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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I.

Was the evidence sufficient to support Defendant's convictions?
(Def.'s Issues 1, 2, 15, 18, 29.)

II.

Is Defendant entitled to relief on his claim that the State obtained his conviction via false testimony? (Def.'s Issues 3, 23.)

III.

Did the trial court properly exercise its discretion in admitting evidence of Defendant's gang membership? (Def.'s Issues 6-10.)

IV.

Was the trial court's 404(b) instructional error harmless beyond a reasonable doubt? (Def.'s Issues 11-12, 25.)

V.

Has Defendant waived his claim that the trial court improperly admitted testimony that he referred to himself as a "demon?" (Def.'s Issue 13.)

VI.

Did the trial court properly instruct the jury on reasonable doubt?
(Def.'s Issues 5, 20.)

VII.

Did the trial court properly deny Defendant a continuance? (Def.'s Issue 14.)

VIII.

Is Defendant entitled to relief on his claim that the Hamilton County District Attorney General's Office had a conflict of interest? (Def.'s Issue 19.)

IX.

Is Defendant entitled to relief on his claim that the State violated his due process rights by failing to give him a bill of particulars? (Def.'s Issue 21.)

X.

Is Defendant entitled to relief on his claim that the trial court committed "motion in limine violations?" (Def.'s Issue 22.)

XI.

Has Defendant waived his claim that the trial court should have sequestered the jury? (Def.'s Issue 24.)

XII.

Did the trial court properly remove Defendant from the courtroom after a nearly violent outburst? (Def.'s Issue 26.)

XIII.

Did Defendant's homicide convictions properly merge? (Def.'s Issues 4, 27-28.)

XIV.

Did the trial court properly exercise its discretion in imposing partially consecutive sentences? (Def.'s Issue 16.)

XV.

Is Defendant entitled to cumulative-error relief? (Def.'s Issue 17.)

XVII.

Is Defendant entitled to relief on his ineffective-assistance-of-counsel claims? (Def.'s Issue 30.)

STATEMENT OF THE CASE

The Hamilton County Grand Jury indicted Defendant. Donyell Dewayne Holland, for first-degree premeditated murder (Count 1), first-degree felony murder (Count 2), especially aggravated kidnapping (Count 3), employing a firearm during the commission of a dangerous felony (Count 4), and unlawful possession of a firearm (Count 5). (I, 6-8.) A jury convicted Defendant of the lesser-included offense of second-degree murder in Count 1, but otherwise as charged. (V, 652-61.)

Counts 1 and 2 merged, and the trial court imposed an effective life-plus-fifty-year sentence. (V, 652-61.) The trial court allowed trial counsel to withdraw and allowed Defendant to represent himself at sentencing and the motion for new trial. (IV, 479-81.) Defendant filed multiple pro se motions for new trial raising a litany of grievances assailing his convictions. (II, 268-74; IV, 505-78; VII, 902-60; VIII, 961-73.) The trial court denied the motion after a hearing. (IX, 1123; *see generally* XVII, XVIII.) Defendant's premature notice of appeal became effective upon the trial court's denial of his motion for new trial, making this appeal timely. Order, *State v. Holland*, No. E2024-01809-CCA-R3-CD (Tenn. Crim. App. Mar. 17, 2025).

STATEMENT OF THE FACTS

On May 27, 2020, Randy Leslie, the victim, was with Brittany Lanham. (XI, 92-94.) The victim had bought something from Defendant "and it wasn't right," so he and Ms. Lanham went to Defendant's house on Teakwood Drive in Hamilton County. (XI, 95, 127.)

When they arrived, the victim got out of his car and talked to Defendant on the steps of his camper trailer. (XI, 95-96; Ex. 9.) Several other people were at Defendant's house. (XI, 96.) The victim wanted his money back, but Defendant "didn't want to deal with it at the time[.]" (XI, 96.) Though the victim spoke calmly, he was "persistent," and Defendant became "aggravated." (XI, 96-97.) Ms. Lanham watched as Defendant shot the victim with a red firearm. (XI, 96-97; Exs. 8, 21.) The gunshot struck the victim so hard that "[h]is pants came down to his ankles." (XI, 96.) Defendant kicked the victim when he fell to the ground and said, "Why you playing with me? Why you playing with me like that?" (XI, 96, 101.)

Ms. Lanham began screaming. (XI, 101.) She said to Defendant, "What are you doing?" (XI, 101.) Defendant said, "Oh, h[*]ll, no, b[*]tch." (XI, 101.) Defendant took Ms. Lanham's phone from her hand and forced her into the camper trailer. (XI, 101-02.) Some people who were there with Defendant took the victim, who was still alive but could not walk or move his legs, into the trailer, too. (XI, 102.) The victim began panicking and hyperventilating. (XI, 103-04.) He said, "please don't let me die." (XI, 103.) The victim and Ms. Lanham were in the trailer less than ten minutes. (XI, 104.) Ms. Lanham saw a few police cars drive through the neighborhood through the window. (XI, 104-05.)

Chattanooga Police Department ("CPD") Officer David Gerity responded to the Teakwood area based on a call that someone heard a single gunshot and a woman scream. (XI, 57.) When Officer Gerity arrived, he drove around but saw nothing out of the ordinary. (XI, 57-58.) He saw no group of people gathered outside; if he had, he would have asked if anyone heard any gunshots. (XI, 60.)

After a few minutes, Defendant ordered someone to take the victim and lay him across the back seats of his own car. (XI, 106-07.) Defendant "was ordering everybody around." (XI, 106.) Ms. Lanham was placed in the front passenger seat, and Defendant drove. (XI, 107.) Ms. Lanham asked Defendant to take the victim to the hospital. (XI, 107.) Defendant said, "No, he's going to tell on me." (XI, 107.) The victim said, "Please, man. I won't tell on you. Please, man, I'm begging you." (XI, 108.) Defendant told Ms. Lanham to turn around and stop trying to help the victim. (XI, 108.) Ms. Lanham and the victim asked Defendant to let them go, and the victim begged for his life, but Defendant refused. (XII, 194.)

Defendant drove to a "white house off Bonny Oaks," also in Hamilton County. (XI, 109, 127-28.) Everyone sat in the driveway "trying to figure out something." (XI, 110.) Defendant called someone to "patch [the victim] up or maybe to see if they could fix" his wound. (XI, 110.) Lauren,¹ whom Ms. Lanham knew, arrived and inspected the victim, and she determined that the victim needed professional medical help. (XI, 110.) Defendant gave her a first aid kit and said, "No, you got

¹ Lauren's last name is not in the record.

to do this." (XI, 115.) The victim was "gasping for air"; it sounded like he was having an asthma attack. (XI, 127.) Defendant ordered everyone inside the house, leaving the victim in the car in the hot weather. (XI, 110-11.)

Inside the house, Defendant and his cronies brainstormed about what to do. (XI, 111.) Ms. Lanham did not understand "why the hospital wasn't, like the number one plan . . . why saving [the victim] wasn't the first thing to do." (XI, 111.) Someone suggested that they "get rid of" the victim. (XI, 111.) After about two and a half hours, someone went outside to check on the victim. (XI, 111.) When that person returned, he informed the group that the victim had died. (XI, 111-12.)

Defendant made everyone except Ms. Lanham leave the house. (XI, 116.) Defendant and Ms. Lanham got back into the victim's car (with the victim's body still in the back seat) and drove to another house on Glencoe Street. (XI, 118; Exs. 10-12.) It was dark and beginning to rain by this point. (XI, 120.) Defendant parked the victim's car by some shrubs to partially obscure it. (XI, 120.) Defendant and Ms. Lanham sat on the house's back patio for what "felt like forever." (XI, 121.) Defendant called someone "and then a Tahoe pulled up." (XI, 122.) Defendant ordered Ms. Lanham to turn away so she could not see what was happening, but she stole a few looks when she could. (XI, 123.)

Derik Brown was driving the Tahoe; Jimmy Green was with him. (XIV, 478-79.) Defendant told Mr. Brown that the victim was dead and "he needed [Mr. Brown] to get rid of [his] body." (XIV, 481.) Mr. Brown was willing to help Defendant because of their shared membership in the Vice Lords gang. (XIV, 475-77.) Defendant wanted the victim's body

disposed "out of state." (XIV, 488-89.) Defendant told Mr. Brown that no one would be looking for the victim's car because the victim was supposed to be driving it. (XIV, 481.) Defendant also told Mr. Brown the car would need to be cleaned. (XIV, 482.) Mr. Brown asked if Defendant had shot the victim in the head. (XIV, 482.) Defendant gestured, indicating that "it was a body shot," and called himself a "demon." (XIV, 482-83.)

Mr. Brown got in the victim's car and drove away with the Tahoe following. (XI, 123; XIV, 484-86.) Defendant and the victim sat on the patio for another thirty to forty-five minutes until a minivan arrived to pick them up. (XI, 123.)

Mr. Brown and Mr. Green argued about the best way to dispose of the victim's body. (XIV, 487-88.) They moved the victim's body to the trunk in case they were pulled over. (XIV, 488.) They eventually dumped the victim's body off the side of the road in a "real wooded area." (XIV, 490.)

After dumping the victim's body, they returned to a hotel where Mr. Green's girlfriend was staying. (XIV, 491.) Mr. Green took everything out of the trunk and Mr. Brown contacted an acquaintance, named "Payday," to come help clean the car. (XIV, 492-93.) Mr. Brown wanted Payday to bring bleach, but "it [was] corona and all the bleach was bought up." (XIV, 493.) So, Payday brought a gallon of hand sanitizer. (XIV, 493.) But Payday did a poor job of cleaning the car, and it still smelled like blood. (XIV, 494-95.)

Cherie Harden, the victim's mother, last spoke to him the day he was murdered. (XI, 34.) He was driving a Mitsubishi Lancer at the time that Ms. Harden bought for him. (XI, 34.) The victim had left his

daughter with Ms. Harden's mother, who summoned Ms. Harden to bring the victim's daughter something to eat after Ms. Harden got off work that evening because the victim had not come to get her. (XI, 35.) The victim did not come the next day to get his daughter, either. (XI, 35.)

Coffee County Sheriff's Office ("CCSO") Deputy Blake Simmons noticed the Lancer in a hotel parking lot in Coffee County. (XI, 75-76.) Deputy Simmons noticed that the car had a Hamilton County tag and the driver wore bright green gloves. (XI, 76-77; Ex. 7.) Deputy Simmons thought it was "odd" that the driver was wearing gloves on that hot day. (XI, 78.) Eventually, Deputy Simmons pulled the Lancer over for speeding. (XI, 79.) Mr. Brown was the driver. (XI, 80.) Mr. Brown could not provide the Lancer's registration or proof of insurance. (XI, 81.) He told Deputy Simmons that he had just bought the car in Chattanooga. (XI, 81.) But he could not tell Deputy Simmons from whom he had bought the car. (XI, 81.)

Deputy Simmons ran the tag through his system and noticed the car had a lien, which stood out to him because people "[t]ypically [do] not" sell cars with liens. (XI, 81-82.) When Deputy Simmons next spoke with Mr. Brown, he gave a different story about how he acquired the car. (XI, 82.) Eventually, a K-9 unit arrived at the stop, and the dog indicated the presence of narcotics in the car. (XI, 83-84.) A search revealed narcotics on Mr. Brown's person and scales in the car. (XI, 85-86.) Mr. Brown tried to run away but was quickly apprehended. (XI, 85.)

Ms. Harden had not heard from the victim in a couple of days but did not begin to worry until she got a call from Coffee County authorities saying that they had the Lancer. (XI, 36.) Ms. Harden asked the officer

magazines, and ammunition, including a red handgun. (XII, 217, 219-20, 234; Exs. 8, 15-16, 17-10,² 17-19, 21.)

CPD investigators noticed "moldy" stains around which was a red substance appearing to be blood on the Lancer's back seat. (XII, 270-73; Ex. 31-3-31-6, 33.) There were red stains on the metal underneath the back seat and in the trunk. (XII, 273-74; Exs. 31-5-31-9, 34-35.) Those red stains turned out to be blood—neither Defendant's nor Mr. Brown's, but the same person's as on the towel. (XIII, 363-66, 396-97; Exs. 49-50.)

The medical examiner found a single bullet lodged near the victim's spine that entered through the right side of his torso. (XIII, 322-23; Exs. 44-45.) The medical examiner opined that the victim's complaining that he could not move his legs was consistent with the spinal cord injury he sustained. (XIII, 325.) The victim's injury would not have instantly killed him; he would not have died until he bled out. (XIII, 333.) The medical examiner ultimately concluded that the victim's cause of death was a gunshot wound to the torso and his manner of death was homicide. (Ex. 45.)

TBI forensic biologists could not obtain a known DNA sample from the victim due to his advanced decomposition. (XIII, 371-75.) Of the several guns law enforcement collected in this case, the bullet found in

² Some collective exhibits, such as Exhibit 17, contain several photographs. Twenty-one photographs comprise Exhibit 17, labeled as 17-1 through 17-21. For clarity's sake, the State refers to multiple consecutive exhibits using a hyphen; for example, "Exs. 5-6." The State uses an en dash to refer to a specific photograph in the collective exhibits; for example, "Ex. 17-10."

the victim's body could only have been shot out of the red SCCY pistol.
(XIV, 532-35; Ex. 53.)

In a bifurcated proceeding, the State submitted a certified judgment showing that Defendant was convicted of aggravated robbery in 1995. (Ex. 57.)

ARGUMENT

Defendant raises numerous arguments on appeal assailing his convictions. On none of these claims is he entitled to relief. This Court should affirm.

I. Sufficient Evidence Supported Defendant's Convictions. (Def.'s Issues 1, 2, 15, 18, 29.)

Defendant raises various claims which, taken together, ultimately amount to a sufficiency challenge. (Def.'s Br. at 14-16, 52-53, 61-62, 82.) Though he broadly asserts that the evidence presented against him was not credible, unreliable, or entitled to little weight, which does not entitle him to relief and risks waiver for insufficient argument because he does not engage with the statutory elements, the State will brief the merits of this issue. See Tenn. Ct. Crim. App. R. 10(b).

A. Standard of review

When examining whether the evidence presented at trial was sufficient to support a conviction, several well-settled principles guide this Court's analysis. This Court determines "whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Parker*, 350 S.W.3d 883, 903 (Tenn. 2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); see also Tenn. R. App. P. 13(e). A guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). The defendant bears the burden on appeal to demonstrate that the evidence is insufficient to support his conviction. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

"[A] jury verdict, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." *State v. Harris*, 839 S.W.3d 54, 75 (Tenn. 1992). The State is entitled on appeal to "the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom." *State v. Elkins*, 102 S.W.3d 578, 581 (Tenn. 2003). As such, this Court is precluded from re-weighing or reconsidering the evidence when evaluating the convicting proof. *State v. Morgan*, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996); *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Moreover, this Court may not substitute its own "inferences for those drawn by the trier of fact from circumstantial evidence." *Matthews*, 805 S.W.2d at 779. Questions as to the credibility of witnesses and the weight of the evidence, as well as factual issues raised by such evidence, are resolved by the trier of fact, not this Court. *State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990). These principles govern "whether the conviction is based upon direct or circumstantial evidence." *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)).

B. The evidence was sufficient to support Defendant's second-degree murder conviction in Count 1.

Second-degree murder is a knowing killing of another. Tenn. Code Ann. § 39-13-210(a)(1). A defendant acts knowingly "with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct

when the person is aware that the conduct is reasonably certain to cause the result." *Id.* § 39-11-106(23).

Here, viewed in the light most favorable to the State, the evidence was sufficient to establish that Defendant knowingly killed the victim. Defendant and the victim were involved in a disagreement that, though the victim was persistent, remained civil. (XI, 96-97.) Defendant shot the victim in the torso, paralyzing him, to put an end to it. (XI, 96-97, 102; XIII, 325; Exs. 8, 21.) Defendant did not seek professional medical help for the victim. (XI, 110-11, 115, 127; XII, 194.) The victim finally died after he bled out. (XI, 111-12; XIII, 325, 333; Ex. 45.)

Defendant's general complaints about the lack of physical or forensic evidence fall flat. (Def.'s Br. at 14-15, 61-62, 82.) The State introduced plenty of physical and forensic evidence—the gun Defendant used to shoot the victim, the bullet extracted from the victim's spine, the medical examiner, the TBI testing—to establish that he knowingly killed the victim. (XIII, 322-33; Exs. 8, 21, 44-45, 48-51, 53.) His other complaints about the weight of the evidence get him nowhere on appeal. *Morgan*, 929 S.W.2d at 383; *Matthews*, 805 S.W.2d at 779. The evidence was sufficient. Defendant is not entitled to relief.

C. The evidence was sufficient to support Defendant's first-degree felony murder and especially aggravated kidnapping convictions in Counts 2 and 3.

A person commits especially aggravated kidnapping who "knowingly removes or confines another unlawfully so as to interfere substantially with the other's liberty" and the victim suffers serious bodily injury. Tenn. Code Ann. §§ 39-13-302(a), -305(a)(4). Serious bodily

injury is a bodily injury that involves, as relevant here, a substantial risk of death, extreme physical pain, or protracted loss or substantial impairment of a function of a bodily member or organ. *Id.* § -11-106(37)(A), (C), (E). A person commits first-degree felony murder who kills another during a perpetration of any kidnapping. *Id.* § -13-202(a)(2).

Viewed in the light most favorable to the State, the evidence was sufficient. Defendant shot the victim, paralyzing him and rendering him unable to walk or breathe properly, and forced him into his camper trailer. (XI, 96-97, 101-04, 106-08, 110-12, 127.) Defendant would not let the victim and Ms. Lanham leave. (XII, 194.) Then, Defendant shoved the victim into the back seat of his own car, and drove to another place, where he left the victim to die. (XI, 106-07, 110-11.) The victim died after he bled out. (XI, 111-12; XIII, 325, 333; Ex. 45.) The evidence was sufficient to show that he knowingly confined the victim so as to substantially interfere with his liberty, that the victim suffered serious bodily injury, and that the victim died during the perpetration of this kidnapping. Defendant is not entitled to relief.

D. The evidence was sufficient to support Defendant's conviction in Count 4 for employing a firearm during the commission of a dangerous felony.

It is an offense to employ a firearm during the commission of an especially aggravated kidnapping. Tenn. Code Ann. § 39-17-1324(b)(1), (j)(1)(E). Viewed in the light most favorable to the State, the proof showed that Defendant used the red handgun to shoot the victim and committed especially aggravated kidnapping as set out in section I(C)

... The evidence was sufficient. Defendant is not entitled to relief.

K. The evidence was sufficient to support Defendant's conviction at Issue 5 for unlawful possession of a firearm.

It is unlawful for a person to possess a firearm after having been convicted of a felony crime of violence. Tenn. Code Ann. § 39-17-1(a)(1)(A). Aggravated robbery is a crime of violence. Id. § 39-17-1(b). Here, viewed in the light most favorable to the State, the proof showed that Defendant possessed the red handgun and that he had been convicted of aggravated robbery in 1985. (Tr. 46-47, 102-103, 105-106, 21-22, 37.) The evidence was sufficient. Defendant is not entitled to relief.

II. Defendant Is Not Entitled to Relief on His Claim that the Trial Court Allowed False Testimony. (Def.'s Issues 3, 21.)

Defendant claims that the State introduced false testimony to secure his conviction. (Def.'s Tr. at 17-20, 71-72.) Specifically, he complains that Mr. Luskman lied about the victim's shooting while in Defendant's company, and that the State's witnesses lied about the address where he met Mr. Brown and Mr. Brown took the victim's car. (Def.'s Tr. at 17-20, 71-72.) But he has not shown that the State knowingly used false evidence to obtain his conviction.

The State may not knowingly present false testimony and it has an affirmative duty to correct the false testimony of its witnesses. The failure to do so deprives a defendant of due process. See *Giglio v. United States*, 405 U.S. 150, 154 (1972); *State v. Sparlock*, 874 S.W.2d 602, 617 (Tenn. Crim. App. 1986). To warrant relief, "a defendant must show that the prosecution knowingly selected false testimony or knowingly allowed it

to go uncorrected when it appear[ed].” *Glossip v. Oklahoma*, 604 U.S. 226, 246 (2025) (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)).

Here, Defendant has not shown that the evidence of which he complains is false, much less that the State acted knowingly in soliciting it. As to Ms. Lanham’s testimony, he points to her testifying that the victim bled “a lot” while in Defendant’s camper, while the TBI lab report from items in his camper stated no presence of blood. (Def.’s Br. at 18-20.) To be sure, the TBI report Defendant cites states that the items tested from the camper did not indicate the presence of blood. (Ex 49.) But Ms. Lanham did not testify at trial that the victim was bleeding while inside the camper. (XI, 90-150; XII, 151-94.) She testified at the motion for new trial hearing that the victim bled “a lot” while in the camper. (XVII, 39.) This garden-variety discrepancy in the *trial* proof was for the jury to consider. Defendant simply has not shown that the State knowingly solicited false testimony from Ms. Lanham.

As for the Glencoe Street address, Defendant claims that the house to which the State alleged he took Ms. Lanham and the victim’s car does not exist at 4062 Glencoe Street, and that the address is an empty lot. (Def.’s Br. at 71-73.) When Ms. Lanham identified the house at trial, she did not specify a number, just that it was on Glencoe Street. (XI, 118-19; Ex. 12.) From where Defendant gets the impression that the State said that house was at 4062 Glencoe Street the State is unsure since he does not cite to the record in his argument on this issue. (Def.’s Br. at 71-73.) In any instance, though, he presented no proof below of his claim that 4062 Glencoe Street is an empty lot, which is why the trial court denied his motion for new trial on this claim. (XVIII, 87-89.) Such failure is

similarly fatal to this claim on appeal. Defendant has not established that the State knowingly presented false evidence on this point. He is not entitled to relief.

III. The Trial Court Properly Exercised Its Discretion in Allowing Evidence of Defendant's Membership in a Gang. (Def.'s Issues 6-10.)

A. Additional relevant facts

Before trial, Defendant filed a motion to exclude evidence regarding Defendant's "uncharged criminal conduct." (II, 224-33.) The State filed its own motion to admit evidence under Tenn. R. Evid. 404(b), including evidence of Defendant's gang membership. (II, 209-15.) At a motions hearing before trial, the State agreed it would not introduce any evidence of gang membership. (XVII, 46-48.)³ During Ms. Lanham's cross-examination, counsel for Defendant asked her why Defendant would let eight to ten other witnesses leave but not her. (XII, 159-60.) The State argued this created a logical gap in the proof such that it should be allowed to elicit testimony that Defendant and the others were gang members. (XII, 166.) The trial court agreed that Defendant's question had created a gap in the proof such that the "realm of relevanc[e]" expanded and the door was opened to evidence of Defendant's gang membership such that a jury-out 404(b) hearing was justified. (XII, 182-83.)

³ This citation is to the motion for new trial hearing. The parties referenced a May 6, 2024, pretrial hearing at which this agreement was apparently struck. (XVII, 46-47.) A transcript of that May 6, 2024, hearing is not in the record.

At the jury-out hearing, Ms. Lanham testified that she personally knew that Defendant was a member of the Vice Lords gang and that it was commonly known to people who knew him. (XII, 185-87.) He would wear Vice Lords clothing and talked about his membership in the gang. (XII, 185.) But Ms. Lanham was not sure whether the other people with Defendant the day of the victim's murder were Vice Lords members. (XII, 185-86.) Ms. Lanham surmised that Defendant was a high-ranking member because "[a]nybody that ever approached him, they knew that he was alpha, alpha male." (XII, 187.)

The trial court declined to allow Ms. Lanham to testify about Defendant's gang membership. (XII, 192-93.) Because Ms. Lanham did not know who the other people were or whether they were gang members, the trial court reasoned, she could not testify that Defendant trusted them and allowed them to leave because they were fellow gang members. (XII, 192-93.)

The trial court held another jury-out 404(b) hearing before Mr. Brown testified. He testified that he had been a member of the Vice Lords gang in Chattanooga since he was thirteen years old, around thirty-six or -seven years. (XIII, 426-27.) Mr. Brown explained that Defendant was also a Vice Lords member in May 2020. (XIII, 428.) Mr. Brown said that anyone in Defendant's and his "age bracket" in the gang would have considerable influence among younger members simply by virtue of their seniority in the gang. (XIII, 432.) Vice Lords members trusted each other and were supposed to "aid and assist and help each other out." (XIII, 433-34.) As for why Defendant would trust the other murder witnesses but not Ms. Lanham, Mr. Brown said that "naturally, in the streets" a man is

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going to trust a man more than he would a woman." (XIII, 438.) Mr. Brown did not know whether the victim was a Vice Lord. (XIII, 441.) If Mr. Brown helped Defendant with criminal activity, he said, he "did it on [his] own terms. It ain't got nothing to do with Vice Lords." (XIII, 447.) But Mr. Brown explained that Defendant's being a Vice Lord "opened the door" to Mr. Brown to assist him, but he did it for money, not only because Defendant was a Vice Lord. (XIII, 449-50.)

The trial court allowed Mr. Brown to testify about Defendant's membership in a gang for the limited purpose of explaining why he was willing to help Defendant dispose of Mr. Brown's body. (XIV, 460-62.) The trial court instructed the jury that it could consider the fact of Defendant's Vice Lords membership only for the purpose of "completing the story" and could not "consider such evidence to prove his disposition to commit the crimes for which he is on trial" or for establishing Defendant's identity. (XIV, 518-19.) Defendant approved of the trial court's instruction. (XIV, 467.) The trial court did not repeat its instructions regarding Defendant's Vice Lords membership in the final 404(b) instruction so as not to call attention to that fact again, but did instruct on 404(b) evidence generally. (XIV, 582-83; XV, 634-35.)

B. Applicable law

Proof of other crimes, wrongs, or acts committed by the defendant is not admissible to prove the defendant's propensity to commit a crime. Tenn. R. Evid. 404(b). But such proof may be admissible "for other purposes." *Id.* Before allowing such evidence, the trial court must (1) hold a jury-out hearing upon request, (2) determine that "a material issue exists other than conduct conforming with a character trait and must

upon request state on the record the material issue, the ruling, and the reasons for admitting the evidence[.]” (3) must find the proof to be clear and convincing, and (4) exclude the evidence if the danger of unfair prejudice outweighs its probative value. *Id.* Tennessee courts have recognized that 404(b) evidence may be admissible for providing necessary contextual background. See *State v. Reynolds*, 635 S.W.3d 893, 921 (Tenn. 2021); *State v. Gilliland*, 22 S.W.3d 266, 272 (Tenn. 2000).

If the trial court substantially complied with Rule 404(b)’s procedural requirements, then this Court reviews for abuse of discretion. *State v. Clark*, 452 S.W.3d 268, 287 (Tenn. 2014). But if it did not substantially comply, then this Court reviews de novo. *Id.* “A trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party.” *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010).

C. The trial court properly exercised its discretion in admitting this evidence for limited purposes.

Here, as set out above, the trial court substantially complied with Rule 404(b)’s procedural requirements. The trial court held a jury-out hearing, (XIII, 426-50; XIV, 451-68), found that Defendant’s Vice Lords membership was relevant to explaining why Mr. Brown was willing to help him dispose of the victim’s body (XIV, 458-59), found the proof of Defendant’s Vice Lords membership to be clear and convincing (XIV, 459), and that the danger of unfair prejudice did not outweigh its “substantial” probative value. (XIV, 459-62.) Its decision is therefore entitled to this Court’s deference unless it abused its discretion.

The evidence of Defendant's Vice Lords membership was highly probative to filling the contextual void of why Mr. Brown was willing to help Defendant dispose of the victim's body. Tellingly, Defendant does not challenge this relevance.⁴ (Def.'s Br. at 34-39.) He only challenges the witness' credibility and claims that the jury must have used it improperly. (Def.'s Br. at 34-39.) Beyond that, any danger of unfair prejudice was minimal because, similar to *Reynolds*, the State never alleged that these were gang crimes. 635 S.W.3d at 922-23. The trial court properly exercised its discretion in admitting the evidence of Defendant's Vice Lords membership. Defendant is not entitled to relief.

IV. Any 404(b) Instructional Error Was Harmless. (Def.'s Issues 11-12, 25.)

Criminal defendants have "a right to a correct and complete charge of the law, so that each issue of fact raised by the evidence will be submitted to the jury on proper instructions." *State v. Garrison*, 40 S.W.3d 426, 432 (Tenn. 2000). Jury instructions should not contain inaccurate, inapplicable, or confusing statements. *State v. Hatcher*, 310 S.W.3d 788, 812 (Tenn. 2010).

Errors in jury instructions are subject to harmless-error analysis. *State v. Allman*, 712 S.W.3d 467, 537 (Tenn. Crim. App. 2024). An error

⁴ Defendant claims that the State "exceeded the scope of the court's ruling." (Def.'s Br. at 35-36.) He complains about the prosecutor's closing argument but did not contemporaneously object to it. (XV, 681-82); (Def.'s Br. at 34-35.) He cannot bootstrap this waived improper-argument claim onto his 404(b) claim because counsel's statements are not evidence. See *State v. Wagner*, 382 S.W.3d 289, 299 n.10 (Tenn. 2012).

is harmless if it “appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *State v. Cecil*, 409 S.W.3d 599, 610 (Tenn. 2013) (quoting *State v. Rodriguez*, 254 S.W.3d 361, 371 (Tenn. 2008)). “When an appellate court undertakes a harmless error analysis its purpose is to ascertain the actual basis for the jury’s verdict. . . . [T]he crucial consideration is what impact the error may reasonably be taken to have had on the jury’s decision-making.” *Rodriguez*, 254 S.W.3d at 372.

Here, the trial court instructed the jury after Mr. Brown testified that it could only use the fact of Defendant’s Vice Lords membership for “completing the story” or establishing Defendant’s identity. (XIV, 518-19.) In its final jury instructions, the trial court gave a generic 404(b) instruction, instructing the jury that it could not use prior bad acts evidence for propensity purposes, but could for other purposes, including “the complete story of the crime,” “the defendant’s identity,” “a scheme or plan,” “motive,” “the defendant’s intent,” or “guilty knowledge.” (XV, 634-35.) This was error, as the trial court noted at the motion for new trial hearing. (XVIII, 65-69.)

Defendant relies heavily on *State v. Greer*, No. E2015-00922-CCA-R3-CD, 2017 WL 2233647 (Tenn. Crim. App. May 17, 2017) (no perm. app. filed), in which this Court reversed the defendant’s convictions for a similar instructional error. But that nearly decade-old, unpublished case did not conduct a harmless error analysis, which this Court recently explained is required. *Allman*, 712 S.W.3d at 537.

The error was certainly harmful in *Greer* but was harmless beyond a reasonable doubt here. In *Greer*, the trial court admitted proof of a prior robbery in which the defendant was involved during his trial for another robbery and murder. 2017 WL 2233647, at *1. The prior robbery was nearly identical to and occurred four hours before the crime for which the defendant was on trial. *Id.* at *13. And it was central to the State's proving the defendant's identity as the perpetrator. *Id.* So, though the panel did not explicitly say it, it seems it considered the trial court's inflating the scope of purposes for which the jury could consider that evidence was harmful.

Here, by contrast, while the evidence of Defendant's Vice Lords membership was probative, *see supra* Section III, especially for filling the contextual void of Mr. Brown's involvement, it was not the central pillar of the State's case. As discussed at Section I *supra*, overwhelming evidence supported Defendant's convictions. The State never alleged that Defendant's crimes were gang crimes. In light of the overwhelming proof, this Court can and should comfortably conclude beyond a reasonable doubt that this error did not contribute to the jury's verdict. *Cf. Allman*, 712 S.W.3d at 535 (holding that an instructional error was harmless in light of the overwhelming proof establishing the defendant's guilt). The "actual basis for the jury's verdict" was the overwhelming proof of Defendant's guilt, not the tangential fact of his gang membership. *See Rodriguez*, 254 S.W.3d at 372. Defendant is not entitled to relief.

V. Defendant Has Waived His Claim that the Trial Court Improperly Allowed Testimony that He Called Himself a "Demon." (Def.'s Issue 13.)

Defendant argues that the trial court improperly allowed testimony that Defendant referred to himself as a "demon." (Def.'s Br. at 44-45.) But this claim is waived because if he objected at all, he did not do so on any specific grounds.

The testimony shook out this way in the State's direct examination of Derik Brown:

Q. Okay. And did [Defendant] refer to himself in some particular way? [. . .] I'm asking about did he call himself a particular name of refer –

A. Yeah, yeah.

Q. What particular name?

A. A demon.

Q. He called himself a demon?

A. Yeah.

Q. And that was in relation to shooting the victim?

A. Just character, period.

(XIV, 482-83.) Defense counsel "object[ed]" and counsel approached the bench. (XIV, 483.) Defense counsel stated that the testimony was "getting a little close." (XIV, 483.) The prosecutor told the trial court that he intended to go no further. (XIV, 483.) The parties agreed to move on. (XIV, 483-84.) Defendant did not move to strike the testimony or ask for a curative instruction.

The first step to preserving an issue for appellate review is a timely and specific objection in the trial court. *State v. Ruiz*, 716 S.W.3d 439, 453 (Tenn. Crim. App. 2024). Without this crucial first step, a party waives plenary review of that issue on appeal. *Id.* Here, Defendant's "objection" is arguably not an objection at all. Rather, the State gleans from the substance of counsel's statement to the trial court that it was not objecting to the testimony, but that it wanted to stop the train before it ran off the tracks. (XIV, 483.) That counsel did not move to strike the testimony or ask for a curative instruction buttresses this interpretation. To the extent counsel's statement can be characterized as an objection, it was not specific at all. (XIV, 483.) Either way, this issue is waived. And Defendant has neither requested nor analyzed this issue under plain error, so this Court should not engage. *See State v. Neece*, No. E2023-01654-CCA-R3-CD, 2026 WL 413050, at *4-5 (Tenn. Crim. App. Feb. 13, 2026) (citing *Ruiz*, 716 S.W.3d at 453)) (perm. app. pending). Defendant is not entitled to relief.

VI. The Trial Court Properly Instructed the Jury on Reasonable Doubt. (Def.'s Issues 5, 20.)

Defendant claims that the trial court's instructions on reasonable doubt were the "very bare minimum" that lacked guidance "about burden of proof and the preponderance of the evidence." (Def.'s Br. at 23.)

The trial court instructed the jury on reasonable doubt in accordance with the pattern instruction:

Reasonable doubt is that doubt created by an investigation of all the proof in the case and an inability, after such investigation, to let the mind rest easily as to the certainty of guilt. Absolute certainty of guilt is not demanded by the law

to convict of any criminal charge, but moral certainty is required, and this certainty is required as to every element of proof necessary to constitute the offense.

(XIV, 594-95); see Tenn. Prac. Pattern Jury Instr. T.P.I. – Crim. 2.03.

The trial court also instructed the jury:

If you find the State has proven the defendant guilty beyond a reasonable doubt, then you should find him guilty.

If, however, you find the State has not proven the defendant's guilt beyond a reasonable doubt, or if you have a reasonable doubt as to the defendant's guilt, then you must find him not guilty.

(XV, 693.)

Defendant claims these instructions constituted “judicial misconduct” and violated his 14th Amendment rights. (Def.’s Br. at 23.) But he does not explain how these instructions were erroneous. Indeed, our Supreme Court has held these instructions are not unconstitutional. See *State v. Dotson*, 450 S.W.3d 1, 96 (Tenn. 2014) (appendix); *Carter v. State*, 958 S.W.2d 620, 625-26 (Tenn. 1997). And it is perplexing why the reasonable doubt instruction should have referenced an irrelevant “preponderance of the evidence” standard. (See Def.’s Br. at 23.) Defendant is not entitled to relief.

VII. The Trial Court Properly Exercised Its Discretion in Denying Defendant a Continuance. (Def.’s Issue 14.)

Defendant claims that the trial court abused its discretion in denying him a continuance. (Def.’s Br. at 46-51.) The trial court properly exercised its discretion.

The State obtained a superseding indictment⁵ in this case on April 9, 2024. (I, 6-8.) Defendant then moved, through counsel, to continue the May 14, 2024, trial date. (II, 249-51.) Defendant argued that the State's adding charges to the indictment a month before trial required more time for him to prepare. (II, 249-51.) The trial court denied the continuance motion after a hearing. (X, 1-21.) The trial court noted that though the State added new charges to the indictment, the witness list remained the same, and the State had not turned over any new discovery. (X, 19.) The trial court also noted that were it to grant a continuance, it could not schedule the trial until spring 2025, and Defendant had been in custody since his initial indictment in 2021. (X, 16-18.) The court confirmed with the prosecutor that the State was presenting the same facts it would have presented at trial under the original indictment. (X, 11-12.)

Granting or denying a continuance is within the trial court's "sound discretion." *State v. Rimmer*, 250 S.W.3d 12, 40 (Tenn. 2008) (citing *State v. Odom*, 137 S.W.3d 572, 589 (Tenn. 2004)) (appendix). This Court will reverse only if the trial court abused its discretion in denying the continuance and the defendant suffered prejudice as a result. *Id.* To demonstrate an abuse of discretion, the defendant must show "that the failure to grant a continuance denied the defendant a fair trial or that it could reasonably be concluded that a different result would have followed had the continuance been granted." *Id.* (citing *State v. Hines*, 919 S.W.2d 573, 579 (Tenn. 1995)). When a defendant claims that the denial of a

⁵ The original indictment is not in the record.

continuance constitutes a denial of due process, then he must establish actual prejudice. *Id.* (citing *Odom*, 137 S.W.3d at 589).

Defendant complains that the trial court's denial of his continuance motion did not give his counsel enough time to prepare a new defense given the additional charges. (Def.'s Br. at 48-51.) But, as the prosecutor told the trial court and the trial court found in denying the continuance, the State was presenting the same facts under the superseding indictment it would have under the original and the witness list had not changed. (X, 11-12, 19.) Defendant has not established that he was prejudiced in any concrete way or that the trial would have come out any differently had the continuance been granted. Defendant is not entitled to relief.

VIII. Defendant Is Not Entitled to Relief on His Claim that the Hamilton County District Attorney General's Office Had a Conflict of Interest. (Def.'s Issue 19.)

Defendant claims that the Hamilton County District Attorney General's Office had a conflict of interest in this case because the prosecutors obtained a superseding indictment.⁶ (Def.'s Br. at 63.) It seems the gravamen of his complaint is his frustration that the

⁶ Defendant makes a passing argument that the prosecutors violated their obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), by withholding exculpatory evidence. (Def.'s Br. at 63.) But he does not engage with any of the *State v. Edgin*, 902 S.W.2d 387 (Tenn. 1995), factors or raise the *Brady* issue as a standalone issue. (See generally Def.'s Br.) Any *Brady* claim is waived. *City of Memphis v. Edwards by & Through Edwards*, No. W2022-00087-SC-R11-CV, 2023 WL 4414598, at *2 (Tenn. July 5, 2023); Tenn. Ct. Crim. App. R. 10(b) (stating that an issue is waived if it is not adequately briefed).

prosecutors did not provide him with a bill of particulars. (Def.'s Br. at 63.) A government lawyer is prohibited under the Rules of Professional Conduct from representing a client in a matter in which he has an actual conflict of interest. Tenn. Sup. Ct. R. 8, RPC 1.11. An actual conflict of interest arises when "[a] lawyer who has formerly represented a client in a matter [] thereafter represent[s] another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client[.]" *Id.* RPC 1.9.

Defendant does not argue that the prosecutors (or anyone at the Hamilton County District Attorney General's Office) represented him in this matter or a substantially related matter. (Def.'s Br. at 63.) And the State fails to see how the prosecutors' failure to produce a bill of particulars amounted to an actual conflict of interest. So, he has not established that the prosecutors had an actual conflict of interest under the applicable law. Defendant is not entitled to relief.

IX. Defendant Is Not Entitled to Relief on His Claim that the State Denied Him Due Process by Failing to Give Him a Bill of Particulars. (Def.'s Issue 21.)

Defendant complains that the prosecutors denied him due process because they did not provide him with a bill of particulars. (Def.'s Br. at 67.) But he has cited no binding authority in his one-paragraph argument on this issue stating that the State was required to provide one here. (See Def.'s Br. at 67.) And there is no proof in the record that Defendant's counsel ever requested a bill of particulars. The prosecutor told the trial court and Defendant's counsel during a motions hearing that he would be willing to file one if helpful given the superseding

indictment; in any event, he then narrated the facts the State planned to introduce at trial, which were no different than they would have been before the superseding indictment. (X, 9-12.) Defendant has not shown how he was harmed by this alleged withholding beyond his bare-bones assertion that he could not adequately prepare for trial. (Def.'s Br. at 67.) Defendant is not entitled to relief.

X. Defendant Is Not Entitled to Relief on His Claims of "Motion in Limine Violations." (Def.'s Issue 22.)

Defendant claims that the trial court erred in allowing the State to violate the court's orders regarding inadmissible evidence. (Def.'s Br. at 67-70.) He specifically complains of a "gruesome" video and gang evidence. (Def.'s Br. at 67-70.) The State has addressed the gang evidence issue separately at Section III, *supra*, and will therefore only address the video here.

Before trial, Defendant, through counsel, moved the trial court to exclude "gruesome photos and videos." (I, 244-45.) The parties agreed to redact what was later admitted as Exhibit 6 to blur out the victim's face. (X, 23, 45-50.) Now, he claims that the State played during its opening argument "a gruesome video of the vict[i]m[]s decomposed body that had not been agreed to." (Def.'s Br. at 67.) The record does not support this claim. Though the prosecutor asked about hooking up the computer before his opening statement, the transcript does not indicate that he played a video for the jury during his opening statement. (XI, 14-20.) And the State could locate no video in the record besides the agreed-upon redacted video. (Ex. 6.) He cannot now complain that the State introduced a video to which he agreed. Tenn. R. App. P. 36(a) ("Nothing

his rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error"). If the State did play an unredacted version of the video, the record is inadequate for this Court to resolve this issue because such video is not in the record. "When the record is incomplete, or does not contain the proceedings relevant to an issue, this Court is precluded from considering the issue." *State v. Miller*, 737 S.W.3d 556, 558 (Tenn. Crim. App. 1987). This Court therefore "must conclusively presume that the ruling of the trial court was correct in all particulars." *Id.* In either instance, Defendant is not entitled to relief.

XI. Defendant Has Waived His Claim that the Trial Court Should Have Sequestered the Jury. (Def.'s Issue 24.)

Defendant claims that he is entitled to a new trial because the trial court did not sequester the jury. (Def.'s Br. at 74-76.) He claims that the jurors were potentially exposed to prejudicial media concerning this "serious," "high-stakes" case, which was "inherently prejudicial." (Def.'s Br. at 75.) But not only is this claim waived because Defendant never requested a sequestered jury, he has not established (or even argued) that any specific juror was exposed to any extraneous prejudicial information. See *State v. Adams*, 405 S.W.3d 641, 651 (Tenn. 2013) (requiring a party claiming juror misconduct to establish that the jury was "exposed to extraneous prejudicial information or an improper outside influence"). Defendant is not entitled to relief.

XII The Trial Court Decision

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XII. The Trial Court Properly Removed Defendant from the Courtroom After His Outburst During Closing Argument. (Def.'s Issue 26.)

A. Additional relevant facts

This case is peppered with instances of Defendant interjecting during the proceedings despite his representation by counsel. (*E.g.*, X, 10-11, 46-49; XI, 169-75; XIII, 404; XIV, 462-64.) The trial court repeatedly advised Defendant that he could only address the court through his counsel. (*E.g.*, X, 47-48; XI, 170-75, 262-63; XIII, 404, 507.) The trial court warned Defendant at least once that he would be removed from the courtroom if he persisted in his disruptive behavior. (XI, 174; XIV, 463-64.)

During the prosecutor's closing argument, when he was explaining the link between the bullet found in the victim and the red SCCY pistol, Defendant began complaining that he had proof to show the prosecutor was lying. (XV, 648.) The trial court instructed Defendant to stop, but he would not. (XV, 648-49.) Worried that Defendant was going to become violent toward his counsel and counsel's assistant, the trial court ordered him removed from the courtroom. (XV, 648-50.) The court instructed the jury that it should strike Defendant's outburst from its memory and only assess the case based on the facts and the law. (XV, 651-52.) The jury assured the court it would do so. (XV, 652.) The trial court excused the jury for a recess and discussed the matter with counsel. (XV, 651-53.) After hearing from the parties, the trial court found that Defendant's behavior warranted his remaining outside the courtroom for the remainder of closing arguments and the trial court's final instructions on

deliberations. (XV, 658.) The court said it would reassess the matter as necessary. (XV, 658.) Defendant was allowed back in the courtroom when the jury returned its verdict. (XV, 695-96.)

B. Applicable law

A defendant has a fundamental right to presence during his trial under the federal and state constitutions. *State v. Mosley*, 200 S.W.3d 624, 631 (Tenn. Crim. App. 2005) (citing *State v. Muse*, 967 S.W.2d 764, 766 (Tenn. 1998)). Tenn. R. Crim. P. 43(a) also states that the defendant "shall be present at every stage of the trial[.]" (cleaned up). But a defendant can voluntarily or involuntarily waive his right to presence. *Id.* 43(b). A trial court may exclude a defendant for disruptive behavior if he continues in such behavior after being warned. *Id.*

C. The trial court was in lockstep with Rule 43.

Defendant claims that the trial court's removing him from the courtroom was "per se reversible or, at minimum, mandates an evidentiary hearing." (Def.'s Br. at 79.) Even if he had cited authority in support of that claim, it is not the law as described above. The trial court showed extreme patience toward Defendant in dealing with his outbursts and warned Defendant more than once that his continued disruptions would result in his removal from the courtroom. (XI, 174; XIV, 463-64.) It was reasonable that Defendant's signaling he was about to become violent toward his counsel was the straw that broke the trial court's back. (XV, 648-50.) Indeed, this Court has affirmed a trial court's removing a defendant on less egregious facts. *State v. Ford*, No. W2000-01205-CCA-R3-CD, 2002 WL 1592746, at *5-7 (Tenn. Crim. App. July 12, 2002),

perm. app. denied (Tenn. Dec. 16, 2002). Defendant is not entitled to relief.

XIII. Defendant's Murder Convictions Properly Merged. (Def.'s Issues 4, 27-28.)

Defendant complains that he was convicted of three murders when there was only one victim and that the State "intended cumulative punishment." (Def.'s Br. at 80-81.) From where Defendant arrives at three murder convictions, the State is unsure; the record shows that he was convicted only of two homicide offenses. (V, 652-61.) In any event, the trial court properly merged the two homicide convictions.

"[A]ll crimes arising from the same incident that are not lesser included offenses of another crime charged in the indictment must be charged in separate counts." *State v. Wilburn*, 647 S.W.3d 893, 896 (Tenn. Crim. App. 2021) (quoting *State v. Gilliam*, 901 S.W.2d 385, 389 (Tenn. Crim. App. 1995)). If the jury returns multiple guilty verdicts for offenses based on the same conduct, then merging the convictions into one judgment of conviction is appropriate. See *State v. Cooper*, 336 S.W.3d 522, 523-24 (Tenn. 2011) (citing *State v. Conway*, 77 S.W.3d 213 (Tenn. Crim. App. 2001)). Because Defendant was convicted of second-degree murder in Count 1 and first-degree felony murder in Count 2, but there was only one homicide victim, the trial court merged Count 1 into Count 2. (I, 652-55.) This was entirely proper.

To the extent he complains that the superseding indictment violated his double jeopardy rights, it did not because jeopardy had not attached when the State obtained the superseding indictment. *State v.*

Huskey, 66 S.W.3d 905, 914 (Tenn. 2001) (jeopardy attaches when the jury is sworn). Defendant is not entitled to relief.

XIV. The Trial Court Properly Exercised Its Discretion in Imposing Consecutive Sentences. (Def.'s Issue 16.)

A. Applicable law

Like other sentencing decisions, this Court reviews a trial court's alignment of sentences for abuse of discretion with a presumption of reasonableness. *See State v. Pollard*, 432 S.W.3d 851, 860 (Tenn. 2013); *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). Stated differently, this Court is "bound by a trial court's decision as to the length of the sentence so long as it is imposed in a manner consistent with the purposes and principles set out" in the Sentencing Act. *State v. Carter*, 254 S.W.3d 335, 346 (Tenn. 2008). "A trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party." *State v. Gevedon*, 671 S.W.3d 536, 543 (Tenn. 2023) (quoting *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010)). The party challenging a sentence bears the burden of demonstrating its impropriety. Tenn. Code Ann. § 40-35-401, Sentencing Comm'n Cmts.; *see also State v. Ashby*, 823 S.W.3d 166, 169 (Tenn. 1991). A trial court may order consecutive service of sentences if it finds by a preponderance of the evidence that one of the factors enumerated in Tennessee Code Annotated section 40-35-115(b) applies.

B. Defendant does not seriously challenge the trial court's exercise of its discretion.

Here, as to sentence alignment, the trial court found that Defendant had an extensive history of criminal activity and that he was on probation when he committed these crimes. (XVI, 80-84; XXIII, Ex. 2); see Tenn. Code Ann. § 40-35-115(b)(2), (6). The trial court therefore ordered partial consecutive service, resulting in an effective life-plus-fifty-year sentence. (XVI, 85-86.)

Defendant does not challenge the trial court's reliance on either of the statutory factors. (Def.'s Br. at 55-56.) Instead, he merely states, without citation to any authority, that the aggregate sentence length is excessive. (Def.'s Br. at 55-56.) His failure to cite to authority should result in waiver. See Tenn. Ct. Crim. App. R. 10(b).

In any event, the trial court properly exercised its discretion in imposing partially consecutive sentences. As the trial court mentioned, the presentence report showed that Defendant, who was in his early forties at the time of sentencing, had been involved in criminal activity since he was around twelve years old. (XXIII, Ex. 2.) His history of criminal activity was certainly "considerable or large in amount, time, space, or scope." *State v. Perry*, 656 S.W.3d 116, 128-29 (Tenn. 2022). And the proof showed that Defendant was on probation when he committed these offenses. (XXIII, Exs. 5-6.) The trial court properly exercised its discretion in imposing partially consecutive sentences. Defendant is not entitled to relief.

**XV. Defendant Is Not Entitled to Cumulative-Error Relief.
(Def.'s Issue 17.)**

Defendant argues that he is entitled to cumulative-error relief. (Def.'s Br. at 57-61.) The cumulative error doctrine recognizes that multiple errors may exist in a trial that are harmless standing alone but implicate a defendant's right to a fair trial when aggregated. *State v. Hester*, 324 S.W.3d 1, 76 (Tenn. 2010). But Defendant has not established multiple errors. He is therefore not entitled to cumulative-error relief.

XVI. Defendant is Not Entitled to Relief on His Ineffective-Assistance-of-Counsel Claims. (Def.'s Issue 30.)

Defendant raises numerous allegations of ineffective assistance of counsel. (Def.'s Br. at 83-84.) Specifically, he claims that counsel was ineffective for: failing to object to "motion in limine violations"; failing to subpoena Defendant's private investigator and other witnesses; failing to object to "fabricated evidence" of the house on Glencoe Street; failing to object to "character assaults by the State"; failing to disclose exculpatory evidence to Defendant; failing to object to improper jury instructions; failing to effectively cross-examine Ms. Lanham and Mr. Brown; failing to challenge "key evidence"; failing to investigate "chain of custody violations"; failed to investigate *Miranda* violations; and failed to adequately prepare for trial. (Def.'s Br. at 83-84.) All of these claims are waived for inadequate briefing.

The Sixth Amendment to the United States Constitution and article I, section 9 of the Tennessee Constitution guarantee to criminal defendants the right to counsel. These provisions have been interpreted

to guarantee the effective assistance of counsel. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). To succeed on an ineffective assistance of counsel claim, a petitioner must prove (1) deficient performance by counsel, and (2) that counsel's deficient performance prejudiced the defense. *Strickland*, 466 U.S. at 687; *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996). If a petitioner fails to satisfy either prong, the claim fails. *Strickland*, 466 U.S. at 687.

As to deficiency, this Court begins with a "strong presumption that counsel provided adequate assistance and used reasonable professional judgment to make all significant decisions." *Kendrick v. State*, 454 S.W.3d 450, 458 (Tenn. 2015) (citing *Strickland*, 466 U.S. at 687). A petitioner bears the burden of overcoming this presumption. *Id.* Counsel's performance is deficient if it "f[alls] below an objective standard of reasonableness," *Strickland*, 466 U.S. at 683; stated differently, if "the advice given, or the services rendered by the attorney, are [outside] the range of competence demanded of attorneys in criminal cases." *Baxter*, 523 S.W.2d at 936. This standard does not require perfect representation, but constitutionally adequate representation. *Denton v. State*, 945 S.W.2d 793, 796 (Tenn. Crim. App. 1996). This Court must make every effort to avoid Monday-morning quarterbacking and to eliminate hindsight's distorting effects; therefore, this Court strives to "reconstruct the circumstances of counsel's challenged conduct, and . . . evaluate the conduct from counsel's perspective at the time."

Felts v. State, 354 S.W.3d 266, 277 (Tenn. 2011) (quoting *Strickland*, 466 U.S. at 689).

A petitioner establishes prejudice if he shows that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694; see also *Vaughn v. State*, 202 S.W.3d 106, 116 (Tenn. 2006). "It is not enough for the petitioner to show that the errors had some conceivable effect on the outcome of the proceeding"—a petitioner must prove that the alleged deficiencies "actually had an adverse effect on the defense." *Strickland*, 466 U.S. at 693.

Here, Defendant did not call trial counsel as a witness at the motion for new trial hearing to develop any facts in support of his ineffective-assistance claims. (See generally XVII, XVIII.) And he does not seriously argue any of his claims in his appellate brief. (Def.'s Br. at 83-84.) His argument is nothing more than a list of grievances. (Def.'s Br. at 83-84.) These claims are waived for inadequate argument. See Tenn. Ct. Crim. App. R. 10(b). Defendant is not entitled to relief.

CONCLUSION

For the reasons stated, the judgment of the trial court should be affirmed.

Respectfully submitted,

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/s/ Benjamin L. Barker

BENJAMIN L. BARKER

Assistant Attorney General

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