

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs July 14, 2026

FILED

09/11/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. KORTNEY DALON BALL

Appeal from the Criminal Court for Davidson County
No. 2021-B-825 Khadija Lanice Babb, Judge

No. M2025-01458-CCA-R3-CD

In 2021, the Davidson County Grand Jury indicted the Defendant for one count of aggravated assault by strangulation or attempted strangulation. At his 2024 trial, the trial court instructed the jury on the charged aggravated assault offense as well as the lesser-included offenses of attempted aggravated assault, reckless aggravated assault, domestic assault, attempted domestic assault, and domestic assault by offensive contact. After deliberating, the jury acquitted the Defendant of aggravated assault by strangulation as well as the lesser-included offenses of attempted aggravated assault and reckless aggravated assault. However, the jury was unable to reach a unanimous verdict on the domestic assault charge, and the trial court declared a mistrial. At the Defendant's 2025 retrial, the jury convicted the Defendant of domestic assault. On appeal, the Defendant argues: (1) his conviction for domestic assault should be vacated and his indictment dismissed with prejudice because the trial court erroneously instructed the jury that domestic assault was a lesser-included offense of the indicted aggravated assault offense; (2) the trial court violated his due process and confrontation rights when it denied him access to the transcript from his first trial, when it restricted his cross-examination of the victim, and when it failed to declare a mistrial in response to the victim's testimony that the Defendant had "a history of selling [drugs]"; (3) the trial court abused its discretion in admitting unauthenticated photographs of the victim's alleged injuries; (4) the trial court abused its discretion in imposing an excessive sentence and in setting a restrictive appeal bond and bond conditions following the appellate court's intervention; and (5) the cumulative effect of these errors requires relief.¹ After review, we reverse the Defendant's conviction for domestic assault, vacate the judgment, and remand the case to the trial court for further proceedings consistent with this decision.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed
and Vacated, Case Remanded**

¹ We have reordered and separated some of the Defendant's issues for clarity.

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

Kortney Dalon Ball, Smyrna, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Ryan W. Davis, Assistant Attorney General; Glenn R. Funk, District Attorney General; and Camera Bacon, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

This case stems from an August 9, 2020 incident between the Defendant and the victim, Lee’a Garnett, who were dating and living together in the victim’s home. On June 2, 2021, the Davidson County Grand Jury indicted the Defendant for one count of aggravated assault by strangulation or attempted strangulation. The indictment alleged that the Defendant:

Did intentionally or knowingly cause bodily injury to Lee’a Garnett and the assault involved strangulation or attempted strangulation, in violation of Tennessee Code Annotated § 39-13-102, and against the peace and dignity of the State of Tennessee.

Trial. Because the Defendant’s first trial ended in a hung jury, we have not summarized the evidence presented at that trial but have included the necessary procedural history. In its final instruction to the jury, the trial court stated that the Defendant was charged with aggravated assault by strangulation or attempted strangulation. The court asserted that if the jury found that the Defendant was not guilty of the indicted aggravated assault offense, then it should consider the following lesser-included offenses in order: attempted aggravated assault, reckless aggravated assault, domestic assault, attempted domestic assault, and domestic assault by offensive contact. The trial court did not instruct the jury on simple assault.

At the conclusion of deliberations, the jury acquitted the Defendant of aggravated assault by strangulation or attempted strangulation, attempted aggravated assault, and reckless aggravated assault. Because the jury was unable to reach a unanimous verdict on the domestic assault charge, the trial court declared a mistrial.

Hearing Before Retrial. At a hearing prior to the Defendant’s retrial, the Defendant argued that the indictment should be dismissed because the State never obtained a superseding indictment charging him with domestic assault. The trial court asserted that domestic assault was a lesser-included offense of the indicted aggravated assault offense

and that the parties were going to proceed on domestic assault “because that’s where the Jury was hung.” Ultimately, the trial court overruled the Defendant’s objection, asserting that domestic assault was a lesser-included offense of aggravated assault.

Retrial. Here, we have included a brief summary of the facts relevant to the issues raised on appeal. At the Defendant’s May 5, 2025 retrial, the victim testified that around 3:00 a.m. on August 9, 2020, she and the Defendant had an argument about his phone being too loud. When the victim reached over to take the Defendant’s phone, the Defendant grabbed her by the throat with both hands, threw her onto her back on the bed, and straddled her. Although the victim started kicking him and told the Defendant to stop, the Defendant refused to let her go, and the victim began to pass out and felt dizzy. As she struggled to free herself, she slipped off the bed and out of the Defendant’s grip and landed on the hard floor, and the Defendant landed on top of her. A moment later, the Defendant stood, acted as if nothing had happened, and went back to his side of the bed. The victim asked the Defendant why he had hurt her, and when he told her that he did not know what she was talking about, the victim slapped him across the face. In response, the Defendant became enraged, hit her in the face, grabbed her by her hair, and threw her around the bedroom, which caused her to hit several pieces of furniture and to cut her leg on the side of the bed. The Defendant then pushed her head into the mattress for thirty seconds to a minute, which made her unable to breathe. Suddenly, the Defendant stopped and again acted as if nothing had happened. The victim retreated to the bathroom to catch her breath and clean up the blood on her leg, and the Defendant yelled at her to “get back in this bed, woman.” When she got into the bed, the victim told the Defendant that she was going to call the police, and the Defendant told her, “[G]o ahead, you know what I told you about bringing in third party people.” A short time later, the Defendant gave the victim “no choice” and had sex with her.

The victim said she did not find her cell phone until the next morning, and she did not immediately call the police about the incident because her neighbor, Starr Henry, texted to see if she wanted to “come over for coffee” and the victim saw it as her chance to leave the house. The victim asked the Defendant for permission to leave their home, and he allowed her to go. While she was at the neighbor’s home, the victim received a text message from the Defendant, stating, “Don’t run over there and be telling our business either.” A screenshot of this text was admitted into evidence. The victim showed this text message to her neighbor because she did not know what to say. She then told the neighbor what happened with the Defendant, and the neighbor observed her injuries. She said her neighbor later wrote a letter about the “scratches and the bruises on [the victim’s] face and neck.”

When the victim returned home, she moved her things into her daughter’s room. She stayed locked in this room with her dog, feeling like “a prisoner in [her] own home.”

The victim admitted that she texted the Defendant, telling him she loved him, because she had never been in a previous situation like this and was trying to make peace. She acknowledged that she did not seek medical treatment for her injuries right away but did seek treatment a month later because she was experiencing substantial neck pain from the Defendant's abuse, which she disclosed to her doctors. A few days later, the victim disclosed the Defendant's abuse to her daughters, who documented her injuries by taking photographs with a cell phone on August 12, 2020. The victim said she had red marks around her neck from the Defendant's fingerprints, marks on her face where the Defendant had hit her, and bruises all over her body from the incident. The photographs of the victim's injuries were admitted into evidence and published to the jury. On August 13, 2020, the victim sought a protective order because she did not feel safe with the Defendant at her house. When the Defendant returned to the house, she called law enforcement so he could be served with the order of protection. When officers responded to her call, she informed them of the August 9, 2020 incident with the Defendant, but the officers told her that they were just there to remove him from her home because of the protection order.

On September 9, 2020, the victim called the police so she could file a report against the Defendant. She provided the officers with printed photographs of her injuries, and they filed an incident report and obtained the arrest warrant for the Defendant. She claimed she waited a month to report it to the police because she "was scared," "didn't know what to do," and was "in a lot of pain[.]"

On cross-examination, the victim acknowledged that she received bruises on the front of her shin from moving the Defendant's bed into her home in June 2020; however, she asserted that those bruises were completely healed by the August 9, 2020 incident. The victim denied having consensual sex with the Defendant after the August 9, 2020 incident. She acknowledged that she sent texts to the Defendant, telling the Defendant that she loved him, from August 9, 2020, through August 12, 2020. She also acknowledged that her daughters took photographs of her injuries on August 12, 2020. The victim said that when the officers appeared at her home on August 15, 2020, to serve the order of protection on the Defendant, the officers did not photograph or otherwise document any of her injuries because they were there simply to serve the order of protection. She said she waited until September 9, 2020, to press charges against the Defendant because she needed the confidence she gained through the free therapy provided through the order of protection before she was able to file charges against the Defendant. The victim said that her daughter and Starr Henry were with her when she pressed charges against the Defendant on September 9, 2020.

Starr Henry, the victim's neighbor, testified that the victim seemed "shaky" and had marks on her face during her visit the morning of August 9, 2020. The victim eventually told her that the Defendant had caused these injuries. On September 9, 2020, Henry wrote

a statement summarizing her version of the events on August 9, 2020, which she gave to a police officer.

McKalia Garnett, the victim's adult daughter, testified that in August 2020, she was seventeen years old and was living with her mother and the Defendant in her mother's home. She stated that in the early morning hours of August 9, 2020, she "woke up [and] heard a lot of commotion" in her mother's room right across the hall from her bedroom. Garnett heard her mother say, "[W]hy did you throw me around like a rag doll[?]" She also heard "glass breaking" and "a lot of commotion" that lasted approximately ten minutes. The next day, she texted her mother to tell her what she heard and ask if she was okay, and her mother replied that she was "fine, thank you for asking." Garnett said that she had noticed some "red marks" and "a lot of bruises" on her mother and that on August 12, 2020, she and her sister took photographs her mother's injuries. Garnett then identified a set of photographs depicting her mother's injuries, and these photographs were admitted into evidence and published to the jury.

The Defendant testified that the victim sent him several texts from August 9, 2020, through August 12, 2020, indicating that she wanted to work things out between them. He asserted that the time stamp on the photographs of the victim's alleged injuries did not indicate when the photographs were actually taken. The Defendant asserted that on August 15, 2020, two sheriff deputies informed him that the victim had obtained an order of protection against him and that he was required to pack his things and leave the victim's home. The Defendant said he did not return to the victim's home until October 11, 2020, when he obtained a police escort to remove his belongings from the victim's home. After moving his things out of the victim's home, he was suddenly informed that he had an outstanding warrant related to the incident on August 9, 2020, and he was arrested that day.

The Defendant said he knew the victim was on prescribed medication, although he did not ask what medication she took. He also knew the victim had undergone prior surgeries on her nose and neck, but he did not know the severity of these surgeries. The Defendant was aware that the victim had seen a therapist while they were dating, although he did not become aware of her suicide attempt until after he received her medical records in discovery. He claimed that the victim smoked marijuana and was not taking her medication around the time that she moved her things out of the bedroom and told him to stop using her car.

The Defendant stated that around 3:00 or 3:30 a.m. on August 9, 2020, the victim got angry with him over his phone being too loud. He said the victim became irate, slapped him, and tried to kick him. The Defendant thought that the victim just "needed some attention," so they had sex that night and then went to sleep. He claimed he "never touched" the victim in a violent way that night. The next morning, the Defendant said the

victim received a text from her neighbor, Starr Henry, to go “wake and bake,” meaning they were going to smoke marijuana together, which is something they did regularly.

On cross-examination, the Defendant denied assaulting the victim, putting his hands on her neck, strangling her, grabbing her hair, and struggling with her on the bed on August 9, 2020. He said that the morning after the incident, the victim was “chipper” in her text messages to him and went next door to smoke marijuana with Starr Henry. The Defendant said that the first time he heard the allegation that he had strangled the victim was when he was served with the order of protection. When the prosecutor asked the Defendant why he sent a text to the victim the next morning telling her to not share their business, the Defendant denied that he was referencing his assault of the victim the night before and claimed his text was referring to other things. The Defendant said that the victim tried to talk to him on Monday or Tuesday, and when he was unable to talk, the victim stopped sending him friendly text messages and “conspired to take out an order of protection” against him. The Defendant claimed that the victim did not move her things out of the bedroom they shared until that Tuesday or Wednesday.

When asked about the photographs admitted into evidence, the Defendant replied that they “could be bruises” on the victim or they “could be make-up.” He asserted that these photographs had nothing to do with him, and he did not know when the photographs had been taken or what they portrayed. The Defendant claimed that the victim had helped him move some of his furniture into her home in April 2020, which resulted in a bruise to her leg. When asked about the photographs depicting injuries to the victim’s neck, the Defendant said he knew the victim had a scar from her neck surgery. He stated that he did not know “how any of those photos came about” or what they “represent[ed].” The Defendant posited that if the victim actually had been assaulted, then she would have obtained medical attention and would have called the police promptly, which the victim did not do in this case. He reiterated that he did not cause the bruises on the victim and that he and the victim had “consensual sex” that night.

In its final instructions to the jury, the trial court stated that the Defendant was charged with domestic assault. It explained that if the jury found the Defendant not guilty of domestic assault, then it should consider the following lesser-included offenses in order: attempted domestic assault and then domestic assault by offensive contact. The trial court never instructed the jury on simple assault. Following deliberations, the jury found the Defendant guilty of domestic assault. Because the jury convicted the Defendant of the highest charged offense, it did not consider any lesser-included offenses.

Sentencing Hearing. At the May 12, 2025 sentencing hearing, the State had the victim present her impact statement to the court, the defense presented no proof, and the parties relied on the arguments submitted in their sentencing memorandums. The trial

court credited “all” of the victim’s trial testimony, stating it “one hundred percent believe[d] the testimony that she gave to this Court about the assault and the violent nature of her experience the night in question.” The court also found that it “did not credit what [the Defendant] said happened that night.” The court added, “I do believe that the facts support a conviction of aggravated assault by strangulation. But obviously, the Jurors . . . in the [first] trial found him not guilty of that. So we’re not here to sentence him on that today, but I’m here to sentence him on domestic assault.”

The court observed that the Defendant, who represented himself on retrial, only questioned the women at that trial and did not question the police officers. The court asserted its belief that the Defendant presumably did this for the purpose of “revictimiz[ing]” the victim. The trial court explained:

Obviously, we all saw that [the victim] was sitting here on the stand and the frustration she experienced having to be questioned by the person who . . . actually assaulted her. And it was difficult to watch. And I could see that she was being revictimized in that moment. [The Defendant] did not cross[-]examine any of the police officers or any of the men that were involved in this trial, which . . . speaks for itself.

The trial court placed great emphasis on the Defendant’s extensive criminal history, which dated back to 2009 and included his pending domestic assault against his mother that occurred while out on bond in this case, his three convictions for assault, and his convictions for resisting arrest and unlawful possession of a weapon, wherein he “used a knife to stab or cut a security officer at Graham Central Station.” The court also noted that there had been “multiple attempts at probation, . . . incarceration[,]” and different attempts to “rehabilitate [the Defendant],” but none of these measures had worked. Based on its previous considerations, “the testimony,” “the exhibits . . . at trial,” and “the behavior that he’s displayed since he’s been out on bond,” the trial court sentenced the Defendant to eleven months and twenty-nine days in confinement at seventy-five percent to serve and, upon his release, to supervised probation for eleven months and twenty-nine days. In addition, the trial court ordered the Defendant to have no contact with the victim and to attend fifty-two weeks of Batterer’s Intervention Program classes. The Defendant’s judgment of conviction was entered on May 12, 2025.

Motion for Judgment of Acquittal or New Trial. Following sentencing, the Defendant timely filed a motion for judgment of acquittal or a new trial on May 19, 2025. In it, the Defendant alleged, in pertinent part, that he was entitled to an acquittal or a new trial because although he objected to the unindicted offense of domestic assault at his first trial, prior to his second trial, and during his second trial, he was nevertheless convicted of domestic assault, which constituted a material error. The Defendant also asserted that his

indictment was “manufactured for [t]rial [p]urposes,” despite his objections, and that although the trial court and the State had the opportunity to dismiss the domestic assault charge, which was the lone remaining count from his first trial, they failed to do so, which constituted reversible error. The Defendant added that proceeding under a charge like simple assault would have likely resulted in a different outcome at trial.”

In a pleading entitled “Addendum to Defendant’s Motion for Judgment of Acquittal or a New Trial,” the Defendant additionally claimed that the alleged lesser-included offenses did not meet the “necessarily included” definition and “were not agreed upon or consented to by [him].” Moreover, the Defendant asserted that his “alleged [i]ndictment in the [s]econd trial” was “not properly amended or presented to the jury.”

In a minute entry dated August 27, 2025, the trial court denied the Defendant’s motion. On September 17, 2025, the Defendant, through counsel, timely filed a notice of appeal. Thereafter, he was permitted to proceed with this appeal pro se.

ANALYSIS

The Defendant argues several issues on appeal: (1) his conviction for domestic assault should be vacated because the trial court lacked authority to instruct the jury that domestic assault was a lesser-included offense of the indicted offense of aggravated assault; (2) the trial court violated his due process and confrontation rights when it denied him access to the transcript from his first trial, when it restricted his cross-examination of the victim, and when it failed to declare a mistrial in response to the victim’s testimony that the Defendant had “a history of selling [drugs]”; (3) the trial court abused its discretion in admitting unauthenticated photographs of the victim’s alleged injuries; (4) the trial court abused its discretion in imposing an excessive sentence and in setting a restrictive appeal bond and bond conditions following the appellate court’s intervention; and (5) the cumulative effect of these errors requires relief. The State concedes that the trial court erred in instructing the jury on domestic assault, which resulted in the Defendant’s conviction, and claims the proper remedy is a new trial on simple assault. However, the State fails to address the numerous other issues raised by the Defendant, presumably believing, albeit incorrectly, that concession on the domestic assault issue relieved it of any obligation to address the Defendant’s other issues.

I. Domestic Assault as Lesser-included Offense. The Defendant contends that his conviction for domestic assault should be vacated and his indictment dismissed with prejudice because the trial court erred in charging the jury with the offense of domestic assault as a lesser-included offense of the indicted crime of aggravated assault by strangulation or attempted strangulation. While the Defendant acknowledges that valid lesser-included offenses may be submitted to the jury without a separate indictment, he

insists that domestic assault is not a lesser-included offense of the charged crime and that the trial court's action in submitting the domestic assault offense to the jury violated his right to due process and notice.

The State concedes that the Defendant should not have been tried and convicted of domestic assault because that offense is not a lesser-included offense of aggravated assault. It also maintains that the proper remedy is for this court to reverse the Defendant's domestic assault conviction and remand his case for a new trial on simple assault.

The Defendant specifically claims that domestic assault requires proof of an additional statutory element, namely a qualifying domestic relationship, that is not found in aggravated assault. He asserts that at his first trial the jury acquitted him of the indicted offense of aggravated assault as well as attempted aggravated assault, and reckless aggravated assault and hung only on domestic assault, which was an offense not included in the indicted offense. He insists that because domestic assault is not a valid lesser-included offense, the State should have been required to obtain a superseding indictment from the grand jury before retrying him on the offense of domestic assault; instead, he claims the State improperly proceeded to retry him on an "amended indictment" without grand-jury action."

At the Defendant's first trial, the trial court held a charge conference concerning its proposed jury instructions. The State, noting that the trial court had proposed the lesser-included offenses of domestic assault, attempted domestic assault, and simple assault by offensive contact, asked the court to change the simple assault by offensive contact offense to domestic assault by offensive contact because Tennessee Pattern Jury Instruction 6.08, Part C, "has the domestic assault component of the offensive contact misdemeanor." In response, the defense counsel stated,

[W]e don't want to include the lesser-included offenses in the jury charge. If the Court decides that it has to put the lesser-included offenses in the jury charge, we would definitely like to have one of the lesser-included offenses listed as simple assault pursuant to the statute instead of the domestic variant.

In the end, the trial court held that the State's request to change simple assault by offensive contact to domestic assault by offensive contact was a "fair change" and asserted that the defense's objection would be noted on the record. The court reminded defense counsel that case law required it "to include certain lesser-included[ed]s" and that it was "in the best interest of [his] client" for the jury to have "other options." When the court asked if

defense counsel had any other questions or requests regarding the jury instructions, defense counsel said he did not.

During a jury-out hearing following the conclusion of the Defendant's testimony at the first trial, the trial court revisited the defense's objection to the jury instructions, stating,

Just for the record, [defense counsel], you're requesting that the Court only include the crime that is charged in the indictment, which is aggravated assault, and strike the remaining lesser-includeds [sic] which include attempted aggravated assault, reckless aggravated assault, domestic assault, attempted domestic assault and domestic assault by offensive contact, right?

Defense counsel confirmed that this was the case. The State asserted that the Defendant would be entitled to all lesser-included offenses and reiterated its desire for all lesser-included offenses mentioned by the trial court to remain in the jury charge. The trial court referenced Code section 40-18-110 and acknowledged that it had to determine whether the record contained any evidence that reasonable minds could accept as to the lesser-included offenses. The court then held, "[B]ased on the proof that I heard, I do find that these are appropriate included lesser offenses."

In its final jury charge, the trial court informed the jury that the Defendant was charged in the indictment with aggravated assault, but that if the jury found the Defendant not guilty of that offense, it should consider whether or not the Defendant was guilty of the following lesser-included offenses in order: attempted aggravated assault; reckless aggravated assault; domestic assault; attempted domestic assault; and domestic assault by offensive contact. Notably, the record shows that the trial court did not instruct on simple assault, attempted simple assault, or simple assault by offensive contact. Following deliberations, the jury acquitted the Defendant of aggravated assault, attempted aggravated assault, and reckless aggravated assault, but the jury was unable to reach a unanimous verdict on the domestic assault offense, which resulted in the trial court declaring a mistrial.

When the State proceeded to retry the Defendant on the domestic assault charge, the Defendant filed a renewed motion to dismiss the indictment for fatal deficiencies, location discrepancies, and prejudicial irregularities. The trial court observed that this motion was substantively the same as the motion to dismiss that it denied prior to the Defendant's first trial. The Defendant asserted that although the State had "several years to file a superseding indictment if they wanted to add additional charges," it "never did." The State responded that a superseding indictment was unnecessary because domestic assault was a lesser-

included offense of aggravated assault. Ultimately, the trial court denied the Defendant's motion, explaining that the Defendant was initially indicted for aggravated assault by strangulation and that domestic assault is a lesser-included offense of the indicted aggravated assault charge. It then stated, "[W]e're going to proceed on the domestic assault because that's where the Jury was hung."

At the trial court's request, the State drafted a proposed indictment amendment charging the Defendant with domestic assault, so that the jury on retrial would not be prejudiced by the fact that the Defendant was initially indicted on the offense of aggravated assault by strangulation or attempted strangulation. The defense objected to the amended indictment based on its references to a domestic abuse victim, the included terms knowingly and intentionally, and the date stamp of June 2021; the defense also objected to "prosecution under the new domestic assault statute" because the charge was added on retrial. The trial court asserted,

[T]he lesser-includeds [sic] are included in the jury instructions if they have similar elements [to] the top charged offense. In this case, domestic assault does. So I'm going to allow the State to proceed with the indictment as amended. I'll note your objection for the record.

The following amended indictment was then read to the jury:

State of Tennessee, Davidson County. The Grand Jurors of Davidson County, Tennessee, duly impaneled and sworn, upon their oath, present that Kortney Dalon Ball, on the 9th day of August 2020 in Davidson County, Tennessee and before the finding of this indictment, did intentionally, knowingly or recklessly cause bodily injury to Lee'a Garnett, a domestic abuse victim, in violation of Tennessee Code Annotated Section 39-13-111 and against the peace and dignity of the [S]tate of Tennessee.

During its final jury charge, the trial court informed the jury that the Defendant was charged with domestic assault. It explained that if the jury found the Defendant not guilty of the domestic assault offense, then it should consider the following lesser-included offenses in order: attempted domestic assault, and domestic assault by offensive contact. The trial court did not instruct the jury on the offense of simple assault or any lesser-included offenses of simple assault. At the conclusion of the trial, the jury found the Defendant guilty of domestic assault and did not consider any lesser-included offenses.

Whether a given offense should have been submitted to the jury as a lesser-included offense is mixed question of law and fact. State v. Smiley, 38 S.W.3d 521, 524 (Tenn. 2001). Therefore, our review is de novo with no presumption of correctness. See id.; State

v. Moore, 77 S.W.3d 132, 134 (Tenn. 2002); State v. Rush, 50 S.W.3d 424, 427 (Tenn. 2001).

The United States Constitution and the Tennessee Constitution provide that a defendant is entitled to knowledge of “the nature and cause of the accusation.” U.S. Const. amend. VI; Tennessee Const. art. I, § 9. The accused is notified of the nature of the charges through an indictment. State v. Myers, 581 S.W.3d 173, 180 (Tenn. 2019). “For an indictment to be constitutional, it ‘must provide the defendant with notice of the offense charged, provide the court with an adequate ground upon which a judgment may be entered, and provide the defendant with protection against double jeopardy.’” Id. (quoting State v. Goodson, 77 S.W.3d 240, 244 (Tenn. Crim. App. 2001)); see Tenn. Code Ann. § 40-13-202 (“The indictment must state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, in a manner so as to enable a person of common understanding to know what is intended and with that degree of certainty which will enable the court, on conviction, to pronounce the proper judgment. . . .”). Satisfaction of these requirements ensures that the accused is given “a fair opportunity to defend against the judgment.” Goodson, 77 S.W.3d at 244.

Here, the single-count indictment charged the Defendant with aggravated assault by strangulation, to wit: that the Defendant “intentionally or knowingly cause[d] bodily injury to [the victim] and the assault involved strangulation or attempted strangulation.” See Tenn. Code Ann. §§ 39-13-102(a)(1)(A)(iv), -101(a)(1). Therefore, the Defendant was on notice that he would have to defend against the claim that he intentionally or knowingly caused bodily injury to the victim by strangulation or attempted strangulation. See id. No other indictment charged the Defendant with the offense of domestic assault.

Because an accused has the right to fair and reasonable notice of the charges against which he must defend, the accused may be convicted only of a crime charged in the indictment or a lesser-included offense thereof. Rush, 50 S.W.3d at 427 (citing Hagner v. United States, 285 U.S. 427, 431, 52 S. Ct. 417, 76 L. Ed. 861 (1932)); see U.S. Const. amend. VI; Tenn. Const. art. I, § 9. An offense is a lesser-included offense if it is “necessarily included in the offense charged.” Tenn. R. Crim. P. 31(d)(1).

To determine if an offense qualifies as a lesser-included offense, two interrelated tests apply. State v. Howard, 504 S.W.3d 260, 268-70 (Tenn. 2016) (concluding that the adoption of Tennessee Code Annotated section 40-18-110(f), which effectively codified parts (a) and (c) of the common law test for lesser-included offenses in State v. Burns, 6 S.W.3d 453 (Tenn. 1999), did not abrogate part (b) of the Burns test). Under the first test, an offense is lesser-included if “[a]ll of its statutory elements are included within the statutory elements of the offense charged” or if the alleged lesser offense is an attempt, facilitation, or solicitation of the charged offense or of an offense that otherwise meets the

definition of a lesser-included offense. Tenn. Code Ann. § 40-18-110(f)(1)-(4). Under the second test, if an offense's statutory elements are not subsumed by the statutory elements of the greater offense but the statutory elements provide for a different mental state indicating a lesser kind of culpability and/or a less serious harm or risk of harm to the same person, property, or public interest, then the offense is considered a lesser-included offense. Howard, 504 S.W.3d at 267-68 (citing Burns, 6 S.W.3d at 466-67).

Here, the Defendant was initially charged with aggravated assault pursuant to Tennessee Code Annotated section 39-13-102(a)(1)(A)(iv), which provides: "A person commits aggravated assault who . . . [i]ntentionally or knowingly commits an assault as defined in § 39-13-101, and the assault . . . [i]nvolved strangulation or attempted strangulation." Therefore, the elements of the aggravated assault offense are the following: (1) that the defendant intentionally or knowingly caused bodily injury to another, and (2) the act involved strangulation or strangulation was attempted. See 7 Tenn. Prac. Pattern Jury Instr. T.P.I.—Crim. 6.02.

However, on retrial, the Defendant was convicted of domestic assault pursuant to Code section 39-13-111, which provides, "A person commits domestic assault who commits an assault as defined in § 39-13-101 against a domestic abuse victim." Tenn. Code Ann. § 39-13-111(b) (emphasis added). As relevant here, a "domestic abuse victim" encompasses "[a]dults . . . who are dating or who have dated or who have or had a sexual relationship[.]" Id. § 39-13-111(a)(3). Accordingly, the elements of the domestic assault offense are as follows: (1) the defendant caused bodily injury to a domestic abuse victim; and (2) the defendant acted either intentionally, knowingly, or recklessly. See 7 Tenn. Prac. Pattern Jury Instr. T.P.I.—Crim. 6.08 (emphasis added).

After applying the tests for lesser-included offenses delineated above, we conclude that domestic assault is not a lesser-included offense of aggravated assault. Significantly, domestic assault has an element that aggravated assault does not—the requirement of a domestic abuse victim. See Tenn. Code Ann. § 39-13-111(b). This additional element (1) precludes domestic assault from being subsumed by the elements of aggravated assault and (2) does not establish either a different mental state indicating a lesser kind of culpability or a less serious harm or risk of harm to the same person. See State v. Dominy, 6 S.W.3d 472, 478 (Tenn. 1999). Because domestic assault is not a lesser-included offense of aggravated assault, the indictment is not sufficient to support the Defendant's conviction for domestic assault. See id.; see also McLean v. State, 527 S.W.2d 76, 81 (Tenn. 1975) ("Nothing is more firmly established in the law than that a defendant cannot be charged with one crime and convicted of another."). In other words, the Defendant was convicted of a criminal offense "for which he was neither provided with notice via the indictment nor that was encompassed within the indictment as a lesser-included offense of the crime

charged.” Myers, 581 S.W.3d at 181. Accordingly, we must reverse the conviction for domestic assault.

Next, we must determine the appropriate remedy for the trial court’s error. While the Defendant contends that his conviction should be vacated and his indictment dismissed with prejudice, the State argues that the case should be remanded for a new trial on the offense of simple assault. Because the Defendant was convicted of an offense that was not embraced by the indictment, his conviction is unconstitutional unless the indictment was properly amended. See id. Our review of the record shows that the Defendant did not file a written motion to amend the indictment or make a formal oral motion to amend the indictment. See id. In addition, the Defendant did not provide an oral or written consent to amend his indictment. Consequently, the Defendant was charged with aggravated assault in a single-count indictment, and the indictment was never amended pursuant to Tennessee Rule of Criminal Procedure 7(b). See id. at 188; State v. Williams, 558 S.W.3d 633, 637 & n.1 (Tenn. 2018). Moreover, the Defendant did nothing to cause an “effective amendment” of his indictment. See Williams, 558 S.W.3d at 637 & n.1; Demonbreun v. Bell, 226 S.W.3d 321, 324 (Tenn. 2007).

The record shows the Defendant was subsequently convicted of domestic assault, an offense not embraced by the indictment. “This discrepancy between the conviction and the indictment left the defendant without the ability to effectively defend himself, as he could not possibly know to defend against a charge not brought in the indictment.” Myers, 581 S.W.3d at 182. We acknowledge that a court cannot allow a defendant to be tried on charges that are not made in the indictment against him. See id. (quoting Stirone v. United States, 361 U.S. 212, 217 (1960)).

After review, we reiterate that the Defendant’s domestic assault conviction is a nullity because it was not predicated on a valid indictment, a lesser-included offense of the indicted offense, or a proper amendment of the indictment. See id. at 187. However, the principles against double jeopardy do not preclude the Defendant’s prosecution in a new trial for simple assault.

The United States Constitution provides that no person shall “be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. Similarly, the Tennessee Constitution states that “no person shall, for the same offence, be twice put in jeopardy of life or limb.” Tenn. Const. art. 1, § 10. Significantly, both of these provisions state that no person will be twice put in jeopardy “for the same offence.” The federal and state prohibitions against double jeopardy have been construed as providing the following protections: (1) protection against a second prosecution for the same offense after acquittal; (2) protection against a second prosecution for the same offense after conviction; and (3) protection against multiple punishments for the same offense. State v. Rimmer,

623 S.W.3d 235, 253 (Tenn. 2021) (citing North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L.Ed.2d 656 (1969), overruled on other grounds by Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201, 104 L.Ed.2d 865 (1989); and State v. Watkins, 362 S.W.3d 530, 541 (Tenn. 2012)).

Therefore, we conclude that the Defendant's conviction for domestic assault is reversed and the case is remanded to the trial court for a new trial on any offenses that qualify as lesser-included offenses of aggravated assault by strangulation or attempted strangulation, so long as these lesser-included offenses did not already result in acquittal for the Defendant. See Rush, 50 S.W.3d at 432-33 (concluding that reckless aggravated assault and felony reckless endangerment are not lesser-included offenses of attempted second degree murder but misdemeanor reckless endangerment is a lesser-included offense of attempted second degree murder and that the case is remanded for a new trial on Count 1 of the indictment for any offenses which qualify as lesser-included offenses that "were not originally charged" or "were charged but which are lesser offenses than reckless aggravated assault"); see also Moore, 77 S.W.3d at 134 (holding that although felony reckless endangerment is not a lesser-included offense of aggravated assault committed by intentionally or knowingly causing another to reasonably fear imminent bodily injury by use or display of a deadly weapon other offenses may qualify as lesser-included offenses and remanding the case for a new trial "on all offenses which qualify under the Burns test as lesser-included offenses of aggravated assault that were not originally charged or were charged but are lesser offenses than felony reckless endangerment"); State v. Langley, No. M2004-00631-CCA-R3-CD, 2005 WL 736718, at *7 (Tenn. Crim. App. Mar. 31, 2005) (reversing the defendant's conviction for felony reckless endangerment, which was not a lesser-included offense of the indicted offense of aggravated assault, and remanding the case for a new trial on that count, charging him with "any offense which qualifies as a lesser-included offense of aggravated assault under Burns, but not for the charged offense of aggravated assault, for which he has been acquitted"); but see Myers, 581 S.W.3d at 180-87 (holding that felony reckless endangerment was not a lesser-included offense of the indicted offense of aggravated assault by intentionally or knowingly causing victim to reasonably fear imminent bodily injury by use or display of a deadly weapon, that the indictment was not properly amended pursuant to the rules of criminal procedure, that the indictment was not effectively amended pursuant to caselaw, and that the proper remedy was to reverse the conviction for felony reckless endangerment and dismiss the charges against the defendant); cf. State v. Maupin, 859 S.W.2d 313, 317 (Tenn. 1993) (holding that "where a conviction for an offense is reversed on appeal for insufficient evidence, double jeopardy protects the accused from retrial on that offense, but he may still be tried on lesser offenses if the evidence at the first trial was not insufficient, as a matter of law, to support a conviction of those lesser offenses."). If the Defendant is convicted of an offense on retrial, the sentencing court must give him credit for the time served on his domestic assault conviction.

Despite having concluded that reversal of the domestic assault conviction and a remand for a new trial is required, we will briefly address the remainder of the Defendant's issues in the event of further appellate review.

II. Due Process and Confrontation Rights. Next, the Defendant argues that the trial court violated his due process and confrontation rights when it denied him access to the transcript from his first trial, restricted his cross-examination of the victim, and failed to declare a mistrial in response to the victim's testimony that the Defendant had "a history of selling [drugs]." He asserts that because the case depended almost entirely on the credibility of the victim, the trial court's errors regarding the trial transcript, cross-examination, and prejudicial testimony deprived him of a fair opportunity to test the reliability of the victim on retrial. We disagree.

First, we will address the Defendant's claim that the trial court violated his due process and confrontation rights when it denied him access to the transcript from his first trial. At a pretrial hearing on April 23, 2025, the Defendant asserted that defense counsel had filed a motion to obtain the transcript from the Defendant's first trial, but they had not yet received it. The Defendant stated, "So in order for me to go to trial, I need that trial transcript." Shortly thereafter, the Defendant requested that he represent himself on retrial and that defense counsel serve as elbow counsel, which the trial court granted. The trial court asked him for the names of the individuals that he wanted to subpoena and then stated, "[A]s far as your transcript, I'll have to reach out to the court reporter and see how quick[ly] they can get that done." The prosecutor asked whether the Defendant would want to continue the May 5, 2025 trial date if he was unable to obtain the transcript in time, and the trial court noted that it had already denied defense counsel's motion for a continuance and then said it would "see how long it takes to get the transcript" and would "address it on May 5[]." The court added, "As far as I'm concerned, we're going forward."

On May 5, 2025, in a hearing immediately prior to the start of the Defendant's retrial, the trial court addressed and quickly denied the Defendant's motion regarding "the trial transcript." The trial court noted that the Defendant and his prior attorney, who was currently serving as the Defendant's elbow counsel, had the opportunity to secure the transcript from the October 2024 trial and failed to do so prior to the Defendant's May 2025 retrial. The court added, "[E]ven though the trial transcript is not available this morning, we're still going to proceed with trial."

Although the Defendant frames this issue as the trial court's denial of access to the transcript from his first trial, the record shows that the trial court attempted to assist the Defendant in obtaining this transcript. However, the court refused to continue the Defendant's retrial when the transcript was not available by the date of his retrial. A motion

for a continuance is addressed to the sound discretion of the trial court, and the court's ruling on this motion will not be disturbed in the absence of an abuse of discretion to the prejudice of the defendant. State v. Strouth, 620 S.W.2d 467, 472 (Tenn. 2001). "An abuse of discretion is demonstrated by showing that the failure to grant a continuance denied defendant a fair trial or that it could be reasonably concluded that a different result would have followed had the continuance been granted." State v. Hines, 919 S.W.2d 573, 579 (Tenn. 1995). "The burden rests upon the party seeking the continuance to show how the court's action was prejudicial." State v. Goodman, 643 S.W.2d 375, 378 (Tenn. Crim. App. 1982). Moreover, "[a] reversal will be ordered only if the reviewing court is convinced that the complaining party did not have a fair trial and a different result would or might reasonably have been reached had there been a different disposition of the motion." Id. (citing Baxter v. State, 503 S.W.2d 226, 228 (Tenn. Crim. App. 1973)).

As is more fully discussed below, the record shows that the trial court granted the Defendant wide latitude to cross-examine the victim at his retrial. The Defendant has offered nothing tangible to support his claim that the trial court's refusal to continue his retrial prejudiced his ability to confront the victim or to impeach her testimony. The record shows that the Defendant conducted an extensive cross-examination of the victim on retrial, which included questions about her medication, her mental health, her drug use, and her attempted suicide. Although the Defendant could have asked the victim why she had previously denied smoking marijuana with her neighbor the day after the incident at issue, he neglected to do so. Because the Defendant failed to show how he was prejudiced by the trial court's refusal to delay his retrial based on the absence of the transcript from his first trial, we conclude that the trial court did not abuse its discretion. See id.

Regarding the Defendant's claim that the trial court unduly restricted his cross-examination of the victim, the transcript from his retrial shows that the trial court granted the Defendant great latitude in cross-examining the victim. The transcript shows that the Defendant asked the victim why she did not contact the police immediately after the alleged August 9, 2020 incident, and the victim replied that the Defendant continued to stay at her house, which made her "scared" and unsure of "what else was going to happen." He then asked why she did not tell law enforcement about the alleged incident for an entire month when she had contact with officers a week later. The victim replied that she had taken advantage of therapy offered to her when she obtained the order of protection, which gave her the "confidence" to "do something about" the Defendant's abuse. The Defendant then inquired if the victim had ever gone to therapy before she saw the therapist provided by the State, and the prosecutor immediately objected. At the ensuing bench conference, the prosecutor said he was objecting on the ground of relevancy, and elbow counsel offered that the victim had previously seen a therapist and been put on medication after her attempted suicide. The trial court overruled the prosecutor's objection, stating, "I'll overrule the objection. I'll give you a little latitude, but maybe one question or two."

Thereafter, the Defendant questioned the victim about her prior therapy in 2019. When the Defendant asked whether she had been drinking and not taking her prescribed medication during the alleged August 9, 2020 incident, the victim stated that she had drunk two to three glasses of wine that night and that her medication had been “legally decreased” by her doctor. The Defendant then asked if she smoked marijuana, and the victim admitted that she had smoked marijuana “in the past” but did not “anymore.” When the Defendant asked if she had smoked marijuana with her daughter, the prosecutor objected, and the trial court overruled the objection. The victim replied that she had smoked marijuana with her daughter McKalia “when she turned eighteen.” The Defendant subsequently asked if she had allowed her daughter McKalia to drink while she was underage, and the prosecutor again objected on the ground of relevance, which the trial court sustained.

Thereafter, the Defendant asked the victim if she had been in an abusive relationship for thirteen years, and the victim responded that she was “never in an abusive relationship for thirteen years” but she had been in “a relationship for thirteen years” with a man who had “cheated on her for the last six [years].” The Defendant inquired if her thirteen-year relationship was what caused her to be hospitalized for an attempted suicide, and the victim responded, “That and my father got lung cancer. He had just found out.” At that point, the trial court asked the parties to approach for a bench conference, wherein the court stated:

I don’t know how long [the victim] has been on the witness stand, but obviously she’s been on the witness stand since we’ve started this trial. I always give open latitude for you all to ask the questions that you need. At this point, [Defendant], you’re asking repetitive questions. I want to make sure that you’re asking relevant questions that have not already been asked or answered by you. Now, you feel free to ask questions that the State asked her. But if you’ve already asked these questions, then you’ll need to not ask them again, okay? If you continue to do that, I’m going to ask you—I’m just going to say move on from that, [Defendant], if you ask questions that have already been asked, okay?

The Defendant agreed and returned to cross-examining the victim.

“The propriety, scope, manner, and control of cross-examination of witnesses . . . remain within the discretion of the trial court.” State v. Echols, 382 S.W.3d 266, 285 (Tenn. 2012). Consequently, “[a]ppellate courts may not disturb [a trial court’s] limits on cross-examination except when there has been an unreasonable restriction on the right.” State v. Dishman, 915 S.W.2d 458, 463 (Tenn. Crim. App. 1995) (citing State v. Fowler,

373 S.W.2d 460, 466 (Tenn. 1963); State v. Johnson, 670 S.W.2d 634, 636 (Tenn. Crim. App. 1984). Based on our review of the record, the trial court acted well within its discretion in controlling the Defendant's cross-examination of the victim.

Lastly, the Defendant claims the trial court should have declared a mistrial when the victim testified that the Defendant had a history of selling drugs. On cross-examination, the Defendant asked the victim if she had a history of doing drugs, and the victim replied, "No, I don't have a history of doing drugs, but I think you have a history of selling them." The Defendant objected, and during the ensuing jury-out hearing, the trial court noted that the victim had just made "a totally inappropriate statement" and then asked the Defendant what he wanted to do as a result. The Defendant said he wanted the court "to strike that and instruct the Jury not to give that testimony [any consideration]." The State agreed that this action was appropriate. At that point, the trial court informed the victim her previous statement could have potentially led to a mistrial and that she should only answer the questions that were asked of her. When the jury returned, the trial court provided the following instruction: "Just before you all left, there was a comment that was made by [the victim] related to [the Defendant]. You all are to disregard that comment, and you are not allowed to consider that in your later deliberations."

The record is clear that the Defendant never asked for the trial court to declare a mistrial after the victim's statement about the Defendant's history of selling drugs. Consequently, this issue is waived. See Tenn. R. App. P. 36(a) (Relief on appeal is typically not available when a party is "responsible for an error" or has "failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error."). Moreover, the Defendant does not ask this court to review this issue for plain error, and we decline to conduct plain error review. See Tenn. R. App. P. 36(b); Reynolds, 635 S.W.3d at 931; see also Thompson, 2023 WL 4552193, at *5.

III. Photographs. The Defendant also claims that the trial court abused its discretion by admitting unauthenticated photographs of the victim's alleged injuries. He asserts that the State introduced "digital images without the original device, without forensic verification, and without metadata confirming origin or integrity" and that the trial court "treated these defects as issues of weight rather than admissibility." We conclude that these photographs were properly authenticated by both the victim and her daughter and that the trial court did not abuse its discretion in admitting these photographs.

"[T]rial courts have broad discretion in determining the admissibility of evidence, and their rulings will not be reversed absent an abuse of that discretion." State v. McLeod, 937 S.W.2d 867, 871 (Tenn. 1996). A trial court is found to have abused its discretion when it applies "an incorrect legal standard or [reaches] a decision which is illogical or

unreasonable and causes an injustice to the party complaining.” State v. Ruiz, 204 S.W.3d 772, 778 (Tenn. 2006) (citing Howell v. State, 185 S.W.3d 319, 337 (Tenn. 2006)).

“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to the court to support a finding by the trier of fact that the matter in question is what its proponent claims.” Tenn. R. Evid. 901(a). For tangible evidence, “a witness must be able to identify the evidence or establish an unbroken chain of custody.” State v. Kilpatrick, 52 S.W.3d 81, 87 (Tenn. Crim. App. 2000) (citing State v. Goodman, 643 S.W.2d 375, 381 (Tenn. Crim. App. 1982)). The purpose of this requirement is “to demonstrate that there has been no tampering, loss, substitution, or mistake with respect to the evidence.” State v. Braden, 867 S.W.2d 750, 759 (Tenn. Crim. App. 1993) (citing Orr v. State, 472 N.E.2d 627, 630 (Ind. Ct. App. 1984)). Absolute certainty of identification is not required, however. Kilpatrick, 52 S.W.3d at 87 (citing Ritter v. State, 462 S.W.2d 247, 250 (Tenn. Crim. App. 1970)). “Reasonable assurance, rather than absolute assurance, is the prerequisite for admission.” Id. “If the proffered evidence is unique, readily identifiable, and relatively resistant to change, the foundation need only consist of testimony confirming its relevance.” State v. Cannon, 254 S.W.3d 287, 309 (Tenn. 2008) (Wade, J., concurring).

Shortly before his retrial, the Defendant filed a motion to suppress and exclude unauthenticated photographs of the victim’s injuries as evidence, arguing that the State had failed to show that the photographs were taken contemporaneously with the alleged incident or that they depicted the victim. In a hearing just prior to the start of the second trial, the trial court denied this motion. It noted that it had already conducted a hearing on a motion to suppress all evidence, including the photographs, as fruit of an illegal warrantless arrest, which the court denied.

When the State asked the victim to identify the set of photographs at trial, the Defendant, through elbow counsel, objected on the basis that the victim had just admitted that she did not take the photographs and that these photographs needed to be introduced through the victim’s daughter, who had taken the pictures. The trial court overruled the Defendant’s objection. The State again asked the victim to identify the set of photographs, and the victim stated that they were pictures of the bruises and scratches on her face that the Defendant caused during the August 9, 2020 incident. The State asked the victim if these photographs were a fair and accurate depiction of her injuries from the incident, and the victim said, “They’re exactly them.” When the State asked that these photographs be admitted into evidence and published to the jury, the defense again objected that the victim had not taken the photographs and that the State needed to introduce these photographs through the victim’s daughter. The trial court held that the Defendant’s objection would be noted for the record and admitted the set of photographs into evidence.

When the State later sought to admit additional photographs of the victim's injuries through the victim's adult daughter, McKalia Garnett, the Defendant noted that these photographs looked like the same ones admitted during the victim's testimony and then objected on the same ground as he had for the victim. The trial court said it would note the Defendant's objection for the record and held that the photographs would be admitted. Later, during a jury-out hearing, the defense renewed its "[Rule] 901 objection to the pictures," stating, "[W]e still don't have the cellphone that was allegedly used to take these pictures." The trial court overruled the objection, again stating that his objection would be noted on the record.

Both the victim and McKalia Garnett had ample knowledge to identify the photographs as images depicting the victim's injuries caused by the Defendant on August 9, 2020. See Tenn. R. Evid. 901(b)(1). We conclude that these photographs were properly authenticated and that the trial court did not abuse its discretion in admitting them. Accordingly, the Defendant is not entitled to relief on this issue.

IV. Sentence and Appeal Bond Conditions. The Defendant contends that the trial court abused its discretion by imposing an excessive sentence that required him to serve the maximum confinement sentence, the maximum service percentage, and an additional full probationary term. In addition, he asserts that the trial court abused its discretion in setting a restrictive appeal bond and bond conditions following the appellate court's intervention. We conclude that the trial court did not abuse its discretion in imposing the Defendant's sentence or the Defendant's appeal bond and conditions.

A. Sentence. First, the Defendant claims the trial court failed to consider that his sentence be "no greater than that deserved for the offense committed" and "the least severe measure necessary to achieve the purposes for which the sentence is imposed." See Tenn. Code Ann. § 40-35-103(2), (4). However, the Defendant never explains why he believed his sentence was greater than deserved and never provided any coherent argument or analysis to support his claim that the trial court abused its discretion in imposing the sentence in this case. "Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court." Tenn. Ct. Crim. App. R. 10(b); see also Tenn. R. App. P. 27(a)(7) (A brief shall contain "[a]n argument . . . setting forth the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record . . . relied on."). Failure to comply with this basic rule will ordinarily constitute a waiver of the issue. Schaller, 975 S.W.2d at 318 (citing Hammons, 737 S.W.2d at 552). Consequently, the Defendant has waived appellate consideration of this issue.

Second, the Defendant contends that the trial court improperly considered his alleged conduct in the underlying charges that did not result in conviction before determining that the facts in this case could have supported a more serious offense. The Defendant argues that a trial court's reliance upon his acquitted conduct to enhance his punishment raises due process concerns. He declares that he was acquitted of the charged felony offense of aggravated assault as well as lesser-included felony offenses and was convicted only of misdemeanor domestic assault.

Misdemeanor sentencing is controlled by Tennessee Code Annotated section 40-35-302. Significantly, the sentencing court is granted considerable latitude in misdemeanor sentencing. State v. Johnson, 15 S.W.3d 515, 518 (Tenn. Crim. App. 1999) (citing State v. Troutman, 979 S.W.2d 271, 273 (Tenn. 1998)). An individual convicted of a misdemeanor has no presumption of entitlement to a minimum sentence. Johnson, 15 S.W.3d at 518 (citing State v. Baker, 966 S.W.2d 429, 434 (Tenn. Crim. App. 1997); State v. Creasy, 885 S.W.2d 829, 832 (Tenn. Crim. App. 1994)). In determining the appropriate sentence for a defendant, the Criminal Sentencing Reform Act of 1989 requires the sentencing court to consider a broad range of factors including: the evidence received both at the trial and the sentencing hearing, the presentence report, the principles of sentencing and arguments as to sentencing alternatives, the nature and characteristics of the criminal conduct involved, the evidence and information offered by the parties on the mitigating and enhancement factors, any statistical information regarding sentencing practices, and any statement the defendant wishes to make in the defendant's own behalf. Tenn. Code Ann. § 40-35-210(b). Despite the Defendant's arguments to the contrary, the sentencing act "does not preclude consideration of facts proven by a preponderance of the evidence, even where the facts are the basis of a charge for which there has been an acquittal." State v. Winfield, 23 S.W.3d 279, 283 (Tenn. 2000). Given the evidence presented regarding the nature of this offense as well as the considerable latitude afforded to the trial court in misdemeanor sentencing, we conclude that the trial court's sentence in the Defendant's case was in accordance with the principles, purposes, and goals of the Criminal Sentencing Reform Act of 1989. Tenn. Code Ann. §§ 40-35-104(c)(4) (authorizing a sentence of periodic confinement served at a local jail or workhouse in conjunction with a term of probation), -303(c)(2)(B)(i), (C)(i) (providing for a probationary period not to exceed two years for a domestic assault conviction if the trial court determines that probation is necessary for the defendant to complete an appropriate treatment program, including a sanctioned batterer's intervention program).

B. Appeal Bond Conditions. The Defendant additionally contends that, following appellate intervention, the trial court abused its discretion by setting a restrictive appeal bond and bond conditions without making adequate findings that such restrictive conditions were necessary to ensure public safety and his appearance in court and were proportionate with his minimal remaining sentence to serve. We conclude that the trial

court's order failed to satisfy Tennessee Rule of Appellate Procedure 8(a)'s requirement that the court state in writing the reasons for its action; however, for the reasons that follow, we decline to order a separate remand concerning the sufficiency of the trial court's Rule 8(a) findings.

The Defendant asserts that at the time of this court's remand to the trial court concerning the appeal bond, he had eleven days remaining to serve on his sentence, had appeared for all prior court proceedings, was not a flight risk, and had never been ordered to have electronic monitoring when initially charged with the felony aggravated assault. The Defendant asserts that despite these circumstances, the trial court refused to release him on his own recognizance and ordered a \$1500 bond and GPS monitoring. The Defendant argues that "[t]he record contains no individualized findings demonstrating that such restrictive conditions were necessary to ensure appearance [at court] or [to] protect public safety."

On October 29, 2025, the pro se Defendant filed a motion for release pending appeal pursuant to Tennessee Rule of Appellate Procedure 8. On November 12, 2025, the Court of Criminal Appeals entered an order remanding the Defendant's motion for release to the trial court for immediate consideration and noting that the Defendant was entitled to a reasonable bond, which might include the imposition of any appropriate conditions of release pending the resolution of his current appeal.

On November 19, 2025, the trial court conducted a hearing on the Defendant's motion. The Defendant argued that he should be released on his own recognizance because he had always appeared in court on time and was "slated to be released" from jail in this case on December 1, 2025, which he noted was "only a week away." The Defendant also asserted that he had only been convicted of the misdemeanor offense of domestic assault in this case, which he had appealed. At the conclusion of this hearing, the trial court reduced the Defendant's original appearance bond from \$15,000 to \$1,500 and required, as a condition of the Defendant's release, that the Defendant have no contact with the victim in this case and that the Defendant be required to wear a GPS monitoring device during the pendency of the appeal. After hearing the court's decision, the Defendant stated that it was going to take "a long time" for someone to get the GPS monitoring set up so he would "just wait" to be released, and the trial court indicated that it was the Defendant's decision about whether he wanted to post the appeal bond it had just granted. The trial court also entered a written order, stating in part that it had set the bond and imposed the conditions after considering the "applicable legal authority, the proof offered, and the record before the Court."

Thereafter, the Defendant sought review of the trial court's order in this court. This court ordered a transcript from the November 19, 2025 hearing and held that it would

consider the merits of the Defendant's motion following receipt of this transcript. In the interim, the Defendant was arrested on a probation violation warrant related to the sentence he received in this case that is the subject of this appeal, and he filed an "Emergency Motion for Immediate Release and Stay of Execution of Custody Arising from Felony Probation Violation." This court denied this motion because the pro se Defendant had not signed the motion and because he failed to first petition the trial court for relief.

On April 21, 2026, the trial court entered an order granting the Defendant "Release[] on Recognizance" pending the resolution of his probation violation warrant given that the Defendant's sentence was currently under review by the Court of Criminal Appeals. In this order, the trial court noted that the Defendant was currently released on an appeal bond in the instant case. The Defendant then filed another pleading in this case requesting his release from custody, and this court entered an order stating that the Defendant's pleading was moot in light of the trial court's April 21, 2026 order.

It is well established that "[a] person convicted of a misdemeanor has a right to have bail set or to be released on recognizance pending the exhaustion of all direct appellate procedure in the case." Tenn. R. Crim. P. 32(d)(1). Moreover, "[t]he actions by a trial court from which an appeal lies to the supreme court or court of criminal appeals in granting, denying, setting or altering conditions of the defendant's release shall be reviewable in the manner provided in the Tennessee Rules of Appellate Procedure." Tenn. Code Ann. § 40-11-144(a).

In this case, the trial court entered a written order stating that it had considered the "applicable legal authority, the proof offered, and the record before the Court" before it set the appeal bond at \$1500 and imposed bond conditions requiring the Defendant to have no contact with the victim and to wear a GPS monitoring device until the appeal was complete. We disagree with the proposition that the trial court's general statement that it considered the "applicable legal authority, the proof offered, and the record before the Court" satisfies Tennessee Rule of Appellate Procedure 8(a)'s requirement that the court state in writing the reasons for its action. Ordinarily, when a trial court's written order does not sufficiently identify the reasons supporting its decision concerning release pending appeal, one appropriate course is to remand for entry of an order that complies with Rule 8(a) and permits meaningful appellate review. Here, however, a separate remand for that purpose would accomplish no practical objective. Because we have reversed the Defendant's domestic assault conviction, vacated the judgment, and remanded the case for a new trial, the appeal bond determination arising from that now-vacated judgment no longer requires further adjudication. We therefore decline to order a separate remand concerning the sufficiency of the trial court's Rule 8(a) findings.

V. Cumulative Error. Lastly, the Defendant argues that the cumulative effect of these errors undermines confidence in the verdict and warrants reversal of his conviction under Tennessee Rule of Appellate Procedure 36(b). The cumulative error doctrine recognizes that “there may be multiple errors committed in trial proceedings, each of which in isolation constitutes mere harmless error, but which when aggregated, have a cumulative effect on the proceedings so great as to require reversal in order to preserve a defendant’s right to a fair trial.” State v. Hester, 324 S.W.3d 1, 76 (Tenn. 2010). The cumulative error doctrine only applies when there has been more than one error committed during the trial proceedings. Id. at 77. Because the Defendant has not established two or more trial errors subject to aggregation, the cumulative error doctrine affords him no relief.

CONCLUSION

The trial court committed reversible error by instructing the jury on an improper lesser-included offense in the absence of an amendment to the indictment. Accordingly, the Defendant’s conviction for domestic assault is reversed, the judgment is vacated, and the case is remanded to the trial court for further proceedings consistent with this decision.

s/ *Camille R. McMullen*

CAMILLE R. MCMULLEN, JUDGE