

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
May 23, 2023 Session

FILED

09/12/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. RAFFELL M. GRIFFIN, JR.

Appeal from the Criminal Court for Knox County
Nos. 114936, 115414 Kyle A. Hixson, Judge

No. E2022-00659-CCA-R3-CD

The Defendant, Raffell M. Griffin, Jr., was convicted by a jury of conspiracy to possess with the intent to sell or deliver more than twenty-six grams of cocaine in a drug-free zone, a Class B felony, and first degree premeditated murder. *See* T.C.A. §§ 39-17-417(c) (2018) (subsequently amended) (possession of a controlled substance), 39-12-103 (2018) (conspiracy), 39-13-202(a)(2) (2018) (subsequently amended) (first degree murder). The jury found that the Defendant committed a criminal gang offense, enhancing by one level the felony classification of the convictions. *See id.* § 40-35-121 (2019) (subsequently amended) (gang enhancement). The trial court imposed a twenty-five year sentence for the conspiracy conviction, to be served consecutively with a life sentence for the murder conviction. On appeal, the Defendant contends that: (1) the evidence is insufficient to support the Defendant's conviction for first degree murder; (2) the trial court erred in admitting hearsay evidence; (3) the trial court erred by allowing Investigator Philip Jinks to testify as an expert in gang investigations; (4) the trial court failed to conduct an adequate investigation of alleged juror misconduct; and (5) the trial court failed to apply mitigating factors in sentencing. We affirm the judgments of the trial court.

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

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and J. ROSS DYER, JJ., joined.

Robert L. Jolley, Jr. (on appeal), Knoxville, Tennessee; Forrest Wallace (at trial), Knoxville, Tennessee, for the Appellant, Raffell M. Griffin, Jr.

Jonathan Skrmetti, Attorney General and Reporter; Garrett D. Ward, Assistant Attorney General; Charme Allen, District Attorney General; Ta Kisha M. Fitzgerald and Larry Dillon, Assistant District Attorneys General for the appellee, State of Tennessee.

OPINION

This case relates to the January 17, 2018 shooting death of Antoine Washington and to other criminal investigations which resulted in the recovery of guns, ammunition, drugs, and other evidence of the sale of narcotics by the Defendant and other members of the Tree Top Pirus gang. A Knox County Grand Jury charged the Defendant by presentment along with codefendants Sidarius Jackson, Decosio Clark, Robert Cody, Thakelyn Tate, and Zephaniah Nyane. In case number 114936, the Defendant was charged with conspiracy to possess with the intent to sell or deliver more than twenty-six grams of cocaine in a drug-free zone, employing a firearm during the commission of a dangerous felony, and engaging in an enterprise of racketeering activity. The State also sought a criminal gang enhancement charge. In case number 115414, the Defendant was charged with first degree premeditated murder. The two cases were consolidated for trial. The racketeering count was dismissed prior to trial.

At the trial, Knoxville Police Department (KPD) Investigator Jacklyn Hale, a latent fingerprint examiner, testified that on January 17, 2018, she investigated the area where the victim was found. She said that she photographed the scene and found .40-caliber cartridge casings, a loaded Smith & Wesson handgun, and a bullet fragment in the victim's jacket sleeve. She said that she took the victim's clothes and identified for the jury where the clothing had marks or tears from bullets. Photographs of the items located at the scene were received as exhibits. Investigator Hale said that she later returned to the scene and found a TulAmmo 7.62 by 39-millimeter cartridge casing. She also identified several bullet fragments found in or around the victim.

Edward Johnson, a former KPD crime scene technician and an expert in latent fingerprint examination, testified that he investigated the scene of the shooting where he searched a car and found guns, a cell phone, and .40-caliber and 7.62 by 39-millimeter ammunition. The contents of the car were received as exhibits. Mr. Johnson identified two guns found in the car as a .40 caliber Smith & Wesson handgun and an AK-47 Zastava pistol. Mr. Johnson stated that he found codefendant Jackson's fingerprints on the magazine located inside the Smith & Wesson handgun.

Shantoria Smith, the victim's girlfriend, testified that she and the victim had a child and that they lived together. She stated that she had known the victim for seven

years and that he had been a member of the Tree Top Pirus gang. Ms. Smith identified codefendants Cody, Clark, Tate, Jackson, and Nyane as gang members. Ms. Smith said that, with the exception of codefendant Tate, the codefendants were around the victim “all the time.” She stated codefendant Cody was the leader of the gang.

Ms. Smith testified that, after their child was born, the victim stayed home while she worked. She said that several weeks before the shooting, the victim talked to her about his going to California to which she replied that he could not go because she needed help with the baby. Ms. Smith stated that it was her understanding after this conversation that the victim did not intend to go to California.

Ms. Smith testified that on the day of the shooting, January 17, 2018, the victim dropped her off at work around 2:30 p.m. She said she never saw him again. Ms. Smith stated that the police notified her of the shooting the next morning and that she told the police that the victim would have been with the Defendant and codefendants Jackson, Clark, and Cody. Ms. Smith said that the victim had a close relationship with codefendants Cody and Jackson. She described codefendant Cody as the victim’s best friend and said codefendant Jackson looked to the victim as a “big brother.”

KPD Officers Russell Whitfield and Todd Childress testified that searches in September and December of 2017 at an apartment at the Walter P. Taylor Homes recovered digital scales, cash, guns, drug paraphernalia, ammunition, crack cocaine, and powder cocaine. Photographs of these items were received as exhibits. Officer Childress stated that he conducted the September search after receiving information that a weapon used in an unrelated shooting was located in the apartment. He said the December search was a result of a complaint of narcotics activity.

KPD Officer Clayton Madison testified that he was called to the scene of the shooting on January 17, 2018. Officer Madison stated that, when he arrived, the victim was lying face down on the road with gunshot wounds. Officer Madison said that he gathered information regarding the victim’s name, family members, and gang association and attempted to locate codefendants Jackson and Clark. Officer Madison stated that he stopped a car at the home of codefendant Jackson’s girlfriend and that passengers in the car included codefendants Jackson and Clark.

KPD Sergeant James Lockmiller testified that he confiscated codefendant Cody’s cell phone as a result of a different traffic stop.

Former KPD Officer Jordan Henderson testified that he assisted in a search of codefendant Nyane’s home on Louise Avenue in May 2108. Mr. Henderson said the search revealed evidence of criminal activity including a loaded rifle, ammunition, drug paraphernalia, and codefendant Nyane’s cell phone. Mr. Henderson said that

codefendant Cody was arrested at Robert Crowe's home on Louise Avenue. Mr. Henderson said that officers suspected Mr. Crowe's home was being used for drug activity, and a search of the home revealed a buttstock for a rifle and drug paraphernalia. Other evidence established that these homes were located in a drug-free zone.

Lola Garrett testified that codefendant Cody provided her with crack cocaine when she was in a Walter P. Taylor Homes apartment that belonged to a person whom she knew as "Carolina." Ms. Garrett stated that "a lot of people" frequently sold crack cocaine at the apartment. Ms. Garrett said that after a police search of the apartment, she moved into Mr. Crowe's home on Louise Avenue, where both she and Mr. Crowe used drugs. Ms. Garrett said that codefendant Cody cooked crack cocaine in the home and that he and "whoever was in there" sold crack cocaine from the home. Ms. Garrett also said that the Defendant and codefendants Cody, Clark, Tate, and Jackson brought guns and large sums of money into the home.

Ms. Garrett testified that she knew the victim as "Yayo," that she had known him for years, and that he frequented the Walter P. Taylor Homes area and the Louise Avenue home. She stated that she last saw the victim at the Louise Avenue home on the day he was shot. The Defendant and codefendants Cody, Clark and Jackson were also there. Ms. Garrett said that when she spoke to the victim, the Defendant and codefendants Cody, Clark, and Jackson were in a bathroom. Ms. Garrett did not recall the Defendant returning to the home that evening, although codefendants Cody, Clark, and Jackson did.

On cross-examination, Ms. Garrett acknowledged that during 2018 and 2019, she lived at the Louise Avenue home, that she used crack cocaine several times a day, and that she had a prior conviction for criminal impersonation. She agreed that she had been previously convicted of conspiracy to distribute cocaine and of maintaining a dwelling for the purpose of drug distribution, that she was asked to be a witness for the State in this case, and that she spoke to KPD Investigators Thomas Thurman and Philip Jinks regarding the last day she saw the victim. Ms. Garrett admitted during the police interview that she often was "high" from cocaine and that cocaine could cloud her memory. Ms. Garrett also told the officers that, on the day the victim was shot, the victim left the Louise Avenue home with the Defendant and codefendants Jackson and Clark.

Terry Thomas testified that he was a member of the Tree Top Pirus gang and that he regularly spent time with the Defendant and the victim. He said that he had known the victim since childhood. Mr. Thomas stated that the Defendant and codefendants Jackson, Clark, and Cody spent most of their time at the Louise Avenue home. Mr. Thomas said that, on the day of the shooting, he went to the Louise Avenue home, where he met the victim, the Defendant, and codefendants Jackson and Clark. Mr. Thomas testified that

the Defendant asked Mr. Thomas to meet him in the bathroom, where the following exchange took place:

...[the Defendant] said, “What’s up, bruh? Bruh got to go.”

I’m like, “Who got to go?” [The Defendant] said, “Yayo.” I said, I’ll give him a ride. Where he going?” [The Defendant] like, “Nah, bruh, he got to go.”¹ Then I seen—I seen in his face he was serious. . . .

. . . [the Defendant]’s like, “You ain’t got to worry about nothing. The little homies is going to handle it.”

Mr. Thomas testified that this conversation meant that the victim was to be killed but that the Defendant never indicated why the victim was targeted. Mr. Thomas said that after the conversation with the Defendant, he went to the living room and talked to the victim. Mr. Thomas said that he got up to leave and that the victim asked for a ride. As they were approaching Mr. Thomas’s car, the victim requested that codefendants Jackson and Clark ride with them. Mr. Thomas said that he stopped at a convenience store, that codefendants Jackson and Clark were in the backseat having a conversation, and that the victim went inside the store to buy gas.

Mr. Thomas testified that, while the victim was in the store, codefendants Jackson and Clark discussed how to get the victim alone. In response, Mr. Thomas testified that he said to codefendants Jackson and Clark, “Y’all going to, y’all, y’all going to do this s-- for real, y’all doing this?” In reply, Mr. Thomas said codefendants Jackson and Clark told him, “Don’t worry about it.” Mr. Thomas stated that he never told the victim what the codefendants discussed or what the Defendant said in the bathroom at the Louise Avenue home. Mr. Thomas said the victim was in a “good mood” when he returned to the car.

Mr. Thomas testified that, after stopping at the convenience store, the victim suggested that they drive by “B-Tang’s” home where the victim and codefendants Jackson and Clark shot guns through the open car windows at B-Tang’s home. Mr. Thomas stated that after driving around for about an hour, the victim asked Mr. Thomas to stop the car at an intersection, the victim and codefendant Jackson got out of the car, and codefendant Clark moved from the backseat to the front passenger seat. Mr. Thomas said that after a few minutes, codefendant Clark said, “He about to do it,” and Mr. Thomas looked up and saw codefendant Jackson shoot the victim in the back. Mr. Thomas said that the victim tried to shoot but missed codefendant Jackson, who was running toward the car. Mr. Thomas said that the victim lay on the ground when

¹ The record reflects that during his testimony, Mr. Thomas made a hand gesture in the shape of a gun, which he said replicated a gesture made by the Defendant when the Defendant said the victim “got to go.”

codefendant Clark, “hanging out the [car] window,” shot the victim and “finished him off” with “the Draco.” Mr. Thomas said that, after the shooting began, he “jumped” to the backseat of the car, that codefendant Clark moved to the driver’s seat, and that codefendant Clark drove the car back to the Louise Avenue home. Mr. Thomas said that codefendant Clark had two guns: the Draco firearm and another handgun.

Mr. Thomas testified that, at the Louise Avenue home, codefendants Jackson and Clark told the Defendant and codefendant Cody, “It’s done.” Mr. Thomas stated that the Defendant responded, “What’s up pfonk. That’s what’s up, pfonk. Y’all handled that wax.” Mr. Thomas said that the Defendant’s statements meant that codefendants Jackson and Clark did what they were told.

Mr. Thomas testified that, on the day after the shooting, he met with the Defendant and codefendant Cody and that they went to the candlelight service for the victim. Mr. Thomas testified that the Defendant was his “big homie” in the Tree Top Pirus gang, which meant that the Defendant out-ranked Mr. Thomas. Mr. Thomas said that the victim out-ranked codefendants Jackson and Clark in the gang and that codefendant Cody out-ranked everyone in the Knoxville Tree Top Pirus.

Mr. Thomas stated that he and the Defendant exchanged text messages on the day after the candlelight service. Mr. Thomas said that one message from the Defendant reflected a need to find a high-ranking member of a rival gang, the Crips, against whom the Tree Top Pirus could retaliate for the victim’s death.

On cross-examination, Mr. Thomas testified that he was previously a member of the Bounty Hunter Bloods gang and that he met the Defendant at a club. Mr. Thomas stated that he did not associate with any gang but was familiar with a variety of Knoxville-area gangs. Mr. Thomas stated that at the time of the victim’s shooting, the Bloods and the Crips were not fighting.

Mr. Thomas said that when he first arrived at the Louise Avenue home on the afternoon of the shooting, the victim was drinking alcohol and getting a haircut while the Defendant was motioning for Mr. Thomas to join him in the bathroom of the home. Mr. Thomas stated that approximately twenty minutes passed between his meeting the Defendant in the bathroom and his leaving with the victim and codefendants Jackson and Clark. Mr. Thomas stated that the victim invited codefendants Jackson and Clark to join them when they left the Louise Avenue home.

Mr. Thomas reiterated the events before the shooting and clarified that codefendant Clark stood up and shot over the top of the car when he shot the victim.

Mr. Thomas testified that several months after the shooting, KPD Investigator Thomas Thurman interviewed him. Mr. Thomas stated he was a suspect in the shooting. Mr. Thomas admitted that he told the officer he was being truthful but that he actually lied about where he was on the night of the shooting, about which car he was driving, about who was in the car during the shooting, and about plans to shoot B-Tang's home.

Mr. Thomas testified that his cell phone contained a video of him driving a friend's car while holding his friend's gun, and his phone contained photographs of marijuana. Mr. Thomas said that he had occasionally acted as a middleman in drug and gun transactions before 2019. Mr. Thomas stated that he was currently charged with first degree murder.

On redirect examination, Mr. Thomas testified that he moved to Indiana after the shooting "because [he] was afraid [he] was going to get killed next." Mr. Thomas said that, while in Indiana, he spoke to Investigator Thurman on at least one occasion and was later arrested for the shooting. Mr. Thomas also identified from photograph exhibits the guns that codefendants Jackson and Clark used to shoot the victim.

Retired KPD Officer Patricia Resig, an expert in firearms examination and identification, testified that the eleven cartridge casings collected at the scene of the shooting and the four bullet fragments recovered from the victim's body were fired from a Smith & Wesson handgun. She also stated that a bullet fragment recovered at the scene and a bullet fragment recovered from the victim's body were fired from the Zastava semi-automatic pistol. Ms. Resig stated that all the bullets and bullet fragments from the victim's body were fired from the two guns previously received as exhibits.

TBI Special Agent Forensic Scientist Marla Newport testified that DNA samples from the car were consistent with the DNA sample from Mr. Thomas but otherwise inconclusive.

KPD Organized Crime Unit Investigator Philip Jinks testified as an expert in narcotics investigations and gang investigations. Investigator Jinks said that the Tree Top Pirus gang was a subset of the Bloods, that it had a presence in East Knoxville in the Walter P. Taylor Homes area, and that it was engaged in the distribution of cocaine. Investigator Jinks stated that he was familiar with the investigation and search of Charles Arnold's apartment at Walter P. Taylor Homes, which recovered crack cocaine, items for manufacturing crack cocaine, a digital scale, sandwich "baggies," a rifle, and ammunition. Investigator Jinks stated that guns and drug distribution "go hand-in-hand" because drug distributors carry guns to protect themselves. In his opinion, the apartment was being used "as a platform for the manufacture and distribution of crack cocaine in that community," and Mr. Arnold allowed others to distribute crack cocaine from his apartment.

Investigator Jinks testified that he was certified to extract data from cell phones and that he did so from the Defendant's and some of the codefendants' phones. Investigator Jinks said that codefendant Jackson received text messages from the Defendant on the evening of the shooting, in which the Defendant asked codefendant Jackson if he was "going to the store LOL" and that codefendant Jackson responded, "the spot." Investigator Jinks said that in a text message the afternoon after the shooting, the Defendant told codefendant Jackson to "erase everything out your phone" and "numbers too." Investigator Jinks identified photographs from codefendant Jackson's cell phone, which included a photograph taken in December 2017 showing the Defendant and codefendants Jackson and Clark making gang gestures and showing codefendants Jackson and Clark with handguns in their pockets or waistbands. Investigator Jinks identified other text messages sent during that time between the Defendant and codefendant Jackson, in which they discussed a gun and the sale of marijuana. Investigator Jinks said that December 2017 text messages between the Defendant and codefendant Clark discussed the sale of a "basket," which he said meant one-eighth of an ounce of crack cocaine. Investigator Jinks said text messages sent in October 2017 between the Defendant and codefendant Cody referenced the manufacture of crack cocaine and the amount of a cutting agent which would be added to the manufacturing process. Investigator Jinks said that, in a series of text messages sent in January and February 2018, the Defendant and codefendant Cody discussed selling powder and crack cocaine, as well as the purchase of a handgun. Investigator Jinks said that he examined text messages, photographs, and videos from codefendant Tate's cell phone and that many of the text messages from March through June 2018 between the Defendant and codefendant Tate discussed the sale of crack cocaine.

Investigator Jinks testified that he was familiar with the items found at the Louise Avenue home, which included ammunition, sandwich baggies, and drug scales and which were commonly associated with crack cocaine distribution.

Investigator Jinks testified that on January 3, 2018, the Defendant sent text messages to codefendant Cody which included screen shots of text messages exchanged between the Defendant and a Tree Top Pirus member identified as "Ken" who was in California. Investigator Jinks said that in these messages, Ken asked the Defendant to send "two homies" who are "killas" to California to kill a member of a rival gang and that the Defendant responded, "[N]o problem." Investigator Jinks stated that in a January 4, 2018 text message, the Defendant told codefendant Cody, "So what's plan B? We'll just clean everything else up down here after we get it figured out who going. My main focus is getting two homies up. S--- killa ain't even answering and [the victim] I guess girl done talked him out of going, so what's up?"

Investigator Jinks testified that a photograph from the Walter P. Taylor Homes apartment showed an AK-47 style firearm on a dresser. Videos from codefendant Tate's cell phone dated from October to December 2017 of that same home were received into evidence. Investigator Jinks stated that one of the videos showed codefendant Tate holding a AK-47 style firearm. Investigator Jinks identified videos from codefendant Clark's cell phone and said one video showed codefendants Jackson and Clark with guns, including a Draco firearm. Investigator Jinks stated that a video dated the day of the shooting showed codefendant Clark holding a handgun with the Draco firearm on a table behind codefendant Clark. Investigator Jinks identified another video from 8:28 p.m. on the day of the shooting which showed codefendant Clark with several handguns, making a gang-related hand sign, and retrieving a Draco firearm.

Investigator Jinks testified that, in his opinion, the amount of crack cocaine confiscated by law enforcement, depicted on cell phone photographs, and described in text messages was consistent with a conspiracy to manufacture and distribute crack cocaine in Knox County.

On cross-examination, Investigator Jinks testified that gang members sometimes associated with members of different gangs when "business and money . . . take precedence over gang affiliation[,]" including drug trafficking or acts of violence. Investigator Jinks stated that text messages from the codefendants' cell phones mentioned drugs other than crack cocaine, including marijuana, which were sometimes sold in quantity designations similar to those used to sell crack cocaine. Investigator Jinks stated that no drugs or guns were seized from the Defendant, that no search warrant was issued for the Defendant's home, and that no confidential informants were used to purchase drugs from the Defendant.

TBI Special Agent Forensic Scientist Jacob White testified that he performed an analysis of the drugs received as exhibits and determined them to be 76.12 grams of powder cocaine, 4.57 grams of crack cocaine, 28.13 grams of powder cocaine, and 33.41 grams of crack cocaine.

Dr. Amy Hawes, a Knox County Regional Forensic Center Medical Examiner and an expert in forensic, anatomic, and clinical pathology, testified that she performed the victim's autopsy and determined his cause of death to be multiple gunshot wounds and the manner of his death to be a homicide. Dr. Hawes stated that the victim was shot in the head, chest, arm, shoulder, foot, wrist, hand, armpit and buttocks. She stated that there were too many wounds on the victim's back to describe them individually. Dr. Hawes said that she collected bullets and fragments from the victim's clothing and remains.

At the conclusion of proof, the trial court granted the Defendant's motion for a judgment of acquittal as to the employing a firearm during the commission of a dangerous felony charge. *See* Tenn. R. Crim. P. 29. The jury convicted the Defendant of conspiracy to possess with the intent to sell or deliver more than twenty-six grams of cocaine in a drug-free zone and of first degree premeditated murder. The court sentenced the Defendant to life in prison for first degree murder.

In a bifurcated proceeding, the jury heard evidence regarding the applicability of the criminal gang enhancement statute. During the gang enhancement phase of the trial, Knox County Criminal Court Clerk employee Stephanie Ogle identified certified judgments of felony convictions for (1) Bernard Walker (aggravated assault); (2) Walter Smith (possession with the intent to sell more than a half gram of a Schedule II substance, cocaine); (3) Demarkus Lowe (first degree murder); (4) Michael May (second degree murder); (5) Galven Siler (possession with the intent to sell a Schedule III controlled substance and possession with the intent to sell a Schedule IV controlled substance); (6) Arterious North (manufacture, delivery, sale or possession of a Schedule VI controlled substance and four counts of attempted voluntary manslaughter); and (7) Montiere King (two counts of aggravated burglary). The judgments were received as exhibits. All of the offenses had been committed within a five-year period.

KPD Investigator Mark Taylor, an expert in gang identification and intelligence gathering, testified that in order to evaluate the Defendant, he reviewed the Defendant's criminal history, information from the Tennessee Department of Correction, police reports or field interviews, admissions by the Defendant, and the social media and photographic evidence relating to the Defendant. Investigator Taylor stated that law enforcement uses a point system to identify gang members. He explained that points accumulated based on an individual's criminal history, any admissions or statements regarding gang membership, gang-related tattoos or branding, clothing colors, and hand signs. Investigator Taylor stated that the Defendant had admitted to being a member of the Tree Top Pirus gang, that the Defendant had tattooing indicating Tree Top Pirus membership, and that the Defendant had used language consistent with Tree Top Pirus, such as substituting the letter "c" for the letter "b" in correspondence. Investigator Taylor said that he also considered the Defendant's nickname, "Raff or Raff Tree," as being indicative of Tree Top Pirus membership. Investigator Taylor said that the Defendant had a common Tree Top Pirus gang-related tattoo stating "Taylor made" referring to the Walter P. Taylor Homes, a neck tattoo that said "Tree Top," and other tattoos referencing Tree Top Pirus areas in California and Tree Top Pirus in general. In Investigator Taylor's opinion, the Defendant was a member of Tree Top Pirus. Investigator Taylor further opined that codefendants Clark, Cody, Jackson, and Nyane, and Mr. King, Mr. Lowe, Mr. May, and Mr. North were also Tree Top Pirus members based upon their criminal histories, statements of gang affiliation, hand signs, branding, and associations.

Investigator Taylor testified that gangs maintained a geographic area in which they operate, that the primary source of revenue for gangs was narcotics trafficking, and that gangs used weapons to protect drug-trafficking activities and to provide a measure of intimidation and status.

On cross-examination, Investigator Taylor testified that he examined files from KPD, Knox County Sherriff's Department, the District Attorney's Office, and Tennessee Department of Correction. Investigator Taylor testified that photographs associated with the Defendant's "Raff Tree" Facebook account depicted the Defendant displaying gang-related hand gestures and other images relating to Tree Top Pirus.

Upon this evidence, the jury found that the Defendant met the criteria for criminal gang enhancement.

At the January 14, 2022 sentencing hearing, the trial court received the Defendant's presentence report from Stephanie Keaton with the Department of Correction. On cross-examination, Ms. Keaton testified that the Defendant's 2010 presentence report was updated in 2020 to reflect gang affiliation. The court received copies of the Defendant's prior convictions and heard a victim impact statement from the victim's mother. The Defendant did not allocute. The court found that the Defendant was a Range I offender, considered the evidence and arguments presented, and reviewed the presentence report, including the Validated Risks and Needs Assessment, which reflected that the Defendant was a high threat for violence. The court applied a mitigating factor to the conspiracy count because the Defendant's criminal conduct neither caused nor threatened serious bodily injury. *See* T.C.A. § 40-35-113(1) (2018) (subsequently amended).

The court applied enhancement factors pursuant to Tennessee Code Annotated Section 40-35-114 (2018) (subsequently amended). The court found that the Defendant had a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range. *See id.* § 40-35-114(1). The court noted that the Defendant had been incarcerated for the majority of his adult life and committed serious criminal offenses when he was not incarcerated. The court considered that the Defendant used Molotov cocktails in a previous attempted aggravated arson case and that the Defendant inflicted grave and life-long injuries to the victim in a prior aggravated assault case. The court found that the Defendant failed to comply with the conditions of his sentence involving release into the community because the Defendant had a history of prior probation and parole revocations. *See id.* § 40-35-114(8). The court also found that the Defendant was on parole during the time that the drug conspiracy was ongoing. *See id.* § 40-35-114(13). Based upon the enhancement factors, the court concluded that an enhanced sentence within the range was appropriate.

The trial court considered whether the Defendant's sentences should run consecutively or concurrently. The court found that the Defendant had been incarcerated for the majority of his adult life with an employment record of only one month, making it likely that the Defendant was a professional criminal who had knowingly devoted his life to criminal acts as a major source of livelihood. *See id.* § 40-35-115(b)(1). The court found that the Defendant was an offender whose record of criminal activity was extensive, based upon his history of incarceration and past violent offenses. *See id.* § 40-35-115(b)(2). Based on the totality of the Defendant's history and the "chilling" and "business-like nature" of the homicide in the present case, the court found that the Defendant was a dangerous offender whose behavior indicated little or no regard for human life and that the Defendant had no hesitation about committing a crime in which the risk to human life was high. *See id.* § 40-35-115(b)(4). The court concluded that the Defendant was a dangerous offender, that an extended sentence was necessary to protect the public, and that consecutive sentencing was appropriate.

Following the sentencing hearing, the trial court imposed a twenty-five year sentence for the conspiracy conviction to be served consecutively to the life sentence for the first degree murder conviction.

The court denied the Defendant's motion for a new trial. This appeal followed.

I. Sufficiency of the Evidence: First Degree Murder

The Defendant contends that the evidence is insufficient to support his conviction for first degree premeditated murder. The State counters that the evidence of first degree murder is compelling, including a witness account of the shooting. We conclude that the evidence was sufficient.

In determining the sufficiency of the evidence, the standard of review is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007). The State is "afforded the strongest legitimate view of the evidence and all reasonable inferences" from that evidence. *Vasques*, 221 S.W.3d at 521. The appellate courts do not "reweigh or reevaluate the evidence," and questions regarding "the credibility of witnesses [and] the weight and value to be given the evidence . . . are resolved by the trier of fact." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *see State v. Sheffield*, 676 S.W.2d 542, 547 (Tenn. 1984).

"A crime may be established by direct evidence, circumstantial evidence, or a combination of the two." *State v. Hall*, 976 S.W.2d 121, 140 (Tenn. 1998); *see State v.*

Sutton, 166 S.W.3d 686, 691 (Tenn. 2005). “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) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)).

First degree murder is the unlawful, intentional, and premeditated killing of another. T.C.A. §§ 39-13-201 (2018), 39-13-202(a)(1) (2018) (subsequently amended). In the context of first degree murder, intent is shown if the defendant has the conscious objective or desire to cause the victim’s death. *State v. Page*, 81 S.W.3d 781, 790-91 (Tenn. Crim. App. 2002); see T.C.A. § 39-11-106(a)(21) (2018) (subsequently amended) (defining intentional as the “conscious objective or desire to engage in the conduct or cause the result”). “It is not necessary that the purpose to kill preexist in the mind of the accused for any definite period of time.” T.C.A. § 39-13-202(e). “The element of premeditation is a question for the jury which may be established by proof of the circumstances surrounding the killing.” *State v. Young*, 196 S.W.3d 85, 108 (Tenn. 2006). As a result, the jury “may infer premeditation from the manner and circumstances of the killing.” *State v. Jackson*, 173 S.W.3d 401, 408 (Tenn. 2005); see *State v. Vaughn*, 279 S.W.3d 584, 595 (Tenn. Crim. App. 2008). Our supreme court has provided a list of factors which “tend to support the existence” of premeditation and deliberation. See *Bland*, 958 S.W.2d at 660. The list includes the use of a deadly weapon upon an unarmed victim, the particular cruelty of the killing, declarations by the defendant of an intent to kill, evidence of procurement of a weapon, preparations before the killing for concealment of the crime, and calmness immediately after the killing. *Id.* (citing *State v. Brown*, 836 S.W.2d 530, 541-42 (Tenn. 1992); *State v. West*, 844 S.W.2d 144, 148 (Tenn. 1997)).

A person is criminally responsible for an offense committed by the conduct of another, if: . . . “[a]cting with intent to promote or assist the commission of the offense, or to benefit in the proceeds or results of the offense, the person solicits, direct, aids, or attempts to aid another person to commit the offense[.]” T.C.A. § 39-11-402(2) (2018). “Criminal responsibility is not a separate crime, but ‘a theory by which the State may prove the defendant’s guilt of the alleged offense . . . based upon the conduct of another person.’” *State v. Dickson*, 413 S.W.3d 735, 744 (Tenn. 2013) (citation omitted). The defendant does not have to take a physical part in the crime in order to be held liable. *Id.* (citation omitted).

Text messages from the Defendant’s cell phone showed that a gang member identified as “Ken” told the Defendant, a high-ranking member of the Knoxville Tree Top Pirus gang, to send some “killas” to California to kill a rival gang member. The victim, a Tree Top Pirus member, told his girlfriend that he did not intend to go to California. The Defendant acknowledged in a text message to codefendant Cody that the

victim was not planning to go to California, stating “[The victim] I guess girl done talked him out of going, so what’s up?”

Mr. Thomas testified that the Defendant said the victim had “to go” while making a hand gesture in the shape of a gun. Mr. Thomas’s testimony also indicated that he was concerned about the killing because the Defendant said that he had directed “little homies” to “handle it.” While in the car with Mr. Thomas, codefendants Jackson and Clark discussed how to get the victim alone. Mr. Thomas said that he witnessed codefendants Jackson and Clark shoot and kill the victim. Trial testimony established that codefendants Jackson and Clark were lower-ranking gang members than the Defendant. Mr. Thomas stated that soon after the shooting, codefendants Jackson and Clark told the Defendant and codefendant Cody, “It’s done,” and, in response, the Defendant used gang nomenclature to indicate his satisfaction with the killing. Trial testimony further established that on the afternoon after the shooting, the Defendant sent a text message to codefendant Jackson instructing him to “erase everything” from codefendant Jackson’s phone.

In a light most favorable to the State, a rational trier of fact could find beyond a reasonable doubt that the Defendant wanted to cause the victim’s death and that he directed codefendants Jackson and Clark to kill the victim. The evidence is sufficient to support the Defendant’s conviction for first degree murder. The Defendant is not entitled to relief on this basis.

II. Hearsay Claims

1. Ms. Smith’s Statement

At the trial, Ms. Smith was asked about her understanding of the victim’s plan to go to California. Ms. Smith testified that the victim talked to her about his going to California, to which she replied that he could not go because she needed help with their baby. Ms. Smith stated that it was her understanding after this conversation that the Defendant did not intend to go to California. The Defendant objected to this testimony as inadmissible hearsay. In response, the State argued that Ms. Smith could testify as to her understanding of the victim’s state of mind pursuant to Tennessee Rule of Evidence 803(3). The trial court found that the victim’s statement constituted a statement of intent within Rule 803(3) and overruled the Defendant’s objection.

The Defendant contends the trial court erred by admitting the testimony under the state of mind exception. The State responds that the statement falls within the hearsay exception. We agree with the State.

Hearsay “is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Tenn. R. Evid. 801(c). Hearsay is inadmissible unless it qualifies as an exception. *Id.* at 802. Tennessee Rule of Evidence 803(3) provides:

Hearsay Exceptions. – The following are not excluded by the hearsay rule:

.....

(1.2) Admission by Party-Opponent. A statement offered against a party that is (A) the party’s own statement in either an individual or a representative capacity. . . or (E) a statement by a co-conspirator of a party during the course of and in furtherance of the conspiracy

(3) Then Existing Mental, Emotional, or Physical Condition. – A statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant’s will.

A trial court’s factual findings and credibility determinations relative to a hearsay issue are binding upon an appellate court unless the evidence preponderates against them. *Kendrick v. State*, 454 S.W.3d 450, 479 (Tenn. 2015). The determination of whether the statement in question is hearsay and whether a hearsay exception applies are questions of law that are reviewed de novo. *Id.*

The State theorized that gang members murdered the victim because he refused to travel to California to kill someone at the gang’s request and that Ms. Smith’s testimony regarding the victim’s intent to go to California was offered to prove that the victim’s state of mind was to defy the gang’s order. The victim’s refusal to go was the motive for his murder. We do not agree with the Defendant that the testimony at issue “had no bearing on [the victim’s] state of mind.” Tennessee Rule of Evidence 803(3) explicitly provides that statements of “intent” are not excluded by the hearsay rule. *See State v. Wilson*, 164 S.W.3d 355, 364 (Tenn. Crim. App. 2003) (A victim’s declarations that he intended to be buried in a cemetery, rather than cremated, falls within the “state of mind” hearsay exception.); *see also State v. Ronald Eugene Rickman and William Edward Groseclose*, No. W1999-01744-CCA-R3-CD, 2002 WL 35667898, at *53 (Tenn. Crim. App. May 17, 2002) (The defendant’s “statements concerning his desire to move with his family to Kingsport and find a job” indicated his state of mind within the meaning of Tenn. R. Evid. 803(3)). The victim’s statement regarding whether he intended to go to California was admissible as a state of mind hearsay exception. Further, evidence that

the victim did not intend to go to California was relevant to the State's theory regarding the motive for the shooting. *See* Tenn. R. Evid. 402. The Defendant is not entitled to relief on this basis.

2. Codefendants Jackson's and Clark's Statements to Mr. Thomas

At the trial, Mr. Thomas testified that the victim went inside a convenience store while codefendants Jackson and Clark were in the backseat of Mr. Thomas's car discussing how to isolate the victim. Mr. Thomas said that they left the store and continued to drive around until the victim asked him to stop, that the victim and codefendant Jackson got out of the car, that the victim and codefendant Jackson walked a short distance down the street, and that codefendant Clark said, "He about to do it." Mr. Thomas said that immediately afterward, he saw codefendant Jackson shoot the victim. Mr. Thomas testified that he and the codefendants returned to the Louise Avenue home after the shooting and entered a bathroom, where codefendants Jackson and Clark told the Defendant, "It's done" and to which the Defendant replied, "What's up, pfonk. That's what's up, pfonk" and "Y'all handled that wax."

The Defendant objected on the basis of inadmissible hearsay to the codefendants' statements in the car and in the bathroom. The State countered that the statements in the car were "made in the course of the conspiracy to commit the [victim's] murder," that the Defendant's statements fell within the co-conspirator admission by party-opponent hearsay exception, and that codefendants Jackson's and Clark's statements in the bathroom after the shooting were relevant to give context to the Defendant's statements.

The trial court found that the codefendants' statements in the car constituted statements of their intent, plan, motive and design to get the victim out of the car and concluded that they were admissible pursuant to Rule 803(3). The court also found that the trial testimony showed by a preponderance of the evidence that the codefendants were part of a conspiracy to murder the victim and that their statements were made during the pendency of and in furtherance of the conspiracy. Thus, the court concluded that the statements fell within the Rule 803(1.2) hearsay exception. As to the codefendants' statements in the bathroom after the shooting, the court ruled that those statements did not fall within the hearsay exception for co-conspirators' statements because the court found that the conspiracy was consummated at the time of the shooting. The court ruled that the statement "It's done." was admissible to provide context for the Defendant's statement to the effect that the codefendants completed their assignment in a satisfactory manner.

On appeal, the Defendant contends that the trial court erred by finding a hearsay exception applied to codefendants Jackson's and Clark's statements. The State responds that the codefendants' statements were in furtherance of the conspiracy to commit the

victim's murder and that codefendants Jackson's and Clark's statements in the bathroom after the shooting were necessary to give context to the Defendant's admission. We agree with the State.

“A conspiracy is defined as a combination between two or more persons to do a criminal or unlawful act or a lawful act by criminal or unlawful means.” *State v. Alley*, 968 S.W.2d 314, 316 (citing *State v. Lequire*, 634 S.W.2d 608, 612 (Tenn. Crim. App. 1981)). This court has noted that a conspiracy requires “an agreement to commit a crime” and “a knowing involvement” to do so. *State v. Shropshire*, 874 S.W.2d 634, 641 (Tenn Crim. App. 1993) (citations omitted). “The state only has to show an implied understanding between the parties, not formal words or a written agreement, in order to prove a conspiracy.” *Alley*, 968 S.W.2d at 316 (citing *State v. Gaylor*, 862 S.W.2d 546, 553 (Tenn. Crim. App. 1978)).

Regarding co-conspirators' statements, our supreme court has stated,

. . . The rationale for this exception is the principle of agency, under which each conspirator is bound to the actions and statements made by other conspirators during the course of and in furtherance of a common purpose. See [*Neil P. Cohen et al., Tennessee Law of Evidence*, § 803(1.2)(.6), at 521 (3rd ed. 1995)].

Accordingly, for a statement to be admissible under this exception, the prosecution must establish: 1) that there is evidence of the existence of a conspiracy and the connection of the declarant and the defendant to that conspiracy; 2) that the declaration was made during the pendency of the conspiracy; and 3) that the declaration was made in furtherance of the conspiracy. See *Tennessee Law of Evidence*, § 803(1.2)(.6), at 521-22. These requirements must be established by a preponderance of evidence. See *State v. Stamper*, 863 S.W.2d 404, 406 (Tenn.1993).

State v. Henry, 33 S.W.3d 797, 801-02 (Tenn. 2000). “If a conspiracy is shown to exist, the co-conspirator's statement is admissible even though no conspiracy has been formally charged.” *Alley*, 968 S.W.2d at 316.

As to the codefendants' statements made in the car before the shooting, the record reflects that the trial court found that sufficient evidence of a conspiracy existed to admit codefendants Jackson's and Clark's statements under Tenn. Rule Evid. 803(1.2). Mr. Thomas testified that the Defendant tasked codefendants Jackson and Clark with shooting the victim for his defiance of a gang order and that the victim's murder was planned before the victim and the codefendants got into Mr. Thomas's car. The codefendants' statements regarding how to isolate the victim were made during the pendency of and in

furtherance of the conspiracy to murder the victim and fall within the hearsay exception as a statement of a co-conspirator. *See Henry*, 33 S.W.3d at 801-02.

At the Louise Avenue home after the shooting, codefendants Jackson and Clark told the Defendant that the assignment was “done,” to which the Defendant responded in an approving manner. This court has held that statements providing context for a defendant’s statements are admissible non-hearsay and do not violate a defendant’s right to confront witnesses. *See State v. Carlos Jones*, No. W2008-02584-CCA-R3-CD, 2010 WL 3823028, at *5 (Tenn. Crim. App. Sept. 30, 2010), *perm. app. denied* (Tenn. Mar. 9, 2011). Codefendants Jackson’s and Clark’s statements to the Defendant were offered to give context to the Defendant’s statements about the killing. Accordingly, the trial court did not err by admitting codefendants Jackson’s and Clark’s statements for the purpose of providing context for the Defendant’s statements. The Defendant is not entitled to relief on this basis.

III. Investigator Jink’s Qualifications

At the trial, Investigator Jinks testified that he investigated gangs as part of his narcotics work with the KPD. Investigator Jinks attended the Tennessee Gang Investigators Association’s Gang Training and Investigations seminar in 2008, the Institute for Police Technology and Management’s course regarding Interview and Interrogation for Gang and Drug Enforcement Officers in 2009, the Institute for Police Technology and Management’s course on Gang Identification and Investigations in 2010, and the National Gang Crime Research Center’s Basic Gang Specialist Program in 2014 and 2017. Investigator Jinks stated that the National Gang Crime Research Center was the “gold standard” in gang investigation training and included international instructors.

Investigator Jinks testified that, while with the KPD, he worked with the East Community Response Team responding to community complaints which included gang activity; he worked with the Repeat Offender Squad for nine years, focusing on gang investigations; and he worked for the Organized Crime Unit as a member of the Temporary Gang Task Force. He served as a Task Force Officer with the Drug Enforcement Administration and participated in numerous federal and state investigations regarding narcotics. He said that the vast majority of his training involved the investigation of drug distribution organizations, with some focus on gang investigations, and that his employment with local and federal law enforcement provided specialized knowledge in relation to gang investigations. He also stated that he had knowledge and training regarding the Tree Top Pirus but that most of his experience came from his investigative work in this case.

On appeal, the Defendant contends the trial court erred in permitting Investigator Jinks to testify as an expert in gang investigations and gang identification.² The State counters that the court did not abuse its discretion by certifying Investigator Jinks as an expert due to his extensive educational background and his experiential learning regarding gangs. We agree with the State.

Tennessee Rule of Evidence 702 provides the following foundation for the admission of expert testimony:

If scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.

Rule 703 provides, “The court shall disallow testimony in the form of an opinion or inference if the underlying facts or data indicate lack of trustworthiness.” In *McDaniel v. CSX Transportation, Inc.*, our supreme court listed the following nonexclusive factors a trial court may consider in assessing reliability of proposed expert testimony:

- (1) whether scientific evidence has been tested and the methodology with which it has been tested;
- (2) whether the evidence has been subjected to peer review or publication;
- (3) whether a potential rate of error is known;
- (4) whether . . . the evidence is generally accepted in the scientific community; and
- (5) whether the expert’s research in the field has been conducted independent of litigation.

955 S.W.2d 257, 265 (Tenn. 1997).

² At the trial, Investigator Jinks was accepted as an expert in narcotics investigations and gang investigations by the trial court. His qualifications as an expert in narcotics investigations is not at issue on appeal. The Defendant’s brief indicates that Investigator Jinks was accepted as an expert in both “gang investigations and gang member identification.” We note that the court qualified Investigator Jinks as an expert in the area of gang investigations, not gang identification.

Our supreme court has also said that, in assessing the reliability of an expert's methodology, a trial court may consider the expert's qualifications and the connection between the expert's knowledge and the basis of his or her opinion. *See Brown v. Crown Equip. Corp.*, 181 S.W.3d 268, 274-75 (Tenn. 2005). “[Q]uestions regarding the admissibility, qualifications, relevancy and competency of expert testimony are left to the discretion of trial court.” *McDaniel*, 955 S.W.2d at 263; *see State v. Ballard*, 855 S.W.2d 557, 562 (Tenn. 1993). An appellate court may disturb the trial court's ruling only if the trial court abused or arbitrarily exercised its discretion. *McDaniel*, 955 S.W.2d at 263-64.

Our courts have recognized experts in the area of gang activity. *See State v. Bonds*, 502 S.W.3d 118, 144 (Tenn. Crim. App. 2016) (holding that the trial court did not abuse its discretion by allowing an officer to testify as an expert in the field of gang identification); *State v. Justin Mathis*, No. W2005-02903-CCA-R3-CD, 2007 WL 2120190, at *9 (Tenn. Crim. App. July 20, 2007) (citations omitted) (this court considered an officer's informal, “on the street” training, seminar training on gangs, and TBI investigative work when concluding the officer was an expert in gang activity), *perm. app. denied* (Tenn. Dec. 26, 2007). An expert witness “must have such superior skill, experience, training, education, or knowledge within the particular area that his or her degree of expertise is beyond the scope of common knowledge and experience of the average person.” *State v. Reid*, 91 S.W.3d 247, 302 (Tenn. 2002); *see State v. Nikos Burgins*, No. E2021-00602-CCA-R3-CD, 2022 WL 1693582, at *8 (Tenn. Crim. App. Mar. 26, 2022). Further, an expert witness “may acquire the necessary expertise through formal education or life experiences.” *Reid*, 91 S.W.3d at 302; *see Nikos Burgins*, 2022 WL 1693582, at *8.

Based upon Investigator Jinks's specialized training and experience, we conclude that the trial court did not abuse its discretion by finding Investigator Jinks as an expert on gang investigations. The Defendant is not entitled to relief on this basis.

IV. Juror Misconduct

At the trial, after the criminal gang enhancement verdict was returned, the Defendant's cousin informed the trial court that a juror viewed the juror's cell phone during the gang enhancement portion of the trial. The court placed the juror under oath and questioned her regarding her cell phone use.

The juror testified that she sent her husband text messages from her cell phone that said, “Still going,” and that he responded with “Sorry.” The juror stated that she did not access the internet while seated as a juror. On cross-examination, the juror testified that each day during the trial, she sent text messages that said “Still going” or its equivalent to her husband in order for him to plan for picking up their children. The juror stated that she also sent the same message to a friend on one occasion. On redirect examination, the

juror testified that she paid attention to the proof in the trial and that she tried to send messages to her husband during bench conferences, when there were periods of white noise. The juror stated that she never discussed the case with her husband or her friend.

The Defendant raised the issue of juror misconduct in his new trial motion and requested that the trial court allow the Defendant's expert to examine the juror's cell phone. The court held a hearing on the Defendant's motion on April 8, 2022, and at a hearing on May 13, the court relied on its findings from the April 8 hearing and denied the Defendant's request.

On appeal, the Defendant contends that the trial court failed to investigate adequately possible juror misconduct by denying his motion to have an expert extract information from the juror's cell phone. The State responds that this issue is waived because the record does not contain a transcript of the April 8, 2022 hearing, at which the court made specific findings as to the juror misconduct issue, or, in the alternative, that the record reflects that the juror was not exposed to extraneous prejudicial information. We agree that we are precluded from considering this issue and must presume the ruling of the court denying the Defendant's motion was correct.

This court has noted that

When a party seeks appellate review of an issue, the party has a duty to prepare a record which conveys a fair, accurate, and complete account of what transpired with respect to the issue presented for review. When the record is incomplete and does not contain a transcript of the proceedings relevant to the issue presented for review, the appellate court is precluded from considering the issue. Instead, the appellate court must conclusively presume the ruling of the trial court on the motion was correct.

State v. Griffis, 964 S.W.2d 577, 596 (Tenn. Crim. App. Apr. 30, 1997) (citations omitted); *see* T.R.A.P. 24(b).

The record reflects that, at the conclusion of the trial, the trial court placed the juror under oath and asked her questions regarding her cell phone usage. Her testimony indicated that she used her phone briefly to manage child care issues. Although no evidence in the record demonstrates that the juror was exposed to improper outside influences, the record does not contain the transcript of the April 8 hearing, at which the court heard additional proof and made findings regarding the juror misconduct issue. Without the transcript of the April 8 hearing, the record is incomplete, and we are precluded from considering the issue. We must conclusively presume that the ruling of the trial court was correct. The Defendant is not entitled to relief on this basis.

V. Sentencing

The Defendant contends that the trial court “failed to consider certain mitigating factors under Tenn. Code Ann. § 40-35-113, and sentenced [him] to consecutive punishments.” The State counters that the Defendant waived these issues because he failed to adequately brief them or cite to the record in support of his arguments. We agree with the State.

In his brief, the Defendant failed to cite to the record or provide this court with any indication as to which mitigating factors were not considered by the trial court. Further, the Defendant provided no argument or citation to the record in support of his consecutive sentencing claim. These issues are waived. *See* Tenn. R. Ct. Crim. App. 10(b); Tenn. R. App. P. 27(a)(7)(A). The Defendant is not entitled to relief on this basis.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

ROBERT H. MONTGOMERY, JR., JUDGE