

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 21, 2026 Session

FILED

09/17/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. BUDDY LIVESAY

**Appeal from the Criminal Court for Knox County
No. 128417 Hector Sanchez, Judge**

No. E2025-01070-CCA-R3-CD

The Defendant, Buddy Livesay, appeals his Knox County Criminal Court jury convictions of evading arrest, criminal impersonation, and unlawful possession of a firearm after having been convicted of a felony crime of violence, arguing that the trial court by erred by denying his motion to suppress the evidence obtained following what he believes to be an unconstitutional traffic stop, by instructing the jury that his out-of-state conviction qualified as a felony crime of violence rather than submitting the issue to the jury, and by ordering a sentence of full confinement. We hold that (1) the trial court did not err by denying the motion to suppress; (2) the trial court erred by instructing the jury that the Defendant's out-of-state conviction qualified as a crime of violence rather than submitting that issue, with proper instructions, to the jury, and the error cannot be classified as harmless beyond a reasonable doubt; and (3) the trial court did not abuse its discretion by ordering a sentence of full confinement. Accordingly, we reverse the Defendant's conviction of unlawful possession of a firearm after having been convicted of a felony crime of violence and remand the case to the trial court for a new trial on that charge but affirm the judgments of the trial court in all other respects.

Tenn. R. App. P. 3; Judgments of the Criminal Court Affirmed in Part; Reversed in Part; Remanded

STACY L. STREET, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and ROBERT J. MONTGOMERY, JR., JJ., joined.

Eric M. Lutton, District Public Defender; Jonathan Harwell, Assistant District Public Defender (on appeal); and David D. Skidmore, Assistant District Public Defender (at trial), for the appellant, Buddy Livesay.

Jonathan Skrmetti, Attorney General and Reporter; Elizabeth Evan, Assistant Attorney General; Charme P. Allen, District Attorney General; and Molly Martin and Sean Bright, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

The convictions in this case arose from the June 21, 2024 traffic stop from which the Defendant, a convicted felon, fled. After the Defendant's capture and arrest, the police discovered two handguns and what appeared to be methamphetamine in the vest that the Defendant discarded during the subsequent chase.

Factual and Procedural Background

The Knox County Grand Jury charged the Defendant with one count of unlawful possession of a firearm after having been convicted in Indiana of criminal confinement, a felony crime of violence, *see* T.C.A. § 39-17-1307(b)(1)(A) (2021); one count of unlawful possession of a firearm after having been convicted in Indiana of domestic battery, a felony crime of violence, *see id.*; one count of evading arrest, *see id.* § 39-16-603(a)(1); one count of felony evading arrest, *see id.* § 39-16-603(b); one count of simple possession of methamphetamine, *see id.* § 39-17-434(b); and one count of criminal impersonation, *see id.* § 39-16-301(a)(1).

Prior to trial, the Defendant moved the trial court to suppress the evidence seized as a result of the June 21, 2024 traffic stop, claiming that neither the initial traffic stop nor his continuing detention was supported by reasonable suspicion or probable cause and that the evidence seized during the ensuing chase when he fled the scene should be suppressed as the poisonous fruit of the initial illegality. The State responded that the officer had, at a minimum, reasonable suspicion to stop the Defendant because the officer observed the Defendant run a stop sign and because a check of the license plate on the Defendant's motorcycle, which was partially obscured, was returned as "not on file."

I. Suppression Hearing

At the February 11, 2025 hearing on the Defendant's motion, Knox County Sheriff's Office (KCSO) Deputy Brett Cox testified that he "got behind" the Defendant's motorcycle "at Avenue A at Sims" in Knoxville. When Officer Cox saw the Defendant "run the stop sign at the railroad tracks," he "[a]ttempted to run his tag" but "[c]ouldn't really get a good read on the tag, telling what state it's from, [be]cause of the obstructions on the tag," including "a decorative frame around it with two bungee cords over the top of it." The officer could read the numbers, however, and checked them against the National Crime Information Center (NCIC) database as a Tennessee-issued plate. He said the plate "[c]ame back[] 'not on file.'" At that point, Officer Cox decided to stop the Defendant.

The Defendant pulled over, got off his motorcycle, and "started questioning the stop." Officer Cox testified that when he told the Defendant that he had stopped him

because of the registration, the Defendant responded that the motorcycle was registered in Indiana and provided the officer with a registration form. Officer Cox asked the Defendant for his driver's license, and the Defendant said that he held an Indiana driver's license that he did not have with him at that time. The recording of the traffic stop captured by Officer Cox's body worn camera (BWC) was exhibited to his testimony and played at the hearing.

The BWC footage does not capture the Defendant's running the stop sign but otherwise tracks Officer Cox's testimony. Officer Cox can be heard telling the dispatcher that the motorcycle's license plate was a Tennessee plate while attempting to verify the registration. Once stopped, the Defendant can be seen getting off his motorcycle. The Defendant continues to smoke a cigarette and does not initially turn off the loud music playing from his motorcycle, and the combination renders some of the conversation between the Defendant and Officer Cox difficult to discern. After Officer Cox tells the Defendant that the motorcycle's plate came back as "not on file," the Defendant reaches into a side compartment on the motorcycle, retrieves what appears to be a registration document, and gives it to the officer. The Defendant identifies himself as James Livesay and tells Officer Cox that he has an Indiana driver's license but does not have it with him. When Officer Cox asks the Defendant's date of birth and social security number, the Defendant gives his name as "James Livesay" and provides a number. Officer Cox then tells the Defendant to wait and begins walking back to his patrol vehicle. Before the officer reaches his vehicle, the Defendant flees on his motorcycle. Officer Cox chases the Defendant, and within a short time, the BWC captures the Defendant's motorcycle lying on its side in a parking lot. Although it was not captured on the recording, Officer Cox said that the Defendant then "got up off the ground, jumped the fence, and went into the wood line."

Officer Cox testified that officers trailed the Defendant into the woods and that when they eventually captured him, he was no longer wearing the vest he had been wearing during the initial stop. Officers recovered the vest in the woods and found two handguns and a small amount of what appeared to be methamphetamine inside a cigarette packet in a pocket of the vest.

During cross-examination, Officer Cox conceded that he did not tell the Defendant that he had seen him run the stop sign.

At the conclusion of the hearing, the trial court accredited Officer Cox's testimony that he saw the Defendant run a stop sign, noting that the court would take the officer "at his word, and with the presumption that he's testifying honestly" because it had "no reason" to conclude that the officer had "fabricat[ed] the basis of probable cause or reasonable suspicion." Additionally, the court found that the officer observed that the license plate was partially obscured by the decorative frame and bungee cords. The court concluded that both the traffic violation and the obscured license plate gave the officer "at a minimum,

reasonable suspicion, if not probable cause, to at least” conduct the traffic stop. The court denied the Defendant’s motion to suppress.

II. Motion in Limine

Prior to trial, the Defendant moved the trial court to bifurcate the trial, reserving the issue whether his prior conviction was a felony crime of violence for after the jury concluded that he had possessed a firearm, and to submit the factual determination whether his prior convictions qualified as crimes of violence to the jury.¹

At the hearing on the motion, the parties cited *State v. Curry*, 705 S.W.3d 176 (Tenn. 2025), and agreed that unless the offense was specifically enumerated in Tennessee Code Annotated section 39-17-1301(3), the trial court must submit the issue to the jury with proper instructions but disagreed on the appropriate process to be followed. The Defendant asked that the issue be bifurcated from the issue of his guilt on the remaining offenses to avoid unfair prejudice. The State, again citing *Curry*, opposed the request for bifurcation on grounds that the violent nature of the prior felony offense was an essential element of the charged offense. The parties discussed the Indiana offense of criminal confinement extensively and agreed that the offense did not necessarily equate to either kidnapping or aggravated kidnapping, both of which are enumerated in Code section 39-17-1301. The State noted that the prior conviction involved bodily injury, making it at least a kidnapping, but asserted that “it’s a fact for the jury to determine” from evidence presented during its case-in-chief. The State provided a copy of the relevant Indiana statute and indicated that it intended to present witness testimony to provide proof of the prior offense.

The trial court took the motion under advisement. On the first morning of trial, the trial court concluded, despite the parties’ agreement that the issue should go to the jury, that *Curry* “pertains only to simple robbery” and “found that the confinement from out of state does mirror our aggravated kidnapping offense,” which is an enumerated crime of violence in Tennessee Code Annotated section 39-17-1301(3). The court then said, “So[,] really what I do is just instruct the jury that that is a felony crime of violence. So[,] the State will not be permitted to introduce evidence in their case-in-chief about that underlying conviction.” The court offered the State the opportunity to be heard, and the State indicated that it intended to mention the nature of the prior offense during jury voir dire and in its opening statement. The Defendant expressed concern about the procedure, and the court stated that if the Defendant refused to stipulate that he had “a prior felony conviction for a crime of violence, then [the State] get[s] to prove up what it’s for.” The State indicated that it “had proof ready to prove it up,” but the court reiterated that such proof was unnecessary because the holding in *Curry* “applies to simple robbery.”

¹ No written motion appears in the record on appeal.

The Defendant objected, stating that he did not read the holding in *Curry* to be limited to robbery. The Defendant argued that the gravamen of the *Curry* holding was that the determination whether an offense was a crime of violence was a jury question for all offenses not specifically enumerated in section 39-17-1301(3). The Defendant also objected on constitutional grounds, arguing that the court's ruling deprived him of due process. The trial court insisted that it was "helping" the Defendant by "preventing the State from putting on proof in their case-in-chief about the details of the agg[ravated] kidnapping, and that's pursuant to" *Curry*. The Defendant noted that the offense for which he had been convicted could be committed both with and without violence and that the State had produced nothing to indicate which of the modes of commission the jury found. The trial court found that the offense could be proven by the certified copy of the judgment and stated again that aggravated kidnapping was an enumerated offense. The Defendant reiterated his position that the court's ruling violated his "Sixth Amendment rights" and asked the court to note his continuing objection.

With regard to the Defendant's request for bifurcation, the trial court stated that it had sent the parties "an email with the Court's rationale" and that bifurcation was "not appropriate here in this particular context." The court found that because "the other offenses he's charged with are not extraordinarily prejudicial," bifurcation was unnecessary. The court did not place its full reasoning on the record, and the email with its findings is not in the appellate record.

The State dismissed the second count of the indictment, which charged the Defendant with unlawful possession of a firearm after having been convicted of a crime of violence, domestic battery in Indiana. The case proceeded to trial on the remaining counts. Notably, during jury voir dire, the State informed the jury that the Defendant's conviction of "criminal confinement in Indiana" was a crime of violence and that "the Judge will instruct you, that criminal confinement and aggravated kidnapping here in Tennessee, the elements are the same."

III. Trial Proof

At the Defendant's February 24, 2025 trial, Officer Cox offered essentially the same testimony as he did at the hearing on the motion to suppress, so we recount here only the relevant testimony not duplicative of that we previously included. Redacted footage from Officer Cox's BWC was exhibited to his testimony and played for the jury.

Officer Cox testified that he asked the Defendant for his driver's license, registration, and proof of insurance as he did on every traffic stop. Officer Cox said that the Defendant indicated that he did not have his driver's license with him and that it was his practice in such circumstances to issue a citation to the driver and "have a licensed driver come get the vehicle." He stated that he intended to use the identifying information

that the Defendant provided to him to verify that the Defendant had a valid driver's license. Before he could do so, however, the Defendant fled on his motorcycle. Officer Cox said that because it was an active traffic stop, the Defendant was not free to leave.

After he was apprehended, the Defendant, who was no longer wearing a vest, told Officer Cox that his name was Buddy Livesay rather than James Livesay. Officer Cox testified that a records check indicated that the Defendant had two prior felony convictions from Indiana and that, as a result, he was not legally permitted to possess a firearm. Officers "found two loaded handguns"—a .25 caliber handgun and a pink 9mm handgun—and "a cigarette pack" that contained a white crystal-like substance that, based on his training and experience, Officer Cox believed was "consistent with methamphetamine."

During cross-examination, Officer Cox acknowledged that he did not initially tell the Defendant that he had seen him run a stop sign. He also agreed that he told the Defendant that he would "cut him loose" if the registration was valid, explaining that he would have issued the Defendant a ticket for not having his driver's license and, potentially, for the obscured license plate.

Knoxville Police Department Officer Brady Holland testified that, after learning that Officer Cox was in pursuit, he saw "the [D]efendant[] coming from behind a house with a helmet and a vest on." Officer Holland ordered the Defendant to stop, but the Defendant "proceeded to run through the woods," and Officer Holland "lost him in the wood line." Officer Holland pursued the Defendant "through the thick brush," and although he lost sight of the Defendant, he came upon "a tree that had the helmet with the vest inside of it." He also saw a gun inside the vest. He recovered the helmet and vest with the guns and gave them to Officer Cox.

The State submitted through Knox County Jail Captain Aaron Turner the redacted recordings of calls the Defendant placed from the jail. During one call, the Defendant admitted that the firearms found by the police belonged to him.

At the conclusion of the live proof, the State admitted into evidence a certified copy of "an abstracted judgment from the State of Indiana" for the conviction of "criminal confinement resulting in bodily injury," and the Defendant stipulated that he was the person named in the judgment.

After reading the stipulation, the State rested. The Defendant moved the trial court for a judgment of acquittal, noting particularly that the State had failed to produce any chemical testing to establish that the crystal-like substance described as consistent with methamphetamine was, in fact, methamphetamine. The trial court granted a judgment of acquittal on the charge of possession of methamphetamine in Count Five but denied the motion as to the other counts.

Following a *Momon* colloquy, the Defendant elected not to testify and chose to present no proof.

Based upon this evidence, the jury convicted the Defendant of evading arrest, felony evading arrest, criminal impersonation, and unlawful possession of a firearm after having been convicted of a felony crime of violence. Following a sentencing hearing, the trial court imposed a total, effective sentence of ten years' incarceration to be served in confinement.

The Defendant filed a timely but unsuccessful motion for new trial followed by a timely notice of appeal.

Analysis

On appeal, the Defendant asserts that the trial court erred by denying his motion to suppress, that the trial court erred by concluding that his prior Indiana conviction was a crime of violence and by not submitting the issue to the jury, and that the trial court erred by ordering a sentence of full incarceration.

We consider first the Defendant's challenge to the denial of his motion to suppress, turn to his claim that the trial court mishandled the jury instructions related to his firearms convictions, and finally consider his objection to the sentence.

I. Suppression

The Defendant argues that the trial court erred by denying his motion to suppress the evidence seized following what he asserts was an unconstitutional traffic stop. The State contends that the trial court did not err. We agree with the State.

a. Standard of Review

The trial court's ruling on a motion to suppress evidence presents a mixed question of law and fact. This means that the court's factual findings "are conclusive on appeal unless the evidence in the record preponderates otherwise." *State v. McCormick*, 494 S.W.3d 673, 678 (Tenn. 2016) (citing *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996)); see also *State v. Binette*, 33 S.W.3d 215, 217 (Tenn. 2000). As the trier of fact in a suppression hearing, the trial court determines witness credibility, assigns the weight and value to the evidence presented, and resolves any conflicts in the proof. See *McCormick*, 494 S.W.3d 678 (quoting *Odom*, 928 S.W.2d at 23). During our review, we "may consider evidence offered at both the suppression hearing and trial." *State v. Washington*, 737 S.W.3d 294, 301 (Tenn. 2025) (citing *State v. Henning*, 975 S.W.2d 290, 299 (Tenn. 1998)), *cert. denied*, 146 S. Ct. 1640 (2026). As "[t]he party prevailing in the trial court," the State "is entitled

to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from [the] evidence.” *State v. Tuttle*, 515 S.W.3d 282, 299 (Tenn. 2017) (quoting *State v. Bell*, 429 S.W.3d 524, 529 (Tenn. 2014)). We review the trial court’s application of law to the facts de novo with no “presumption of correctness.” *Id.* (citing *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001)).

Both the Fourth Amendment to the United States Constitution and Article I, section 7 of the Tennessee Constitution protect against unreasonable searches and seizures. *See* U.S. Const. amend. IV (stating that “[t]he right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated”); Tenn. Const. art. I, § 7 (stating that “the people shall be secure . . . from unreasonable searches and seizures”); *see also* *Washington*, 737 S.W.3d at 301. The Tennessee Supreme Court has interpreted the state constitutional protection as “identical in intent and purpose with the Fourth Amendment.” *State v. Davis*, 484 S.W.3d 138, 142 (Tenn. 2016) (first quoting *Sneed v. State*, 423 S.W.2d 857, 860 (Tenn. 1968); and then citing *State v. Scarborough*, 201 S.W.3d 607, 622 (Tenn. 2006)). “The requirement for reasonableness protects individuals from ‘arbitrary invasions’ of their privacy and security by government actors.” *Washington*, 737 S.W.3d at 301 (quoting *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997)). Thus, under both provisions, “a warrantless search or seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement.” *Davis*, 484 S.W.3d at 142 (quoting *Yeargan*, 958 S.W.2d at 629). “The government bears the burden of demonstrating that an exception applies.” *Washington*, 737 S.W.3d at 301 (citing *State v. Meeks*, 262 S.W.3d 710, 722 (Tenn. 2008)).

Because the State prevailed in the trial court, we examine the evidence in the light most favorable to the State to determine whether the State satisfied its burden of establishing that the evidence obtained as a result of Officer Cox’s warrantless seizure of the Defendant was admissible despite the general prohibition because it fell “within one of the few, narrowly drawn exceptions to the Fourth Amendment’s warrant requirement.” *Id.* (citing *Yeargan*, 958 S.W.2d at 629).

b. Probable Cause/Reasonable Suspicion

Among the narrowly defined exceptions to the warrant requirement is a seizure based upon “probable cause to believe that the suspect has committed, is committing, or is about to commit a criminal offense.” *Davis*, 484 S.W.3d 143 (Tenn. 2016) (first citing *State v. Echols*, 382 S.W.3d 266, 277-78 (Tenn. 2012); and then citing T.C.A. § 40-7-103(a)(1)). Similarly, “[a]s a general rule, if the police have probable cause to believe a traffic violation has occurred, the stop is constitutionally reasonable.” *State v. Berrios*, 235 S.W.3d 99, 105 (Tenn. 2007) (citing *Whren v. United States*, 517 U.S. 806, 810 (1996)); *see State v. Vineyard*, 958 S.W.2d 730, 736 (Tenn. 1997) (holding that officers’ observation

of traffic violation provided probable cause to stop defendant); *see also United States v. Barry*, 98 F.3d 373, 376 (8th Cir. 1996) (holding that even minor traffic violations provide “probable cause to stop the driver of a vehicle”).

The “probable cause inquiry focuses on probabilities rather than technicalities and is grounded in the factual and practical considerations of everyday life on which reasonable and prudent people, not legal technicians, act.” *Davis*, 484 S.W.3d 143 (quoting *State v. Bishop*, 431 S.W.3d 22, 36 (Tenn. 2014)). Importantly, “the strength of the evidence necessary to establish probable cause . . . is significantly less than the strength of evidence necessary to find a defendant guilty beyond a reasonable doubt.” *Id.* at 143-44 (first citing *Bishop*, 431 S.W.3d at 41; and then citing *Adams v. Williams*, 407 U.S. 143, 149 (1972)).

Another well-delineated exception to the warrant requirement exists when an officer has reasonable suspicion supported by specific and articulable facts to believe that a criminal offense has been or is about to be committed. *See Terry v. Ohio*, 392 U.S. 1, 21 (1968); *Binette*, 33 S.W.3d 215, 219 (Tenn. 2000). Whether reasonable suspicion exists in a particular case is a fact-intensive, but objective, analysis, *see State v. Garcia*, 123 S.W.3d 335, 344 (Tenn. 2003), that necessarily includes consideration of the totality of the circumstances, *see State v. Hord*, 106 S.W.3d 68, 71 (Tenn. Crim. App. 2002). The likelihood of criminal activity that is required for reasonable suspicion is not as great as that required for probable cause and is “considerably less” than would be needed to satisfy a preponderance of the evidence standard. *United States v. Sokolow*, 490 U.S. 1, 7 (1989). The objective facts upon which an officer may rely include his or her own observations, information obtained from other officers or agencies, offenders’ patterns of operation, and information from informants. *See State v. Watkins*, 827 S.W.2d 293, 294 (Tenn. 1992). A seizure based on reasonable suspicion must be “justified at its inception” and “must remain ‘reasonably related in scope to the circumstances which justified the interference in the first place.’” *State v. Montgomery*, 462 S.W.3d 482, 487 (Tenn. 2015) (quoting *Terry*, 392 U.S. at 20). Even a “detention that is reasonable at the outset can become unreasonable and constitutionally invalid if the time, manner[,], or scope of the investigation exceeds the proper parameters.” *Id.* (quoting *State v. Troxell*, 78 S.W.3d 866, 871 (Tenn. 2002) (alteration in *Montgomery*) (internal quotation marks omitted). “[T]he proper inquiry is whether . . . the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.” *Id.* (quoting *State v. Simpson*, 968 S.W.2d 776, 783 (Tenn. 1998)).

As we explain more fully below, the totality of the circumstances justified the traffic stop that led to the Defendant’s arrest and the charges in this case.

i. Failure to Stop at Stop Sign

Officer Cox testified that he observed the Defendant roll through a stop sign without coming to a complete stop, and it was objectively reasonable for him to effectuate a traffic stop on this basis. *See* T.C.A. § 55-8-149(c)-(d) (requiring drivers to stop at stop sign and providing that failure to do so is a Class C misdemeanor). The Defendant argues that the evidence preponderates against the trial court's finding that he failed to stop at the stop sign, arguing that the trial court's finding that Officer Cox was credible was based on an improper presumption and that the officer's testimony was contradicted by the facts that the BWC did not capture the failure to stop, Officer Cox did not immediately mention the failure to stop, and the Defendant was not charged with a stop sign violation.

The trial court's ruling, considered in its entirety, establishes that instead of truly presuming the officer to be credible, the trial court's chosen verbiage merely indicated that it had accredited Officer Cox's testimony. Indeed, the trial court specifically concluded that the Defendant ran the stop sign, thereby giving Officer Cox not only reasonable suspicion but also probable cause to effectuate a traffic stop. *See State v. Norman*, No. W2003-02067-CCA-R3-CD, 2004 WL 2255253, at *6 (Tenn. Crim. App. Oct. 7, 2004) (finding that officer's testimony "that he observed Defendant run a stop sign and that he heard excessively loud music coming from Defendant's vehicle" provided him with "probable cause to stop Defendant's vehicle").

The Defendant emphasizes that the BWC did not capture his running the stop sign and that the officer did not mention his running the stop sign during the traffic stop, suggesting that these omissions offer "strong proof that he never saw a stop-sign violation." Officer Cox testified that his BWC was manually activated and that he activated it after he saw the Defendant run the stop sign. Contrary to the Defendant's assertions, the BWC footage does not contradict Officer Cox's testimony that the Defendant ran a stop sign. Because the BWC was mounted to Officer Cox's chest, it could not have, and did not, capture the Defendant's driving. Under these circumstances, the fact that the BWC did not capture the Defendant's running the stop sign is insignificant. As to the Defendant's claim that Officer Cox did not tell him he had run a stop sign, we note that the Defendant's own flight cut the interview short.

The Defendant also emphasizes that he was not charged with running the stop sign, attempting to shoehorn the decision not to charge him with that offense into "proof" that he did not commit the offense. The "constitutional validity" of a seizure conducted pursuant to probable cause does not turn on whether the defendant was charged with, much less convicted of, the offense for which he or she was seized. *See Davis*, 484 S.W.3d at 144 (citation omitted).

The evidence does not preponderate against the trial court's finding that the Defendant ran the stop sign, and we conclude that this traffic violation gave Officer Cox probable cause to stop the Defendant's motorcycle. *See State v. Smith*, 484 S.W.3d 393, 401 (Tenn. 2016) (explaining that "[w]hen a police officer sees a motorist commit" a traffic offense, including running a stop sign, "the officer will have probable cause to stop the motorist," and "the officer's stop of the motorist will pass constitutional muster"); *Vineyard*, 958 S.W.2d at 734 ("As a general rule, however, the stop of an automobile is constitutionally reasonable, under both the state and federal constitutions, if the police have probable cause or reasonable suspicion to believe that a traffic violation has occurred.") (citations omitted).

ii. Obscured License Plate

The evidence established that after observing the Defendant run the stop sign, Officer Cox attempted to verify the Defendant's registration but incorrectly informed his dispatcher that the license plate was issued in Tennessee. Officer Cox explained that his mistake occurred because the state of issuance was obscured by a license plate holder and bungee cords. He stated that the plate was returned as "not on file." The Defendant asserts that the BWC footage does not support Officer Cox's version of events and that the trial court never conclusively determined that the obscured license plate justified the stop. Regardless of the precise timing of Officer Cox's attempt to determine the validity of the registration, his testimony and the BWC footage clearly establish that he did attempt to do so and that he initially reported the plate as a Tennessee plate because he could not see the state of issuance. The trial court found that the plate was obscured based on Officer Cox's testimony and the BWC footage and concluded that this provided Officer Cox with reasonable suspicion to justify the stop so that he could investigate further.

In our view, the evidence does not preponderate against the trial court's findings. Officer Cox testified that he could not see the state of issuance because of the license plate frame and the bungee cords. The BWC footage corroborated his testimony. Tennessee Code Annotated section 55-4-110 provides, in pertinent part, as follows:

Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so to prevent the plate from swinging and at a height of not less than twelve inches (12") from the ground, measuring from the bottom of the plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.

T.C.A. § 55-4-110(b); *see also Gilliam v. Gerregano*, 737 S.W.3d 258, 270 (Tenn. 2025) (citations omitted) (stating that "vehicle owners are still required to display a distinct registration number on their license plates in a 'clearly visible' manner"), *cert. denied*, 146

S. Ct. 881 (2025). “The registration number communicates to law enforcement and members of the public that the number can be used to identify the vehicle.” *Gilliam*, 737 S.W.3d at 270 (citations omitted). This court has interpreted “the provision for clear legibility to address obscuring or interfering with the legibility of the tag.” *State v. Hunt*, 302 S.W.3d 859, 864 (Tenn. Crim. App. 2009). Because the “failure to keep a license plate ‘clearly legible’ is an ongoing violation of § 55-4-110(b),” the Defendant’s failure to keep his license plate “clearly legible” provided Officer Cox with reasonable suspicion to stop his motorcycle and investigate further. *See State v. Ochoa*, No. M2011-02400-CCA-R3-CD, 2012 WL 6082476, at *8 (Tenn. Crim. App. Dec. 7, 2012) (holding that officer’s inability “to read the issuing state or expiration date on the defendant’s temporary tag while traveling at a distance of five or six car lengths behind the defendant’s vehicle” provided him with reasonable suspicion for stop).

iii. Duration of Stop

In the trial court, and to an extent on appeal, the Defendant argued that after the Defendant provided him with the registration document for the motorcycle, Officer Cox had no further reason to detain him. However, once he had stopped the Defendant, Officer Cox was constitutionally permitted to investigate, and his asking the Defendant for his driver’s license was an objectively reasonable part of that investigation. The BWC footage clearly establishes that Officer Cox “diligently pursued a means of investigation that was likely to confirm or dispel [his] suspicions quickly.” *Montgomery*, 462 S.W.3d at 487 (quoting *Simpson*, 968 S.W.2d at 783). His efforts were thwarted by the Defendant’s flight, and the firearms were discovered as a result of the flight. *See State v. Nelson*, 275 S.W.3d 851, 861 (Tenn. Crim. App. 2008) (stating that “even if the initial seizure of [the defendant] was constitutionally infirm, new criminal acts committed after the stop and seizure,” including the defendant’s flight from officers, “provided an independent and constitutionally valid basis for [the defendant’s] arrest”); *see also State v. Abernathy*, 159 S.W.3d 601, 604 (Tenn. Crim. App. 2004) (stating that “evidence of new criminal acts committed subsequent to an illegal stop and seizure constitutes an exception to the ‘fruit of the poisonous tree’ doctrine” (citing *United States v. Sprinkle*, 106 F3d 613, 619 (4th Cir. 1997))).

In sum, we conclude that the evidence does not preponderate against the factual findings of the trial court and that, based upon the totality of the circumstances, Officer Cox’s stop of the Defendant did not violate the constitution. Thus, the trial court did not err by denying the motion to suppress.

We turn, then, to the Defendant’s challenge to his conviction of unlawful possession of a firearm after having been convicted of a felony crime of violence.

II. Crime of Violence

The Defendant makes a three-part challenge to his conviction of unlawful possession of a firearm after having been convicted of a felony crime of violence. First, he claims that the evidence was insufficient to support his conviction because “[o]ut-of-state convictions cannot qualify as felony crimes of violence” under Tennessee Code Annotated section 39-17-1301(3). Second, he asserts that even if the statute applies to out-of-state convictions, the determination whether his Indiana conviction of criminal confinement was a qualifying conviction was a question of fact to be determined by the jury and that, in consequence, the trial court erred by refusing to submit the issue to the jury. Third, he contends that, even if the trial court did not err by engaging in an elements analysis to determine that criminal confinement *could* qualify as a crime of violence, it erred by concluding, based on the evidence presented, that criminal confinement as committed by the Defendant *did* qualify as a crime of violence. We consider each claim in turn.

a. Out-of-State Conviction as Crime of Violence

The Defendant argues that because Tennessee Code Annotated section 39-17-1301(3) “does not list any crimes that are not Tennessee crimes” and because “that section” of the Code contains no “provision suggesting that an out-of-state conviction could qualify” or “explaining how such a conviction should be analyzed,” the legislature did not intend for Tennessee Code Annotated section 39-17-1301(b)(1)A to apply to out-of-state convictions. Citing *State v. Curry*, 705 S.W.3d 176 (Tenn. 2025), the State argues that the plain language and the “clear legislative purpose of the statute” do not limit its application to Tennessee offenses and that the Defendant cannot create ambiguity in the statute by proposing a construction of the statute that would lead to an absurd result. We agree with the State.

i. Standard of Review

Our consideration of the Defendant’s claim requires us to construe sections 39-17-1301(3) and 39-17-1307. In doing so, we remain mindful that “[t]he text of the statute is of primary importance” and that “the words must be given their natural and ordinary meaning in the context in which they appear and in light of the statute’s general purpose.” *Colley v. Colley*, 715 S.W.3d 293, 306 (Tenn. 2025) (quoting *Coffee Cnty. Bd. of Educ. v. City of Tullahoma*, 574 S.W.3d 832, 839 (Tenn. 2019)). We examine “the language of the statute, its subject matter, the object and reach of the statute, the wrong or evil which it seeks to remedy or prevent, and the purpose sought to be accomplished in its enactment.” *Id.* (quoting *Coffee Cnty.*, 574 S.W.3d at 839). “When the statutory language is clear and unambiguous, we apply the plain language in its normal and accepted use.” *Boarman v. Jaynes*, 109 S.W.3d 286, 291 (Tenn. 2003) (citing *State v. Nelson*, 23 S.W.3d 270, 271

(Tenn. 2000)). Importantly, “Tennessee law provides that courts are to ‘avoid a construction that leads to absurd results.’” *State v. Curry*, 705 S.W.3d 176, 184 (Tenn. 2025) (quoting *Tennessean v. Metro. Gov’t of Nashville*, 485 S.W.3d 857, 872 (Tenn. 2016)). Instead, “[o]ur construction must be reasonable in light of the statute’s purposes and objectives.” *Colley*, 715 S.W.3d at 306 (quoting *In re Markus E.*, 671 S.W.3d 437, 460 (Tenn. 2023)); *see also Curry*, 705 S.W.3d at 184 (citing *Beard v. Branson*, 528 S.W.3d 487, 496 (Tenn. 2017)).

ii. Tennessee Code Annotated § 39-17-1301

As charged in this case and at the time of the offense, Tennessee Code Annotated section 39-17-1307 prohibited the possession of a firearm by any person who “[h]as been convicted of a felony crime of violence.” T.C.A. § 39-17-1307(b)(1)(A) (2021). At the time of the offense, section 39-17-1301 defined “crime of violence” as follows:

“Crime of violence” includes any degree of murder, voluntary manslaughter, aggravated rape, rape, rape of a child, aggravated rape of a child, aggravated sexual battery, especially aggravated robbery, aggravated robbery, burglary, aggravated burglary, especially aggravated burglary, aggravated assault, kidnapping, aggravated kidnapping, especially aggravated kidnapping, carjacking, trafficking for commercial sex act, especially aggravated sexual exploitation, felony child abuse, and aggravated child abuse[.]

T.C.A. § 39-17-1301(3) (2021).²

Much of the work in interpreting these statutes was done by our supreme court in *Curry* when considering the question “whether robbery is encompassed within the statutory definition of ‘crime of violence.’” *Curry*, 705 S.W.3d at 180. The court began by “examin[ing] our definition of ‘crime of violence’ in the larger context of unlawful firearms statutes known also as felon-in-possession laws.” *Id.* at 185. The court observed that, unlike some other jurisdictions that apply the prior conviction of a crime of violence as a sentence enhancement, “the statutory definition of crime of violence conviction is incorporated as an element of an unlawful possession offense” in this state. *Id.* The court observed that in Code section 39-17-1301(3), the legislature had adopted an “enumerated offenses clause” prefaced by the term “includes” to define “felony crime of violence” and noted that some jurisdictions had determined that “‘includes’ followed by specific enumerated offenses (instead of general definitions) is indeed a term of limitation.” *Id.* at 186 (first citing *Carcieri v. Salazar*, 555 U.S. 379, 391-92 (2009); and then citing *Dong v. Smithsonian Inst.*, 125 F.3d 877, 880 (D.C. Cir. 1997)). The high court ultimately rejected

² The legislature later amended the statute to include the offense of robbery. *See* T.C.A. § 39-17-1301(3) (2025).

this construction, choosing instead to “adhere to our established precedent and agree with the Court of Criminal Appeals that the list of felony offenses in the statutory definition was intended to be illustrative.” *Id.* The court “conclude[d] the statutory definition of ‘crime of violence’ contained in section 39-17-1301(3) is illustrative of the felonies deemed to be crimes of violence by the legislature” rather than a self-contained list of qualifying felonies. *Id.* at 187.

The supreme court moved on to the question whether robbery, which was not then included in the list, could qualify as a “felony crime of violence” for purposes of section 39-17-1301(3). *See id.* The court stated that “our legislature has provided little insight into the criteria it used to select the enumerated offenses on the list” but made the following observations: (1) the opening language of section 39-17-1301 “indicates this section provides the exclusive definitions for the terms used in the firearms offenses contained in this part of the Code”; (2) the legislature chose not to include “a typical elements or residual clause” that could “guide consideration of unenumerated offenses”; and (3) “a conviction for a felony crime of violence is an essential element of this unlawful possession offense.” *Id.* at 187-88 (citation and footnote omitted). The court then examined the elements of robbery and concluded that robbery “*can* be a crime of violence for purposes of the unlawful possession statute, depending on the underlying facts of the robbery case.” *Id.*

Guided by the supreme court’s analysis in *Curry*, we conclude that the plain language of section 39-17-1301(3) coupled with the court’s conclusion that the list of enumerated offenses is illustrative necessarily leads to the conclusion that out-of-state convictions may qualify as crimes of violence. The plain language of the statute neither includes nor excludes out-of-state convictions, but we read the statute and our supreme court’s holding in *Curry* to mean that *any* felony offense that may be committed by violence may qualify under the statute.

We are unpersuaded by the Defendant’s argument that the legislature’s omission of a specific provision including out-of-state convictions in the definition of “felony crime of violence” evinces the legislature’s intent to exempt out-of-state felony convictions. First, the supreme court rejected a similar argument in *Curry*. *Id.* at 189 n.19 (stating that “the legislature’s failure, thus far, to add robbery to the statutory list of crimes despite ample opportunity to do so” did not alter its holding). Second, and perhaps more importantly, such a construction would have the effect of shielding out-of-state violent offenders from conviction under Tennessee Code Annotated section 39-17-1307(b)(1)(A). In our view, it would be strange indeed to construe the statute in a way that would exempt out-of-state violent offenders when the overall purpose of preventing violent offenders from possessing firearms would be frustrated if those with violent felony convictions from other states did not have to comply with this statute. “In construing statutes, we seek to ‘avoid a construction that leads to absurd results.’” *Coblentz v. Tractor Supply Co.*, --- S.W.3d ---,

No. M2023-00249-SC-R11-CV, 2025 WL 3704465, at *12 (Tenn. Dec. 22, 2025) (quoting *Curry*, 705 S.W.3d at 184). Because adopting the Defendant’s construction would lead to an absurd result, we reject it and conclude, instead, that an out-of-state felony conviction not specifically enumerated in Code section 39-17-1301(3) *may* qualify as a crime of violence for purposes of Code section 39-17-1307(b)(1)(A) if the jury finds the offense *as committed* includes violence.

Having so concluded, we consider whether the trial court erred by concluding, as a matter of law, that the Defendant’s conviction of criminal confinement was a “felony crime of violence” and so instructing the jury.

b. Failure to Submit Issue to Jury

The Defendant argues that even if his out-of-state conviction could have qualified as a “felony crime of violence,” the jury, and not the trial court, should have made that determination and that the trial court’s failure to submit the issue to the jury was reversible error. The State asserts that the trial court did not err by engaging in a “solely legal inquiry” into the elements of the Defendant’s prior conviction to determine that, as committed, it tracked the elements of Tennessee’s aggravated kidnapping statute, which is an enumerated offense in Tennessee Code Annotated section 39-17-1301(3). We agree with the Defendant.

i. Who decides?

We are again guided by our supreme court’s analysis in *Curry*. After concluding that robbery could qualify as a crime of violence, the *Curry* court turned to the question of “who—judge or jury—makes the determination of whether a prior conviction for robbery qualifies as a ‘conviction for a felony crime of violence’ for purposes of the unlawful possession of a firearm statute.” *Curry*, 705 S.W.3d at 189. *Curry* argued that the determination was a question of fact to be determined by a properly instructed jury. *See id.* The State, citing *State v. Sims*, 45 S.W.3d 1, 10-15 (Tenn. 2001) (“a capital case in which the State relied on the prior violent felony aggravating circumstance in seeking the death penalty when the prior felony was aggravated assault”), argued that it was a question of law to be determined by the trial court. *Id.* The State insisted that the trial court should consider the elements of the offense and “the underlying facts of the prior convictions” and then make the determination. *Id.*

The supreme court explained that the *Sims* procedure, which mirrored the procedure employed by the trial court in *Curry*, “would require the trial court to make the threshold legal determination in cases involving a charge of unlawful possession of a firearm by a convicted felon and to instruct the jury accordingly.” *Id.* at 190. The supreme court agreed that the procedure was “appealing” but determined that the procedure was not appropriate

in this instance because the violent nature of the prior felony is “an *essential element*” of the offense charged in section 39-17-1307(b)(1)(A) and “conclude[d] that whether a particular robbery conviction is a crime of violence for purposes of section 39-17-1307(b)(1)(A) is a question for a properly instructed jury.” *Id.*

As *Curry* holds, the determination whether an unenumerated felony that can be committed with or without violence is a question for a properly instructed jury.

ii. Application in this case

In this case, the parties agree that, generally, the Indiana offense of criminal confinement may, but does not always, include an element of violence. At the time of the offense, Indiana Code Annotated section 35-42-3-3 provided:

Sec. 3. (a) A person who knowingly or intentionally confines another person without the other person’s consent commits criminal confinement. Except as provided in subsection (b), the offense of criminal confinement is a Level 6 felony.

(b) The offense of criminal confinement defined in subsection (a) is:

(1) a Level 5 felony if:

(A) the person confined is less than fourteen (14) years of age and is not the confining person’s child;

(B) it is committed by using a vehicle; or

(C) it results in bodily injury to a person other than the confining person;

(2) a Level 4 felony if it results in moderate bodily injury to a person other than the confining person;

(3) a Level 3 felony if it:

(A) is committed while armed with a deadly weapon;

(B) results in serious bodily injury to a person other than the confining person; or

(C) is committed on an aircraft; and

(4) a Level 2 felony if it is committed:

(A) with intent to obtain ransom;

(B) while hijacking a vehicle;

(C) with intent to obtain the release, or intent to aid in the escape, of any person from lawful incarceration; or

(D) with intent to use the person confined as a shield or hostage.

Ind. Code Ann. § 35-42-3-3 (2016). The plain language of the statute shows that it may be, but is not always, accomplished by violence. Accordingly, more is needed to determine whether a conviction of criminal confinement qualifies as a “felony crime of violence” for purposes of section 39-13-1301(3), and our supreme court has told us explicitly that a properly instructed jury, not the judge, makes that determination. *Curry*, 705 S.W.3d at 190-91.

In this case, the trial court did not submit the issue to the jury but, instead, employed the same procedure employed by the trial court and specifically rejected by the supreme court in *Curry*. *See id.* at 189-90 (describing *Sims* procedure and explaining why that procedure was inapt). At the hearing on the Defendant’s motion to bifurcate, the parties agreed that the determination whether the Defendant’s prior convictions³ qualified as felony crimes of violence was an issue of fact for the jury. The trial court appeared to agree and took the issue of bifurcation under advisement over the weekend before trial. On the first day of trial, however, the trial court reasoned that the holding in *Curry* was limited to robbery and stated that it had employed the very procedure rejected by *Curry* to determine that the Defendant’s conviction of criminal confinement, which is not specifically enumerated in section 39-17-1301(3), was a “felony crime of violence.”

We address first the trial court’s conclusion that *Curry*’s holding applies only to the Tennessee offense of robbery. Although it is true that the specific unenumerated offense at issue in *Curry* was robbery, nothing in the supreme court’s opinion specifically limited its holding to that offense. Indeed, the court’s conclusion that “the statutory definition of ‘crime of violence’ contained in section 39-17-1301(3) is illustrative of the felonies deemed to be crimes of violence by the legislature,” *see id.* at 187, necessarily includes a holding that *any felony* that can be committed by violence may qualify as a “felony crime of violence” under the statute. As the court explained, by prefacing the list of enumerated offenses with the word “includes,” the legislature intended that the list be “illustrative of the felonies deemed to be crimes of violence by the legislature.” *Id.* This language alone militates against the conclusion that the court’s holding should be limited only to robbery. But the high court went further. When considering whether robbery could be a “felony crime of violence,” the court began by discussing the omission of any provision in the statute “to guide consideration of *unenumerated* offenses,” indicating that the analysis that

³ As indicated, following this hearing and before the trial began, the State dismissed Count Two, which charged the Defendant with unlawful possession of a firearm after having been convicted of domestic battery in Indiana.

followed should be applied to all unenumerated offenses that, like robbery, could be committed with or without violence. *Id.* at 188 (emphasis added). Additionally, in a footnote, the court “recognize[d] that an unenumerated offense may be a ‘crime of violence’ when the offense is a greater or lesser degree offense of an enumerated offense” but that not every “*lesser* degree offense of every enumerated offense” would be “a ‘crime of violence,’ particularly if such lesser offense does not contain an element of violence.” *Id.* at 189 n.20. We conclude that the supreme court anticipated the application of its holding to other unenumerated offenses.

Thus, the holding in *Curry* and the procedure adopted therein applies to all unenumerated felonies the State seeks to use as a predicate for conviction under Tennessee Code Annotated section 39-17-1307(b)(1)(A). Having so concluded, we turn to the question whether the trial court erred by using a procedure similar to that considered and rejected in *Curry*.

The State contends that, under the facts of this case, the trial court did not err by examining the elements of the Defendant’s conviction of criminal confinement and then, utilizing the “Abstract of Judgment,” which indicated that the offense was committed by bodily injury, to determine that the offense was essentially the same as aggravated kidnapping in Tennessee, which is an offense enumerated in Code section 39-17-1301(3). The State insists that the court engaged solely in a “legal inquiry” and made no improper findings of fact. We cannot agree.

As the supreme court explained, in *Sims*, when determining whether Sims’ prior conviction of aggravated assault could be used to prove the prior violent felony aggravating circumstance, the trial court first concluded that “aggravated assault does not necessarily involve the use of violence” and then “considered the underlying facts of the prior convictions as alleged in the indictment and affidavit of complaint” to determine “that the elements of the prior convictions involved the use of violence” and “allowed the State to introduce the prior conviction of aggravated assault to the jury.” *Curry*, 705 S.W.3d at 189 (citing *Sims*, 45 S.W.3d at 10-11). The supreme court agreed with the State that using the *Sims* procedure to determine whether a conviction is a “felony crime of violence” for purposes of Code section 39-17-1307(b)(1)(A) was “appealing” but held that the procedure was not appropriate because the prior “felony crime of violence” was “an *essential element*” of the offense. *Id.* at 190.

The trial court in this case employed a similar procedure to that used by the trial court in *Curry* and approved in *Sims*. The court first examined the elements of the Defendant’s conviction of criminal confinement and, observing that it did not necessarily include an element of violence, examined the “Abstract of Judgment” to conclude that the offense, as committed by the Defendant, included the element of serious bodily injury. The court then observed that these elements were essentially the same as aggravated

kidnapping, which is an enumerated offense in section 39-17-1301(3). This conclusion necessarily included a factual determination that the Defendant's crime, as committed, involved the use of violence. That the court used the certified "Abstract of Judgment" to make its determination rather than relying on testimony or similar proof does not, *ipso facto*, transform the determination into a legal as opposed to factual one. The trial court in *Sims* also examined certified copies of documents—the indictment and affidavit of complaint—to determine that Sims' conviction of aggravated assault was a violent felony, and the supreme court specifically concluded that this procedure was not appropriate for purposes of Code section 39-17-1301(3). *Id.* at 190.

The case before us does not involve an out-of-state conviction that could only be committed by violence, and, as a result, the procedure employed by the trial court was error. Because the trial court, like the trial court in *Curry*, determined that the Defendant's prior conviction "was a crime of violence as a matter of law and . . . insert[ed] this legal conclusion into the jury instruction, the trial court improperly usurped the function of the jury." *Id.* at 190. Having concluded that the trial court erred, we turn to the question of remedy.

c. Remedy

The Defendant asserts that the trial court's error entitles him to a new trial on the unlawful possession of a firearm offense. The State agrees that, should we find that the trial court committed reversible error, the remedy is a new trial. Under the circumstances presented here, we agree that the Defendant is entitled to a new trial.

In *Curry*, the court reduced Curry's conviction "from a Class B felony to a Class E felony" despite concluding that the trial court erred by instructing the jury that, as a matter of law, Curry's robbery conviction was a crime of violence "[b]ecause the State had ample opportunity at trial to present evidence that" Curry's "robbery conviction was a 'conviction for a felony crime of violence,'" but did not do so. *Id.* (citing *Bandy v. State*, 575 S.W.2d 278, 281 (Tenn. 1979)). However, this case is distinguishable from *Curry* specifically because the State did not have "ample opportunity" to present evidence to the jury at trial to support a conclusion that the Defendant's conviction of criminal confinement was a "felony crime of violence." The trial court foreclosed the State from presenting evidence when the court said that proof of the prior conviction was unnecessary, even though the State's prosecutor said that it "had proof ready to prove it up."

i. Trial Evidence

Because the prior conviction for a "felony crime of violence" is an essential element of the offense charged, the State was required to prove "that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *Curry*, 705

S.W.3d at 190 (quoting *United States v. Gaudin*, 515 U.S. 506, 510 (1995)). At trial, the State presented only the certified copy of the “Abstract of Judgment” for the Defendant’s conviction of criminal confinement, which lists the “crime” as “Criminal Confinement resulting in bodily injury” but contains no information about how the offense was actually committed. The high court explained that, for enumerated offenses, a certified copy of the judgment of conviction would suffice but that, for the unenumerated offense of robbery, which could be committed with or without violence, the State was required to “present sufficient evidence, which is admissible under our Rules of Evidence, to prove the robbery was committed by violence, such that a jury may consider whether the State proved beyond a reasonable doubt the essential element that the conviction was for a felony crime of violence.” *Id.* at 191. In this case, the State indicated that it was prepared to present witness testimony to prove that the Defendant’s conviction of criminal confinement was a “felony crime of violence,” but the trial court specifically prevented the State from doing so under the auspices of “helping” the Defendant. Because the State was deprived of the opportunity to present its proof, this case is distinguishable from *Curry*. Given that the trial court, and not the State, was responsible for the lack of proof on this issue, it is our view that modification of the conviction offense is not appropriate.

We turn, then, to the nature of the error to determine the proper remedy.

ii. Jury Instructions

As the Defendant correctly asserts, the trial court’s decision to instruct the jury that, as a matter of law, his conviction of criminal confinement was a “felony crime of violence” implicated his constitutional right to trial by jury. In *Curry*, despite reducing Curry’s conviction, the supreme court addressed his claim that the jury instructions “were inaccurate and incomplete” in that they did not define “felony crime of violence” because it was “embedded within our review of this case for sufficiency of the evidence and statutory construction.” *Id.* (citing *State v. White*, 362 S.W.3d 559, 581 (Tenn. 2012)). The court ruled:

To be clear, “crime of violence” as used in this unlawful possession offense should be defined in every case to guide the jury’s consideration of this essential element. Of course, the definition inserted in a given case should correspond to the applicable statute based on the date of the offense. When the alleged “crime of violence” is one of the enumerated offenses, the trial court should (immediately following the instruction for this essential element) instruct the jury that the particular enumerated offense alleged by the State is a crime of violence.

However, because robbery is not expressly included on the enumerated offenses list and because it may be committed by alternative

means, the trial court must provide additional instruction. The jury instructions should inform the jury the State has alleged that a prior robbery conviction is a felony crime of violence, inform the jury of the essential elements of robbery, and explain to the jury that it must unanimously find that the prior robbery was in fact committed by the use of violence before it can find that the robbery conviction is a felony crime of violence.

Id. at 192 (footnotes omitted).

In this case, the trial court instructed the jury that, as a matter of law, criminal confinement was a “felony crime of violence” instead of informing the jury “of the essential elements of” criminal confinement and explaining to the jury “that it must unanimously find that the prior [conviction] was in fact committed by the use of violence before it can find that the [prior] conviction is a felony crime of violence.” *Id.* This was constitutional error. *See State v. Cecil*, 409 S.W.3d 599, 610 (Tenn. 2013) (stating that “the lack of the instruction set out in *White*, while entirely understandable because the trial predated our ruling, qualified as constitutional error”).

However, “[t]he failure to instruct the jury on a *material element* of an offense is a constitutional error subject to harmless error analysis.” *Id.* (first quoting *State v. Faulkner*, 154 S.W.3d 48, 60 (Tenn. 2005) (emphasis added); and then citing *State v. Garrison*, 40 S.W.3d 426, 434 (Tenn. 2000)). Thus, to determine whether the instructional error in this case was harmless, this court “must ask ‘whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.’” *Id.* (first quoting *State v. Rodriguez*, 254 S.W.3d 361, 371 (Tenn. 2008); and then citing *State v. White*, 362 S.W.3d 559, 580 n.20 (Tenn. 2012)). The “touchstone” of our “inquiry is whether a rational trier of fact could interpret the proof at trial in different ways.” *Id.* (citing *White*, 362 S.W.3d at 579).

As indicated, because of the trial court’s handling of this issue, the only proof of the Defendant’s prior conviction presented at trial was the “Abstract of Judgment.” In our view, it is impossible to conclude what a properly instructed jury might have done with this meager evidence. The issue in this case is not that the proof could be interpreted in different ways but that, because of the trial court’s erroneous ruling, no proof of the underlying offense was presented at trial. Further, because of the trial court’s instructional error, the jury was not permitted to “interpret” the proof at all. In consequence, the error cannot be classified as harmless beyond a reasonable doubt.

Because the error cannot be classified as harmless beyond a reasonable doubt, we reverse the Defendant’s conviction for unlawful possession of a firearm after having been convicted of a “felony crime of violence” and remand the case to the trial court for a new trial on that offense.

III. Sentencing

Finally, the Defendant asserts that the trial court erred by ordering that he serve his entire sentence in confinement. The State contends that the Defendant waived consideration of his sentencing challenge by specifically asking the trial court to impose the minimum eight-year sentence “to serve.” The State argues that the Defendant cannot establish that the trial court committed plain error by denying an alternative sentence. In his reply brief, the Defendant contends that the record does not support the State’s argument that he invited error.

a. Waiver

We are unprepared to conclude that defense counsel’s argument at the sentencing hearing should be interpreted as an abandonment of any argument that the Defendant should receive alternative sentencing. The trial court certainly did not interpret it that way because the court went on to discuss the factors applicable to alternative sentencing. Furthermore, “probation shall be automatically considered by the court as a sentencing alternative for eligible defendants.” T.C.A. § 40-35-303(b); *see also id.* § 40-35-303(a)(1) (stating that those not convicted of certain enumerated offenses are “eligible for probation under this chapter if the sentence actually imposed” is ten years or less). We conclude that the Defendant has not waived review of his claim that the trial court erred by ordering a fully incarcerative sentence.

b. Alternative Sentencing

At the sentencing hearing, the State introduced evidence that the Defendant committed the offense of criminal confinement while he was on probation and committed the offenses in this case while on bond. The State also presented a recording of a call that the Defendant placed to his father while he was incarcerated, during which the Defendant indicated that he did not intend to abide by laws prohibiting him from owning firearms. Finally, the State presented the testimony of KCSO Lieutenant Samantha Hill to establish that the Defendant had received several disciplinary infractions while incarcerated in the Knox County Jail.

At the conclusion of the hearing, the trial court imposed a sentence of ten years for the Defendant’s conviction for unlawful possession of a firearm after having been convicted of a felony crime of violence, a sentence of two years for his conviction of felony evading arrest, a sentence of eleven months and twenty-nine days for his conviction of misdemeanor evading arrest, and a sentence of six months for his conviction of criminal impersonation. The court ordered the Defendant to serve the sentences concurrently, resulting in a total effective sentence of ten years. Finally, the trial court ordered the Defendant to serve his sentence in confinement.

i. Standard of Review

We review “sentencing decisions that reflect a proper application of the purposes and principles of our Sentencing Act,” including “questions related to probation or any other alternative sentence” and to sentence alignment, under an abuse of discretion standard accompanied by “a presumption of reasonableness.” *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012); *see State v. Pollard*, 432 S.W.3d 851, 864 (Tenn. 2013); *State v. Caudle*, 388 S.W.3d 273, 279 (Tenn. 2012); *see also State v. King*, 432 S.W.3d 316, 324 (Tenn. 2014). We do not apply a presumption of reasonableness when the trial court fails to consider and weigh the applicable factors. *See King*, 432 S.W.3d at 327-28; *Caudle*, 388 S.W.3d at 279. “A trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party.” *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010).

“Any sentence that does not involve complete confinement is an alternative sentence.” *State v. Sanders*, No. M2023-01148-CCA-R3-CD, 2024 WL 1739660, at *3 (Tenn. Crim. App. Apr. 23, 2024) (citation and internal quotation marks omitted), *perm. app. denied* (Tenn. July 17, 2024). “Convicted felons committing the most severe offenses, possessing criminal histories evincing a clear disregard for the laws and morals of society and evincing failure of past efforts at rehabilitation” are generally not considered favorable candidates for alternative sentencing. T.C.A. § 40-35-102(5)-(6)(A). Further, when, as here, the defendant has been convicted of a Class B felony, he or she is not automatically considered a favorable candidate for alternative sentencing. Before ordering a sentence of full confinement, however, the trial court must consider the factors enumerated in Code section 40-35-103(1):

(1) Sentences involving confinement should be based on the following considerations:

(A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;

(B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or

(C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant

T.C.A. § 40-35-103(1). Additionally, the trial court should consider the defendant’s potential for rehabilitation in determining whether to impose an alternative sentence. *Id.* § 40-35-103(5).

A defendant is statutorily eligible for probation when the total effective sentence “actually imposed upon the defendant is ten (10) years or less” and when he or she does not stand convicted of the offenses enumerated in Code section 40-35-303(a)(1). T.C.A. § 40-35-303(a)(1). Eligibility does not equal entitlement, *see id.* § 40-35-303(b), and the Defendant bears the burden of establishing his “suitability for full probation,” *State v. Mounger*, 7 S.W.3d 70, 78 (Tenn. Crim. App. 1999), by demonstrating that full probation would “subserve the ends of justice and the best interest[s] of both the public and the defendant,” *State v. Carter*, 254 S.W.3d 335, 347 (Tenn. 2008) (citations omitted). A trial court considering whether to place a defendant on probation should consider the circumstances of the offense; the need for special or general deterrence; and the defendant’s amenability to correction, criminal and social history, and physical and mental health. *See State v. Trent*, 533 S.W.3d 282, 291 (Tenn. 2017). Our supreme court has concluded that to support the denial of alternative sentencing based on the circumstances of the offense alone, the offense “as committed, must be ‘especially violent, horrifying, shocking, reprehensible, offensive, or otherwise of an excessive or exaggerated degree,’ and the nature of the offense must outweigh all factors favoring probation.” *State v. Travis*, 622 S.W.2d 529, 534 (Tenn. 1981). Our legislature codified this principle in Code section 40-35-103(1)(B). *See State v. Housewright*, 982 S.W.2d 354, 357 (Tenn. Crim. App. 1997) (first citing *State v. Hartley*, 818 S.W.2d 370, 375 (Tenn. Crim. App. 1991); and then citing *State v. Fletcher*, 805 S.W.2d 785, 787 (Tenn. Crim. App. 1991)).

ii. Application

In arriving at the ten-year effective sentence in this case, the midpoint within the range for his Class B felony conviction of unlawful firearm possession, the trial court applied enhancement factors (1) that he had a history of criminal convictions greater than that necessary to establish his sentencing range; (8) that he had previously failed to comply with a sentence involving release into the community; and (13) that he committed the offenses in this case while he was on both probation and bond. *See* T.C.A. § 40-35-114(1), (8), (13). The trial court denied the State’s request that it apply factor (10), that he had no hesitation about committing a crime when the risk to human life was high, and its request for consecutive sentencing.

The trial court deemed alternative sentencing “a stretch” given the Defendant’s failure to comply with alternative sentencing in Indiana. Additionally, the trial court correctly recognized that the Defendant was not “presumed” to be a favorable candidate for alternative sentencing by virtue of his Class B felony conviction. The court also found that the Defendant’s conviction of criminal confinement weighed in favor of a sentence of confinement. The court found that confinement was necessary to avoid depreciating the seriousness of the offenses, observing that the Defendant possessed concealed firearms knowing that he was not allowed to possess those weapons. Additionally, the court

observed that the Defendant ran from the police. Finally, the court found that confinement was necessary because the Defendant had not demonstrated success on measures less restrictive than confinement. In our view, the record does not preponderate against the trial court's findings, and we conclude that the trial court did not abuse its discretion by denying an alternative sentence.

Conclusion

Based upon the foregoing, we hold that (1) the trial court did not err by denying the motion to suppress; (2) the trial court erred by instructing the jury that the Defendant's out-of-state conviction qualified as a crime of violence rather than submitting that issue, with proper instructions, to the jury, and the error cannot be classified as harmless beyond a reasonable doubt; and (3) the trial court did not abuse its discretion by ordering a sentence of full confinement. Accordingly, we reverse the Defendant's conviction of unlawful possession of a firearm after having been convicted of a felony crime of violence and remand the case to the trial court for a new trial on that charge, but we affirm the remaining judgments of the trial court in all respects.

s/ *Stacy L. Street*

STACY L. STREET, JUDGE