W.3d at 230.
>
> For the third prong, the trial court must balance the probative value of the evidence against the danger of its unfair prejudice in showing the defendant's propensity or character as required by Rule 404(b). Factors to consider include "the prosecution's need for the evidence, the likelihood the defendant committed the other crimes, and the degree of its relevance." *State v. Edwards*, 868 S.W.2d 682, 691 (Tenn. Crim. App. 1993). "The similarity of the acts makes the probative value particularly significant." *Id*.

A trial court's decision to consolidate or sever offenses is discretionary and will only be reversed if discretion has been abused. *Shirley*, 6 S.W.3d at 245-47; *Moore*, 6 S.W.3d at 238. "[A] trial court's decision to consolidate or sever offenses will not be reversed unless the 'court applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining.'" *Spicer*, 12 S.W.3d at 442-43 (quoting *Shirley*, 6 S.W.3d at 247); *see also State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997).

In this case, the trial court did not abuse its discretion when it granted Defendant's motion for severance only as to the charges of violation of the sex offender registry and sexual activity with an animal and granted the State's request to consolidate Defendant's remaining offenses in case numbers 20-CR-533 and 21-CR-246 for trial. At the conclusion of the pretrial hearing on the issue, the trial court stated that the "aggravated assault, the child abuse stuff, all that stuff is very intertwined[,]" and it concluded that the events were all part of a common scheme or plan of behavior against Defendant's three young children, that the video evidence involved all three victims, and that, if separate trials were held, the trials would be "very nearly exactly the same."

The record supports the trial court's ruling. As aptly described by the State in its brief, Defendant's crimes against his children "were not merely a string of similar offenses. Instead, they were part of a larger, continuing plan to scare his children into silence, allowing their weekend visits to continue and ensuring his continued access to M.G." During the pretrial hearing, Ms. Ralston testified that all three of the children described similar instances of physical abuse by Defendant. They told Ms. Ralston that Defendant often locked them outside of the house, hit them in their faces, and whipped them with a belt. The children also disclosed to Ms. Ralston that Defendant made threats to kill them. On one occasion, Defendant directed the children to sit together on the couch while he rubbed the blades of two knives together and said they were "going to die today"; the State corroborated this with the introduction of video clips showing Defendant brandishing two knives in front of the children in the living room of his house. The record shows that these assaults took place in the open areas of Defendant's house and in plain view of the other children, so that all three children understood what would happen if they disobeyed Defendant.

Additionally, the record shows that the physical abuse often related back to Defendant's sexual interest in M.G. Ms. Ralston testified that M.G. disclosed physical abuse by Defendant when she resisted his sexual advances. M.G. also disclosed that Defendant tried to convince her that she was "actually having a sexual relationship with her stepfather" and that Defendant would hit and beat M.G. until she agreed with him. Ms. Ralston said that Na.G. described seeing this abuse; he told Ms. Ralston that Defendant "would ask [M.G.] if she was having sex with [her stepfather] and beat her until she told a bold face lie that he wanted to hear." Ms. Ralston testified that children who have been sexually abused are often "warned by their abuser not to tell" and are "sometimes told specifically what will happen if [they] do tell." She said that such threats and physical abuse can be the cause of a child's delayed disclosure of sexual abuse. Ms. Ralston concluded that Defendant's physical abuse of M.G. and her younger brothers "tie[d] in as a measure of controlling her and not only making her do what he wanted her to do, but also preventing her from telling anybody."

Thus, Defendant's repeated physical assaults on the children were clearly part of his larger, continuing plan to rape M.G. during their weekend visits and to ensure that they did not tell their mother or law enforcement. Moreover, the evidence of each set of offenses would have been admissible at the trial of the other; the evidence of the other offenses was relevant to establish material issues such as motive, intent, and identity, and the probative value of the evidence outweighed any danger of unfair prejudice to Defendant. *See Eady*, 685 S.W.3d at 709.

Under these circumstances, the trial court did not abuse its discretion when it concluded that Defendant was not entitled to a severance of offenses, save for the charges

of violation of the sex offender registry and sexual activity with an animal. He is not entitled to relief as to this claim.

C. Violation of Right to Confrontation

Defendant next contends that the trial court committed plain error when it allowed the State to introduce the TBI forensic biology report and the Our Kids physical examination report of M.G. because the reports were prepared by individuals (Agent Kennedy and Ms. Dennis, respectively) who did not testify at trial. Defendant argues that the court's ruling violated his right to confrontation, citing *Smith v. Arizona*, 602 U.S. 779, 802-03 (2024), in which the United States Supreme Court held that the State may neither introduce "the testimonial out-of-court statements of a forensic analyst at trial . . . through a surrogate analyst who did not participate in their creation" nor introduce those statements as the basis for the surrogate's expert opinion.

The State responds that Defendant is not entitled to plain error relief.

As acknowledged by Defendant, he did not object at trial or in his motion for new trial to the testimony of Agent Lenzy or Ms. Gallion or to the admission of the TBI forensic biology report and the Our Kids physical examination report of M.G. Defendant further acknowledges that *Smith v. Arizona* was decided in 2024, after the conclusion of his trial and during the pendency of his appeal, and he asks this court to apply it retroactively to this case.

Our supreme court has held that "appellate courts must apply new rules retroactively to cases pending on direct review when the new rule is announced but must do so subject to existing jurisprudential principles, such as appellate review preservation requirements and the plain error doctrine." *State v. Minor*, 546 S.W.3d 59, 70 (Tenn. 2018). Therefore, "if a defendant fails to comply with appellate review preservation requirements, an appellate court must utilize the plain error doctrine rather than plenary appellate review when applying a new rule." *Id.* Because Defendant did not preserve the issue for plenary review, we will review the issue for plain error.

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 relief, 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).

Upon review, we conclude that plain error relief is unwarranted because consideration of the error is not necessary to do substantial justice. Our supreme court has held that "a conclusion that substantial justice requires relief would imply a significant probability that the jury would have acquitted the [d]efendant had the disputed testimony not been admitted." *State v. Vance*, 596 S.W.3d 229, 256 (Tenn. 2020). Here, neither the testimony of the witnesses at issue (from Agent Lenzy and Ms. Gallion) nor the introduction of the related reports (the TBI forensic biology report prepared by Agent Kennedy or the Our Kids physical examination report of M.G. prepared by Ms. Dennis) were particularly compelling for the State's case. Neither Agent Kennedy nor Agent Lenzy concluded that M.G.'s DNA was on any of the items recovered from Defendant's house and tested by the TBI; those items included things like mattress samples, a rag from Defendant's nightstand, and towels from his dirty laundry. Likewise, Ms. Dennis indicated in her report that she saw no signs of injury or trauma on M.G.'s body, and Ms. Gallion testified to those findings at trial.

Even without the testimony from Agent Lenzy and Ms. Gallion and the introduction of the related reports, ample evidence supports the jury's determination that Defendant raped and otherwise sexually abused M.G. and that he assaulted all three victims. Each of the victims participated in individual forensic interviews and testified against Defendant at trial. Moreover, the State introduced video clips that captured many of the instances of abuse they described. Defendant cannot show that the results of the trial would have been different in the absence of either witness's testimony or reports. Thus, he has failed to prove that he is entitled to plain error relief.

D. Consecutive Sentences

Defendant contends that the trial court erred in imposing consecutive sentences. He argues that his effective 475-year sentence "is both draconian and highly unnecessary given that the sentence far exceeds his natural lifespan and given that there was no evidence of loss of life or even serious injury submitted throughout the State's case." Additionally, he appears to raise a claim that his sentence violates the prohibition against "cruel and unusual punishment" found in both Article I, § 16 of the Tennessee Constitution and the Eighth Amendment of the United States Constitution.

The State responds that the trial court's sentencing decisions should be affirmed because the court properly applied the appropriate consecutive sentencing factors when it decided how Defendant's sentences should be aligned, and those determinations are supported by the record.

Tennessee Code Annotated section 40-35-210(b) requires that a trial court consider the following when determining a specific sentence to impose upon a defendant:

> (1) The evidence, if any, received at the trial and the sentencing hearing;
>
> (2) The presentence report;
>
> (3) The principles of sentencing and arguments as to sentencing alternatives;
>
> (4) The nature and characteristics of the criminal conduct involved;
>
> (5) Evidence and information offered by the parties on the mitigating and enhancement factors set out in [Tennessee Code Annotated sections] 40-35-113 and 40-35-114;
>
> (6) Any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee;
>
> (7) Any statement the defendant wishes to make on the defendant's own behalf about sentencing; and
>
> (8) The result of the validated risk and needs assessment conducted by the department and contained in the presentence report.

Tenn. Code Ann. § 40-35-210(b) (2023).

In determining a specific sentence within a range of punishment, the trial court should consider, but is not bound by, the following advisory guidelines:

> (1) The minimum sentence within the range of punishment is the sentence that should be imposed, because the general assembly set the minimum length of sentence for each felony class to reflect the relative seriousness of each criminal offense in the felony classifications;
>
> and

> (2) The sentence length within the range should be adjusted, as appropriate, by the presence or absence of mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114.

Tenn. Code Ann. § 40-35-210(c).

To facilitate meaningful appellate review, the trial court must state on the record the factors it considered and the reasons for imposing the sentence chosen. Tenn. Code Ann. § 40-35-210(e); *State v. Bise*, 380 S.W.3d 682, 706 (Tenn. 2012). Although the trial court should consider enhancement and mitigating factors, such factors are advisory only. *See* Tenn. Code Ann. § 40-35-114; *see also Bise*, 380 S.W.3d at 698 n.33, 704; *State v. Carter*, 254 S.W.3d 335, 346 (Tenn. 2008). We note that "a trial court's weighing of various mitigating and enhancement factors [is] left to the trial court's sound discretion." *Carter*, 254 S.W.3d at 345. In other words, "the trial court is free to select any sentence within the applicable range so long as the length of the sentence is 'consistent with the purposes and principles of [the Sentencing Act].'" *Id*. at 343. A trial court's "misapplication of an enhancement or mitigating factor does not invalidate the sentence imposed unless the trial court wholly departed from the 1989 Act, as amended in 2005." *Bise*, 380 S.W.3d at 706. "[Appellate courts are] bound by a trial court's decision as to the length of the sentence imposed so long as it is imposed in a manner consistent with the purposes and principles" set out in Tennessee Code Annotated sections 40-35-102 and 103. *Carter*, 254 S.W.3d at 346.

When the record clearly establishes that a trial court imposed a sentence within the appropriate range after a "proper application of the purposes and principles of our Sentencing Act," this court reviews a trial court's sentencing decision under an abuse of discretion standard with a presumption of reasonableness. *Bise*, 380 S.W.3d at 707. The party challenging the sentence on appeal bears the burden of establishing that the sentence was improper. Tenn. Code Ann. § 40-35-401, Sentencing Comm'n Cmts.

In *State v. Pollard*, 432 S.W.3d 851, 859 (Tenn. 2013), the Tennessee Supreme Court expanded its holding in *Bise* to trial courts' decisions regarding consecutive sentencing. "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)). Among the Tennessee Supreme Court's reasons for shifting to an abuse of discretion standard, the *Pollard* Court noted that "the 2005 amendments also signaled a general increase in the discretionary authority of the trial courts in regard to all sentencing decisions, including the decision of whether to impose consecutive sentences." *Id*. at 860.

If a defendant is convicted of more than one criminal offense, the court shall order sentences to run consecutively or concurrently. Tenn. Code Ann. § 40-35-115(a). Tennessee Code Annotated section 40-35-115(b) provides, in pertinent part:

> (b) The court may order sentences to run consecutively if the court finds by a preponderance of the evidence that:
>
> > (1) The defendant is a professional criminal who has knowingly devoted the defendant's life to criminal acts as a major source of livelihood;
> >
> > (2) The defendant is an offender whose record of criminal activity is extensive;
> >
> > . . . .
> >
> > (5) The defendant is convicted of two (2) or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances arising from the relationship between the defendant and victim or victims, the time span of defendant's undetected sexual activity, the nature and scope of the sexual acts and the extent of the residual, physical and mental damage to the victim or victims;

Tenn. Code Ann. § 40-35-115(b)(1)-(2), (5). Any one of the grounds set out in Tennessee Code Annotated section 40-35-115(b) 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)).

First, to the extent that Defendant attempts to raise a claim that his sentence violates the constitutional protections against cruel and unusual punishment found in Article I, § 16 of the Tennessee Constitution and the Eighth Amendment of the United States Constitution, we conclude that Defendant has waived our consideration of this issue. A review of the record indicates that Defendant's challenge to his sentence in his motion for new trial did not include a constitutional challenge, and it is well-established that an appellant cannot change theories for relief from the trial court to the appellate court. *State v. Alder*, 71 S.W.3d 299, 303 (Tenn. Crim. App. 2001); *State v. Tanner*, No. M2018-00639-CCA-R3-CD, 2019 WL 2065120, at *1 (Tenn. Crim. App. May 9, 2019), *no perm. app. filed*. Accordingly, this claim is waived.

Regarding Defendant's claim that the trial court erred in imposing consecutive sentences, we note that the trial court properly articulated on the record its reasons for ordering consecutive sentences. *See Pollard*, 432 S.W.3d at 862; Tenn. R. Crim. P. 32(c)(1)). Upon reviewing Defendant's lengthy criminal record and commenting on the "litany" of felony convictions that spanned three different counties, the trial court found that Defendant was a professional criminal who had knowingly devoted his life to criminal acts as a major source of livelihood and that Defendant was an offender whose record of criminal activity was extensive. *See* Tenn. Code Ann. § 40-35-115(b)(1)-(2). Additionally, the trial court found that Defendant had been convicted of two or more statutory offenses involving sexual abuse of a minor—his daughter M.G. The court then considered the aggravating circumstances arising from the relationship between Defendant and the victim; the time span of Defendant's undetected sexual activity; the nature and scope of the sexual acts; and the extent of the residual, physical and mental damage to the victim. *See* Tenn. Code Ann. § 40-35-115(b)(5). M.G. was Defendant's biological daughter, and he committed the sexual offenses against her for over a year, every weekend that she went to his house. Defendant engaged in vaginal, oral, digital, and anal penetration of M.G., in addition to repeated instances of inappropriate touching of the victim, and he used physical violence and threatened to kill the victim and other family members if she did not comply. Regarding the residual damage to the victim, the trial court noted that the victim suffered from "insomnia, . . . consistently threw up, anxiety . . . as a result of this[.]" The court further noted that she had been diagnosed with PTSD and remained in counseling due to Defendant's sexual and physical abuse. After making those findings, the trial court said, "If there's ever a sentence that requires consecutive sentencing, . . . it's this one." The trial court also found that seven enhancement factors and no mitigating factors applied under the facts of the case. When the court calculated Defendant's total effective sentence of 475 years, it reiterated that the sentence was "absolutely justified based on what [it] observed[.]"

For his part, Defendant states that he "does not dispute the trial court's findings on the enhancement factors nor even that one or more of the aforementioned consecutive sentencing factors apply" to his case. Nevertheless, he asserts that the trial court erred in imposing partial consecutive sentences because his effective sentence exceeds his natural lifespan. However, this court has previously held that the total effective length of a defendant's sentences will not be found to be excessive simply because it would extend beyond the expected lifetime of the defendant. *State v. Robinson*, 930 S.W.2d 78, 85 (Tenn. Crim. App. 1995). Defendant also argues that his total effective sentence is excessive because there was no loss of life or serious bodily injury presented by the State, but we note that this court has previously upheld lengthy terms of incarceration imposed pursuant to the sexual abuse of a minor factor. *See e.g., State v. Worley*, No. M2023-00867-CCA-R3-CD, 2025 WL 101656, at *10 (Tenn. Crim. App. Jan. 15, 2025) (upholding an effective sentence of 150 years based upon the sexual abuse of a minor factor where the defendant

was convicted of four counts of rape of a child and one count of attempted rape of a child; the offenses occurred over a twenty-month period; and the victim was six and seven years old during the crimes), *perm. app. denied* (Tenn. Jun. 18, 2025); *State v. Allard*, No. M2023-01033-CCA-R3-CD, 2024 WL 4275047, at *15 (Tenn. Crim. App. Sept. 24, 2024) (upholding an effective 144-year sentence for convictions of two counts of aggravated rape of a child, two counts of aggravated sexual battery, and twenty-eight counts of especially aggravated sexual exploitation of a minor), *perm. app. denied* (Tenn. Jan. 22, 2025); *State v. Blanton*, No. M2020-00155-CCA-R3-CD, 2022 WL 904839, at *14 (Tenn. Crim. App. Mar. 29, 2022) (upholding the defendant's effective 212-year sentence where the defendant was convicted of six counts of rape of a child and two counts of aggravated sexual battery and the trial court relied upon the sexual abuse of a minor factor together with the extensive criminal record factor), *no perm. app. filed*; *State v. Perry*, No. E2015-01227-CCA-R3-CD, 2016 WL 2901817, at *4 (Tenn. Crim. App. May 13, 2016) (upholding a 106-year sentence for convictions of fifty-nine counts of especially aggravated sexual exploitation of a minor, three counts of statutory rape by an authority figure, and one count of sexual exploitation of a minor), *no perm. app. filed*; *State v. Clemons*, No. M2014-00131-CCA-R3-CD, 2015 WL 1778064, at *8 (Tenn. Crim. App. Apr. 17, 2015) (upholding the imposition of partial consecutive sentencing under the sexual abuse of a minor factor resulting in an effective 176-year sentence), *no perm. app. filed*; *State v. Zukowski*, No. M2001-02184-CCA-R3-CD, 2003 WL 213785, at *21 (Tenn. Crim. App. Jan. 31, 2003) (holding that an effective sentence of 125 years for five convictions of rape of a child was proper under the sexual abuse of a minor factor where the victim was mentally disabled and the abuse spanned two years), *perm. app. denied* (Tenn. May 19, 2003); *State v. Crittenden*, No. M1998-00485-CCA-R3-CD, 1999 WL 1209517, at *4 (Tenn. Crim. App. Dec. 17, 1999) (affirming an effective sentence of 100 years under the sexual abuse of a minor factor where the defendant was indicted on thirty-six counts of sexual abuse and pled guilty to eight counts of aggravated rape of his minor daughter occurring over a period of approximately eight years), *perm. app. denied* (Tenn. June 5, 2000).

In this case, the trial court painstakingly reviewed the evidence presented at both trial and sentencing, and it thoroughly explained its evaluation of the evidence in light of our sentencing scheme. Our review of the record indicates that, in imposing consecutive sentences, the trial court did not apply an incorrect legal standard, reach an illogical conclusion, base its ruling on a clearly erroneous assessment of the proof, or apply reasoning that causes an injustice to the complaining party. Defendant has failed to rebut the presumption of reasonableness applicable to the trial court's sentencing decision and to demonstrate that the trial court abused its discretion by ordering a portion of his sentences to run consecutively. Thus, we conclude that Defendant is not entitled to relief.

III. Conclusion

Based upon the foregoing, we affirm the judgments of the trial court.

s/*Robert L. Holloway, Jr.*
ROBERT L. HOLLOWAY, JR., JUDGE