

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs August 4, 2026

FILED

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. GIRTES L. STEWART, JR.

**Appeal from the Circuit Court for Gibson County
No. H10527 Clayburn Peeples, Judge**

No. W2025-00763-CCA-R3-CD

The Defendant, Girtes L. Stewart, Jr., was convicted in the Gibson County Circuit Court of attempted first degree, a Class A felony; employing a firearm during the commission of a dangerous felony, a Class C felony; and seven counts of reckless endangerment with a deadly weapon, a Class E felony. After a sentencing hearing, the trial court ordered that he serve an effective sentence of twenty-six years in confinement. On appeal, the Defendant claims that the evidence is insufficient to support six of his reckless endangerment convictions and that the trial court erred in denying his request to dismiss the charges due to lost or destroyed evidence pursuant to *State v. Ferguson*, 2 S.W.3d 912 (Tenn. 1999). Based upon our review, 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.

Joshua V. Lehde (on appeal), Assistant Public Defender - Appellate Division, Franklin, Tennessee; Harold E. Dorsey (at trial), Trenton, Tennessee; and Tracey A. Brewer-Walker (at trial), Ripley, Tennessee, for the appellant, Girtes L. Stewart, Jr.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; Frederick Agee, District Attorney General; and Scott G. Kirk and Nina W. Seiler, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS

This case relates to the Defendant's firing a gun at his ex-girlfriend, Victoria Turner (hereinafter "the victim"), on the morning of June 4, 2020. In February 2021, the Gibson

County Grand Jury indicted the Defendant for attempted first degree premeditated murder, employing a firearm during the commission of a dangerous felony, and seven counts of reckless endangerment by discharging a firearm into a habitation. The Defendant went to trial in June 2024.

At trial, the forty-two-year-old victim testified that she and the Defendant had been in a romantic relationship and that she lived with him in his home in Alamo. About two weeks before the shooting, the victim ended their relationship and moved in with her sister, Erica Wade. Ms. Wade had five children ranging in age from four to fourteen years old and lived in a double-wide mobile home in Humboldt.

The victim testified that she had left some property at the Defendant's home in Alamo. On the night of June 3, 2020, the Defendant arrived at Ms. Wade's residence unannounced. He wanted to talk with the victim about their relationship and offered to drive her to his house to get her property. The victim agreed and left with him.

The victim testified that when they arrived at the Defendant's home, he allowed her to get her belongings but was "acting weird." They talked about reconciling, but the victim suggested they be friends. The victim said that all of her property would not fit into the Defendant's car and that he began throwing her belongings into a garbage can and "talking bad" to her. The Defendant was upset and claimed he was going to burn the rest of her property in the back yard when he returned home.

The victim testified that the Defendant began driving her back to Humboldt at about 5:00 a.m. and that they arrived at Ms. Wade's house about sunrise. Ms. Wade and her children were asleep. The victim began unloading her property and taking it inside the mobile home while the Defendant waited outside. When the victim finished, the Defendant asked, "Well, are you sure you're done?" The victim understood him to be asking if she was done with their relationship and told him, "Yes." He asked for a hug, but when she went to hug him, he slapped her face. The victim said that she grabbed the Defendant's shirt and that she "[b]ackhand[ed]" him. They began fighting on the front porch, and the Defendant fell on top of her. The victim was scratching the Defendant's face and yelling for Ms. Wade. Ms. Wade came outside and pulled the Defendant off the victim.

The victim testified that Ms. Wade went back inside and that the Defendant left the porch. The victim called out to him, "Okay. Yeah. I got the best of you. Did you think that you could just put your hands on me and I wasn't going to defend myself?" The victim said the Defendant turned around, pointed at her, and stated, "I'm going to kill you." He got into his car, and the victim thought he was going to leave. Instead, she saw him with a gun. She immediately turned around to go into the mobile home and heard seven or eight gunshots. The victim said that she was able to get inside without being shot and that she

saw her sister and her sister's children on the floor. Everyone was scared, and Ms. Wade telephoned 911. The Defendant drove away.

The victim testified that the gunshots struck the mobile home. One bullet grazed the doorframe as the victim was entering the residence, and another bullet traveled into the living room. The State asked if the victim, Ms. Wade, and the children were "in that area" when the bullet passed through, and the victim answered, "I was." After the police arrived, the Defendant returned to the scene. The victim pointed out his car to police, and an officer arrested him. The victim said that neither she nor Ms. Wade had a gun.

On cross-examination, the victim testified that she lived with the Defendant for approximately sixteen months before the shooting and that she knew him to keep guns in his car. The victim said that she and the Defendant were at his home for a couple of hours before the shooting and that he was "acting weird" because he did not want her to leave him. The victim, not Ms. Wade, injured the Defendant during the fight on Ms. Wade's porch. However, Ms. Wade may have accidentally scratched the Defendant while she was pulling him off the victim. The victim denied that Ms. Wade threatened to shoot the Defendant. The victim also denied that she had been drinking alcohol or using drugs before the shooting.

The victim testified that she saw the Defendant with both hands on his gun and that he fired the gun from his car. The bullets struck the mobile home's exterior siding and doorframe. At first, the victim said she was "running for [her] life" during the shooting. However, she then acknowledged testifying at a previous hearing that she jumped through the door of the mobile home as soon as the shooting began. The victim clarified that she did not have to run to get into the mobile home but that she "turned and pivot[ed] . . . and jumped in the door."

Lieutenant Markeith Wade of the Humboldt Police Department ("HPD") testified that on the morning of June 4, 2020, he responded to a shots-fired call at a mobile home on McKnight Street. He arrived at approximately 5:50 a.m. and spoke with the victim and Ms. Wade. The victim reported that her ex-boyfriend had fired a gun at her from his car, and Lieutenant Wade found seven cartridge casings in the roadway in front of the residence. He also saw bullet holes in the mobile home's exterior siding. A wheelchair ramp led to the front door, and a bullet had grazed the ramp's railing.

Lieutenant Wade testified that he was wearing a body camera at the scene, and the State played the video for the jury. The video showed Lieutenant Wade approaching the mobile home and asking the victim what happened. The victim told him that she went with the Defendant to Alamo to get her property. She said that when they returned to Humboldt, she put her belongings into the mobile home. She stated that the Defendant accused her of

“playing him,” that he started fighting her, and that she fought back. She stated that the Defendant got into his car, that he said he was going to kill her, and that she saw him “grab the gun.” She then stated, “That’s when I ran, and he started shooting.”

On cross-examination, Lieutenant Wade testified that the victim did not say whether the Defendant was inside or outside his car at the time of the shooting. Lieutenant Wade said the bullet holes in the mobile home appeared to be recent. However, he acknowledged that he did not have any scientific proof that the bullet holes had been created that morning. He did not go inside the mobile home or photograph the interior of the home. The victim said she had been in a physical altercation with the Defendant, but she did not request medical attention.

Lieutenant Tony Williams, an investigator with the HPD, testified that he responded to the scene, which he described as “chaotic.” He collected seven nine-millimeter cartridge casings from the roadway. The casings were grouped together, indicating that the shooter had fired from one location. Lieutenant Williams found eight bullet holes in the mobile home’s exterior siding. The holes extended from the north corner of the home to the front door, a distance of at least thirty feet. Three of the bullet holes were around the front door. One bullet had lodged in the doorframe, and another bullet had traveled into the home. The distance from the group of cartridge casings to the front door was forty-nine feet. A wheelchair ramp was outside the front door and extended about twelve feet across the front of the home. Two of the bullet holes were located alongside the ramp. Lieutenant Williams said that, in his opinion, the victim appeared to have been running on the ramp to the front door while the shooter was firing at her.

Lieutenant Williams testified that the Defendant returned to the scene while officers were present. The Defendant drove away, but officers stopped him about one-quarter mile from the scene of the shooting. Lieutenant Williams later collected evidence from the Defendant for a gunshot residue kit.

On cross-examination, Lieutenant Williams testified that a bullet was on the living room floor. He acknowledged that if the victim was standing at the front door when the shooting began, then his theory about the shooter firing at the victim as she ran to the front door was incorrect.

Sergeant Kevin Hill of the HPD testified that he was the lead investigator in this case. By the time he arrived at the scene on June 4, 2020, officers had taken the Defendant into custody and had collected evidence at the scene. Later that morning, Sergeant Hill executed a search warrant on the Defendant’s car and found a nine-millimeter Luger cartridge casing on top of the dashboard. He also found an open bottle of Old Forester, a fully-loaded .38 Special handgun, and a gun magazine for a semiautomatic nine-millimeter

firearm. The gun magazine was “pretty close to being full” of ammunition. Sergeant Hill did not find a nine-millimeter firearm.

Sergeant Hill testified that the Defendant was transported to the HPD and that he waived his constitutional rights. Sergeant Hill and another officer formally interviewed him, and the State played the video-recorded interview for the jury. The Defendant stated as follows during the interview: He and the victim were talking but started arguing, and Ms. Wade said she was going to get her gun and shoot the Defendant. Ms. Wade got into a physical altercation with the Defendant and was holding onto his back. After the altercation, the Defendant walked to his car, obtained his nine-millimeter gun, and fired two or three times into the air. He did not shoot at anyone, left the scene, and threw his gun into a river.

The Defendant adamantly denied shooting at the victim, so the officers confronted him with the evidence from the scene, particularly the bullet holes in the mobile home. At that point, the Defendant changed his story. He claimed that the victim hit him and that he obtained his gun for protection because she was coming toward him again. The Defendant said he fired three shots into the air and then fired at the victim because he was defending himself. The Defendant denied disposing of the gun so that the police could not find it. He said he threw his gun into the river because he was “done with this.” The Defendant claimed he later returned to the scene of the shooting because he wanted to apologize to Ms. Wade. He said he was a Navy veteran and suffered from “PTSD.”

Sergeant Hill testified that the Defendant had a scratch on his right temple and three scratches down the middle of his back. Sergeant Hill saw additional marks on the Defendant’s body that may have been scratches.

On cross-examination, Sergeant Hill testified that law enforcement did not try to recover the Defendant’s gun from the river. Without the gun, the Tennessee Bureau of Investigation (“TBI”) could not determine if the bullet found in the living room was fired from the weapon. Although the Defendant claimed in his interview that Ms. Wade threatened to shoot him, Sergeant Hill did not search her mobile home for a gun. Sergeant Hill acknowledged that he formally interviewed the victim and Ms. Wade at the police department but that he lost their video-recorded interviews due to a technical issue. Defense counsel asked him to explain what happened to the recordings, and he stated that when he went to work for the Drug Task Force, he transferred all of his files from his computer to an external hard drive so that he could take his files with him. However, he later discovered the external hard drive had been corrupted. Sergeant Hill tried to obtain his files from his original computer but discovered that the computer’s hard drive also had been corrupted.

On redirect-examination, Sergeant Hill testified that two bullets were recovered from the scene: one in the living room and one in the frame around the front door. He did not send the bullet from the doorframe to the TBI because the bullet was too damaged for analysis. He acknowledged that nothing had impeded the Defendant from leaving the property after the Defendant's physical altercation with the victim and Ms. Wade.

TBI Special Agent Alex Brodhag, an expert in firearms examination with the Forensic Services Division, testified that he microscopically examined eight Luger nine-millimeter cartridge cases. The police had collected seven of the cartridge cases from the roadway and one cartridge case from inside the Defendant's car. Special Agent Brodhag said all the cartridge cases had the same "mechanical fingerprint," demonstrating they all had been fired from the same gun. Special Agent Brodhag also received a fired bullet recovered from the mobile home. However, he did not receive the gun used in the shooting, so he could not determine whether the bullet was fired from the gun. He was able to determine from the characteristics of the bullet, though, that it could have been fired from a Luger nine-millimeter firearm. On cross-examination, Special Agent Brodhag testified that a nine-millimeter Luger was a "very common" gun and that the type of bullet recovered from the mobile home also was common.

Sergeant Justin Yarbrough testified that he previously worked for the HPD and that he responded to the shooting. He arrived at the scene soon after Lieutenant Wade and was told to look out for a black Toyota Camry. As he was walking toward the mobile home, he heard the victim say, "There he goes; there he goes[.]" Sergeant Yarbrough ran to his patrol car and conducted a traffic stop of the Camry about two hundred yards from the property. The Defendant was the sole occupant, and Sergeant Yarbrough took him into custody without incident.

Special Agent Lindsey Anderson, a forensic scientist with the Forensic Services Division and an expert in gunshot residue analysis, testified that she analyzed the Defendant's gunshot residue kit and determined that gunshot residue was on his hands. On cross-examination, Special Agent Anderson testified that gunshot residue typically remained on a person's hands for four to six hours. She could not determine the type of firearm used by the Defendant.

The Defendant did not present any proof. The trial court instructed the jury on self-defense, but the jury convicted him as charged in the indictment of attempted first degree murder and employing a firearm during the commission of a dangerous felony. The jury also convicted him of seven counts of reckless endangerment with a deadly weapon: one count for the victim, one count for Ms. Wade, and one count for each of Ms. Wade's five

children.¹ After a sentencing hearing, the trial court sentenced the Defendant to twenty years for attempted first degree murder, a Class A felony; six years for employing a firearm during the commission of a dangerous felony, a Class C felony; and two years for each conviction of reckless endangerment, a Class E felony. The trial court ordered that the Defendant serve the twenty- and six-year sentences consecutively for a total effective sentence of twenty-six years in confinement.

I. Sufficiency of the Evidence

The Defendant claims that the evidence is insufficient to support six of his reckless endangerment convictions because the State failed to show that Ms. Wade and her five children were within the zone of danger. The State argues that the evidence is sufficient. 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); *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. Williams*, 657 S.W.2d 405, 410 (Tenn. 1983). 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. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990). “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

¹ Although the State indicted the Defendant for seven counts of reckless endangerment by discharging a firearm into an occupied habitation, a Class C felony, the trial court instructed the jury on reckless endangerment with a deadly weapon, a Class E felony. The parties agreed at sentencing that the jury convicted the Defendant of reckless endangerment with a deadly weapon, and the judgments confirm that the trial court sentenced him for that offense.

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).

Reckless endangerment occurs when a person “recklessly engages in conduct that places or may place another person in imminent danger of death or serious bodily injury.” Tenn. Code Ann. § 39-13-103(a). A person acts recklessly with respect to the result of conduct when he or she is “aware of but consciously disregards a substantial and unjustifiable risk” that a prohibited result will occur. *Id.* at § 39-11-302(c). The risk must be “of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person’s standpoint.” *Id.* A threat of death or serious bodily injury is “imminent” when a person is placed in a reasonable probability of danger as opposed to a mere possibility of danger. *State v. Payne*, 7 S.W.3d 25, 28 (Tenn. 1999). The State may satisfy its burden by demonstrating that a “person or class of persons” other than the defendant was in the zone of danger. *State v. Goodwin*, 143 S.W.3d 771, 778 (Tenn. 2004) (quoting *Payne*, 7 S.W.3d at 28).

In support of his claim that the evidence is insufficient to show Ms. Wade and her children were within the zone of danger, the Defendant relies on multiple cases in which this court held that the evidence was insufficient to show that any particular person was in the zone of danger at the time of the shooting. Specifically, in *State v. Woods*, No. E2008-01545-CCA-R3-CD, 2009 WL 2143988, at *4 (Tenn. Crim. App. 2009), *no perm. app. filed*, the defendant’s rifle discharged inside a mobile home, but the victim, who was only fifteen feet from the defendant, was in a separate room, and there was no evidence that the bullet traveled in the victim’s direction. In *State v. Kiser*, No. W2011-01937-CCA-R3-CD, 2012 WL 6115087, at *8 (Tenn. Crim. App. Dec. 10, 2012), *perm. app. denied* (Tenn. May 7, 2013), the defendant fired six gunshots, two at a building and four into the air, but two people were standing behind the defendant at the time of the shooting. In *State v. Fox*, 947 S.W.2d 865, 866 (Tenn. Crim. App. 1996), the defendant discharged the firearm into the air or into a treetop. Finally, and more recently, in *State v. Durocher*, No. M2024-01290-CCA-R3-CD, 2026 WL 850273, at *3 (Tenn. Crim. App. Mar. 27, 2026), *no perm. app. filed*, the defendant fired multiple gunshots from her back door and in the direction of a playground, but the State did not present proof that anyone was at the playground at the time of the incident.

All of the cases cited by the Defendant are easily distinguishable from the instant case. Taken in the light most favorable to the State, the evidence shows that after the Defendant’s physical altercation with the victim and Ms. Wade, Ms. Wade went back into the mobile home, and the Defendant threatened to kill the victim and went to his car. He obtained his nine-millimeter handgun and began shooting in the direction of the mobile home at the victim. The victim jumped through the front door while the Defendant fired

at her. The Defendant fired eight gunshots, and all of them struck the mobile home in which Ms. Wade and her five children were present. The gunshots spanned a distance of thirty feet across the front of the residence, and one bullet even entered the living room. When the victim managed to get through the front door, she saw Ms. Wade and Ms. Wade's children lying on the floor. From this evidence, we have no hesitation in concluding that Ms. Wade and her children were in the zone of danger. Accordingly, the evidence is sufficient to support the Defendant's convictions of reckless endangerment with a deadly weapon.

II. Ferguson Motion

Next, the Defendant claims that the State committed a *Ferguson* violation by failing to preserve Sergeant Hill's video-recorded interview of the victim. The Defendant claims that the video was material and potentially exculpatory because it "would have enabled him to more effectively cross-examine her by highlighting any inconsistencies." The State argues that the trial court properly found no *Ferguson* violation. We agree with the State.

Before trial, the Defendant filed a motion to dismiss the charges or, in the alternative, to provide the jury with an instruction on lost evidence pursuant to *State v. Ferguson*, 2 S.W.3d 912 (Tenn. 1999), due to the State's failure to preserve Sergeant Hill's video-recorded interviews of the victim and Ms. Wade. The trial court held a brief hearing on the motion on April 11, 2024. During the hearing, the State advised the trial court that Sergeant Hill saved the recordings on his computer but that the computer's hard drive "crashed." The State said that it sent the hard drive to a company in California and paid the company about \$3,000 to try to recover the recordings but that the company was unsuccessful. The State initially advised the trial court that the officer's written summaries of the interviews were available and had been turned over to the Defendant. However, the State later said it "may have misstated" the existence of the summaries. The State argued that the defense also had police body camera video from the scene and the victim's preliminary hearing testimony.

Defense counsel responded that she was only challenging the State's inability to produce the victim's recorded interview because Ms. Wade was not going to testify at trial. Defense counsel argued that Sergeant Hill was negligent in not having a "backup" of his hard drive and requested that the trial court dismiss the charges. The trial court asked why defense counsel thought the victim's video-recorded statement was material, and defense counsel said the victim's preliminary hearing testimony differed from her statements to Lieutenant Wade at the scene. Notably, the victim testified at the preliminary hearing that she was on the porch and jumped into the house when the shooting began but told Lieutenant Wade that she ran when the shooting began. Defense counsel argued that the victim's video-recorded statement also may have been inconsistent with her preliminary

hearing testimony, and therefore, exculpatory. The trial court found that the evidence was “missing.” The court ruled that while the better practice was for law enforcement to back up evidentiary recordings, the court could not say law enforcement’s failure to do so was negligent. The trial court, without further explanation, stated that it was overruling the Defendant’s motion to dismiss the charges. The trial court did not address the Defendant’s request for a jury instruction on the lost evidence and did not provide an instruction pursuant to *Ferguson* during the final jury charge.

In *Ferguson*, the Tennessee Supreme Court held that “the loss or destruction of potentially exculpatory evidence may violate a defendant’s right to a fair trial.” *State v. Merriman*, 410 S.W.3d 779, 784 (Tenn. 2013) (citing *Ferguson*, 2 S.W.3d at 915-16). When the State loses potentially exculpatory evidence, Tennessee courts first analyze whether the State had a duty to preserve the evidence. *Ferguson*, 2 S.W.3d at 917. If the proof demonstrates that the State has breached a duty to preserve evidence, a court must evaluate “1. the degree of negligence involved; 2. the significance of the destroyed evidence, considered in light of the probative value and reliability of secondary or substitute evidence that remains available; and 3. the sufficiency of the other evidence used at trial to support the conviction.” *Id.* The central objective is to protect the defendant’s right to a fundamentally fair trial. *Id.* If, after evaluating all the factors, the trial court determines that a trial without the missing evidence would be fundamentally unfair, the trial court may dismiss the charges, deliver a curative instruction to the jury, or craft such other orders as appropriate to protect the defendant’s right to a fair trial. *Id.* We review a trial court’s determination as to whether a defendant was deprived of a fundamentally fair trial de novo with no presumption of correctness. *Merriman*, 410 S.W.3d at 797. We review the trial court’s determination of an appropriate remedy for the State’s failure to preserve evidence under an abuse of discretion standard. *State v. Rimmer*, 623 S.W.3d 235, 256 (Tenn. 2021).

Turning to the *Ferguson* analysis, the State does not dispute that it had a duty to preserve the victim’s formal statement and that it failed to do so. *See State v. Johnson*, No. M2019-00707-CCA-R3-CD, 2020 WL 4557035, at *13 (Tenn. Crim. App. Aug. 7, 2020) (citing *Ferguson*, 2 S.W.3d at 917), *perm. app. denied* (Tenn. Dec. 2, 2020). As to the three *Ferguson* factors, the Defendant first claims that the State was negligent in failing to create a backup of important evidence in an ongoing attempted first degree murder investigation. The trial court found that the State was not negligent for failing to create a backup of the evidence. In our view, even if negligent, the State’s loss of the victim’s video-recorded statement was inadvertent and, therefore, due to simple negligence rather than gross negligence. *State v. Rhea*, No. E2024-01415-CCA-R3-CD, 2026 WL 1802322, at *15 (Tenn. Crim. App. June 23, 2026) (classifying the inadvertent loss of evidence as simple negligence as opposed to intentional conduct, bad faith, or gross negligence), *perm. app. filed* (Tenn. Aug. 24, 2026).

As to the significance of the lost evidence, the Defendant contends that the victim's recorded statement was "of vital importance" because she could have said something inconsistent with her trial testimony. However, the record reflects that the Defendant had other evidence with which to cross-examine the victim at trial. For example, the victim testified on direct examination that she ran when the shooting started but admitted on cross-examination that she testified in another proceeding that she jumped through the door when she saw the gun. She then explained to the jury, "I did not have to run anywhere. As long as my legs are, all I had to do was pivot right there into the door." The defense also had Lieutenant Wade's body camera video of the victim's statements at the scene. Therefore, we do not think the victim's formal statement would have been particularly significant evidence in the Defendant's case.

Finally, we consider the sufficiency of the other evidence used at trial. Officers found eight nine-millimeter shell casings in a group on the street, which corroborated the victim's claim that the Defendant shot at her seven or eight times from his car. All of the bullets struck Ms. Wade's home, and the bullets spanned a distance of thirty feet. The victim described seeing Ms. Wade and her children taking cover inside the home by lying on the floor. Three of the bullets struck the doorframe, and one bullet traveled into the living room of the home. Gunshot residue was on the Defendant's hands, and he ultimately admitted in his police interview that he shot at the victim. In sum, the remaining evidence against the Defendant is overwhelming. Therefore, applying and balancing the *Ferguson* factors de novo, we conclude that the Defendant's trial was not fundamentally unfair without the lost evidence and that the trial court did not err by denying the Defendant's *Ferguson* motion for either dismissal or a jury instruction.

CONCLUSIONS

Upon our review, we affirm the judgments of the trial court.

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