FILED
08/13/2026
Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 14, 2026

STATE OF TENNESSEE v. CHRISTOPHER LAMONT LUSTER

Appeal from the Circuit Court for Robertson County
No. 74CC2-2021-CR-166 William R. Goodman, III, Judge

No. M2025-00841-CCA-R3-CD

The Defendant, Christopher Lamont Luster, appeals his Robertson County Circuit Court conviction of rape of a child, for which he received a sentence of thirty years' incarceration. On appeal, the Defendant contends that (1) the evidence is insufficient to sustain his conviction, (2) he was denied a fair trial because he was unable to adequately hear the testimony, and (3) his sentence is excessive. Following our review, we affirm the Defendant's conviction but vacate his sentence and remand for further proceedings consistent with this opinion.

Tenn. R. App. P. 3 Appeal as of Right;
Judgment of the Circuit Court Affirmed in Part;
Vacated in Part; Case Remanded

STEVEN W. SWORD, J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and TOM GREENHOLTZ, JJ., joined.

William F. Kroeger, Springfield, Tennessee, (on appeal and motion for new trial hearing); and Paul J. Walwyn, Madison, Tennessee, (at trial and sentencing), for the appellant, Christopher Lamont Luster.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Senior Assistant Attorney General; Joshua R. Gilbert, Assistant Attorney General (*pro hac vice*); Robert J. Nash, District Attorney General; and Jason White, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

On April 21, 2021, a Robertson County grand jury returned an indictment charging the Defendant with one count of rape of a child. The Defendant proceeded to trial on November 7, 2022.

A. Trial

The victim testified that she was born in April 2011 and was eleven years old at the time of the Defendant's trial. The victim testified that the Defendant visited her family's home and was scheduled to spend the night there on April 5, 2021. She recalled that the Defendant had three cell phones and that he permitted the victim and her brother to play with them as they sat together in the living room that evening. During the Defendant's visit, the victim's mother instructed the victim and her brother to go to bed. The victim briefly went into her bedroom and then returned to the living room, where the Defendant and her brother were sitting. The victim recalled that her parents had gone to bed when she returned to the living room. The victim sat on the couch beside the Defendant and resumed playing with his cell phone; as she did so, the Defendant began "rubbing" her leg. The victim's brother instructed the victim to go to bed shortly thereafter.

The victim testified that she returned to her bedroom but later went to the bathroom. As she walked to the bathroom, she saw her brother "playing around" and "wrestling" with the Defendant in the living room. The victim stated that she entered the bathroom and turned on the light, leaving the door open behind her. The Defendant followed the victim inside the bathroom and closed and locked the door. The victim stated that she attempted to hug the Defendant and that the Defendant picked her up and set her on the sink. The victim recalled that she wore a nightgown over her underwear and that the Defendant reached underneath her nightgown and pulled her underwear to the side. She heard the Defendant unzip his pants as he moved to stand in front of her. The victim testified that she then felt "a little sting" near her "private area," which she identified as her vagina. She stated that the Defendant then applied Vaseline to his penis and inserted his penis into her vagina. The victim testified that this was painful.

The victim recalled that her brother began knocking on the bathroom door shortly after the Defendant inserted his penis into her vagina and continued knocking until the Defendant permitted her to leave the bathroom. The victim ran from the bathroom to her bedroom. The victim's brother followed her into her bedroom shortly thereafter, while the Defendant remained in the bathroom. The victim began crying and informed her brother what happened. She testified that she then went to her mother's bedroom to tell her what happened and that she had to pass the Defendant on her way. She recalled she told the Defendant she was crying because she had lost her hairbrush and needed to find it, and the Defendant allowed her to enter her mother's bedroom.

The victim testified that upon entering her mother's bedroom, she saw that her father was asleep and that her mother was in her bathroom. The victim told her mother what the Defendant had done to her, and the victim's mother woke the victim's father. As the victim's father dressed, the victim's mother and the victim saw that the Defendant was standing in an adjacent room and looking into the victim's mother's bedroom. The victim's mother called the police and her relatives. The victim recalled that after the police gathered evidence from her home, she went to the hospital and spoke with "two ladies." She stated that the "two ladies" swabbed her underwear and placed it into a bag.

On cross-examination, the victim stated that the Defendant often spent the night at her family's home and slept on a couch in the living room. She recalled that the Defendant helped her father repair vehicles. She stated that she and her brother briefly played with the Defendant before she entered the bathroom. She testified that she felt confused when the Defendant picked her up and placed her on the bathroom sink. The victim agreed that she did not see the Defendant's penis, but she averred that she knew that he applied Vaseline to his penis because "[h]is hand went down." She was unsure how much time elapsed during the incident. She stated that the Defendant "stood back" when her brother began knocking on the bathroom door and that she "jumped down" and unlocked the door to exit the bathroom. She agreed that although she had initially described the Defendant as wearing pants, he could have been wearing shorts.

The victim's brother testified that he was thirteen at the time of the Defendant's trial. He described the Defendant as a family friend and averred that the Defendant frequently visited the family's home to help his father "do work and stuff." He recalled that, on the evening of April 5, 2021, he, his sister, and the Defendant sat together on two couches in his family's living room and "play[ed] on" the Defendant's cell phones. He stated that his parents were in their bedroom but were not asleep.

The brother testified that, while he and the victim played with the Defendant's cell phones, he noticed the Defendant "rubbing on" the victim's thigh. The brother told the victim to go to bed, and the victim did so. However, the victim exited her bedroom soon thereafter and entered the bathroom, and the Defendant followed her into the bathroom. The brother approached the bathroom and found the door was closed and locked. The brother knocked on the door three times and, after approximately two minutes, the victim exited the bathroom and went into her bedroom. The brother followed the victim into her bedroom and found her sitting on her bed and crying. The brother asked the victim "what was wrong," and the victim responded that the Defendant had touched her "on [her] private part."

The brother testified that he instructed the victim to tell their mother that the Defendant had touched her. He recalled that the victim ran to their mother's bedroom,

entered the adjoining bathroom, and closed the door behind her. The brother sat in a chair near the bathroom and waited for them to exit. He stated that his mother called the police, and one of her friends came to the home. The brother later accompanied the victim to the hospital.

The brother testified that, two weeks before the offense, his mother gave him a jar of Vaseline, which he kept in the bathroom near the sink and used to treat his chapped lips during the winter. He testified that he did not see what the Defendant and the victim were doing in the bathroom when the bathroom door opened.

On cross-examination, the brother testified that his family's living room included a red couch and a brown couch. He stated that he typically slept on the red couch and that the Defendant typically slept on the brown couch when he spent the night at the family's home. The brother stated that he did not "run around or wrestle" with the Defendant when the victim returned to the living room. He described the Defendant as wearing black shorts on the night of the offense.

The victim's mother testified that she and her husband were not the biological parents of the victim or her brother but that they had shared custody of the children as their legal guardians for more than nine years by the time of the Defendant's trial. She stated that she and her husband had raised the victim and the victim's brother since they were babies and averred that they referred to her and her husband as their parents.

The mother stated that she first met the Defendant via her biological daughter. She recalled that the Defendant eventually became a family friend and that she and her husband grew to trust him. The mother stated that the Defendant occasionally stayed overnight at her home on weekends; she explained that he visited to help her husband "work on cars" and to tend to the family's chickens, rabbits, and dogs.

The mother testified that the Defendant spent the night at her home on April 5, 2021. She recalled telling the victim and the brother to go to bed, and that she then went to her bedroom. She stated that the victim awoke her later that night and informed her, through tears, that the Defendant "pulled her underwear down and set her up on the sink in the bathroom." The victim also informed her mother that the Defendant placed Vaseline on her "private" and on himself and then "put his private part in her private part," which she described as painful. The mother testified that she had never seen the victim so upset.

The mother stated that she called 911 after speaking with the victim. She also asked one of her friends to visit and "be with" her. She stated that she and her friend ensured that the Defendant was still at the victim's family's home when the police arrived. The mother recalled that two police officers arrived at her home and requested that she permit them to

collect the victim's underwear as evidence; the mother denied this request, but she permitted them to collect the Vaseline and the nightgown the victim wore. The mother thereafter took the victim to Vanderbilt Children's Hospital. She testified that, after the victim was examined at the hospital, the doctors informed her that the victim "had been messed with." She stated that the doctors collected the victim's underwear and provided her with new clothes to wear "after they cleaned her up."

On cross-examination, the mother agreed that she was asleep when the victim woke her. She stated that she immediately called 911 after speaking with the victim. She recalled that the Defendant attempted to leave the home shortly thereafter and that she and her friend ensured he did not leave before the police arrived. She stated that the Defendant just "st[ood] there" after she informed him that she had called the police. She testified that she asked the Defendant why he had "bother[ed]" the victim and that the Defendant responded that "he didn't know."

The mother agreed that although the Defendant occasionally slept overnight at her home on weekends, it was also common for him to spend the night on weekdays. She averred that the Defendant typically stayed at her old home when he was not with her family. She explained that her family "was trying to help him."

Robertson County Sheriff's Office (RCSO) Deputy Wilson Jernigan testified that, on the evening of April 5, 2021, he was training RCSO Sergeant Michael Krause. During their patrol, Deputy Jernigan and Sergeant Krause responded to a call at the victim's home. Deputy Jernigan recalled that the victim's family and the Defendant were gathered in the living room when he arrived. He described the victim as "isolated" and "shy," as if "she was just kind of existing in the room" and "had no thoughts." Deputy Jernigan took statements from the mother and other family members; took photographs of the bathroom, which were introduced as exhibits; and collected a jar of Vaseline from the bathroom as evidence. Deputy Jernigan testified that Sergeant Krause and RCSO Detective Jacob Ryan thereafter led the investigation. On cross-examination, Deputy Jernigan testified that he did not see any evidence of petroleum jelly in the bathroom other than in the jar of Vaseline, and he denied that any petroleum jelly was "smeared" anywhere in the bathroom.

RCSO Sergeant Michael Krause testified that he was assigned as Deputy Jernigan's field training officer on the evening of April 5, 2021. During their patrol, Sergeant Krause and Deputy Jernigan responded to a call at the victim's home. Sergeant Krause testified that he and Deputy Jernigan were admitted into the victim's home via the back door and that they found "everybody," except for the victim's father, sitting together in the living room. He recalled that there was "a lot of tension in the air" and a "very awkward silence" until he asked, "What was going on?" He described the victim as sitting "tucked back into the couch" and sitting in "a protective stance." He identified the Defendant as the alleged

perpetrator and asked him to step outside onto the back porch while Deputy Jernigan spoke with the victim's family.

Sergeant Krause testified that he did not ask the Defendant any questions and that the Defendant began speaking to him of "his own free will." He recalled that the Defendant stated that he and the victim were "just wrestling," although he conceded that "it may have gotten a little more physical" than it should have. The Defendant repeated "over and over and over" that he and the victim were just "wrestling" and "playing." Sergeant Krause testified that the Defendant admitted that he put the victim on the bathroom sink and that the victim "got scared."

Sergeant Krause recalled that one of the mother's friends was also present at the home and that he primarily communicated with her because the mother had difficulty hearing the officers. He stated that he instructed the friend to take the victim to the Our Kids Center in Nashville to have her examined by a sexual assault nurse examiner. Sergeant Krause also assisted Deputy Jernigan in collecting evidence from the home. He recalled that the officers collected a pink shirt the victim had worn on the evening of the offense. Sergeant Krause testified that he did not arrest the Defendant that night; however, he instructed the Defendant to leave the home and informed him that he would be arrested for trespassing if he returned.

On cross-examination, Sergeant Krause conceded that he may have asked the Defendant a question to help "build rapport," but he maintained that he did not ask any question pertinent to the investigation. He testified that he did not ask to collect the clothing the victim wore during the offense and that he was informed the victim had changed clothes before the officers arrived. He stated that he was told the pink shirt he and Deputy Jernigan collected as evidence was the one the victim had worn during the offense. He was also informed that the victim was still wearing the underwear she had worn during the offense, and he testified that he instructed the victim's family not to permit the victim to remove her underwear before she arrived at the hospital.

Jill Howlett testified that she worked as a forensic social worker at the Our Kids Center. Ms. Howlett recalled that she and Leanna Dugan, a nurse practitioner, were on call on the evening of April 5, 2021, and remained on call into the early morning of the following day. She stated that the victim was referred to the Our Kids Center by Vanderbilt Children's Hospital around 5:00 a.m. on April 6, 2021. Ms. Howlett spoke with the mother and asked about the victim's medical history and the purpose of the visit. Ms. Howlett also explained the process of a forensic medical examination to both the victim and her mother.

Ms. Howlett described the victim as a "typical developing nine-year-old," noting that she was cooperative throughout her examination. Ms. Howlett testified that the victim

reported that the Defendant had "put his private on [her] private." The victim further stated that the Defendant's private "didn't go on the inside" but averred that "he pushed [her] private with his private and it hurt." The victim noted that the Defendant "had some Vaseline" and stated that she did not believe he used it. Ms. Howlett shared the victim's report with Nurse Dugan. She noted that the victim also disclosed that the police had taken the nightgown she wore during the offense but that she wore the same underwear. Ms. Howlett and Nurse Dugan collected the victim's underwear, performed a medical examination, and completed a sexual assault kit.

Leanna Dugan testified that she worked as a nurse practitioner and qualified sexual assault nurse examiner at the Our Kids Center. Nurse Dugan stated that she worked with Ms. Howlett as part of a team and that they were on call on the evening of April 5, 2021, and into the early morning of the following day. She stated that she and Ms. Howlett received a referral in the early morning of April 6, 2021, regarding "a nine-year-old girl who had reported sexual contact by an adult male in her home." Nurse Dugan testified that she and Ms. Howlett interviewed the victim and her mother. Nurse Dugan thereafter performed a medical examination upon the victim.

Nurse Dugan testified that she collected swabs from the victim's genitalia and mouth and completed a sexual assault kit. She recalled that the victim had a superficial laceration near her outer labia which extended towards her anus. Although Nurse Dugan noted that this type of injury would heal on its own between two to three days, she described it as "significant trauma" consistent with an erect penis pushing against the victim's genitalia. She stated that the victim would likely have experienced a stinging or burning pain when the injury was inflicted. Nurse Dugan stated that the injury was likely inflicted near in time to the victim's examination and did not appear as though it had begun to heal. She also noted that the victim's genitals were "a little bit red."

On cross-examination, Nurse Dugan conceded that the laceration to the victim's genital area could have been caused by an accident. However, she noted that the victim did not report suffering any accidents in her medical history. She stated that she saw injuries consistent with the victim's in approximately five percent of the children she examined. On redirect examination, Nurse Dugan testified that the injury could have been caused by an object penetrating the victim's outer labia. She averred that the victim's injury could have been caused by the victim's straddling an object and falling but that "something" must have "also penetrated the labia" during the fall.

RCSO Detective Jacob Ryan testified that he received a phone call from Sergeant Krause on the evening of April 5, 2021, informing him of the victim's case. Detective Ryan instructed Sergeant Krause to ensure that the Defendant did not reenter the home or contact the victim's family, to collect any pertinent evidence, and then to ask the mother to

take the victim to the Our Kids Center. On April 12, 2021, Detective Ryan retrieved the victim's sexual assault kit from the Our Kids Center, took it to the RCSO, and submitted it, along with the other evidence collected from the victim's home, into evidence via Detective Jimmy Kendrick, whom he identified as the RCSO's evidence clerk.

Detective Ryan testified that the victim gave a forensic interview at the Child Advocacy Center in Springfield. After reviewing the evidence collected from the victim's home and the victim's forensic interview, Detective Ryan procured a search warrant for the Defendant's DNA. He collected two buccal swabs from the Defendant and submitted them, along with the victim's sexual assault kit and evidence collected from her home, to the Tennessee Bureau of Investigation (TBI) for examination.

Detective Ryan testified that the Defendant was arrested and subsequently housed at the Robertson County jail. Through Detective Ryan's testimony, the State introduced portions of a jail telephone call the Defendant placed on February 10, 2022. In the telephone call, the Defendant spoke with an unidentified woman. The Defendant stated that he had gone to court and that the State had tried to "offer [him] something." He asserted that the State had no evidence to use against him and that he expected the case to be dismissed. The unidentified woman responded that he needed to explain why his DNA was "on [the victim's] panties." The Defendant stated that the DNA may have been from his "adjusting" himself or that the victim's underwear may have been inside out. He also stated that he might have "swiped" the victim.

On cross-examination, Detective Ryan testified that he collected the buccal swabs from the Defendant on May 1, 2021. He stated that the Defendant was in custody at the time and did not contest the collection of the buccal swabs. He stated he did not know what the Defendant meant when he said he might have "swiped" the victim.

Following Detective Ryan's testimony, the parties stipulated that RCSO Detective Jimmy Kendrick was the RCSO's evidence custodian. They further stipulated that on May 21, 2021, Detective Kendrick transported the evidence collected by Detective Ryan and Deputy Jernigan, which included the victim's shirt, a jar of petroleum jelly, the sexual assault kit, and the Defendant's buccal swabs, to the TBI's Crime Laboratory. The State read these stipulations into the record.

TBI Special Agent John Dunn testified that he worked in the TBI's Latent Print Unit. Special Agent Dunn testified that he examined the jar of petroleum jelly collected from the victim's home and was unable to develop any latent fingerprints from the jar.

TBI Special Agent Alyssa Manfredi testified that she worked in the TBI's Forensic Biology Unit. Special Agent Manfredi testified that she examined the buccal swabs

collected from the Defendant, the victim's shirt and underwear, and the sexual assault kit. She stated that the swabs taken from the victim contained in the sexual assault kit did not contain any male DNA, but she noted that the outside seams of the victim's underwear contained male DNA. She stated that the victim's underwear did not contain the presence of semen. After testing the buccal swabs collected from the Defendant, Special Agent Manfredi concluded that the male DNA she found on the victim's underwear matched the Defendant's DNA. Special Agent Manfredi testified that the victim's nightgown did not contain any semen and that she did not perform any DNA testing on it.

On cross-examination, Special Agent Manfredi noted that the victim's underwear and nightgown were stained. She stated that she tested these stains for the presence of semen and reiterated that they did not contain semen. She averred that she did not test the victim's clothing for the presence of Vaseline, although she agreed that Vaseline could cause staining.

The State rested. Following a *Momon* colloquy, the Defendant elected not to testify and presented no additional proof. Upon this evidence, the jury convicted the Defendant as charged.

B. Sentencing

The trial court held a sentencing hearing on May 31, 2023. The State introduced the Defendant's presentence report and the results of his psychosexual evaluation as exhibits at the outset of the sentencing hearing.

The mother testified that she had known the Defendant for approximately one year by the time of the offense. She stated that she had trusted him with her children and described him as playful with the victim and the victim's brother. She testified that the victim had developed a fear of men since the offense. She stated she felt guilty about the offense and its impact on the victim because it occurred in her home and because she had trusted the Defendant.

Following this proof, the State requested that the trial court sentence the Defendant as a Range II offender and impose a sentence between thirty-five and forty years' incarceration. The State argued that the Defendant had a prior criminal record which included two prior felony convictions in 1994 and convictions for driving under the influence in Davidson and Robertson Counties. The State further argued that the Defendant violated a position of private trust in committing the offense, noting that the victim's parents had trusted the Defendant around their children and permitted him to spend the night at their home. The Defendant responded that his prior convictions were not similar in nature to his conviction in this case and argued that he had not abused a position

of private trust in committing the offense. The Defendant, accordingly, requested that the trial court impose a sentence of twenty-five years' incarceration.

Following arguments, the trial court found that the Defendant was a Range II offender and imposed a sentence of thirty years' incarceration.[1] The trial court also ordered the Defendant to register as a sexual offender. The trial court did not address the parties' arguments regarding the applicable enhancement factors at the sentencing hearing. The trial court entered an order memorializing its findings that same day. In its order, the trial court stated that it had considered the evidence presented at trial and at the sentencing hearing, the presentence report, the results of the psychosexual assessment, the purposes and principles of sentencing, the applicable enhancement and mitigating factors, and the relevant statistical information provided by the administrative office of the courts. In its order, the trial court stated that it had applied enhancement factor (1), that "[t]he defendant has a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range," and enhancement factor (14), that "[t]he defendant abused a position of public or private trust, or used a professional license in a manner that significantly facilitated the commission or the fulfillment of the offense," to the Defendant's sentence. Tenn. Code Ann. § 40-35-114(1), (14).

C. Motion for a New Trial

The Defendant filed a timely motion for a new trial. Following the withdrawal and substitution of counsel, the Defendant filed an amended motion for a new trial on February 7, 2025, contending that the evidence is insufficient to sustain his conviction, that he was denied a fair trial because he was unable to adequately hear the testimony at trial, and that his sentence was excessive. The State responded in opposition on March 17, 2025, and the trial court held a hearing on May 8, 2025.

The Defendant testified that he had suffered from hearing loss since he was a child and that he had difficulty hearing the testimonies of the witnesses during his trial. He stated that he informed trial counsel when he could not hear the witnesses or otherwise asked trial counsel what the witnesses said. He further testified that he did not have hearing aids at trial but was provided with assistive headphones during his sentencing hearing, which he described as helpful. He averred that he did not know that he could request assistive headphones until the mother was provided with them at the sentencing hearing. He stated that he did not see anyone at his trial wearing assistive headphones. He testified that it was especially difficult for him to hear the testimonies of the victim and her brother. The

[1] Pursuant to Code section 39-13-522, rape of a child is a Class A felony, and a defendant convicted of rape of a child "shall be punished as a Range II offender" or as a Range III offender, "if appropriate." Tenn. Code Ann. § 39-13-522(b)(1), (b)(2)(A) (2020) (subsequently amended).

Defendant further testified that, while he was incarcerated following his trial, he was evaluated by a physician and provided with hearing aids. He stated that he had since lost his hearing aids.

On cross-examination, the Defendant testified that he had hearing loss in his right ear; he described his left ear as his "good ear." He averred that he could not understand Special Agent Manfredi's testimony. He stated that he felt like he was "left out" during his trial and that he did not get the opportunity to "say anything much"; however, he agreed that he elected not to testify and that he did not inform the trial court that he was unable to hear the testimonies of the witnesses. On redirect examination, the Defendant testified that he could hear the witnesses speaking but could not discern their words.

Trial counsel testified that, during his pretrial meetings with the Defendant, the Defendant would ask him to "repeat things quite a bit." He recalled that the Defendant asked him to repeat what the witnesses had said at several points during the trial and informed counsel that the testimony was incorrect. Trial counsel testified that he asked the Defendant to write down his questions, but that the Defendant "had a little bit of trouble writing certain things." He stated that he did not know that the Defendant had a "hearing deficit" at the time of his trial. He agreed that he learned that the Defendant needed assistance in hearing the proceedings when he asked for assistive headphones during his sentencing hearing, but he averred that he "still didn't know what his issue was or if it was just that he wanted to make sure that he was hearing things correctly."

On cross-examination, trial counsel reiterated that he was unaware of the Defendant's hearing loss prior to the trial. He stated that if he had known, he would have filed a pretrial motion raising it as an issue or otherwise brought it to the trial court's attention. He stated that the Defendant did not inform the trial court that he was unable to hear the proceedings during his *Momon* colloquy or at any other point during the trial.

Following this proof, the Defendant argued that he was unable to fully participate in his trial proceedings because of his hearing loss. He contended that he did not know that any accommodation could be provided to assist him in hearing the proceedings and that he promptly requested assistance when he saw that the mother was provided with assistive headphones during his sentencing hearing. The Defendant noted that he had particular difficulty in hearing the testimonies of the victim and her brother. The State responded that the Defendant was not entitled to relief and noted that he had not raised any issue regarding his hearing loss either before or during his trial. The parties also presented arguments regarding the sufficiency of the evidence and the length of the Defendant's sentence.

Following arguments, the trial court denied the Defendant's motion for a new trial, concluding that the evidence was sufficient to sustain his conviction and that his sentence was not excessive. Regarding the Defendant's claim that he was denied a fair trial because he was unable to adequately hear the testimony, the trial court found that there was "just no basis in the record to establish a significant hearing deficiency" at the time of trial. This timely appeal followed.

II. ANALYSIS

On appeal, the Defendant contends that the evidence is insufficient to sustain his conviction, that he was denied a fair trial because he was unable to adequately hear the testimony at trial, and that his sentence is excessive. We will consider these issues in turn.

A. SUFFICIENCY

The Defendant challenges the sufficiency of the evidence to convict. Specifically, he contends that the victim's testimony was inconsistent as to whether the Defendant penetrated her vagina, whether he used Vaseline, and whether the victim and her brother wrestled with the Defendant. He concedes that the evidence is sufficient to sustain a conviction for the lesser-included offenses of attempted rape of a child or aggravated sexual battery and requests that this court reduce his conviction accordingly. The State responds that the evidence adduced at trial is sufficient to sustain the Defendant's conviction of rape of a child. We agree with the State.

"Findings of guilt in criminal actions . . . shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e). The standard of appellate review on a challenge to the sufficiency of the evidence 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original) (citations omitted); *see also State v. Williams*, 558 S.W.3d 633, 638 (Tenn. 2018).

"A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient." *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982); *see also State v. Thomas*, 687 S.W.3d 223, 249 (Tenn. 2024) (citing *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000)). "On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom." *State v. Wilson*, 211 S.W.3d 714, 718 (Tenn. 2007) (citing *State v. Hall*, 8 S.W.3d 593, 599 (Tenn. 1999)). "We do not reweigh the evidence . . . because questions regarding witness credibility, the weight to be

given the evidence, and factual issues raised by the evidence are resolved by the jury as the trier of fact." *State v. Curry*, 705 S.W.3d 176, 183 (Tenn. 2025) (citations omitted). The same standard of review applies "whether the conviction is predicated on direct or circumstantial evidence, or a combination of both." *Williams*, 558 S.W.3d at 638 (first citing *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011); and then citing *State v. Brown*, 551 S.W.2d 329, 331 (Tenn. 1977)).

As relevant here, "[r]ape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is more than eight (8) years of age but less than thirteen (13) years of age." Tenn. Code Ann. § 39-13-522(a) (2020). "'Sexual penetration' means sexual intercourse . . . or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's, the defendant's, or any other person's body, but emission of semen is not required." *Id*. § 39-13-501(7).

The evidence adduced at trial, when viewed in the light most favorable to the State, is sufficient to sustain the Defendant's conviction of rape of a child. The victim testified that on April 5, 2021, while she and her brother played games on the Defendant's cell phones, the Defendant began rubbing her thigh. The brother told the victim to go to bed, and she did so; however, she later exited her bedroom and entered the bathroom. The Defendant followed the victim into the bathroom and closed and locked the door behind him. The victim testified that the Defendant then picked her up, sat her on the bathroom sink, pulled her underwear to the side, and inserted his penis into her "private part." She testified that her "private part" was her vagina. Although the victim's testimony alone is sufficient to sustain the conviction, other testimony corroborated the victim's testimony. Nurse Dugan testified that the victim suffered a superficial laceration near her outer labia which extended towards her anus. Nurse Dugan described this injury as "significant trauma" consistent with an erect penis pushing against the victim's genitalia. Additionally, Special Agent Manfredi testified that the Defendant's DNA was recovered from the victim's underwear.

The Defendant contends that there was insufficient proof that he inserted his penis into the victim's vagina and notes that the victim informed Nurse Dugan that the Defendant did not penetrate her vagina. As noted above, sexual penetration means "any . . . intrusion, however slight." *Id.* Nurse Dugan also testified that the victim's injury was consistent with an erect penis pushing against the victim's genitalia and that the superficial laceration she sustained could have been caused by an object penetrating the victim's outer labia. Regardless of these alleged inconsistencies in the proof, proof of the Defendant's penetrating the victim's outer labia by pushing his penis against her outer labia or of his inserting his penis into her vagina is sufficient to sustain his conviction of rape of a child. *See State v. Bowles*, 52 S.W.3d 69, 74 (Tenn. 2001) (holding that proof of the sexual

penetration "of the vulva or labia is sufficient" to prove vaginal penetration). The Defendant's challenge to the sufficiency of the convicting evidence is, at its core, a challenge to the victim's credibility and the weight of the evidence. But determining a witness's credibility and weighing the evidence are tasks entrusted to the jury as the trier of fact. *Curry*, 705 S.W.3d at 183. The victim testified that the Defendant inserted his penis into her private part, and by its verdict, the jury accredited that testimony. We will not disturb that determination of credibility. The Defendant is not entitled to relief.

B. Fair Trial

The Defendant also argues that he was denied a fair trial because he was unable to adequately hear the testimony. He concedes that he did not raise this issue at any point during his trial, but he contends that he is nevertheless entitled to plenary review because he raised it in a timely motion for a new trial. The State responds that the Defendant's claim is waived and that he is not entitled to plain error relief. We agree with the State.

To be sure, a criminal defendant has a fundamental right to a fair trial, and that right encompasses the right to be present throughout trial proceedings and to face and cross-examine the witnesses against him or her. *See* U.S. Const. amends. V, VI, XIV § 1; Tenn. Const. art. I, § 9; see also *State v. Brown*, 29 S.W.3d 427, 430-31 (Tenn. 2000); *State v. Muse*, 967 S.W.2d 764, 766 (Tenn. 1998). Axiomatically, a criminal defendant also has the right to "understand the language of the forum," and as we have previously recognized, "[a] defendant who cannot hear is analogous to a defendant who cannot understand English, and a severely hearing-impaired defendant cannot be tried without adopting reasonable measures to accommodate his or her disability." *Gregory v. State*, No. M2023-01502-CCA-R3-PC, 2025 WL 1753253, at *31 (Tenn. Crim. App. June 25, 2025) (quoting *Com. v. Walls*, 993 A.2d 289, 297 (Pa. 2010)), perm. app. denied (Tenn. Dec. 11, 2025). The General Assembly has provided that accommodations must be made for deaf individuals—that is, those individuals with "a hearing loss so great as to prevent [them] from understanding language spoken in a normal tone"—in the form of qualified interpreters. Tenn. Code Ann. § 24-1-211(a)(1), (b)(1). However, "[e]very deaf person whose appearance before a proceeding entitles such person to an interpreter should notify the appointing authority of such need prior to any appearance and should request at such time the services of an interpreter." *Id.* § 24-1-211(b)(3). But here, the Defendant did not inform the trial court of his hearing loss and need for hearing assistance until his motion for a new trial hearing. Although he testified that he was unaware that he could receive accommodations for his hearing loss until his sentencing hearing, when he saw the mother using assistive headphones, we note that during the Defendant's trial, the prosecutor informed the trial court that the mother would "need the hearing aids" while testifying. At his motion for a new trial hearing, the Defendant also testified that he felt "left out" of the trial proceedings; however, he participated in the Momon colloquy and was given the

opportunity to raise any issues he had with the proceedings. Moreover, his claim that he felt "left out" is also belied by trial counsel's testimony at the motion for a new trial hearing that the Defendant conferred with him throughout his trial.

We do not intend to diminish a defendant's right to hear and understand trial proceedings. As we have previously noted, "if the proof established that [the defendant] had such a substantial hearing problem as to not be able to understand and participate in his trial and his impairment was not addressed after being brought to the attention of trial counsel and/or the court," the defendant would "[u]ndoubtedly be deprived of a fundamental right. *Carpenter v. State*, No. 0301-9411-CR-00425, 1996 WL 196523, at *3 (Tenn. Crim. App. Apr. 24, 1996).

However, as the State notes, the Defendant failed to raise the issue of his hearing loss at any point during his trial, thereby waiving his claim. Our basic rules of appellate procedure require that issues must first be presented to the trial court to preserve them for appellate review. *See* Tenn. R. App. P. 36(a) ("Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error."); *see also State v. Bristol*, 654 S.W.3d 917, 925 (Tenn. 2022) ("It has long been the general rule that questions not raised in the trial court will not be entertained on appeal."); *State v. Rowland*, 520 S.W.3d 542, 545 (Tenn. 2017) ("Generally, issues raised for the first time on appeal are waived."). This rule of issue preservation "ensure[s] that the defense and the prosecution are afforded an opportunity to develop fully their opposing positions on an issue." *State v. Minor*, 546 S.W.3d 59, 65 (Tenn. 2018) (citing *Puckett v. United States*, 556 U.S. 129, 134 (2009)). By requiring the parties to preserve their claims by fully litigating them below, the rule "may obviate altogether the need for appellate review." *Minor*, 546 S.W.3d at 65 (citing *State v. Jordan*, 325 S.W.3d 1, 57-58 (Tenn. 2010)).

The Defendant concedes that he did not raise the issue of his hearing loss at any point during his trial and that, normally, it would be waived. However, he maintains that he is entitled to plenary review of his claim because the issue is a "[s]tructural [d]ue [p]rocess defect." Respectfully, it appears, from a review of the cases the Defendant relies upon, that the Defendant has conflated the issues of issue preservation with the categories of constitutional error our supreme court has recognized. Our supreme court has recognized three categories of error: structural constitutional errors, which "compromise the integrity of the judicial process itself" and require automatic reversal; non-structural constitutional errors, which are subject to harmless error review; and non-constitutional errors, which are governed by Tennessee Rule of Appellate Procedure 36(b). *State v. Rodriguez*, 254 S.W.3d 361, 371-72 (Tenn. 2008); *see also State v. Dotson*, 254 S.W.3d 378, 388 n.8 (Tenn. 2008) (discussing structural constitutional errors and the harmless error doctrine); *Momon v. State*, 18 S.W.3d 152, 164-66 (Tenn. 1999) (same). Claims of

structural constitutional error are still governed by the rule of issue preservation; in other words, they must be raised via a contemporaneous objection at trial and are waived if presented for the first time in a motion for a new trial. *See State v. Flamini*, No. E2008-00418-CCA-R3-CD, 2009 WL 1456316, at *4 (Tenn. Crim. App. May 26, 2009) (concluding that a defendant waived plenary review of his constitutional due process claim by failing to raise it via a contemporaneous objection), *no perm. app. filed*; *see also State v. Taylor*, No. W2023-00693-CCA-R3-CD, 2024 WL 2132619, at *8 (Tenn. Crim. App. May 13, 2024) (collecting cases and holding that, pursuant to Tennessee Rule of Criminal Procedure 36(a), "a party is not allowed to raise an issue on motion for new trial that was not presented to the court at the trial of the case"), *perm. app. denied* (Tenn. Oct. 25, 2024).

The Defendant's argument that his claim is preserved for appellate review because he presented it to the trial court via a timely motion for a new trial, notwithstanding his failure to raise it via a contemporaneous objection at trial, is similarly unavailing. Like evidentiary claims, "[o]bjections to improper procedure must be voiced contemporaneously to give the trial judge the opportunity to correct the error on the spot." *State v. Estes*, 655 S.W.2d 179, 186 (Tenn. Crim. App. 1983). Such claims are waived if presented to the trial court for the first time in a motion for a new trial. *See State v. Smith*, 857 S.W.2d 1, 20 (Tenn. 1993) (concluding that a capital defendant waived appellate review of the procedure the trial court utilized during voir dire examination of the potential jurors by failing to raise the issue "until after the case had been presented to the jury."). As our supreme court has noted, "[t]rials are fluid processes and contain many moving parts." *State v. Vance*, 596 S.W.3d 229, 254 (Tenn. 2020). The function of a contemporaneous objection is to provide the trial court the opportunity to correct an error in real-time. *Id*. Even though presenting an issue for the first time in a motion for a new trial may permit the trial court to rule on the issue, it "does not serve to alleviate the consequences of the [d]efendant's failure to timely object at trial." *Id.* Accordingly, the Defendant has waived plenary review of his claim. The issue is reviewable only for plain error.

"When necessary to do substantial justice, an appellate court may consider an error that has affected the substantial rights of a party at any time" under plain error review. Tenn. R. App. P. 36(b). A defendant may only receive relief under plain error review if he or she proves all five of the following prerequisites:

> (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 violated; (4) the accused must not have waived the issue for tactical reasons; and (5) consideration of the error is necessary to achieve substantial justice.

State v. Rimmer, 623 S.W.3d 235, 255-56 (Tenn. 2021) (citing *State v. Martin*, 505 S.W.3d 492, 504 (Tenn. 2016)). If a defendant fails to prove any one of the five plain error factors, then he or she is not entitled to plain error relief, and the appellate court is not required to analyze the remaining factors. *State v. Bledsoe*, 226 S.W.3d 349, 358 (Tenn. 2007). In order to qualify as plain error, "[t]he magnitude of the error must have been so significant that it probably changed the outcome of the trial." *Id*. at 354 (quoting *State v. Adkisson*, 899 S.W.2d 626, 642 (Tenn. Crim. App. 1994) (internal quotation marks omitted)); *see also* Tenn. R. App. P. 36(b).

Plain error review, however, is discretionary, and should be sparingly exercised. *State v. Banks*, 271 S.W.3d 90, 119 (Tenn. 2008); *State v. Bledsoe*, 226 S.W.3d 349, 354 (Tenn. 2007). Importantly, an appellant requesting relief regarding an unpresented or unpreserved issue has the burden of persuading the appellate court that plain error relief is warranted to correct the trial court's obvious error. *Bledsoe*, 226 S.W.3d at 355; *State v. Maddin*, 192 S.W.3d 558, 562 (Tenn. 2005). In light of this burden of persuasion, an appellant's failure to request plain error review weighs against consideration of an unpresented or unpreserved issue. *State v. Thompson*, No. W2022-01535-CCA-R3-CD, 2023 WL 4552193, at *5 (Tenn. Crim. App. July 14, 2023) ("[A] defendant's failure to request [plain error] relief weighs against any such consideration on our own."), *no perm. app. filed*. This is especially true where, as here, a defendant does not respond to the State's argument that the issue is waiver for plenary review. *Id.* at *5. In such cases, "only particularly compelling or egregious circumstances could typically justify our *sua sponte* consideration of plain error relief." *Id*.

No such compelling or egregious circumstances exist in this case. Here, the issue of the Defendant's hearing loss was not presented to the trial court until the Defendant's motion for a new trial hearing. Even assuming, *arguendo*, the fact of the Defendant's hearing loss, the Defendant nevertheless had ample opportunities to inform the trial court of his need for hearing assistance. He did not do so in a timely fashion, and he did not request plain error review. Accordingly, the Defendant is not entitled to plain error relief.

C. SENTENCING

Lastly, the Defendant challenges his sentence as excessive. He contends that the trial court erred by failing to place on the record its findings of fact in support of its application of enhancement factors (1) and (14). The State responds that the trial court's findings are sufficient. We agree with the Defendant that the findings of fact are insufficient for a meaningful appellate review.

We review a trial court's sentencing determinations for abuse of discretion. *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). Additionally, where the trial court imposes a

within-range sentence "and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles" of the Sentencing Act, we afford its sentencing determinations a presumption of reasonableness. *Id*. A trial court abuses its discretion in the context of sentencing determinations by applying an incorrect standard of law or reaching a decision contrary to logic or reasoning which causes prejudice to the complaining party. *State v. Bonds*, 502 S.W.3d 118, 166 (Tenn. Crim. App. 2016) (citing *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997)).

Included among the purposes and principles of the Sentencing Act is the balancing consideration that "the sentence imposed should be the least severe measure necessary to achieve the purposes for which the sentence is imposed" while also acting as an effective deterrent to future violations of the law. *See* Tenn. Code Ann. §§ 40-35-102(3)(A), 40-35-103(4). The trial court must also consider the following factors:

> (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.

Id. § 40-35-210(b). Although the trial court is not required to make particularly lengthy or detailed findings on the record in its consideration of these factors, it must nevertheless "set forth enough to satisfy the appellate court that [it] has considered the parties' arguments and has a reasoned basis" for imposing the sentence. *Bise*, 380 S.W.3d at 705-06 (citing *Rita v. United States*, 551 U.S. 338, 356-57 (2007)).

The trial court's misapplication of an enhancement or mitigating factor does not serve to invalidate a defendant's sentence. *Bise*, 380 S.W.3d at 707. So long as it appears from the record that the trial court imposed a within-range sentence which complies with the purposes and principles of the Sentencing Act, we will afford its decision a presumption of reasonableness and will not invalidate it notwithstanding its erroneous application of an enhancement or mitigating factor. *Id.*; *see also State v. Fusco*, 404 S.W.3d 504, 548 (Tenn. 2012). Additionally, the trial court's weighing of the applicable enhancement and

mitigating factors is discretionary, and a defendant's disagreement with that discretionary determination is not a valid ground for appeal. *Bise*, 380 S.W.3d at 706; *see also State v. Earley*, 719 S.W.3d 228, 253 (Tenn. Crim. App. 2025).

At the Defendant's sentencing hearing, the trial court heard the State's arguments that enhancement factors (1) and (14) were applicable to the Defendant's case and the Defendant's responses thereto. Following arguments and the presentation of proof, the trial court found that the Defendant had committed a Class A felony and that the statute required him to be sentenced as a Range II offender. The trial court further found that the applicable sentencing range was between twenty-five and forty years and that the Defendant would serve 100 percent of his sentence. Regarding the length of the Defendant's sentence, the trial court found

> In this case, the [c]ourt has considered the presentence report, the [psychosexual] evaluation that was performed by Dr. Moore, the testimony that we have heard from [the victim's mother], from all of which the [c]ourt determines that[,] based on the facts of this case, that the Defendant should be sentenced and is sentenced to a term of thirty years in the Tennessee Department of Correction.

The trial court thereafter ordered the Defendant to register as a sexual offender and advised him of his estimated release date. The trial court made no comments during the sentencing hearing on the enhancement factors argued by the State. In a preprinted standard written sentencing order, entered the same day as the sentencing hearing, the trial court found that, after considering the evidence presented at trial and at the sentencing hearing, the sentencing principles, any argument made as to alternative sentencing, the nature and characteristics of the criminal conduct, information on enhancing and mitigating factors, any relevant statistical information provided by the administrative office of the courts, any statement made by the Defendant, and the Defendant's potential for rehabilitation. The order then had "X" marks next to enhancement factors (1) and (14), indicating that the trial court found these to be present, with "none" indicated next to the mitigating factors list.

The trial court's sentencing findings include no reasoning regarding its application of enhancement factors (1) and (14), specifically, the facts that supported the court's findings and how those factors led to the sentencing determination in relation to the purposes and principles of the Sentencing Act. Our sentencing statutes require that a trial court place on the record the enhancement and mitigating factors considered and the "reasons for the sentence" in order to ensure fairness and consistency in sentencing. Tenn. Code Ann. § 40-35-210(e)(1). This requirement is consistent with the purposes and principles of the Sentencing Act. *See id.* § -102(2) (providing that the Sentencing Act is designed "to assure fair and consistent treatment of all defendants by eliminating

unjustified disparity in sentencing and providing a fair sense of predictability of the criminal law and its sanctions."). Although "[m]ere inadequacy in the articulation of the reasons for imposing a particular sentence . . . should not negate the presumption" of reasonableness, a trial court must, nevertheless, set forth sufficient facts "to satisfy the appellate court that [it] has considered the parties' arguments and has a reasoned basis for exercising [its] own legal decisionmaking authority" consistent with the purposes and principles of the Sentencing Act. *Bise*, 380 S.W.3d at 705-06 (citing *Rita*, 551 U.S. at 356-57). As the State notes, the trial court's findings of fact in support of the sentence imposed need not be particularly lengthy or detailed. *Bise*, 380 S.W.3d at 706. But the trial court must still make some finding of fact in support of the sentence it imposes to comport with our Sentencing Act. Tenn. Code Ann. § 40-35-210(e); *Bise*, 380 S.W.3d at 706; *see also State v. Strouth*, No. E2024-01790-CCA-R3-CD, 2026 WL 923921, at *17 (Tenn. Crim. App. Apr. 6, 2026), *perm. app. pending*. Although the record as a whole contains evidence which may very well support the trial court's imposition of a thirty-year sentence based upon enhancement factors (1) and (14) and the purposes and principles of the Sentencing Act, the trial court did not make the requisite findings of fact in this case. Such findings rest in the province of the trial court, not the appellate court.

Following our review of the record, we conclude that the trial court erred by failing to provide findings of fact as to how enhancement factors (1) and (14) were supported by the record and how they led the court to impose this particular sentence in accordance with the purposes and principles of the Sentencing Act. Accordingly, we vacate the court's sentencing order and remand this case with instructions for the trial court to place on the record its findings of fact regarding the length of the sentence, including the application and weight of the enhancement factors in relation to the purposes and principles of the Sentencing Act.

III. CONCLUSION

Following our review of the record and based upon the foregoing analysis, we affirm the Defendant's conviction but vacate the trial court's sentencing order. We remand with instructions for the court to place on the record the appropriate findings as to the application of the enhancing factors and its conclusions to support its sentencing determination in relation to the purposes and principles of the Sentencing Act.

s/ *STEVEN W. SWORD*

STEVEN W. SWORD, JUDGE