

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
May 20, 2026 Session

FILED

08/06/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. CASSEN JACKSON-GARRISON

**Appeal from the Criminal Court for Knox County
No. 119856 Steven Wayne Sword, Judge**

No. E2024-01828-CCA-R3-CD

Defendant, Cassen Jackson-Garrison, appeals his convictions for three counts of sexual battery by an authority figure, two counts of rape, two counts of aggravated statutory rape, and two counts of statutory rape by an authority figure, for which he received an effective twenty-six-year sentence. On appeal, Defendant challenges (1) the sufficiency of the evidence supporting his convictions for rape, sexual battery by an authority figure, and statutory rape by an authority figure; (2) the admission of evidence regarding the possibility of additional victims and the admission of evidence of grooming as violating Tennessee Rule of Evidence 404(b); (3) the exclusion of evidence pursuant to Tennessee Rule of Evidence 412; and (4) the admission of rebuttal testimony. Defendant also contends he is entitled to relief due to the cumulative effect of the errors. Upon review, we affirm the judgments of the trial court.

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

MATTHEW J. WILSON, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER, P.J., and JILL BARTEE AYERS, J., joined.

Drew Justice, Murfreesboro, Tennessee (on appeal); Eric Lutton, District Public Defender; and Keith Lowe and Preston Pierce, Assistant Public Defenders (at trial), for the appellant, Cassen Jackson-Garrison.

Jonathan Skrmetti, Attorney General and Reporter; Ryan W. Davis, Assistant Attorney General; Charme P. Allen, District Attorney General; and Ashley McDermott and Heather Good, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural History

A Knox County grand jury charged Defendant via presentment with four counts of sexual battery by an authority figure, two counts of rape, two counts of aggravated statutory rape, and two counts of statutory rape by an authority figure as a result of multiple acts of sexual abuse committed against a thirteen-year-old victim between September 11 and September 15, 2021. Defendant also was charged with one count of assault of the victim's father.¹ Prior to trial, the State dismissed one count of sexual battery by an authority figure. Defendant's trial commenced in July 2023. At the conclusion of the proof, the jury acquitted Defendant of the assault charge but was unable to reach a verdict on the remaining nine counts. Defendant was retried on the remaining nine counts in January 2024 during which the following evidence was presented.

The State's Proof—the Relationship Between Defendant and the Victim's Family

At the time of the offenses, the victim was thirteen years old and in the seventh grade, was approximately four feet eleven inches tall, and weighed approximately eighty-five pounds. Defendant was in his thirties, "tall and buff," and a former collegiate and professional football player; he also had trained as a boxer.

The victim's family, which included the victim, her parents, and her twelve-year-old brother, shared a close relationship with Defendant's family, which included Defendant, his four children, and his then-wife, Morgan Mynatt. The victim's father and Defendant, both of whom were in their thirties, had known each other since high school; their children played together in youth sports; and the victim and her brother attended middle school with Defendant's two oldest sons, C.J.G.1 and C.J.G.2, while Defendant's youngest son, C.J.G.3, and daughter, C.J.G.4, attended the nearby elementary school.² The families were together two to four nights each week, and they often held cookouts at each other's homes. The victim's mother and Ms. Mynatt coordinated with each other in driving the children of both families to school, practices, and sporting events. The victim's father testified that he and Defendant likely drove the other's children to games on occasion. The victim's father stated that around the time of the offenses, he considered Defendant to be

¹ Defendant also was charged with one count each of solicitation of a minor, simulated sexual activity involving a minor, and distribution of material to a minor—charges that involved a different victim. Prior to trial, these counts were severed from the counts relevant to this appeal.

² It is the policy of this court to protect the identities of minor victims and witnesses. Because Defendant's children have the same initials, we will refer to them as C.J.G.1, C.J.G.2, C.J.G.3, and C.J.G.4.

one of his best friends and trusted him. The victim's mother testified that she had trusted both Defendant and Ms. Mynatt with the victim and her brother.

Defendant's Prior Conduct

The victim testified at trial regarding Defendant's behavior toward her leading up to the offenses. On one occasion when the victim and C.J.G.4 were performing handstands in Defendant's home, Defendant told the victim that he could see her underwear through her shorts. When the victim apologized, Defendant replied, "It's fine. I like it." The victim recalled that "[i]t was a little bit embarrassing" and that she laughed and walked away.

On another occasion while at Defendant's home, the victim and C.J.G.4 were standing by the sink in the master bathroom when Defendant walked over to the toilet, which was separated from the sink by a wall, and urinated. The victim only saw Defendant's face while he was urinating and did not see his genitalia. She described the incident as "a little bit weird." The victim recalled another occasion when she and C.J.G.4 were tumbling in the master bedroom in Defendant's home and C.J.G.4 closed the door to the bedroom. The victim said Defendant became angry and stated that he did not want Ms. Mynatt to be suspicious because the bedroom door was closed.

The victim testified that Defendant would often "pop" her back in front of her family. She stated that on one occasion when she asked Defendant to "pop" her back, he directed her to the recycling bins located by the street near her home. While they were standing by the recycling bins, Defendant popped her back and held her against his body. Defendant often hugged the victim's family when they parted ways, but he would touch the victim's buttocks when he hugged her. On one occasion, when the victim told Defendant that she was leaving for a trip on the following day, Defendant replied that he would "miss" her and that "[i]f you were older, you'd be my girlfriend. You're my type."

The State presented other evidence of Defendant's behavior toward the victim through Ms. Mynatt, and the victim's father. Ms. Mynatt observed Defendant's having the victim rub lotion on his back and shoulders during a joint-family outing at a water park on July 4, 2021. Ms. Mynatt believed Defendant's conduct was "inappropriate." Ms. Mynatt informed the victim's father of Defendant's request to the victim, and she expressed that she was uncomfortable with Defendant's actions. The victim's father testified that at the time, "I kind of blew it off a little bit" even though "I wouldn't ask a 12-year-old girl to put lotion on my shoulder." The victim's father said he decided that he should "start looking . . . a little bit more in depth."

The victim's father testified that he and his family went to Defendant's home at the end of August or the first part of September 2021 to watch a football game. The victim's

father realized that Defendant was alone upstairs with the victim and C.J.G.4. The victim's father went upstairs where he found Defendant standing in the doorway of his bedroom and the victim and C.J.G.4 standing in the doorway of C.J.G.4's bedroom. The victim's father told the victim to go downstairs, but he did not say anything to Defendant at the time. Ms. Mynatt also recalled Defendant's being alone with the victim and C.J.G.4 upstairs that evening; she testified that she "didn't feel good about" the encounter. Later that night, the victim's father saw Defendant hug the victim next to Defendant's truck. The victim's father described Defendant's actions as "kind of creepy." The victim's father stated that although he began "really becoming suspicious," he continued to associate with Defendant and his family because Defendant was one of his best friends at the time and "[he] wanted to believe it could have been innocent."

Ms. Mynatt recalled another occasion when Defendant became angry at Ms. Mynatt when she approached Defendant and the victim as he was showing the victim something on his truck. Ms. Mynatt told Defendant privately that she did not believe it was appropriate for him to have so much communication with the victim while the two of them were alone. Defendant called Ms. Mynatt "insecure" and "immature" and accused her of having an affair.

The Night of the Cookout

On Saturday, September 11, 2021, the victim's family had a cookout at their home, and Defendant's family and two other friends, Zack and Trevor Garrett, attended. The victim's mother and Ms. Mynatt left the cookout to go "downtown," while Defendant and the victim's father supervised the children. At one point, Defendant left in his red pickup truck to drive C.J.G.2 to a pool party at a country club, and C.J.G.3, C.J.G.4, the victim, and her brother went with him. The victim testified that she sat in the middle front seat next to Defendant, that C.J.G.4 sat in the front passenger's seat, and that C.J.G.2, C.J.G.3, and her brother sat in the back seat. She stated that while stopped at a red light near a skating rink, Defendant grabbed a gray sweatshirt and laid it over his lap. Defendant then grabbed the victim's wrist and put her hand over his penis, which was exposed underneath the sweatshirt. Defendant had his hand on top of the victim's hand and moved her hand up and down while he was "grunting, sighing." She stated that the drive from the stop light to the country club lasted for approximately fifteen minutes and that Defendant kept her hand on his penis during that entire time. The victim tried to move her hand once, but Defendant "still had his hand on my hand." Defendant released the victim's hand once they arrived at the country club.

The victim testified that none of the other children gave any indication that they saw what had occurred. It was dark inside the truck because the truck had tinted windows and no lights were on, and the other children were not paying attention. C.J.G.4 was scrolling

on her cell phone, and the boys in the back seat were watching videos and laughing. Once they arrived at the country club, C.J.G.2 exited the truck and went to the pool party, and Defendant and the other children returned to the victim's home. The victim stated that nothing occurred inside the truck during the return trip.

The victim testified that after they returned to her home, she and C.J.G.4 hung out with three friends from her neighborhood. Defendant called C.J.G.4 and asked whether she and the victim wanted to go with him to pick up C.J.G.2, and they agreed to go. The victim stated that when C.J.G.4 tried to sit in the middle front seat of Defendant's truck, Defendant yelled at her because he wanted the victim to sit beside him. The victim sat beside Defendant, and C.J.G.4 sat on the other side of the victim. The victim stated that when they arrived at the country club, it was dark outside, that Defendant parked in the back of the parking lot near some trees and away from other vehicles, that no vehicles were traveling around the parking lot, and that the children were at the pool. Defendant told C.J.G.4 to get her brother, and she exited the truck.

The victim testified that after C.J.G.4 exited the truck, Defendant told the victim, "Give me head." She said Defendant's penis was exposed through a hole in his gym shorts. She stated that she knew what Defendant wanted her to do and that she did not want to do it. She laughed, and Defendant repeated the instruction. The victim testified that Defendant put his hand on the back of her head and pushed her head down on his penis and that his penis went into her mouth. She later testified that after her mouth was on Defendant's penis, Defendant "put his hand on the back of [her] head and then, like, went up and down." She agreed that Defendant forced her to perform fellatio. The fellatio continued for approximately three minutes, and the victim believed Defendant ejaculated "[b]ecause after, he told me to swallow and there was a weird residue in my mouth." She stated that the fellatio stopped once Defendant observed C.J.G.2 and C.J.G.4 walking back to the truck. The victim did not believe the two children could see inside the truck while returning from the pool area because it was dark outside and the truck's windows were tinted.

Once they returned to the victim's home and Defendant exited the truck, he kissed the victim on her mouth and told her that he loved her. The victim described the encounter as "awkward." She exited the truck and went into the backyard, but she did not tell anyone what had occurred.

The victim's father testified that once Defendant returned from picking up C.J.G.2 from the party, Defendant announced that he was going to play hide-and-seek with the girls. The victim's father said "that's really . . . when my parent alert went up. It just, again, didn't seem right. Why just the girls?" The victim's father told Defendant that he needed help cleaning the dishes.

The victim testified that later that night, Defendant approached her and C.J.G.4 and asked for their assistance in locating his keys. The victim searched in the backseat of the truck on the driver's side, while C.J.G.4 searched on the passenger's side. The victim believed the adults and other children were inside the house, and she could not see or hear them from the truck. At some point, C.J.G.4 left the truck, and the victim did not know where she went. As the victim was searching the backseat with the truck's door open, Defendant came up from behind her, pressed up against her, and rubbed his exposed penis on her buttocks over her clothing. The victim stated that she did not know what to do. She explained that although the front of the truck was facing the house, anyone on the porch would not have been able to observe Defendant's actions because the truck's opened door blocked the view. The victim did not believe the nearby bonfire was large enough to illuminate the area.

The victim's father testified that he saw Defendant and the victim standing together by Defendant's truck but that an open truck door blocked his view. Defendant was standing behind the victim, and the backs of Defendant and the victim were facing her father. C.J.G.4 was by a tree, and the victim's father did not know whether she could see what the victim and Defendant were doing. No other adults were in the area. The victim's father stated that "the way they were standing just did not seem right" and that "I got a very, very uneasy feeling. . . . [A]t this point is when I was going to put an end to this."

The victim's father testified that he approached the victim and told her to come with him. C.J.G.4 followed them into the garage, but the victim's father did not want to say anything in front of C.J.G.4. He instructed the victim to go into the dining room where he told the victim that for her own protection, she needed to "stay away from adults," which included Defendant. The victim testified that the confrontation with her father occurred while she was sitting with C.J.G.4 by a bonfire. She said her father was angry, yelled that she needed to spend less time with adults and more time with children. The victim stated that she did not understand her father's yelling that he specifically did not want her around Defendant.

The victim's father said he turned off the radio because he was "done with this party." Defendant threw his speaker and camping chairs in the back of his truck. The victim's father testified that he asked the victim, who was standing on the patio, what she had done. The victim replied that she had told Defendant that the victim's father had said she could no longer be around him. Once Ms. Mynatt and the victim's mother returned, the victim's father spoke to Ms. Mynatt and then explained to the victim that he was looking out for her best interests, that she did not understand what was occurring, and that she needed to "stay away from adults."

The victim's father testified that he then went downstairs and told all of the adults, including Defendant, that he expected the adults to abide by any rules that he made regarding his children. Defendant replied, "F**k you." Defendant then told Ms. Mynatt, "F**k you, C**t. Had you not said anything, he wouldn't believe anything right now." The victim's father determined that "this was not a good situation" due to the "sheer anger" in Defendant's voice. The victim's father went outside to the firepit, but Defendant came outside cursing at him and stating, "Can't believe you'd believe this." Defendant got in his face and said, "F**k you. I can't believe you would treat your daughter like this. You're not going to talk to your daughter like this." The victim's father backed up, but Defendant continued coming at him. The victim's father put his hand on Defendant's chest and told him to back up, and Defendant punched him in his eye. They started fighting, and the victim's father acknowledged that Defendant had beaten him in the fight. Defendant left with his children and without Ms. Mynatt, while the victim's father lay in the grass. The victim's father's eye was swollen shut, and his head was hurting.

Defendant later sent Ms. Mynatt a text message saying that she had five minutes to get into his vehicle. Defendant returned and walked toward the victim's father, who told him to "stay away from my kids. Stay away from us. We're done." The victim's father considered that to be the end of his friendship with Defendant.

Ms. Mynatt testified that she decided not to return to her home with Defendant, and she had a friend drive her to her home to retrieve her car. Ms. Mynatt never returned to live with Defendant after that night. Prior to September 11, 2021, she was primarily responsible for driving Defendant's children, who were her stepchildren, to school, but after September 11, Defendant began driving his children to school.

Monday, September 13, 2021

On Monday, September 13, 2021, the victim's mother dropped the victim and her brother off near the school at approximately 7:30 a.m. The victim testified that Ms. Mynatt typically drove Defendant's children to school, and the victim would sit in Ms. Mynatt's vehicle and eat breakfast with the children until she had to go to school, which started at 8:30 a.m. Defendant had driven his children to school that day. The victim saw Defendant's truck parked near where her mother had dropped her off, and Defendant, C.J.G.1 and C.J.G.2 were in the truck. The victim got into the backseat of the truck. The victim testified that following the fight between her father and Defendant, her parents did not tell her that they did not want her to be around Defendant. She stated that she did not know the reason for the fight and that Defendant told her that he and her father had "made up." The victim stated that once C.J.G.1 and C.J.G.2 exited the truck, she moved to the middle seat next to Defendant. The victim testified that Defendant put his hand down her pants and underwear and that his fingers touched her vagina but did not penetrate it. She

told Defendant to stop because she was menstruating, and Defendant complied. The victim then exited the truck and entered the school.

Tina Greer, the crossing guard at the middle school, testified that she saw the victim enter a red truck on the morning of September 13. Ms. Greer stated that the victim entered the front passenger's side of the truck and remained in the truck for "several minutes." Ms. Greer believed the victim exited the truck with the other children. At the time, Ms. Greer was facing the driver's side of the truck and could not see inside the truck due to the dark tint on the side windows. Ms. Greer subsequently learned that Defendant was driving the truck. She contacted the victim's mother, who stated that the situation was "under control" and instructed Ms. Greer not to involve herself.

Tuesday, September 14, 2021

On Tuesday, September 14, 2021, the victim's mother again dropped off the victim and her brother in the same area near the school. The victim saw Defendant's truck parked nearby, and she and her brother entered the truck occupied by Defendant, C.J.G.1, and C.J.G.2 and ate breakfast with them. Defendant told the victim that he believed Daniel Marlow, a friend of her parents, was watching them because he saw Mr. Marlow's truck parked nearby. The victim subsequently exited the truck with the other children and entered the school.

Ms. Greer observed the victim and her brother entering the truck on Tuesday, September 14 and then exiting the truck together. Although Ms. Greer was unable to see inside the truck through the dark tint of the side windows, she was able to view Defendant inside the truck through the front windshield.

Mr. Marlow dropped his children off at the middle school and saw the victim and her brother walking toward a red truck parked on a road near the school. Mr. Marlow used his cell phone to record the victim and her brother as they entered and later exited the red truck, and he later provided the recording to the police. At the time, Mr. Marlow was unaware of any animosity between the victim's father and Defendant, and Mr. Marlow explained he chose to record the events because he did not know who owned the truck at the time. Mr. Marlow later learned the truck belonged to Defendant. Mr. Marlow could not see inside the truck and could not determine the number of occupants.

The victim's father and Preston Leslie also went to the school on the morning of September 14 to record any interactions between the victim and Defendant before the victim's father made any accusations against Defendant. They were unable to obtain any recordings because Mr. Marlow had blocked their view. The victim's father saw his children enter Defendant's truck, later exit the truck, and enter the school.

Wednesday, September 15, 2021

The victim's mother dropped the victim and her brother off at the same location on the morning of Wednesday, September 15, 2021, and the victim's brother walked into the school with a friend. The victim testified that she walked to Defendant's truck, which was occupied by Defendant, C.J.G.1, and C.J.G.2, and she went into the backseat. Defendant then drove to McDonald's, where he purchased breakfast for his two sons, and he returned to the same road near the school. Once C.J.G.1 ate his breakfast, he exited the truck and walked into the school, and the victim moved to the front seat. Defendant said he believed someone standing on a porch at a nearby house was watching them, and Defendant moved to the car-rider line where C.J.G.2 exited the truck and walked into the school. The victim identified C.J.G.2 in a video recording exiting Defendant's truck and entering the school between 8:22 and 8:23 a.m. before school began at 8:30 a.m. The victim remained inside the truck.

The victim testified that Defendant parked his truck in the teachers' parking lot and "had me straddle him and kiss him and he fingered me," although she did not know the order in which the events occurred. She stated that Defendant was in the driver's seat, that she was on top of him with her back to the steering wheel and windshield, and that Defendant kissed her and had his hands on her buttocks over her clothes. She said Defendant put his hand down her pants and inserted his finger into her vagina while she was sitting in the middle seat next to him. Defendant put on a condom and instructed the victim to "give him head," and the victim refused, stating that she needed to go to school. She exited the truck and walked into the school. The victim identified herself in a video recording exiting Defendant's truck and entering the school between 8:30 and 8:31 a.m.

The victim testified that Defendant had taken the condom from a black fanny pack that was on the truck's floorboard on the passenger's side and that after he had put on the condom, he gave the condom wrapper to her. The victim placed the condom wrapper in a "little tampon pouch" that she kept in the front pocket of her backpack. Later that same day, the principal searched her backpack for her cell phone due to concern that Defendant had been sending text messages to her. At the time, the victim did not have a cell phone. The school officials did not look inside the pouch and did not find the condom wrapper. The victim stated that once she arrived home after school, she placed the condom wrapper in a box that was hidden under her bed. She explained that she believed her parents would find the wrapper if she threw it in the trash. The victim revealed the existence of the condom wrapper during a forensic interview, and she gave the wrapper and the box in which she placed the wrapper to her parents, who then gave the items to the police.

The victim's father asked Mr. Leslie to return to the school on the morning of Wednesday, September 15, 2021, in a vehicle that Defendant would not recognize. The

victim's father told his children that he was going out of town, but he instead parked his vehicle and waited for Mr. Leslie to contact him. Mr. Leslie testified that he decided to drive his wife's black Honda Accord to the middle school instead. He arrived at the middle school at approximately 7:30 a.m. and parked in the teachers' parking lot. He saw the victim's mother drop off the victim and her brother around 7:42 or 7:43 a.m. The victim and her brother exited the vehicle, crossed the road, and walked through the teacher's parking lot and toward the school, and the victim's brother entered the school. Before the victim reached the end of the teacher's parking lot, she turned around, "hesitated," walked back to the crosswalk, "retraced her steps back almost exactly to the circle where she was dropped off," and entered Defendant's truck. Mr. Leslie was alternating between recording the victim on his cell phone and calling the victim's father.

Mr. Leslie testified that within one to two minutes after the victim entered the truck, the truck left the area. Mr. Leslie said he was "kind of in a panic" and followed the truck while calling the victim's father to report that the truck was leaving. He located the truck in the parking lot of McDonald's. Once the truck left the drive-through line, the truck returned to the road near the middle school where it had originally been parked. Mr. Leslie saw one or two children exit the truck and walk into the school while the victim remained inside the truck. He then observed someone moving from the back seat to the front seat. He testified that due to the dark tint on the truck's windows, he likely would not have been able to determine that the victim was inside the truck if he had not observed her entering the truck beforehand. The truck then pulled into the drop-off line where one child exited the truck and entered the school. The victim remained inside the truck.

Mr. Leslie testified that the truck parked in an area of the parking lot where there were only one or two other vehicles. He was unable to see what was occurring inside the truck due to his distance from the truck and the dark tint on the truck's windows. The truck remained parked in the same spot for eight to nine minutes before the victim exited the vehicle on the passenger's side and walked into the school. Once the victim exited the truck, Defendant drove away.

The victim's father affirmed that Mr. Leslie called him numerous times, reporting that Defendant had taken the victim away from the school, had returned to the school, and then left again. As the victim's father was driving toward the school, he met Defendant in his truck, rolled down his window, and informed Defendant that he was headed toward the school and intended to alert authorities. The victim's father testified that he was upset that Defendant had taken the victim off school property twice and that Defendant did not have permission to be with the victim. Once the victim's father arrived at the school, he approached Ms. Greer and asked her to contact the school resource officer. He also contacted the victim's mother to come to the middle school.

Ms. Greer also saw the victim enter the red truck without her brother on the morning of September 15, and Ms. Greer did not see the victim exit the truck but saw the truck leave the parking lot. Ms. Greer saw the red truck again in the area at approximately 8:30 a.m. She observed a group of men encircling the truck and yelling. She then watched the truck leave the parking lot.

Officer Dana Crocker of the Knoxville Police Department (“KPD”) was the school resource officer at the middle school in September 2021. On Wednesday, September 15, 2021, at approximately 8:30 a.m., Officer Crocker received a call from Ms. Greer reporting a commotion or altercation in the parking lot. Officer Crocker went to the parking lot where she saw Ms. Greer, the victim’s father, and a few other men. The victim’s father reported that Defendant was “messaging with [his] daughter.” While Officer Crocker was speaking to the victim’s father, a red truck pulled up, and the victim’s father and the other men yelled, “[H]e has a gun.” Officer Crocker was approximately seventy-five feet away from the truck, could not see inside the truck due to its tinted windows, and did not know who was inside the truck. While those in the parking lot hid behind vehicles, Officer Crocker placed her hand on her gun and instructed the driver to roll down his window. The driver rolled down one of the windows, but Officer Crocker still could not see inside the truck. Officer Crocker instructed the driver to pull around, but the driver left the scene. Officer Crocker radioed officers and issued a be-on-the-lookout (“BOLO”) alert for the truck.

KPD Officer Tim Edwards, the school resource officer at a nearby school, testified that he heard the BOLO for a red truck on the police radio. He then heard that a patrol officer had made a traffic stop near the high school. Because the patrol officer was not responding to the dispatcher, Officer Edwards went to the scene of the stop. When Officer Edwards arrived, he saw Defendant behind a red truck. Officer Edwards stated that the window tint on the back and side windows of the truck was “definitely darker than your legal tint,” making it difficult to see into the truck. He noted that the interior of the truck was dark and that a person standing outside would be required to be “right up close to be able to see in the vehicle from the front windshield.”

Officer Edwards spoke to Defendant, and their interaction was recorded on Officer Edwards’s body camera. Defendant maintained that his wife and the victim’s father were having an affair, that they were “trying to weed me out,” and that they were “using my past against me.” Defendant stated that on Saturday night, the victim’s father became angry because Defendant and the victim were alone next to his truck while searching for his keys. Defendant said that while he was packing his things into his truck to leave, his children ran up to him and reported that the victim’s father was screaming at the victim and may have hit her. Defendant said that he confronted his wife and the victim’s father about their affair and the reason for their accusations against him, that Defendant and the victim’s father

yelled at each other, that the victim's father "took a swing and missed," and that Defendant "whooped his a**." He maintained that he had not engaged in inappropriate conduct with the victim and that the victim and her brother "always come sit in my truck" when their parents drop them off at school and sit with his children until they go into the school. Defendant was not arrested that day.

Forensic Interviews and Investigation

The victim's parents took the victim for a forensic interview at Childhelp. On cross-examination, the victim testified that during the initial forensic interview, she denied anything occurred between her and Defendant and that she later decided to return for a second forensic interview during which she revealed the sexual abuse. In response to defense counsel's questioning on cross-examination, she stated that during the second forensic interview, she informed the interviewer that she decided to reveal the abuse "because I thought of [Defendant's] daughter and the fact that he could do it to other girls." Defense counsel asked the victim whether she recalled telling the forensic interviewer, "My parents told me he was doing it to other girls," and the victim replied, "Yeah." Defense counsel asked, "And so your parents told you he was doing it to other girls and so you decided to go talk to [the forensic interviewer] and to tell [the forensic interviewer] what you told her; is that right?" The victim replied, "Yeah." She clarified that her parents told her that Defendant "could be" sexually abusing others. The victim affirmed that her parents made the statement to her after her father had lost a fight against Defendant and that her father was upset that he had been beaten by Defendant.

The victim acknowledged that during the second forensic interview, she stated that Defendant also forced her to touch his penis while on the way back from the country club but clarified in her testimony that her statement was not accurate. She explained, "I was just confused. And I know that it only happened once, which was on the way there with everyone in the car."

On redirect examination, the victim testified that during the first forensic interview, she discussed Defendant's "grooming" behavior because "I just felt they weren't as bad as the other stuff." At the time, she had not heard of the term "grooming." The victim explained that following the first forensic interview, she told her mother about Defendant's behavior toward her, which her mother informed her was considered "grooming." The victim explained that she did not reveal the sexual abuse during the first forensic interview because she cared for Defendant's children and "didn't want him to lose his family." The victim stated that during the second forensic interview, she explained why she decided to return and reveal more information. The State played a portion of a recording, and the victim confirmed that her statement in the recording was the reason for her decision to reveal the sexual abuse.

The victim's parents did not watch the forensic interviews, remained in the lobby during the interviews, and did not know what the victim had said during the interviews. The victim's mother testified that after the first forensic interview, she and her husband met with KPD Sergeant James Lockmiller, who "advised [them] that it might be wise to just sit down with [the victim] in the next few days and talk to her and just say, if there's anything else bothering you, to let us know and that there could be other victims involved." The victim's mother testified that when she and the victim's father sat down with the victim a few days later, they did not ask her what she had said during the forensic interview. The victim's mother said they "just expressed to her that, if something was bothering her or she felt like there was more to be said, to let us know and we would contact Sergeant Lockmiller. And we also told her that she was being extremely brave and that there is a possibility of other victims." The victim's mother stated that they never told the victim to lie to get Defendant in trouble. Within one or two weeks, the victim approached her parents and told them that "there was more" and that she wanted to have a second forensic interview.

Sergeant Lockmiller, who was the lead investigator, testified that he viewed both forensic interviews. He met with the victim's parents after the initial forensic interview but did not disclose what the victim had stated during the interview. He informed the victim's parents that "there were other people that needed to be interviewed and that there was the potential for other victims, but I wouldn't know that until I could complete those interviews." Sergeant Lockmiller said he did not intend for the victim's parents to repeat his statement regarding the potential for other victims to the victim in an effort to elicit additional information. He explained that he made the statement to provide the victim's parents with more information regarding the investigation process and its "extended duration."

Following the second forensic interview, Sergeant Lockmiller was aware that the victim had collected a condom wrapper. He asked the victim's father to bring him the container in which the victim had placed the condom wrapper, and the victim's father complied with the request.

A warrant was subsequently issued for Defendant's arrest, and on October 8, 2021, he was arrested following a traffic stop. KPD Investigator Philip Jinks, who was at the scene of the arrest, stated that the truck's dark window tint limited his ability to see inside the truck. Upon searching the truck, officers seized a firearm in a black bag that also contained Defendant's identification. Officers also observed an unopened gold condom in the black bag, but they did not seize the condom at that time. The truck was towed to the police impound lot.

Sergeant Lockmiller learned from Investigator Jinks that an unopened condom in a wrapper consistent with the wrapper submitted by the victim's father was in Defendant's truck. Sergeant Lockmiller obtained a search warrant for the truck, executed the search warrant in the police impound lot, and seized the unopened condom. He noted that the condom wrapper obtained from the victim's father and the wrapper of the unopened condom from Defendant's truck were the same brand and color and listed the same number, TT09TA209, which Sergeant Lockmiller described as the "lot number." On cross-examination, Sergeant Lockmiller testified that based on his research, the numbers on the two wrappers were lot numbers. The expiration month and year had been torn from the wrapper provided to him by the victim's father. He clarified that he was not saying that the lot number on the two wrappers was unique and stated, "I'm just saying that they are similar and that they have the same markings." He was unaware of the number of condoms that had that same lot number.

The Defense's Proof

Defendant presented the testimony of three of his four children, C.J.G.2, C.J.G.3, and C.J.G.4. C.J.G.2 recalled leaving the cookout at the victim's home to go to a pool party at a country club. He testified that Defendant drove him to the party, and C.J.G.3, C.J.G.4, the victim, and the victim's brother went with them. C.J.G.2 stated that it was still light outside when they left the cookout, that he and the other two boys were sitting in the back seat, and that C.J.G.4 and the victim were sitting in the front seat. C.J.G.2 acknowledged that he had previously testified that he did not know in which of the front seats C.J.G.4 and the victim were sitting but that he since had recalled that C.J.G.4 was sitting in the middle next to Defendant and that the victim was sitting on the other side of C.J.G.4. C.J.G.4 testified that she believed that while going to the country club, she was sitting in the back seat and that the victim was sitting next to her, but she said the victim could have been sitting in the front seat. C.J.G.4 did not recall where the boys were sitting. C.J.G.3 did not recall whether the victim and her brother were in Defendant's truck during the drive to the country club. All three children testified that nothing out of the ordinary occurred during the drive.

C.J.G.2 and C.J.G.4 testified that when Defendant returned to the country club, both C.J.G.4 and the victim came from Defendant's truck to retrieve C.J.G.2. C.J.G.2 said Defendant's truck was parked on the curb close to the pool. C.J.G.4 did not recall where Defendant parked, but she believed he parked close to the pool.

C.J.G.4 testified that later that night, she and the victim searched for Defendant's keys in his truck while at the victim's home. Defendant told C.J.G.4 that he believed he left them on the kitchen counter and instructed her to search for them inside the house. C.J.G.4 ran inside, found the keys, and brought them back to Defendant. She believed she

was inside the house for only a short period of time. She acknowledged that Defendant and the victim remained by the truck when she went inside.

C.J.G.2 testified that Ms. Mynatt typically drove him and his siblings to school but that Defendant began driving them to school following the physical altercation at the cookout. On Monday following the cookout, both the victim and her brother entered Defendant's truck after they were dropped off at school. C.J.G.2 believed the victim's brother exited first to walk into the school, but he did not recall the order in which he, C.J.G.1, and the victim exited the truck. C.J.G.2 stated that on Tuesday or Wednesday morning, the victim exited her father's vehicle at the middle school, acted as if she was walking into the school, and then entered Defendant's truck once her father left. C.J.G.2 did not recall what occurred after that.

Defendant testified on his own behalf, denying that he sexually abused or groomed the victim. He stated that when he asked for someone to put lotion on his back on July 4, 2021, he had intended for Ms. Mynatt, who was standing nearby, to do so. He also stated that whenever the victim requested that he "pop" her back, he only did so when around other adults. Defendant said that his family and the victim's family frequently hugged one another, that he only gave the victim "side hug[s]," that he apologized if his fingers ever touched the victim's buttocks or waist, and that he did not recall hugging the victim outside of her parents' presence. Regarding the incident involving the victim's handstand, Defendant explained that he told her to be careful as he could see her underwear because multiple adults and boys were inside the home, and he walked away. Regarding the bathroom incident, Defendant maintained that the victim and C.J.G.4 entered his bathroom while he was urinating and that because a wall separated the toilet from the rest of the bathroom, the victim and C.J.G.4 did not see him urinating.

Defendant acknowledged that the victim sat next to him while he was driving C.J.G.2 to the pool party at a country club on September 11, 2021. He denied placing a sweatshirt in his lap and grabbing the victim's wrist and placing her hand on his penis. He stated that when he and the children left to go to the country club, it was still light outside and that during the drive, the children primarily talked amongst themselves and played on their cell phones. Defendant testified that when he, the victim, and C.J.G.4 returned to the country club after the pool party, he parked close to the pool where he could see the pool and that both C.J.G.4 and the victim exited the truck to retrieve C.J.G.2. Defendant stated that he could see the children and adults by the pool and that he waved at the father of C.J.G.2's friend before leaving.

Defendant denied taking his penis out of his pants and rubbing it on the victim as she searched for his keys in his truck. He stated that he stood outside the truck while the victim and C.J.G.4 searched for his keys inside the truck. He told C.J.G.4 to look inside

the house; she ran toward the house while the victim continued searching for the keys inside the truck; and C.J.G.4 returned with the keys after less than one minute.

Defendant testified that the victim's father, who had been drinking alcohol, approached the victim and told her to come with him. Defendant later saw the victim sitting by the bonfire and crying, and the victim said, "I just got in trouble. My dad told me I was at the truck alone with you. And that wasn't the case." Defendant stated that as he was packing his things to leave, two of his children and the victim's brother ran up to him and reported that the victim's father was yelling at the victim and that they believed the victim's father had hit her. Defendant said he went inside and confronted both the victim's father and Ms. Mynatt, who he accused of having an affair with the victim's father. Defendant and the victim's father continued arguing outside. Defendant said he punched the victim's father but only did so after the victim's father pushed him and attempted to punch him. Defendant said he left the cookout with his children, but they asked him to return for Ms. Mynatt. Upon returning, Defendant knelt down beside the victim's father, who was lying in the grass, and told the victim's father that he did not want to fight, that he knew about the relationship between the victim's father and Ms. Mynatt, and that if the victim's father was uncomfortable with Defendant being around the victim, he should have said something. Defendant said the victim's father replied, "I could have handled things a lot different. You know, friends fight, s**t happens."

Defendant acknowledged that the victim was in his truck on Monday, Tuesday, and Wednesday of the following week, but he denied committing any acts of sexual abuse against her. He stated that on Monday morning, the victim sat in the back seat and remained for a brief time after his two sons exited the truck to update him on what had occurred at her home. He said that on Tuesday morning, the victim exited his truck at the same time as his children and her brother. He stated that on Wednesday morning, the victim initially sat in the back seat and that she moved to the front seat after C.J.G.1 exited the truck. Defendant acknowledged parking his truck after C.J.G.2 exited in the car-rider line but said the victim updated him on her home life, gathered her school items from the back seat, and entered the school.

Defendant testified that after leaving the middle school, he met the victim's father on the roadway and that the victim's father accused him of kidnapping and sexually abusing the victim. The victim's father said Defendant was going to jail for the rest of his life and drove away, and Defendant followed him to the middle school. Defendant stated that when he started to exit his truck, the school resource officer yelled for him to get back into his truck. He said that he rolled down a window to talk to the officer but that because the officer had her hand on her gun and was in a "stance," he drove away.

On cross-examination, Defendant agreed that he was close to the victim's family before September 2021, that he had trusted the victim's parents with his children, that he "assume[d]" they had trusted him with their children, and that he also "assume[d]" the victim had trusted him "as any child would trust an adult." The State asked Defendant whether he gave the victim "that condom that she then turned over to the police," and Defendant denied that he had done so. The State asked, "[T]hat condom came out of the same package as the condom that was found in your truck, did it not?" Defendant replied, "No, it did not."

The State's Rebuttal Proof

The State recalled Sergeant Lockmiller, who testified that "[y]esterday afternoon," he examined several boxes of condoms that were the same style and brand as the condom found in Defendant's truck and the condom wrapper obtained from the victim's family. He examined three boxes containing three condoms and four boxes containing a larger number of condoms. He noted that each condom wrapper listed an expiration date, a series beginning with TT followed by numbers ("TT series"), and a series beginning with A followed by numbers ("A series"). The condoms from all seven boxes had the same TT series number. The condoms from the same box shared the same A series number, but the A series number differed in each box. For example, the condoms in one box each had the same A series number of A301; the condoms in another box each had the same A series number of A302; and the condoms in a third box each had the same A series number of A303. Sergeant Lockmiller stated that the wrapper of the condom from Defendant's truck and the condom wrapper from the victim had the same A series number. Sergeant Lockmiller did not know whether the A series numbers repeated or how often they repeated.

Following the State's elections, the jury convicted Defendant of all the offenses as charged. After a sentencing hearing, the trial court imposed an effective sentence of twenty-six years.³ Defendant filed a timely motion for new trial and multiple amended motions, which the trial court denied following a hearing. Defendant filed a timely notice of appeal.

Analysis

On appeal, Defendant challenges (1) the sufficiency of the evidence supporting his convictions for rape, sexual battery by an authority figure, and statutory rape by an authority figure; (2) the admission of evidence regarding the possibility of additional victims and the admission of evidence of grooming as violating Tennessee Rule of

³ The parties do not challenge sentencing on appeal.

Evidence 404(b); (3) the exclusion of evidence pursuant to Tennessee Rule of Evidence 412; and (4) the admission of rebuttal testimony. Defendant also contends he is entitled to relief due to the cumulative effect of the errors.

I. Sufficiency of the Evidence

Defendant contends that the evidence is insufficient to support his convictions for rape, sexual battery by an authority figure, and statutory rape by an authority figure.⁴ In challenging his rape convictions, he maintains that the evidence failed to establish force or coercion or the *mens rea* of knowingly. In challenging his convictions for sexual battery by an authority figure and statutory rape by an authority figure, he maintains that the evidence failed to establish that he was an authority figure at the time of the sexual acts upon which the convictions were based or that he used any such position of authority to facilitate the sexual acts. The State responds that the evidence is sufficient to support Defendant's convictions.

We review a challenge to the sufficiency of the convicting evidence to determine whether, “after viewing the evidence in the light most favorable to the prosecution” and providing the State with “the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences which may be drawn therefrom,” “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (citations omitted); *State v. Davis*, 354 S.W.3d 718, 729 (Tenn. 2011) (citations omitted); Tenn. R. App. P. 13(e). Our review “is identical whether the conviction is predicated on direct or circumstantial evidence, or a combination of both.” *State v. Williams*, 558 S.W.3d 633, 638 (Tenn. 2018) (citing *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011)). Importantly, a guilty verdict removes the presumption of innocence and replaces it with one of guilt on appeal, shifting the burden to the defendant to demonstrate why the evidence is legally insufficient to support the conviction. *Davis*, 354 S.W.3d at 729 (citing *State v. Sisk*, 343 S.W.3d 60, 65 (Tenn. 2011)).

We must decline any invitation to revisit witness credibility or any purported discrepancies in the evidence because the jury, not this court, resolves all questions involving the credibility of the witnesses, the weight and value to be given to the evidence, and the factual disputes raised by such evidence. *See Dorantes*, 331 S.W.3d at 379 (citing *State v. Campbell*, 245 S.W.3d 331, 335 (Tenn. 2008)). Accordingly, this court will neither reweigh nor reconsider the evidence when evaluating the sufficiency of the convicting proof. *State v. Stephens*, 521 S.W.3d 718, 724 (Tenn. 2017).

⁴ Defendant does not challenge the sufficiency of the evidence supporting his convictions for aggravated statutory rape.

Appellate counsel states in his appellate brief that Defendant “realizes that the Court frowns on appeals based on the sufficiency of the evidence, but he is starting this appeal with them.” Characterizing this court’s prior decisions addressing issues of sufficiency of the evidence as a general disapproval of the issue and suggesting an unwritten bias as a result is not only inappropriate but is also a misinterpretation of jurisprudence. This court is bound by statutory text and established law, and a defendant’s lack of success in challenging sufficiency of the evidence on appeal is due to the high burden faced by defendants on appeal and this court’s application of the long-established standard of review as announced by the United States Supreme Court.

However, we do “frown on” what is best characterized as the tone used by appellate counsel for Defendant in the initial and reply brief. For example, he cites to the Bible to justify Defendant’s conduct, argues that the thirteen-year-old victim “*did* want it—until she didn’t” and that the victim “would have known full well what she was getting into,” and he maintains that “[t]o any sane person,” sex with the thirteen-year-old victim “would *seem* consensual.” (Emphasis in original). Instead of citing to any authority or proof at trial in response to the State’s emphasis in the size disparity between Defendant and the victim as one of the surrounding circumstances supporting the rape convictions, appellate counsel instead offers his opinion that “[i]f anything typically a man’s strength and size make him more desirable, not less.”⁵ As our supreme court has recognized,

While it is entirely proper for counsel in his brief to show errors, and apply the law to them, he is not permitted to insert matters which are defamatory, scandalous, impertinent and untrue. Nor will the courts tolerate, either orally or by brief, their use . . . as a forum for an unsuccessful attorney to vent his spite.

Ward v. Univ. of the South, 354 S.W.2d 246, 249 (Tenn. 1962) (quoting 5 C.J.S., Appeal & Error § 1327, p. 346-47). “‘Petulant grousing’ and ‘hyperbolic barbs’ do not suffice as cogent argument as required by our appellate rules.” *Basic v. Amouri*, 58 N.E.3d 980, 985 (Ind. Ct. App. 2016) (quoting *County Line Towing, Inc. v. Cincinnati Ins. Co.*, 714 N.E.2d 285, 291 (Ind. Ct. App. 1999); see *Ward*, 354 S.W.2d at 419 (“[I]nvectives are not argument, and have no place in legal discussion, but tend only to produce prejudice and discord.”)). No contextualization of the tone employed by appellate counsel lessens its inappropriateness. We reject appellate counsel’s use of vitriol disguised as “zealous advocacy” and caution appellate counsel against using such tone in future appellate briefs. We now turn to the issues raised by Defendant on appeal.

⁵ These are only a few examples of the tone employed by appellate counsel in the initial appellate brief and reply brief.

A. Rape

As applicable to the instant case, rape is the “unlawful sexual penetration of a victim by the defendant or of the defendant by a victim” where “[f]orce or coercion is used to accomplish the act[.]” Tenn. Code Ann. § 39-13-503(a)(1). “Sexual penetration” is defined as “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of the victim’s, the defendant’s, or any other person’s body, but emission of semen is not required[.]” *Id.* § 39-13-501(7). “‘Force’ means compulsion by the use of physical power or violence and shall be broadly construed to accomplish the purposes of this title[.]” *Id.* § 39-11-106(14). “‘Coercion’ means threat of kidnapping, extortion, force or violence to be performed immediately or in the future or the use of parental, custodial, or official authority over a child less than fifteen (15) years of age[.]” *Id.* § 39-13-501(1).

Defendant contends that the evidence was insufficient to establish force or coercion or that he acted knowingly. With regard to Defendant’s challenge to the *mens rea*, we note that the offense of rape does not specify a requisite mental state. *Id.* § 39-13-503(a)(1); *State v. Hodge*, No. E2014-01059-CCA-R3-CD, 2015 WL 1417285, at *5 (Tenn. Crim. App. Mar. 26, 2015). Ordinarily, the State may establish the offense of rape by showing that the defendant acted intentionally, knowingly, or recklessly. *See* Tenn. Code Ann. § 39-11-301(c) (“If the definition of an offense within this title does not plainly dispense with a mental element, intent, knowledge or recklessness suffices to establish the culpable state.”); *see also State v. Clark*, 452 S.W.3d 268, 296 (Tenn. 2014) (rape of a child); *State v. Batey*, No. M2017-02440-CCA-R3-CD, 2019 WL 6817059, at *21 (Tenn. Crim. App. Dec. 13, 2019) (aggravated rape); *Hodge*, 2015 WL 1417285, at *5 (rape). However, both rape counts in the presentment alleged that Defendant acted “knowingly,” and the trial court instructed the jury that the State was required to prove beyond a reasonable doubt that Defendant acted either intentionally or knowingly. Defendant contends that, as a result, the State was required to establish that he at least acted knowingly. The State does not challenge this contention but instead argues that the evidence nevertheless is sufficient to establish that Defendant acted knowingly. As the trial court instructed the jury, a person “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.” Tenn. Code Ann. § 39-11-302(b). “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.*

The first count of rape, as alleged in Count 2 in the indictment, was based on Defendant’s causing the victim to perform fellatio on him while they were in his truck in the parking lot of the country club. The second count of rape, as alleged in Count 7 in the indictment, was based on Defendant’s inserting his finger in the victim’s vaginal opening

while they were in his truck parked outside the middle school. On appeal, Defendant acknowledges that the victim's testimony was sufficient to establish penetration but maintains that the evidence was insufficient to establish that he used force or coercion and that he did so knowingly.

As to the rape in Count 2, the evidence presented at trial, when viewed in the light most favorable to the State, established that Defendant, a grown man who was in his thirties and had played football professionally, was considerably larger in size than the victim, a thirteen-year-old girl who was less than five feet tall and weighed approximately eighty-five pounds. Defendant had sexually abused the victim earlier in the evening of September 11, 2021, when he grabbed the victim's hand and forced her to touch his penis. The victim resisted by attempting to withdraw her hand, but Defendant maintained his hold, demonstrating the victim's efforts to resist were futile. When Defendant returned to the country club with the victim and his daughter later that night, he parked in the back of the parking lot away from other vehicles and sent his daughter to retrieve his son. After his daughter exited the truck, Defendant exposed his penis to the victim and twice instructed the victim to "[g]ive [him] head." When the victim did not comply, Defendant pushed her head down toward his penis, which went into her mouth, and Defendant "put his hand on the back of [her] head and then, like, went up and down."

Defendant argues on appeal that his actions were insufficient to establish force, that he did so knowingly, and that any such force did not "accomplish" the sexual penetration. Defendant's arguments hinge on an overly narrow interpretation of the rape statute and his claim that the victim's actions were voluntary, which is unsupported by the record. Rape requires "unlawful sexual penetration" and force or coercion "to accomplish the act[.]" Tenn. Code Ann. § 39-13-503(a)(1). Our supreme court has noted that "the word 'accomplished' is not defined in our criminal code." *State v. Henderson*, 531 S.W.3d 687, 692 (Tenn. 2017). In examining other criminal statutes, our supreme court and this court have utilized the dictionary definition of the word "accomplish," which means "1: to bring about (a result) by effort . . . 2: to bring to completion: fulfill." *Id.* at 692-93 (quoting *State v. Farmer*, No. M2007-01553-CCA-R3-CD, 2008 WL 3843847, at *7 (Tenn. Crim. App. Aug. 18, 2008)). Thus, under the plain language of the rape statute, the force or coercion must bring about or bring to completion the sexual penetration.

Defendant twice instructed the victim to perform fellatio on him. When the victim did not comply, he pushed her head down toward his exposed penis and then "put his hand on the back of [her] head and then, like, went up and down" as the victim performed fellatio on him. The victim testified that she did not want to perform fellatio on Defendant and that he forced her to do so. Although Defendant argues that the victim did not physically resist, "[t]here is no requirement in this state that the victim of a rape forcibly resist the actions of the perpetrator or . . . employ all the resistance of which she is physically capable

before a conviction may occur.” *State v. Banks*, No. M2007-00545-CCA-R3-CD, 2008 WL 1699440, at *4 (Tenn. Crim. App. Apr. 11, 2008). Defendant twice instructed the victim to perform fellatio on him, and she demonstrated her resistance by not complying with his demands. Furthermore, the victim, as a thirteen-year-old minor, was “legally incapable of consenting to sexual penetration by the defendant.” *State v. Steele*, No. M2023-00695-CCA-R3-CD, 2024 WL 2783712, at *5 (Tenn. Crim. App. May 30, 2024), *perm. app. denied* (Tenn. July 21, 2026); *see State v. Enoch*, No. W2023-01032-CCA-R3-CD, 2024 WL 3261421, at *4 (Tenn. Crim. App. July 1, 2024), *no perm. app. filed*. The evidence presented at trial established that Defendant accomplished the sexual penetration by force, i.e., by compulsion of the victim through Defendant’s physical power and that he acted knowingly. Accordingly, the evidence was sufficient to support the first count of rape.

As to the rape in Count 7, the evidence presented at trial, when viewed in the light most favorable to the State, established that on the morning of Wednesday, September 15, 2021, Defendant dropped his children off at school, leaving him alone with the victim. Defendant parked his truck, “had” the victim straddle and kiss him while his hands were on her buttocks, digitally penetrated her vagina, exposed his penis, put on a condom, gave her the condom wrapper, and instructed the victim to “give him head.” The victim did not do so, stating that she needed to go to school.

The State argues that the jury could have reasonably inferred coercion based on the surrounding circumstances. This court has recognized that an “implicit threat” of force or violence qualifies as coercion under Code section 39-13-501(1). *See State v. Gass*, No. E2000-00810-CCA-R3-CD, 2001 WL 767011, at *9 (Tenn. Crim. App. July 3, 2001); *State v. Reeves*, No. 01C01-9711-CR-00515, 1999 WL 155926, at *3 (Tenn. Crim. App. Mar. 23, 1999), *overruled on other grounds by State v. Collier*, 411 S.W.3d 886, 899-900 (Tenn. 2013). The evidence presented at trial established that in the days leading up to the digital penetration, Defendant engaged in a pattern of sexually abusing the victim through force. Defendant had forced the victim to touch his penis even when she attempted to resist, had forced her to perform fellatio on him, had kissed her, and had approached her from behind and rubbed his exposed penis on her buttocks. This pattern could lead a reasonable jury to find that Defendant could and would sexually penetrate the victim by force if she resisted. Based on Defendant’s prior sexual abuse of the victim by force, the large disparity in size between Defendant and the victim, and the circumstances surrounding Defendant’s digital penetration of the victim, a jury could reasonably infer that the sexual penetration was accomplished through an implicit threat of force or violence if the victim resisted and that Defendant acted knowingly. Although Defendant argues that the victim consented and that he could not have known otherwise, the thirteen-year-old victim was “legally incapable of consenting” to the sexual penetration, and Defendant knew or should have known that she could not consent. *See Steele*, 2024 WL 2783712, at

*5; *see also Enoch*, 2024 WL 3261421, at *4. We conclude that the evidence is sufficient to establish rape as alleged in Count 7 of the presentment in that Defendant digitally penetrated the victim, that he accomplished the sexual penetration through coercion, and that he acted knowingly.

B. Sexual Battery by an Authority Figure and Statutory Rape by an Authority Figure

Defendant challenges his convictions for sexual battery by an authority figure and statutory rape by an authority figure, asserting that the evidence is insufficient to establish that he was an authority figure at the time of the offenses. The State responds that the evidence is sufficient to establish that Defendant was in a position of trust and, thus, an authority figure at the time of the offenses.

As charged in the instant case, sexual battery by an authority figure is the “unlawful sexual contact with a victim by the defendant or the defendant by a victim” where “[t]he victim was, at the time of the offense, thirteen (13) years of age or older but less than eighteen (18) years of age” and “[t]he defendant was at the time of the offense in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant’s legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact[.]” Tenn. Code Ann. § 39-13-527(a)(1), (3)(A). As charged in the instant case, statutory rape by an authority figure is defined as “the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim” where

- (1) The victim is at least thirteen (13) but less than eighteen (18) years of age;
- (2) The defendant is at least four (4) years older than the victim; and
- (3)(A) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant’s legal, professional, or occupational status and used the position of trust or power to accomplish the sexual penetration[.]

Id. § 39-13-532(a).

Pursuant to statute, “the State is required to prove that at the time of the offense, the defendant was in a position of trust *or* had supervisory or disciplinary power over the victim by virtue of the defendant’s legal, professional, or occupational status; the State is not required to prove both.” *State v. Tice*, No. M2021-00495-CCA-R3-CD, 2022 WL 2800876, at *21 (Tenn. Crim. App. July 18, 2022) (quoting *State v. McGrowder*, No.

M2013-01184-CCA-R3-CD, 2014 WL 4723100, at *9 (Tenn. Crim. App. Sept. 23, 2014)) (emphasis added); *see State v. Capps*, No. E2023-01419-CCA-R3-CD, 2024 WL 5135477, at *7 (Tenn. Crim. App. Dec. 17, 2024), *perm. app. denied* (Tenn. May 23, 2025). The State argues that Defendant held a position of trust.

The term “position of trust” as used in sexual offenses by an authority figure is not defined by statute. Rather, “case law has defined the concept by reference to definitions of ‘trust’ and by analogy to sentencing enhancements based upon an abuse of a position of trust.” *Capps*, 2024 WL 5135477, at *7 (citing *Tice*, 2022 WL 2800876, at *22; *State v. Simmons*, No. M2014-02086-CCA-R3-CD, 2015 WL 7354311, at *12 (Tenn. Crim. App. Nov. 20, 2015); *McGrowder*, 2014 WL 4723100, at *10). In examining the sentencing enhancement based on the abuse of a position of public or private trust, our supreme court explained that a “court must look to ‘the nature of the relationship,’ and whether that relationship ‘promoted confidence, reliability, or faith.’ . . . A relationship which promotes confidence, reliability, or faith, usually includes a degree of vulnerability.” *State v. Gutierrez*, 5 S.W.3d 641, 646 (Tenn. 1999) (quoting *State v. Kissinger*, 922 S.W.2d 482, 488 (Tenn. 1996)). “The position of parent, step-parent, babysitter, teacher, coach are but a few obvious examples. The determination of the existence of a position of trust does not depend on the length or formality of the relationship, but upon the nature of the relationship.” *Kissinger*, 922 S.W.2d at 488.

Defendant maintains that the determination of whether he held a position of trust should be based on the perspective of the victim’s parents rather than the victim. He asserts that he was merely a friend of the victim’s parents, which is insufficient to rise to the level of a position of trust, and that “the friendship faded, and any supported trust evaporated” prior to the offenses. Our supreme court and this court have analyzed the nature of the relationship from the perspective of both the minor victim and the victim’s parents in determining whether the defendant held a position of trust. *See, e.g., Kissinger*, 922 S.W.2d at 488-89; *Capps*, 2024 WL 5135477, at *8; *Tice*, 2022 WL 2800876, at *23; *State v. Collazo*, No. M2009-02319-CCA-R3-CD, 2011 WL 4529643, at *17 (Tenn. Crim. App. Sept. 29, 2011). Thus, the trust of Defendant by both the victim and her parents is relevant in determining whether Defendant held a position of trust at the time of the offenses.

In the context of the sentencing enhancement, this court has held that “[t]he mere existence of a friendship . . . does not establish ‘private trust.’” *State v. Canada*, No. M2025-00397-CCA-R3-CD, 2026 WL 796360, at *14 (Tenn. Crim. App. Mar. 23, 2026) (quoting *State v. Stepp*, No. E2005-02178-CCA-R3-CD, 2006 WL 3102353, at *5 (Tenn. Crim. App. Nov. 2, 2006)), *no perm. app. filed*. The proof in the present case, however, established more than a “mere friendship.” The victim’s father considered Defendant to be one of his best friends; their families were together two to four nights a week; and they frequently visited each other’s homes. The victim’s parents, Defendant, and Ms. Mynatt

entrusted their respective children to each other to drive the children to school, practices, and sporting events. The victim's mother testified that she trusted Defendant with the victim and her brother. Defendant likewise testified that he "assume[d]" that the victim had trusted him and that her parents had trusted him with her and her brother.

Defendant relies on the testimony of the victim's father regarding his "really becoming suspicious" of Defendant prior to the offenses as proof that Defendant did not have a position of trust at the time of the offenses. However, no proof was presented that the victim's father expressed his suspicions to the victim prior to Defendant's sexually abusing the victim while driving to the country club, while in the country club parking lot, and while by Defendant's truck in the driveway of the victim's home, which form the basis for two convictions for sexual battery by an authority figure and one conviction for statutory rape by an authority figure. Rather, the victim's father continued to allow Defendant in his home and entrusted him to drive the victim to and from the country club. Defendant argues that the physical altercation later established that the victim's parents no longer trusted him and that, therefore, he did not hold a position of trust with regard to the sexual abuse that occurred near the school. However, the victim did not testify that her parents' lack of trust in Defendant was conveyed to her. Rather, the victim testified that Defendant told her that he and her father had "made up," that she did not understand her father's protest regarding her being involved in "adult matters" as prohibiting her from being around Defendant, and that her parents did not otherwise tell her that they did not want her around him.

We conclude that the evidence, when viewed in the light most favorable to the State, established that Defendant stood in a position of trust with the victim at the time of the offenses. It was only because Defendant stood in a position of trust that he was able to commit the offenses, and, thus, he used the position of trust to accomplish the sexual contact. Accordingly, we hold that the evidence is sufficient to support Defendant's convictions for sexual battery by an authority figure and statutory rape by an authority figure.

II. Tennessee Rule of Evidence 404(b)

Defendant contends that the trial court violated Tennessee Rule of Evidence 404(b) in admitting evidence regarding the possibility of other victims and evidence of uncharged acts against the victim. The State responds that the trial court did not abuse its discretion in admitting the evidence.

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity with the character trait." Tenn. R. Evid. 404(b). Rule 404(b) has been described as a rule of exclusion rather than inclusion. *State*

v. Jones, 450 S.W.3d 866, 891 (Tenn. 2014). “Trial courts have been encouraged to take a ‘restrictive approach of [Rule] 404(b) . . . because “other act” evidence carries a significant potential for unfairly influencing a jury.’” *Id.* (quoting *State v. Dotson*, 254 S.W.3d 378, 387 (Tenn. 2008)).

Evidence of other acts may be admissible for other non-propensity purposes, such as “to establish motive, intent, identity, absence of mistake, or common plan or scheme,” or contextual background. *State v. Little*, 402 S.W.3d 202, 210 (Tenn. 2013), *abrogated on other grounds by State v. Thomas*, 687 S.W.3d 223 (Tenn. 2024); *see also* Tenn. R. Evid. 404(b), Advisory Comm’n Cmts. Evidence may be admitted for these purposes if the following requirements have been met:

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

Tenn. R. Evid. 404(b).

If the trial court has substantially complied with the procedure mandated by Rule 404(b), a trial court’s decision to admit or exclude evidence pursuant to Rule 404(b) is reviewed under an abuse of discretion standard. *State v. DuBose*, 953 S.W.2d 649, 652 (Tenn. 1997). A trial court abuses its discretion when “it applies an incorrect legal standard or its decision is illogical or unreasonable, is based on a clearly erroneous assessment of the evidence, or utilizes reasoning that results in an injustice to the complaining party.” *Jones*, 450 S.W.3d at 892 (quoting *State v. Adams*, 405 S.W.3d 641, 660 (Tenn. 2013)). If the trial court has failed to substantially comply with the procedural mandates of Rule 404(b), our standard of review is de novo. *State v. Mallard*, 40 S.W.3d 473, 486 n.13 (Tenn. 2001) (citing *DuBose*, 953 S.W.2d at 652-53).

A. Evidence of the Possibility of Other Victims

Defendant contends that the trial court erred in admitting evidence of the possibility of other victims. He asserts that such proof was evidence of other crimes, wrongs, or acts subject to Rule 404(b) and that the trial court failed to make the necessary findings for admission of the evidence pursuant to Rule 404(b). The State responds that proof that the victim learned of the possibility of other victims was not subject to Rule 404(b) and was relevant to explain why the victim decided to disclose the sexual abuse during the second forensic interview after she had denied that such abuse occurred during the initial forensic interview.

1. Underlying Proceedings

Prior to trial, Defendant filed a motion in limine to exclude evidence of other allegations and criminal charges unrelated to the victim in the instant case pursuant to Tennessee Rules of Evidence 402, 403, and 404. During a hearing prior to the initial trial, the State noted that at trial, Defendant may question the victim regarding why she changed her statement disclosing sexual abuse during the second forensic interview after she denied such sexual abuse occurred during her first forensic interview. The State argued that if Defendant pursued this line of questioning, the victim should be allowed to explain that she decided to disclose the sexual abuse once she learned that there may be other victims. Defendant objected, arguing that such testimony would have limited probative value and that “the prejudicial effect greatly outweighs the probative value.”

The trial court initially found that “a statement that there are other victims out there,” generally, would implicate Rule 404(b). However, the court determined that if the defense brought out the discrepancies between the victim’s statements at trial, the State would be permitted to present testimony that the victim decided to disclose the abuse upon learning of the possibility of other victims to explain the discrepancies. The court ruled that the State could not present proof regarding the specific allegations involving other victims or the investigation into those allegations. Defendant subsequently argued that the admission of the evidence fell within Rule 404(b) and that, therefore, a jury-out hearing would be necessary prior to the admission of the evidence. The trial court found that “we’re not bringing in proof of the bad acts” and that, rather,

the door’s going to be opened to an explanation on why she said what she said. So I don’t think that really, at that point, would be 404(b). It’s just really her state of mind. Why are you saying this? Well, ‘cause I came to believe that there were other kids out there and I didn’t want them to go—go through what I’ve gone through. That’s as far as we go.

Prior to Defendant's second trial, the trial court affirmed that its previous ruling continued to apply.

The State called the victim as its first witness at trial but did not question the victim on direct examination regarding her first forensic interview or the circumstances leading to her second forensic interview. In response to defense counsel's questioning on cross-examination, the victim testified that during the first forensic interview, she repeatedly denied that any sexual abuse occurred and that prior to the second forensic interview, she told her parents that no sexual abuse occurred. The victim testified that she decided to disclose the sexual abuse during the second forensic interview "because [she] thought of [Defendant's] daughter and the fact that he could do it to other girls." In response to questioning from the defense, the victim acknowledged that her parents told her that there could be other victims, that they made the statements after her father lost in a "fistfight" against Defendant, and that her father was "not very pleased that he had been beat up and punched in the face."

During a jury-out hearing at the conclusion of the victim's testimony, the State announced its intent to present evidence of the police investigation into allegations involving other victims to rebut the defense's suggestion during the cross-examination of the victim that her parents made false statements to her regarding the possibility of other victims out of vindictiveness. Defense counsel acknowledged that the trial court's initial ruling was "correct" in that "once an inconsistency occurs, they absolutely have the right to tell the jury what is going on in this witness's mind as to why they changed it. I don't contest that at all. The ruling puts us in a difficult position, but the ruling's correct." However, defense counsel argued that evidence that police officers actually were investigating allegations by other victims was irrelevant to the reason the victim decided to change her statement and that the admission of the evidence would violate Rule 404(b) and Rule 403.

The victim and her mother both testified outside the jury's presence and affirmed that the victim's parents told her that there could be other victims and not that there were other victims. The victim's mother stated that she and the victim's father learned the information from Sergeant Lockmiller following the victim's first forensic interview. The victim's mother stated that while discussing the next steps in the investigation, Sergeant Lockmiller made a "vague" statement regarding the "possibility of some other victims that could be . . . involved."

The trial court found that evidence regarding why the victim changed her story between the first and second interviews and the source of her parents' information regarding the possibility of additional victims were relevant as a result of the defense's claim that the allegations against Defendant were falsely made due to vindictiveness over

the fight between Defendant and the victim's father. The court found that the defense's theory "does not open the door to the fact that there actually are other charges or" other victims or to the details regarding the investigation into the allegations from other victims.

2. Analysis

Defendant contends that the trial court violated Rule 404(b) by admitting evidence regarding the possibility of other victims without first finding that the allegations had been established by clear and convincing evidence or finding that "the probative value outweighed the unfair prejudice." We conclude that the trial court's findings, when viewed as a whole, reflect that its decision to admit evidence of the possibility of other victims was not based on Rule 404(b) but was based on the doctrine of "opening the door."

Evidence that generally is not admissible may nevertheless be admitted if the defendant "opens the door" by introducing evidence or taking "some action that makes admissible evidence that would have previously been inadmissible." *State v. Gomez*, 367 S.W.3d 237, 246 (Tenn. 2012) (quoting 21 Charles Alan Wright et al., *Federal Practice & Procedure Evidence* § 5039 (2d ed. 1987)). "The most common manner by which a party opens the door to inadmissible evidence is by raising the subject of that evidence at trial." *Id.* "When a party raises a subject at trial, the party 'expand[s] the realm of relevance,' and the opposing party may be permitted to present evidence on that subject." *Id.* (quoting 21 Charles Alan Wright et al., *Federal Practice and Procedure Evidence* § 5039.1). The basis for the doctrine has been described as follows:

On occasion, a party wants to have its evidence cake and eat it too. This party may "open the door" to the admission of otherwise inadmissible evidence, then object when that evidence is rendered. Tennessee law has long recognized that a party "will not be permitted to take advantage of errors which he himself committed, or invited, or induced the trial court to commit, or which were the natural consequences of his own neglect or misconduct."

State v. Vance, 596 S.W.3d 229, 250 (Tenn. 2020) (quoting Neil P. Cohen et al., *Tennessee Law of Evidence* § 1.03[3][d] (6th ed. 2011)). Rulings regarding the relevancy of evidence, including the application of the doctrine of "opening the door," are within the discretion of the trial court, and this court will not reverse the trial court's decision on appeal absent an abuse of that discretion. *See State v. Forte*, No. E2022-01216-CCA-R3-CD, 2025 WL 1420366, at *18 (Tenn. Crim. App. May 16, 2025), *perm. app. denied* (Tenn. Oct. 8, 2025).

The doctrine of "opening the door" is "intended to serve fairness and truth-seeking," and, thus, "the remedy sought after a party has opened the door should be both relevant and proportional." *Vance*, 596 S.W.3d at 250-51 (citations omitted). "The otherwise

inadmissible evidence sought to be introduced by the opposing party should be limited to that necessary to correct a misleading advantage created by the evidence that opened the door.” *Id.* at 251 (citing *State v. Gaudet*, 97 A.3d 640, 646 (N.H. 2014)). “The fact that ‘the door has been opened’ does not permit all evidence to pass through because the doctrine is intended to prevent prejudice and is not to be subverted into a rule for the injection of prejudice.” *Id.* (quoting *Gaudet*, 97 A.3d at 646). “The trial court is in the best position to gauge the prejudicial impact of particular testimony.” *Id.* (quoting *Gaudet*, 97 A.3d at 646).

The trial court ruled that only if Defendant questioned the victim about the discrepancies between her first forensic interview during which she denied any sexual abuse occurred and her second forensic interview during which she disclosed the sexual abuse, the State could elicit testimony from the victim that she changed her statement based in part on her learning from her parents of the possibility of other victims. Because Defendant opened the door to the evidence, the admission of the victim’s testimony regarding her belief that there could be other victims was not subject to the requirements of Rule 404(b). The trial court narrowly tailored the remedy for Defendant’s opening the door and disallowed any evidence regarding the actual existence of any victims, their allegations, and the investigation into their allegations. At trial, defense counsel conceded that the trial court correctly ruled that the victim would be allowed to explain the discrepancies in her statements if challenged.

Furthermore, the defense was the first party to elicit testimony from the victim that she decided to disclose the sexual abuse upon learning of the possibility of other victims from her parents. In his cross-examination of the victim, Defendant suggested that her parents made the statement to the victim due to animosity toward Defendant resulting from his physical altercation with the victim’s father. Once Defendant challenged the veracity of the parents’ statement and their motivation for making the statement to the victim, the defense opened the door to allow the State to present evidence that the victim’s parents learned of the possibility of other victims from Sergeant Lockmiller following the victim’s first forensic interview. The trial court again narrowly tailored the remedy for Defendant’s opening the door and disallowed any evidence regarding the actual existence of the victims, their allegations, and the investigation into their allegations. We conclude that the trial court did not abuse its discretion by admitting the evidence.

B. Evidence of Uncharged Acts Against the Victim

Defendant challenges the trial court’s admission pursuant to Rule 404(b) of evidence of his having the victim rub lotion on his back, his touching the victim’s buttocks while hugging her, his popping her back, his commenting about seeing her underwear, his saying that the victim could be his girlfriend if she was older, and his urinating in his

bathroom while the victim and his daughter were also in the room. The State responds that the trial court did not abuse its discretion in admitting the evidence as proof of grooming.

Although Defendant challenges on appeal the admission of evidence of his having the victim rub lotion on him, he did not raise the admission of this evidence as an issue in his motion for new trial or his amended motions. Accordingly, he has waived plenary review of this issue on appeal. *See* Tenn. R. App. P. 3(e); *State v. Harbison*, 539 S.W.3d 149, 164 (Tenn. 2018). However, Defendant raised the admission of evidence of the other incidents between him and the victim as an issue in his motion for new trial, and, therefore, he preserved plenary review of the trial court's admission of this evidence.

The record reflects that during a pretrial hearing, the State announced its intention to present proof at trial regarding other interactions between Defendant and the victim that occurred in the months leading up to the offenses. The State argued that the prior instances were not "necessarily criminal" and did not "cross[] the line into a sexual assault" but that the prior instances were evidence of grooming. Defendant objected, arguing that the instances were prior bad acts, which were inadmissible unless the requirements of Rule 404(b) were met.

The trial court held a hearing outside the jury's presence during which the victim testified regarding the multiple incidents involving Defendant. At trial, the victim identified the following categories of incidents: (1) Defendant's telling the victim that she would be his girlfriend if she was older; (2) Defendant's urinating in a bathroom while the victim and his daughter were in the same room; (3) Defendant's commenting about seeing the victim's underwear; (4) Defendant's touching the victim's buttocks while hugging her; and (5) Defendant's pressing his body against the victim's body while popping her back.

At the conclusion of the victim's testimony, the trial court reviewed the victim's testimony as to each incident, found her testimony to be credible, and concluded that each incident was proven by clear and convincing evidence. The court found that the incidents constituted grooming behavior and were material to the issue of intent. The court also found that the probative value of the evidence "substantially outweigh[ed] any danger of unfair prejudice." Thus, the court concluded that the evidence was admissible.

Defendant contends that the trial court failed to substantially comply with the requirements in Rule 404(b) in that, with the exception of one of the instances identified by the victim, the trial court failed to rule on "whether the probative value outweighed the unfair prejudice." Defendant maintains that as a result, this court must employ a de novo standard of review. The record reflects that the trial court reviewed the victim's testimony regarding each incident, finding that each incident was proven by clear and convincing evidence and ruling on the materiality of each incident. The trial court then made a

collective finding that the probative value of the evidence “substantially outweighs any danger of unfair prejudice.” We conclude that the trial court substantially complied with the procedure mandated by Rule 404(b), and, therefore, we review the trial court’s decision to admit the evidence for abuse of discretion. *See DuBose*, 953 S.W.2d at 652.

On appeal, Defendant challenges the trial court’s materiality finding, asserting that the trial court erred in finding the evidence material to intent and grooming because neither were an element of the charged offenses. Defendant also argues that the probative value of “‘grooming’ is low or non-existent” in that “the grooming allegations were all pretty trivial.”

This court has upheld the admission of evidence of a defendant’s “grooming of a victim,” including evidence of “bad acts committed during or in preparation for the charged offense.” *See, e.g., State v. Perry*, No. M2022-00643-CCA-R3-CD, 2023 WL 6150852, at *16 (Tenn. Crim. App. Sept. 21, 2023), *perm. app. denied* (Tenn. May, 15, 2024); *State v. Clayborn*, No. M2021-00656-CCA-R3-CD, 2022 WL 2817162, at *15 (Tenn. Crim. App. July 19, 2022); *see also State v. Wallace*, No. W2018-01649-CCA-R3-CD, 2020 WL 768731, at *7 (Tenn. Crim. App. Feb. 14, 2020) (explaining that “the concept of ‘grooming’ is one that has been recognized by the courts of this state as well as other jurisdictions and is properly admitted through evidence of a defendant’s bad acts to gain favor or gain access to a victim”). Grooming “includes conduct designed to gradually acclimate the child to sexual topics and conduct.” 7 Clifford S. Fishman & Anne Toomy McKenna, *Jones on Evidence* § 57.70 (7th ed., Nov. 2025 update). “[W]here a defendant charged with abuse or molestation denies committing those acts, explicit sexual ‘grooming’ is highly relevant as evidence of preparation or steps toward the ultimate goal.” *Id.* Here, the evidence that in the months preceding the offenses, Defendant was making inappropriate comments to the victim and touching her in increasingly sexual ways was relevant as evidence of his steps toward the ultimate goal of engaging in sexual activity with the victim. The trial court’s findings reflect that the court considered the probative value of the evidence and concluded that its probative value outweighed its prejudicial effect. We conclude that the trial court did not abuse its discretion by admitting the evidence.

III. Exclusion of Evidence

Defendant contends that the trial court erred in excluding evidence of the victim’s prior sexual history pursuant to Tennessee Rule of Evidence 412. He asserts that the evidence served as proof of the victim’s knowledge of sexual matters and that the exclusion of the evidence violated his constitutional right to present a defense. The State responds that the trial court did not abuse its discretion in excluding the evidence pursuant to Rule 412. The State further responds that Defendant has waived his constitutional claim by

failing to raise it in the trial court or in his motion for new trial and that Defendant has failed to establish plain error. Defendant replies that he properly preserved the constitutional issue for purposes of appeal.

Prior to Defendant's initial trial, he filed a motion under seal seeking to admit evidence pursuant to Rule 412. As related to the issues raised on appeal, Defendant sought to present evidence that the victim was sexually abused when she was approximately three years old, arguing that the evidence was admissible pursuant to Rule 412(c)(4)(ii) to explain the victim's knowledge of sexual matters. Defendant also cited "U.S. Const. Amends. V, VI, XIV; Tenn. Const. art. I, § 8, 9" and averred that the evidence was admissible pursuant to Rule 412(c)(1), "as it is '[r]equired by the Tennessee or United States Constitution' to preserve [Defendant's] right to present a defense."

The thirteen-year-old victim discussed the prior sexual abuse during her forensic interview related to the charges against Defendant in the instant case, and the recording of the forensic interview was entered as an exhibit during the hearing on Defendant's Rule 412 motion. During the hearing, defense counsel argued that the evidence of the prior sexual abuse was admissible as an alternative source of the victim's knowledge of sexual matters. Defense counsel did not argue that the admission of the evidence was necessary to preserve Defendant's constitutional right to present a defense. The trial court asked defense counsel, "So source of knowledge is—really is your primary argument[?]" Defense counsel replied, "Yes, your Honor."

The trial court took the matter under advisement and subsequently entered an order denying Defendant's motion. The court analyzed the admissibility of the evidence pursuant to Rule 412(c)(4)(ii) to show an alternative source of the victim's knowledge of sexual matters. The court noted that during the forensic interview, the victim said the abuse occurred when she was "really little" but that she "did not provide a detailed description of the behavior." In excluding the evidence, the court noted that the victim's description of the sexual abuse by Defendant was "much more detailed" than her description of the prior sexual abuse. The court reasoned:

It is clear from the slang and language that she used that she was quite familiar with sexual terms and acts. Her understanding appears to be that of a normal teenager. This case does not involve a very young victim. The language she uses to describe the behaviors with [Defendant] is not inconsistent with a teenager who has or has not been abused. Thus, the prior incidents do not help explain her use and understanding of sexual terms. Therefore, they are not relevant to any permissible use under Rule 412 and are hereby excluded.

A. Tennessee Rule of Evidence 412

On appeal, Defendant contends that the trial court erred in denying the motion pursuant to Rule 412. He maintains that “[b]ecause the prior experience explained her knowledge of sexual matters, and because it even involved similar accusations, there was no good reason to deny the motion.” The State responds that the prior sexual abuse was distinct from the allegations against Defendant, that there was a significant temporal disparity between the prior sexual abuse and the sexual abuse by Defendant, and that the language used by the victim during the forensic interview “was not indicative of special knowledge” stemming from the prior abuse. The State argues that as a result, the trial court did not abuse its discretion in excluding the evidence.

Tennessee Rule of Evidence 412, Tennessee’s rape shield rule, “was enacted to reflect the general view that evidence of prior sexual behavior is irrelevant or, if relevant, has little probative value compared to its prejudicial effect, unless the evidence is within one of the enumerated exceptions.” *State v. Brown*, 29 S.W.3d 427, 429-30 (Tenn. 2000). The rule recognized that “despite the embarrassing nature of the proof, sometimes the accused can only have a fair trial if permitted to introduce evidence of the alleged victim’s sexual history.” Tenn. R. Evid. 412, Advisory Comm’n Cmts. (2005 amendment). The purpose of Rule 412 “is to exclude all evidence regarding the complainant’s prior sexual behavior unless the procedural protocol is followed and the evidence conforms to the specifications” of the rule. *Brown*, 29 S.W.3d at 430. The decision to admit or exclude evidence pursuant to Rule 412 is within the sound discretion of the trial court, and this court will not disturb the trial court’s evidentiary ruling absent an abuse of discretion. See *State v. Sheline*, 955 S.W.2d 42, 46 (Tenn. 1997); *State v. Nance*, 393 S.W.3d 212, 223 (Tenn. Crim. App. 2012).

Rule 412 defines “sexual behavior” as “sexual activity of the alleged victim other than the sexual act at issue in the case.” Tenn. R. Evid. 412(a). “This broad definition ‘deals with sexual intercourse as well as every other variety of sexual expression.’” *State v. Wyrick*, 62 S.W.3d 751, 770-71 (Tenn. Crim. App. 2001) (quoting *Sheline*, 955 S.W.2d at 47 n.6). As applicable to the instant case, Rule 412(c) provides that “[e]vidence of specific instances of a victim’s sexual behavior is inadmissible” unless the evidence is presented to prove or explain “knowledge of sexual matters” if “the sexual behavior was with persons other than the accused.” Tenn. R. Evid. 412(c)(4)(ii). The sexual knowledge exception in Rule 412(c)(4)(ii)

will most frequently be used in cases where the victim is a young child who testifies in detail about sexual activity. To disprove any suggestion that the child acquired the detailed information about sexual matters from the

encounter with the accused, the defense may want to prove that the child learned the terminology as the result of sexual activity with third parties.

Cooper v. State, No. E2022-01776-CCA-R3-PC, 2024 WL 4143828, at *32 (Tenn. Crim. App. Sept. 11, 2024) (quoting *State v. Lyle*, No. E2012-00468-CCA-R3-CD, 2013 WL 1281857, at *13-14 (Tenn. Crim. App. Mar. 28, 2013)), *perm. app. denied* (Tenn. Mar. 14, 2025).

A defendant who intends to offer evidence of specific instances of a victim's sexual behavior must "file a written motion to offer such evidence." Tenn. R. Evid. 412(d)(1). The motion shall be filed under seal, shall be accompanied by a written offer of proof that describes the evidence and the purpose of introducing the evidence, and shall be served on all parties, the prosecutor, and the victim. Tenn. R. Evid. 412(d)(1)(ii), (iii), (d)(2). If the trial court concludes that the evidence satisfies Rule 412(c) and that "the probative value of the evidence outweighs its unfair prejudice to the victim, the evidence shall be admissible in the proceeding to the extent an order made by the court specifies the evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined." Tenn. R. Evid. 412(d)(4). Thus, the intent of Rule 412 "is not to provide a defendant with unfettered use of the victim's past sexual behavior once any of the enumerated grounds for admissibility specified in the rule have been established." *Cooper*, 2024 WL 4143828, at *31 (citing Tenn. R. Evid. 412(d)(4)).

The record supports the trial court's finding that the evidence of the prior abuse was not relevant to explain the victim's knowledge of sexual matters. The prior sexual abuse occurred approximately ten years before the incidents occurred in the instant case. As noted by the trial court, when the instant offenses occurred, the victim was not a young child who would not have been expected to have any knowledge of sexual matters. Rather, she was a teenager, who used slang and straightforward language in describing Defendant's actions. It was not illogical for the trial court to determine that the victim did not display a knowledge of sexual matters uncommon for someone her age. *See State v. Bailey*, No. W2014-02434-CCA-R3-CD, 2016 WL 7742753, at *10 (Tenn. Crim. App. Apr. 8, 2016) (upholding the trial court's decision to exclude evidence of prior abuse when the victim, who was age eleven at the time of the disclosure and age thirteen at the time of the jury-out hearing, gave "simple and straightforward" testimony regarding the defendant's actions and "it was not illogical for the trial court to conclude that she did not display a knowledge of sexual matters that was uncommon for a person her age"); *see also State v. Banks*, 271 S.W.3d 90, 116 (Tenn. 2008) (noting that a trial court abuses its discretion only when it has "applied incorrect legal standards, reached an illogical conclusion, based its decision on a clearly erroneous assessment of the evidence, or employed reasoning that causes an injustice to the complaining party"). Accordingly, the trial court did not abuse its discretion in excluding the evidence.

B. Right to Present a Defense

Defendant also claims that the trial court's exclusion of evidence of the victim's prior sexual abuse violated his constitutional right to present a defense. Defendant's allegations in his amended motions for new trial regarding the denial of his Rule 412 motion is limited to a one-sentence claim that "[e]rror was committed when the Court denied [Defendant's] 412 motion, filed under seal." The State maintains that this statement is insufficient to raise the issue of whether the exclusion of the evidence violated Defendant's constitutional right to present a defense, while Defendant maintains that the mere reference to the denial of the "412 Motion" was sufficient to preserve the issue.

"Appellate review generally is limited to issues that a party properly preserves for review by raising the issues in the trial court and on appeal." *State v. Minor*, 546 S.W.3d 59, 65 (Tenn. 2018) (citations omitted). "Issue-preservation requirements promote efficiency and judicial economy by 'enabl[ing] a trial court to avoid or rectify an error before a judgment becomes final' and 'fostering the expeditious avoidance or correction of errors before their full impact is realized.'" *State v. Bristol*, 654 S.W.3d 917, 926 (Tenn. 2022) (quoting *Minor*, 546 S.W.3d at 65). "This obligation to preserve issues applies to constitutional issues as well as non-constitutional ones." *Vance*, 596 S.W.3d at 253 (citing *Minor*, 546 S.W.3d at 65).

To preserve an issue in a motion for new trial, "the defendant must set forth the factual grounds on which he relies, the legal grounds for the trial court's ruling, and a concise statement as to why the trial court's decision was in error." *State v. Reynolds*, 635 S.W.3d 893, 926-27 (Tenn. 2021) (quoting *State v. Harbison*, 539 S.W.3d 149, 164-65 (Tenn. 2018)). When crafting argument in a motion for new trial, a defendant should not "simply allege, in general terms, that the trial court committed error, either by taking some action or by admitting or excluding evidence" but should "identify the specific circumstances giving rise to the alleged error so that it may be reasonably identified in the context of the entire trial." *Fahey v. Eldridge*, 46 S.W.3d 138, 142-43 (Tenn. 2001) (citing *State v. Ashburn*, 914 S.W.2d 108, 114 (Tenn. Crim. App. 1995)). A motion for new trial should "identify, with reasonable clarity, the legal ground upon which the trial court based its actions and contain a concise statement asserting the legal reasons why the court's decision was improper." *Id.* at 143. "[P]recise citation to a rule, statute, or case as the legal ground for the alleged error is normally not required to preserve the issue for appeal under Rule 3(e)." *Id.* "[A]lthough to the extent that citation to authority aids in fairly bringing the legal nature of the error to the attention of the trial judge, such a practice ought to be encouraged." *Id.* When reviewing a motion for new trial, this court must "view the motion in the light most favorable to the appellant, and it should resolve any doubt as to whether the issue and its grounds were specifically stated in favor of preserving the issue" because

“[a]ny other method of review would result in needlessly favoring ‘technicality in form’ over substance.” *Id.*

Although Defendant’s motion, titled “Sealed Motion Pursuant to Rule 412,” included a brief reference to Defendant’s constitutional right to present a defense, the motion did not include any analysis or case law relating to the constitutional issue. During the pretrial hearing on the motion, Defendant did not argue that the evidence was necessary to protect his constitutional right to present a defense. Rather, when questioned by the trial court, trial counsel affirmed that the defense was seeking to admit the evidence as an alternative source of the victim’s knowledge of sexual matters pursuant to Rule 412(c)(4)(ii). Thus, even if Defendant’s brief reference in his motion to his constitutional right to present a defense was sufficient to raise the issue, it appears that Defendant abandoned the argument during the pretrial hearing. In its order denying the motion, the trial court only analyzed the admission of the evidence pursuant to Rule 412(c)(4)(iii). In light of trial counsel’s statements during the pretrial hearing and the trial court’s order based on those statements, we cannot conclude that Defendant’s reference to the denial of his “412 Motion” in his amended motions for new trial without any claim that the exclusion of the evidence violated his constitutional right to present a defense was sufficient to preserve the issue for purposes of appeal. Accordingly, this issue is waived.

Waiver notwithstanding, we conclude that Defendant is not entitled to relief. The United States Constitution “guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’” *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). Our supreme court also has recognized that the right to present a defense is “a fundamental element of due process of law.” *State v. Brown*, 29 S.W.3d 427, 432 (Tenn. 2000) (quoting *Washington v. Texas*, 388 U.S. 14, 19 (1967)). The right to offer testimony from witnesses, however, is not absolute. *State v. Flood*, 219 S.W.3d 307, 316 (Tenn. 2007). “In the exercise of this right, the accused, as is required of the State, must comply with established rules of procedure and evidence.” *Id.* (quoting *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)). Our supreme court has recognized that “[r]ules of procedure and evidence are designed to assure fairness and reliability in the criminal trial process” and that “[s]o long as the rules of procedure and evidence are not applied arbitrarily or disproportionately to defeat the purposes they are designed to serve, these rules do not violate a defendant’s right to present a defense.” *Id.* (citations omitted). As a result, a trial court’s ruling regarding the admissibility of evidence, generally, does not rise to the level of constitutional error. *State v. Rice*, 184 S.W.3d 646, 673 (Tenn. 2004), *abrogated on other grounds by State v. Miller*, 638 S.W.3d 136 (Tenn. 2021). However, “the erroneous exclusion of evidence that thwarts a criminal defendant’s right to present a defense is constitutional error.” *State v. Bell*, 512 S.W.3d 167, 190-91 (Tenn. 2015) (citing *Rice*, 184 S.W.3d at 673). In determining whether the trial court’s exclusion of evidence violated a defendant’s constitutional right

to present a defense, this court must consider “whether the excluded proof is critical to the defense; whether it bears sufficient indicia of reliability; and whether the interest supporting exclusion of the proof is substantially important.” *Id.* at 191 (citing *Rice*, 184 S.W.3d at 673).

In Defendant’s appellate brief, he failed to reference or include any analysis of the above-cited factors that courts should consider in determining whether the exclusion of evidence violated a defendant’s constitutional right to present a defense. *See id.* (citing *Rice*, 184 S.W.3d at 673). Even after the State pointed out Defendant’s shortcomings in its responsive brief, Defendant still failed to address the factors in his reply brief. Accordingly, Defendant has failed to establish that the exclusion of the evidence violated his constitutional right to present a defense.

IV. Admission of Rebuttal Testimony

Defendant challenges the trial court’s admission of rebuttal testimony from Sergeant Lockmiller regarding his examination of multiple boxes of condoms that were the same style and brand of the condom found in Defendant’s truck and the condom wrapper obtained from the victim’s family. Defendant contends that the testimony was improper rebuttal evidence because the evidence should have been presented in the State’s case-in-chief and was presented by the State in response to testimony that the State elicited from Defendant on cross-examination. The State responds that the trial court did not abuse its discretion in admitting the evidence.

During the State’s case-in-chief, Sergeant Lockmiller testified regarding the similar lot numbers on the unopened condom recovered from Defendant’s truck and the condom wrapper recovered from the victim’s family. During the defense proof, defense counsel announced during a jury-out hearing that following Sergeant Lockmiller’s testimony, counsel instructed the defense investigator to purchase multiple boxes of the same brand of condoms for defense counsel to examine. Counsel stated that based on his examination, “the numbers aren’t unique and the numbers aren’t identifying.” Counsel said that “[b]y way of rebuttal,” he asked the investigator “to make himself available with those condoms so we can see that there is repetition to the numbers, . . . it’s not just one of those to one box.”

Defendant subsequently testified, and on direct examination, he denied using a condom on September 15, 2021. In response to questioning by the State on cross-examination, Defendant denied that he gave the victim a condom wrapper or that the condom wrapper produced by the victim’s family came from the same box as the condom wrapper recovered from his truck. Defendant did not call the defense investigator as a witness.

The State recalled Sergeant Lockmiller in rebuttal, and he explained that “[y]esterday afternoon,” he examined several boxes of condoms of the same style and brand as the condoms at issue. Defendant objected and argued during a bench conference that the evidence was “case-in-chief proof” and not “rebuttal proof.” He maintained, “The only reason that there’s an argument that’s rebuttal is because [the State] asked [Defendant] a follow-up question, after he indicated he had no personal knowledge. They can’t open their own door.” The trial court overruled Defendant’s objection.

Sergeant Lockmiller testified that upon examining multiple boxes of condoms, he determined that those condoms sharing the same box each had the same A series number. He also stated that the condom found in Defendant’s truck and the condom wrapper recovered from the victim’s family shared the same A series number.

The admission or rejection of rebuttal evidence is left to the trial court’s sound discretion. *State v. Braden*, 867 S.W.2d 750, 760 (Tenn. 1993); *State v. Thompson*, 43 S.W.3d 516, 524 (Tenn. Crim. App. 2000). “Rebuttal evidence is ‘any competent evidence which explains or is in direct reply to or a contradiction of material evidence introduced by the accused.’” *Thompson*, 43 S.W.3d at 524 (quoting *Nease v. State*, 592 S.W.2d 327, 331 (Tenn. Crim. App. 1979)).

Defendant argues that admission of the rebuttal evidence was error because the State should have presented the evidence in its case-in-chief. Defendant relies on this court’s decision in *State v. West*, in which this court held that the State did not “proceed within the context of the applicable norms of a level-handed prosecution” by their introduction of a surprise rebuttal witness whose testimony was not “rebuttal” but “proof-in-chief.” 825 S.W.2d 695, 698 (Tenn. Crim. App. 1992). The rebuttal witness in *West* “was an eyewitness with a story to tell,” whose testimony “made a stronger case for the [State] than any other witness presented.” *Id.* In *West*, the evidence was improperly admitted “because the testimony did not rebut anything and thus, it should have been proffered during the State’s case in chief.” *State v. Dellinger*, 79 S.W.3d 458, 489 n.12 (Tenn. 2002) (appendix) (citing *West*, 825 S.W.2d at 698); see *State v. Bigsbee*, No. M2008-02514-CCA-R3-CD, 2010 WL 4188274, at *8 (Tenn. Crim. App. Oct. 22, 2010); *State v. Tabb*, No. W2005-02974-CCA-R3-CD, 2007 WL 2700075, at *9 (Tenn. Crim. App. Sept. 14, 2007). However, this court has recognized that the fact the State could have offered the same evidence as part of its case-in-chief does not preclude admission of the evidence in rebuttal if the evidence is relevant as rebuttal proof. See, e.g., *Dellinger*, 79 S.W.3d at 488-89 (appendix); *State v. Kendricks*, 947 S.W.2d 875, 884 (Tenn. Crim. App. 1996); *State v. Shuttles*, No. W2015-01529-CCA-R3-CD, 2016 WL 7654953, at *8 (Tenn. Crim. App. Sept. 23, 2016); *Bigsbee*, 2010 WL 4188274, at *8.

Sergeant Lockmiller's testimony was relevant to rebut Defendant's testimony on direct and cross-examination denying that he used a condom, that he handed a condom wrapper to the victim, and that the condom wrapper produced by the victim's family came from the same box as the condom found in his truck. Although the State elicited some of the testimony that Sergeant Lockmiller's testimony was presented to rebut, "[a]ny competent evidence which explains or is a direct reply to, or a contradiction of, material evidence introduced by the accused, or which is brought out on his cross-examination is admissible in rebuttal." *State v. Anderson*, No. E2013-00661-CCA-R3-CD, 2015 WL 12978652, at *18 (Tenn. Crim. App. June 29, 2015) (quoting *Nease*, 592 S.W.2d at 331). Furthermore, there is nothing in the record to suggest that the State elicited Defendant's testimony regarding the condom and the wrapper for the sole purpose of presenting the rebuttal evidence. Rather, the State's questions to Defendant on cross-examination were reasonable in light of Defendant's claim on direct examination that the sexual abuse did not occur and that he never used a condom on the date in question. We cannot conclude that the trial court abused its discretion in admitting the evidence.

V. Cumulative Error

Defendant finally argues that the cumulative effect of the errors in this case deprived him of a fair trial. The cumulative error doctrine applies when there have been "multiple errors committed in trial proceedings, each of which in isolation constitutes mere harmless error, but which when aggregated, have a cumulative effect on the proceedings so great as to require reversal in order to preserve a defendant's right to a fair trial." *State v. Hester*, 324 S.W.3d 1, 76 (Tenn. 2010). The doctrine requires the existence of more than one actual error before it may be applied. *Id.* at 77. We have determined that Defendant has failed to establish any error in the trial proceedings, and, thus, no errors exist to aggregate. Accordingly, Defendant is not entitled to relief.

Conclusion

For the foregoing reasons, we affirm the judgments of the trial court.

s/ Matthew J. Wilson
MATTHEW J. WILSON, JUDGE