

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
July 14, 2026 Session

FILED

10/19/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. CELSO VALENTIN FERTO

Appeal from the Criminal Court for Davidson County
No. 2021-A-176 Khadija Lanice Babb, Judge

No. M2024-00279-CCA-R3-CD

Defendant, Celso Valentin Ferto, appeals his convictions for two counts of aggravated sexual battery and one count of solicitation of a minor, arguing (1) the trial court erred in admitting forensic interviews pursuant to Tennessee Code Annotated section 24-7-123, (2) the admission of the forensic videos violated his rights under the Confrontation Clause, and (3) the evidence was insufficient to support his convictions. Upon our review of the entire record, the briefs and arguments of the parties, and the applicable law, we affirm the judgments of the trial court.

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

JILL BARTEE AYERS, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and TOM GREENHOLTZ, JJ., joined.

Patrick McNally (on appeal), Nashville, Tennessee, and Geoffrey Coston (at trial), Franklin, Tennessee, for the appellant, Celso Valentin Ferto.

Jonathan Skrmetti, Attorney General and Reporter; Caroline W. Weldon, Assistant Attorney General; Glenn R. Funk, District Attorney General; and Addie Askew and Addison Rogers, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

Defendant was indicted by a Davidson County grand jury for two counts of aggravated sexual battery and one count of solicitation of a minor. The victims were C.T.

and M.T.¹, granddaughters of Defendant's longtime partner. The allegations involved incidents occurring in Defendant's home and at his workplace.

Pretrial Hearings - Forensic Interviews

At a May 20, 2022 hearing, the trial court addressed several preliminary evidentiary matters concerning the State's intent to introduce forensic interviews of C.T. and M.T., and of P.T., who was not named as a charged victim.

The hearing primarily focused on the competency of the victims and whether their prior recorded statements could be presented to the jury. Defendant argued that the interview of M.T., who was three years old at the time, should be excluded because it demonstrated no meaningful level of competence. Defendant noted that M.T. was unable to answer basic questions, could not identify simple personal information, and showed no ability to provide reliable or coherent narrative responses. The State countered that despite M.T.'s young age, the interview conveyed important information about the allegations which the jury should be permitted to evaluate. The court deferred ruling until the morning of trial.

The parties agreed that C.T. and P.T., ages seven and ten at the time of their interviews, were competent witnesses. Defendant stated he had no substantial objection to the admission of P.T.'s forensic interview, describing her as the most articulate and reliable of the three witnesses. The State confirmed there was no dispute concerning P.T.'s interview, and the court indicated it would address any remaining issues on the first day of trial.

A different judge presided at the trial. Prior to trial, the trial court acknowledged that the prior judge had not entered an order on the admissibility of the forensic interviews and addressed the forensic interviews of M.T. and C.T. with Defendant's counsel:

THE COURT: [D]o you have any objection or anything to add to the -- the forensic interview of - not P.T., but the other two young ladies that are actually listed as victims in this matter?

[COUNSEL]: I think the ruling was -- and I think [the pretrial hearing judge] made the right ruling. As he stated -- and I'm going to guess you're

¹ Because it is the policy of this court to protect the identity of minor victims, we will identify them, and any relatives with the same last name, by their initials.

going to do the same thing, to wait for the children to testify to see if they authenticate -- maybe authenticate is the wrong word, but if they meet the --

THE COURT: Lay the foundation for it.

[COUNSEL]: Lay the foundation correctly for it.

....

THE COURT: Okay. All right. Thank you. So I did -- I reviewed all of the forensic interviews. And as far as any statutory requirements, they have been met aside from just laying the foundation. So I'll go ahead and grant the State's motion as it relates to the M.T. and C.T. forensic interviews.

Defendant did not object, and the parties stipulated that the forensic interviewer was qualified.

The remaining issue concerned P.T., a witness not listed as a victim. The State sought to introduce P.T.'s forensic interview, filing a Rule 404(b) notice "out of an abundance of caution" because P.T.'s statements referenced matters that could be construed as uncharged acts. The trial court noted it had reviewed the video and summarized its contents. Defendant had no objection to the admission of P.T.'s complete interview, including the hearsay portions, because he believed the interview was beneficial to his defense. The court found the probative value was not outweighed by any danger of unfair prejudice and granted the State's motion to admit P.T.'s interview.

Trial

Testimony at trial showed that during the relevant period, Defendant and his partner had been together for almost twenty years and lived with his partner's adult daughter, A.T., and A.T.'s four daughters, including P.T. and M.T. A.T. shared a bedroom with her three youngest daughters and her oldest daughter had her own bedroom. Defendant and his partner shared the remaining bedroom ("Defendant's bedroom"). Defendant's bedroom contained two beds; one used by Defendant and his partner and the other used intermittently by his partner's grandchildren. The family was very close, and A.T.'s daughters considered Defendant their grandfather and viewed him as a "parental figure," often referring to him as "[P]api or [D]addy." A.T.'s brother had a daughter, C.T., who would occasionally visit the house to play with her cousins and spend the night.

C.T.'s mother testified that in February 2020, C.T., then seven years old, reported she had attended a class at school where she learned about inappropriate touching. C.T. then told her mother Defendant had touched her and made her touch him. According to her mother, C.T. was "nervous" and "fearful" when she made the disclosure. At the time of the disclosure, it had been "some months back" since C.T. had spent the night with her cousins at Defendant's home. C.T. told her mother she had been sleeping in the second bed in Defendant's bedroom. She woke up and Defendant was watching television. When she sat up, Defendant told her to come to him. She hesitated and he told her again to come over to his bed. C.T. lay down between her grandmother and Defendant "and that's when he started touching her private parts on top of her clothes," and "he opened his zipper and took [C.T.'s] hand and put it on his private parts." Defendant then told C.T. "not to say anything" because her parents "would get very mad" and she would not be allowed to come to the house to play with her cousins anymore.

When C.T.'s father came home from work, C.T.'s mother told him what C.T. had disclosed. C.T.'s father testified that when he talked with C.T., she told him "everything" she had reported to her mother, and additionally, disclosed that Defendant had also shown her "some videos where there were people and even animals having sex" while C.T. was with Defendant at his workplace.

C.T.'s father spoke to A.T. about the allegations the following day because he was worried about his nieces who lived in Defendant's home. A.T. said she immediately asked M.T. if Defendant had touched her private parts. M.T. replied "yes" and told her mother that Defendant had "lowered her pants on the front and he had touched her "colita."² A.T. then went to the school to pick up P.T. She asked P.T. if Defendant had ever touched her private parts and P.T. said that at night "she would feel that somebody was touching her legs," but P.T. said she never saw anyone when she had those feelings. After speaking to M.T. and P.T., A.T. called the police and reported that Defendant had been touching her two minor daughters.

Sergeant Sharissa Perez of Metropolitan Nashville Police Department ("MNPd") testified that as the on-call youth services detective, she responded to A.T.'s call. When she arrived on the scene, an MNPd patrol officer was there, along with a caseworker from the Department of Children's Services ("DCS"), C.T. and her parents, M.T., P.T., and A.T. The children were sent to a separate room so Sergeant Perez could speak to the parents. Sergeant Perez noted that when she later spoke to the children, P.T. "was extremely nervous, really quiet." She added that P.T. "was hesitating before she answered. And then her answers were almost – she didn't want to come out and say things . . . directly."

² A.T. testified that M.T. referred to her vagina as her 'colita.'

After the initial statements were taken, MNPD Officer Cody Jarvis took over the investigation and forensic interviews were scheduled for all three children. Officer Jarvis was not present to observe the forensic interviews, but he later watched the recordings as part of his investigation. He testified that both P.T.'s and C.T.'s interviews were consistent with what they had reported. He was unable to comment on the consistency of M.T.'s interview with her previous statements because Defendant objected and the State withdrew the question. Officer Jarvis noted that his investigation was separate from the DCS investigation, which had been classified as "ASPS," meaning the allegations and perpetrator were substantiated. He also said that the Child Protective Investigative Team met and the case was then sent to the Davidson County Grand Jury.

C.T., age ten at the time of the trial, testified that she knew the difference between the truth and a lie. She said her cousins M.T. and P.T. lived with her grandparents and she went to their house to play and spent the night there "probably like every two months." In February 2020, she attended a class at school about safe and unsafe touching of the body. She recalled the person leading the class said "if you don't feel comfortable with somebody touching your body or doing something unnecessary, tell them to stop. If not, go to [the] nearest person to you and tell them what happened, and they'll try to help you." During that class, she remembered thinking, "Something isn't right and I need to tell my parents what happened." C.T. said "then I told my mom what happened," but gave no specific testimony about what she disclosed.

C.T. remembered "going and talking to a lady . . . about what happened." She was presented with the video recording of her forensic interview and said she watched the video the previous day. She knew it was the video she had watched because she signed her first and last name on it. She acknowledged that the video recording was of her being interviewed and describing what happened. She said she could see herself and hear her voice on the video. At that point, the State submitted that "the statutory requirements of T[ennessee] C[ode] A[nnnotated section] 24-7-123 [had] been satisfied," and requested permission to show the video to the jury. Defendant did not object and responded, "I believe they have met those requirements." The video recording was played for the jury.

C.T. told the interviewer that during a sleepover at Defendant's house, C.T. was sleeping with P.T. She woke up and sat up in bed, and Defendant told her to come to him. She did so, but she put her hands behind her back. Defendant "took off his belt" and "grabbed" her hand. She "kept it strong" because she "didn't know what he was going to do." Defendant "grabbed her hand," and "put it on his private part"; C.T.'s hand was touching "his skin," and his private part felt "weird." Defendant also touched her private part over her pajamas. C.T. said Defendant was "moving" his hand by "closing and opening, closing and opening."

C.T. described a second incident when she had gone to Defendant's workplace. P.T. was there working with their grandmother. Defendant was in a car and asked C.T. to come with him. While she was in the car with him, Defendant asked her if she wanted to touch his private part, but she said "no." Defendant also asked C.T. if he could touch her "boobs" when she grew up, and when she said "no," Defendant asked if he could touch them "a little bit."

After the video was played, C.T. confirmed she told the truth during her interview. She said before the class at school she knew that Defendant touching her was wrong, and she was "kinda disappointed" in herself for not telling anyone. She did not tell anyone "because [she] really liked being with [her] cousins and [she] always wanted to be with them to play." Defendant told her that if she told anyone, she would not be allowed to come over to play with her cousins. She said she had not been able to be with them since she told her mother that Defendant touched her. She maintained she always told the truth to the police officers who asked her questions about the incident and no one had told her what to say during her interview.

P.T. testified that when she lived with Defendant, she shared a room and slept with her mother. Sometimes, she would sleep in Defendant's bedroom, but in a separate bed. She admitted that in February 2020, her mother asked her if someone had touched her and that she had replied "yes," but said nothing more. P.T. then identified her forensic interview video. She had watched it the previous day and knew it was the same video because she had "put [her] letters" on it. She confirmed that she saw herself and heard her voice on the video and acknowledged that she was talking about the things that brought the police to her house in February 2020.

The video of P.T.'s forensic interview was played for the jury without objection. In it, P.T. said she told her mother Defendant had not touched her. She did not know whether he had touched her sisters but said that M.T. had told her Defendant touched M.T.'s private part. P.T. said she did not think Defendant would do that and denied Defendant had ever touched her inappropriately. However, she said she sometimes felt like someone was touching her while she slept.

After the video was played, P.T. admitted she did not want Defendant to get into trouble, and she was afraid "something would happen to him." On cross-examination, P.T. said when her mother asked if someone had touched her, she had replied "no." She reiterated that Defendant had never touched her. On redirect, she could not recall whether she told her mother that she sometimes felt like someone was touching her when she was asleep.

M.T. was six years old at the time of the trial. After a few preliminary questions, the following exchange with the State occurred:

Q. M.T., do you remember watching a video yesterday?

A. A little bit.

Q. A little bit, okay. Do you remember sitting downstairs with Lucy, yes or no?

A. Yes.

Q. And did she put a video into the computer?

A. Yes.

Q. And could you see yourself talking on the video?

A. Yes.

Q. And after you watched that video, did you write your name on this disk?

A. Yes.

Q. Was that right there where you wrote it?

A. Yes.

Q. And this is the video where you're talking?

A. Yes.

Q. Can you see yourself on the video?

A. Yes.

Q. Can you hear your voice on the video?

A. Yes.

The State then asserted it had met the statutory requirements and requested permission to play the video of M.T.'s forensic interview for the jury. Defendant objected, and at a jury-out hearing on the matter, the following exchange occurred:

THE COURT: All right. [Counsel], what is your objection?

[COUNSEL]: First of all, I believe she had to be led through the process of even identifying the video. And it's required that the child testifies under oath that the offered video recording is a true and correct video of the events contained in the video recording and the child is available for cross[-]examination. Clearly, she's available for cross[-]examination, but I haven't heard her say anything – she stated that she had seen the video yesterday and made an initial on the video. So all she's testified to is having seen the video yesterday. The rest of number one³ is not met.

³ Trial counsel appears to be referring to the statutory requirement under T.C.A. § 24-7-123(b)(1).

Second, the video recording is shown to the reasonable satisfaction of the Court in a hearing conducted pretrial -- we're doing it now -- to possess particularized guarantees of trustworthiness. In determining whether a statement possesses particular guarantees of trustworthiness, the Court shall consider the following factors, the mental, physical age and maturity --

STATE: Your Honor, I would interject real quick and say that's already been ruled on pretrial by [pretrial hearing judge].

[COUNSEL]: He ruled that it was a child -- that the interviewer was qualified and the association was qualified. I don't believe that there is a ruling about finding that the child -- that it possesses guarantees of trustworthiness.

THE COURT: It was my understanding, when we had this -- even when I did the hearing again that you had agreed that the statutory factors had been met aside from the State laying the foundation.

[COUNSEL]: Well, I consider this the foundation.

THE COURT: Okay. And the foundation being that she's -- the child testifies under oath that the offered -- because the video recording has already been shown to the Court. I've reviewed it in a hearing conducted pretrial. And I reviewed it and find that it does guarantee trustworthiness. And you agreed to that. You didn't object to her particular interview. And now, we're here in the foundation stage to determine whether the video that's being offered is a true and correct recording of the events contained in the video recording and the child is available for cross[-]examination.

....

THE COURT: Okay. So is the issue competency with Ms. M.T.?

[COUNSEL]: I think that is part of it, but it's -- the problem is the child testifies under oath that the offered video recording is true and correct. It doesn't say that the video is a true and correct rendition of the events. It says the child testifies under oath that the offered video recording is true and correct. And you heard, as she was walking up to the stand, she said I don't remember.

THE COURT: Well, we hadn't even gotten her sworn in yet. And she -- and now, she is sworn in. I think -- General [], are you able to lay a foundation that she understands between telling the truth and telling a lie?

Still outside the presence of the jury, the State and the court then questioned M.T. about her ability to distinguish between the truth and a lie. Upon establishing that M.T. knew the difference, the court asked, "So on the video that you watched, did you tell things that happened or did not happen," to which M.T. replied, "That did happen." The court then allowed Defendant to question M.T. further.

Q. Do you remember watching that video yesterday?

A. Yes. Yes, a little.

Q. Okay. What was in the video?

A. I don't remember.

Q. Okay. Who was in the video?

A. Me.

Q. Do you remember what you told -- said in the video?

A. No.

The jury-out hearing continued with the following exchange:

THE COURT: I think foundationally, I think with her saying that it was her in the video and I believe that she said -- because some of us can't remember what we ate yesterday for dinner. I don't know, but I don't think that's an appropriate . . .

[COUNSEL]: I'm not going to be able to do a cross[-]examination obviously. I'm -- and the -- not only this rule, but the Constitution gives a right to a cross[-]examination. And the cross[-]exam -- nobody was there to cross[-]examine her in the video. And the rule contemplates that we should be able to have a meaningful and constitutional cross[-]examination of what she said in the video. And it's clear to me that I'm not going to be able to do any kind of cross[-]examination.

THE COURT: I mean, I believe that she said it's her in the video. I don't believe that whether or not she remembers everything that was said in the video is -- if you would like, we play the video. And as you're doing your cross[-]examination, if you want to replay parts of it. Although that might take time. If you want to replay a particular part and ask her about that

part, then I would allow us to do it that way so that you can cross[-]examine her.

[COUNSEL]: But what if her answer to everything is I don't remember? I mean, that's no cross[-]examination at all.

THE COURT: We don't -- I understand, but we don't -- I don't have the ability to determine if that's what's going to happen at this time. I think that it would be appropriate to ask if she -- at the end of the video, if she told the truth or not and proceed in that manner.

[COUNSEL]: Is that your ruling?

THE COURT: That's going to be my ruling. I'm going to allow that -- I do find that it meets the statutory requirements of 24-7-123 and that the foundation has been laid.

The video of M.T.'s forensic interview was then played for the jury. M.T. was three years old at the time of the interview and answered questions in Spanish. There were times when the interpreter was unable to understand what M.T. was saying and had to have her repeat her answers. M.T. said "My [P]api touched my colita" but she did not indicate when or how he touched her. She said when he touched her, he "took down [her] underwear." She also said Defendant did "ugly things," but did not elaborate further. She shook her head 'no' when asked if Defendant had ever asked her to touch his body.

On direct examination, M.T. testified that she told the truth in the forensic interview, except that she "didn't go to the school -- the school for four-year olds" and her mom, not her sister, brought her to the interview. She said everything else was true. On cross-examination, M.T. said she did not remember in the video where she said that Defendant does ugly things. When asked if he does ugly things, she said, "Sometimes because, when he touched me, my colita." She denied that anyone had told her to say Defendant had touched her colita; she remembered him doing so and said it happened in the bedroom. She said she learned at school that no one gets "to touch [her] body."

Denise Alexander, a social worker with the Our Kids Center at Nashville General Hospital, testified that she spoke with C.T. and P.T. as part of their medical evaluations and collected information for reports she completed and submitted to DCS and MNPd. Those reports were admitted into evidence. She did not speak to M.T. due to her young age.

Ms. Alexander said C.T. reported that Defendant had touched her private part over her clothes. C.T. also told medical providers at Our Kids that “[P.T.] felt like someone was touching her and [M.T.] said [Defendant] put his private on her private.” C.T. declined a physical examination and based on the allegation that Defendant touched her with his hand over her clothes, it was determined that a physical examination was unnecessary.

When Ms. Alexander initially spoke with P.T., P.T. said she would do the interview in English. However, when Ms. Alexander asked P.T. if anyone had ever touched her private part, P.T. hesitated before saying “no.” She then said she had to say something “but only knew how to describe it in Spanish.” An interpreter was then brought in to assist with the interview. P.T. said “when I am sleeping, I feel like someone is touching me. I wake up quickly and I see my dad walking toward his bed.” She clarified that when she said “dad” she was referring to Defendant. P.T. reported that Defendant’s bed was in the room where she slept. She said she had never seen Defendant touch her, but she sometimes felt a hand under her blanket.

After the State’s case in chief and outside the presence of the jury, the trial court entered specific findings on the record regarding the admissibility of M.T.’s forensic interview.

[B]efore we get to the jury instructions and -- I just wanted to make something clear on the record regarding the forensic interviews that I let in. So yesterday, three forensic interviews were introduced as substantive evidence pursuant to Tennessee Code Annotated Section 24-7-12[3].

Based on my viewing of the record from May the 20th when this case was originally set, this Court believes that [counsel] and the State agreed that the forensic interview for M.T. and C.T. met the statutory requirements for particularized guarantees of trustworthiness. Yesterday, [counsel] . . . objected to the interview coming in for M.T. based on the fact that he believed that she did not state that the video recording was true and accurate and that there would be a possibility that he would not be able to effectively cross[-]examine her on behalf of his client.

And I just want to put on the record that I did -- although I do -- it’s the Court’s opinion that you all agreed that there were particularized guarantees of trustworthiness and the only thing that was left to address by this Court during trial was laying the foundation. But I just want to put on the record the particular guarantees of trustworthiness that I actually saw even though I do believe that you all agreed

So I want to put on the record that, first, it's the Court's position that, when M.T. testified at trial, that she testified that her statement on the forensic interview recording was true. She testified that she had previously watched a tape and initialed the DVD cover after watching it. And she testified it was her on the tape and that she told the truth.

Second, in preparation for the pretrial hearing regarding the State's pretrial motion regarding the admissibility of the forensic interview tapes, the Court reviewed M.T.'s forensic interview. And this Court made the following findings in determining whether the interview possessed particularized guarantees of trustworthiness.

This Court finds that the manner in which M.T.'s interview was conducted was reliable. This Court finds that the video recording of the interview is an accurate recording of the interview. The Court finds that extrinsic evidence exists that shows the Defendant had the opportunity to commit the alleged crimes that M.T. complained of in her forensic interview. And the Court found no apparent motive for M.T. to falsify or distort the event or to lie about the Defendant who she considered her grandfather and referred to as [P]api. The Court finds that the timing of M.T.'s statements weighs in favor of trustworthiness. The Court finds that, with M.T.'s young age and lack of knowledge and experience, that it is unlikely that she fabricated her statement that the Defendant pulled down her pants and touched her colita.

It's the Court's opinion that these statutory factors support the trustworthiness of M.T.'s forensic interview, that the Defense and the State had agreed that the statutory requirements for trustworthiness did exist before and that the State was just required to lay the foundation. And these are the reasons that the Court admitted M.T.'s forensic interview tape into evidence pursuant to T.C.A. 24-7-123.

The State rested and Defendant proceeded with his proof. His partner, M.E., who was the grandmother of C.T., M.T., and P.T., testified that she and Defendant had been in a relationship for twenty-two years and that the two of them worked together every day. She confirmed that C.T. spent the night at their house "two or three times a year" and on those occasions, C.T. and P.T. would sleep in the extra bed in her and Defendant's bedroom. She insisted Defendant was never alone with the girls. She maintained the abuse "could not have happened" because she was awake with the girls until they went to bed. She claimed she would have felt something if C.T. had gotten into bed with her and

Defendant because she is a “light sleeper.” M.E. also said that in the summer of 2019, C.T. went to work with her every day because “they didn’t have anywhere to leave her.” Again, she repeated that Defendant was never alone with C.T. at the workplace.

On cross-examination, M.E. agreed that P.T. “had an especially close relationship” with Defendant. M.E. also said she believed the victims’ medical examinations cleared Defendant of any wrongdoing because there was no physical evidence of abuse. When asked if she thought C.T. was lying, M.E. said, “I don’t know really” and suggested there were family problems involving C.T.’s mother.

Defendant testified and denied touching C.T., M.T., and P.T. He said he was never alone with the girls; M.E. was always present. Defendant and M.E. worked together painting and cleaning and usually took one car to work. If they ever drove two cars, C.T. would ride with M.E. He denied C.T. was ever in the car alone with him. When C.T. came to the workplace with them, P.T. would be there too, and the girls were always together. C.T. only came to their house a couple of times a year. Defendant said the girls would only sleep in the extra bed in the bedroom he shared with M.E. “when they [felt] bad or they [were] afraid.” However, he admitted that when C.T. spent the night, she and P.T. would sleep in the extra bed in Defendant and M.E.’s room.

On cross-examination, Defendant agreed that C.T. and M.T. had been truthful about everything else, but he did not know why they were lying about the abuse. He insisted he never touched the girls and said he did not know why they would say he did. Defendant reasoned that C.T. may have felt some pressure because Defendant had heard C.T.’s mother say “if [C.T.] didn’t say whatever she told her, she would kick dad out.” Defendant admitted he did not disclose this during his police interview, and that the first time he had made that accusation was during his trial testimony. Finally, Defendant clarified that when he said he had never been alone with the girls, he meant he had never been alone with only one of them at a time. There had been occasions when he was the only adult with more than one of the girls together.

Based on this evidence, the jury convicted Defendant on all counts as charged, and the trial court imposed an effective eight-year sentence. Defendant filed a timely motion for new trial arguing the court “erred by admitting the video of the forensic interviews of [C.T.] and [M.T.]. At the motion for new trial hearing, Defendant claimed that M.T. failed to authenticate her forensic interview and that it lacked particularized guarantees of trustworthiness. The trial court denied the motion for new trial and Defendant timely appealed.

Analysis

On appeal, Defendant argues that (1) the evidence was insufficient to support his convictions; (2) the trial court erred in admitting the forensic interviews of C.T. and M.T. pursuant to Tennessee Code Annotated section 24-7-123; and (3) admission of the forensic interviews violated his rights under the Confrontation Clause. He further argues that the erroneous admission of the interviews requires reversal of all three convictions. We address the evidentiary issues before turning to Defendant's constitutional and sufficiency claims.⁴

I. Admission of Forensic Interviews

Defendant argues that the trial court erred in admitting the forensic interviews of C.T. and M.T. claiming the statutory requirements of Tennessee Code Annotated section 24-7-123 were not satisfied. Specifically, he contends neither C.T. nor M.T. testified under oath that the videos of their forensic interviews were “a true and correct recording of the events contained in the video recording,” and the trial court failed to make factual findings that the interviews possessed sufficient “particularized guarantees of trustworthiness” as required by the statute. The State asserts that the trial court properly admitted the videos after making the required statutory findings.

Pursuant to Tennessee Code Annotated section 24-7-123, a video recording of a forensic interview of a child under the age of thirteen where the child describes any act of sexual contact performed with or on the child by another may be admitted as substantive evidence if certain requirements are met. T.C.A. § 24-7-123(a). The interview “may be considered for its bearing on any matter to which it is relevant in evidence” at the trial of the defendant. *See id.* The video recording “may” be admitted if:

- (1) The child testifies, under oath, that the offered video recording is a true and correct recording of the events contained in the video recording and the child is available for cross[-]examination;
- (2) The video recording is shown to the reasonable satisfaction of the court, in a hearing conducted pretrial, to possess particularized guarantees of trustworthiness. In determining whether a statement possesses particularized guarantees of trustworthiness, the court shall consider the following factors:
 - (A) The mental and physical age and maturity of the child;
 - (B) Any apparent motive the child may have to falsify or distort the event, including, but not limited to, bias or coercion;

⁴ We have reordered Defendant's issues for clarity.

- (C) The timing of the child's statement;
- (D) The nature and duration of the alleged abuse;
- (E) Whether the child's young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;
- (F) Whether the statement is spontaneous or directly responsive to questions;
- (G) Whether the manner in which the interview was conducted was reliable, including, but not limited to, the absence of any leading questions;
- (H) Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement;
- (I) The relationship of the child to the offender;
- (J) Whether the equipment that was used to make the video recording was capable of making an accurate recording; and
- (K) Any other factor deemed appropriate by the court;

Id. § 24-7-123(b)(2)(A)-(K). The statute requires additional findings regarding the forensic interviewer. *Id.* § 24-7-123(b)(3)⁵. The parties stipulated to those requirements, and they are not at issue on appeal. A trial court must make specific findings of fact on the record explaining its ruling regarding the admissibility of the forensic interview. *Id.* § 24-7-123(d).

“Generally, the admissibility of evidence rests within the trial court’s sound discretion, and the appellate court does not interfere with the exercise of that discretion unless a clear abuse appears on the face of the record.” *State v. Franklin*, 585 S.W.3d 431, 448 (Tenn. Crim. App. 2019) (citing *State v. McCoy*, 459 S.W.3d 1, 8 (Tenn. 2014)). A trial court abuses its discretion when it applies “an incorrect legal standard or reaches a conclusion that is ‘illogical or unreasonable and causes an injustice to the party complaining.’” *State v. Lewis*, 235 S.W.3d 136, 141 (Tenn. 2007) (quoting *State v. Ruiz*, 204 S.W.3d 772, 778 (Tenn. 2006)). When a trial court fails to make complete factual findings on the record as required by Tennessee Code Annotated section 24-7-123(d), this court may conduct a de novo review. *State v. Rodriguez*, No. W2022-00894-CCA-R3-CD, 2023 WL 3296376, at *3 (Tenn. Crim. App. May 8, 2023); *see also*, *State v. Lovin*, No. E2021-00705-CCA-R3-CD, 2022 WL 3078579, at *7-8 (Tenn. Crim. App. Aug. 3, 2022); *State v. Tyler*, No. W2015-00161-CCA-R3-CD, 2016 WL 1756419, at *6 (Tenn. Crim. App. Apr. 29, 2016).

⁵ The statute has been amended to allow forensic interviewers to authenticate the video recording but that has no bearing on our opinion.

Admission of M.T.'s Forensic Interview

Defendant first argues that M.T. did not authenticate the recording of her forensic interview as required by section 24-7-123(b)(1). We disagree. The statute does not prescribe particular words the child must use. Rather, the child's testimony, considered as a whole, must establish under oath that the offered recording is a true and correct recording of the events depicted. *See* T.C.A. § 24-7-123(b)(1).

Before M.T.'s forensic interview recording was played for the jury, M.T. testified under oath that she had watched the video the previous day, recognized herself talking in it, could see herself and hear her voice, and wrote her name on the disc after watching it. During the jury-out hearing, M.T. again identified herself as the person in the video. After the trial court established that M.T. understood the difference between the truth and a lie, it asked whether the video showed her describing things that happened or did not happen. M.T. responded, "That did happen." M.T.'s testimony sufficiently established that the offered recording was a true and correct recording of her forensic interview. Her inability to recall all the details of the interview did not negate her authentication of the recording. Any issues with her memory bore on the weight and credibility of her account, not her authentication of the recording. *See State v. Blackwell*, No. W2018-01233-CCA-R3-CD, 2019 WL 2486228, at *7 (Tenn. Crim. App. June 13, 2019) (concluding that the victim had properly authenticated the video, despite testifying on cross-examination that she did not remember the interview, because she testified that she had recently watched the video, recognized herself in the video, and she had told the truth when she answered questions on the video).

This case is distinguishable from *State v. Stegall*, upon which Defendant relies. In *Stegall*, the forensic interview recording was played for the jury before the victim testified, and the victim "did not at any time, under oath, testify before the video was played for the jury that the offered video was a true and correct recording of the events contained in the video." No. W2022-00628-CCA-R3-CD, 2023 WL 6319610, at *7 (Tenn. Crim. App. July 14, 2023), *reh'g denied* (Sept. 27, 2023). Here, before the video was played, M.T. testified that she watched the recording the previous day and signed her name on the video, she identified herself in the recording, and affirmed that the video showed her talking about things that happened. On this record, the requirements of subsection (b)(1) were satisfied.

Defendant next argues that the trial court's findings regarding particularized guarantees of trustworthiness were incomplete and unsupported. Prior to trial, the court addressed the admission of the forensic interviews with the parties noting that the prior judge had not entered an order on the pretrial ruling and that it wanted to clarify the status on the record. The trial court clarified that it had reviewed all of the forensic interviews

and that “as far as any statutory requirements, they have been met aside from just laying the foundation.” Defense counsel agreed that the prior judge had made the “right ruling” and that they would “wait for the children to testify to see if they authenticate” the recordings.

During M.T.’s testimony, Defendant objected to the admissibility of her video on the authentication issue discussed above and also raised concern with the “particularized guarantees of trustworthiness,” reciting the statutory factors the trial court is required to consider in making that determination. The State argued that determination had already been ruled on pretrial and the trial court noted, “[E]ven when I did the hearing again that [defense counsel] had agreed that the statutory factors had been met aside from the State laying the foundation. The court clarified that it had reviewed the video in a pretrial hearing and found that it did guarantee trustworthiness and that defense counsel did not object. Defense counsel then argued that “the problem is the child testifies under oath that the offered video recording is true and correct. It doesn’t say that the video is a true and correct rendition of the events. . . . And you heard, as she was walking up to the stand, she said I don’t remember.” After questioning the witness and determining that she knew the difference between the truth and a lie and further questioning by defense counsel about the recording of the interview, the trial court ruled that the video met the statutory requirements and that the witness authenticated the video.

After the State closed its proof and outside the presence of the jury, the trial court clarified that it watched M.T.’s recorded forensic interview and based on its reading of the prior record and its pretrial hearing with the parties it understood that both parties agreed the statutory requirements of particularized guarantees of trustworthiness had been met. Nevertheless, it then put on the record the factors it found in support of the guarantees of trustworthiness including the manner in which the interview was conducted, evidence showing Defendant’s opportunity to commit the alleged crimes, finding no motive for M.T. to lie about the crimes, the timing of M.T.’s statements, and the fact that due to M.T.’s young age, it was unlikely she fabricated the specific allegation that Defendant pulled down her pants and touched her.

The record shows that when defense counsel objected to the admission of M.T.’s forensic video, the trial court responded: “And I reviewed [the recording of M.T.’s forensic interview] and find that it does guarantee trustworthiness. And you agreed to that. You didn’t object to her particular interview.” Defense counsel then questioned M.T.’s competency and his ability to cross-examine her; he made no other objection or comments about the trustworthiness of the video nor did he dispute the trial court’s statement that he had agreed to same.

However, even if the record does not clearly establish that the parties reached a pretrial stipulation regarding the trustworthiness of the recording of M.T.'s forensic interview, under a de novo review, we conclude the record establishes that the recording possessed particularized guarantees of trustworthiness. M.T. was nearly four years old when she was interviewed. Her age and limited maturity were evident in the recording, including her short answers and occasional difficulty being understood. Those circumstances did not render the interview inherently unreliable. M.T. described Defendant pulling down her underwear and touching her "colita," a term her mother testified M.T. used for her vagina. The sexual nature of that description was beyond the ordinary knowledge and experience of a child her age and weighed in favor of trustworthiness. *See* T.C.A. § 24-7-123(b)(2)(A), (E). M.T. made the statement shortly after her mother questioned her following C.T.'s disclosure.

The recording shows that M.T.'s answers were responsive to the interviewer's questions, and the trial court, after reviewing the recording, found the manner of the interview reliable. Nothing in the record suggests that the interviewer supplied the allegation or coerced M.T. Nor was there evidence that M.T. had a motive to falsely accuse Defendant, whom she regarded as a grandfather and called "[P]api." The proof established that M.T. lived in Defendant's home and sometimes slept in the extra bed in Defendant's bedroom, providing Defendant with the opportunity to commit the offense. *See id.* § 24-7-123(b)(2)(B)-(D), (F)-(I). The trial court also found that the video accurately recorded the interview, and Defendant does not identify any evidence that the recording equipment was incapable of doing so or that the recording was altered or incomplete. *See id.* § 24-7-123(b)(2)(J), (b)(4)-(6). Finally, the parties stipulated to the forensic interviewer's qualifications. *See id.* § 24-7-123(b)(3).

Defendant emphasizes that the interpreter could not understand portions of M.T.'s Spanish-language answers and that M.T. later had difficulty recalling or understanding portions of the recording. These circumstances were fully apparent to the jury and provided grounds for cross-examination; they did not overcome the factors supporting the reliability of the manner in which the interview was conducted. Although section 24-7-123 contemplates a pretrial determination on the guarantees of trustworthiness, any deficiency in the timing or completeness of those findings is cured by our de novo review. *See Lovin*, 2022 WL 3078579, at *8; *Tyler*, 2016 WL 1756419, at *6. We conclude that M.T.'s forensic interview was properly admitted.

Admission of C.T.'s Forensic Interview

Defendant concedes that he did not object when the State moved to admit C.T.'s forensic interview and instead told the trial court, "I believe they have met those requirements." He nevertheless asks this court to review the admission of the recording

for plain error. *See* Tenn. R. App. P. 36(b). The record, however, reflects more than a failure to make a contemporaneous objection. Before trial, trial counsel agreed that the statutory requirements had been satisfied except for the witnesses laying the necessary foundation. Then, after C.T. identified the recording at trial, trial counsel expressly agreed that the State had met the requirements for its admission. Thus, Defendant, through counsel, affirmatively agreed to the admission of the recording.

Decisions concerning which evidentiary objections to raise and which agreements to make regarding the admission of evidence are ordinarily tactical decisions that counsel may make on a defendant's behalf. *New York v. Hill*, 528 U.S. 110, 115 (2000). Accordingly, this court will not review an issue for plain error when a defendant affirmatively waived it instead of merely failing to object. *State v. Wyrick*, 62 S.W.3d 751, 768 (Tenn. Crim. App. 2001) (citing *State v. Adkisson*, 899 S.W.2d 626, 641 (Tenn. Crim. App. 1994)); *see also State v. Gordon*, No. W2025-00506-CCA-R3-CD, 2026 WL 1383117, at *8-9 (Tenn. Crim. App. May 18, 2026), *perm. app. filed*. Nor may a party obtain relief from an error that the party invited or induced the trial court to make. *State v. Garland*, 617 S.W.2d 176, 186 (Tenn. Crim. App. 1981); *see* Tenn. R. App. P. 36(a).

Defendant also makes the same argument about C.T.'s interview that he made about M.T.'s—that the trial court failed to make adequate findings concerning the trustworthiness of the recording. However, again, because Defendant affirmatively agreed to the admissibility of C.T.'s recorded forensic interview at trial, he is not entitled to relief. Defendant cites no authority requiring a trial court to disregard counsel's representation that the statutory requirements have been met and to make an independent assessment of those same requirements before accepting the agreement. *See Gordon*, 2026 WL 1383117, at *9. Because Defendant affirmatively agreed that C.T.'s forensic interview satisfied the statutory requirements for admission, he has waived appellate review of the issue.

II. Confrontation Clause Violation

Defendant next argues that admission of the forensic interviews violated his rights under the Confrontation Clause because the victims did not authenticate the recordings and M.T.'s limited memory prevented meaningful cross-examination. The State responds that Defendant waived plenary review by failing to identify a confrontation claim in his motion for new trial and that, waiver notwithstanding, both victims testified and were available for cross-examination.

Defendant objected at trial to M.T.'s interview on confrontation grounds, but his motion for new trial alleged only the broad claim that the trial court erred by admitting

the interviews of C.T. and M.T. However, we need not decide whether that language preserved his constitutional theory because the claim fails even under plenary review.

The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI. Article I, section 9 of the Tennessee Constitution likewise affords an accused the right “to meet the witnesses face to face.” Whether the admission of evidence violates the right of confrontation is a question of law that we review de novo. *McCoy*, 459 S.W.3d at 12-13; *Lewis*, 235 S.W.3d at 141-42.

The statutory and constitutional inquiries are linked in this context because Tennessee Code Annotated section 24-7-123(b)(1) makes the child’s availability for cross-examination an express condition of admissibility. Under subsection (b)(1), a forensic interview may be admitted only if “[t]he child testifies, under oath, that the offered video recording is a true and correct recording of the events contained in the video recording *and* the child is available for cross[-]examination.” T.C.A. § 24-7-123(b)(1) (emphasis added). As our supreme court explained, a child’s forensic interview may be admitted consistently with both the statute and the right of confrontation only when the child first authenticates the recording and then appears for cross-examination at trial. *McCoy*, 459 S.W.3d at 15-16.

When a declarant appears at trial and is subject to cross-examination, the Confrontation Clause ordinarily places no limitation on the use of the declarant’s prior testimonial statements. *Crawford v. Washington*, 541 U.S. 36, 59 n.9 (2004); *State v. Dotson*, 450 S.W.3d 1, 64 (Tenn. 2014). The constitutional guarantee secures an opportunity for effective cross-examination; it does not guarantee cross-examination that is effective “in whatever way, and to whatever extent,” the defense desires. *United States v. Owens*, 484 U.S. 554, 559 (1988). Accordingly, the opportunity for cross-examination is the key consideration in determining whether a child witness is available under both the Confrontation Clause and section 24-7-123(b)(1). *State v. Ruzicka*, No. W2023-00134-CCA-R3-CD, 2024 WL 3387294, at *12 (Tenn. Crim. App. July 12, 2024) (citing *State v. McMillan*, No. E2020-00610-CCA-R3-CD, 2022 WL 855262, at *12 (Tenn. Crim. App. Mar. 23, 2022)).

Both components of subsection (b)(1) were satisfied here. As we have previously concluded, C.T. and M.T. authenticated their respective video recordings before they were played for the jury. Both victims then remained on the witness stand and were subject to cross-examination. Defendant is correct that availability for cross-examination, standing alone, would not cure a failure to authenticate; the statute requires both. But there was no missing authentication requirement to cure. Defendant questioned C.T. regarding the circumstances of the offenses and used the forensic

interview to challenge her account. He questioned M.T. extensively about her memory, her recorded statements, whether she understood portions of the recording, and whether anyone told her to accuse Defendant. Defendant also replayed a portion of the recording and asked M.T. about the specific statement.

M.T.'s inability to recall every detail did not make her unavailable for cross-examination under subsection (b)(1) or deprive Defendant of the opportunity for effective cross-examination. *See Owens*, 484 U.S. at 559-60. Defendant's reliance on Tennessee Rule of Evidence 804(a)(3) conflates unavailability for purposes of the hearsay exceptions in Rule 804 with availability for cross-examination under section 24-7-123(b)(1) and the Confrontation Clause. M.T. took the witness stand, answered counsel's questions, and was available to explain or defend her prior statements. Indeed, Defendant used her lack of memory and inconsistent answers to impeach her and emphasized those weaknesses during closing argument. Because both victims authenticated the recordings and were available for cross-examination, admission of the interviews satisfied both requirements of Tennessee Code Annotated section 24-7-123(b)(1) and did not violate Defendant's confrontation rights. *See McCoy*, 459 S.W.3d at 15-16. Defendant is not entitled to relief.

III. Sufficiency of the Evidence

When evaluating the sufficiency of the evidence on appeal, the relevant question is whether "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 v. Virginia*, 443 U.S. 307, 319 (1979)); *see* Tenn. R. App. P. 13(e). The State is entitled to the strongest legitimate view of the evidence presented at trial and to all reasonable and legitimate inferences that may be drawn from the evidence. *State v. Gibson*, 506 S.W.3d 450, 458 (Tenn. 2016). This court will not reweigh or reevaluate the evidence, and it may not substitute its inferences drawn from circumstantial evidence for those drawn by the trier of fact. *State v. Davis*, 466 S.W.3d 49, 70 (Tenn. 2015). A jury's verdict of guilt, approved by the trial court, resolves conflicts of evidence in the State's favor and accredits the testimony of the State's witnesses. *State v. Smith*, 436 S.W.3d 751, 764 (Tenn. 2014). "Questions concerning the credibility of witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997).

A guilty verdict replaces the presumption of innocence with one of guilt, and on appeal, the burden of demonstrating that the evidence is insufficient to support the conviction is on the defendant. *State v. Cole*, 155 S.W.3d 885, 897 (Tenn. 2005). This standard of review applies to guilty verdicts based upon direct or circumstantial evidence.

State v. Dorantes, 331 S.W.3d 370, 379 (Tenn. 2011) (citing *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)). In *Dorantes*, our supreme court held that “direct and circumstantial evidence should be treated the same when weighing the sufficiency of such evidence.” *Id.* at 381.

Defendant was convicted in counts one and three of aggravated sexual battery. As charged in this case, aggravated sexual battery is “unlawful sexual contact with a victim by the defendant or the defendant by a victim” when the victim is less than thirteen years old. T.C.A. § 39-13-504(a)(4) (2018). “Sexual contact” includes the intentional touching of the victim’s, the defendant’s, or any other person’s intimate parts, or the clothing covering the intimate parts, if the touching can reasonably be construed as being for the purpose of sexual arousal or gratification. *Id.* § 39-13-501(6). “Intimate parts” include the primary genital area and groin. *Id.* § 39-13-501(2).

Viewed in the light most favorable to the State, the evidence was sufficient to support Defendant’s conviction in count one for aggravated sexual battery of C.T. C.T. stated in her forensic interview that, while she was sleeping in the extra bed in Defendant’s bedroom, Defendant called her to his bed, grabbed her hand, and placed it on his exposed genitalia. She also said Defendant moved his hand over her private part on top of her pajamas. C.T. was seven years old at the time. Her account was consistent with her initial disclosures to her parents, and the sleeping arrangements corroborated by other witnesses established Defendant’s opportunity to commit the offense. Despite Defendant’s and M.E.’s denial that Defendant was ever alone with C.T., and M.E.’s claim that she would have awakened had someone else been in bed with them, Defendant admitted that C.T. slept in the extra bed in his bedroom and that he had been the only adult present with the victims on some occasions. The jury heard and rejected the defense proof. We will not reassess that credibility determination on appeal. *See Bland*, 958 S.W.2d at 659.

The evidence was likewise sufficient to support Defendant’s conviction in count three for aggravated sexual battery of M.T. In her forensic interview, M.T. said Defendant pulled down her underwear and touched her “colita.” M.T.’s mother explained that M.T. used that word to refer to her vagina. At trial, M.T. again testified that Defendant touched her colita in the bedroom and denied that anyone had told her to make the accusation. M.T.’s mother testified that M.T. made a similar disclosure when first asked whether Defendant had touched her. The jury was aware of M.T.’s age, her inability to remember portions of the interview, and the inconsistencies Defendant identifies on appeal. Those matters concern credibility and the weight of the evidence, which were questions for the jury. *See Smith*, 436 S.W.3d at 764. The absence of physical evidence does not render the proof insufficient. The testimony of a victim, standing alone, is generally sufficient to support a conviction, and the inconsistencies

here were not so improbable or unsatisfactory as to create reasonable doubt as a matter of law. *See State v. Elkins*, 102 S.W.3d 578, 582-83 (Tenn. 2003).

Defendant was convicted in count two of solicitation of a minor. As relevant here, a person eighteen years of age or older commits the offense by intentionally commanding, requesting, hiring, persuading, inviting, or attempting to induce a person whom the person knows, or should know, is less than eighteen years old to engage in conduct that, if completed, would constitute aggravated sexual battery. T.C.A. § 39-13-528(a)(4) (2018). It is not a defense that the solicitation was unsuccessful. *Id.* § 39-13-528(b).

C.T. stated that, while she was alone with Defendant in his car at his workplace, Defendant asked whether she wanted to touch his private part. When she refused, he asked whether he could touch her breasts when she grew up and then whether he could touch them “a little bit.” C.T. was seven years old. Her father testified that C.T. disclosed that Defendant had shown her sexually explicit videos at the workplace, and M.E. confirmed that C.T. accompanied them to work during the relevant period. From this evidence, a rational jury could find that Defendant intentionally invited C.T. to touch his genital area—conduct that, if completed, would constitute aggravated sexual battery. Defendant’s denial and his challenge to the plausibility of C.T.’s account again required the jury to resolve credibility, and its verdict resolved that question in the State’s favor.

The evidence was sufficient to support all three convictions. Because we have also concluded that the forensic interviews were properly admitted and did not violate Defendant’s confrontation rights, his separate claims that all counts must be reversed based on their erroneous admission necessarily fail. Defendant is not entitled to relief.

CONCLUSION

Based on the foregoing reasons, we affirm the judgments of the trial court.

s/ *Jill Bartee Ayers*
JILL BARTEE AYERS, JUDGE