

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 18, 2026

FILED

09/15/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. JAVARI JACKSON-ALLEN

Appeal from the Criminal Court for Knox County
No. 123864 G. Scott Green, Judge

No. E2025-01150-CCA-R3-CD

A Knox County grand jury charged the Defendant, Javari Jackson-Allen, via presentment with two counts of first degree felony murder and one count each of especially aggravated robbery, first degree premeditated murder, attempted first degree premeditated murder, and employment of a firearm during the commission of a dangerous felony. At trial, the jury convicted the Defendant of both counts of first degree felony murder as well as especially aggravated robbery, the lesser included offense of criminally negligent homicide, and the firearm charge but acquitted the Defendant of attempted first degree murder. Thereafter, the trial court imposed an effective sentence of life imprisonment. On appeal, the Defendant argues that the trial court erred in failing to instruct the jury that a felony murder must be the “natural and probable consequence” of the target crime of fraud. After review, we conclude that the Defendant waived all issues regarding the trial court’s failure to instruct the jury on the “natural and probable consequences” portion of the criminal responsibility instruction, and we decline to conduct plain error review. Therefore, we affirm the judgments of the trial court.

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

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and TOM GREENHOLTZ, JJ., joined.

Gerald L. Gulley, Jr. (on appeal) and Christopher Rodgers (at trial), Knoxville, Tennessee, for the appellant, Javari Jackson-Allen.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Charne P. Allen, District Attorney General; and Takisha Fitzgerald and Robert DeBusk, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

On February 23, 2023, a Knox County grand jury charged the Defendant with two counts of first degree felony murder (Counts 1 and 2) and one count each of especially aggravated robbery (Count 3), first degree premeditated murder (Count 4), attempted first degree premeditated murder (Count 5), and employment of a firearm during the commission of a dangerous felony (Count 6).

Trial. Jerriah Love testified that, in February 2023, he and Rahleik Garcia, his cousin and the victim in this case, rented a hotel room in downtown Knoxville. At the time, Love and the victim were carrying cash obtained from Love's clothing business and a "bank scheme." He explained that pursuant to this scheme, the victim communicated with individuals about obtaining a credit or bank card. The victim would then create a check on a computer, print the check, and deposit it into the account associated with the card. Immediately after the fraudulent deposit, Love and the victim would use an ATM card to withdraw the funds that had been deposited into the account.

Love stated that on February 14, 2023, the victim and the Defendant exchanged Instagram messages about setting up a meeting, wherein the Defendant would provide the victim with a credit card to be used in the scheme. Because Love was unsure of the meeting location, he drove to a convenience store. Love observed police cars nearby and asked the victim whether he wanted to store the firearm he was carrying in the backseat. When they arrived, Love and the victim entered the store to make their respective purchases. Love watched the victim pay for his items, noting that the victim was carrying approximately \$1500 to \$2000 in cash.

As they left the store, Love asked the victim, "So, where are we headed next?" The victim showed Love the directions to Lonsdale Homes, which was approximately ten minutes from the convenience store. As they approached the destination, Love noticed they were entering a "rougher area[.]" He asked the victim who he was meeting, and the victim showed him the Defendant's Instagram account that had a photograph of the Defendant. Love asked the victim whether he trusted the Defendant, and the victim replied, "I trust me," as he retrieved his gun from the backseat and placed it near his leg. Love drove toward the address provided by the Defendant, which he described as a road with parallel parking spaces.

After waiting for approximately ten minutes, Love suggested that they return later. The victim initiated a video call to the Defendant through his Instagram account, and when the Defendant answered, Love was able to identify the Defendant. The Defendant subsequently directed them to a nearby park, where they parked. A moment later, the Defendant approached Love's driver's side window. Love spoke briefly with the

Defendant; however, he asserted that the Defendant never gave him a bank or credit card and never said anything to him about such a card.

While talking with the Defendant, Love noticed “somebody” in his rearview mirror pointing a handgun at them. He said this person was wearing a black ski mask and a jacket. Love immediately opened the driver’s door, knocked the Defendant over, and ran. As he fled, he saw the Defendant bend over and pull out an AR-style automatic rifle from a backpack on the ground. Thereafter, Love heard several gunshots, some of which sounded louder than others, like they were from a different gun. He continued running until he reached the road, where he flagged down a passing vehicle for assistance. He then called 9-1-1.

Caleb Coffey, an officer with the Knoxville Police Department, testified that when he arrived at the Lonsdale Homes neighborhood at the intersection of Badgett Drive and Goins Drive, he observed some people standing around a parked car. He noticed that the area was less “boisterous” than usual and concluded that “something bad had happened.” As he approached the parked car, Officer Coffey observed “multiple bullet holes in the vehicle” and saw the victim’s body in the passenger seat. After checking the victim’s vital signs and finding no signs of life, Officer Coffey began securing the scene. Shortly thereafter, the Knoxville Fire Department arrived and began life-saving measures on the victim, who was ultimately pronounced dead at the scene.

During the course of this investigation, Timothy Riddle, an investigator with the Knoxville Police Department, developed the Defendant as a suspect. Officers found a shell casing in a burned area “right next to the porch” of the Defendant’s apartment. A few days later, a shell casing was recovered on the side of a building on Badgett Drive near another burned patch. Investigator Riddle obtained surveillance video near the crime scene from the date in question, which led to footage of the suspect vehicle entering and exiting the Lonsdale Homes area. Investigator Riddle determined that the suspect car was a silver Chevrolet Malibu with a blue license plate that contained the number 29. After entering those identifiers into a police database, he discovered that this car belonged to Na’Kelin McAfee, who had been friends with the Defendant “for years.” A subsequent Cellebrite extraction of McAfee’s cell phone showed a text conversation between the Defendant and McAfee, in which the Defendant told McAfee to wipe out McAfee’s car with bleach “real good [sic]” and report it stolen. During this conversation, the Defendant told McAfee that he “burned the phone and clothes.” The Defendant then informed McAfee that he had “called Bank of America” and “told them that [he] lost [his] phone account, username, and password,” and McAfee replied, “Remember my number if anything happens.”

Investigator Riddle stated that a Flock Safety camera picked up the car that McAfee and the Defendant were riding in approximately fifteen minutes after the victim’s

homicide. In this footage, McAfee and the Defendant were wearing backpacks, and they both discarded something before entering an apartment.

Because Investigator Riddle was unable to access either Love's or the victim's iPhones, he obtained and executed a search warrant for the victim's Instagram account, which enabled him to read the Instagram messages between the Defendant and the victim in the days preceding the shooting. On February 11, 2023, the Defendant sent the victim a message stating that he "got BOA" or Bank of America, and the victim replied, "Let's work, my guy." The Defendant and the victim continued to exchange messages until the afternoon of February 14, 2023. The victim asked the Defendant for an address to meet, and the Defendant replied, "2703 Badgett Drive." The victim said, "Here I come[.]" and then described Love's car. At 5:03 p.m. on February 14, 2023, the victim initiated a video chat with the Defendant, which ended a minute later.

Brian Dalton, a lieutenant with the Knoxville Police Department, was accepted as an expert in the field of firearm and toolmark examination. He stated that there were fourteen nine-millimeter cartridge cases and nine bullets or bullet fragments collected from the scene. Of these fourteen nine-millimeter cartridge cases, nine were identified as being fired from one unknown firearm. Four cartridge cases were identified as being fired from a second unknown firearm. A single nine-millimeter cartridge casing indicated the presence of a third unknown firearm. In addition, a single 7.62 x 39 cartridge case was recovered, suggesting a fourth unknown firearm. Lieutenant Dalton opined that "between all of the bullets and fragments," all but one were "consistent in the rifling characteristics [of] a Generation 5 marksman Glock barrel."

Christopher Lochmuller, the deputy chief medical examiner for Knox and Anderson Counties, was accepted as an expert in the field of forensic pathology. Dr. Lochmuller opined that the victim's manner of death was homicide and his cause of death was multiple gunshot wounds. He stated that the victim had been shot four times, with the fatal wound being the one that went through the front of his left arm, into his left chest, struck his left lung, hit his thoracic spine, and then exited on the right side of his back. He agreed that the victim could have been "seated in the passenger's seat" and "struck in the left arm from the driver's side[.]" but the "muzzle of the gun and [the victim's] body ha[d] to be in alignment so you get the downward trajectory." He reiterated that the trajectory of the wound in the victim's left arm was "going from front to back, left to right, and down about two inches." He also noted that the irregularly shaped exit wound on the victim's back indicated that the victim's back was against something, like the seat of a car, when the bullet exited his body. Dr. Lochmuller additionally stated that the victim had some shrapnel injuries to the front of his right thigh and had gunpowder residue on his pants at this injury.

Dr. Lochmuller acknowledged that he was only able to provide “the trajectory of how the bullet entered/exited the body” but could not give “the exact positioning of the [victim] or of the shooter,” adding that he did not know “if the shooter was standing” or “where [the shooter was] in relationship to the [victim][.]” Dr. Lochmuller said that based on the shrapnel injury to the victim’s right thigh and the gunshot residue on the victim’s pants, he opined that the “firearm was within twelve inches” of the victim’s thigh when the shot was fired.

The Defendant was arrested on March 3, 2023, and was housed at the Roger D. Wilson Detention Center. Captain Aaron Turner, of the Knox County Sheriff’s Office, stated that he supervised that facility and monitored the emails sent by inmates. He stated that on March 7, 2023, the Defendant sent an email, wherein he identified himself, stated that he had been charged with first degree murder, attempted first degree murder, and armed robbery but denied committing these crimes, and asserted that although he “was there[,]” “Iran” had committed the first degree murder and “Na’Kelin” had committed the attempted first degree murder.” On July 26, 2023, the Defendant sent an email to the prosecutor assigned to his case, claiming that he gave his bank card to Love, that McAfee and Iran fired shots at Love and shot the victim several times, and that McAfee pointed a gun at the Defendant and demanded that he get into his car before driving him to his brother’s apartment.

The Defendant did not testify or present any witnesses on his behalf.

At the charging conference in this case, the prosecutor asked the trial court if it planned to include the “natural and probable consequences” portion of the criminal responsibility instruction, and the trial court replied, “The more I think about that, I’m not[.]” When the trial court later asked if the parties had any objection to “that page” of the jury instructions, defense counsel responded, “No.” During its final charge to the jury, the trial court did not instruct the jury on the natural and probable consequences portion of the criminal responsibility instruction. Defense counsel never raised any objection to this instruction’s absence.

At the conclusion of trial, the jury convicted the Defendant of both counts of first degree felony murder (Counts 1 and 2), especially aggravated robbery (Count 3), the lesser included offense of criminally negligent homicide (Count 4), and employment of a firearm during the commission of a dangerous felony (Count 6). The jury acquitted the Defendant of attempted first degree murder (Count 5). The trial court then imposed an effective sentence of life imprisonment on the Defendant.

Thereafter, the Defendant timely filed a motion for new trial and an amended motion, alleging in pertinent part that the trial court erred in not instructing the jury “that

the felony murder that was committed was a natural and probable consequence of the target crime,” and the trial court denied this motion. More than thirty days later, the Defendant filed his notice of appeal. The Defendant then filed a motion to waive timely filing of his notice of appeal, which this court granted in the interest of justice.

ANALYSIS

The Defendant asserts the trial court erred in failing to instruct the jury that the felony murder must be “a natural and probable consequence” of the target crime of fraud, an offense for which the Defendant was never charged. He claims the trial court declined to give this instruction based on the medical examiner’s testimony that the victim was fatally shot from the driver’s side of the car where the Defendant had been standing. However, the Defendant asserts that there was evidence, provided through cell phone extractions and jail emails, indicating that he was meeting with the victim to commit bank/credit card fraud, which provided an alternate theory that did not implicate him in the armed robbery and murder of the victim by Na’Kelin McAfee and Iran Lyons. The Defendant maintains that in this alternate version of events, the “target crime” for the “natural and probable consequences” instruction was the bank/credit card fraud, not the robbery.

In response, the State contends that the Defendant waived plenary review by failing to contemporaneously object during the charging conference or the court’s final charge to the jury and by advancing this issue for the first time in his amended motion for new trial. It asserts that the Defendant never acknowledges his failure to make a contemporaneous objection and seems wholly unaware that he has waived plenary review. Moreover, the State notes that the Defendant never requested plain error relief and argues that the Defendant is not entitled to receive it because he was never charged with fraud. We conclude that the Defendant waived all issues regarding the failure of the trial court to instruct the jury on the “natural and probable consequences” portion of the criminal responsibility instruction, and we decline to conduct plain error review.

The Defendant asserts that by declining to give the instruction on the “natural and probable consequences” of the target crime of fraud, the trial court effectively accredited the testimony of the medical examiner, thereby precluding the jury from considering the Defendant’s version of events. He claims the trial court effectively ruled as a matter of law that the target crime would be the robbery and not the bank/credit card fraud referenced in the cell phone extractions and emails from jail. See State v. Richmond, 90 S.W.3d 648, 656-57 (Tenn. 2002) (concluding that the natural and probable consequences doctrine “reinforces the principle that the jury, not the court, is vested with the power to weigh the sufficiency of evidence and determine whether collateral crimes, committed by relevant parties in both physical and spatial proximity of the target crime, are the natural and

probable consequences of the intended criminal behavior”). The Defendant insists that because the trial court’s instructional error deprived him of his constitutional right to a jury trial, his convictions must be reversed, and his case must be remanded for a new trial.

The natural and probable consequences rule “extends criminal liability to the crime intended by a defendant, and [to] collateral crimes committed by a co-defendant, that were the natural and probable consequences of the target crime.” Id. at 654; see State v. Carson, 950 S.W.2d 951, 954-55 (Tenn. 1997). To impose criminal liability pursuant to the natural and probable consequences rule, the State must prove beyond a reasonable doubt and the jury must find: “(1) the elements of the crime or crimes that accompanied the target crime; (2) that the defendant was criminally responsible pursuant to Tennessee Code Annotated section 39-11-402 [for the crime or crimes that accompanied the target crime]; and (3) that the other crimes that were committed were natural and probable consequences of the target crime.” State v. Howard, 30 S.W.3d 271, 276 (Tenn. 2000). Because the felony murder statute does not require the State to prove that the killing was a natural and probable consequence of the predicate felony, a trial court need not give a natural and probable consequences instruction concerning the foreseeability of the killing when the evidence establishes that the defendant intended to commit or assist in the commission of the predicate felony. See Tenn. Code Ann. § 39-13-202(a)(2); State v. Winters, 137 S.W.3d 641, 659 (Tenn. Crim. App. 2003); State v. Hinton, 42 S.W.3d 113, 119 (Tenn. Crim. App. 2000).

At the charging conference held after the close of all proof, the prosecutor asked the trial court if it planned “to add the natural and probable consequences” portion of the criminal responsibility charge. The trial court replied:

The more I think about that, I’m not [going to add the natural and probable consequences portion]. . . based on Dr. Lochmuller’s testimony I mean, the circumstantial evidence would suggest that the person who was at the [driver’s side] door, to wit, [the Defendant], would have been the one who fired the fatal shot [at the victim]. So, I’m not going to—I don’t think the natural and probable consequences charge is appropriate in this case.

Defense counsel did not object to the trial court’s decision. The trial court then asked if the parties had any objections to “that page” of the jury instructions, referencing the criminal responsibility instruction, and defense counsel replied, “No.”

The propriety of jury instructions is reviewed de novo with no presumption of correctness. State v. Perrier, 536 S.W.3d 388, 396 (Tenn. 2017). However, a defendant can waive plenary review of the trial court’s failure to charge a jury instruction by

affirmatively agreeing to a trial court's proposed instruction, failing to lodge a contemporaneous objection, failing to make a specific request for an instruction, or failing to include the issue in a motion for new trial. See Tenn. R. App. P. 36(a) ("Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error.").

Here, the Defendant appears to argue that the trial court provided incomplete jury instructions because it failed to charge the optional "natural and probable consequences" portion of the criminal responsibility instruction. See 7 Tenn. Prac. Pattern Jury Instr. T.P.I.—Crim. 3.01.¹ A party must contemporaneously object to incomplete jury instructions to preserve the issue for plenary appellate review. State v. Faulkner, 154 S.W.3d 48, 58 (Tenn. 2005) ("An erroneous or inaccurate jury charge, as opposed to an incomplete jury charge, may be raised for the first time in a motion for a new trial and is not waived by the failure to make a contemporaneous objection.") (emphasis added); see State v. Lynn, 924 S.W.2d 892, 898-99 (Tenn. 1996) (distinguishing between "a positive error" in the jury instructions, which only requires that the issue be raised in a motion for new trial, and "an error of omission" in the jury instructions, which requires both a contemporaneous objection to the proposed charge and inclusion of the issue in the motion for new trial). The trial transcript in this case shows that the Defendant neither contemporaneously objected to the trial court's instruction on criminal responsibility nor requested a special jury instruction including the "natural and probable consequences" portion of this instruction.

"Where a trial court gives an allegedly incomplete jury charge to which the defense does not object, we consider the issue waived and will review the omitted instruction for plain error only." State v. Hatcher, 310 S.W.3d 788, 815 n.15 (Tenn. 2010) (citing State v. Bledsoe, 226 S.W.3d 349, 353 (Tenn. 2007)). Because the Defendant did not contemporaneously object during the charging conference or during the trial court's final

¹ The bracketed, and therefore optional, "natural and probable consequences" portion of the criminal responsibility instruction reads as follows:

A defendant who is criminally responsible for an offense may be found guilty not only of that offense, but also for any other offense or offenses committed by another, if you find beyond a reasonable doubt that the other offense or offenses committed were natural and probable consequences of the original offense for which the defendant is found criminally responsible, and that the elements of the other offense or offenses that accompanied the original offense have been proven beyond a reasonable doubt. With regard to Count _____ charging the defendant(s) with Murder in the Perpetration of _____, this natural and probable consequences rule does not apply. There is no requirement that the killing be foreseeable in order to hold a defendant criminally responsible, only that the defendant intended to commit the alleged _____.

charge to the jury, he has waived plenary review and may obtain relief, if at all, pursuant to the plain error doctrine. See id.; State v. Enix, 653 S.W.3d 692, 701 (Tenn. 2022) (setting forth the five factors required to obtain plain error relief and concluding that the defendant, who waived his issue by failing to make a contemporaneous objection, was not entitled to relief via the plain error doctrine).

Significantly, “[o]ur authority to review unpreserved issues for plain error is discretionary and must be ‘sparingly exercised.’” State v. Ruiz, 716 S.W.3d 439, 453 (Tenn. Crim. App. 2024) (quoting Bledsoe, 226 S.W.3d at 354); see Tenn. R. App. P. 13(b), Advisory Comm’n Comments. In the Defendant’s case, we respectfully decline to exercise this discretionary authority for two specific reasons. See Ruiz, 716 S.W.3d at 453; see also State v. Gooch, No. M2022-01395-CCA-R3-CD, 2024 WL 2814624, at *4-5 (Tenn. Crim. App. June 3, 2024), perm. app. denied (Tenn. Nov. 20, 2024); State v. Funk, No. E2022-01367-CCA-R3-CD, 2023 WL 7130289, at *2-3 (Tenn. Crim. App. Oct. 30, 2023); State v. Thompson, No. W2022-01535-CCA-R3-CD, 2023 WL 4552193, at *5 (Tenn. Crim. App. July 14, 2023); State v. Powell, No. W2011-02685-CCA-R3-CD, 2013 WL 12185202, at *8 (Tenn. Crim. App. Apr. 26, 2013), perm. app. denied (Tenn. Sept. 11, 2013).

First, in his principal brief, the Defendant failed to request that this court conduct plain error review, failed to cite any authority for the plain error doctrine, and failed to analyze the five factors required for plain error relief. See Ruiz, 716 S.W.3d at 453; Gooch, 2024 WL 2814624, at *4. “To be clear, a party seeking plain error relief must generally raise and argue the issue in the party’s briefing, just as the party would do with all other issues in the ordinary course of an appeal.” Funk, 2023 WL 7130289, at *3 (citing Tenn. R. App. P. 27(a) (requiring that an appellant’s brief contain, among other things, an argument setting forth “the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record . . . relied on”)); see Gooch, 2024 WL 2814624, at *4 (concluding that the defendant’s failure to request plain error relief in his principal brief weighed against any such consideration by the appellate court on its own); see also State v. Neece, __ S.W.3d __, 2026 WL 413050, at *5 (Tenn. Crim. App. Feb. 13, 2026), perm. app. denied (Tenn. Aug. 13, 2026) (“[A] routine practice of allowing plain error arguments to surface first in a reply brief undermines the appellate process and rewards strategic silence over timely advocacy.”). In this case, the Defendant raised the instructional issue in his amended motion for new trial, which means his failure to contemporaneously object was clear at the time of his appeal. Accordingly, the Defendant could have requested plain error review in his principal brief but failed to do so. Because the Defendant bears the burden of showing he is entitled to plain error relief, his failure to request this relief in his principal brief necessarily weighs against any such consideration on our own. See Ruiz, 716 S.W.3d at 453-54; Gooch, 2024 WL

2814624, at *4; Funk, 2023 WL 7130289, at *2; see also Bledsoe, 226 S.W.3d at 355 (asserting that generally, “[i]t is the accused’s burden to persuade an appellate court that the trial court committed plain error”).

Second, the Defendant failed to file a reply brief requesting plain error review, even after the State specifically asserted in its response brief that the Defendant waived plenary review of this issue by failing to make a contemporaneous objection at trial. Although the Defendant was on notice that his instructional issue might be waived because it was not presented and preserved in the trial court, the Defendant did not respond to the State’s argument in a reply brief or otherwise. See Ruiz, 716 S.W.3d at 454; Gooch, 2024 WL 2814624, at *5; Funk, 2023 WL 7130289, at *3. “Where a defendant fails to respond to a waiver argument, only particularly compelling or egregious circumstances could typically justify our sua sponte consideration of plain error relief.” Thompson, 2023 WL 4552193, at *5 (citing Powell, 2013 WL 12185202, at *8 (declining to conduct plain error review, in part, when the defendant neither “request[ed] in his brief on appeal that this issue be reviewed for plain error” nor “filed a reply brief in which he request[ed] plain error review”)). Because no “particularly compelling or egregious circumstances” exist in the Defendant’s case, we respectfully decline to consider plain error review on our own.

CONCLUSION

We conclude that the Defendant waived all issues regarding the failure of the trial court to instruct on the “natural and probable consequences” portion of the criminal responsibility jury instruction, and we decline to conduct plain error review. Accordingly, we affirm the judgments of the trial court.

s/ *Camille R. McMullen*
CAMILLE R. MCMULLEN, JUDGE