

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 19, 2026

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. KEVIN RAY ROARK

Appeal from the Criminal Court for Greene County
No. CC24CR404 Alex E. Pearson, Judge

No. E2025-01419-CCA-R3-CD

The Defendant, Kevin Ray Roark, was convicted by a Greene County jury of driving under the influence, a Class A misdemeanor, in violation of Tennessee Code Annotated section 55-10-401 and received a suspended sentence of eleven months and twenty-nine days with ninety days to serve. On appeal, the Defendant argues (1) that the trial court violated his constitutional right to present a defense and Tennessee Rule of Criminal Procedure 16 by excluding his proffered expert witness; (2) that the trial court erred under Tennessee Rule of Evidence 702 and McDaniel v. CSX Transportation, Inc., 955 S.W.2d 257, 263-65 (Tenn. 1997) by admitting the State's drug-impairment expert without conducting the required reliability analysis; (3) that the trial court improperly denied his Rule 29 motion for judgment of acquittal; and (4) that the evidence was insufficient to support his conviction under Jackson v. Virginia, 443 U.S. 307 (1979). Based upon our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment 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.

P. Richard Talley and Ty Richard Talley, Dandridge, Tennessee, for the appellant, Kevin Ray Roark.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Senior Assistant Attorney General; Joshua R. Gilbert, Assistant Attorney General (*pro hac vice*); Dan E. Armstrong, District Attorney General; and Hailey Hatfield and Emily Burnett, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

In the early morning hours of November 9, 2023, Trooper Austin Burchett of the Tennessee Highway Patrol was conducting stationary traffic observation on West Andrew Johnson Highway near Blue Springs Parkway in Greene County, Tennessee. While monitoring traffic, he observed the Defendant driving approximately forty-seven miles per hour in a fifty-five-mile-per-hour zone. As the vehicle passed, the trooper saw that its tag lights were not illuminated. Although he witnessed no erratic driving, Trooper Burchett followed the Defendant for roughly one and nine-tenths of a mile before initiating a traffic stop based solely on the inoperative tag lights.

When Trooper Burchett approached the vehicle, he detected an odor of marijuana and a slight odor of alcohol, and he observed that the Defendant's eyes appeared bloodshot and red. The Defendant denied possessing marijuana but acknowledged that it was "possible" he had smoked earlier, later stating that his most recent use occurred around lunchtime that day. The Defendant initially struggled to produce the requested insurance documentation.

Trooper Burchett asked the Defendant to exit the vehicle and administered a series of field sobriety tests. The horizontal gaze nystagmus and vertical gaze nystagmus tests revealed no clues, and Trooper Burchett agreed that cannabis ordinarily does not cause nystagmus. During the lack-of-convergence test, he observed that the Defendant's right eye failed to converge, which he regarded as consistent with cannabis impairment. On the walk-and-turn test, the Defendant could not maintain balance during the instructional phase, began before being instructed to do so, raised his arms for balance, paused during his steps, miscounted, and executed an improper turn. The trooper regarded these observations as six distinct clues of impairment. When asked to perform the one-leg stand, the Defendant attempted the test but lost his balance within a few seconds and indicated that he did not feel safe continuing.

Trooper Burchett next administered the modified Romberg test. He testified that the Defendant exhibited eyelid tremors and estimated thirty seconds as thirty-five seconds, which he interpreted, along with the tremors, as evidence of a slowed internal clock associated with cannabis impairment. During the finger-to-nose test, the Defendant hesitated or missed the tip of his nose on certain attempts.

The Defendant later testified and explained that he had undergone three back surgeries and continued to experience chronic back and leg pain. He also stated that he was fatigued and cold during the stop, explaining that he had worked a full shift driving a forklift until midnight. He attributed his performance on the balance-related tests to his physical limitations, fatigue, and cold temperature. Trooper Burchett acknowledged that fatigue can cause red eyes and that energy drinks may cause tremors, although he believed these explanations did not account for the severity of the signs he observed.

A search of the Defendant's vehicle revealed an open can of beer and another unopened can. The Defendant stated that he had opened the beer shortly before the stop but had not consumed any of it. A search of the Defendant's person uncovered a vape pen, which the Defendant identified—after receiving Miranda warnings¹—as a tetrahydrocannabinol (THC)-containing vape purchased at a local market. The Defendant later consented to a blood draw at the Greene County jail. The State introduced the recording from Trooper Burchett's body camera, which he agreed fairly and accurately depicted his encounter with the Defendant on the night of the offense. The recording was played for the jury in its entirety.

On cross-examination, Trooper Burchett testified that the blood test result was negative for alcohol. When defense counsel asked Trooper Burchett if he could differentiate between the smell of CBD, which is legal, and marijuana, Trooper Burchett answered, "[n]o, sir, it smells like marijuana." Trooper Burchett testified that it is not illegal to have a THC vape pen, but it is illegal to be under the influence of it and drive. He stated that he did not test the vape pen for THC content. Defense counsel asked Trooper Burchett if energy drinks could cause eyelid tremors, because the Defendant works night shifts. The trooper testified that while energy drinks could cause that, they would have to be consumed in extremely large amounts. He testified that fatigue could cause bloodshot eyes. Defense counsel asked Trooper Burchett if he was aware that the Defendant had three back surgeries, and he testified that he was only aware that he had some leg problems and a back problem. He testified that even people with back problems do not struggle with the walk-and-turn test to the extent that the Defendant did. Trooper Burchett testified that the Defendant also had slurred speech. On the Romberg test, he testified that there is a five-second range on the timing and the Defendant was right on the cusp of that range, but he also exhibited eyelid tremors. Trooper Burchett testified that the Defendant was driving below the speed limit, which he found suspicious. Defense counsel tried to admit the drug recognition expert (DRE) protocol as an exhibit. The State objected on relevance grounds, and defense counsel clarified the DRE protocol would show the steps that Trooper Burchett should have taken with the Defendant. Defense counsel ultimately withdrew the exhibit.

The Tennessee Bureau of Investigation ("TBI") later analyzed the blood sample obtained from the Defendant. TBI Agent Regina Aksanov, an expert in forensic toxicology, testified that the Defendant's blood tested positive for the controlled substance of marijuana. She confirmed that his blood sample contained 23 nanograms per milliliter of Delta-9 THC, 7 nanograms per milliliter of Hydroxy THC, and 311 nanograms per milliliter of Carboxy THC. She testified that Delta-9 THC is the psychoactive ingredient in marijuana; Hydroxy THC is a metabolite; and Carboxy THC is an inactive metabolite,

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

which is not relevant in terms of the effect of THC. Agent Aksanov testified that the amount of Delta-9 THC found in the Defendant's blood was "pretty high." She noted that other states consider 2 to 5 nanograms per milliliter of Delta-9 THC as the acceptable driving limit. She clarified, however, that there is no defined level of Delta-9 THC impairment in Tennessee. She also testified that 7 nanograms of the active metabolite is an indication of recent marijuana use. She testified that marijuana use causes slurred speech, red bloodshot eyes, slow internal clock, trouble staying still, and tremors. She confirmed that Trooper Burchett's findings aligned with her findings in the tests, which indicated impairment from marijuana use. She noted that while someone could have that amount of Delta-9 THC in the blood and not be impaired, it is "highly unlikely."

On cross-examination, Agent Aksanov testified that CBD and THC do not share the same active compounds, and Delta-9 comes from the cannabis plant, unlike CBD which comes from a hemp plant. When defense counsel asked if a person with that level of THC could build their tolerance and function normally, she stated, "that's correct."

The Defendant conceded that he had smoked THCA flower during his lunch break and that he was a long-time cannabis user. He denied being impaired at the time of the stop, asserted that his driving had been safe aside from the tag-light violation, and attributed his difficulties on the field sobriety tests to physical limitations, fatigue, and cold conditions. On cross-examination, the Defendant testified that he was aware that THC affected cognitive functioning and stated that on occasion he took THC and then drove a forklift at work.

The jury convicted the Defendant as charged in the indictment. At sentencing, the State argued that the Defendant had three prior DUI convictions, which were not relevant for a sentencing enhancement, but warranted a sentence of incarceration for ninety days. The trial court subsequently sentenced him to an effective term of eleven months, twenty-nine days suspended to probation, with ninety days of service in jail. The Defendant filed a motion for a new trial, which was denied by the trial court. The Defendant timely appealed to this court.

ANALYSIS

The Defendant presents four issues for our review. He contends that the trial court (1) violated his constitutional right to present a defense and Tennessee Rule of Criminal Procedure 16 by excluding his proffered expert witness; (2) erred under Tennessee Rule of Evidence 702 and McDaniel, 955 S.W.2d at 263-65, by qualifying the State's trooper as an expert without undertaking the required reliability analysis; (3) improperly denied his Rule 29 motion for judgment of acquittal; and (4) evaluated legally insufficient evidence

under Jackson v. Virginia, 443 U.S. 307 (1979), in concluding that he was impaired.² In response, the State’s overarching position is that each of the Defendant’s issues is waived—either because the Defendant failed to lodge a contemporaneous objection, failed to raise the same ground in his motion for new trial, or failed to provide a complete appellate record. The State asserts that, even assuming the issues were not waived, the Defendant neither requests nor satisfies the stringent requirements of plain-error review and, therefore, the conviction should be affirmed. For the reasons that follow, we agree with the State.

We begin our analysis of these issues by setting forth the following well-settled rules governing issue preservation in Tennessee. “Ordinarily, before a party can challenge the admission of evidence on appeal, the party must have preserved the issue in the trial court.” State v. Ruiz, 716 S.W.3d 439, 453 (Tenn. Crim. App. 2024); see also State v. Pewitte, 739 S.W.3d 240, 248 (Tenn. Crim. App. 2025), perm. app. denied (Tenn. May 21, 2026) (quoting State v. Gardner, 716 S.W.3d 388, 416 (Tenn. Crim. App. 2024), perm. app. denied (Tenn. May 23, 2025)). Preservation requires both a timely, specific objection at trial and the presentation of the same issue—on the same ground—in a written motion for new trial. Ruiz, 716 S.W.3d at 453; see also Tenn. R. Evid. 103(a); Tenn. R. App. P. 3(e), 36(a). A party who fails to take these steps waives plenary review and may obtain relief only under the narrow doctrine of plain error—but only if the party expressly seeks plain-error review and adequately develops it in the brief. Ruiz, 716 S.W.3d at 453.

The above principles are rooted in Rule 103 of the Tennessee Rules of Evidence which specifically discusses a trial court’s error regarding the admission or exclusion of evidence. Rule 103(a)(2) states, in pertinent part:

² The issues as presented in the statement of issues section of the Defendant’s brief are as follows: (1) Whether the trial court violated [the Defendant’s] constitutional right to present a defense by excluding his expert witness where the State filed its discovery request two days before trial, defense counsel immediately provided the expert’s credentials and materials the next day, and the only missing item was a formal written report; (2) Whether the trial court erred by allowing Trooper Burchett to testify as a drug-impairment expert without any inquiry into the scientific reliability of his opinions, where Burchett admitted he did not complete a full drug recognition evaluation and offered opinions about cannabis impairment, time perception changes, and blood test results without establishing any scientific foundation for those opinions; (3) Whether the evidence was sufficient to prove impairment beyond a reasonable doubt where the only traffic violation was an inoperative tag light, the alcohol breath test was negative, the standardized eye tests showed no signs of impairment, Tennessee has no legal limit for THC, the State’s own toxicologist testified a person could have these THC levels without being impaired, and [the Defendant] testified he was not impaired and had medical reasons for difficulty with balance tests; and (4) Whether the trial court erred in denying [the Defendant’s] motion for judgment of acquittal where the State failed to prove impairment beyond a reasonable doubt.

Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

....

(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context.

Tenn. R. Evid. 103(a)(2). This rule requires a party seeking admission of the evidence to make an offer of proof unless the substance of the evidence and the evidentiary basis supporting the evidence's admission is apparent under the circumstances. Id. The Tennessee Supreme Court has routinely held that the failure to make an offer of proof following a trial court's exclusion of evidence results in waiver of the issue on appeal. State v. Sims, 45 S.W.3d 1, 15 (Tenn. 2001) (concluding that the failure to make an offer of proof regarding excluded evidence results in a waiver of the issue); State v. Goad, 707 S.W.2d 846, 852-53 (Tenn. 1986) (holding that "[i]n order for an appellate court to review a record of excluded evidence, it is fundamental that such evidence be placed in the record" and that when the excluded evidence "consists of oral testimony, it is essential that a proper offer of proof be made in order that the appellate court can determine whether or not exclusion was reversible").

Rule 3(e) of the Tennessee Rules of Appellate Procedure further directs that, in jury trials, no issue predicated on the admission or exclusion of evidence may be reviewed on appeal unless "specifically stated in a motion for a new trial." Tenn. R. App. P. 3(e). The issues must be stated "with reasonable certainty" such that the trial court is given a fair opportunity to correct any alleged error and the appellate court can determine whether the issue was properly preserved. Waters v. Coker, 229 S.W.3d 682, 689 (Tenn. 2007) (citing State v. Gauldin, 737 S.W.2d 795, 798 (Tenn. Crim. App. 1987)); Fahey v. Eldridge, 46 S.W.3d 138, 146 (Tenn. 2001).

Tennessee Rule of Appellate Procedure 36(a) also bars relief when a party "failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error." Tenn. R. App. P. 36(a). As our supreme court has emphasized, allowing testimony to enter the record without objection—and then structuring one's case around that testimony—precludes later challenges to its admissibility. State v. Allen, 593 S.W.3d 145, 154 (Tenn. 2020). Additionally, the appellant bears the burden of preparing a record that conveys "a fair, accurate and complete account" of the proceedings relevant to the issues raised. Tenn. R. App. P. 24(b). When an appellant fails to include essential materials in the appellate record, this court is precluded from reviewing the issue and must presume

the trial court's ruling was correct. State v. Roberts, 755 S.W.2d 833, 836 (Tenn. Crim. App. 1988); State v. Bibbs, 806 S.W.2d 786, 790 (Tenn. Crim. App. 1991). Moreover, appellate review "generally will extend only to those issues presented for review." Tenn. R. App. P. 13(b). An issue is "presented" only when it appears in the statement of the issues and is supported with argument, citations to authority, and appropriate references to the record. Tenn. R. App. P. 27(a)(4), (7); Tenn. Ct. Crim. App. R. 10(b). Issues argued in the body of the brief but omitted from the statement of the issues are waived. Hodge v. Craig, 382 S.W.3d 325, 334-35 (Tenn. 2012). Finally, "[i]ssues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court." See Tenn. Ct. Crim. App. R. 10(b); see also Tenn. R. App. P. 27(a)(7) (A brief shall contain "[a]n 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.").

Taken together, the above rules frame our analysis of the Defendant's first two claims and guide our determination of whether review is permitted and, if so, to what extent.

I. Exclusion of the Defense Witness. The Defendant contends that "the trial court violated [his] constitutional right to present a defense by excluding his expert witness based on a procedural technicality." He argues that the exclusion of critical evidence may violate due process. In support of his constitutional claim, the Defendant explains that the State filed its discovery request two days before trial, trial counsel immediately provided the expert's credentials and materials the next day, and the only missing item was a formal written report. Under these circumstances, the Defendant argues "exclusion was a disproportionate response" and that the trial court abused its discretion in failing to consider less severe alternatives such as a short continuance, limiting instructions, or permitting expanded cross-examination. The State argues that the Defendant waived plenary review of this issue by not contemporaneously raising it at trial. The State asserts he also waived plain error review by failing to request it, and even if he did, he cannot satisfy the plain error factors.

The record shows that at the close of the State's proof, the trial court excused the jury, and the State inquired whether defense counsel still intended to call his proposed expert witness. Defense counsel confirmed that he did. The State then objected, asserting that reciprocal discovery entitled it to receive the expert's report prior to trial and that no such report had been provided. Defense counsel responded that no report existed, that he had disclosed all materials in his possession—including the expert's credentials—and that he had offered to make the witness available to the prosecution before trial. When the court asked what the expert would testify about, counsel stated that the testimony would concern

the administration and results of the field sobriety tests. Defense counsel did not raise any constitutional objection or argue that exclusion would impair the Defendant's right to present a defense. After briefly conferring with the parties, the trial court sustained the State's objection and excluded the expert based on Rule 16 and State v. Vilvarajah, 735 S.W.2d 837, 839 (Tenn. Crim. App. 1987), concluding that allowing expert testimony without a report would amount to "trial by ambush."

On August 6, 2025, the Defendant filed a motion for a new trial. The motion, in its entirety, stated:

COMES Defendant, [] through counsel, and Pursuant to Rule 33, Tenn. R. Crim. P., and moves that the Court grant a new trial and says:

1. [The Defendant] was convicted of Driving While Impaired after jury trial on July 10, 2025, and sentenced to ninety (90) days in jail, fined Three Hundred Fifty Dollars (\$350.00), and lost driving privileges for one (1) year.

2. [The Defendant] called Brian Keith Lawson as a witness to testify regarding field sobriety testing procedures utilized by arresting Tennessee Highway Patrol Officer Austin Burchett. Haley Hatfield, Assistant District Attorney, objected, citing the fact that no report from Lawson was supplied. [The Defendant] responded that the Request for Discovery by the State was filed on July 7, 2025, at 3:24 p.m. (Exhibit I). Further, that counsel did not see the Request until July 8, 2025, and did not have sufficient time to obtain a report from Lawson.

3. [The Defendant] provided Lawson's Curriculum Vitae and all documents to be offered into evidence to the prosecution on July 8, 2025 (Exhibit 2).

4. Lawson's testimony regarding Burchett's failure to follow DRE protocol was critical evidence in [the Defendant's] defense as only THC was Identified in his BAC test, no alcohol. The General Order No. 373 regarding DRE protocol is attached (Exhibit 3).

WHEREFORE, [the Defendant] moves for a new trial.

Attached to the motion, the Defendant included the State's request for discovery, the defense expert's curriculum vitae, and the DRE policy.

The court held a hearing on the Defendant's motion for a new trial on August 25, 2025, and the Defendant argued the following:

. . . In this case, Your Honor, we filed a motion for discovery, which triggered the right for the [S]tate to ask for discovery pursuant to Rule 16(b) titled Disclosure of Evidence by the Defendant. That particular rule says that once the [D]efendant asks for discovery, then the [S]tate may request and the [D]efendant shall permit the [S]tate to inspect and copy or photograph books, papers, documents, photographs, tangible objects or copies thereof of those items if one of the items is within the [D]efendant's possession, custody or control and the [D]efendant intends to introduce the item as evidence in the [D]efendant's case-in-chief.

This case here, we had Trooper Lawson who was going to testify regarding the administration of field sobriety tests and failure to follow the DRE protocol by Trooper Burchett in the case and I did not request a report and I didn't intend to introduce one at trial.

The second part of that rule is reports of examination and tests and it provides if the [D]efendant requests disclosure under – and we did, we did ask for discovery, the [D]efendant shall permit the [S]tate to inspect and copy or photograph any result or reports of physical or mental examinations or scientific tests or experiments made in connection with a particular case. We didn't do – none of the things we did fit under (A) or (B). . . .

In denying the Defendant's motion, the trial court again relied on Rule 16 of the Tennessee Rules of Criminal Procedure and Vilvarajah, 735 S.W.2d at 839, and reasoned that a party may not avoid its reciprocal discovery obligations by failing to obtain a report from its expert. The court acknowledged that the State's request had been filed only about two days before trial and stated that it would have allowed the testimony had a report been produced even that morning. It reasoned, however, that permitting expert opinion testimony with no report at all would deprive the State of a fair opportunity to prepare and would amount to "trial by ambush." The court concluded that "excluding the expert with no report is the appropriate thing to do in this case." The trial court stated that whether expert witnesses are required to produce a written report "may be in a sense a case of first impression." Nonetheless, the court concluded: "I think in fundamental fairness and the purpose of reciprocal discovery is when you're going to offer expert testimony to rebut the scientific testing that the [S]tate was doing, [] that there should have been a report provided"

Based upon our review, nothing in the trial transcript reflects that the Defendant objected on the constitutional grounds asserted in this appeal when the State challenged his attempt to call the expert witness. After the State rested, defense counsel confirmed his intent to present the expert. Defense counsel said he intended to call his expert, and the State objected because the State had not received a report despite its request for reciprocal discovery. Defense counsel responded that no report existed, that he had given the State everything in his possession, and that he had offered the prosecutor the opportunity to speak with the witness before trial. When the trial court inquired what the expert would address, counsel said the testimony would concern “primarily the Field Sobriety Test and the results, and the administration of those tests.” Defense counsel did not make an offer of proof and did not suggest that exclusion would implicate any constitutional right. Defense counsel responded only that no report existed, that he had provided the State with everything in his possession, and that he had offered to make the witness available before trial. He did not assert that exclusion would infringe on the Defendant’s constitutional right to present a defense or raise any due-process concern. Nor did counsel make an offer of proof to enable the court to evaluate the reliability or necessity of the proposed testimony. Because defense counsel made no offer of proof regarding the substance of the excluded expert testimony, he failed to satisfy Tennessee Rule of Evidence 103(a)(2), which requires a proffer unless the evidentiary basis is apparent from the record. See Sims, 45 S.W.3d at 15. The trial court considered the objection under Rule 16 and Vilvarajah, 735 S.W.2d at 839, and sustained the State’s objection on the ground that permitting expert opinion testimony without a report would deprive the State of a fair opportunity to prepare and amount to “trial by ambush.”

The Defendant first attempted to frame the issue in constitutional terms in his motion for new trial, which asserted only that the excluded testimony was “critical evidence.” However, at the hearing on that motion, defense counsel continued to argue that Rule 16(b) did not require a written report because the expert’s testimony concerned the administration of field sobriety tests and deviations from DRE protocol, rather than scientific testing. The State maintained—and the court agreed—that reciprocal discovery principles required a report so that the State could adequately prepare for rebuttal. The trial court again relied on Vilvarajah, 735 S.W.2d at 839, reaffirming that the absence of a report justified exclusion, particularly where the defense expert had produced reports in a prior, similar case. The Defendant still did not articulate any constitutional basis for admission of the testimony.

To the extent that the Defendant relies on the phrase “critical evidence” in his motion for new trial to preserve his constitutional claim, it bears noting that whether the evidence is critical is only one component of a broader constitutional analysis that the exclusion of evidence violated the right to present a defense. See State v. Brown, 29 S.W.3d 427, 433-34 (Tenn. 2000). Such a claim requires two other considerations: whether

the evidence bears sufficient indicia of reliability and whether the interest supporting exclusion is substantially important. Id. at 434; see also State v. Flood, 219 S.W.3d 307, 316-17 (Tenn. 2007). Here, defense counsel never addressed the reliability of the expert's anticipated opinions. He also did not make a proffer, so the trial court could not assess the expert witness's reliability. See Tenn. R. Evid. 103(a)(2). Nor did the Defendant argue that the State's interest in reciprocal discovery was insufficiently weighty to justify exclusion. We therefore conclude that the Defendant's assertion in his motion for a new trial that evidence was "critical" alone is insufficient to preserve a constitutional claim.

Because the Defendant failed to raise a constitutional objection at trial, the claim is not preserved for plenary review. See State v. Vance, 596 S.W.3d 229, 253 (Tenn. 2020) (noting that appellate review generally is limited to issues that a party properly preserves for review by raising the issues in the trial court and on appeal; that this obligation to preserve issues applies to constitutional issues as well as non-constitutional ones; that these preservation requirements ensure that the defense and the prosecution are afforded an opportunity to develop fully their opposing positions on an issue, and such requirements also enable a trial court to avoid or rectify an error before a judgment becomes final; and that a party is bound by the ground asserted at trial and cannot assert a new or different theory than advanced at trial on appeal). Consequently, we conclude that the constitutional claim as raised in this appeal is waived. In addition, we note that although the Defendant's brief weaves Rule 16 principles throughout the same section, this argument centers on whether the trial court imposed a disproportionate discovery sanction under State v. Merriman, 410 S.W.3d 779, 791-92 (Tenn. 2013) and State v. Harris, 839 S.W.2d 54, 69 (Tenn. 1992). That proportionality analysis, however, is entirely different from the position advanced at trial, where counsel argued only that no report existed and never invoked the constitutional right to present a defense or the trial court's duty to consider lesser sanctions. Accordingly, to the extent the Defendant attempts to assert an independent Rule 16 claim on these grounds in this appeal, we conclude that these issues are also waived because they were not presented to the trial court, not designated separately in the statement of issues, and not supported by adequate authority or citation to the record. See Tenn. R. App. P. 13(b), 27(a)(4).

Finally, we observe that the Defendant never filed a reply brief addressing the State's allegation of waiver regarding this issue and never asked for plain error review. Therefore, we conclude that the Defendant is not entitled to plain error review of this issue. See Tenn. R. App. P. 36(b); State v. Bledsoe, 226 S.W.3d 349, 355 (Tenn. 2007).

II. Admissibility of the State's Expert Witness. Next, the Defendant asserts that the trial court erred by admitting Trooper Burchett as an expert "in the field of drug recognition" based solely on his training and experience, pursuant to Tennessee Rules of Evidence 702 and 703. The Defendant argues that the court failed to conduct the McDaniel

factor analysis and made no findings regarding the scientific validity of the methodologies he applied, the reliability of his interpretations, or whether his truncated evaluation complied with accepted standards. McDaniel, 955 S.W.2d at 263-65; State v. Scott, 275 S.W.3d 395, 401-02 (Tenn. 2009). He argues that the inquiry was especially necessary because Trooper Burchett did not complete the standardized twelve-step DRE protocol, and the reliability of field sobriety test evidence depends on proper administration. State v. Murphy, 953 S.W.2d 200, 203-04 (Tenn. 1997). The Defendant asserts that several aspects of Trooper Burchett's testimony extended beyond mere observation and into scientific causation without foundational support. See State v. Stevens, 78 S.W.3d 817, 832-34 (Tenn. 2002). The Defendant contends that this erroneous admission of expert testimony was compounded by the exclusion of the defense expert, who would have offered critique of the incomplete DRE methodology. The State argues the Defendant waived this issue because he did not object to the admissibility of Trooper Burchett as an expert, only to the relevance of his testimony. The State further argues that the Defendant failed to raise the objection to the expert witness in his motion for a new trial and therefore waived it.

The record shows that during trial, when the State offered Trooper Burchett as an expert in drug recognition, the following exchange occurred:

[State]: Your Honor, at this time, the State would offer Trooper Burchett as an expert in drug recognition.

[Defense Counsel]: Well, Your Honor, we've got the DRE checklist here, and it wasn't done in this case; right? You didn't do the DRE –

The Witness: No, sir, an evaluation was not done.

[Defense Counsel]: It wasn't done in this case, Your Honor. Why would it matter? It wasn't done.

[State]: Based on his opinion, overall.

The Court: Well, I mean, the Court finds that Trooper Burchett is an expert in the field of drug recognition pursuant to the DRE training. I don't know whether that's going to have a whole lot of bearing here or not, but I will accept him as an expert in that field. Continue on.

Based on the above exchange, when the State offered Trooper Burchett as an expert in drug recognition, defense counsel did not object to his qualifications under McDaniel, 955 S.W.2d at 265. Instead, counsel merely remarked that no DRE evaluation had been

performed in this case, a comment that challenged the relevance or weight of the proposed expert testimony rather than its admissibility. Trial counsel did not make any objections as the trooper proceeded to testify about lack of convergence, short-term memory, internal clock perception, or the toxicology results, and his later effort to introduce the DRE protocol demonstrated a strategic choice to attack the credibility of the testimony rather than its expert foundation. Accordingly, we conclude that this issue is waived for failure to lodge a contemporaneous objection at trial. This claim is also not preserved for appellate review and therefore waived because the Defendant also failed to include this issue in his motion for new trial. The Defendant does not request plain-error review, and we decline to undertake it.

III. Motion for Judgment of Acquittal. The Defendant argues that the trial court erred in denying his motion for acquittal. He asserts that the State's evidence was insufficient to establish impairment beyond a reasonable doubt; the trial court's reliance on Trooper Burchett's testimony was misplaced; and the trial court compounded error by relying on Trooper Burchett's "inadmissible testimony" when it denied the motion for judgment of acquittal. The State first argues that the Defendant waived this issue because, after the denial of his motion for acquittal, he proceeded to offer proof. Finch v. State, 226 S.W.3d 307, 317 (Tenn. 2007). Even if it was not waived, the State asserts the Defendant also waived the issue by failing to provide an adequate record.

Tennessee Rule of Criminal Procedure 29 provides in pertinent part as follows:

(b) Grounds for Judgment of Acquittal. On defendant's motion or its own initiative, the court shall order the entry of judgment of acquittal of one or more offenses charged in the indictment, presentment, or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses.

(c) Proof After Denial of Motion. If—at the close of the state's proof—the court denies a defendant's motion for judgment of acquittal, the defendant may offer evidence without having reserved the right to do so.

Tenn. R. Crim. P. 29(b), (c). "If a defendant chooses to present proof after the trial court denies the motion for judgment of acquittal made at the close of the State's case-in-chief, then he 'waive[s] any claim of error for failure to grant the motion for judgment of acquittal at the conclusion of the proof offered by the State.'" State v. Mulac, No. M2024-00401-CCA-R3-CD, 2025 WL 1937465, at *18 (Tenn. Crim. App. July 15, 2025), perm. app. denied (Tenn. Dec. 16, 2025) (quoting State v. Collier, 411 S.W.3d 886, 893 (Tenn. 2013), abrogated on other grounds by State v. Thomas, 687 S.W.3d 223, 242 (Tenn. 2024)). If the defendant renews his motion for judgment of acquittal at the close of all the evidence,

however, he does not “waive his right to appeal the denial of the motion made at the close of all of the proof or to challenge the sufficiency of the convicting evidence.” Id. (internal quotations omitted).

Here, the Defendant moved for a judgment of acquittal at the end of the State’s proof. The trial court ruled immediately and denied the motion. Then, defense counsel called the Defendant to testify. The Defendant did not renew his motion for a judgment of acquittal at the close of all evidence. As such, the Defendant waived the right to appeal the denial of his motion for judgment of acquittal based on the insufficiency of the State’s evidence alone. See State v. Gilley, 297 S.W.3d 739, 763 (Tenn. Crim. App. 2008) (citing Finch, 226 S.W.3d at 317). We therefore consider the proof adduced during the State’s case-in-chief as well as the defense proof at trial in determining the sufficiency of the evidence supporting the Defendant’s conviction of DUI.

IV. Sufficiency of the Evidence. The Defendant contends that the evidence was insufficient to establish that he was driving while he was impaired. The State argues that the Defendant waived his sufficiency of the evidence argument by providing an inadequate record, which lacks body camera footage of the traffic stop. The Defendant did not file a reply brief, move to supplement the record, and he did not address waiver.

Under Rule 24(a) of the Tennessee Rules of Appellate Procedure, the appellant shall have prepared a record on appeal consisting of:

(1) copies, certified by the clerk of the trial court, of all papers filed in the trial court except as hereafter provided; (2) the original of any exhibits filed in the trial court; (3) the transcript or statement of the evidence or proceedings, which shall clearly indicate and identify any exhibits offered in evidence and whether received or rejected; (4) any requests for instructions submitted to the trial judge for consideration, whether expressly acted upon or not; and (5) any other matter designated by a party

Tenn. R. App. P. 24(a). As previously discussed, it is the duty of the defendant to prepare a record which conveys a fair, accurate and complete account of what transpired in the trial court with respect to the issues which form the basis of the criminal appeal, and that failure to prepare a complete record on appeal precludes review. State v. Ballard, 855 S.W.2d 557, 560-61 (Tenn. 1993); State v. Bunch, 646 S.W.2d 158, 160 (Tenn. 1983). Absent the necessary relevant material in the record, this court cannot consider the merits of an issue and must “conclusively presume that the ruling of the trial court was correct.” State v. Draper, 800 S.W.2d 489, 493 (Tenn. Crim. App. 1990).

Here, while the record lacks body camera footage, the same arresting officer, Trooper Burchett, testified in detail to the incident that led to the Defendant's arrest, including his observations, the field sobriety tests he administered, and the Defendant's performance. The parties also do not dispute any facts as presented in the instant appeal. Accordingly, upon reviewing the record before this court and the arguments of the parties, we conclude the record as constructed is sufficient to allow for a complete and thorough review of the legal sufficiency of the evidence claim.

The Defendant contends that the evidence at trial was insufficient for the jury to find him guilty of DUI beyond a reasonable doubt. He asserts that there was no evidence of impaired driving, which is a critical element of the DUI offense. In support, he notes that (1) he was driving below the posted speed limit; (2) the horizontal gaze nystagmus and vertical gaze nystagmus tests revealed no clues; (3) he provided an explanation that back surgeries impacted his balance which was unrebutted; and (4) the toxicology evidence did not establish impairment beyond a reasonable doubt. The Defendant asserts that the State's proof only established that he had consumed cannabis earlier that day and THC was present in his blood; it did not establish that his ability to safely operate a motor vehicle was impaired at the time he was driving.

The State asserts that the evidence was sufficient for the jury to find the Defendant guilty of DUI. The State argues that it presented evidence that Trooper Burchett smelled marijuana; the Defendant's eyes were bloodshot and red; he exhibited a lack of convergence in his right eye; he could not keep his balance and exhibited short-term memory issues; and he had body tremors and eyelid tremors. The State further argues there was a THC vape pen on his person; his bloodwork came back positive for THC; and the TBI agent testified that his behavior aligned with the tests indicating impairment.

"Because a verdict of guilt removes the presumption of innocence and raises a presumption of guilt, the criminal defendant bears the burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict." State v. Hanson, 279 S.W.3d 265, 275 (Tenn. 2009) (citing State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992)). "Appellate courts evaluating the sufficiency of the convicting evidence must determine 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" State v. Wagner, 382 S.W.3d 289, 297 (Tenn. 2012) (quoting Jackson, 443 U.S. at 319); see Tenn. R. App. P. 13(e). When this court evaluates the sufficiency of the evidence on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence. State v. Davis, 354 S.W.3d 718, 729 (Tenn. 2011) (citing State v. Majors, 318 S.W.3d 850, 857 (Tenn. 2010)).

Guilt may be found beyond a reasonable doubt where there is direct evidence, circumstantial evidence, or a combination of the two. State v. Sutton, 166 S.W.3d 686, 691 (Tenn. 2005); State v. Hall, 976 S.W.2d 121, 140 (Tenn. 1998). The standard of review for sufficiency of the evidence “‘is the same whether the conviction is based upon direct or circumstantial evidence.’” State v. Dorantes, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting Hanson, 279 S.W.3d at 275). The jury as the trier of fact must evaluate the credibility of the witnesses, determine the weight given to witnesses’ testimony, and reconcile all conflicts in the evidence. State v. Campbell, 245 S.W.3d 331, 335 (Tenn. 2008) (citing Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978)). Moreover, the jury determines the weight to be given to circumstantial evidence, and the inferences to be drawn from this evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury. Dorantes, 331 S.W.3d at 379 (citing State v. Rice, 184 S.W.3d 646, 662 (Tenn. 2006)). When considering the sufficiency of the evidence, this court “neither re-weighs the evidence nor substitutes its inferences for those drawn by the jury.” Wagner, 382 S.W.3d at 297 (citing State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997)).

The Tennessee Code defines a DUI offense, in pertinent part as follows:

It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, [] while:

(1) Under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof that impairs the driver’s ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of oneself that the driver would otherwise possess[.]

Tenn. Code Ann. § 55-10-401(1).

The Defendant does not deny that there was sufficient proof that he had used marijuana at the time of the traffic stop. However, he argues that there was insufficient evidence to show that the marijuana had *impaired* his ability to operate his vehicle, asserting that Trooper Burchett did not observe erratic, unsafe, or improper driving behavior during the approximately one and nine-tenths of a mile in which he followed the Defendant prior to initiating the traffic stop. The Defendant contends that the absence of erratic driving, coupled with the Defendant’s positive performance of several sobriety tests, negates the State’s proof of impairment. We respectfully disagree.

As an initial matter, to sustain a DUI conviction, the State is not required to prove that a defendant drove unsafely or committed a moving violation. The statutory definition instead requires proof that the defendant was “under the influence” of an intoxicant to a degree that “impairs the driver’s ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of oneself that the driver would otherwise possess.” Tenn. Code Ann. § 55-10-401(1). The impairment element thus concerns a defendant’s *condition*, not the officer’s observation of a discrete act of dangerous driving. The conduct that distinguishes DUI from other driving offenses is the defendant’s state of impairment. State v. Lawrence, 995 S.W.2d 142, 146 (Tenn. Crim. App. 1998). For the same reason, reckless driving, which requires proof of a dangerous manner of driving but does not require being under the influence of an intoxicant, is not considered a lesser-included offense of DUI. See Fournier v. State, 945 S.W.2d 766, 769 (Tenn. Crim. App. 1996).

Moreover, Tennessee law recognizes that a defendant may be impaired even while maintaining apparent control of the vehicle for a short distance. Impairment need not manifest in overt vehicular mismanagement, and jurors are not precluded from concluding that a driver’s condition falls within the statutory prohibition despite momentary adequate operation. See, e.g., State v. Lawrence, 849 S.W.2d 761, 763 (Tenn. 1993) (holding that DUI may be committed by being in physical control of a vehicle, without proof that the vehicle was in motion). This court has repeatedly upheld DUI convictions in the absence of erratic or unusual driving where other evidence established impairment. See State v. Corder, 854 S.W.2d 653, 654 (Tenn. Crim. App. 1992) (upholding a DUI conviction when the defendant was found asleep in car and no field sobriety tests were performed); State v. Brooks, 277 S.W.3d 407, 414 (Tenn. Crim. App. 2008) (upholding a DUI conviction when the defendant admitted to consuming alcohol, the officer detected an odor of alcohol, the defendant had slurred speech and bloodshot eyes, and the defendant failed a field sobriety test); State v. Lawler, No. M2012-00843-CCA-R3-CD, 2013 WL 1558022, at *3 (Tenn. Crim. App. Apr. 15, 2013) (upholding a DUI conviction when the defendant exhibited slurred speech and bloodshot eyes, was unsteady when he exited the car, the officer detected an odor of alcohol and found an open container of beer in the vehicle); State v. Dotson, No. M2015-00010-CCA-R3-CD, 2015 WL 6122863, at *5 (Tenn. Crim. App. Oct. 19, 2015) (upholding a DUI conviction when the defendant had a blood alcohol concentration of 0.22 percent, exhibited slurred speech, and had difficulty maintaining balance during field sobriety tests).

Consistent with the above framework, the absence of erratic driving is a factor the jury could consider, but it is not dispositive. In this case, the jury considered Trooper Burchett’s testimony which supplied multiple observations that, if credited, permitted a rational jury to find impairment. Trooper Burchett detected an odor of marijuana, a slight odor of alcohol, and observed the Defendant’s bloodshot eyes. The Defendant admitted it

was “possible” he had smoked marijuana earlier and demonstrated signs of divided-attention difficulty when interacting with the trooper. These observations, considered collectively, provided a foundation for proceeding to field sobriety evaluations regardless of the Defendant’s driving pattern. Moreover, Trooper Burchett testified that the Defendant’s slowed driving—first at forty-seven miles per hour and then at forty-three miles per hour in a fifty-five-mile-per-hour zone—was unusual and aroused suspicion, particularly on a four-lane highway late at night. While mere slow driving does not establish impairment, the jury was permitted to consider it as part of the totality of the circumstances.

The Defendant’s performance on the field sobriety tests also constituted substantive evidence from which a jury could infer impairment. Trooper Burchett testified that the Defendant exhibited lack of convergence, which the trooper stated is consistent with cannabis use. On the walk-and-turn test, the Defendant displayed six of eight recognized clues, including starting too soon, inability to maintain balance, stopping during the test, raising his arms, taking the wrong number of steps, and making an improper turn. On the one-leg stand, the Defendant abandoned the test within seconds due to balance loss. During the modified Romberg test, the Defendant displayed eyelid tremors and overestimated the thirty-second interval, which the trooper associated with a slowed internal clock. On the finger-to-nose test, the Defendant missed several attempts.

The jury heard the Defendant’s assertion that his back injuries and fatigue—not impairment—accounted for these results. Trooper Burchett acknowledged that such factors may affect testing but maintained that the constellation of clues was consistent with cannabis impairment. Assessing the credibility of those explanations and rejecting the Defendant’s was within the fact-finder’s province. The evidence, if accredited, supports an inference of impairment notwithstanding the absence of erratic driving.

TBI Agent Aksanov also testified that the Defendant’s blood contained 23 nanograms per milliliter of Delta-9 THC, an amount she described as “on the higher end” of results typically encountered. She further testified that other states impose per-se limits in the range of 2 to 5 nanograms per milliliter, and that the presence of 7 nanograms per milliliter of Hydroxy THC indicated recent use within hours of driving. She opined that the Defendant’s performance on the field tests, as seen on body camera footage, was consistent with impairment at these levels. This testimony, which the jury was entitled to credit, directly addressed whether the Defendant’s mental or physical faculties were impaired.

Viewed in the light most favorable to the State, this evidence was legally sufficient to permit a rational trier of fact to find beyond a reasonable doubt that the Defendant was under the influence of marijuana that impaired his ability to safely operate a motor vehicle

by depriving him of the clearness of mind and control of himself he would otherwise have possessed. Accordingly, we affirm the Defendant's conviction.

CONCLUSION

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

s/ *Camille R. McMullen*

CAMILLE R. MCMULLEN, JUDGE