

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs July 15, 2026

FILED

09/24/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DARRELL A. GRADY

Appeal from the Criminal Court for Davidson County
No. 2023-C-1634 Jennifer Smith, Judge

No. M2025-01834-CCA-R3-CD

Defendant, Darrell A. Grady, was convicted by a Davidson County jury of possession of a firearm after having been convicted of a violent felony, and the trial court imposed a Range II, twelve-year sentence to be served in the Department of Correction. On appeal, Defendant argues that the evidence was insufficient to support his conviction based on the facts and based on the trial court's error in its instructions to the jury. He also claims the trial court's denial of a community corrections sentence was erroneous and violated the federal and state constitutions against cruel and unusual punishment. After a thorough review of the record, the briefs of the parties, and applicable law, we affirm the judgment.

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

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

Ramsdale O'DeNeal, Nashville, Tennessee, for the appellant, Darrell A. Grady.

Jonathan Skrmetti, Attorney General and Reporter; Elizabeth Evan, Assistant Attorney General; Glenn R. Funk, District Attorney General; and Brian Ewald and Derick Blakely, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

This case arose when officers responded to a call that a woman pointed a weapon at a man in a parking lot. When they arrived at the scene, Defendant, a convicted felon, was alone in his girlfriend's vehicle with two loaded firearms. Defendant was charged with

two counts of possession of a firearm after having been convicted of a violent felony (counts one and two) and possession of a schedule I controlled substance (count three).

At trial, Officer Jaren Breece and Officer Shedie Herbert of the Metropolitan Nashville Police Department testified that on August 9, 2022, they responded to a report of a woman pointing a gun at a man in the parking lot of an adjoining office building. When Officer Breece arrived at the scene, Defendant was driving a black Mazda SUV and “about to exit the parking lot.” When stopped by Officer Breece, Defendant “said nobody had a gun, that it was his girlfriend with a phone, and that they were just having an argument.”

Because the reported altercation involved an intimate partner, Officer Breece obtained the names of the parties involved and then went to his vehicle to check for any outstanding warrants or orders of protection. He confirmed that the Mazda was registered to Stephanie Steed, Defendant’s girlfriend. There were no outstanding warrants or orders of protection involving Defendant or Ms. Steed; however, Defendant had a prior conviction for aggravated assault.

Ms. Steed came out to the parking lot when she saw that officers had arrived. After Officer Breece spoke with Ms. Steed and the initial 911 caller, he believed there was a weapon involved so he returned to Defendant who was still seated in the vehicle and “asked him where the gun was at that was in the car.” Defendant pointed “down to his right saying that it was in the center console” where he had earlier retrieved his identification. Defendant said the gun had been in the console a long time and that it was rusted. Officer Breece told Defendant not to reach for the gun and asked him to exit the vehicle. Officer Breece explained that the presence of a firearm with his knowledge that Defendant had a prior conviction for aggravated assault provided probable cause to search the vehicle. Officer Breece also said Defendant smelled of marijuana. When asked, Defendant said he smoked marijuana the evening before. Officer Breece conducted a pat-down search, placed Defendant in handcuffs, placed him in the back of his patrol vehicle, and then searched the vehicle.

During the search, Officer Breece recovered two firearms: a .38 revolver from the console and a 9mm semiautomatic handgun from beneath the driver’s seat. He testified that both weapons were loaded, functional, and within Defendant’s immediate reach. The revolver had some flash rusting but was operative and held five live rounds; the 9mm had a magazine with twelve rounds and “one in the chamber.” Neither firearm was reported stolen. Officer Breece also found a small plastic bag of a substance later determined to be ecstasy or MDMA pills.

After the search of Ms. Steed's car, Officer Breece advised Defendant of his *Miranda*¹ rights; Defendant waived them and agreed to talk. Defendant denied that the firearms and drugs belonged to him. He maintained that the firearms belonged to Ms. Steed and emphasized that it was not his car.

A redacted video recording from Officer Breece's body camera was played for the jury during his testimony. The events captured on the recording were consistent with Officer Breece's testimony. Additionally, the video included Defendant's explanation of the argument that led to the complaint. Ms. Steed had given Defendant a ride to work. However, when they arrived at his workplace, Defendant learned he was not scheduled to work and asked Ms. Steed to take him back home. Because it was her first day at a new job and returning Defendant home would make her late, Ms. Steed refused and the two began to argue. Defendant demonstrated how Ms. Steed handed him his phone which he was going to use to schedule an Uber home.

Officer Herbert testified that Officer Breece was already at the scene when he arrived. His role was as backup and to secure the scene. Officer Herbert recalled that Ms. Steed and Defendant were detained before Ms. Steed's car was searched. He recalled an odor of alcohol or marijuana emanating from Ms. Steed when he put her in his patrol car. He confirmed that Ms. Steed was not arrested; however, she was instructed not to drive her vehicle home due to a "strong suspicion" she was under the influence. He had no contact with Defendant.

The State rested its case following Officer Herbert's testimony and dismissed count three of the indictment.

Ms. Steed testified and denied pointing or handing a gun to Defendant during their argument. She said she tried to hand Defendant his phone because he initially decided to walk home. After he decided to drive home in her car, she gathered her belongings and went inside to her new job.

Ms. Steed claimed ownership of both firearms. She said the .38 revolver was "deep" in the console of her car "covered by a lot of stuff" and was "rusted" and "inoperable." It was in her car because a friend was going to teach her how to clean it properly. The 9mm was underneath the driver's seat. She explained that she purchased the firearms due to a prior domestic incident involving another man. She denied that Defendant knew the firearms were in her car or that he knew she even owned firearms because "[she] kept them concealed." She clarified that she "usually" kept the 9mm in her home and carried the

¹ *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) (holding any statement made by the accused during a custodial interrogation without the benefit of procedural safeguards is inadmissible in court).

revolver because it was small and easier to conceal. Because she needed to have the revolver cleaned, she had been carrying the 9mm. Sometimes she brought the 9mm into her home at night but there were a couple of times when she left it in the car. She had not told Defendant about the firearms because they had only been dating “a couple of months” at the time.

Ms. Steed admitted she was “slightly intoxicated” in addition to being nervous and scared during the interview with the police. She was unaware Defendant was a convicted felon. Ms. Steed was inconsistent in what she told officers at the scene and in her trial testimony as to whether she handed Defendant the revolver, and she acknowledged that she gave conflicting accounts of what happened. She initially told the officers there were no weapons in the vehicle and she denied consent to search it. She then said Defendant was unaware of the firearms in her vehicle. However, in one account, she said she gave Defendant the revolver. She later said Defendant never touched the revolver; then she admitted she may have handed Defendant the revolver and his fingerprints could be on it. She testified that she thought about giving Defendant the revolver when he initially said he was going to walk home. However, she changed her mind because she had only known him for a couple of months and he ultimately decided to drive himself home using her car. She recalled holding the revolver by the barrel and putting it “deep” into the console after she changed her mind.

Based upon the evidence, the jury convicted Defendant of one count of possession of a firearm after having been convicted of a violent felony but acquitted him of the same charge in count two.

Sentencing – July 25, 2025

The State introduced Defendant’s presentence report and entered certified copies of two prior Class C felony convictions for aggravated assault. Based on these convictions, the State argued that Defendant qualified as a Range II offender and noted that, as a Class B felony, alternative sentencing was not an option for Defendant.

Patrick Alan Slate testified that he was the head coach at Shelby Park and had known Defendant and his children for roughly two years. Defendant worked as an assistant coach at the park. He described Defendant as a reliable and protective father who was actively involved in his children’s lives.

Defendant testified and took responsibility for his actions, acknowledging he had violated the law by being in possession of a weapon. He said he had issues with substance abuse involving cocaine and marijuana but had never undergone treatment. However, he told the court he had steady employment and reliable housing and paid child support for

his children. Defendant understood the sentencing range for the convicted offense and asked the trial court for “leniency.”

On cross-examination, Defendant confirmed that at the time of the offense in August 2022, he had been released on bond on two 2020 misdemeanor cases – resisting arrest and child neglect. He resolved the earlier cases by plea in September 2022 and completed the corresponding eleven-month, twenty-nine-day sentence of probation.

After initially admitting guilt and responsibility, Defendant then explained the incident as a misunderstanding and said he had learned his lesson to check whether someone had a gun before accepting a ride.

The trial court noted “candid[ly]” that Defendant was someone the court would be “inclined” to consider for an alternative sentence based on his remote felony history and consistent employment. However, after reviewing the governing statutes, the trial court concluded it lacked discretion to impose an alternative sentence and found specifically that Defendant was ineligible for community corrections. Trial counsel agreed that the trial court lacked discretion regarding community corrections. The trial court explained that the least severe sentence it could impose was a sentence of twelve years as a Range II offender to serve. T.C.A. §§ 39-17-1307(b)(1)(A), (b)(2); 40-35-112(b)(2); 40-35-501(y)(1)(A), (y)(2)(A) (2024). The judgment of conviction was signed by the trial court on July 25, 2025.

Defendant filed a motion for new trial on August 26, 2025, alleging the evidence was insufficient to support his conviction, his sentence was “too harsh” and that an alternative sentence was available, and the jury should not have been permitted to hear that he was a convicted felon. On September 29, 2025, Defendant filed a motion for community corrections alleging that he met the criteria for placement under Tennessee Code Annotated section 40-36-106.

A hearing on the motions was held on October 24, 2025. Trial counsel reported that a “program representative” had confirmed Defendant met the eligibility criteria for community corrections, subject to the trial court’s discretion, because the circumstances in the case were not violent but a misunderstanding between Defendant and Ms. Steed. Trial counsel emphasized Defendant’s consistent employment history and positive life changes and informed the trial court Defendant had secured housing and continued employment. Trial counsel described Defendant as remorseful and insisted that he could successfully comply with community corrections requirements. Trial counsel also submitted letters of support for Defendant.

The State argued that under subsection (a) of Tennessee Code Annotated section 40-36-106, a defendant convicted of a felony offense involving the use or possession of a weapon is ineligible for community corrections. The State further argued that Defendant did not qualify under subsection (c) or the “special needs” provision of the community corrections statute, because a defendant must be eligible for probation, and Defendant’s twelve-year sentence exceeded the statutory ten-year maximum for probation consideration.

The trial court acknowledged that Defendant appeared to be an amenable candidate for alternative sentencing but concluded that binding precedent foreclosed relief. The trial court referenced *State v. Johnson*, 342 S.W.3d 520 (Tenn. Crim. App. 2009), among several cases, which have consistently held that defendants must be eligible for probation to receive consideration for the “special needs” provision of the community corrections statute. The trial court denied the motion for community corrections and the motion for new trial.

The trial court’s written order denying both motions was entered on November 12, 2025. Defendant filed a notice of appeal on November 18, 2025.

Analysis

I. Timeliness of the Motion for New Trial

We must first address the State’s contention that Defendant’s motion for new trial was not timely filed, thereby rendering his notice of appeal untimely. The State contends we should dismiss the appeal because the interests of justice do not merit a waiver of the timely filing requirement. The State further contends that should the appeal not be dismissed, Defendant’s issues except sufficiency and sentencing are waived. Defendant did not respond to the timeliness issue regarding the motion for new trial or the notice of appeal.

Rule 33(b) of the Tennessee Rules of Criminal Procedure states that a motion for new trial “shall be in writing . . . within thirty days of the date the order of sentence is entered.” The thirty-day requirement is jurisdictional and cannot be waived. *State v. Martin*, 940 S.W.2d 567, 569 (Tenn. Crim. App. 1997); Tenn. R. Crim. P. 45(b)(3). “A motion for a new trial which is not timely filed is a nullity.” *State v. Dodson*, 780 S.W.2d 778, 780 (Tenn. Crim. App. 1989). A judgment is deemed entered when it is filed with the clerk following the judge’s signature. *State v. Stephens*, 264 S.W.3d 719, 729 (Tenn. Crim. App. 2007) (*abrogated on other grounds as stated in State v. Beaty*, No. M2014-00130-CCA-R3-CD, 2016 WL 3752968, at *20 (Tenn. Crim. App. July 8, 2016)). Thus, the file-

stamp date on the judgment constitutes evidence of when the order of sentence is entered. *Id.*

A notice of appeal must be filed “within 30 days after the entry of the judgment appealed from.” Tenn. R. App. P. 4(a). Unlike the motion for new trial, this court may waive the timely filing requirement “in the interest of justice.” *Id.*

Here, the record shows that the jury returned its verdict on April 22, 2025. Defendant was sentenced on July 25, 2025, to twelve years at eighty-five percent to serve in confinement and a uniform judgment form was completed pursuant to Rule 17 of the Tennessee Supreme Court. The trial judge signed the judgment form, and it is dated “7/25/25.” However, the judgment in the record does not bear a file-stamp date of the clerk of court.

Defendant’s motion for new trial was file-stamped August 26, 2025. The order denying the motion for new trial bears a file-stamp date of November 12, 2025. Defendant’s notice of appeal was filed by the appellate court clerk on November 18, 2025.

In its brief, the State asserts that the judgment of conviction was entered on July 25, 2025, and that Defendant had until August 25, 2025,² to file his motion for new trial. Because Defendant did not file his motion until Tuesday, August 26, 2025, the State contends the motion was untimely filed, and thus, the notice of appeal was likewise untimely. For purposes of review, the State argues that except for sufficiency and sentencing, Defendant’s issue alleging instruction error is waived for plenary review and not entitled to plain error review.

Because the judgment of conviction in the record does not bear a stamp showing a “filed” date, this court ordered the trial court clerk to supplement the appellate record with an original uniform judgment document which has a file-stamped date by the clerk if such document exists. The trial court clerk responded:

After examination of the official court file . . . the true and original Judgment of Conviction for Count One contained in the court file does not bear a file stamp.

Accordingly the Clerk is unable to provide a file-stamped copy of the Judgment of Conviction from the official court file.

² Because August 24, 2025, was a Sunday, Defendant had until Monday, August 25, 2025, to file his motion for new trial. Tenn. R. Crim. P. 45(a)(2)(A).

Because the judgment form bears no file-stamped date, we cannot conclude Defendant's motion for new trial was untimely. *See State v. Kimble*, No. W2012-00407-CCA-R3-CD, 2013 WL 3795949, at *4 (Tenn. Crim. App. July 22, 2013) (addressing issue on the merits where motion for new trial could not be determined to be untimely because judgment lacked a file-stamped date); *State v. Cuevas*, No. E2018-01002-CCA-R3-CD, 2019 WL 2173245, at *3 (Tenn. Crim. App. May 20, 2019) (waiving untimeliness of the appeal where the filing date could not be determined due to the lack of file-stamped date on judgments and the State did not argue the appeal was untimely.) Thus, we will address Defendant's issues regarding sufficiency and sentencing on the merits. Because Defendant acknowledges his failure to contemporaneously object to the jury charge, we will review that issue for plain error.

II. Sufficiency of the Evidence/Jury Instructions

Defendant claims the evidence was insufficient "to support [the] jury verdict due to [the] court's plain error failure in its jury charge or instruction and failure to clarify [the] verdict's identification of specific weapon attached to each count of Unlawful Possession of Firearm by a Convicted Felon." The State argues that the evidence supports the conviction, that Defendant's challenge to the jury instructions and verdict is waived and that he is not entitled to plain error relief.

Sufficiency

When a defendant challenges the sufficiency of the evidence, this court is obliged to review that claim according to certain well-settled principles. "A guilty verdict 'removes the presumption of innocence and replaces it with a presumption of guilt.'" *State v. Reynolds*, 635 S.W.3d 893, 914 (Tenn. 2021) (quoting *State v. Gentry*, 538 S.W.3d 413, 420 (Tenn. 2017)); *State v. Allison*, 618 S.W.3d 24, 33 (Tenn. 2021). The burden is shifted to the defendant on appeal to demonstrate why the evidence is insufficient to support the conviction. *Allison*, 618 S.W.3d at 33; *State v. Jones*, 589 S.W.3d 747, 760 (Tenn. 2019). The relevant question the reviewing court must answer 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." *Allison*, 618 S.W.3d at 33-34 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *see also* Tenn. R. App. P. 13(e).

On appeal, "all reasonable and legitimate inferences from the evidence must be drawn in favor of the prosecution and all countervailing evidence discarded." *State v. Weems*, 619 S.W.3d 208, 221 (Tenn. 2021); *State v. Rimmel*, 710 S.W.3d 640, 645 (Tenn. 2025). This court is precluded from re-weighing the evidence when evaluating the convicting proof. *State v. Stephens*, 521 S.W.3d 718, 724 (Tenn. 2017). Questions

concerning the credibility of the witnesses and the weight and value to be given to evidence, as well as all factual issues raised by such evidence, are resolved by the trier of fact and not the appellate courts. *Rimmel*, 710 S.W.3d at 645; *Allison*, 618 S.W.3d at 34; *Jones*, 589 S.W.3d at 760. “This standard of review is identical whether the conviction is predicated on direct or circumstantial evidence, or a combination of both.” *State v. Williams*, 558 S.W.3d 633, 638 (Tenn. 2018) (citing *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011)).

“A person commits an offense who unlawfully possesses a firearm, . . . and: Has been convicted of a felony crime of violence[.]” T.C.A. § 39-17-1307(b)(1)(A) (2022).³ For purposes of this firearm offense, aggravated assault constitutes a felony crime of violence. *Id.* § 39-17-1301(3). Possession of contraband can be either actual or constructive. *See State v. Fayne*, 451 S.W.3d 362, 370 (Tenn. 2014). “[A]ctual possession refers to physical control over an item.” *Id.* To find constructive possession, the State must show that the accused knowingly had the power and intention at a given time to exercise dominion and control over the object directly or through others. *State v. Copeland*, 677 S.W.2d 471, 476 (Tenn. Crim. App. 1984). “In other words, ‘constructive possession is the ability to reduce an object to actual possession.’” *State v. Cooper*, 736 S.W.2d 125, 129 (Tenn. Crim. App. 1987) (quoting *State v. Williams*, 623 S.W.2d 121, 125 (Tenn. Crim. App. 1981)).

Viewed in the light most favorable to the State, the evidence established that Defendant was the driver and sole occupant of Ms. Steed’s vehicle when Officer Breece conducted the stop. Video evidence clearly showed Defendant telling Officer Breece there was a firearm in the center console and that he knew it had been in the console for the entire duration of the stop. The video also documented Defendant accessing the console to retrieve his identification, placing the firearm within his immediate custody and control. Officer Breece easily found the revolver in the console when he searched the vehicle. A second firearm was found directly under the Defendant’s seat while he was solely in control of the vehicle he was driving, likewise placing it within his immediate custody and control. The proof was sufficient to support Defendant’s constructive possession of either firearm. *See State v. Robertson*, No. W2020-00365-CCA-R3-CD, 2021 WL 2189998, at *5 (Tenn. Crim. App. May 28, 2021) (finding the evidence sufficient to support that the defendant possessed a firearm found on the driver side floorboard of his truck despite a witness testifying that “the gun was [the witness’s] firearm, that he accidentally left the gun under the [defendant]’s driver side seat when he drove the truck to the store, and that the [defendant] did not know about the gun”). *See State v. Cheairs*, No. W2024-00312-CCA-R3-CD, 2025 WL 407435, at *11-12 (Tenn. Crim. App. Feb. 5, 2025) (affirming

³ The statute was amended on July 1, 2025, to also include firearm ammunition. This amendment has no effect on the analysis of this case.

possession of a firearm by convicted felon where the firearm was found under the front passenger seat in a vehicle and the defendant was the driver and sole occupant of the vehicle), *perm. app. denied* (Tenn. June 23, 2025). The evidence is sufficient to support Defendant's conviction. He is not entitled to relief.

Jury Instructions

Conceding that he failed to object contemporaneously, Defendant contends the trial court committed plain error by failing “to clarify or identify the particular weapon under each of the counts in its charge to the jury” resulting in an “ambiguous verdict” thereby denying his right to a unanimous verdict. The record shows Defendant likewise failed to raise this issue in his motion for new trial, further foreclosing plenary review. The State responds that there was no plain error.

A defendant who fails to properly preserve an issue for appellate review must seek plain error review and bears the burden of demonstrating that the asserted error warrants plain error relief. *State v. Bledsoe*, 226 S.W.3d 349, 355 (Tenn. 2007) (citing *United States v. Olano*, 507 U.S. 725, 734 (1993)); *State v. Pewitte*, 739 S.W.3d 240, 248-49 (Tenn. 2025). To demonstrate plain error, Defendant must prove all of the following five factors: (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); *Pewitte*, 739 S.W.3d at 249. “Whether the plain error doctrine has been satisfied is a question of law which we review de novo.” *Pewitte*, 739 S.W.3d at 249 (quoting *State v. Knowles*, 470 S.W.3d 416, 423 (Tenn. 2015)).

Defendant's plain error argument focuses on factor two – that a clear and unequivocal rule of law was breached regarding the jury instructions.

A defendant has a constitutionally protected right to a unanimous verdict. See U.S. Const. amends. VI, XIV; Tenn. Const. art. I, § 6; *Ramos v. Louisiana*, 590 U.S. 83, 92 (2020); *State v. Kendrick*, 38 S.W.3d 566, 568 (Tenn. 2001). To safeguard this fundamental right, the election doctrine was developed to ensure that jurors unanimously agree on the same criminal act when reaching their verdict. *Pewitte*, 739 S.W.3d at 247; *State v. Qualls*, 482 S.W.3d 1, 9 (Tenn. 2016). When the evidence presented at trial encompasses more incidents than the offenses charged, the election doctrine obligates the State to designate the specific act upon which it relies to secure a guilty verdict for each count. *Pewitte*, 739 S.W.3d at 247; *Qualls*, 482 S.W.3d at 9-10. The election requirement extends beyond cases involving a single charge supported by proof of multiple acts. It may also apply where the evidence reflects more than one criminal act and the defendant is

charged multiple counts of the same offense. *See State v. Green*, No. M2021-01438-CCA-R3-CD, 2023 WL 2663102, at *14 (Tenn. Crim. App. Mar. 28, 2023) (holding that the State’s election was improper because it “consisted of two identical sets of offenses . . . [and] failed to match not only the alternative counts of the indictment but also the proof presented at trial”), *no perm. app. filed*; *State v. Harris*, No. M2018-01680-CCA-R3-CD, 2019 WL 5704185, at *9-10 (Tenn. Crim. App. Nov. 5, 2019) (granting plain error where the election in one count contained “insufficient information, such as a specific date, modality of abuse, or significant detail to allow the jury to differentiate the act of abuse in that count from the offenses described in [three other counts]”); *cf. State v. Richards*, No. E2022-01468-CCA-R3-CD, 2024 WL 4142596, at *67-69 (Tenn. Crim. App. Sept. 11, 2024) (holding election adequate where the State distinguished otherwise similar acts by identifying the location of each offense, providing a reliable basis for the jury to associate each count with a specific act), *perm. app. denied* (Tenn. Apr. 17, 2025).

The indictment in this case charged Defendant with two counts of possession of a firearm after having been convicted of a violent felony; neither count referenced a specific firearm. During closing argument, the State referred to the firearms collectively and asked the jury to convict on “both counts.” On rebuttal, the State emphasized the revolver found in the console and concluded by requesting a guilty verdict on “both counts [one] and [two].” The trial court instructed the jury on the elements of the charged offenses by identifying aggravated assault as the prior violent felony and defining “possession,” “firearm,” and the required mental state. The instructions did not identify a specific firearm for either count.

However, even assuming that the firearms should have been specifically associated with the individual counts – which we do not – because Defendant cannot show that consideration of the alleged error is necessary to do substantial justice, he cannot prevail on plain error review. *Pewitte*, 739 S.W.3d at 254; *see State v. Page*, 184 S.W.3d 223, 231 (Tenn. 2006). To satisfy this fifth factor, Defendant must show a “significant probability that the jury would have acquitted” him had the alleged error not occurred. *State v. Vance*, 596 S.W. 3d 229, 256 (Tenn. 2020); *State v. Banks*, 271 S.W.3d 90, 119 (Tenn. 2008) (citing *Bledsoe*, 226 S.W.3d at 354-55); *State v. Adkisson*, 899 S.W.2d 626, 642 (Tenn. Crim. App. 1994).

Although there was no election regarding the firearms, the verdict indicates that the jurors distinguished between the two weapons in some manner. The jury convicted Defendant on count one and acquitted him on count two, notwithstanding the identical elements charged in each count. Indeed, the proof for the revolver found in the center console was materially stronger than the proof for the handgun found underneath the driver’s seat. Defendant retrieved his identification from the center console of the vehicle, and when asked where the firearm was located, he pointed to the center console. Officer

Breece then recovered the revolver from the center console. The verdict aligns with the relative strength of the two factual theories, undermining Defendant's claim that any error affected the outcome of the trial. *Adkisson*, 899 S.W.2d at 642. Defendant has not shown "a significant probability that the jury would have acquitted [him]" had the alleged error not occurred. *Vance*, 596 S.W.3d at 256.

"[A]n appellate court need not consider all criteria when the record demonstrates that one of [the five plain error factors] cannot be established." *Vance*, 596 S.W.3d at 254; *Reynolds*, 635 S.W.3d at 931. Defendant is not entitled to relief.

III. Sentencing

Defendant challenges the trial court's denial of alternative sentencing, specifically, community corrections. Although he acknowledges he is ineligible for community corrections, Defendant argues on appeal that the denial of community corrections was a violation of the federal and state constitutional prohibition against cruel and unusual punishment because his sentence of confinement is disproportionate to the convicted offense, which in this case, did not involve violence. The State contends that the trial court properly ordered Defendant to serve his sentence in confinement. The State asserts that the cruel and unusual punishment claim is waived and, alternatively, that there was no plain error.

The trial court is granted broad discretion to impose a sentence anywhere within the applicable range, regardless of the presence or absence of enhancement or mitigating factors, and the resulting sentence will be upheld "so long as it is within the appropriate range and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles listed by statute." *State v. Bise*, 380 S.W.3d 682, 709-10 (Tenn. 2012); *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012) (applying presumption of reasonableness and abuse of discretion standard of review to decisions involving alternative sentencing).

Community corrections is governed by Tennessee Code Annotated section 40-36-106. Under subsection (a) of the statute, an offender convicted of a felony offense involving the use or possession of a weapon is statutorily ineligible for community corrections. T.C.A. § 40-36-106(a)(1)(D). Under subsection (c) of the statute, sometimes referred to as the "special needs" provision, felony offenders not otherwise eligible under the criteria of subsection (a) may be eligible for community corrections if they are "unfit for probation due to a history of chronic alcohol abuse, drug abuse, or mental health problems, but their special needs are better treatable in a community corrections program than in incarceration." *Id.* § 40-36-106(c). However, an offender must first be eligible for regular probation to be eligible under the special needs provision of community

corrections. *Johnson*, 342 S.W.3d at 522; *State v. Staten*, 787 S.W.2d 934, 936-37 (Tenn. Crim. App. 1989).

Here, Defendant was ineligible under subsection (a) of the community corrections statute because he was convicted of an offense involving “the use or possession of a weapon.” T.C.A. § 40-36-106(a)(1)(D). He also was ineligible under the special needs provision of subsection (c) because his twelve-year, B felony sentence exceeded the ten-year cap for probation. *See id.* § 40-35-303(a) (“A defendant shall be eligible for probation under this chapter if the sentence actually imposed upon the defendant is ten (10) years or less[.]”). The trial court’s remark that it would have considered him a favorable candidate for community corrections if allowed by law does not render the imposed sentence and the denial of community corrections an abuse of discretion, nor does it overcome the presumption the sentence is reasonable. The trial court was bound by the statute and adhered to it.

In terms of Defendant’s claim of cruel and unusual punishment, this court declines to review it under either plenary or plain error review. This argument was not raised in the trial court and appears for the first time in Defendant’s opening brief on appeal where he does not request plain error review. *State v. Neece*, -- S.W.3d --, No. E2023-01654-CCA-R3-CD, 2026 WL 413050, at *4 (Tenn. Crim. App. Feb. 13, 2026) (citing *State v. Ruiz*, 716 S.W.3d 439, 453 (Tenn. Crim. App. 2024) (recognizing as a general principle that a newly raised issue on appeal must be raised and argued for plain error review in the opening brief)), *perm. app. denied* (Tenn. Aug. 13, 2026). Here, Defendant does not request or address the issue for plain error although the State squarely raised the issue in its brief. Defendant is not entitled to relief.

CONCLUSION

Based on the foregoing reasons, the judgment of the trial court is affirmed.

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