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Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs June 16, 2026

STATE OF TENNESSEE v. ERIC BRANCH

Appeal from the Circuit Court for Rutherford County
No. 88997 James A. Turner, Judge

No. M2025-00579-CCA-R3-CD

Defendant, Eric Branch, appeals from his jury convictions for four counts of aggravated sexual battery, two counts of rape of a child, and one count of possession of a firearm by a person convicted of a felony crime of violence, for which he is serving an effective sentence of eighty-two years. On appeal, he argues that (1) his right to a unanimous verdict was violated in Counts 1 and 2; (2) the evidence is insufficient to support his convictions in Counts 3 and 4; and (3) the trial court erred by imposing an excessive sentence. After a thorough review of the record and applicable law, we affirm.

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

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which J. ROSS DYER and MATTHEW J. WILSON, JJ., joined.

Raven Prean-Morris (on appeal), Assistant Public Defender—Appellate Division; Gerald L. Melton, District Public Defender; and Katie J. Ladefoged and Brittney S. Hollis (at trial), Assistant District Public Defenders, for the appellant, Eric Branch.

Jonathan Skrmetti, Attorney General and Reporter; Ryan W. Davis, Assistant Attorney General; Jennings H. Jones, District Attorney General; and Sharon L. Reddick and Andrew J. Hazley, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

This case arises from Defendant's sexual abuse of the victim,¹ who was the daughter of a woman he briefly dated. The August 2021 term of the Rutherford County Grand Jury issued an indictment charging Defendant with four counts of aggravated sexual battery, a Class B felony (Counts 1-4); two counts of rape of a child, a Class A felony (Counts 5 and 6); and one count of unlawful possession of a firearm by a person convicted of a felony crime of violence, a Class B felony (Count 7). *See* Tenn. Code Ann. §§ 39-13-504, -522, -17-1307(b)(1)(A). A superseding indictment was issued in February 2023, amending the date range of the offenses as having been committed between December 1, 2017, and June 14, 2021.

At trial, Krishenda Martin testified that her cousin, C.F.,² was the victim's mother. Ms. Martin had helped take care of the twelve-year-old victim and her eight-year-old brother, A.S., since they were born. The children began living with Ms. Martin full time in October 2021, and at the time of trial, Ms. Martin was the victim's legal guardian. Ms. Martin agreed that the victim could be honest with her about important things in her life and that they had a trusting relationship.

Ms. Martin testified that, beginning when the victim was about four years old, C.F. and the children lived in a two-bedroom townhome on Hastings Street (the Hastings Street residence). Ms. Martin stopped by the Hastings Street residence on June 14, 2021, to check on A.S. Several police cars were present when she arrived. The officers would not permit her to enter, but A.S. came outside and spoke to her. Eventually, Ms. Martin was allowed to go inside, and she saw that the victim was crying. Ms. Martin noted that C.F. was there and "really, really angry." Later that day, Ms. Martin accompanied the victim to the emergency room and to Our Kids Center (Our Kids) in Nashville for a pediatric sexual assault examination.

On cross-examination, Ms. Martin testified that she was not "super close" with C.F. and that most of their interactions involved the children. Ms. Martin noted that C.F. had sickle cell anemia and struggled financially. Ms. Martin stated that she never asked C.F. to have the children live with her before October 2021. Ms. Martin stated that she only spent significant time at the residence if she needed to sign one of the children's school

¹ It is the policy of this court to protect the identity of minors and victims of sexual offenses by omitting their names from the opinion.

² To further protect the victim's privacy, we will also refer to her mother by initials only.

forms or check their homework. Ms. Martin denied that the children ever mentioned Defendant to her, and she did not have the impression that Defendant visited them often. Ms. Martin testified that she had never met Defendant before the trial.

Ms. Martin testified that the victim referred to the June 14 incident as “her trauma” and that the victim did not like to be “touched . . . or surprised.” She said that the victim had not given her “full-on statements . . . about the events[.]”

On redirect examination, Ms. Martin denied that the victim ever told her a different version of events regarding the allegations against Defendant.

At the time of trial, the victim was twelve years old. The victim testified that the Hastings Street residence had two levels; the first floor had the living room, the kitchen, and a bathroom, and the second floor had two bedrooms and a bathroom. C.F. slept downstairs, and each of the children had their own rooms, although A.S. usually slept in the victim’s room. The victim identified photographs of the two bedrooms, which were received as exhibits.

The victim identified Defendant in the courtroom. She testified that she knew Defendant by the nickname “Chunky” and that he was C.F.’s friend. She stated that Defendant lived with the family for between two and four weeks in 2017 or 2018 when she was seven or eight years old.

The victim testified that she did not have “much of a relationship” with Defendant and that he initially “seemed like a nice person.” The victim stated that her opinion changed when he “touched [her] in ways he was not supposed to.” The victim said that the touching occurred “[e]very time [her] mother left the house,” which she estimated was once or twice per week.

The victim testified that, when C.F. was not at home, Defendant told her to go into A.S.’s bedroom. The victim lay down on the mattress, and Defendant touched her breasts over her clothing and on her skin. The victim stated that the touching happened on multiple occasions. The victim said that “[t]here ha[d] been times” that Defendant touched her buttocks over her clothing. The victim stated that Defendant also touched her genitals³ over her clothing and on the skin. When asked whether she could recall anything Defendant said to her during the incidents, the victim answered, “He wouldn’t say anything

³ The prosecutor gave the victim anatomical diagrams of an adult man and a female child. The victim circled and labeled parts of the body. The diagrams were received as exhibits and reflected that, when the victim referred to a man’s “private,” she meant his penis, and that, when she referred to a girl’s “private,” she meant female genitalia.

specifically, just not to tell anybody.” The victim did not remember if A.S. was ever at home when the touching occurred.

The victim testified that, on a second occasion, she went into the living room to tell Defendant that she had cleaned her room and that he made her put his penis in her mouth. She stated that, on another occasion, he grabbed her buttocks in the kitchen. The victim said that, about one week before Defendant moved out, “[T]here was an attempt . . . for his private to go into [hers], but that did not work out.” The victim stated that Defendant said, “It doesn’t fit. We’ll try again when you’re older.” The victim did not know why Defendant moved out.

The victim testified that she did not tell anyone about the incidents “[p]robably because he said he was going to come back” and that she did not know what might happen if she told someone. The victim agreed that these events happened five or six years previously and that she did not have “a lot of good, specific memories” of what Defendant did to her.

The victim testified that she did not see Defendant again until summer 2021, when she was eleven years old. The victim stated that Defendant came to their house twice “for like a couple days,” although he was not living there. The victim said that she would stay in her bedroom during his visits and that she did not want to interact with him. She agreed that C.F. and Defendant were friendly with one another.

The victim testified that, on June 14, 2021, Defendant gave C.F. “a credit card and a food stamp [card] Either both or one of the two.” C.F. went to the store, and Defendant told A.S. to clean the kitchen and that, “if he stayed downstairs, [Defendant] would give him . . . a couple dollars.” The victim stated that Defendant grabbed her wrist and took her upstairs to her bedroom, then closed and locked the door. The victim said that Defendant touched her “on [her] torso,” then pushed down on her shoulders to make her kneel, pulled down his pants, and put his penis in her mouth. The victim denied that Defendant said anything to her. The victim stated that Defendant moved her to the floor against her bed frame, put his hand down the front of her clothing, and touched her “private” on the skin with his hand. The victim said that Defendant touched “down in the middle” and that his hand was inside but “[n]ot necessarily up.” The victim agreed that he touched her “where a tampon goes.”

The victim testified that Defendant was on his knees in front of her and that she knew he was going to attempt to put his penis in her. However, A.S. interrupted by repeatedly calling out that he had finished cleaning the kitchen and wanted to come upstairs. The victim said that A.S. was either downstairs or in the stairwell; she stated, though, that he “might have” tried to come into the bedroom. The victim stated that

Defendant exited her bedroom, went downstairs, and left the house. The victim said that she stayed in her bedroom until Defendant left.

The victim testified that she called C.F., who was still at the store. The victim stated that she brushed her teeth, went downstairs, and grabbed “a pair of safety scissors or something . . . in case, like, any self-defense precautions needed to be taken.” She did not tell A.S. what happened.

The victim testified that C.F. returned home and asked her “why [she] was crying on the couch.” The victim stated that she “was not in the mood to rephrase everything that [she] had just contacted her about” but that they talked “some” about what had happened. The victim thought that A.S. was upstairs at the time. C.F. called the police, and the victim spoke to them. The victim stated that she was “a little anxious [and] scared.”

The victim testified that she went to the hospital and “another hospital-type place” in Nashville. She said that, the following day, she went to the Rutherford County Child Advocacy Center (CAC) and spoke to forensic interviewer Elizabeth Benton. The victim stated that she knew the interview would be recorded and that it was the first time she gave details about the June 14 incident. She said that it was difficult for her to talk about it.

The victim testified that she was not fully honest with Ms. Benton and that she told Ms. Benton that nothing like the June 14 incident ever happened before. The victim stated that the previous incidents were not “something [she] wanted to remember and talk about at the time.” The victim said that, upon further questioning, she told Ms. Benton that she did not “really remember”; it was unclear whether the victim was referring to not remembering whether previous incidents occurred or not remembering the details of previous incidents. The victim agreed that she had already discussed the June 14 incident with C.F., the police, and medical professionals by the time she spoke to Ms. Benton. The victim testified that she understood that she had sworn an oath to tell the truth and averred that her testimony was truthful.

The victim testified that, on June 14, Defendant was carrying a gun in the waistband of his pants, although he did not have it at the time he took her upstairs. The victim did not know where he put it. The victim identified the gun in a photograph, which showed a black pistol inside a drawer, but she could not conclusively identify the gun as Defendant’s.

On cross-examination, the victim testified that she told Our Kids employee Jill Howlett that Defendant had touched her about two years ago “over the clothes and on [her] privates, but only the outside part.” The victim further agreed that she had never told anyone about Defendant’s having put his penis in her mouth in 2017 or 2018 or Defendant’s having tried to vaginally penetrate her with his penis during that period.

The victim acknowledged that Ms. Benton told her that she would not get into trouble for anything she said at the forensic interview and that, nevertheless, she told Ms. Benton that no prior incidents of touching occurred even though Ms. Benton “specifically asked” about it more than once.

The victim affirmed that she underwent “[a] lot of trauma” during the time Defendant lived with the family in 2017 or 2018; that she decided not to talk about it when Defendant moved out; and that she still told no one when Defendant came back in 2021. The victim agreed that she only saw Defendant twice in 2021. The victim further agreed that she told Ms. Benton that Defendant knew C.F. was struggling and gave money to the victim, C.F., and A.S., and that the victim was okay with Defendant’s coming around because he was helping them.

On redirect examination, the victim testified that she was told that the forensic interview was “very important,” but she did not realize that she would have to come to court and “account for everything [she] said in that interview[.]” The victim agreed that, in the time between the interview and trial, she had thought more about the previous incidents. The victim noted that her “honest goal was to forget about it and try to live [her] life normally, and not have to spend it being dragged down on that” but that, when Defendant started coming around again, she decided to tell someone what happened to prevent it from happening again. The victim denied that C.F. or anyone else told her to make up a lie about Defendant.

A.S. testified that he was eight years old and that the victim was his older sister. A.S. stated that, when he lived with C.F., he knew a man named Chunky. He agreed that the police came to their home because something had happened with the victim. A.S. said that Chunky “called [the victim] to go upstairs with him” and that Chunky told him that he would give him five dollars if he cleaned up clothes on the kitchen floor and put them in a white basket. A.S. stated that Chunky and the victim were in the victim’s bedroom and that he was downstairs. A.S. said that he tried to go into the victim’s bedroom, but the door was locked. A.S. stated that Chunky came out of the room and told A.S. that he was leaving. A.S. said that the victim went downstairs after Chunky left. A.S. sat with the victim on a bed until C.F. came home.⁴ A.S. recalled that, after C.F. came home, the victim was “shivering and crying.” A.S. stated that the victim talked with C.F., that C.F. called 911, and that the police came. A.S. stated that he did not see Chunky again.

⁴ There was some confusion in A.S.’s testimony about whether he and the victim sat on the bottom bunk bed in her bedroom or a bed that was downstairs. A.S. ultimately agreed that he sat with the victim on a bed that was downstairs.

C.F. testified that she was the victim's and A.S.'s mother and that in 2017, she was in a romantic relationship with Defendant, whom she knew as Chunky. Defendant helped her pay bills and watched the children while she was at work. C.F. said that she had no indication that something was wrong. C.F. stated that, after about two months, they argued, and she "put him out."

C.F. testified that, in June 2021, she and Defendant began seeing one another again as friends. C.F. denied that Defendant ever spent the night during this time. Defendant gave her money for food or a food stamp card, and she thought Defendant was "a blessing" because she was grateful for his help. C.F. knew Defendant to carry a black gun "[o]n him or in his pocket."

C.F. testified that, on June 14, 2021, Defendant gave her a food stamp card and told her to "hurry up and go spend it" so that he could give it back to its owner. C.F. noted that Defendant's behavior "was odd." Defendant called her while she was grocery shopping and told her that he had left and that the children had money because he asked the children to clean up while C.F. was gone. She stated that, prior to that day, A.S. did not clean anything in the house and that she never saw Defendant ask A.S. to clean or give him money.

C.F. testified that, when she returned home, the victim was sitting downstairs on the couch and had a knife. C.F. stated that the victim looked scared and was shaking. C.F. said that the victim told her "some things" and that she called the police.

Murfreesboro Police Department (MPD) Officer Casey Fiddler testified that he responded to the Hastings Street residence on June 14, 2021. He spoke briefly with the victim, who told him that she would be more comfortable speaking to a female officer.

MPD Officer Kelly Liggett testified that she responded to Officer Fiddler's call for a female officer and that she spoke to the victim before a detective arrived. After she asked the victim general questions, Officer Liggett decided that the victim needed to go to Our Kids; however, because it was "after hours," she sent the victim to the emergency room. Officer Liggett followed Ms. Martin and the victim to the hospital, called Our Kids to confirm that they could see the victim, and stayed with Ms. Martin and the victim until they left the hospital to drive to Nashville.

MPD Detective Tiffany Host testified that she was assigned the victim's case on June 15, 2021, by which time the scene had been processed and the victim had undergone a sexual assault examination at Our Kids. On June 16, Detective Host attended the victim's forensic interview, and she became aware that Defendant had possibly been armed. Detective Host subsequently obtained a search warrant for an apartment that was leased to

Defendant's girlfriend. Officers found a Glock pistol in the drawer of a nightstand that also contained Defendant's personal items.

Detective Host testified that she obtained an indictment in August 2021 for four counts of aggravated sexual battery and two counts of rape of a child. Detective Host said that Defendant was eventually located and arrested by the Memphis Police Department on October 25, 2021. Detective Host stated that, in February 2023, she obtained a superseding indictment to include 2017 and 2018 within the date range of the offenses.

On cross-examination, Detective Host testified that C.F. told her in their initial conversation that C.F. had been having financial trouble and that Defendant had been giving the children \$20 and \$40 "here and there." Detective Host interpreted C.F.'s statements to mean that Defendant was occasionally visiting. Detective Host testified that, during the investigation, she learned that Defendant had been "out of contact for a while" and had recently come back.

Our Kids forensic social worker Jill Howlett testified that she and nurse practitioner Leanna Dugan conducted the victim's sexual assault examination around 9:00 p.m. on June 14, 2021. Ms. Martin accompanied the victim. Ms. Howlett noted that the purpose of the pre-examination interview was to get information about the type of sexual contact to facilitate the physical examination. Ms. Howlett testified that the victim seemed to understand the reason for the visit and that the victim "did not hesitate at all" in answering questions. Ms. Howlett read the following aloud from her report:

[The victim] described digital genital contact on her skin by [Defendant] earlier today. [The victim] reported he pulled her clothes down and touched her on her genital area. When asked if he touched her in any other way, [the victim] stated, "He also touched my bottom, but on the outside, not on the inside." [The victim] described the contact as . . . , "His hands on my skin["] . . .

When asked if [Defendant] touched her in any other way, [the victim] stated, . . . "He put his private in my mouth," When asked if she saw anything come from his private following . . . the penile-oral penetration, [the victim] stated, . . . "No." When asked if he touched her in any other way, [the victim] stated, . . . "No." When asked if she knew what time the sexual contact occurred, [the victim] stated, . . . "It was around 4:00 or 5:00. My mom was at the store." When asked if [Defendant] ever touched her in the past, [the victim] stated, . . . "About two years ago, he touched me on my chest and on my private["]

[The victim] described the digital[-]genital contact [two years ago] as being quote, "On the outside, not on the inside." [The victim] reported she did not experience any other sexual contact by [Defendant] in the past two years until today.[]

Ms. Howlett testified that the victim had come to Our Kids directly from the hospital. Ms. Howlett further agreed that the victim did not change clothing or use the bathroom between the time of the incident and her examination, but she had brushed her teeth. Regarding whether the previous touching occurred more than once, Ms. Howlett stated on redirect examination, "[The victim] told me just in the past that it happened, and that nothing had happened in the two years since she saw him again."

Nurse Dugan, an expert in pediatric forensic examination, testified that she conducted the victim's sexual assault examination. She stated that she had performed more than 1,000 pediatric sexual assault examinations and that "95 percent of the kids that we see, have completely healthy, normal exams with no injuries, no scarring, nothing like that." Nurse Dugan explained that, in scientific studies, DNA evidence was only recovered in twenty to twenty-five percent of children examined within seventy-two hours of sexual contact. She agreed that a lack of ejaculation would affect the likelihood of finding DNA evidence. Nurse Dugan stated that, with allegations of penile-oral penetration, she would not "even consider collecting a kit beyond about 12 hours. And if the child has already had something to drink or brush[ed] their teeth, then . . . the likelihood of there being DNA on those types of swabs would be almost none."

Nurse Dugan testified that girls often referred to the "inside" of their genital area when they meant the mucosal tissue leading to the vagina or inside the vagina before reaching the hymen. She noted that she would not "ever expect to see injury" from contact with those areas.

Nurse Dugan testified that it was unusual for Ms. Howlett not to document having asked the victim whether the digital-genital contact on June 14 felt like "it was on the inside or the outside." She said that the victim's exam was normal. She said that the victim's description of the penetration and touching in this case was not inconsistent with her examination.

Tennessee Bureau of Investigation (TBI) Special Agent Lisa Forester, an expert in forensic serology and DNA testing, testified that she processed the victim's rape kit and evidence from the victim's bedroom. Agent Forester stated that a detective informed her that Defendant had not ejaculated during the June 14 incident; accordingly, Agent Forester tested for "skin cells that may have been left behind." She was also informed that the victim brushed her teeth after the incident. Agent Forester testified that the victim's cheek

swab, oral swabs, perianal swabs, perineal swabs, and “outer labial swabs” were negative for male DNA. The victim’s “inner labial swab” was inconclusive for male DNA.

Agent Forester testified that, typically, she did not find a lot of DNA left behind after fellatio because a person’s naturally swallowing meant that “DNA typically gets lost in the process of just time passing.” Agent Forester said that studies found that, with fellatio involving ejaculation, DNA evidence would only be present for between six and twelve hours; in the absence of ejaculation, the time period would be shorter. When asked whether she would expect to find male DNA on a swab taken seven hours after an incident in a case of digital penetration, Agent Forester responded, “Seven hours is a pretty long time when you’re talking about skin cells from collection,” and she stated that it would depend on the situation.

On cross-examination, Agent Forester testified that Defendant was not identified in any of her testing and that she did not “have any DNA profiles to identify anyone.” Agent Forester said that seven hours was not outside the general window within which DNA could possibly be found. She agreed that, if a victim had not changed clothing, it was more likely to find residual DNA on the victim’s body.

CAC forensic interviewer Elizabeth Benton testified that she conducted the victim’s forensic interview on June 16, 2021. A recording of the interview was entered as an exhibit and played for the jury. In the recording, the victim stated that she was eleven years old and about to begin sixth grade. When asked if she knew why she was there, the victim stated that “something happened yesterday.” Ms. Benton asked her to describe what happened, and the victim paused for a long interval and looked down. Ms. Benton told the victim that she would not be in trouble for anything she said. After another pause, Ms. Benton asked a series of questions, and the victim stated that the incident to which she was referring occurred when she was at home with A.S. and Defendant, whom she called her mother’s friend “Eric.” The victim agreed that Defendant had made her do something, but she fell silent when asked to describe it. When asked whether it involved body parts, the victim nodded. After another long silence, Ms. Benton asked if it would be easier for the victim to write down what happened; the victim nodded, and Ms. Benton retrieved a piece of paper and a pencil.

At trial, Ms. Benton identified the victim’s written statement, which was entered as an exhibit and read as follows:

He sent my mom to get food and made my brother stay down[]stairs, then he grabbed my arm and took me to my room[.] [H]e grabbed my shoulders and pushed me on my knees then he made me put his “thing” in my mouth. Then he grabbed my wrist and forced me back up and he touched places he wasn’t

supposed to[.] [H]e then left the house after forcing me to secrecy and I called⁵ my mother.

In the recording, Ms. Benton asked the victim if she would read the statement aloud, but she remained silent. Ms. Benton read the statement aloud, and after each sentence, she asked the victim if it was accurate. The victim nodded in agreement.

The victim stated that Defendant told her that she “had to do [her] own job” and that, as she was walking upstairs, he grabbed her wrist and pulled her to her room. The victim said that she entered her room and asked Defendant what she needed to do, expecting him to tell her to clean it. She stated that Defendant did not respond to her question but instead turned around and closed and locked the door. The victim said that Defendant put his hands on her shoulders and pushed her down onto the floor while he remained standing. The victim stated that, at that point, she was on a red rug.

When asked what happened next, the victim became quiet, and Ms. Benton continued by reading portions of the written statement aloud. When asked what made Defendant allow the victim to remove his “thing” from her mouth, the victim responded, “He just stopped.” She denied that Defendant said anything to her or that anything came out of his “thing.” When shown an anatomical diagram of a boy and asked to what body part she referred to as a “thing,” the victim pointed at the penis.

The victim stated that Defendant pulled her up by her wrist and touched her “private areas” under her clothes with his hands. When asked what he did with his hands, the victim said that she did not know and became upset. Ms. Benton showed the victim a diagram of a girl’s body and asked her to indicate the areas Defendant touched; the victim pointed at the buttocks, breasts, and genital area. The victim stated that Defendant “just grabbed” her breasts and that he grabbed her buttocks and held them “for like five minutes.” She denied that Defendant touched her with anything other than his hands.

The victim hesitated when Ms. Benton asked her to describe how Defendant touched her genitals. Upon further questioning, the victim stated that Defendant had touched “under” and “in between here,” pointing at the diagram.⁶ When asked whether she knew what a tampon was and where it went, the victim nodded affirmatively. When asked whether Defendant touched her on “the outside, the part where you wipe, or where a tampon would go,” the victim responded, “I think where the tampon would go.” The victim denied that Defendant made her touch any parts of his body other than when he put his

⁵ During the interview, the victim clarified that she had texted her mother, not called her.

⁶ The recording showed that the victim drew a vertical line on the diagram near the genital area.

penis in her mouth. The victim stated that Defendant left because A.S. kept saying that he was done cleaning and wanted to come upstairs; Defendant responded by calling out that he was “coming in a minute.” She said that Defendant told her that he would try to come back to the house later and stated, “You can’t tell anybody, ok?”

The victim denied that Defendant threatened her, but she added that Defendant had “access to very harmful weapons” and that she “figured he’d do something.” The victim later stated that the weapon was a black gun and that she had seen the handle sticking out of the side of Defendant’s pants while they were eating on the couch before the incident. The victim said that he carried the gun “everywhere.” She stated that Defendant did not have the gun when they were in her bedroom.

The victim did not know who picked up Defendant, but she stated that they drove an orange car. The victim said that, after Defendant left, she “grabbed a pair of [her] sharpest scissors” and texted her mother. The victim stated that, when C.F. returned, she was sitting on the couch waiting for her.

When asked whether anything “like this” had happened with Defendant or anyone else before, the victim answered negatively. The victim stated that Defendant paid them to do chores around the house but that he never “drives us to do anything.” She said that Defendant had given her \$10 or \$20 for doing chores in the past month and on unspecified previous occasions. The victim denied that Defendant had a cell phone with him on the day of the incident; that he took any photographs of her; or that he showed her photographs.

The victim stated that she had known Defendant for two or three years. The victim denied that Defendant had ever said anything to her that had made her uncomfortable, noting that she had “barely talked to him.” When asked why she did not talk to Defendant, the victim responded that she “just [doesn’t] talk to people much.”

The victim said that Defendant partially pulled down his pants when he put his penis in her mouth. She stated that his pants were “back to normal” when he began touching her. The victim said that she was wearing a zip-up shirt, which Defendant unzipped but did not take off. The victim stated that her shorts remained on and that Defendant put his hand inside them.

When asked whether the victim included anything in her text messages to C.F. that she did not tell Ms. Benton, the victim responded that she did not remember what she texted C.F. Ms. Benton told the victim that the detective had shown her a message referring to something that happened “before.” When asked whether she knew “what that was about,” the victim responded negatively. When asked why she would have written that in the text message, the victim responded that she did not remember. The victim added that she did

not remember anything happening before. The victim affirmed that Defendant had never made her do something she did not want to do previously.

On cross-examination, Ms. Benton testified that the forensic interview was “kind of the definitive interview” in child sexual abuse cases. Ms. Benton agreed that it was “not ideal” for several people to have talked to a child before she interviewed him or her. Ms. Benton stated that the victim was “more forthcoming” after she began asking questions based upon the written statement. Ms. Benton acknowledged that she asked the victim about previous incidents multiple times and that the victim maintained that she did not remember any such incidents.

Thereafter, the State made the following election of offenses:

Count 1, aggravated sexual battery refers to [the victim’s] testimony and statement at Our Kids regarding an incident of digital genital contact during the period of time that [D]efendant was living with the family in 2017 or 2018, occurred when her mother was not at home, and [D]efendant laid her on a mattress in the upstairs bedroom and he touched her on her breast, on her skin and over her clothes.

Count 2, aggravated sexual battery refers to [the victim’s] testimony and statement at Our Kids regarding an incident of digital genital contact during the period of time that [D]efendant was living with her family in 2017 or 2018, occurred when her mother was not at home, and [D]efendant laid her on the mattress in the upstairs bedroom and touched her private . . . on the skin. And he would . . . tell her not to tell anyone.

Count 3, aggravated sexual battery refers to [the victim’s] testimony and her forensic interview regarding an incident of digital breast contact in her bedroom on 6/14/2021, wherein she describes [D]efendant[’s] unzipping her jacket and touching her breast on the skin.

Count 4, aggravated sexual battery refers to [the victim’s] forensic interview and statement at Our Kids regarding an incident of digital buttocks contact in her bedroom on 6/14/2021, wherein she describes [D]efendant touched her bottom . . . “[o]n the outside, not on the inside[.]”

Count 5, rape of a child refers to [the victim’s] testimony, forensic interview and statement at Our Kids regarding an incident of fellatio in her bedroom on 6/14/2021, wherein she describes [D]efendant[’s] pushing her down to her knees and putting his private in her mouth.

Count 6, rape of a child refers to [the victim's] testimony and forensic interview regarding an incident of digital genital penetration in her bedroom on 6/14/2021, wherein she describes [D]efendant touching her private with his hands going down the front of her pants, going . . . “[i]n but not up in[.]”

Upon this evidence, the jury convicted Defendant as charged in Counts 1-6. In a bifurcated proceeding on Count 7, the parties entered a stipulation that, on August 20, 2009, Defendant was convicted of carjacking, which was a felony involving force, attempted force, violence, or a deadly weapon, in Shelby County Criminal Court case number 09-03392. The jury convicted Defendant of unlawful possession of a firearm by a person convicted of a felony crime of violence.

At the sentencing hearing, the presentence report was received as an exhibit and reflected that Defendant was thirty-six years old. He had pending charges in Rutherford County Circuit Court case number 85728 for aggravated assault, two counts of aggravated kidnapping, two counts of aggravated rape, employing a firearm during the commission of a dangerous felony, and possession of a firearm by a person convicted of a felony involving force, violence, or a deadly weapon; and in Rutherford County Circuit Court case number 85338 for three counts of the sale of methamphetamine. Defendant had a prior conviction for misdemeanor theft in Rutherford County and Shelby County convictions for possession of a firearm during the commission of a dangerous felony, carjacking, and misdemeanor vandalism.

The presentence report officer wrote that Defendant was a self-reported and confirmed member of the Vice Lords. Defendant reported that his mental health was “excellent” and his physical health was “fair.” Defendant began consuming alcohol at age fifteen or sixteen and using marijuana at age sixteen, although he stated that he had not used illegal drugs in fifteen years and no longer consumed alcohol.

The STRONG-R assessment rated Defendant as having “a score of high violence”; high needs in education, attitudes/behaviors, and aggression; and moderate needs in family. Defendant’s written statement of the offenses was as follows:

I’m not mental health or I don’t do drugs or alcohol. I’m a loving person to anyone I come in contact with. I’ve done some wrong in my life but my wrong never has been of the charges I’ve been convicted of (in case number 88997). I’m only involved because of word of mouth. My trial consisted of doctors and medical people that stated that they found no DNA from me at the scene. All medical people also stated that my so call victim had no injuries what so ever. I was issued harsh charges that consist of no major or no minor injuries.

The victim impact statement was exhibited to the sentencing hearing; however, the copy of the statement in the record was written so lightly that much of it is illegible. The boxes checked on the form indicated that the victim was psychologically or emotionally injured as a result of the offenses and that she received therapy. The victim wrote that she thought Defendant should receive a life sentence.

The State sought to present evidence of facts related to Defendant's pending criminal cases. The trial court noted that it would only consider this evidence for purposes of enhancement factor (1), whether Defendant had a history of criminal behavior in addition to that necessary to establish the appropriate range. Tenn. Code Ann. § 40-35-114(1).

T.M. testified that, on the morning of March 31, 2021, Defendant raped her at the apartment she shared with her sister and their two toddlers. T.M. identified Defendant, who was an acquaintance of her sister, in the courtroom. T.M. stated that Defendant put his arm around her neck, dragged her into her sister's bedroom, and raped her while recording the incident on his cell phone. T.M. testified that Defendant placed a gun on the nightstand and warned her not to tell anyone. T.M. stated that her boyfriend urged her to call the police, but she was afraid to do so. T.M. later saw a public Facebook post by C.F. detailing what had happened to the victim. T.M. contacted C.F., who provided her with Detective Host's contact information.

MPD Detective Jacob Fountain testified that, in 2020, he was assigned to the "Overdose Unit" and investigated a suspected methamphetamine supplier from Memphis who went by the initials "C.J." Detective Fountain stated that he arranged controlled drug transactions using a confidential informant on January 17, 2020; January 24, 2020; and February 5, 2020. Detective Fountain watched recordings of the sales, which showed C.J.'s face. Detective Fountain said that the TBI confirmed that the substance purchased in each sale was about half an ounce of methamphetamine.

Detective Fountain testified that he had another officer conduct a "knock-and-talk" interaction at a hotel and that the officer sent him a photograph of one of the room's occupants, whom Detective Fountain recognized as C.J. Detective Fountain identified Defendant as C.J. and stated that Defendant had been indicted for three counts of selling methamphetamine.

The trial court stated that it had considered the evidence at trial and the sentencing hearing, the presentence report and sentencing exhibits, the principles of sentencing and arguments made as to sentencing alternatives, the nature and characteristics of the criminal conduct involved, the parties' arguments as to mitigating and enhancement factors,

statistical information from the Administrative Office of the Courts as to sentencing practices, and Defendant's potential for rehabilitation.

The trial court found that Defendant was a Range I standard offender and that the sentencing range for aggravated sexual battery and possession of weapon by a convicted felon was eight to twelve years. The court added that rape of a child carried a statutory Range II sentence of twenty-five to forty years.

Relative to enhancement factors, the trial court found that Defendant had a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range, and it applied this factor to every count of the indictment. Tenn. Code Ann. § 40-35-114(1). In Counts 5 and 6 only, the court found that the offenses involved a victim and were committed to gratify Defendant's desire for pleasure or excitement. *Id.* at § 40-35-114(7). In Counts 1-6, the court found that Defendant possessed a firearm during the commission of the offenses. *Id.* at § 40-35-114(9). The court also found⁷ that Defendant abused a position of private trust in a manner that significantly facilitated the commission or the fulfillment of the offense, noting that C.F. trusted Defendant to care for her children after he gave her money to go to the store. *Id.* at § 40-35-114(14). The court found that no mitigating factors applied.

Regarding consecutive sentencing, the trial court found that Defendant was convicted of two or more statutory offenses involving sexual abuse of a minor. Tenn. Code Ann. § 40-35-115(b)(5). The court found that a relationship of private trust existed; that Defendant's sexual activity was undetected for a period of three to four years; and that two types of penetration occurred and "just about every theory of aggravated sexual battery possible." The court noted, "[I]n the statement by the victim in this case, it states it's affected me in many ways. It's affected me mentally and emotionally, in school, at home, everywhere. She's received counseling . . . [and] therapy." The trial court found that "the mental damage appears to be significant[,] as if the [c]ourt needed an exhibit to make that finding."

The trial court imposed the following sentences:

Count	Offense	Sentence	
1	Aggravated sexual battery	10 years	Consecutive to Count 5; Concurrent with Count 2
2	Aggravated sexual battery	10 years	Consecutive to Count 5

⁷ The trial court did not specify to which counts this enhancement factor applied.

3	Aggravated sexual battery	10 years	Concurrent with Count 6
4	Aggravated sexual battery	10 years	Concurrent with Count 6
5	Rape of a child	37 years	Consecutive to Count 6
6	Rape of a child	35 years	
7	Unlawful possession of a firearm by a convicted felon	12 years	Concurrent with Count 6

The total effective sentence was eighty-two years.

After the trial court denied the motion for new trial, Defendant timely appealed.

Analysis

On appeal, Defendant argues that (1) his right to a unanimous verdict was violated in Counts 1 and 2; (2) the evidence is insufficient to support his convictions in Counts 3 and 4; and (3) the trial court abused its discretion by imposing an excessive sentence.

I. Election of Offenses/Jury Unanimity

Defendant contends that the State’s elections in Counts 1 and 2, aggravated sexual battery occurring in 2017 or 2018, were insufficient to ensure a unanimous jury verdict, arguing that the State “did not clearly differentiate between [the victim’s] allegations of inappropriate sexual contact in prior interviews from [the victim’s] testimony at trial” and that the elections were not “sufficient to distinguish the acts elected from the plethora of proof presented to the jury indicating inappropriate digital breast and private contact occurring at similar times, locations, and circumstances.” He acknowledges that he has raised this issue for the first time on appeal and requests plain error relief.

The State responds that Defendant is not entitled to plain error relief. We agree with the State.

Plain error relief is “limited to errors that had an unfair prejudicial impact which undermined the fundamental fairness of the trial.” *State v. Adkisson*, 899 S.W.2d 626, 642 (Tenn. Crim. App. 1994). In order to be granted relief under plain error, five criteria must be met: (1) the record must clearly establish what occurred in the trial court; (2) a clear and unequivocal rule of law must have been breached; (3) a substantial right of the accused must have been adversely affected; (4) the accused did not waive the issue for tactical reasons; and (5) consideration of the error is “necessary to do substantial justice.” *Id.* at 640-41; *see also State v. Smith*, 24 S.W.3d 274, 282-83 (Tenn. 2000) (Tennessee Supreme

Court formally adopting the *Adkisson* standard for plain error relief). Importantly, appellate courts must exercise plain error review “sparingly.” *State v. Bledsoe*, 226 S.W.3d 349, 354 (Tenn. 2007). As the appellant, Defendant bears the burden of persuading this court that plain error exists. *State v. Dotson*, 450 S.W.3d 1, 48-49 (Tenn. 2014).

We conclude that plain error relief is not warranted because no clear and unequivocal rule of law was breached. Article 1, section 6 of the Tennessee Constitution, providing in relevant part that “the right of trial by jury shall remain inviolate,” guarantees criminal defendants the right to a unanimous jury verdict. *State v. Qualls*, 482 S.W.3d 1, 8-9 (Tenn. 2016) (citing *State v. Lemacks*, 996 S.W.2d 166, 169-70 (Tenn. 1999), and *State v. Shelton*, 851 S.W.2d 134, 137 (Tenn. 1993)).

In most criminal trials, the constitutional guarantee of juror unanimity is readily satisfied . . . because it is a general rule that evidence the defendant has committed “some other crime wholly independent of that for which he is charged, even though it is a crime of the same character” is generally excluded as “irrelevant.”

Id. (quoting *State v. Rickman*, 876 S.W.2d 824, 827 (Tenn. 1994) (citations omitted)); see Tenn. R. Evid. 404. However, in cases involving sexual offenses, trial courts may admit evidence of other sexual crimes when an indictment charges a number of sexual offenses but does not allege the specific date such offenses occurred. *Qualls*, 482 S.W.3d at 9 (quoting *Rickman*, 876 S.W.2d at 828). In such cases, the State has a “duty . . . to elect for each count charged the specific incident on which the jury should deliberate to determine the defendant’s guilt.” *Id.* (citing *Rickman*, 876 S.W.2d at 828); see *Shelton*, 851 S.W.2d at 137; see also *Burlison v. State*, 501 S.W.2d 801, 803 (Tenn. 1973).

The election doctrine . . . assists the defendant in preparing for and defending against the specific charge, protects the defendant from double-jeopardy concerns, enables the trial judge to review the weight of the evidence in its role as thirteenth juror[, and] enables an appellate court to review the legal sufficiency of the evidence. Nevertheless, as this [c]ourt has previously emphasized, the most important purpose served by the election of offenses doctrine is to ensure that the jurors deliberate over and render a verdict based on the same offense[.]

Qualls, 482 S.W.3d at 10 (internal citations and quotation marks omitted). In short, such practice allows the State latitude when prosecuting criminal acts against young children while simultaneously preserving a criminal defendant’s right to a unanimous jury verdict. *Id.*; see *Rickman*, 876 S.W.2d at 828; see also *Shelton*, 851 S.W.2d at 137 (“A defendant’s right to a unanimous jury before conviction requires the trial court to take precautions to

ensure that the jury deliberates over the particular charged offense, instead of creating a ‘patchwork verdict’ based on different offenses in evidence.”) (citing *State v. Brown*, 823 S.W.2d 576, 583 (Tenn. Crim. App. 1991)). Our supreme court “has ‘stressed that the election requirement is a responsibility of the trial court and the prosecution and, therefore, does not depend on a specific request by a defendant.’” *State v. Fields*, No. W2018-02014-CCA-R3-CD, 2020 WL 5015902, at *8 (Tenn. Crim. App. Aug. 25, 2020) (quoting *State v. Kendrick*, 38 S.W.3d 566, 569 (Tenn. 2001)), *perm. app. denied* (Tenn. Dec. 3, 2020).

Our supreme court has discussed previously the “practical difficulties” of applying the election doctrine in child sexual abuse cases and the court’s practice of allowing “the State some latitude in the prosecution of criminal acts committed against young children who are frequently unable to identify a specific date on which a particular offense was committed.” *Qualls*, 482 S.W.3d at 10 (quoting *Rickman*, 876 S.W.2d at 828). Our supreme court noted that “[t]here is no right to a perfect election” and that the election requirement can be satisfied in numerous ways. *Id.* at 10. The court explained:

For example, the State may elect a particular offense by “narrow[ing] the multiple incidents by asking the victim to relate any of the incidents to a specific month,” *State v. Walton*, 958 S.W.2d 724, 727 (Tenn. 1997), “identify[ing] a particular type of abuse and elect[ing] that offense[,] . . . [or] identify[ing] an assault with reference to a meaningful event in his or her life, such as the beginning of school, a birthday, or a relative’s visit,” *Shelton*, 851 S.W.2d at 138.

Id. at 10-11.

In this case, the elections in Counts 1 and 2 were distinguished by location—in the family home on the mattress in A.S.’s bedroom; the time period—the two to four weeks in 2017 or 2018 when Defendant lived with the family; the circumstances—when C.F. was not at home; and the body part that was the subject of the aggravated sexual battery—digital-breast contact over the clothes and on the skin in Count 1, and digital-genital contact over the clothes and on the skin in Count 2. *See, e.g., State v. Pewitte*, ---S.W.3d ---, No. W2024-01128-CCA-R3-CD, 2025 WL 3510902, at *10 (Tenn. Crim. App. Dec. 8, 2025), *perm. app. denied* (Tenn. May 21, 2026) (discussing that the election of offenses was sufficient when the State “elected three specific acts—two involving oral penetration and one involving vaginal penetration—and the victim testified to each with identifying details tied to distinct locations, circumstances, and sequences”). In addition, the elections specified that the victim disclosed the incidents at Our Kids and testified to them at trial. We note that the trial court instructed the jury on the unanimity requirement and that the jury is presumed to follow the court’s instructions. *See State v. Banks*, 271 S.W.3d 90, 137 (Tenn. 2008). Because the elections were sufficient to ensure a unanimous jury verdict, no

clear and unequivocal rule of law was breached, and Defendant is not entitled to plain error relief.

Lastly, in Defendant's reply brief, during his discussion of his unanimity issue, he argues,

[E]ven if this [c]ourt decides that plain error relief is not warranted, the jury's verdicts in Counts 1 and 2 [were] unreasonable in light of the generic proof that was introduced at trial, including [the victim's] testimony that [Defendant] committed inappropriate sexual conduct every time her mother left the house, in various ways and locations in the house. Credibility is the "true issue" because "the jury either will believe the child's testimony that the consistent, repetitive pattern of acts occurred or disbelieve it . . . for if the jury believes the defendant committed all the acts it necessarily believes he committed each specific act." *Qualls*, 482 S.W.3d at 10 (quoting *People v. Jones*, 792 P.2d 643, 648 (Cal. 1990)). The issue in this case is that [the victim] also gave inconsistent reports, disclosing to Ms. Howlett that [Defendant] only touched her inappropriately one time prior to the June 2021 incident and repeatedly denied in her forensic interview that any inappropriate contact occurred before June 2021.

This argument touches upon both the *Qualls* jury instruction on generic evidence and the sufficiency of the evidence in Counts 1 and 2. However, as our supreme court has stated, "[i]ssues raised for the first time in a reply brief are waived." *Hughes v. Tenn. Bd. of Prob. & Parole*, 514 S.W.3d 707, 724 (Tenn. 2017). This issue has been waived.

II. Sufficiency of the Evidence

Defendant argues that the evidence is insufficient to support his convictions for aggravated sexual battery in Counts 3 and 4, arguing that the victim did not testify about digital-breast or digital-buttock contact occurring during the June 14 incident.⁸ The State responds that the evidence is sufficient.

Our standard of review for a sufficiency of the evidence challenge is "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."

⁸ Defendant does not dispute the sufficiency of the evidence related to Counts 1, 2, 5, 6, and 7.

Jackson v. Virginia, 443 U.S. 307, 319 (1979); *see also* Tenn. R. App. P. 13(e). Questions of fact, the credibility of witnesses, and the weight of the evidence are resolved by the fact finder. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh the evidence. *Id.* Our standard of review “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 *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)) (internal quotation marks omitted).

A guilty verdict removes the presumption of innocence, replacing it with a presumption of guilt. *Bland*, 958 S.W.2d at 659; *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). On appeal, the defendant bears the burden of proving why the evidence was insufficient to support the conviction, *Bland*, 958 S.W.2d at 659, and the “State must be afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom.” *State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007).

As relevant here, aggravated sexual battery is “unlawful sexual contact with a victim by the defendant[.]” and the victim is less than thirteen years old. Tenn. Code Ann. § 39-13-504(a)(4). “Sexual contact” is defined as “the intentional touching of the victim’s . . . intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification[.]” *Id.* § 39-13-501(6). “Intimate parts” includes, among other things, “the primary genital area, groin, inner thigh, buttock or breast of a human being[.]” *Id.* § 39-13-501(2).

The State’s election in Count 3 specified that it was based upon the victim’s testimony and forensic interview that Defendant unzipped her shirt and touched her breast on the skin during the June 14 incident.

The State’s election in Count 4 specified that it was based upon the victim’s testimony and Our Kids interview that Defendant “touched her bottom . . . ‘[o]n the outside, not on the inside’” during the June 14 incident.

In the light most favorable to the State, the eleven-year-old victim stated in her forensic interview that, during the June 14 incident, Defendant unzipped her shirt and “grabbed” her breast on the skin and grabbed and held her buttocks for “five minutes.” At the Our Kids interview, the victim told Ms. Howlett that, during the June 14 incident, Defendant had touched her bottom on the outside, not on the inside. The victim’s trial testimony included that Defendant touched her “on [her] torso” during the June 14 incident. The victim’s testimony, forensic interview, and Our Kids statement included that the touching occurred in the context of Defendant’s forcing her to perform fellatio and digitally penetrating her genital area. A rational jury could have found that Defendant had unlawful

sexual contact with the victim, that the victim was younger than thirteen years old, and that the purpose of the contact was for sexual arousal or gratification.

Defendant's argument that the evidence is insufficient because the victim did not describe the digital-breast and digital-buttock contact in her trial testimony relates to the jury's credibility determinations and the weight of the evidence, not its sufficiency. The victim's forensic interview was admitted as substantive evidence, which Defendant does not contest. *See* Tenn. Code Ann. § 24-7-123. The jury, by its verdict, credited the victim's statements in her forensic interview and resolved any inconsistencies with her trial testimony in the State's favor, and we will not disturb its findings in this regard. *See Bland*, 958 S.W.2d at 659. Defendant is not entitled to relief on this basis.

III. Sentencing

Defendant contends that the trial court imposed an excessive sentence by ordering partial consecutive service of his sentences pursuant to Tennessee Code Annotated section 40-35-115(b)(5). His argument centers on the trial court's finding that the sexual abuse was undiscovered for a period of years, and he asserts that because there was conflicting evidence regarding the incidents occurring in 2017 or 2018, the trial court "base[d] its ruling on a clearly erroneous assessment of the proof." Defendant also argues that the eighty-two-year sentence is not the least severe measure necessary to achieve the purposes for which the sentence was imposed. The State responds that the trial court properly ordered partial consecutive service of the sentences.

Tennessee Code Annotated section 40-35-210(b) requires that a trial court consider the following when determining a specific sentence to impose upon a defendant:

- (1) The evidence, if any, received at the trial and the sentencing hearing;
- (2) The presentence report;
- (3) The principles of sentencing and arguments as to sentencing alternatives;
- (4) The nature and characteristics of the criminal conduct involved;
- (5) Evidence and information offered by the parties on the mitigating and enhancement factors set out in [Tennessee Code Annotated sections] 40-35-113 and 40-35-114;
- (6) Any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee;

(7) Any statement the defendant wishes to make on the defendant's own behalf about sentencing; and

(8) The result of the validated risk and needs assessment conducted by the department and contained in the presentence report.

Tenn. Code Ann. § 40-35-210(b) (2023).

In determining a specific sentence within a range of punishment, the trial court should consider, but is not bound by, the following advisory guidelines:

(1) The minimum sentence within the range of punishment is the sentence that should be imposed, because the general assembly set the minimum length of sentence for each felony class to reflect the relative seriousness of each criminal offense in the felony classifications;

and

(2) The sentence length within the range should be adjusted, as appropriate, by the presence or absence of mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114.

Tenn. Code Ann. § 40-35-210(c).

To facilitate meaningful appellate review, the trial court must state on the record the factors it considered and the reasons for imposing the sentence chosen. Tenn. Code Ann. § 40-35-210(e); *State v. Bise*, 380 S.W.3d 682, 706 (Tenn. 2012). Although the trial court should consider enhancement and mitigating factors, such factors are advisory only. *See* Tenn. Code Ann. § 40-35-114; *see also Bise*, 380 S.W.3d at 698 n.33, 704; *State v. Carter*, 254 S.W.3d 335, 346 (Tenn. 2008). We note that “a trial court’s weighing of various mitigating and enhancement factors [is] left to the trial court’s sound discretion.” *Carter*, 254 S.W.3d at 345. In other words, “the trial court is free to select any sentence within the applicable range so long as the length of the sentence is ‘consistent with the purposes and principles of [the Sentencing Act].’” *Id.* at 343. A trial court’s “misapplication of an enhancement or mitigating factor does not invalidate the sentence imposed unless the trial court wholly departed from the 1989 Act, as amended in 2005.” *Bise*, 380 S.W.3d at 706. “[Appellate courts are] bound by a trial court’s decision as to the length of the sentence imposed so long as it is imposed in a manner consistent with the purposes and principles” set out in Tennessee Code Annotated sections 40-35-102 and 103. *Carter*, 254 S.W.3d at 346.

When the record clearly establishes that a trial court imposed a sentence within the appropriate range after a “proper application of the purposes and principles of our Sentencing Act,” this court reviews a trial court’s sentencing decision under an abuse of discretion standard with a presumption of reasonableness. *Bise*, 380 S.W.3d at 707. The party challenging the sentence on appeal bears the burden of establishing that the sentence was improper. Tenn. Code Ann. § 40-35-401, Sentencing Comm’n Cmts.

In *State v. Pollard*, 432 S.W.3d 851, 859 (Tenn. 2013), the Tennessee Supreme Court expanded its holding in *Bise* to trial courts’ decisions regarding consecutive sentencing. “So long as a trial court properly articulates reasons for ordering consecutive sentences, thereby providing a basis for meaningful appellate review, the sentences will be presumed reasonable and, absent an abuse of discretion, upheld on appeal.” *Id.* at 862 (citing Tenn. R. Crim. P. 32(c)(1)). Among the Tennessee Supreme Court’s reasons for shifting to an abuse of discretion standard, the *Pollard* Court noted that “the 2005 amendments also signaled a general increase in the discretionary authority of the trial courts in regard to all sentencing decisions, including the decision of whether to impose consecutive sentences.” *Id.* at 860.

If a defendant is convicted of more than one criminal offense, the court shall order sentences to run consecutively or concurrently. Tenn. Code Ann. § 40-35-115(a). Any one of the grounds set out in Tennessee Code Annotated section 40-35-115(b) is “a sufficient basis for the imposition of consecutive sentences.” *Pollard*, 432 S.W.3d at 862 (citing *State v. Dickson*, 413 S.W.3d 735, 748 (Tenn. 2013)). In this case, the trial court relied upon Tennessee Code Annotated section 40-35-115(b)(5), which provides in relevant part that the court may order sentences to run consecutively if the court finds by a preponderance of the evidence that

[t]he defendant is convicted of two (2) or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances arising from the relationship between the defendant and victim or victims, the time span of defendant’s undetected sexual activity, the nature and scope of the sexual acts and the extent of the residual, physical and mental damage to the victim or victims[.]

“[N]ot all of the aggravating circumstances listed in [Code] section 40-35-115(b)(5) must be present to support the imposition of consecutive sentencing,” and consecutive sentences may be imposed “even when one factor militates against them if the other aggravating circumstances have been established and carry sufficient weight.” *State v. Doane*, 393 S.W.3d 721, 738 (Tenn. Crim. App. 2011) (citations and quotation marks omitted); see *State v. Jarrett*, No. M2024-01349-CCA-R3-CD, 2025 WL 2630504, at *2-3 (Tenn. Crim. App. Sept. 12, 2025), *no perm. app. filed*.

Here, Defendant concedes that the trial court ordered in-range sentences imposed after making the appropriate findings on the record and that its determination should be reviewed for an abuse of discretion with a presumption of reasonableness. *Bise*, 380 S.W.3d at 707.

In applying partial consecutive sentencing, the trial court considered that a relationship of private trust existed between Defendant and the victim; that Defendant's sexual activity was undetected for a period of three to four years; that two types of penetration occurred and "just about every theory of aggravated sexual battery possible"; and, after considering the victim impact statement, that the abuse resulted in "significant" mental damage to the victim.

We note that Defendant only contests one of the applicable aggravating factors and that, even without considering the 2017 or 2018 incidents, Defendant engaged in oral-penile and digital-genital penetration and touching the victim's breasts and buttocks; he abused the position of trust placed in him by C.F. and the victim; and he caused the victim significant mental harm. The trial court acted within its broad discretion to order partial consecutive service of the sentences. *See State v. Gadbois*, No. M2024-00427-CCA-R3-CD, 2026 WL 1397092, at *27 (Tenn. Crim. App. May 19, 2026) (noting that this court has "has previously upheld lengthy terms of incarceration imposed pursuant to the sexual abuse of a minor factor").

Likewise, Defendant's argument that his effective sentence is not the least severe means necessary to achieve the purposes of sentencing is unavailing. As the State notes, the interests of the public and the interests of the State in ensuring that Defendant is punished for each of his crimes weigh in favor of a lengthy sentence in this case. Defendant sexually abused the young victim for several weeks in 2017 or 2018, left for some years, and then returned, only to immediately begin abusing her again. Defendant preyed upon a financially unstable family and abused the trust placed in him by C.F. to manufacture an opportunity to be alone with the victim. Moreover, proof at the sentencing hearing established that Defendant was a self-reported gang member with prior felony convictions for carjacking and possession of a firearm during the commission of a dangerous felony. After serving his sentences, Defendant accumulated charges for selling methamphetamine on three occasions in 2020, as well as kidnapping and raping T.M. only two weeks before he committed the four separate sexual offenses in this case. We further note that, in the presentence report, Defendant accepted no responsibility for the offenses. The record amply supports the trial court's sentencing determinations, and Defendant is not entitled to relief on this basis.

Conclusion

In light of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

s/Robert L. Holloway, Jr.
ROBERT L. HOLLOWAY, JR., JUDGE