

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
July 9, 2026 Session

**FILED**

10/05/2026

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. SAMUEL WARD, JR.**

**Appeal from the Criminal Court for Shelby County**  
**No. C2207586      Carlyn L. Addison, Judge**

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**No. W2025-01186-CCA-R3-CD**

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In this case involving an issue of first impression pertaining to the exclusion of evidence of a victim's biological sex, Defendant, Samuel Ward, Jr., was convicted by a Shelby County jury of voluntary manslaughter. The trial court sentenced Defendant to six years' incarceration. On appeal, Defendant argues 1) the trial court erred by excluding evidence of the victim's assigned sex at birth; 2) the evidence was insufficient to support Defendant's conviction; 3) it was plain error for the State to make improper comments during its closing argument; 4) the trial court erred by not allowing Defendant to impeach a State's witness; and 5) the trial court erred by imposing the maximum sentence of incarceration and denying an alternative sentence. Because we conclude that the trial court erred by granting the State's motion to exclude evidence of the victim's biological sex, we reverse and remand this case for a new trial.

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

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER, P.J., and MATTHEW J. WILSON, J., joined.

John McNeil, Memphis, Tennessee, for the appellant, Samuel Ward, Jr.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Senior Assistant Attorney General; Steven J. Mulroy, District Attorney General; and Monica Timmerman and Regina Lucreziano, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

Defendant was indicted by the Shelby County Grand Jury for voluntary manslaughter following his shooting of the victim, Paris Lee.

*State's Pre-Trial Motion to Exclude Reference to the Victim's Sexual Identity*

Prior to trial, the State filed a "Motion in Limine to Exclude References to the Victim's Sexual Identity During Trial." The motion averred that the victim was born as a biological male, but "for many years prior to [the victim's] death, [the v]ictim identified and presented as a female." It further averred that the victim and Defendant "were involved in a sexual relationship for at least two years prior to [the v]ictim's murder, and Defendant was aware of [the victim's] assigned sex." The State argued the victim's sexual identity was not relevant under Rule 403 of the Tennessee Rules of Evidence and "would only serve to confuse the material issues presented and potentially prejudice the jury against [the v]ictim."

Defendant filed a response to the State's motion, stating that defense counsel would "respect [the v]ictim's chosen sexual identity throughout trial and w[ould] refer to [the v]ictim as female, using the proper 'she/her' pronouns" when referring to the victim. Defendant argued, however, that the victim's biological sex was relevant to Defendant's claim of self-defense.

On the morning of the first day of trial, the trial court held a hearing on the motion. The State remarked, "This is not a situation where [Defendant] went home with [the victim] for the first time and discovered that [the victim] was biologically a male." The State conceded that if the proof showed the victim's assigned sex was the reason for the altercation between Defendant and the victim, it would be relevant to the adequate provocation element of voluntary manslaughter. However, the State argued, the proof at trial would establish that the victim "was a large woman" who was armed with a weapon and, therefore, the victim's assigned sex was not relevant to the issue of self-defense. The State argued that sexual identity is "a touchy subject that could mislead and bias the jury in ways that are not really relevant at all to the facts . . . ." Defense counsel countered that the relative strength of biological males and females was relevant to self-defense. Additionally, defense counsel argued, if Defendant testified, "it also goes to his credibility." Counsel explained, "it at least goes a little bit to whether [Defendant] was in fear and how much fear he was in and why." Counsel expressed concern that if Defendant chose to testify, he would have to lie to the jury, "either by omission or just a straight-out lie." Defense counsel noted that if any jurors were biased against transgender individuals, their bias would "also appl[y] to [Defendant] who . . . was in a sexual relationship with [the victim]." Finally, defense counsel suggested he was "fine" with a limitation that he "mention[] this once in voir dire and once in closing[.]"

The entirety of the trial court's oral ruling follows:

I don't believe that we are -- there are certain things that come in during a trial that can affect the triers of fact in law, their ability to focus on the core issue. And I think the core issue here is there was a loss of life. I can't say alleged loss of life. Someone is no longer with us. How that happened is for us to later determine, but I think in times past we have limited the information a jury knows in order to protect the process, in order to protect families, victims, and defendants primarily. I do not want a mistrial. I do not want confusion of the issues. And I just don't believe that gender is relevant here. A deadly weapon is a deadly weapon is a deadly weapon. Someone in possession of a firearm is in control of a deadly weapon. With - - and I agree with the State, whether that person has a vagina or a penis has no bearing on the deadliness of a firearm. Not long ago we all read the news, a dog shot his owner. A deadly weapon is a deadly weapon regardless of who holds it. So I will have to grant the State's motion. We will not speak about gender identity or assigned sex at birth. We will address the decedent as according to the roles that that person they lived by, Ms. Paris Nicole Lee.

In addition to requiring everyone to refer to the victim as "Ms. Lee," the trial court later admitted redacted crime scene and autopsy photos which concealed the victim's male genitalia and a redacted written autopsy report which blocked all information relating to the victim's sex.

A written order granting the State's motion is not contained in the record.

#### *Evidence at Trial*

On June 29, 2022, at around 11:00 p.m., Defendant called police to report that he had shot someone. Francesca Caston, a patrol officer with the Memphis Police Department ("MPD"), responded to Defendant's apartment. Defendant stated that he was in an altercation at another location with a friend who became upset after they had sex. Defendant told Officer Caston that the friend pulled a gun on him and began shooting. Defendant pulled a gun and shot back as he was falling down a staircase. Defendant told officers where his gun was located, and the MPD recovered a Taurus handgun and a magazine from the foot of Defendant's bed.

It took officers "a good little piece of time" to determine the location of the shooting. Defendant was detained while police tried to figure out where the shooting occurred. Officer Caston testified, "And all he kept saying over and over was the house where it was is -- couldn't tell you the address but kept saying it's off of Bonnie Lane. It's off of Bonnie

Lane.” Eventually, officers determined the location of the shooting, which was a thirty-one-minute drive away.

MPD Officer Alexander Fleites responded to a call from another precinct to do a welfare check at the victim’s residence. Officer Fleites’s body camera footage was introduced as an exhibit and shown to the jury. Officer Fleites discovered the victim’s body lying just inside the front door at the bottom of a staircase, and officers recovered a handgun lying two to three feet away from the victim’s body. There were also several spent cartridge casings recovered from the scene. Officer Fleites testified he was unable to secure the gun because of “some type of malfunction that [he] wasn’t able to clear.”<sup>1</sup>

Tarik Hunter was a close friend of the victim. The victim called him on the night of June 29, and he could hear someone “talking loud in the background like they was [sic] going off or mad about something.” The victim sounded calm. Although they did not have plans to do anything that night, the victim talked on the phone to Mr. Hunter as if they had plans to meet for dinner. Mr. Hunter testified, “I guess, by me being a male trying to I guess say I’m on my way that, you know, the person who probably that [the victim was] with probably will leave or go on about the[ir] business.” Mr. Hunter had never heard the victim speak of Defendant before.

MPD Sergeant William Burdett conducted a video-recorded interview with Defendant. Defendant stated that he and the victim got into an argument, and the victim retrieved a gun from a dresser drawer and told Defendant to leave. Defendant said the victim pointed the gun with the safety off at his face, and Defendant had his hands in the air. Defendant pulled a gun and shot the victim while falling down the stairs. Defendant told Sergeant Burdett he did not hear the victim’s gun fire and that he believed he fired his gun six or seven times. There were blood transfer stains on Defendant’s shorts and shoes where the victim was laying across Defendant’s legs.

Defendant initially stated he and the victim fell together, but upon questioning by the sergeant, Defendant “was very ambiguous about that part.” The victim suffered six gunshot wounds. Sergeant Burdett explained that the gunshot wounds on the victim’s lower body, one in each leg and one in the abdomen, “were in an upward angle” which is consistent with Defendant’s statement; however, the “three shots [ ] in the upper body; the head, the chest, and the arm[,] . . . are at a downward angle.” Sergeant Burdett said he questioned Defendant about his and the victim’s respective positions when the shooting occurred, “because the gunshot wounds on her lower half, the trajectories didn’t match the gunshot wounds on the upper half.” Sergeant Burdett testified,

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<sup>1</sup> The State’s firearm expert testified later that the weapon recovered at the victim’s location was the same “make and model” as the weapon found at Defendant’s residence – a Taurus 9mm G2 pistol.

The only inconsistencies was [sic] where at the end when they fell who was where. At first [Defendant] said they fell on top of each other. And then he said, no, [the victim] was higher up. We tried to nail him down to what first step, second step, third step. He was -- couldn't remember and he said well, [the victim] was leaned over. And the way [the victim] -- he was showing leaned over, [the victim's] abdomen would not have been exposed. So [the victim] -- [the victim] may have been leaning over after [the victim] got shot in the abdomen and legs.

Defendant offered to take a polygraph, but Sergeant Burdett said that was not an option because "[i]t's not admissible in court, we don't offer it."

Katrina Van Pelt, a forensic pathologist with the West Tennessee Regional Forensic Center, prepared a report detailing her findings from an autopsy of the thirty-six-year-old victim. The victim was shot once in the face just below the right eye from an indeterminate range and at a downward trajectory; once in the chest from an indeterminate range and at a downward right-to-left trajectory; once in the shoulder from a close range and at a downward left-to-right trajectory; once in the right leg from an indeterminate range at an upward trajectory; once in the left thigh from an indeterminate range and at a right-to-left trajectory; and once in the left forearm from an indeterminate range and at an upward trajectory. Dr. Van Pelt opined that both the gunshot wounds to the face and the chest could have been independently lethal. The autopsy report showed that the victim was five feet, eleven inches tall and weighed 262 pounds, with all information regarding the biological sex of the victim redacted.

Special Agent Shandra Lynch, of the Tennessee Bureau of Investigation, testified as an expert firearms examiner. She compared the bullets, bullet fragments, and cartridge casings recovered from the scene with the Taurus G2 pistols belonging to Defendant and the victim. She determined that seven of the cartridge casings found at the scene were fired from Defendant's gun, and one of the casings was fired from the victim's gun. Special Agent Lynch test-fired the victim's gun six times, and it malfunctioned once.

Defendant elected not to testify after a *Momon* hearing. When asked whether he wished to testify, Defendant stated, "I would like to testify if I could tell the whole truth." Defendant expressed his concern that "the jury might hold that against [him]" that he "did something to a woman." Defense counsel requested to make a proffer of what Defendant's testimony would have been "[i]f he were allowed to testify completely truthfully and not restricted by the [c]ourt's ruling." The prosecutor responded the State would "stipulate" Defendant's testimony would be "that there was this added level of fear because he knew of the sexual identity or the assigned sex at birth of the victim." The trial court reiterated

its ruling that regardless of the victim's biological sex, "a gun is a dangerous weapon. And if one is to produce a gun, even if you're not 71 inches and 200 plus pounds, you produce a gun that could lead to someone being placed in fear." The court concluded that a proffer was not necessary to establish that Defendant "would have testified that he was in fear because of the victim's assigned sex at birth."

Defendant presented no witnesses or other proof. The jury found Defendant guilty of voluntary manslaughter.

### *Sentencing Hearing*

At the sentencing hearing, the State introduced a presentence report, which included a victim impact statement from the victim's mother. No witnesses testified, and both parties made arguments to the court. The trial court noted that Defendant, "throughout the entirety of his trial, looked bored" and that he seemed "unattached and unaffected" by the proof at trial. The court summarized the evidence at trial, emphasizing that Defendant drove "a great distance" to his girlfriend's house rather than assisting the victim.

The trial court found the proof supported the application of enhancement factor 6, that the personal injuries inflicted upon, or the amount of damage to property sustained by or taken from, the victim was particularly great. *See* T.C.A. § 40-35-114(6). The court commented, "[The victim's] life was taken, it was particularly great." The court applied enhancement factor 8, that before trial or sentencing, the defendant failed to comply with the conditions of a sentence involving release into the community. *Id.* -114(8). The court noted that the presentence report showed that Defendant had "gone out and partied and gotten high" and was "drinking" while awaiting sentencing. The court also applied enhancement factors 9 and 10, that Defendant possessed or employed a firearm during the commission of the offense and Defendant had no hesitation about committing a crime when the risk to human life was high. *Id.* -114(9) and (10). The court said, "you don't pull out a gun unless you intend to use it." Finally, the court found enhancement factor 12 applicable, that during the commission of the felony, the actions of Defendant resulted in the death of, or serious bodily injury to, a victim or a person other than the intended victim. *Id.* -114(12).

The trial court did not apply any mitigating factors. The court found that confinement was necessary to avoid depreciating the seriousness of the offense and found, "This is an especially violent, horrifying, shocking, reprehensible offense[], or otherwise an excessive, or exaggerated degree." The court sentenced Defendant to six years in confinement.

Defendant filed a timely motion for new trial, which the trial court denied after a hearing, and Defendant appeals.

## *Analysis*

### *Exclusion of Evidence of Victim's Biological Sex*

Defendant raises an issue of first impression in Tennessee: whether the victim's biological sex is relevant to a claim of self-defense.<sup>2</sup> Defendant argues the victim's biological sex was "highly relevant" to his claim of self-defense. Defendant also argues the trial court's decision to exclude evidence of the victim's biological sex curtailed his right to present a full case and impeded his right to testify in his own defense. The State argues the trial court's ruling regarding relevance was a proper exercise of its discretion and that Defendant's other claims are waived. We first address Defendant's relevance argument.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Tenn. R. Evid. 401. Even relevant evidence may be excluded if the probative value of the evidence "is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Tenn. R. Evid. 403; *see State v. Banks*, 564 S.W.2d 947, 950-51 (Tenn. 1978). Prejudice is considered unfair if it has "[a]n undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *See Banks*, 564 S.W.2d at 951. The exclusion of relevant evidence is considered "an extraordinary remedy" to be used only "sparingly, and the party seeking to exclude the evidence bears a heavy burden of persuasion." *State v. Davidson*, 509 S.W.3d 156, 198 (Tenn. 2016) (citing *State v. James*, 81 S.W.3d 751, 757-58 (Tenn. 2002)). The determination of evidentiary relevance lies within the discretion of the trial court; thus, we will not reverse the ruling of that court unless the record clearly establishes that the trial court abused its discretion. *See State v. DuBose*, 953 S.W.2d 649, 652 (Tenn. 1997); *State v. Van Tran*, 864 S.W.2d 465, 477

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<sup>2</sup> Our research has found only one case that addresses gender and self-defense, an unpublished opinion of the Michigan Court of Appeals, albeit in a different context than in this case. In *Michigan v. Lewis*, No. 332424, 2017 WL 4077973 (Mich. Ct. App. Sept. 14, 2017), the state appellate court reviewed for plain error the prosecutor's comments during closing argument that the jury must treat the female defendant, who claimed she shot her husband in self-defense, as though she were a man and hold her to the same standard as a man. The court found the prosecutor's statements "as an appeal to gender neutrality in the proceedings" and concluded they were "entirely proper." *Id.* at \*2. The court observed, "Nowhere in the [self-defense] statute or the jury instructions is the jury prompted to consider the genders of the parties involved when addressing the question of self-defense." *Id.* There was no dispute regarding biological sex.

(Tenn. 1993); *State v. Harris*, 839 S.W.2d 54, 73 (Tenn. 1992). “A trial court abuses its discretion when it applies an incorrect legal standard, reaches an illogical conclusion, bases its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party.” *State v. Clark*, 452 S.W.3d 268, 287 (Tenn. 2014) (citing *State v. Banks*, 271 S.W.3d 90, 116 (Tenn. 2008)).

At trial, Defendant asserted that he acted in self-defense. A person who is acting lawfully and in a place the person has a right to be has no duty to retreat before using deadly force when “[t]he person has a reasonable belief that there is an imminent danger of death or serious bodily injury[.]” T.C.A. § 39-11-611(b)(2). Whether an individual acted in self-defense is a factual determination to be made by the jury as the sole trier of fact. *See State v. Goode*, 956 S.W.2d 521, 527 (Tenn. Crim. App. 1997); *State v. Ivy*, 868 S.W.2d 724, 727 (Tenn. Crim. App. 1993). “Encompassed within that determination is whether the defendant’s belief in imminent danger was reasonable, whether the force used was reasonable, and whether the defendant was without fault.” *State v. Lester*, No. 03C01-9702-CR-00069, 1998 WL 334394, at \*2 (Tenn. Crim. App. June 25, 1998) (citing *State v. Renner*, 912 S.W.2d 701, 704 (Tenn. 1995)). “Factors for a jury to consider in determining whether there were reasonable grounds for a defendant to fear serious bodily injury from an alleged victim include any previous threats of the alleged victim, the alleged victim’s character for violence, the animosity of the alleged victim for the defendant, the manner in which the parties were armed[,] and their relative strengths and sizes.” *State v. Murphy*, No. M2007-02416-CCA-R3-CD, 2009 WL 1643442, \*11 (Tenn. Crim. App. June 12, 2009), *no perm. app. filed*. The genuineness of a defendant’s fear may be demonstrated by examining the circumstances surrounding his self-defense claim. *State v. Smith*, No. W2023-00342-CCA-R3-CD, 2024 WL 4481509, at \*6 (Tenn. Crim. App. Oct. 14, 2024) (citing *Frazier v. State*, 100 S.W. 94 (Tenn. 1907)), *no perm. app. filed*.

Logically, courts allow evidence of the physical characteristics of the victim and defendant when evaluating the “reasonableness” and “imminent danger” requirements of a self-defense claim. Here, Defendant argues the “differences in strength and power between a biological man and a woman of the same weight cannot be denied.” In other words, there are physical differences between a biological male who is five-feet-eleven and 262 pounds and a biological female who is five-feet-eleven and 262 pounds. The trial court determined that because the victim was armed, evidence of her biological sex was irrelevant and potentially prejudicial. We disagree.

While a gun might equalize differences in physical strength and size, there are other inherent physiological differences between the sexes that science continues to reveal and that we choose not to ignore. A detailed discussion is not necessary for our analysis; it suffices to acknowledge that these differences exist. However significant or insignificant these differences are, the Tennessee Rules of Evidence set the threshold test for relevance

low: evidence is relevant if it has *any* tendency to prove a consequential fact. *See* Tenn. R. Evid. 401, Advisory Comm’n Cmt. (“The theoretical test for admissibility is a lenient one . . .”). We decline to hold that the biological sex of the victim is not relevant to a claim of self-defense.

Regarding the danger of unfair prejudice, we recognize that societal biases exist. As counsel for Defendant observed at the pretrial hearing, any prejudices the jury might have against the victim for being transgender could very well be applied to Defendant for being in a sexual relationship with the transgender victim. The trial court was concerned that knowledge of the victim’s biological sex might lead to bias and cause the jury to confuse the issues. The danger of bias, however, ran both ways in this case. Defendant expressed his concern that the jury might be less likely to accept his claim of self-defense based on their understanding of the victim as a woman rather than a biological male. Notably, the victim’s friend, Mr. Hunter, testified the victim called him because the victim thought he could provide some level of intimidation as a male. These societal views on the differences between male and female behaviors only strengthen our belief that a person’s biological sex has relevance to certain issues.

We thus hold it was error for the trial court to grant the State’s motion to exclude references to the victim’s biological sex. The court did not engage in a proper analysis of exclusion of *relevant* evidence pursuant to Rule 403, which the State’s motion sought. The State’s motion asked for exclusion because the victim’s biological sex would “only serve to confuse the material issues presented and potentially prejudice the jury against the victim.” The court stated at the hearing granting the motion to exclude that “in times past we have limited the information a jury knows in order to protect the process, in order to protect families, victims, and *defendants primarily*.” [Emphasis added]. It went on to conclude, “. . . I don’t believe that gender is relevant here. A deadly weapon is a deadly weapon. Someone in possession of a firearm is in control of a deadly weapon. With -- and I agree with the State, whether that person has a vagina or a penis has no bearing on the deadliness of a firearm.”

However, this conclusion misses the point of Rule 403, a rule of admissibility of relevant evidence. Relevant evidence is to be admitted unless the probative value is substantially outweighed by the listed considerations – danger of unfair prejudice, confusion of the issues, or misleading the jury, or considerations of undue delay, waste of time, or needless presentation of cumulative evidence. The Rule is “an extraordinary remedy that should be used sparingly.” *Davidson*, 509 S.W.3d. at 206-207; *White v. Beeks*, 469 S.W.3d 517, 528 (Tenn. 2015) (quoting *Levine v. March*, 266 S.W.3d 426, 439 (Tenn. Ct. App. 2007)). Under this rule, trial courts possess the inherent authority to exclude any evidence that would “threaten the fairness of the trial process.” *State v. Sexton*, 368 S.W.3d

371, 408 (Tenn. 2012) (citation omitted). When the balance is close, evidence should be admitted. *White*, 469 S.W.3d at 528.

The question of the “deadliness of a firearm” and the biological sex of a person who “controlled” a firearm may not be relevant and may lack probative value in some situations. In this situation, however, evidence of the biological sex of the victim was relevant and full of probative value, and its exclusion left the jury with the impression that a male defendant killed a female victim. Contrary to Rule 403, the exclusion of the victim’s biological sex – including a photo depicting the victim as a female, redacted crime scene photos, and redacted autopsy photos and report - misled the jury, threatened the fairness of the judicial process, and was prejudicial to Defendant. We conclude the trial court misapplied Rule 403 and applied an incorrect legal standard, thus abusing its discretion in granting the State’s motion.

Defendant also argues that the trial court’s exclusion of the evidence violated his due process right to present a defense and offer testimony.<sup>3</sup> The State responds that Defendant has waived these additional claims by failing to present them earlier and by not requesting plain error review. In his reply brief, Defendant argues he preserved his due process and confrontation clause claims. Alternatively, Defendant asks this Court to conduct a plain error review of the issues.

“Tennessee law requires a timely and specific objection in the trial court to preserve an evidentiary issue for appellate review.” *State v. Reynolds*, 635 S.W.3d 893, 930 (Tenn. 2021). Constitutional arguments are not exempt from the preservation rules, and if not properly preserved, the issues are deemed waived on appeal. *See, e.g., State v. Howard*, 504 S.W.3d 260, 277 (Tenn. 2016).

At the pretrial hearing on the State’s motion, defense counsel expressed concern that if the trial court excluded evidence of the victim’s biological sex, it would impact Defendant’s ability to present a defense and his right to testify. Defense counsel stated that if Defendant chose to testify, he would be in a position to have to lie to the jury, “either by omission or just a straight-out lie.” Defendant acknowledges that he did not expressly state “due process” or “confrontation clause” violations; however, he argues “the consequences of the trial court’s ruling were not fully apparent until [Defendant]’s *Momon* hearing, where he decided not to testify based solely on the court’s pretrial ruling.” During the *Momon* hearing, Defendant expressly stated, “I would like to testify if I could tell the whole truth.” When ask by his counsel what he meant by ‘the whole truth’, Defendant stated that “Ms.

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<sup>3</sup> Defendant’s principal brief contains additional arguments regarding equal protection and voir dire, which the State asserts are waived, and Defendant’s reply brief does not address these issues. Therefore, we will consider these issues waived.

Lee was born a male.” He went on to tell the trial court that he would testify if he could “add” to his testimony the victim’s true biological sex. Defendant express his concern that if he were not allowed to testify as to the victim’s biological sex, the jury would hold it against him that “I just did something to a woman.”

We conclude Defendant’s objections and argument at the pretrial hearing and statements at the *Momon* hearing were sufficient to preserve the issue for review. When preserving an issue for appellate review, “precise citation to a rule, statute, or case as the legal ground for the alleged error is normally not required.” *Fahey v. Eldridge*, 46 S.W.3d 138, 143 (Tenn. 2001).

It is well established that the right to present a defense is a “fundamental element of due process of law.” *State v. Brown*, 29 S.W.3d 427, 432 (Tenn. 2000) (citation and internal quotation marks omitted). Nevertheless, this right is not absolute and must be exercised in accordance with the rules of evidence and procedure. *See State v. Flood*, 219 S.W.3d 307, 316 (Tenn. 2007). So long as those rules are not applied “arbitrarily or disproportionately to defeat the purposes they are designed to serve,” their application does not infringe on a defendant’s constitutional rights. *Id.* Generally, a trial court’s ruling regarding the admissibility of evidence does not rise to the level of constitutional error. *State v. Rice*, 184 S.W.3d 646, 673 (Tenn. 2004), *abrogated on other grounds by State v. Miller*, 638 S.W.3d 136 (Tenn. 2021). However, “the erroneous exclusion of evidence that thwarts a criminal defendant’s right to present a defense is constitutional error.” *State v. Bell*, 512 S.W.3d 167, 190-91 (Tenn. 2015) (citing *Rice*, 184 S.W.3d at 673). In determining whether the trial court’s exclusion of evidence violated a defendant’s constitutional right to present a defense, this Court must consider “whether the excluded proof is critical to the defense; whether it bears sufficient indicia of reliability; and whether the interest supporting exclusion of the proof is substantially important.” *Id.* at 191 (citing *Rice*, 184 S.W.3d at 673).

Applying this test to the facts of this case, we conclude that evidence of the victim’s biological sex should have been admitted. In the absence of this evidence, the jury was without knowledge of a significant fact known to Defendant when the shooting occurred. We are of the opinion that the evidence was substantially critical to the defense. The reliability of the evidence is not an issue as the sex assigned to the victim at birth is an objective fact. The State has never argued otherwise. The interest supporting exclusion of the evidence is the potential bias it might cause the jury to have about the victim; however, the interest in protecting prejudice against the victim is less than the substantially important interest Defendant has in fully and accurately presenting his defense to the jury.

Because the trial court abused its discretion by causing an injustice to Defendant, we conclude that the trial court erred by excluding evidence of the victim’s biological sex.

By excluding the evidence, the trial court denied Defendant an opportunity to present his defense. Such error was not harmless.

Quite correctly, the trial court instructed the jury that it was to “render your verdict with absolute fairness and impartiality as you think truth and justice dictate. You must consider every fact and circumstance in the case in arriving at your verdict.” In this case, withholding the fact of the victim’s biological sex frustrated a verdict dictated on truth and justice by asking the jury to render justice without absolute truth.

Accordingly, we reverse Defendant’s conviction and remand this case for a new trial. Nevertheless, we will address Defendant’s remaining issues in the event of further appellate review.

### *Sufficiency of the Evidence*

Defendant argues the evidence was insufficient to show he acted in a state of passion brought on by adequate provocation to cause Defendant to act in an irrational manner. The State responds the evidence supports Defendant’s conviction.

“The standard for appellate review of a claim challenging the sufficiency of the State’s evidence is ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *State v. Miller*, 638 S.W.3d 136, 157 (Tenn. 2021) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original)). This standard of review is “highly deferential” in favor of the jury’s verdict. *See State v. Lyons*, 669 S.W.3d 775, 791 (Tenn. 2023). Indeed, “[w]hen making that determination, the prosecution is afforded the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences which may be drawn therefrom.” *State v. Thomas*, 687 S.W.3d 223, 249 (Tenn. 2024) (citation and internal quotation marks omitted). To that end, “[w]e do not reweigh the evidence, because questions regarding witness credibility, the weight to be given the evidence, and factual issues raised by the evidence are resolved by the jury, as the trier of fact.” *State v. Shackelford*, 673 S.W.3d 243, 250 (Tenn. 2023) (citations omitted). “The standard of review is the same whether the conviction is based upon direct or circumstantial evidence.” *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (citation and internal quotation marks omitted).

“The first step in evaluating the sufficiency of the evidence is to identify the elements of the offense.” *See State v. Rimmel*, 710 S.W.3d 640, 646 (Tenn. 2025) (citing *Miller*, 638 S.W.3d at 158). “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.” T.C.A. § 39-13-211(a). Whether

adequate provocation exists to support a conviction for voluntary manslaughter is a question for the jury. *See State v. Williams*, 38 S.W.3d 532, 539 (Tenn. 2001) (“[W]hether a knowing killing resulted from ‘a state of passion produced by adequate provocation sufficient to lead a reasonable person to act in an irrational manner’ is a jury question.”); *State v. Johnson*, 909 S.W.2d 461, 464 (Tenn. Crim. App. 1995).

Defendant argues the only evidence presented by the State that Defendant acted in a state of passion was Mr. Hunter’s testimony that he heard yelling in the background during his phone call with the victim and that the victim sounded calm. However, Defendant overlooks evidence that he told police he and the victim were arguing just prior to the shooting. The evidence established that Defendant and the victim were in a romantic relationship, that the two argued, and that the victim pulled out a gun and pointed it at Defendant’s face. Defendant also produced a gun and shot the victim six times. This evidence is sufficient to support the jury’s verdict. Based on the evidence, any rational juror could have found that Defendant shot the victim during an argument after he was provoked by the victim’s pointing a gun at him. The jury chose to reject Defendant’s self-defense claim, as was its prerogative. *See Goode*, 956 S.W.2d at 527. Defendant is not entitled to relief on this issue.

#### *Improper Comments by the Prosecutor*

Defendant contends that the prosecutor’s comment during closing argument that Defendant’s charge of voluntary manslaughter was a “gift” from the grand jury was improper and amounted to plain error. The State responds that Defendant failed to establish plain error.

During closing argument, the prosecutor commented that Defendant did not hear the victim fire a shot and that “[h]e was already letting his six shots go. The fact that he’s charged with voluntary manslaughter is a gift from the Grand Jury . . . .” The prosecutor noted that the evidence showed the victim fired a shot, “[s]o we’ll give him that adequate provocation. But self-defense? Let’s talk about it.” Because defense counsel did not object to the prosecutor’s comments, we review them for plain error.

Before an error may be recognized, it “must be ‘plain’ and it must affect a ‘substantial right’ of the accused.” *State v. Adkisson*, 899 S.W.2d 626, 639 (Tenn. Crim. App. 1994). “An error would have to [be] especially egregious in nature, striking at the very heart of the fairness of the judicial proceeding, to rise to the level of plain error.” *State v. Page*, 184 S.W.3d 223, 231 (Tenn. 2006). In *State v. Smith*, our supreme court adopted *Adkisson*’s five-factor test for determining whether an error should be recognized as plain:

- (a) The record must clearly establish what occurred in the trial court;

- (b) A clear and unequivocal rule of law must have been breached;
- (c) A substantial right of the accused must have been adversely affected;
- (d) The accused did not waive the issue for tactical reasons; and
- (e) Consideration of the error is “necessary to do substantial justice.”

24 S.W.3d 274, 282-83 (Tenn. 2000) (quoting *Adkisson*, 899 S.W.2d at 641-42). “[A]ll five factors must be established by the record before this Court will recognize the existence of plain error, and complete consideration of all the factors is not necessary when it is clear from the record that at least one of the factors cannot be established.” *Id.* at 283.

This Court has recognized five general categories of prosecutorial misconduct: (1) intentionally misstating the evidence or misleading the jury as to the inferences it may draw; (2) expressing personal beliefs or opinions as to the truth or falsity of any testimony or evidence or the guilt of the defendant; (3) inflaming or attempting to inflame the passions or prejudices of the jury; (4) injecting issues broader than the guilt or innocence of the defendant; or (5) arguing or referring to facts outside the record that are not matters of common knowledge. *See State v. Goltz*, 111 S.W.3d 1, 6 (Tenn. Crim. App. 2003).

Defendant cites *Goltz* but fails to identify any of the general areas of misconduct the prosecutor’s comments fall into. Rather, Defendant calls the comments “unbecoming of officers of the court[.]” He cites the Tennessee Rules of Professional Conduct and argues the prosecutor’s “gift” comment demonstrated a lack of respect for the legal system and improperly expressed dissatisfaction with the indicted charge.

Defendant has not established that a clear and unequivocal rule of law was breached. The prosecutor’s comment does not constitute a breach of the wide latitude afforded parties during closing arguments. Furthermore, we cannot conclude that consideration of the error was necessary to do substantial justice. The State’s remark was not “of such a great magnitude that it probably changed the outcome of the trial.” *Adkisson*, 899 S.W.2d at 642. Defendant is not entitled to plain error relief.

### *Impeachment of State’s Witness*

Defendant asserts the trial court erred by preventing him from impeaching Sergeant Burdett. During defense counsel’s cross-examination of Sergeant Burdett, Sergeant Burdett answered that Sergeant Bishop<sup>4</sup> was the lead detective in the case. Sergeant Bishop wrote the reports and, together with Sergeant Burdett, conducted an interview of Defendant. Sergeant Burdett agreed with defense counsel that he “didn’t write a single report for this case[.]” Defense counsel then asked, “did Sergeant Bishop, like, make a

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<sup>4</sup> Sergeant Bishop’s first name does not appear in the record.

bunch of mistakes on this case?” Sergeant Burdett answered that Sergeant Bishop “got promoted. He probably couldn’t be here.” Defense counsel asked, “He couldn’t be here at a trial on a homicide?” Sergeant Burdett responded, “you would have to ask the prosecution.”

The prosecutor objected on the basis of relevance and a “lack of personal knowledge[.]” During a bench conference, defense counsel responded, “It’s relevant to impeaching an investigation on an officer who said he didn’t make any reports and he wasn’t the lead detective.” The trial court commented, “That would be a first. That’d be a first for me . . . if you’re going to impeach the witness that’s one thing. But the entire investigation?” Defense counsel responded, “I’m just impeaching his lack of knowledge.” The trial court sustained the prosecutor’s objection.

“Generally, questions concerning the admissibility of evidence rest within the sound discretion of the trial court, and this Court will not interfere with the exercise of that discretion in the absence of a clear showing of abuse appearing on the face of the record.” *State v. McCoy*, 459 S.W.3d 1, 8 (Tenn. 2014). A trial court abuses its discretion only when it applies “an incorrect legal standard or reaches a conclusion that is illogical or unreasonable and causes an injustice to the party complaining.” *State v. Lewis*, 235 S.W.3d 136, 141 (Tenn. 2007).

Defendant challenges the trial court’s ruling, arguing that it prevented him from impeaching Sergeant Burdett’s “involvement in the investigation.” Defendant also asserts the trial court “cut defense counsel off at the height of his questioning[.]” Defendant mischaracterizes the State’s objection and the court’s ruling as being “on the grounds that a party may not impeach a witness based on lack of knowledge.” The record shows that the State objected to defense counsel’s questioning on the basis of relevance and that Sergeant Burdett did not have personal knowledge of the reason for Sergeant Bishop’s absence at trial. Defense counsel asked and Sergeant Burdett answered questions relating to Sergeant Burdett’s involvement in the investigation. When defense counsel asked Sergeant Burdett why the lead detective was not present to testify, Sergeant Burdett implied that he did not know. The trial court sustained the State’s objection to defense counsel’s question because it was not relevant and because Sergeant Burdett lacked personal knowledge to answer the question. *See* Tenn. R. Evid. 401, 602. After the bench conference, defense counsel continued his “impeachment” of Sergeant Burdett by asking whether Sergeant Burdett had examined either of the firearms, to which the sergeant responded that he had not.

The record does not show that Defendant was prevented from impeaching Sergeant Burdett. Defendant is not entitled to relief on this issue.

## *Sentencing*

Defendant challenges the trial court's decisions regarding his sentence. When an accused challenges the length and manner of service of a sentence, this Court reviews the trial court's sentencing determination under an abuse of discretion standard accompanied by a presumption of reasonableness. *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). If a trial court misapplies an enhancement or mitigating factor in passing sentence, said error will not remove the presumption of reasonableness from its sentencing determination. *Id.* at 709. This Court will uphold the trial court's sentencing decision "so long as it is within the appropriate range and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles listed by statute." *Id.* at 709-10. Moreover, under such circumstances, appellate courts may not disturb the sentence even if we had preferred a different result. *See State v. Carter*, 254 S.W.3d 335, 346 (Tenn. 2008). The party challenging the sentence imposed by the trial court has the burden of establishing that the sentence is erroneous. T.C.A. § 40-35-401, Sentencing Comm'n Cmts.; *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991).

Defendant argues the trial court erred in its application of two enhancement factors and "completely disregarded" Defendant's arguments in mitigation. Specifically, Defendant challenges the court's application of enhancement factors 6 and 9. We agree with Defendant that the trial court misapplied enhancement factor 6, which applies where "[t]he personal injuries inflicted upon, . . . the victim w[ere] particularly great." T.C.A. § 40-35-114(6). It is well-established that this factor should not be used to enhance a sentence for a homicide offense because the death of the victim is an element of the offense. *State v. Daugherty*, No. 03C01-9203-CR-00082, 1993 WL 330454, at \*4 (Tenn. Crim. App. Aug. 27, 1993) ("[Because] this factor 'is present in every homicide as an element of the offense,' it cannot be used as an enhancement factor on the voluntary manslaughter offense."). Similarly, enhancement factor 12 may not be applied if it is "based on facts that are used to prove the offense." *State v. Arnett*, 49 S.W.3d 250, 263 (Tenn. 2001). Although Defendant does not specifically challenge the court's application of this factor, we note that the record does not support it.

Nevertheless, the trial court correctly applied three other enhancement factors. We disagree with Defendant that the trial court misapplied enhancement factor 9 because the use of a firearm is not an essential element of voluntary manslaughter. T.C.A. §§ 40-35-114(9), 39-13-211. Defendant does not dispute that he failed to comply with the conditions of release or that he had no hesitation about committing a crime where the risk to human life was high. *See id.* § 40-35-114(8), (10). "The application of a single enhancement factor can justify an enhanced sentence." *State v. Banks*, No. M2019-00017-CCA-R3-CD, 2020 WL 5015888, at \*10 (Tenn. Crim. App. Aug. 25, 2020) (citing *State v. Bolling*, 75 S.W.3d 418, 421 (Tenn. Crim. App. 2001)), *perm. app. denied* (Tenn. Dec. 2, 2020).

Despite the trial court's misapplication of two enhancement factors, the sentence imposed was within the statutory range and consistent with the purposes and principles of sentencing, and we accordingly conclude there was no abuse of discretion.

Defendant also argues that the trial court relied on "completely irrelevant information" that the victim's dogs expressed anguish when first responders arrived at the home. At the sentencing hearing, the trial court commented that Defendant seemed "unaffected" and that "[e]ven the dogs" reacted to first responders' arrival at the scene. This observation by the court was inconsequential to its sentencing determination and does not entitle Defendant to relief.

Finally, Defendant argues the trial court "fail[ed] to consider or even mention" his arguments for alternative sentencing. In imposing a sentence of incarceration, the trial court found that confinement was necessary to avoid depreciating the seriousness of the offense, and the court specifically found that the offense was "especially violent, horrifying, shocking, [and] reprehensible[.]" Defendant does not dispute this finding, but rather, he argues the trial court failed to consider his arguments in favor of alternative sentencing. However, the record shows the trial court acknowledged that Defendant was "asking for potentially a probated sentence, or suspended sentence" and made findings supporting a sentence of incarceration.

The record shows that the trial court considered the evidence and the statutorily mandated considerations and referenced the principles and purposes of sentencing. Defendant is not entitled to relief.

### CONCLUSION

Because we conclude that the trial court abused its discretion by excluding evidence of the victim's biological sex and its exclusion of the evidence prevented Defendant from presenting his defense, we reverse the judgment of the trial court. Defendant's conviction is vacated, and this case is remanded for a new trial.

*S/Timothy L. Easter*

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TIMOTHY L. EASTER, JUDGE