

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs August 4, 2026

FILED

09/08/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. KENNETH EARL MURPHY

Appeal from the Circuit Court for Hardin County
No. 20-CR-100 J. Brent Bradberry, Judge

No. W2025-01577-CCA-R3-CD

The Defendant, Kenneth Earl Murphy, appeals his Hardin County Circuit Court convictions of rape of a child and incest, for which he received an effective sentence of thirty years' incarceration. On appeal, the Defendant challenges the sufficiency of the convicting evidence and argues that the trial court committed plain error by 1) failing to issue a curative instruction following his testimony regarding a polygraph test; 2) permitting the introduction of the indictment while simultaneously instructing the jury not to consider it as evidence; 3) instructing the jury that an admission against interest had been raised by the proof; and 4) permitting the introduction of irrelevant and prejudicial character evidence. The Defendant also asserts that the cumulative effect of the errors in this case entitles him to a new trial. Discerning no error, we affirm.

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

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

Jamie L. Lowrance, Selmer, Tennessee (on appeal); and Jason D. Nowlin, Savannah, Tennessee (at trial), for the appellant, Kenneth E Murphy.

Jonathan Skrmetti, Attorney General and Reporter; Garrett D. Ward, Senior Assistant Attorney General; Neil Thompson, District Attorney General; and Morgan B. Reynolds, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

On July 20, 2020, a Hardin County grand jury returned a two-count indictment charging the Defendant with rape of a child and incest. Following pretrial motions and evidentiary hearings, the Defendant proceeded to trial on March 26, 2024.

Teresa Nelson testified that she worked as the executive director for the Carl Perkins Center and facilitated its Child Protective Investigation Team. She recalled that the victim visited the Carl Perkins Center and gave a forensic interview around June 2019. The victim later received therapy services and continued to visit the Carl Perkins Center for yearly checkups. Ms. Nelson stated that she assisted the District Attorney General's Office in preparing the victim to testify and that the victim had not reviewed any recordings of her forensic interview in preparation for trial.

The victim testified that she was eight years old at the time of the offenses in this case. She recalled that at around 8:00 or 9:00 p.m., the Defendant, her uncle, picked her up from her parents' home in Olive Hill and drove her to his home. She explained that she intended to go on a camping trip with the Defendant and his side of the family the following day. The victim stated that she sat in the front passenger seat of the Defendant's truck and that the Defendant also permitted her to sit in his lap and hold the steering wheel while he drove.

The victim recalled that the Defendant stopped his truck on a road near a cemetery approximately fifteen minutes into the drive. The Defendant exited the truck, walked around to the passenger side, opened the door, and instructed the victim to "get up in the seat and turn around." The Defendant pulled down the victim's shorts, inserted his fingers into her vagina, and licked her vagina. The victim described the Defendant's actions as feeling painful. Afterward, the Defendant reentered his truck and continued driving. The victim recalled that, during the drive and after the offenses, the Defendant "made [her] pinky promise not to tell [any]body what happened between [them]." The victim agreed, and the Defendant drove them to his home.

The victim stated that her cousin and Jade Wireman, the Defendant's girlfriend, were present at the Defendant's home, along with the Defendant's two children, when she and the Defendant arrived. Upon arriving, the Defendant sat in his recliner and "passed out." The victim stated that she was supposed to sleep on a "pallet" near the Defendant's recliner that night, which made her feel nervous. She recalled that she began crying shortly after arriving because she felt "scared" and did not "know what was going to happen next." Ms. Wireman and the victim's cousin asked her why she was crying, and the victim informed them that "something bad had happened to [her]." Ms. Wireman called the victim's parents and informed them that she was bringing her back to their home.

The victim testified that Ms. Wireman informed the victim's parents of her allegations against the Defendant when they arrived back at the victim's home. The victim did not believe that either her parents or Ms. Wireman called the police to report her allegations. The victim did not accompany the Defendant on the camping trip the following day.

The victim testified that in May 2019, she returned home from school to find police officers and officials from the Department of Children's Services (DCS) at her home. There, the victim spoke with a police officer, who asked her "what happened" between herself and the Defendant. The victim stated that she did not "go into detail" about the offenses with this officer. The victim later spoke with Madison Haggard, a DCS employee, and informed her of her allegations against the Defendant. Ms. Haggard thereafter informed the victim about the resources available to her at the Carl Perkins Center. The victim recalled that she was removed from her parents' custody in May 2019 because her parents were "on drugs" and did not have hot water or enough food in their home.

The victim stated that she visited the Carl Perkins Center to give a forensic interview and later to attend therapy sessions. She testified that she had not reviewed any recordings of her forensic interview to prepare for trial; she stated that she did not "need" to do so because she would never forget the offense. She denied that anyone asked her to "make up" her allegations against the Defendant.

The victim recalled that she occasionally saw the Defendant "around town" after the offenses and that their most recent interaction was in December 2023 at a Walmart store. The victim stated that, as she retrieved a bag of sugar from a shelf, she saw the Defendant standing behind her, looking at her. The victim felt frightened and walked to the next aisle. The Defendant followed her, and the victim "went and hid in some clothes." The victim did not see the Defendant afterward, but she said that she felt as though the Defendant "was going to hurt [her] or something."

On cross-examination, the victim agreed that she spent "quite a bit of time" with the Defendant prior to the offenses. She testified that the offenses occurred in May 2017 but that she could not "really remember" the exact time the Defendant picked her up from her parents' home. She stated that her cousin and Ms. Wireman "freaked out" when she informed them of the offenses and that they returned her to her parents' home before the Defendant woke the following morning. She recalled that her parents seemed upset and asked her if she was hurt, but that they did not express any anger towards the Defendant. She explained that she did not know why her parents did not call the police to report her allegations.

The victim stated that she informed Ms. Haggard that the Defendant inserted his finger into her vagina and licked her vagina. She was unsure why Ms. Haggard would have omitted her allegation that the Defendant licked her vagina from her report. She maintained that she remembered what she had stated during her forensic interview and that no one had instructed her on how to testify at trial.

On redirect examination, the victim clarified that she had not spent much time alone with the Defendant prior to the offenses. She conceded that she may have inadvertently omitted certain details of her allegations in some of her previous statements. She identified the area where the Defendant pulled his truck over in photographs. On recross-examination, she agreed that it was dark outside at the time of the offenses, but she maintained that she knew where the offenses occurred because she had “lived on that road all [her] life.” She conceded she could not recall the name of the road where the offenses occurred.

Madison Haggard testified that she worked for DCS by investigating allegations of child abuse and neglect. Approximately one week after the victim was removed from her parents’ custody, Ms. Haggard arranged to interview the victim at her elementary school “regarding an allegation of sex[ual] abuse.” During the interview, the victim informed Ms. Haggard that the Defendant “had done some things to her that were not appropriate.” The victim stated that the Defendant picked her up from her parents’ home the night before she was scheduled to accompany him on a family trip. During the drive from the victim’s parents’ home to the Defendant’s home, the Defendant informed the victim that he needed to “use the bathroom.” The Defendant stopped his vehicle on the side of the road, exited the vehicle, walked around to the passenger side, opened the door, and began “touching” the victim “on her body.”

Ms. Haggard testified that she did not ask the victim to provide her with any details as to where the Defendant touched her; she stated that this was standard practice for DCS interviews. Ms. Haggard stated that she observed the victim during her forensic interview, that the victim appeared “forthcoming,” and that she never doubted the truth of the victim’s allegations. She noted that the victim’s story “stayed the same” in both her interview with Ms. Haggard and her forensic interview. Ms. Haggard testified that on June 19, 2019, she traveled to Olive Hill and took photographs of a “pull-off” area of the road near a “very old cemetery” which matched the description the victim provided of where the offenses occurred.

On cross-examination, Ms. Haggard stated that another DCS official worked with the victim regarding her removal from her parents’ custody and learned of the victim’s allegations against the Defendant during that investigation. The official advised the family that she would report the allegations and that another worker “would be coming out to

speak with them.” Ms. Haggard thus averred that the victim appeared to be “expecting” to speak with her.

Ms. Haggard denied that the victim stated during her forensic interview that the Defendant had licked her vagina, but she noted that the victim’s father stated that the Defendant had done so and that it was documented in a police report. Ms. Haggard agreed that the victim was unable to precisely recall where the offenses occurred but stated that the area she photographed in Olive Hill matched the description the victim had provided. On redirect examination, Ms. Haggard described the area she photographed in Olive Hill as being a few miles away from the victim’s parents’ home. On recross-examination, Ms. Haggard stated that she did not take the victim to the area she photographed in Olive Hill because the victim was in school.

The victim’s cousin testified that she was twenty-six years old at the time of the offenses and that she had known the victim for her entire life. The victim’s cousin spent the night at the Defendant’s home on the night of the offenses. She recalled that Ms. Wireman and Ms. Wireman’s three children were present at the home before the victim and the Defendant arrived. She stated that the victim and the Defendant arrived at the home “pretty late at night” and that the Defendant sat in a recliner and “passed out” shortly afterward. The victim played with Ms. Wireman’s children while her cousin made a “pallet” on the living room floor, where the victim and Ms. Wireman’s children were supposed to sleep. As the night wore on, the victim’s cousin noticed that the victim seemed reluctant to go to bed. The victim later informed her cousin and Ms. Wireman that the Defendant had “touched her.” The victim’s cousin described the victim as upset and noted that she did not accompany the family on the camping trip the following day. She agreed that she did not call the police to report the victim’s allegations.

The victim’s cousin testified that she and Ms. Wireman were friends at the time of the offenses. She described Ms. Wireman as upset by the victim’s allegations and noted that Ms. Wireman and the Defendant ended their relationship the following day.

Jade Wireman testified that the Defendant was her ex-boyfriend and that she first met him when she was fourteen years old, while he was engaged in a romantic relationship with Ms. Wireman’s mother. Ms. Wireman and the Defendant shared a home together in Wayne County at the time of the offenses. Ms. Wireman stated that she and the Defendant had one child together and that she had two other children. She noted that the victim was around the same age as her children and that they frequently spent time together prior to the offenses.

Ms. Wireman testified that on the night of the offenses, the Defendant left home to collect the victim from her parents’ home ahead of the family’s camping trip. When the

Defendant returned home with the victim, he sat in his recliner and fell asleep. The Defendant remained in his recliner for the rest of the night. While the victim played with Ms. Wireman's children, Ms. Wireman helped make a "pallet" on the living room floor, where the victim and Ms. Wireman's children were supposed to sleep. As the night grew later, Ms. Wireman noticed that the victim appeared "reserved" and was "act[ing] off." The victim later informed Ms. Wireman that she was "scared to go to sleep." When Ms. Wireman asked why, the victim informed her of the allegations against the Defendant.

After learning of the victim's allegations, Ms. Wireman called her aunt, who lived in Martin, to ask her to lend her a vehicle. Ms. Wireman's aunt did so, and Ms. Wireman drove the victim back to her parents' home between midnight and 1:00 a.m. When they arrived, Ms. Wireman and the victim informed the victim's parents of her allegations. Ms. Wireman agreed that she did not call the police to report the victim's allegations; she averred that, in hindsight, she would have done so if she had known the victim's parents would not.

On cross-examination, Ms. Wireman testified that she gave a statement to the police on July 21, 2019, regarding the victim's allegations. In her statement, Ms. Wireman reported that the victim alleged the Defendant allowed her to sit in his lap and "let her drive" as they drove towards his home. During the drive, the Defendant pulled over "at the graveyard," and the victim moved to the passenger seat. The Defendant exited the vehicle, walked around to the passenger side, pulled the victim's pants down, and "started licking her private parts." Afterward, the Defendant drove the victim to his home. Ms. Wireman agreed that she did not inform the police that the Defendant had inserted his finger into the victim's vagina.

On redirect examination, Ms. Wireman stated that her interactions with the Defendant's family were limited after she and the Defendant ended their relationship. She was unaware the victim's allegations had not been reported until she was asked to give a statement to the police.

The State rested. Following a *Momon* colloquy, the Defendant elected to testify and to present additional proof.

The Defendant testified that the victim was his niece and that her mother was his sister. He described his relationship with the victim's mother as positive both before and after the offenses, but he noted he had not spoken with her in "a long time" due to her drug use and his charges in this case.

The Defendant testified that on the night of the offenses, he collected the victim from her parents' home ahead of the family's camping trip scheduled for the following

day. During the drive to the home the Defendant shared with Ms. Wireman, the Defendant pulled his vehicle over at a “pull-off place next to the cemetery.” The Defendant exited his vehicle, urinated, and then reentered his vehicle. The Defendant thereafter drove to his mother’s home to collect his son and then returned to his home with the victim and his son. The Defendant agreed that the victim sat in the passenger seat during the drive, but he denied that he permitted her to sit in his lap or to “drive the vehicle.” He further denied that he pulled the victim’s underwear down, inserted his finger into her vagina, or licked her vagina.

The Defendant recalled that he sat in his recliner upon arriving home and went to sleep. His mother woke him up the following morning to inform him of the victim’s allegations. He stated that Ms. Wireman left home to go camping with her children and that he did not see her again. He stated that law enforcement contacted him approximately two years later regarding the victim’s allegations.

The Defendant testified that he had “concerns” regarding the victim’s relationship with her parents and regarding her parents’ drug use. He stated that the victim’s mother often “scream[ed] and holler[ed] and cuss[ed]” at the victim and that he did not believe the victim “deserved that.” He also noted that he had previously observed the victim’s parents using drugs he believed to be marijuana and methamphetamine. He believed the victim was “suffering some type of abuse” from her parents and, accordingly, he contacted DCS. The Defendant noted that he was contacted by law enforcement regarding the victim’s allegations against him shortly after the victim was removed from her parents’ custody following his DCS referral. He stated he was served with a subpoena and that he thereafter visited the “jailhouse and took a lie detector test.” He denied giving a statement to the police. He denied having any additional contact with the victim after he learned that law enforcement was investigating her allegations.

On cross-examination, the Defendant estimated that the cemetery where he parked his vehicle was approximately ten minutes away from the victim’s parents’ home. He stated he did not urinate at the victim’s parents’ home because their bathroom was not functional. He recalled that he and Ms. Wireman ended their relationship several weeks after the offenses.

The Defendant initially denied giving a statement to the police; when asked whether he recalled “sitting down” to make a statement, he asked, “Was that when I took the lie detector test?” The Defendant later conceded that he “forgot” he had given a statement to law enforcement.

The Defendant testified that he had three children and that he spent time with them when possible. The Defendant stated that his oldest son’s mother “sent [his oldest son] to

Sharon, Tennessee, without [his] knowledge,” and that he was unable to visit him because he did not have a personal vehicle; he noted that his family members did not permit him to use their vehicles. He stated that he was permitted to visit his middle son every other weekend and that they enjoyed riding bicycles and playing outside together. He agreed that he did not attend his middle son’s school functions because he did not know when they were scheduled. He stated that his youngest son was a newborn and had been born with “drugs in his system.” The Defendant stated that his youngest son was removed from his mother’s custody and that he could not assume custody of him due to his charges in this case. He also agreed that he tested positive for methamphetamine when DCS officials asked him to submit to a drug test following his youngest son’s removal from his mother’s custody.

On redirect examination, the Defendant testified he believed the victim was falsely accusing him of the offenses in this case because he referred her parents to DCS. He explained that he knew of no other reason why he would be accused of committing the offenses, and he reiterated that he did not inappropriately touch the victim in any way.

The defense recalled the victim to testify. The victim testified that she did not remember informing law enforcement that “all [she] could see was the road” during the offenses. She agreed she did not exit the vehicle and reiterated that it was dark outside. She did not recall whether her mother had informed her that the Defendant had previously done “the same thing to a [sixteen]-year-old girl,” and she was unsure why that statement would have appeared in any interviewer’s report of her allegations.

The Defendant rested. Upon this proof, the jury convicted the Defendant as charged. Following a sentencing hearing, the trial court imposed an effective sentence of thirty years’ incarceration. The Defendant filed a timely, but unsuccessful, motion for a new trial. This timely appeal followed.

II. ANALYSIS

On appeal, the Defendant challenges the sufficiency of the convicting evidence and argues that the trial court committed plain error by 1) failing to issue a curative instruction following his testimony regarding a polygraph test; 2) permitting the introduction of the indictment while simultaneously instructing the jury not to consider it as evidence; 3) instructing the jury that an admission against interest had been raised by the proof; and 4) permitting the introduction of irrelevant and prejudicial character evidence. The Defendant also argues that the cumulative effect of the errors in this case entitles him to a new trial. The State responds that the evidence is sufficient and that the Defendant is not entitled to plain error or cumulative error relief. We will consider these issues in turn.

A. SUFFICIENCY

The Defendant first argues that the evidence adduced at trial is insufficient to sustain his convictions because the State's proof relied completely upon the victim's uncorroborated and contradicted testimony. The State responds that the evidence is sufficient, and we agree.

"Findings of guilt in criminal actions . . . shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e). The standard of appellate review on a challenge to the sufficiency of the 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original) (citations omitted); *see also State v. Williams*, 558 S.W.3d 633, 638 (Tenn. 2018).

"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); *see also State v. Thomas*, 687 S.W.3d 223, 249 (Tenn. 2024) (citing *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000)). "On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom." *State v. Wilson*, 211 S.W.3d 714, 718 (Tenn. 2007) (citing *State v. Hall*, 8 S.W.3d 593, 599 (Tenn. 1999)). "We 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. Curry*, 705 S.W.3d 176, 183 (Tenn. 2025) (citations omitted). The same standard of review applies "whether the conviction is predicated on direct or circumstantial evidence, or a combination of both." *Williams*, 558 S.W.3d at 638 (first citing *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011); and then citing *State v. Brown*, 551 S.W.2d 329, 331 (Tenn. 1977)).

The Defendant characterizes the victim's testimony as uncorroborated, noting that the State did not introduce any physical or medical evidence, confession, or contemporaneous report to support her testimony. He further argues that his testimony contradicted the victim's. Both arguments are unavailing. The victim's testimony in this case required no corroboration for the jury to accredit it. "It is well-settled law in Tennessee that the testimony of a victim, by itself, is sufficient to support a conviction." *State v. Bonds*, 189 S.W.3d 249, 256 (Tenn. 2005) (internal quotation marks omitted) (quoting *State v. Strickland*, 885 S.W.2d 85, 87 (Tenn. Crim. App. 1993)). This court has repeatedly reaffirmed that well-settled principle. *See, e.g., State v. McCord*, No. M2023-01209-CCA-R3-CD, 2024 WL 4040901, at *6 (Tenn. Crim. App. Sept. 4, 2024) ("[T]he

victim's testimony alone is sufficient to support the defendant's convictions."), *perm. app. denied* (Tenn. Jan. 24, 2025); *State v. Enoch*, No. W2023-01032-CCA-R3-CD, 2024 WL 3261421, at *3 (Tenn. Crim. App. July 1, 2024) ("Indeed, the victim's testimony requires no corroboration to sustain a conviction."), *no perm. app. filed*; *State v. Cooper*, No. E2018-00622-CCA-R3-CD, 2019 WL 2185219, at *4 (Tenn. Crim. App. May 21, 2019) (finding the evidence adduced at trial sufficient to sustain the defendant's convictions because the victim's "testimony established the elements of all the offenses the [d]efendant was convicted of"), *perm. app. denied* (Tenn. Sept. 18, 2019). Because the victim's testimony established the essential elements of the offenses for which the Defendant was charged and required no corroboration, her testimony alone is sufficient to sustain the Defendant's convictions.

The crux of the Defendant's remaining challenge to the victim's testimony centers upon her credibility as a witness. He contends that the victim's testimony was not credible because he introduced proof which contradicted it, noting that he "unequivocally" maintained his innocence. He also posits that his referring the victim's parents to DCS out of concern for her well-being was "conduct inconsistent with consciousness of guilt." These claims raise issues of witness credibility and the weight of the evidence, both of which are entrusted to the jury, not the appellate court, to resolve. *Curry*, 705 S.W.3d at 183. Moreover, the Defendant thoroughly challenged the victim's credibility through impeachment and cross-examination. In consideration of the proof, the jury weighed the evidence and found the victim's testimony credible and the Defendant's testimony incredible, as was its prerogative as the trier of fact. *Id.*; *Dorantes*, 331 S.W.3d at 379. The Defendant is not entitled to relief.

B. PLAIN ERROR

The Defendant next argues that the trial court erred by 1) failing to issue a curative instruction following his testimony regarding a polygraph test; 2) permitting the introduction of the indictment while simultaneously instructing the jury not to consider it as evidence; 3) instructing the jury that an admission against interest had been raised by the proof; and 4) permitting the introduction of irrelevant and prejudicial character evidence. The Defendant concedes that he failed to raise any of these claims via contemporaneous objections at trial and that, accordingly, they are reviewable only for plain error.¹ The State responds, and we agree, that each of the Defendant's arguments is waived due to inadequate briefing and that, regardless, he is not entitled to plain error relief.

¹ The State also contends that the Defendant's cumulative error claim is waived because he failed to raise it at trial via a contemporaneous objection. As explained more fully below, the doctrine of cumulative error is a judicial recognition that "there may be multiple errors committed in trial proceedings, each of which in isolation constitutes mere harmless error, but which when aggregated, have a cumulative effect on the proceedings so great as to require reversal." *State v. Hester*, 324 S.W.3d 1, 76 (Tenn. 2010).

1. Standard of Review

As the parties agree, the Defendant failed to raise any of his claims regarding the trial court's handling of the testimony, evidence, and jury instructions at trial by contemporaneous objections, and they are therefore waived for plenary review. Our rules of appellate procedure require that issues must first be presented to the trial court to preserve them for appellate review. *See* Tenn. R. App. P. 36(a) ("Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error."); *see also* *State v. Bristol*, 654 S.W.3d 917, 925 (Tenn. 2022) ("It has long been the general rule that questions not raised in the trial court will not be entertained on appeal."). This rule of issue preservation "ensure[s] that the defense and the prosecution are afforded an opportunity to develop fully their opposing positions on an issue." *State v. Minor*, 546 S.W.3d 59, 65 (Tenn. 2018) (citing *Puckett v. United States*, 556 U.S. 129, 134 (2009)). Thus, a defendant wishing to preserve an issue for appellate review must generally raise it via a contemporaneous objection at trial and in his or her motion for a new trial; otherwise, the issue is waived. *State v. Ruiz*, 716 S.W.3d 439, 453 (Tenn. Crim. App. 2024).

The Defendant's claims are, therefore, reviewable only for plain error. "When necessary to do substantial justice, an appellate court may consider an error that has affected the substantial rights of a party at any time" under plain error review. Tenn. R. App. P. 36(b). Plain error review is discretionary and should be sparingly exercised. *State v. Banks*, 271 S.W.3d 90, 119 (Tenn. 2008); *State v. Bledsoe*, 226 S.W.3d 349, 354 (Tenn. 2007). In order to qualify as plain error, "[t]he magnitude of the error must have been so significant that it probably changed the outcome of the trial." *Bledsoe*, 226 S.W.3d at 354 (quoting *State v. Adkisson*, 899 S.W.2d 626, 642 (Tenn. Crim. App. 1994) (internal quotation marks omitted)); *see also* Tenn. R. App. P. 36(b).

A defendant may only receive relief under plain error review if he or she proves all five of the following prerequisites:

A defendant claiming he is entitled to relief due to the cumulative effect of the errors in his trial must thus identify the errors in the trial proceedings which require reversal and a new trial. *Id.* In that respect, the nature of a cumulative error claim renders a motion for a new trial the most appropriate place to first raise it as an argument. Here, the Defendant raised a cumulative error claim in his motion for a new trial. Although the record does not include a transcript of any hearing held upon the Defendant's motion for a new trial, it includes the motion and the trial court's order denying relief. We conclude that the record is sufficiently developed to review this claim on its merits and will address it separately from the remainder of the Defendant's plain error claims.

(1) the record must clearly establish what occurred in the trial court; (2) a clear and unequivocal rule of law must have been breached; (3) a substantial right of the accused must have been violated; (4) the accused must not have waived the issue for tactical reasons; and (5) consideration of the error is necessary to do substantial justice.

State v. Rimmer, 623 S.W.3d 235, 255-56 (Tenn. 2021) (citing *State v. Martin*, 505 S.W.3d 492, 504 (Tenn. 2016)). Importantly, a defendant requesting relief regarding an unrepresented or unpreserved issue has the burden of persuading the appellate court that plain error relief is warranted to correct the trial court's obvious error. *Bledsoe*, 226 S.W.3d at 355; *State v. Maddin*, 192 S.W.3d 558, 562 (Tenn. 2005). If a defendant fails to prove any one of the five plain error factors, then he or she is not entitled to plain error relief, and the appellate court is not required to analyze the remaining factors. *Bledsoe*, 226 S.W.3d at 358.

2. Inadequate Briefing

As a preliminary matter, we address the State's argument that the Defendant has waived appellate review of each of his plain error claims due to inadequate briefing. The basic rules of this court require that an appellant present a brief which sets forth "the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on." Tenn. R. App. P. 27(a)(7)(A). An appellate brief which presents issues unsupported "by argument, citations to authorities, or appropriate references to the record" is inadequate and waives appellate review of those issues. Tenn. R. Ct. Crim. App. 10(b). Simply put, "[i]t is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived." *Sneed v. Bd. of Prof'l Responsibility*, 301 S.W.3d 603, 615 (Tenn. 2010).

In the "Standard of Review" section of the Defendant's brief, he identifies the five plain error factors and concedes that his claims of trial court error are appropriately reviewed under that standard of review due to their waiver. However, the Defendant presents no legal analysis of the five plain error factors in his subsequent "Argument" section. Instead, he appears to make legal arguments on their merits, notwithstanding their waiver. Although perhaps some of his claims could be understood as being analogous to arguments that clear and unequivocal rules of law were breached, that his substantial rights were violated, and that consideration of the errors is necessary to do substantial justice, he does not address the sufficiency of the record or whether he waived review of his claims for tactical purposes. The Defendant also did not file a reply brief addressing the State's

waiver claims. As noted above, an appellant requesting plain error relief has the burden of persuading the appellate court to take the extraordinary remedy of granting relief on an unpresented or unpreserved issue by establishing all five plain error factors. *Bledsoe*, 226 S.W.3d at 355, 358. An appellant may not shift that burden of persuasion to the appellate court by merely identifying the applicable law; the appellant must also analyze that law by identifying the specific facts, as evidenced by the record, which entitle him or her to relief. *See Ruiz*, 716 S.W.3d at 453 (“[A] party seeking plain error relief must generally raise and argue the issue in the party’s briefing, just as the party would do with all other issues in the ordinary course of an appeal.”).

Because the Defendant’s brief contains no legal analysis of the five plain error factors as they pertain to his admittedly waived claims, his brief is inadequate, and he has waived appellate review for this reason. *See* Tenn. R. App. P. 27(a)(7)(A); Tenn. R. Ct. Crim. App. 10(b); *see also, e.g., State v. First*, No. W2024-01823-CCA-R3-CD, 2025 WL 3124684, at *3 (Tenn. Crim. App. Nov. 7, 2025) (declining to exercise plain error review where a defendant’s brief “fail[ed] to analyze the plain error factors as to the issue raised” and only responded to the State’s waiver argument in “a brief, conclusory manner . . . without setting forth any relevant facts to support his conclusory argument”), *no perm. app. filed*; *State v. Tallent*, No. E2023-00750-CCA-R3-CD, 2024 WL 5167716, at *5 (Tenn. Crim. App. Dec. 19, 2024) (finding that a defendant’s brief did not comply with Tennessee Rule of Appellate Procedure 27 because it “fail[ed] to analyze the *Adkisson* plain error factors as to each issue raised”), *perm. app. denied* (Tenn. May 23, 2025). In the interest of judicial economy and in the event of further appellate review, we will nevertheless briefly consider the Defendant’s claims notwithstanding their waiver for inadequate briefing.

3. Curative Instruction

The Defendant argues that the trial court erred by failing to issue a curative instruction after the Defendant twice referred to his having previously taken a “lie detector test.” He notes that he filed a pretrial motion to exclude any post-polygraph statements he made, which the trial court granted in a written order. The Defendant contends that the trial court’s failure to issue a curative instruction following his statements left the jury “entirely unguided” as to how to consider them.

The Defendant’s argument is unavailing. To be sure, our supreme court has repeatedly recognized that polygraph evidence is generally inadmissible and irrelevant because it is “inherently unreliable.” *State v. Sexton*, 368 S.W.3d 371, 409 (Tenn. 2012); *see also State v. Damron*, 151 S.W.3d 510, 515-516 (Tenn. 2004) (collecting cases); *but see State v. McCaleb*, 582 S.W.3d 179, 193 (Tenn. 2019) (clarifying that a “defendant’s statements made during a post-polygraph interview may be admissible *if* they are voluntary

in the constitutional sense *and also* are consistent with *other* applicable constitutional and evidentiary rules”) (quoting *Damron*, 151 S.W.3d at 518) (internal quotation marks omitted). But it has also long been the rule that an appellate court will not reverse for an “invited” error. *Martin v. State*, 8 S.W.2d 479, 480 (Tenn. 1928); *see also* Tenn. R. App. P. 36(a) (“Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error[.]”). Here, despite the trial court’s granting his motion to exclude polygraph evidence, the Defendant testified twice that he submitted to a polygraph test; any error was thus of his own making. Additionally, the Defendant does not specify how his testimony was so prejudicial that omitting a curative instruction prejudiced his defense. The Defendant is not entitled to relief.

4. Admitting the Indictment into Evidence

The Defendant also argues—without citing any supporting authority—that the trial court erred in admitting the indictment into evidence while simultaneously instructing the jury not to consider it as evidence. The Defendant posits that the jury could have reasonably construed the indictment as substantive evidence of his guilt. He also notes that the indictment used “formal[,] accusatory language” and bore the District Attorney General’s signature.

As a preliminary matter, we note that notwithstanding the Defendant’s failure to analyze the five plain error factors, the Defendant has also waived appellate review of this claim by failing to support his arguments with citations to any relevant supporting authorities. The sole reference to any legal authority in this section of the Defendant’s appellate brief is to Tennessee Rule of Appellate Procedure 36(b), which governs plain error review, and comes at the end of a sentence asserting that the trial court’s error in this respect “compromised the integrity of the deliberation process and requires reversal.” He otherwise does not present a statement of the law governing this issue or explain why reversal is required. As noted above, our rules of appellate procedure require more. We reiterate that an appellant must present a brief which includes citations to the authorities he or she relies upon in support of the issues he or she raises. *See* Tenn. R. App. P. 27(a)(7)(A); Tenn. Ct. Crim. R. 10(b). The Defendant’s brief is thus inadequate in this context.

Waiver notwithstanding, the Defendant is not entitled to relief. Firstly, the trial court appropriately instructed the jury that “[t]he indictment in this case is the formal written accusation charging the [D]efendant with a crime. The indictment is not evidence and does not create any inference of guilt.” This instruction matched language provided in the Tennessee Pattern Jury Instructions. *See* T.P.I.—Crim 1.05 (28th ed. 2024). Generally, so long as the indictment does not contain any prejudicial information, there is no issue in its admission as an exhibit, provided that the trial court instructs the jury that it is not to be

considered as evidence. *See* W. Mark Ward, *Tenn. Crim. Trial Practice* § 25:16 (2025-2026 ed.) (collecting cases). The trial court so instructed the jury in this case, and the jury is presumed to follow the trial court’s instructions. *State v. Jordan*, 325 S.W.3d 1, 66 (Tenn. 2010) (citing *State v. Young*, 196 S.W.3d 85, 111 (Tenn. 2006)).

The Defendant appears to contend that the indictment’s “formal[,] accusatory language” and its inclusion of the District Attorney General’s signature were prejudicial and may have led to an inference of guilt. By statute, an indictment “must state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, in a manner so as to enable a person of common understanding to know what is intended[.]” Tenn. Code Ann. § 40-13-202. The Defendant does not specifically identify what language within the indictment contravened the statutory requirements by being overly “formal,” and we will not endeavor to craft such an argument for him. His claims regarding the indictment’s “accusatory language” and the District Attorney General’s signature are similarly unavailing. An indictment is, by its nature, a legal accusation, *see id.* § -101(a), and it must include the appropriate district attorney general’s signature to be valid, *see id.* § -106. The indictment in this case complied with the statutory requirements, did not include extraneous information, and was not prejudicial. The Defendant is not entitled to relief.

5. Admission Against Interest Jury Instruction

The Defendant also argues—without citation to any supporting authority—that the trial court erred by instructing the jury that an admission against interest had been introduced in the proof. The Defendant contends that the victim’s testimony that he “made [her] pinky promise not to tell [any]body what happened between [them]” was ambiguous and did not serve either as an implicit or explicit admission of guilt. He also contends that the trial court’s instruction was not conditional and “improperly bolstered the State’s case” by suggesting to the jury that the trial court believed that the Defendant had made an incriminating statement.

As a preliminary matter, we again note that the Defendant has waived appellate review of this claim by failing to support his argument with legal authorities, in addition to his waiver by failing to analyze the five plain error factors. The sole citations to supporting authorities in this section of his appellate brief are to the Pattern Jury Instruction regarding admissions against interest as well as to Tennessee Rule of Appellate Procedure 36(b) and *State v. Hatcher*, 310 S.W.3d 788, 808 (Tenn. 2010), both of which address plain error review. The Defendant otherwise does not present a statement of the law governing this issue. Although he presents conclusory arguments about what the law is, he does not support them with citations to the governing legal authorities. We reiterate that our rules require an appellant to present a brief that includes citations to the authorities he or she

relies upon in support of the issues he or she raises. *See* Tenn. R. App. P. 27(a)(7)(A); Tenn. R. Ct. Crim. P. 10(b). The Defendant's brief is thus inadequate in this context.

Waiver notwithstanding, the Defendant's claims are unavailing. The trial court instructed the jury as follows:

Evidence has been introduced in this trial of a statement or statements by the [D]efendant made outside the trial[] to show an admission against interest. An admission against interest is a statement by the [D]efendant which acknowledges the existence or truth of some fact necessary to be proven to establish the guilt of the [D]efendant[,] or which tends to show guilt of the [D]efendant[,] or is evidence of some material fact, but not amounting to a confession.

While this evidence has been received[,] it remains your duty to decide if[,] in fact[,] such statement was ever made. If you believe a statement was not made by the [D]efendant[,] you should not consider it. If you decide the statement was made by the [D]efendant, you must judge the truth of the facts stated. In so determining, consider the circumstances under which the statement was made. Also consider whether any of the other evidence before you tends to contradict the statement in whole or in part. You must not, however, arbitrarily disregard any part of any statement, but rather should consider all of any statement you believe was made and is true. You are the sole judge of what weight should be given such statement. If you decide a statement was made, you should consider it with all other evidence in the case in determining the [D]efendant's guilt or innocence.

This instruction matched the language provided in the Tennessee Pattern Jury Instructions. *See* T.P.I.—Crim. 42.11 (28th ed. 2024). The Defendant's first claim touches on the distinction between a confession, which is "a statement by the accused that he engaged in conduct which constitutes a crime," and an admission, which is "an acknowledgement by the accused of certain facts which tend[,] together with other facts[,] to establish his guilt." *Helton v. State*, 547 S.W.2d 564, 567 (Tenn. 1977), *overruled on other grounds by State v. Cabbage*, 571 S.W.2d 832, 836 (Tenn. 1978). The victim's testimony regarding the "pinky promise" indicated that the Defendant wished the victim to keep the offenses a secret. When considered with the victim's other testimony regarding the offenses, the statement tended to show that the Defendant was aware that something had happened between himself and the victim on the night of the offenses, contrary to his testimony, and that he did not want anyone else to know about the offenses. The statement was, therefore, relevant to the jury's evaluation of the Defendant's guilt and warranted the trial court's instruction.

The Defendant's secondary claim that the trial court's instruction was not conditional and "improperly bolstered" the State's argument is somewhat perplexing. The trial court explicitly charged the jury that it must determine whether an admission against interest was made and, if so, to consider whether it was true. The instruction also did not "bolster" the State's case; the trial court specifically charged the jury to consider the weight of the evidence and did not opine on its credibility. The trial court appropriately instructed the jury, and the jury is presumed to follow those instructions. *Jordan*, 325 S.W.3d at 66 (citing *Young*, 196 S.W.3d at 111). The Defendant is not entitled to relief.

6. Character Evidence

The Defendant also argues that the trial court erred by permitting the introduction of irrelevant and prejudicial character evidence. He notes that the State elicited proof through cross-examination of the Defendant's "parenting history, his lack of custody of his children, his failure to attend school functions, his access to transportation, and his past drug use." He contends that this evidence was irrelevant to establish his guilt and that its cumulative effect portrayed him as a "bad person."

Generally, questions regarding the admission or exclusion of evidence are matters left to the trial court's discretion; accordingly, we will not disturb an evidentiary ruling absent an abuse of that discretion. *See State v. Jones*, 450 S.W.3d 866, 891 (Tenn. 2014); *State v. Gomez*, 368 S.W.3d 237, 243 (Tenn. 2012). As we have previously recognized, "only rarely will plain error review extend to an evidentiary issue." *State v. Haymer*, 671 S.W.3d 568, 578 (Tenn. Crim. App. 2023) (citing *State v. Schoville*, No. M2006-01684-CCA-R3-CD, 2007 WL 2600540, at *2 (Tenn. Crim. App. Sept. 11, 2007), *no perm. app. filed*) (internal quotation marks omitted). This is because a defendant's failure to ask the trial court to rule upon an evidentiary issue obfuscates our ability to determine whether the trial court abused its discretion. *See State v. Woods*, No M2022-01168-CCA-R3-CD, 2023 WL 8716807, at *10 (Tenn. Crim. App. Dec. 18, 2023), *perm. app. denied* (Tenn. Apr. 11, 2024). A defendant claiming plain error regarding an evidentiary issue is required to establish a breach of a clear and unequivocal rule of law, and it is particularly difficult to establish that a trial court abused its discretion when it was never asked to exercise that discretion in the first place. *Id.* Such is the case here: because the Defendant did not object at trial to the five areas of his own testimony that he challenges on appeal, he did not ask the trial court to exercise its discretion by ruling on the admissibility of his testimony. And although the Defendant challenges his testimony as prejudicial, he does not explain how it was so unduly prejudicial that substantial justice requires the extraordinary remedy of plain error relief. We will not endeavor to craft such an argument for him. The Defendant is not entitled to relief.

C. CUMULATIVE ERROR

Lastly, the Defendant argues that the cumulative effect of the errors in this case entitles him to a new trial. “The cumulative error doctrine exists to protect a criminal defendant’s state and federal constitutional right to a fair trial.” *State v. Herron*, 461 S.W.3d 890, 909 (Tenn. 2015) (citing *Hester*, 324 S.W.3d at 76). The cumulative error doctrine provides relief where there are multiple errors committed during the trial, “each of which in isolation constitutes mere harmless error, but which when aggregated, have a cumulative effect on the proceedings so great as to require reversal in order to preserve a defendant’s right to a fair trial.” *Hester*, 324 S.W.3d at 76. “To warrant assessment under the cumulative error doctrine, there must have been more than one actual error committed in the trial proceedings.” *Id.* at 77. Because we discern no errors in this case, there are no errors to accumulate, and the Defendant is not entitled to relief under the cumulative error doctrine.

III. CONCLUSION

Following our review of the record and based upon the foregoing analysis, we affirm the judgments of the trial court.

s/ *Steven W. Sword*

STEVEN W. SWORD, JUDGE