

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs August 4, 2026

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. RYON KA'BRAYLE EASLEY

Appeal from the Circuit Court for Madison County
No. 22-382 Donald H. Allen, Judge

No. W2025-00554-CCA-R3-CD

The Defendant, Ryon Ka'Brayle Easley, was convicted by a Madison County Circuit Court jury of attempted voluntary manslaughter, employing a firearm during the commission of a dangerous felony, second degree murder, assault, and four counts of aggravated assault, for which he received an effective sentence of thirty-one years as a Range I offender in the Tennessee Department of Correction. The Defendant raises the following issues on appeal: (1) whether the evidence is sufficient to sustain his second degree murder conviction; (2) whether the doctrine of transferred intent was misapplied, making his conviction for the second degree murder of the victim inconsistent with his conviction for the attempted voluntary manslaughter of his alleged intended victim; (3) whether the trial court's self-defense instruction imposed an improper duty to retreat; (4) whether the trial court erred in denying access to a forensic cell phone expert; and (5) whether the trial court erred by not instructing the jury on the State's duty to preserve evidence. We affirm the judgments of the trial court.

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

JOHN W. CAMPBELL, SR., J., delivered the opinion of the court, in which STEVEN W. SWORD and STACY L. STREET, JJ., joined.

Alexander D. Camp, Jackson, Tennessee, for the appellant, Ryon Ka'Brayle Easley.

Jonathan Skrmetti, Attorney General and Reporter; Courtney Orr and Park Huff, Assistant Attorneys General; Jody S. Pickens, District Attorney General; and Bradley Champine, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

This case arises out of a shooting that occurred outside a Jackson hookah lounge early in the morning of March 27, 2021. The shooting resulted in the death of Demethrius Williams (“the victim”), who was caught in the crossfire between the Defendant and his rap group and a lounge security officer, Denair Woodard. Just before the shooting, Mr. Woodard had ejected a woman from the lounge who was associated with the Defendant and his group. The Defendant admitted to police that he fired his rifle toward the lounge but said it was in self-defense after Mr. Woodard first fired at his vehicle. The Defendant, who was seventeen at the time of the shooting, was transferred to circuit court, and the Madison County Grand Jury returned an indictment charging him with the attempted first degree premeditated murder of Mr. Woodard, employing a firearm during the commission of or attempt to commit a dangerous felony, the first degree premeditated murder of the victim, the first degree felony murder of the victim during the perpetration of attempted first degree murder, and six counts of aggravated assault, with the named victims Mr. Woodard and five bystanders.

State’s Proof

The State’s first witness at the Defendant’s July 2024 trial was the victim’s father, Harold Leake, who testified that the victim, a business major at Lane College in Jackson, had been scheduled to graduate approximately two weeks after the March 27 shooting.

The victim’s best friend, Tyron Carter, testified that he, the victim, and their friend, Jamarcus Porter, all seniors at Lane College, went together on the night of March 26-27, 2021, to Mo Zeppy’s, a hookah lounge on Federal Drive in Jackson, to celebrate their “last college party[.]” That night, the Defendant, who went by the stage name “G9,” was performing with his rap group at the lounge.

Mr. Carter testified that he was dancing in the back of the lounge when a disturbance broke out near the front. The victim grabbed his arm, and he, the victim, and Mr. Porter ran out the back door toward Mr. Carter’s car. As they did so, Mr. Carter saw the rap performers retrieving “[r]ifles [and] handguns” “[f]rom their truck.” When the rap performers “got into their cars, they started shooting.” The shooting originated from the rap performers’ vehicles, and then a lounge security officer began returning fire.

When Mr. Carter fled the lounge, he ran to his car and opened the driver’s door, and the victim ran to the passenger’s side and opened the passenger door. Mr. Carter and the victim were “[i]n the middle of the crossfire[.]” between the rap performers and the security officer, and the victim was shot. Mr. Porter helped get the victim inside Mr. Carter’s car, and Mr. Carter and Mr. Porter took the victim to the hospital. There were “a lot of guns out there[.]” and Mr. Carter did not know who shot the victim. He was certain, however, that the victim was struck by gunfire before the security officer began returning fire.

Mr. Carter agreed that he testified at an earlier hearing that the security officer was “tussling” with members of the Defendant’s group prior to the shooting as the officer attempted to get those individuals to leave the lounge. He recalled seeing one of those individuals, a man “with dreads[,]” carrying a rifle during the “tussling” incident and then getting into a Suburban-type SUV with other members of his group. He said the SUV was in motion during the shooting. When asked if he saw any of the rap performers in the courtroom at trial, Mr. Carter answered, “No, sir.” He agreed, however, that he identified the Defendant at an earlier hearing as the man with dreads and a rifle and expressed his confidence in his identification of the Defendant at trial as the same man.

On cross-examination, Mr. Carter acknowledged that, at that earlier hearing, he testified “about [his] inability to recall the appearance of the individual with the rifle.” He insisted, however, that he recognized the Defendant at trial as that man. He acknowledged that there was more than one individual with a rifle and that “a lot of [the rap performers] had dreads.” He further acknowledged that, in his earlier testimony, he said he first saw the man with dreads and a rifle when the man was at the SUV, and that he did not “really get a good look at him.” He denied having testified at the earlier hearing that gunshots came from four different vehicles, testifying that the gunshots came only from the SUV. He said there were multiple shooters in the SUV but only one individual shooting from the lounge. He testified that the SUV’s occupants were shooting as the SUV exited the parking lot.

On redirect examination, Mr. Carter expressed his confidence that it was the Defendant’s group that fired the first shots.

Jackson Police Department (“JPD”) Officer Austin McMullen testified that he was at a nearby location early on the morning of March 27, 2021, when he heard approximately twenty loud gunshots. He was dispatched to the shooting call at 12:57 a.m. and arrived one minute later to find a few people running in the parking lot and a large African American man picking up shell casings. He instructed the man to stop and secured the crime scene. He recalled that there were shell casings in the roadway on Federal Drive, more shell casings in the lounge parking lot, and shell casings inside a trash can. On cross-examination, he identified photographs of the shell casings found in the trash can and said that the man picking up the shell casings was “a heavysset, black male.” He never saw that man again and would be unable to identify him if he were present in the courtroom.

JPD Officer Aaron Sisk testified that he photographed the shell casings in the trash can but could not recall if he was the officer who found them. There were individuals on foot and in vehicles when he arrived, and he secured the crime scene to the best of his ability until the arrival of investigators. On cross-examination, he described the man he saw picking up shell casings from the parking lot as “a large or heavysset black man.” He

did not question the man or order him to stop disturbing the crime scene and was unsure if any other officer did so. He could not recall if the man was frisked for a weapon. His memory was that the area in which the man was collecting the shell casings was “right in front of the hookah lounge.”

JPD Officer Ezra Tillett testified that he was working extra duty at Jackson General Hospital at 1:05 a.m. on March 27, 2021, when he learned that Tyron Carter and Jamaricus Porter had brought the unresponsive shooting victim to the hospital in a private vehicle.

Steven Soles testified that in March 2021, he and his girlfriend were co-owners of Mo Zeppy’s, a hookah lounge that sold food. He said that, without his knowledge or permission, his disc jockey arranged for the Defendant’s rap group to perform on the night of the shooting, which was one of the lounge’s “college nights.”

Mr. Soles testified that Denair Woodard was his college roommate at Lane College, that they played football together and were both members of Omega Psi Phi fraternity, and that Mr. Woodard remained one of his best friends. Mr. Woodard was a licensed security guard, and on busy nights at the lounge, Mr. Soles used Mr. Woodard for security. When the disturbance began on the night of the shooting, Mr. Soles was in the kitchen cooking. Someone came to get him, and he went outside to the front of the lounge, where he saw Mr. Woodard and the young woman whom Mr. Woodard had just ejected for causing a disturbance. He also saw a young man, whom he identified at trial as the Defendant, “pulling a rifle . . . out of his pants[,]” and “a couple more guys with guns.”

Mr. Soles testified that the Defendant, accompanied by six to eight companions, went to vehicles parked in a nearby parking lot. He said he saw trunks being opened and heard guns being cocked. The Defendant and his companions then got into three separate vehicles, and “[o]nce they pulled off, they started shooting.” The gunfire was directed toward the front of the lounge where Mr. Soles was standing and where Mr. Woodard was standing within ten to fifteen feet of Mr. Soles.

Mr. Soles testified that he was unarmed, that he did not know the Defendant, and that he was not involved in the young woman’s removal from the lounge. He was aware that Mr. Woodard was armed but did not see Mr. Woodard with his gun drawn when the Defendant pulled the rifle out or at any time before the shooting started. He was in fear for his life and ran for cover when the shooting started. Mr. Soles described the Defendant’s vehicle as a gold Suburban and a second vehicle involved in the shooting as a red or orange Charger. He said that as the Suburban began pulling off, he saw the Defendant “hanging out of the window” shooting a rifle. The Defendant was the only individual he saw with a rifle.

On cross-examination, Mr. Soles testified that he saw muzzle flashes originating from at least two vehicles, the Suburban and the Charger. He said he was 6'5" and weighed approximately 330 pounds but denied that he was the man who picked up shell casings from the front of the lounge. He stated that when the police officers instructed that man to put the shell casings down, the man dropped them and "took off." He did not know the man's name, and the police officers never asked him who the man was.

Mr. Soles testified that Mr. Woodard was not working as a lounge security officer on the night of the shooting. He denied that Mr. Woodard ran away after the shooting, testifying that Mr. Woodard was still on the scene when the police arrived. He could not recall if Mr. Woodard spoke with the police. A lot of Mr. Soles's fraternity brothers were present at the time of the shooting and many of those men regularly carried guns. However, to Mr. Soles's knowledge, none of those other fraternity brothers were armed that night.

Disc Jockey Vonnie O'Neal Howard, II, who was a college senior at the time of the shooting, testified that he invited the Defendant, whom he had met at the mall and knew only by his stage name, to perform at the lounge on the night of March 26-27, 2021. He and the Defendant arranged the details over Instagram. The Defendant requested "an entrance without security[.]" but he did not agree to that request.

JPD Captain Chris Chestnut testified that the Defendant was developed as a suspect, and a warrant was issued for his arrest. Several months later, he interviewed the Defendant at the police station and reduced the Defendant's oral statement to writing. Captain Chestnut identified the Defendant's signed statement, which was admitted as an exhibit, and read it aloud to the jury:

A couple months ago, I ran into a guy I know who is a DJ. I saw him at the shoe store. He told me I could pay and perform at the club when he was working. He sent me the address. We went to the club that night. It was off Federal Drive and Carriage House. They were having a Lane College party. I rode there with my cousin, Isaiah Martin in his gold Suburban. Edwin Sain was with us. When we got to the club, I had a rifle in my pants. Security made me put it in the truck before I could come in. We went in and hung out about an hour. I went on stage. A little while later, we were leaving, and I saw a security guard shove Edwin's sister Shelby. I got between security and Shelby. Security pulled guns. Everyone started running. We ran to Isaiah's truck. It was parked in the next parking lot. Isaiah was driving, Edwin Sain was up front, and I was in the back. As we was pulling off, I saw security shooting at our truck. I shot out the back passenger side of the Suburban with the .223 rifle. I was the only one that shot from the truck. When we left, we went to Tinker Hill. I shot from the street as we

were pulling out of the parking lot. I don't think Isaiah's truck was hit by any bullets. I don't have the rifle. I gave it back to who it belongs to.

Captain Chestnut testified that the Defendant did not provide the location of the rifle and that the police never recovered it. On cross-examination, he testified that he interviewed Mr. Soles and agreed that Mr. Soles was a large man. He stated that he was informed by his patrol officers that shell casings had been removed from the lounge parking lot and discarded in a trash can.

Denair Woodard, who said he was employed as a caregiver, testified that in 2021 he occasionally worked as a security officer for Mr. Soles. On the night of the shooting, he stopped at the lounge to get some food. He placed his order, went to the kitchen to talk to Mr. Soles, returned to the front, and sat down. As he was waiting for his food, he noticed a young woman with two or three female companions "getting into it with" Mr. Soles's business partner and girlfriend, Donna. He walked over, and Donna said, "she gotta leave." He then put himself between the two "to try to escort the girl out." He was not working as a security officer that night, but Donna was his friend and he was trying to help her. To get the young woman and her companions outside, he walked toward them with his arms spread wide to push them out the door. He did not shove anyone.

After he had pushed the women outside, he shut the door and turned to talk to Donna. Almost immediately, the women burst back in the door saying they had to use the bathroom. Donna told them they could not use the lounge's bathroom, which angered and upset the women. He again pushed the women out of the lounge, but he did not shove anyone or cause anyone to fall off the porch. However, the young women started telling the group of seven or eight men outside that Mr. Woodard had put his hands on the women. One young man with dreads, looking at Mr. Woodard, lifted his shirt and placed his hand on the AR-style rifle he had down his pants leg. At the same time, other young men in the group placed their hands on the holster-less handguns that they were carrying in their pants.

Mr. Woodard testified that he had a Glock 19 in a holster concealed in his pants, but he did not draw his weapon or point it at anyone. Instead, he stepped back inside the building and told Donna that the men outside had guns. Donna, in turn, informed Mr. Soles, and Mr. Soles came to the front of the lounge and told everyone that they had to leave. As the lounge was clearing, Mr. Woodard stepped outside, where he saw the men with guns walking to an SUV parked in a neighboring business's lot and getting inside it. As the SUV exited that parking lot, Mr. Woodard saw muzzle flashes from gunfire directed toward the lounge.

Mr. Woodard testified that he could not see who was firing. When the shooting started, it put him in fear for his life and he crouched down, drew his gun, and began

returning fire “[t]o protect [him]self.” He was present when the police responded, and he spoke to an officer and provided his identification. Later, on April 12, 2021, he gave a written statement to the police. There were still a lot of people outside when the police responded, with individuals walking and vehicles leaving the parking lot. He did not see anyone pick up shell casings, and he did not participate in that activity.

On cross-examination, Mr. Woodard testified that in 2021 he worked as a caregiver and as a personal trainer at a gym. On the night of the shooting, he stopped by the lounge on his way home from the gym to get some chicken wings to eat. He acknowledged he did not possess the requisite qualifications to work as an armed security guard at the time of the shooting but said that was not the reason for his testimony that he was not working security that night.

Mr. Woodard testified that he did not brandish his gun or push anyone down the stairs. He saw muzzle flashes originating from only one vehicle and did not know how many vehicles exited the parking lot during the time he was firing his weapon. He gave his telephone number to the responding police officers, who told him that the police would call him, but he never received a call. He acknowledged he did not inform those responding police officers that he had fired his weapon but denied that he intentionally withheld that information.

Jacobia Webster, who was a Lane College senior in March 2021, testified that she accompanied her friends, Marnisia Adjei-Duah and Brianna, in a rental car to the lounge for college night. The parking lot was full, and they had to park in a neighboring business’s lot. The lounge was very crowded and hot inside, and after a while, she and her friends went outside to their car. As they were standing in the parking lot, they saw a girl they knew, Raven, “get pushed out the door” of the lounge. Ms. Adjei-Duah went to check on Raven and a few minutes later came running back to the car saying, “[W]e need to leave now. They’re about to start shooting.”

Ms. Webster testified that several individuals came from the lounge to a large white truck that was parked next to her rental car, got something out of the truck, and headed back toward the lounge. As Ms. Webster was attempting to start her rental car, she looked up and saw a man dressed in a blue hoodie and black jeans “reach into his pants” to pull a rifle out before running behind a building. In the meantime, Ms. Webster and her friends gave up on their attempts to start the rental car and ran behind another building.

Ms. Webster testified that she and her friends hid behind the building for a short while before starting back toward their rental car. She said the shooting began as they were headed back to their car. She at first testified that she saw the man with the rifle, while on foot, shooting toward the hookah lounge. However, after having her memory refreshed by

her written statement, she testified that she saw that man shooting toward the lounge from the rear window of the white truck. She said she was terrified and in fear for her life during the shooting.

On cross-examination, Ms. Webster testified that she knew the difference between a white truck and a gold Suburban and repeated that she thought the rifleman was shooting from a white truck.

Marnisia Adjei-Duah testified that when she saw her classmate, Raven, get pushed out of the lounge, she walked over to check if everything was all right. At the front of the lounge, she saw a man in a hoodie and dark jeans with an object “poking out of his pants” arguing with the lounge bouncer. The man raised his hoodie to display the AR-style rifle he had in his pants, and the bouncer responded that he had fought in Iraq and was “not worried about that.” The man in the hoodie then said to his companions, “[L]et’s go get the straps.” The bouncer did not display or point a gun and was “just talking to [the man in the hoodie].”

Ms. Adjei-Duah testified that she ran back to her friends to inform them that the men were about to start shooting and they needed to leave. When the rental car failed to start, she and her friends ran behind a building. The shooting began a few minutes later, with multiple gunshots followed by a short period of silence. She and her friends peeked around the corner during the period of silence, and she saw the same man in the hoodie who had been arguing with the lounge bouncer shooting his rifle toward the hookah lounge. She and her friends retreated behind the building again, and two to five minutes later, the men got into their light-colored SUV and exited the parking lot. As the men were leaving, “[t]hey were hanging out of the vehicle and started shooting toward Mo Zeppy’s again[.]” She and her friends were driving away in the rental car when she saw the men in the SUV coming back in their vehicle toward the hookah lounge. She saw multiple rifles and handguns that night but could not identify the man she saw shooting the rifle out of the back window of the SUV. She was in fear for her life during the shooting.

On cross-examination, Ms. Adjei-Duah acknowledged that in a March 28, 2021 written statement, she described the vehicle involved in the shooting as a white pickup truck, possibly a Ford. On redirect examination, she agreed that she was not focused on the type of vehicle. She also testified that she saw only one vehicle involved in the shooting, and only one individual shooting from the vehicle toward the lounge.

Jamarcus Ellison Porter testified that the lounge was “jammed as sardines” when he, Mr. Carter and the victim arrived, which required them to park in a neighboring business’s lot. He later saw a man who resembled the Defendant involved in a confrontation at the front of the lounge. From a distance, it appeared that a woman was

trying to get into the lounge, and the lounge security officer was trying to get her to leave. He did not see anyone pull a gun during that confrontation. Afterward, he saw a group of men walking to their white Ford Expedition as other individuals were clearing out of the lounge.

Mr. Porter testified that he had exited the lounge and was standing in the middle of the parking lot near the white Ford Expedition when he heard someone tell him to get down. He ducked behind a car and, seconds later, “started hearing rounds of gunfire” from rifles and pistols. The gunfire caused him to fear for his life. He was certain that it originated from the men at the SUV and not from the hookah lounge. Mr. Carter called for his help, and he ran to Mr. Carter’s car where he saw the victim with gunshot wounds to his neck and chest sitting with his torso and one leg inside the front passenger seat and his other leg hanging outside the vehicle.

On cross-examination, Mr. Porter testified that he heard rifles and pistols, but the first shot he “firmly heard was a - - a rifle.” He acknowledged that, in his written statement, he said he saw the individual with a rifle shooting into the air. On redirect examination, he agreed that in that same statement, he said that the man with the rifle then began shooting toward the crowd.

JPD Investigator Kevin Mooney, a certified senior crime scene analyst, identified the crime scene diagram he prepared and photographs of the crime scene, which included photographs of spent shell casings and of a Kia vehicle that had been struck by a bullet. He said that the vehicle, which was oriented with its front facing the hookah lounge parking lot, had an entry bullet hole in the left rear small window and an exit bullet hole in the front right corner of the windshield, which meant that the bullet “came from the short leg of Federal Drive[.]” Items he collected into evidence included fourteen spent .223-caliber shell casings along a trail in the roadway of Federal Drive, a single spent .40-caliber shell casing from that same area of the roadway on Federal Drive, two spent .40-caliber shell casings from the hookah lounge’s parking lot, and a total of nine spent 9-millimeter shell casings from the hookah lounge parking lot. Of those nine spent 9-millimeter shell casings, five were on the ground, three were in a trash can, and one was on the side of the building.

On cross-examination, Investigator Mooney acknowledged that his processing of the crime scene was hurried due to an impending storm. He would normally expect to be on the scene for five or six hours in a similar case, but in this case, he had less than half that time before the storm hit.

JPD Sergeant Kelly Schrotberger, an expert in the field of forensic firearms and tool mark analysis and examination, testified that he identified nine of the .223-caliber shell casings as having been fired from the same unknown firearm. The remaining five .223-

caliber cartridge cases were very similar to the first nine but lacked “enough individual characteristics” to identify them as having been fired from the same firearm. Therefore, while it was possible that they had been fired from the same firearm, he was unable to positively identify them as such.

Sergeant Schrotberger testified that he determined that all three .40-caliber shell casings came from the same firearm, and that the 9-millimeter shell casings came from two different 9-millimeter firearms. Thus, based on the shell casings recovered from the scene, there were at least two 9-millimeter firearms, at least one .40 firearm, and at least one .223 rifle involved. He testified that a rifle bullet consists of a lead core surrounded by copper jacketing, and that it was possible for the copper jacketing to come off the lead core of a rifle bullet either before or after striking an object. He identified a fragment of copper jacketing that was recovered from the victim’s body as consistent with a .223 or 5.56 round.

Dr. William McClain, the medical examiner who performed the autopsy of the victim’s body, testified that the victim had three gunshot wounds: a gunshot wound in which the projectile passed through the victim’s right forearm; a gunshot wound in which the projectile entered the right side of the victim’s upper chest, passed through the right lung, the heart, and the aorta, and “came to rest ...entangled in the left lung”; and a gunshot wound in which the projectile entered the interior right side of the victim’s neck, passed through the thyroid, transected the internal jugular vein, and came to rest in the soft tissue behind the left clavicle. He determined that the cause of death was gunshot wounds to the neck and chest, and that the manner of death was homicide.

Dr. McClain described and identified the “gray metal lead core of a rifle round” that he recovered from the victim’s left lung, and the “copper, metal tip of a rifle round” that he recovered from the soft tissue behind the victim’s left clavicle. In his opinion, all three wounds were rifle wounds based on the irregular margins of the entry wounds, the small lead fragments or “lead snowstorm” along the wound paths that were clearly visible in the victim’s x-rays, and the conical or triangular shape of the lead fragment he recovered from behind the victim’s clavicle. He testified that the victim was killed by “[a]t least one rifle round but perhaps two separate rifle rounds.”

On cross-examination, Dr. McClain acknowledged that he did not refer to the projectiles as rifle rounds in his autopsy report. He testified that he could not identify the caliber of the rounds and could not say whether the bullets were fired by the same gun or different guns. On redirect examination, he testified that because the separate fragments he recovered from the victim’s body consisted of a fragment of a lead core and a fragment of a copper jacket tip, it was not possible to determine if the two fatal gunshot wounds were caused by a single round or two separate rounds.

JPD Sergeant Adam Pinion, the lead investigator on the case, identified an 11-second clip from a home's Nest surveillance video that recorded the sound of gunshots, which he received from a citizen whose home was located approximately one-half mile from the lounge. He said he had no knowledge of what level of sound triggered the Nest camera to start recording or whether the 11-second recording captured all or only part of the shooting.

Sergeant Pinion also identified the Defendant's June 4, 2021 signed consent for the search of his cell phone, as well as four photographs that Sergeant Pinion found on the cell phone that showed the Defendant in possession of an AR15-style rifle. According to the cell phone's metadata, the photographs were created at 8:09 a.m. on February 14, 2021, 3:57 p.m. on February 26, 2021, 11:25 p.m. on March 26, 2021, and 11:26 p.m. on March 26, 2021. The two photographs taken approximately an hour to an hour and a half prior to the shooting showed the Defendant dressed in black jeans, a black sweatshirt, and a black jacket with white sleeves. The AR15-style rifle in the photographs was the type of weapon in which a .223 round could be chambered. Sergeant Pinion testified that the Defendant was seventeen at the time the photographs were taken, and that it was illegal for the Defendant, as a juvenile, to be in possession of a firearm.

On cross-examination, Sergeant Pinion conceded that there were exceptions under which it would be legal for the Defendant to possess a firearm as a juvenile. He acknowledged that his patrol officers did not question or detain the man they observed discarding shell casings and agreed that the man was tampering with evidence. He stated that the man was recorded on JPD Investigator McMullen's body camera, but that they were never able to learn his identity. He identified screenshots of his text message exchange with the Nest camera homeowner, which, according to the camera's timeline, showed that the first "alarm activation from motion" occurred at 12:56:16 a.m. and lasted for five seconds. With respect to the photographs admitted of the Defendant with the AR15-style rifle, he testified that it did not appear to be the same gun in each photograph and that he could not state with certainty that the guns in the photographs were real versus props.

On redirect examination, Sergeant Pinion testified that he watched the body camera video of the large African American man who discarded the shell casings and was unable to identify him as Mr. Soles, Mr. Woodard, or anyone else. Moreover, none of the witnesses described "an unknown heavyset black male" as someone who fired a rifle from the window of a vehicle.

Defendant's Proof

Edwin Sain, the Defendant's first cousin, testified that he was with the Defendant at the mall on March 26, 2021, when a man at a shoe store invited the Defendant to perform at the party at the hookah lounge that evening. Mr. Sain, the Defendant, Isaiah Martin, and their "homeboy" went to the lounge together in a tan Suburban-style SUV. Mr. Martin, who was Mr. Sain's distant cousin, drove. Mr. Sain did not know either the name or the nickname of the man he referred to as their "homeboy."

Mr. Sain testified that he and his companions passed through security to enter. As they were leaving after the Defendant's performance, Mr. Sain's sister, Shelby Sain, and Ms. Sain's friend, Jessica, became involved in an altercation with the lounge security officer. Mr. Sain did not know what the altercation was about, but he saw the security officer push Jessica. When he approached, the security officer reached for the officer's pistol as if about to draw it, which Mr. Sain interpreted as a threat. The Defendant approached, announced that they were leaving, and told Ms. Sain and the other women to go to their vehicles. Everyone started running, and Mr. Sain, the Defendant, Mr. Martin, and "Homeboy" headed toward their SUV, followed by the security officer who had his pistol aimed at them.

When they reached the SUV, Mr. Martin got in the driver's seat, "Homeboy" sat in the front passenger seat, the Defendant sat in the rear seat on the passenger's side of the vehicle, and Mr. Sain sat in the rear seat on the driver's side of the vehicle. The Defendant did not say anything about shooting anyone and was not hanging out the window. As soon as they pulled out of the parking lot, gunshots rang out, and their SUV was struck by a bullet. Mr. Sain ducked for cover when the shooting started. He did not see the Defendant returning fire, but he heard someone in their vehicle shooting a weapon.

When questioned on cross-examination why he mentioned in an earlier hearing only himself, the Defendant, and Isaiah Martin as the individuals in the Suburban, Mr. Sain replied that he thought he testified earlier that "Homeboy" was the fourth individual with them that night. He did not recall having testified at the previous hearing that the Defendant was stopped by security when he tried to enter the lounge with a rifle in his pants and said that, at the time of trial, he had no memory of the Defendant's having attempted to bring a gun into the lounge.

Mr. Sain testified that the Defendant did not brandish a gun or threaten the security officer, and that the Defendant and the security officer did not speak to each other. Mr. Sain and his male companions were not involved in the altercation with the security officer, and Mr. Sain had no idea why the officer became focused on them. Although Mr. Sain did not see who was shooting at them, he believed it was the security officer who was following

them with his gun aimed at them. Mr. Sain acknowledged that he failed to mention their SUV's having been struck by a bullet at the earlier hearing, testifying that the memory came to him later. He first said that the SUV was struck on the left side but then changed it to either the left or the right side. He stated that he did not know the current location of the SUV or the rifle and did not contact the police after the shooting. He acknowledged having testified at an earlier hearing that the Defendant was hanging out the SUV's window firing the rifle but testified that he did not actually witness the Defendant shooting the rifle.

Kylan Burton, who said he was present at the hookah lounge that night, testified that as the party was ending, an altercation occurred at the door, and he saw "the security guards . . . grabbing their guns and stuff from their hips." He stated that he was leaving in his pickup truck when he heard gunshots coming from the hookah lounge, and that his pickup truck was struck by a bullet. As he was driving away, he saw the lounge security officers outside with their "guns already out and pointed" so he "knew that's most likely where the shots came from." Months later, his pickup truck was picked up by the "Jump Out Boys," which he later identified as the JPD gang unit.

On cross-examination, Mr. Burton acknowledged that he did not see the shooting. He testified he saw security officers with their guns pointed, heard gunshots, and saw the bullet strike his truck. He knew the shots came from the direction of the hookah lounge because of "the side the bullet hole was on [his] truck." He could not, however, recall which street he was on or which direction he was driving as he exited the area. He stated that he knew the Defendant through his cousin, "a dude [he] call[ed] Jitty." Jitty was his cousin by marriage, and he did not know Jitty's real name. He denied that he signed a consent form allowing the police to search his pickup truck or that he allowed the Defendant to borrow the pickup truck. He said he did not contact the police after the shooting because he saw no need to do so.

Shelby Sain testified that she drove to the hookah lounge with fellow Lane College students Chris, Christian, Raven and Jessica. When she and her friends arrived at the lounge and learned what the cover charge was, they were unwilling to pay and walked back out. The Defendant and her brother were leaving the lounge at about that same time. The altercation arose when Jessica and Raven attempted to use the lounge bathroom and a woman inside would not allow it because they had not paid the cover charge. Mr. Woodard became involved in Jessica and Raven's argument with the woman, and Mr. Woodard pushed Raven. Jessica started to swing at Mr. Woodard, and Mr. Woodard began "clutching" at something on his side that Ms. Sain assumed was a weapon. Someone in the crowd, who mistook Raven for Ms. Sain, told Ms. Sain's brother and cousins that Ms. Sain had been pushed. When Ms. Sain's brother and cousins came to the door to ask what was happening, "that's when things started to like transpire and everything" and "everybody started running."

Ms. Sain testified that Jessica dropped her cell phone during their flight to their car and insisted on running back to retrieve it. By the time Jessica returned with her phone, “shots started to go off.” The first set of gunshots came from the direction of the hookah lounge, and Ms. Sain did not see who fired those first shots. However, she saw her brother and her cousins leaving in their SUV and a “black buff kind of dude shooting on the side of another truck.”

On cross-examination, the prosecutor elicited testimony from Ms. Sain that clarified that Ms. Sain saw the Defendant and the other men leaving in their SUV and driving out of sight behind a building before she heard the first gunshots. She testified that she was unable to identify the man she saw firing a gun from the side of the truck but believed it could have been Mr. Woodard or possibly Mr. Soles. On redirect examination, she repeated that the first shots appeared to her to come from the hookah lounge.

Dr. Eric Warren, co-owner of SEP Forensic Consultants, who was accepted by the trial court as an expert witness in the fields of firearms and tool mark examination and analysis and shooting incident reconstruction, testified that there could have been up to six different rifles involved in the shooting because “those last five [.223-caliber shell casings] are inconclusive.” He said he created an enhanced version of the audio portion of the Nest camera video by trimming the silent portions at beginning and end and using software to slow the gunshots down by approximately thirty percent, which “ma[d]e it easier to count the number of shots and to better distinguish the quality of the sounds of each of the different shots.”

Dr. Warren identified the enhanced audio version of the Nest video, which was admitted as an exhibit and published to the jury. He testified that there were “three volleys or three groups of shots” audible: a first group of five gunshots followed by a short pause; a group of three gunshots that sounded like each other but quieter than the first volley of gunshots; and a third volley of gunshots consisting of an overlap of “four or five shots that sound one way and then 14 that are much louder than the rest of them.” He said that the 14 louder gunshots “matche[d] up with the number of cartridge cases recovered from the .223 [and] also with what [he] kn[e]w about how loud” a .223 rifle report is compared to a handgun. He testified that “it was clear on the recording that the three handguns had all started shooting or started and completed shooting before those 14 louder consistent percussive sounds occurred that would be consistent with the .223 cartridge cases.” He stated that there was one more gunshot sound on the recording than the number of cartridge cases recovered, indicating that at least one handgun cartridge case was not recovered.

Dr. Warren disagreed with the State’s crime scene analyst regarding the origin of the bullet that struck the Kia vehicle, testifying that, based on the photographs that appeared to show more glass on the inside of the windshield than on the hood, there was “stronger

support that - - that particular bullet defect would be coming from Mo Zeppy's going toward the back of the Kia not the other way around."

On cross-examination, Dr. Warren acknowledged that he had not examined the Nest camera, did not know the level of sound that triggered it to start recording, and could not rule out the possibility that there were gunshots that were not recorded on the video. He also acknowledged that his opinion about the direction of the bullet that struck the Kia was based solely on his review of the crime scene photographs.

The Defendant elected not to testify and rested his case without presenting any further evidence. Following deliberations, the jury found him guilty of the lesser-included offense of attempted voluntary manslaughter of Mr. Woodard in count one, guilty of the indicted offense of employing a firearm during the commission of a dangerous felony in count two, guilty of the lesser-included offense of second degree murder of the victim in count three, not guilty of the felony murder of the victim in count four, guilty of the lesser-included offense of assault of Mr. Woodard in count five, not guilty of aggravated assault or the lesser offense of assault of Mr. Soles in count six, and guilty of the aggravated assaults of Mr. Carter, Mr. Porter, Ms. Webster and Ms. Adjei-Duah, respectively, in counts seven through ten.

The trial court sentenced the Defendant as a Range I, standard offender to four years for the attempted voluntary manslaughter conviction, six years for the employing a firearm during the commission of a dangerous felony conviction, twenty-five years for the second degree murder conviction, 11 months, 29 days for the assault conviction, and five years for each of the four aggravated assault convictions. The trial court ordered all sentences to be served concurrently except for the six-year sentence for employing a firearm during the commission of a dangerous felony, which was ordered to be served consecutively to the twenty-five-year sentence for second degree murder, for an effective sentence of thirty-one years.

Following the denials of his motions to set aside the verdict in count three and for a new trial, the Defendant filed a timely notice of appeal to his court.

ANALYSIS

I. Sufficiency of the Evidence

In the statement of the issues section of his brief, the Defendant lists his first issue as "[w]hether the evidence was insufficient to support the convictions for second-degree murder and related counts, given the physical and testimonial inconsistencies." In his argument section, however, he addresses only the second degree murder conviction,

arguing that the State failed to prove beyond a reasonable doubt that he fired the fatal shots, or that he did not act in self-defense. In support, the Defendant cites, among other things, the chaotic scene and different weapons involved in the shooting, the fact that not all of the .223 shell casings could be matched to the same unknown firearm, the testimony of State and defense witnesses that more than one individual had a rifle, and the testimony of his eyewitnesses that the shooting originated from the direction of the hookah lounge.¹ The State argues that a rational trier of fact could resolve any discrepancies in the evidence in favor of the State and reasonably find the Defendant guilty of a knowing killing of the victim. We agree with the State.

When the sufficiency of the evidence is challenged on appeal, the relevant question of the reviewing court is “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in the original); *see also* Tenn. R. App. P. 13(e) (“Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.”); *State v. Evans*, 838 S.W.2d 185, 190-91 (Tenn. 1992); *State v. Anderson*, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992).

Therefore, on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from it. *State v. Reynolds*, 635 S.W.3d 893, 915 (Tenn. 2021) (citation omitted). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *State v. Pappas*, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient.” *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

The guilt of a defendant, including any fact required to be proven, may be predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999). The standard of review for the sufficiency of the evidence is the same whether the conviction is based on direct or circumstantial evidence or a combination of the two. *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011).

¹ In the statement of facts section of his brief, the Defendant also cites Dr. Warren’s opinion testimony that the trajectory of the fatal gunshot wounds was consistent with a shooter located near the entrance of the hookah lounge rather than someone firing from a vehicle traveling “left-to-right across Federal Drive.” That testimony, however, occurred during a jury-out hearing and was never presented to the jury.

To sustain the conviction for second degree murder, the State had to show beyond a reasonable doubt that the Defendant committed a knowing killing of the victim. Tenn. Code Ann. § 39-13-210(a)(1). A person acts knowingly “when the person is aware that the conduct is reasonably certain to cause the death of the alleged victim.” *Id.* § 39-11-302(b); *see State v. Page*, 81 S.W.3d 781, 787 (Tenn. Crim. App. 2002). “[T]he ‘nature of the conduct’ that causes death is inconsequential.” *Page*, 81 S.W.3d at 787. “A person can act knowingly irrespective of his or her desire that the conduct or result will occur.” *State v. Gray*, 960 S.W.2d 598, 604 (Tenn. Crim. App. 1997) (citing *State v. Rutherford*, 876 S.W.2d 118, 120-21 (Tenn. Crim. App. 1993)). Whether a defendant acted “knowingly” is a question of fact for the jury to determine. *State v. Inlow*, 52 S.W.3d 101, 104-105 (Tenn. Crim. App. 2000).

When viewed in the light most favorable to the State, the evidence establishes that the Defendant fired his .223 rifle toward the crowd of people at the hookah lounge, striking and killing the victim, before anyone began returning fire. The jury was presented with evidence that more than one individual on the scene had a rifle and that there were .223 shell casings that could not be identified as having been fired from the same unknown rifle. The jury also heard conflicting testimony from eyewitnesses as to which side fired the first shots. By convicting the Defendant of the second degree murder of the victim, the jury obviously resolved in favor of the State these discrepancies in the evidence, finding that the Defendant caused the victim’s death by firing his rifle toward the crowd outside the hookah lounge with an awareness that his conduct was reasonably certain to cause that result.

The Defendant claimed he acted in self-defense and presented that defense to the jury. The trial court’s instruction on self-defense included the following:

If a defendant was in a place where he had a right to be, he would also have a right to use force intended or likely to cause death, if the defendant had a reasonable belief that there was an imminent danger of death or serious bodily injury, the danger creating the belief of imminent death or serious bodily injury was real or honestly believed to be real at the time, and the belief of danger was founded upon reasonable grounds.

A defendant who is engaged in unlawful activity at the time of his act of claiming self-defense has a duty to retreat.

After consideration of the proof presented in this case, the jury rejected the Defendant’s self-defense claim, finding the Defendant guilty of the second degree murder of the victim. We conclude that the evidence is sufficient to sustain the jury’s verdict, and, therefore, affirm the conviction for second degree murder.

II. Transferred Intent and Inconsistent Verdicts

The Defendant contends that his convictions for the second degree murder of the victim and the attempted voluntary manslaughter of Mr. Woodard “are inconsistent and irreconcilable under Tennessee law.” Voluntary manslaughter is “the intentional or knowing killing of another in a state of passion produced by adequate provocation sufficient to lead a reasonable person to act in an irrational manner.” Tenn. Code Ann. § 39-13-211(a). The Defendant argues that the jury’s finding that he was provoked into firing at Mr. Woodard “negates the existence of a knowing or intentional mental state that could have transferred to the killing of [the victim]” because “[o]nce the jury concluded that [the Defendant’s] actions were mitigated by passion, no mental state remained to transfer.” The State responds that Tennessee does not require consistent verdicts and points out that the second degree murder conviction is independently supported by the evidence. We agree with the State.

The Defendant cites *State v. Davis*, 466 S.W.3d 49, 73-4 (Tenn. 2015) in support of his assertion that “Tennessee recognizes that inconsistent verdicts may be tolerated in limited circumstances, but only when they reflect possible jury lenity or compromise - - not when they are legally irreconcilable.” He also relies on *Davis* for his claim that Tennessee courts recognize that “more in-depth analysis” is warranted when the verdicts are “mutually exclusive” or “where one conviction logically negates the other.”

As an initial matter, we disagree that the Defendant’s conviction for the attempted voluntary manslaughter of Mr. Woodard is logically inconsistent with his conviction for the second degree murder of the victim. Regardless, the Defendant is misinterpreting *Davis*. In *Davis*, our supreme court rejected a defendant’s argument that Tennessee should follow the minority of jurisdictions that differentiate between “inconsistent” and “mutually exclusive” verdicts, holding that, regardless of terminology, a defendant in Tennessee is not entitled to relief under either scenario:

[W]e reject the argument that we should alter our longstanding position of honoring and respecting a jury’s verdicts, even when they are inconsistent.

Moreover, as set forth above, the few jurisdictions that grant relief on the basis of “mutually exclusive” verdicts appear to struggle with both defining and applying the concept. We are disinclined to open the door to the increased confusion and increased litigation that arises from trying to parse a jury’s inconsistent verdicts.

Id. at 77.

The Defendant also misconstrues *State v. Tilson*, 503 S.W. 2d 921 (Tenn. 1974) and *State v. North*, No. E2015-00957-CCA-R3-CD, 2016 WL 6248598 (Oct. 26, 2016), *perm. app. denied* (Jan. 18, 2018), on which he relies in support of his claim that he could not legally be convicted of both a knowing killing of the victim and an attempted voluntary manslaughter of his alleged intended victim because the transferred intent doctrine does not apply to voluntary manslaughter.

The defendant in *Tilson* was convicted of second degree murder for shooting and killing a man at a bar who had taken no part in the defendant's earlier brawl with other men at the bar. 503 S.W. 2d at 924. This court reduced the defendant's second degree murder conviction to voluntary manslaughter, concluding that the evidence did not support second degree murder but that the victim and the Defendant's combatants, including the man who had been the aggressor in the fight, were "all on one side." *Id.* at * 923-4. Our supreme court reversed, stating that

if the Court of Criminal Appeals holding was sustained, it would now constitute voluntary manslaughter for a defendant, under reasonable and legal provocation, such as sudden combat, to kill a noncombatant by-stander, provided either by association or friendship . . . the by-stander could be characterized as 'on the side' of the one actually provoking the fight.

Id. at 924.

North involved a shootout between the defendant and his fellow gang members and members of a rival gang. 2016 WL 6248598 at *17. During that shootout, a schoolboy, L.P., was struck in the arm and stomach. *Id.* The defendant was convicted of four counts of employing a firearm during the commission of a dangerous felony and four counts of attempted voluntary manslaughter based on four victims: three gang members and L.P. *Id.* at *1. This court reversed and dismissed the defendant's conviction for the attempted voluntary manslaughter of L.P., as well as his conviction for employing a firearm during the commission of the attempted voluntary manslaughter of L.P., concluding that, because "[v]oluntary manslaughter requires that the act of the slayer be the result of provocation instigated by the person slain" and there was no evidence that L.P. provoked anyone, "the doctrine of transferred intent is inapplicable to such a conviction." *Id.* at *19 (internal quotation omitted). In essence, we noted, based on *Tilson*, that provocation by someone other than the victim cannot be transferred to a victim to justify a defendant's conviction for attempted voluntary manslaughter.

Relying on *North* and *Tilson*, the Defendant argues that the jury's "two findings cannot coexist because provocation by Woodard cannot be transferred to [the victim], who did not provoke the [D]efendant." The Defendant is reversing the holdings in *Tilson* and

North. The Defendant was not convicted of the voluntary manslaughter of the victim. Instead, he was convicted of the second degree murder of the victim, and there is ample proof in the record to support that conviction. The jury's finding that the Defendant attempted an intentional or knowing killing of Mr. Woodard while in a state of passion produced by adequate provocation leading him to act in an irrational manner in no way prevented the jury from also finding the Defendant guilty of the knowing killing of the victim.

III. Self-Defense Jury Instruction

The Defendant contends that the trial court erred in instructing the jury that he had a duty to retreat when "the proof did not establish that he was engaged in unlawful activity." The State argues that the Defendant has waived this issue for failing to include in the record the portion of the transcript at which the parties discussed the jury instructions, and by failing to contemporaneously object to the self-defense instruction at trial. The State also points out that the Defendant did not request relief under the doctrine of plain error and argues that the Defendant is not entitled to plain error review because the record does not clearly establish what occurred in the trial court and the Defendant cannot show that a clear and unequivocal rule of law was breached.

Initially, we note that the transcript of the jury instructions supports the trial court's recollection at the hearing on the motion for new trial, as well as in its order denying the motion for new trial, that its self-defense instruction left it up to the jury to determine whether the defendant was engaged in illegal activity. Regardless, we agree with the State that the Defendant has waived appellate review of this issue for his failure to comply with Tennessee Rule of Appellate Procedure 24. Tennessee Rule of Appellate Procedure 24(b) requires that a Defendant "shall have prepared a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal." In the absence of an adequate record, we generally presume that the trial court's ruling was correct. *See State v. Oody*, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991); *State v. Matthews*, 805 S.W.2d 776, 784 (Tenn. Crim. App. 1990).

The Defendant raised the self-defense jury instruction as an issue in his motion for new trial and supplemented the record with the jury instructions, but he did not include the portion of the transcript during which the parties discussed the proposed jury instructions. The Defendant also answered, "No, Your Honor" to the trial court's questions of whether he had any objection to the jury instructions and whether there were any other special requests the trial court failed to mention other than what they had "talked about yesterday." Without the transcript of the discussion about the proposed self-defense instruction, we presume that the ruling of the trial court was correct.

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 alleged 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)). An issue rises to the level of plain error only when all five of the following factors are met: (1) the record clearly establishes what occurred in the trial court; (2) a clear and unequivocal rule of law was breached; (3) a substantial right of the accused was adversely affected; (4) the accused did not waive the issue for tactical reasons; and (5) consideration of the error is “necessary to do substantial justice.” *State v. Smith*, 24 S.W.3d 274, 282 (Tenn. 2000) (quoting *State v. Adkisson*, 899 S.W.2d 626, 641-42 (Tenn. Crim App. 1994)). To rise to the level of plain error, “[a]n error would have to [be] especially egregious in nature, striking at the very heart of the fairness of the judicial proceeding.” *State v. Page*, 184 S.W.3d 223, 231 (Tenn. 2006).

We agree with the State that the Defendant has not shown that he is entitled to plain error review. The Defendant did not request that this court review the issue under plain error in his opening brief and did not respond to the State’s waiver argument in a reply brief. Thus, the Defendant has not advanced any arguments to show why plain error review is warranted. *See State v. Neece*, --S.W.3d--, 2026 WL 413050, at *4 (Tenn. Crim. App. Feb. 13, 2026) (recognizing that “[t]he plain error doctrine is an exceptional and discretionary form of appellate review” and “ordinarily applies only when a party affirmatively invokes it and advances a developed argument for its application.”); *see also State v. Thompson*, No. W2022-01535-CCA-R3-CD, 2023 WL 4552193, at *5 (Tenn. Crim. App. July 14, 2023) (observing that when a defendant does not respond to a waiver argument, “only particularly compelling or egregious circumstances ... typically justify our *sua sponte* consideration of plain error relief.”) (citation omitted). We, therefore, decline to review this issue for plain error.

IV. Denial of Funding for Cell Phone Expert-

The Defendant contends that the trial court’s denial of his request for funding for a forensic expert to examine the photographs extracted from the Defendant’s cell phone “violated due process and [the Defendant’s] right to present a defense.” Specifically, he argues that, without expert assistance, he “was unable to challenge the reliability of the [highly prejudicial] photographs or determine whether the data extraction complied with forensic standards.” The State responds that the trial court acted within its discretion in denying the funds because the Defendant failed to establish a particularized need for the services of a cell phone expert. We agree with the State.

“[T]he due process principle of fundamental fairness requires that a State which prosecutes an indigent defendant assure that defendant of a fair opportunity to present his defense.” *State v. Barnett*, 909 S.W.2d 423, 428 (Tenn. 1995). However, “the right to

assistance of state paid experts exists only upon a showing of a particularized need. The defendant must show that a substantial need exists *requiring* the assistance of state paid supporting services and that his defense cannot be fully developed without such professional assistance.” *Id.* at 430 (citation and internal quotation marks omitted). We review the trial court’s denial of expert services under an abuse of discretion standard. *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000).

At the June 22, 2023 ex parte hearing, the Defendant presented his proposed cell phone expert, Glen Buckley, who explained in general terms the processes he might follow in a case as a forensic cell phone analyst. Upon questioning by the trial court, he acknowledged he did not mention “any kind of cellphone data . . . information” in the summary of facts he provided in his affidavit, and that nothing about cell phones was brought up at the Defendant’s juvenile hearing. After defense counsel acknowledged that the State had already provided in discovery the photographs from the Defendant’s cell phone of the Defendant holding a gun, the trial court denied the motion for the services of a cell phone forensic expert, finding that the Defendant had not “demonstrated a particularized need for a cellphone expert.” Among other things, the trial court noted that the Defendant admitted he was present at the shooting, that the photographs had been extracted from the Defendant’s own cell phone, and that the photographs were of the Defendant.

We conclude that the trial court acted within its discretion in denying the motion for funds for a cell phone expert. As the State points out, as the subject of the photographs, the Defendant would have had personal knowledge of when and how they were taken. The Defendant could have also questioned the State’s witness about their authenticity but failed to do so, instead objecting at trial only to the prejudicial and cumulative nature of the photographs. Moreover, the Defendant was able to elicit testimony from the State’s witness that the same gun was not in each of the four photographs and that it was possible the guns in the photographs were fake.

V. Failure to Instruct Jury on State’s Duty to Preserve Evidence

Lastly, the Defendant contends that the trial court erred in refusing to issue Tennessee Pattern Instruction–Crim. 42.23 on the State’s duty to gather, preserve, and present at trial potentially exculpatory evidence. The Defendant asserts that officers’ having permitted the man they witnessed tampering with evidence “to walk away, unsearched and unidentified” “clearly triggered the instruction” because it implicated the State’s duty to preserve the integrity of the scene. The State points out that it is not clear from the record whether the Defendant requested a missing evidence instruction and argues that, regardless, the Defendant waived the issue for failing to include in the record the portion of the transcript where the parties discussed the jury instructions. The State further

argues that this court should decline to exercise plain error review because an unknown individual's discarding of shell casings as the police were arriving on the scene did not fairly raise the issue of the State's duty to preserve evidence.

We, again, agree with the State. The Defendant failed to include in the record any written or oral request for a jury instruction on the State's duty to preserve evidence, as well as the portion of the transcript where proposed jury instructions were discussed. The Defendant also failed to request plain error review, and we decline to consider the issue under plain error.

CONCLUSION

Based on our review, we affirm the judgments of the trial court.

s/ JOHN W. CAMPBELL
JOHN W. CAMPBELL, SR., JUDGE