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IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs August 1, 2023

STATE OF TENNESSEE v. BILLY RAY TURNER

Appeal from the Criminal Court for Shelby County
No. 17-05881 Lee V. Coffee, Judge

No. W2022-01165-CCA-R3-CD

A Shelby County jury found Defendant, Billy Ray Turner, guilty of first degree murder, conspiracy to commit first degree murder, and attempted first degree murder. The trial court sentenced him to an effective term of life in prison plus forty-one years. On appeal, Defendant contends: (1) the trial court improperly prevented Defendant from impeaching a witness when it excluded a conversation between the witness and the victim's ex-wife; (2) the trial court improperly allowed the State to ask a witness leading questions; (3) the trial court erred by allowing a speaking objection by the State; (4) Shelby County was not the proper venue for the attempted first degree murder case; and (5) the evidence was insufficient to sustain Defendant's convictions. After review, we affirm the judgments of the trial court.

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

MATTHEW J. WILSON, J., delivered the opinion of the court, in which TIMOTHY L. EASTER, J., joined. JOHN W. CAMPBELL, SR., J., not participating.

Shae Atkinson, Memphis, Tennessee (on appeal); John Keith Perry, Southaven, Mississippi, and Andre Thomas, Memphis, Tennessee (at trial), for the appellant, Billy Ray Turner.

Jonathan Skrmetti, Attorney General and Reporter; Brent C. Cherry, Senior Assistant Attorney General; Steven J. Mulroy, District Attorney General; Paul Hagerman and Austin Scofield, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. Trial

Defendant was indicted and ultimately convicted for his role in the 2010 killing of the victim in this case, former University of Memphis and professional basketball player, Lorenzen Wright. In December 2017, Defendant and the victim's ex-wife, Sherra Wright, were each indicted for first degree murder, conspiracy to commit first degree murder, and attempted first degree murder. In July 2019, Ms. Wright pleaded guilty to facilitation of first degree murder and received a thirty-year sentence. She did not testify against Defendant at his trial.

The victim's mother, Deborah Marion, testified that the victim was living in the Atlanta area at the time of his death. The victim and Ms. Wright were married for thirteen years and had six children before their divorce in February 2010. The last time Ms. Marion saw her son was shortly before July 4, 2010, when he told his mother he planned to visit Memphis on July 17 or 18 for his sister's baby shower. When the victim did not attend the baby shower, Ms. Marion attempted to call him to find out where he was. When the victim did not answer Ms. Marion's calls, she called the victim's oldest daughter, who had tried to call her father five times after the baby shower, but he did not answer.

After her unsuccessful attempts to reach her son, Ms. Marion spoke with Ms. Wright, who did not say the victim was missing, but told Ms. Marion that the "police better do they [sic] job." This response caused Ms. Marion substantial concern, so she contacted the police and reported the victim missing. Ms. Marion said Ms. Wright never reported the victim as missing. Eventually, one of the victim's friends, a police officer, notified Ms. Marion that her son was dead. Ms. Marion said that at the time of the victim's death, he had a $1 million insurance policy and a pension from the National Basketball Association (NBA) valued at $150,000.

Claudia Robinson, Ms. Wright's cousin, looked after the victim's and Ms. Wright's children from 2005 until the time of the victim's death. Ms. Robinson testified, "I was not the official nanny. I was just helping out when I could." She said she was present at Ms. Wright's home about five days per week during the summer of 2010, and she was not paid for her work.

Ms. Robinson recalled seeing Defendant at Ms. Wright's home "quite often" during the summer before the victim's death. On average, Defendant visited Ms. Wright's home a few times per week. The witness described Defendant as Ms. Wright's "yard man," and she acknowledged that there may have been a romantic relationship between Defendant and Ms. Wright. Ms. Robinson recalled that one time, Ms. Wright and Defendant were in

the kitchen when Ms. Wright, who Ms. Robinson described as "irate," said the victim "had a hit on her." Ms. Robinson responded, "Surely that's not so. It's [sic] no way you believe that." Ms. Wright "insisted" that the victim had placed "a hit" on her and told Defendant, "It's him or me. . . . [The victim] has a hit on me. He has to be gone." According to Ms. Robinson, Defendant did not dissuade Ms. Wright's talk about the victim's supposed "hit" on her, but she acknowledged Defendant did not discuss any plans to attack the victim during this conversation or the one described below. After that conversation, Ms. Robinson gave the children lunch and heard no additional discussion that day between Defendant and Ms. Wright concerning the victim.

On a separate occasion, Ms. Robinson recalled another conversation she overheard at Ms. Wright's home between Ms. Wright, Defendant, and another of Ms. Wright's cousins, whom Ms. Robinson did not know. Ms. Robinson referenced this cousin as "Jay," but on cross-examination, defense counsel referred to him as "Jimmie." Ms. Robinson denied speaking to Jimmie at any time. That time, Ms. Wright told the other two men, "I can't believe he has a hit out on me. He wants me gone." Ms. Robinson, again, expressed her disbelief over Ms. Wright's claim. Ms. Wright still maintained her belief that the victim had a "hit" on her and "just kept saying, 'It has to be him or me[.]'" Ms. Robinson also testified that "Jay" told Ms. Wright that she (Ms. Robinson) "was going to be a problem," to which Ms. Wright replied, "No, she's not, because she can get offed, too." Ms. Robinson then left from where she could hear, and did not hear anything else between Defendant and Ms. Wright pertaining to the victim. After the second conversation, Ms. Robinson stated, "I kind of distanced myself from being over there[.]" Soon after, Ms. Robinson learned that the victim had been killed, and she was scared for her safety given the earlier conversations between Defendant and Ms. Wright. That fear prevented her from contacting the police after the victim's death.

In late 2016 and early 2017, Ms. Robinson began cooperating with the police investigation into the victim's murder. At law enforcement's direction, Ms. Robinson placed several phone calls to Ms. Wright, hoping that Ms. Wright would implicate herself in the victim's death. But Ms. Wright made no such statements, and Ms. Robinson did not ask her about a potential romantic relationship with Defendant. Ms. Robinson also did not tell the police about a potential romantic relationship between the co-defendants or that Defendant had made an "agreement" to harm the victim. Ms. Robinson denied being offered $10,000 in "hush money" and denied traveling with Ms. Wright to Batesville, Mississippi, to pick up "Jay"/"Jimmie." She acknowledged testifying as part of an immunity agreement but denied being part of the conspiracy to harm the victim. Rather, Mr. Robinson testified, "I signed [the immunity agreement] for my protection because I was at a house where a conversation was made, so—that I had nothing to do with it."

In 2016, Jesse Browning, an Investigator with the Memphis Police Department (MPD) and member of the Multi-Agency Gang Unit (MGU), was part of the renewed investigation into the victim's death called "Operation Rebound." Investigators visited and took exterior photographs of the suburban Atlanta condominium where the victim lived at the time of his death. Those photographs were introduced as trial exhibits. The investigator also described exterior photographs of Ms. Wright's Shelby County home, but he was unsure whether the victim lived at this residence at any time. Investigator Brown testified that the victim "frequented" this residence. Photographs of those two residences and photographs of the area in Shelby County where the victim's body was found also were introduced into the record. The victim's body was found in a wooded area in Collierville, near the modern-day intersection of Callis Cut Off Road and Tournament Drive. At the time of the victim's death, the area was relatively undeveloped, "a wooded area where the road cuts through. It's got three-layered barbed wire fencing, and then it's just . . . it's kind of got some open fields, and then the rest is just woods."

An aerial map depicting the area (as it existed near the time of trial) where the victim's body was found and the houses of Defendant and Ms. Wright were also introduced into evidence. Investigator Browning testified that at the time of the victim's death, Defendant lived about two or three miles from the area where the victim's body was found, while Ms. Wright lived "three or four times as far" from this location.

Investigator Browning stated that the victim flew into Memphis on July 18, 2010, and was murdered at 12:12 a.m. on July 19, 2010. Between 9:00 p.m. and 9:30 p.m. on July 18, the victim went to a Lifetime Fitness location in Memphis to pick up his fifteen-year-old son, and then drove to Ms. Wright's house to drop off the child. The police investigation revealed that no one spoke to the victim, perhaps other than Ms. Wright, between that time and the time the victim was killed.

At 12:12 a.m. on July 19, 2010, a 911 call was placed from the victim's phone. The call was routed to Germantown dispatch. An audio recording of that call was played for the jury at trial. On the recording, an initial gunshot is heard, followed by a male voice yelling "oh, f***." A different male voice then says, "Get him." Two more gunshots are heard, accompanied by another man's strained voice crying out, "Oh, g**d***." Another gunshot is heard, followed by a pause, two more gunshots, another pause, followed by six gunshots in rapid succession. The 911 dispatcher attempted to speak to the caller, but received no response. After the gunshots ceased, the operator says, "Sounds like nothing but gunshots."

No law enforcement agency was contacted in the immediate aftermath of the 911 call. The victim was not reported missing until July 22, 2010, when his mother contacted police. Five days later, Collierville police discovered the 911 call while investigating the

victim's disappearance. The Germantown police identified a potential area from which the 911 call was made, a location that corresponded to the wooded area near Callis Cut Off Road. On July 28, 2010, nine days after the victim placed the 911 call, law enforcement searched the area and found the victim's decomposing body. The victim was still wearing a necklace and other jewelry, including an "expensive wristwatch[.]"

The State introduced several crime scene photographs of the area around Callis Cut Off Road which showed what appeared to be "several rows" of barbed wire that had been cut from poles found in the wooded area. Three types of spent bullet casings—five .25 caliber, one 9 mm caliber, and one .380 caliber—were also found near the victim's body. Bullet fragments were found in the victim's arm, chest, and head. Several other items were found at the scene and tested for DNA but yielded no usable profile.

Investigator Browning testified that before the victim's body was found, police were notified about a "large fire" in Ms. Wright's back yard. The police executed a search warrant at her house in July 2010, between the time of the victim's disappearance and the recovery of his body. Officers found evidence suggesting documents had been burned in a fire pit. Photographs taken during the search of Ms. Wright's back yard showed a burned fragment of paper featuring the word "north" and part of the word "attorneys."

The police also obtained a search warrant for Ms. Wright's cellular phone and discovered that roughly twenty-five minutes before the 911 call was placed, Ms. Wright sent a text message to Defendant which read, "Imma need my commission. Ren want you to bring your cards in the a.m. before he fly out. You owe me, boy."

Beginning on July 17, 2010, Ms. Wright and the victim sent a series of sexually explicit texts to each other, with Ms. Wright enticing the victim to return to Memphis. Ms. Wright's phone also contained communications with a contact named "Edna Jay," who was in fact Jimmie Martin, a suspect in 2010 along with Ms. Wright and Defendant. The police also identified calls between a phone belonging to the victim's fifteen-year-old son and Defendant. Investigator Browning surmised that these calls, placed the day after the victim was killed, were placed by Ms. Wright. Additionally, in 2010, the police obtained Facebook messages sent between June 16 and September 9, 2010, between Ms. Wright and "Jay Martin" where they discussed "getting a party together," which Investigator Browning believed was "code for killing Lorenzen Wright." Phone records from 2010 revealed communications between Defendant and Mr. Martin, as well as communications between a pay phone in Batesville, Mississippi and Defendant's phone. The pay phone was near Mr. Martin's residence at the time of the victim's death.

Between 10:00 p.m. July 18, 2010 and the morning of July 19, 2010, the only text messages from Ms. Wright's phone were (1) the message referenced above, in which Ms.

Wright texted Defendant about her "commission," and (2) a responsive text of "okay" from Defendant to Ms. Wright. Then, at 1:27 a.m. on the day after the victim's death, Ms. Wright sent a text to the victim's phone saying that the couple's children had "waited for [the victim] all day[,]" and the person who was to take the victim to Atlanta had come by the house looking for him.

In 2012, Jimmie Martin gave a statement to police which led law enforcement to focus on a lake near Walnut, Mississippi. Volunteers with the Holly Springs, Mississippi Fire Department searched the lake, but were unable to see in the water because of the rain. In 2017, after Investigator Browning reviewed Mr. Martin's statement, he contacted the Federal Bureau of Investigation (FBI), which searched the lake and found a 9 mm handgun in a specific area identified by Mr. Martin.

Investigators kept the gun's recovery a secret because at that time, they were trying to obtain a wiretap. After the wiretap was authorized, MPD issued a press release stating that the 9 mm handgun had been found. In recorded phone conversations, Ms. Wright sounded "pretty distressed" that the gun was found. Investigator Browning acknowledged that on some calls, Ms. Wright sounded almost suicidal. She had moved away from the Memphis area by this time but made an unplanned trip to Memphis. Ms. Wright, who was under surveillance, was reluctant to communicate through her phone, but had another woman send text messages to Defendant on her behalf.

Investigator Browning stated that there were no large cash deposits made to Defendant's bank account after the victim's death. The investigator also acknowledged Ms. Wright met with several persons other than Defendant when she visited Memphis after the gun was recovered from the lake.

Tennessee Bureau of Investigation (TBI) Special Agent Cervinia Braswell, qualified by the trial court as an expert in the field of firearms investigation, analyzed the handgun, bullets, and bullet casings recovered during the investigation. When she received the 9 mm handgun recovered from the Mississippi lake, the gun was "covered in dirt and black sludge," so she had to clean the gun before testing it. Because the gun was submerged under water for several years, she could not test-fire it, so she examined it by removing "the slide, the top portion. Which, with that, comes the barrel and the breechface. So, everything that [she] would look at under the microscope on test-fired bullets and cartridge cases, [she] was able to remove that[.]" She explained that the TBI keeps reference gun frames so that "if a gun comes in that is not working, we can use parts from that gun to be able to test fire it." After placing the parts from the 9 mm handgun found in the lake onto the corresponding frame, Agent Braswell concluded that the markings on the nine 9 mm shell casings found near the victim's body were consistent with having been made by the 9 mm handgun recovered from the lake. She also examined the .380 cartridge case and .25

caliber cartridges and concluded that the markings on .25 caliber cartridge cases were made by the same .25 caliber gun. She also examined three 9 mm hollow-point bullets taken from the scene. The individual characteristics of one of the bullets was insufficient for matching, but Agent Braswell concluded the other two hollow point bullets were fired from the gun that was removed from the lake. Three bullet fragments taken from the victim's body also were examined:two of the bullets were .25 caliber bullets fired from the same unidentified firearm, while the third bullet had the same class characteristics as the 9 mm retrieved from the lake. However, there were insufficient individual characteristics to conclude that the bullet had been fired by the 9 mm handgun she examined.

Dr. Marco Ross, a forensic pathologist and Chief Medical Examiner for Shelby County, conducted the victim's autopsy. He "evaluate[d] the skeletal remains for evidence of trauma" because the victim's body was missing "soft tissue evidence for potential trauma or disease" after decomposing outside in a hot and humid environment. Dr. Ross testified that the bullet entrance and exit wounds to the victim's skull were visible, and he also noted that a bullet and bullet fragments were recovered from the victim's arm and chest cavity. Dr. Ross identified the manner of death as homicide from at least five gunshot wounds.

MPD Sergeant Dennis Evans conducted the digital forensic investigation in this case. Sergeant Evans has been an MPD officer since 2001 (twenty-one years at the time of trial) and was qualified as a certified expert in digital forensics and cellular phone records examination. He testified that his process for obtaining digital data is as follows: obtain a warrant, extract data from a phone, and then upload or analyze that data. Sergeant Evans prepared a PowerPoint presentation based on cell-phone records from Defendant, Ms. Wright, and Mr. Martin. The records indicated the location of the cell towers used which made it possible to "map out the tower and the side and the base of the tower that was utilized."

Sergeant Evans analyzed Defendant's cell-phone records for July 5, 2010 to August 5, 2010. He stated that he only had call, not text, records from Defendant's phone because Defendant used C-Spire, which only retains records for about two years, and Sgt. Evans did not join the investigation until 2016 or 2017. Sergeant Evans testified that between July 5 and August 5 of 2010, Defendant spoke on the phone with Ms. Wright 186 times. Between those same dates, Defendant spoke on the phone with Mr. Martin seventeen times.

On July 18, 2010 at 11:41 p.m., there was a phone call from Defendant to Mr. Martin that lasted thirty-nine seconds. At 11:47 p.m., there was a phone call from Defendant to Raven Falkner, Defendant's girlfriend. At 12:01 a.m. on July 19, 2010, Defendant received a phone call from a Batesville, Mississippi payphone. At 12:12 a.m., Mr. Martin called

Defendant. Every call listed above was less than forty-five seconds, and Sgt. Evans testified, "Anything less than forty-five seconds to a minute is usually not answered."

Sergeant Evans next analyzed Ms. Wright's records. He stated that he managed to obtain more data from her records because he had her cellular phone, and she used AT&T, which retains its records for a longer period.

Referencing his presentation, he said, "[H]ere we are going to actually show the cell tower maps for those calls that we just looked at. So, when we are looking at it, [the cell-phone towers] I've highlighted several things. We have our homicide scene. We have [Defendant]'s house. We actually have [Ms. Wright]'s house."

On July 18, 2010, at 8:42 p.m., Defendant called Ms. Wright. Sergeant Evans stated that Defendant's phone was within the coverage area of a tower that included Ms. Wright's house, but Sgt. Evans noted that it was impossible to tell, from the records alone, whether the call came from Ms. Wright's house, her yard, or down the street from her house. At 8:54 p.m., there was another call between Defendant and Ms. Wright using the same tower.

Sergeant Evans stated that 9:56 p.m. was the last call Defendant made in the Collierville area. "[T]he next call is going to be at [10:52 p.m.], and [Defendant is] going to be utilizing the tower that is within about two[-]tenths of his house, two-tenths of a mile from his house." From 10:52 to 11:47 p.m., Defendant was using the tower closest to his home for four phone calls.

At 12:12 a.m., "[Defendant's] phone [was] not utilizing that same tower. It . . . changed to a different tower. The tower it's utilizing is actually in the middle of Windyke Country Club. It's in the middle of the golf course."

Sergeant Evans stated that the phone was accounted for at the home base until 11:47 p.m., and then the next time C-Spire provided sufficient data was at 12:14 a.m., which was two minutes after the victim's 911 call. At that time, Defendant's phone was not using his home base tower; it was using the tower in the area where the homicide took place "about [2.87] miles" from Defendant's home base tower.

At 12:14 a.m.:

> [Defendant's] phone utilized that tower on that sector to connect to a call. I can't tell you if the phone was on Winchester. I can't tell you if the phone was exactly at the homicide scene. But it utilized -- it changed from what is close to his house to that other tower at fourteen minutes after midnight.

Next, Sgt. Evans analyzed the victim's 911 call at 12:12 a.m. on July 19, 2010: "The suspected area of Defendant's cell phone at 12:14 overlays the same area that [the victim's] phone was used at 12:12 . . . they're in the exact same area, coverage area."

An analysis of Defendant's home tower and the homicide area tower show that the home tower was used 23 percent of the time (518 phone calls) between the dates of July 5, 2010 and August 5, 2010. By contrast, the homicide tower was used 3.8 percent of the time (85 phone calls) between the same dates.

On July 19, 2010, "at 6:00 in the morning, or approximately six hours after the 911 call, [Defendant] makes an outgoing call. He doesn't call Ms. Wright's phone. He calls what we termed to as 'Snoop's phone,' or Lorenzen Wright Jr.'s phone" for one minute and twenty-nine seconds.

When asked to analyze calls that were made after the homicide, Sgt. Evans stated he believed Turner "was calling [Ms. Wright] on the Snoop phone or the Lorenzen Wright Jr. phone."

Next, Sgt. Evans analyzed the cell tower mapping for Mr. Martin's phone between the dates of July 5, 2010 and August 10, 2010. On July 18, 2010, at 4:56 p.m., there was a thirty-eight-second call from Defendant to Mr. Martin that indicated to Sgt. Evans that "it more than likely wasn't answered." The next call was at 5:38 p.m. from Mr. Martin to Defendant with a duration of one minute and forty-two seconds, which according to Sgt. Evans "would definitely indicate that there was conversation, based on the length of the call." The next call from Mr. Martin to Defendant was at 6:14 p.m., and lasted for four minutes and forty-six seconds.

At 11:44 p.m. and 11:45 p.m., Mr. Martin's phone was traveling near Batesville, Mississippi. At 11:55 there was another call, still in Batesville. At 12:12 a.m. on July 19, 2010, Mr. Martin's phone was in Sardis, Mississippi, and called Defendant. This was at the exact time that the victim called 911.

Sergeant Evans then analyzed what he called "the cleanup of the crime scene after the homicide" which mapped the cell towers for Mr. Martin and Defendant. "[O]n July 21st, Mr. Martin drove from Batesville, Mississippi, to Memphis, where, at that point, we do believe that he met up with Defendant at Ms. Wright's house." At 10:20 a.m. on July 21, 2010, "Mr. Martin traveled from Batesville, Mississippi, up Interstate 55 and around to where Ms. Wright lived in Collierville."

At 12:10 p.m. "[Mr. Martin] [utilized] a tower . . . that would have coverage potentially over Ms. Wright's house." Sergeant Evans testified that on that afternoon,

Defendant and Mr. Martin were using "two different carriers, two different cell tower locations, but they [were] both in the same honeycomb kind of coverage area, and they [were] both receiving calls or making calls at around twelve, 12:10, in the afternoon on the 21st."

Sergeant Evans next analyzed Ms. Wright's phone from 2010 and testified that he did a physical extraction, or download, of Ms. Wright's phone. He found that "she had deleted all the messages between herself and Defendant between July 18, 2010, and July 23, 2010," but he was able to recover eighty-three of them. On July 18, 2010, at 11:47 p.m., Ms. Wright sent the above-referenced instant message to Defendant that said, "I'm going to need my commission." Sergeant Evans noted that this text was sent twenty-eight minutes before the victim called 911.

Sergeant Evans "did a timeline search for Ms. Wright and Mr. Martin," and "found fourteen instant messages between [Ms. Wright] and [Mr. Martin]. The date range was July 15 to July 17, 2010. And, again, all the instant messages between [Ms. Wright] and [Mr. Martin] were also deleted on [Ms. Wright's] iPhone." Sergeant Evans noted that Ms. Wright saved Mr. Martin's name as "Edna Jay" in her contacts. On July 16, 2010 at 1:28 p.m., Ms. Wright sent a message to Mr. Martin that said, "I know you tired of me and my party, but what's up?" A few minutes later Mr. Martin replied, "You're good. Everybody's straight."

When Ms. Wright was arrested in 2017, she had another phone taken from her, a search warrant was prepared, and Sgt. Evans performed another physical extraction of her newer phone. Sergeant Evans stated that he did not find any communication between Ms. Wright and Defendant on the newer phone, but Ms. Wright had conducted internet searches on the phone. On December 5, 2017, the day the media announced Defendant's arrest, Ms. Wright searched, "Do fingerprints stay on objects that are underwater?" Sergeant Evans noted "she also did various other searches related to the homicide of [the victim]." On December 6, 2017 she searched, "Water washes fingerprints," "Fingerprints under water," "Do fingerprints stay on objects that are under water," "Finger marks on glass and metal surfaces recovered from stagnate [sic] water," and "How long do fingerprints last underwater?" Then she started researching weapons: "Can a weapon have prints after seven years?" On December 6, 2017, Ms. Wright "continuously search[ed] 'Billy Turner,' 'indictments,' 'guns under water.' She actually searched this courtroom. She also searched 'Judge Coffee.' She searched everybody that was related to this—to this investigation at the time."

Mr. Martin's Facebook Messenger records showed conversations between him and Ms. Wright, who on Facebook was listed as "Sherra Robinson." On July 4, 2010, Ms. Wright messaged Mr. Martin:

> Man, you’re driving me crazy with this party. We keep getting our days and times mixed up. What are you going to do? We got all our end. What else you need ‘cause I can’t find another DJ this late. I want to talk—I want to do it before the 18th ‘cause we got a family reunion and other stuff coming up. Give me a holler back. Let me know something.

Three days later on July 7, the following exchange occurred:

> Mr. Martin: So what’s this—so this what’s up? 300 USD. Left towel in Florida. Had the concert there. You want me to go to party adult theme, but the party has kids? When is it going to be an all-adult party or how to plan around that? Also got to plan around my contacts there then a rental[?]
>
> Ms. Wright: It’s okay to throw a party outside?
>
> Mr. Martin: All right. Gotcha
>
> Ms. Wright: Kids in and adults out. Let me know what you think.
>
> Mr. Martin: Don’t know. Just concerned about the noise and the neighbors. But have to work it out other—I’ll have to work it out if no other way.
>
> Ms. Wright: Cool . . . love you . . . thank you for everything. . . I owe you.

On July 13, Ms. Wright wrote, “We still on?” On July 14, the following exchange occurred:

> Mr. Martin: Tying up loose ends. Moving studios. Changing off plan. Ya’ artist can’t find any equipment. He can’t trade or sell my big keyboard, but that’s what I’m trying to do. The other two are cool, but I need a nine-inch studio monitor. Don’t want cleaning up—Don’t want people sweat and stuff [burning] up in the [non-A/C] joint.”
>
> Ms. Wright: We’re gonna have to rent something to haul all this. Too much hassle cleaning up. Don’t want to be riding dirty. Then the money got to come over our ass.
>
> Ms. Wright: You need money for something? I’ve got two hundred dollars.

Mr. Martin: Try to find them monitors. Does our speakers. Everybody use them. I can't find them around here. Can't afford new ones. Let me know. He should be able to help. Then I'll scoop him and we good.

On July 21, two days after the victim was killed, Ms. Wright wrote to Mr. Martin again:

Ms. Wright: I give up. Nothing is working out. . . . Ugh . . . . Everything us too high including really—including getting the pool up and running. Memphis Pool trying to put a dent in my pockets. I know you done helped me—or done helped, and I done worried you, but I think I'm gonna quit. I'm sick of this party. In the meantime, maybe I will plan for after the family reunion. Please let your artist know I'm serious, but just not ready right now.

On July 22, Mr. Martin wrote: "You need to call your auntie."

Mr. Martin became a trial witness for the State after signing an immunity agreement in 2012, under which he would not be charged criminally for his role in the victim's death if he (Martin) testified truthfully. In May 2010, Mr. Martin lived in Batesville, Mississippi. At that time, Ms. Wright, who was his first cousin, visited him and told him the victim "needed somebody to take care of his Rottweilers." Mr. Martin testified the victim had contacted him previously about training the victim's dogs. Mr. Martin then went with Ms. Wright to her house in Memphis. Upon Mr. Martin's arrival, "the whole subject matter change[d]" to a discussion about "a ploy to kill [the victim]." Mr. Martin knew Ms. Wright had been "going through some things" and was possibly "just talking off the wall," and he told her, "It's not the business you want to be in."

Mr. Martin was unsure why Ms. Wright had tried to involve him in her plans to harm the victim, but he guessed it had to do with "a particular bind" in which Mr. Martin found himself in May 2010. Mr. Martin acknowledged that at that time, he was facing "violent criminal charges," and Ms. Wright had recommended a lawyer and had paid some of his attorney's fees. After Mr. Martin's initial "not the business you want to be in" comment, Ms. Wright began a "brainstorming session" in which she discussed "how best to" kill the victim. During this conversation, Defendant and "a pregnant lady" were also present. At the time of this conversation, Mr. Martin did not know the pregnant woman's name, but on cross-examination defense counsel identified this woman to Mr. Martin as Claudia Robinson. Mr. Martin testified that during the meeting, they discussed catching the victim "somewhere where there ain't a lot of people." At the end of the meeting, Mr. Martin testified, "[E]veryone went their separate ways." Mr. Martin thought Defendant

and Ms. Wright were "just getting stuff off [their] chest." He thought the plot "wasn't real," yet neither he nor anyone ever expressed that the plot was a bad idea.

Later in May 2010, Ms. Wright traveled to Batesville again, picked up Mr. Martin, and drove him to her house. Upon Mr. Martin and Ms. Wright's arrival, Defendant and another man unknown to Mr. Martin were present. During the meeting, the group discussed more details of the plot to kill the victim, including the "two or three guns" needed to shoot him. The group also discussed potential locations for killing the victim, and one potential location was the Atlanta area. According to Mr. Martin, if the victim was to be killed in Atlanta, Mr. Martin would be the person to carry out the act. Mr. Martin did not object to the suggestion for fear of being killed. Mr. Martin thought Defendant also believed this plot to be "crazy." After the meeting, Mr. Martin was given Defendant's car to drive back to Batesville. Mr. Martin described the car as a "gun metal color[ed] Dodge." While driving back to Mississippi, Mr. Martin received a phone call from Ms. Wright, who told him to "look in the trunk" once he arrived home. Upon reaching his home, Mr. Martin looked inside the car's trunk and found guns, marijuana, and about $300 to $500. Mr. Martin recalled that the guns were "a .25, a .38, and a [m]agnum." Mr. Martin sold the .38.

In June 2010, Ms. Wright called Mr. Martin and instructed him to go to the victim's Atlanta-area condominium to, as Mr. Martin understood, "catch [the victim] in a compromising position and take care of him." Ms. Wright did not discuss potential payment for this action. Mr. Martin did not drive to Atlanta as instructed, although he later told Ms. Wright that he went to Atlanta but could not find the victim. Ms. Wright became upset upon hearing this response, leading Mr. Martin to believe that Ms. Wright knew he was lying.

After the June 2010 phone call, Ms. Wright again contacted Mr. Martin, telling him that she had been to the victim's condominium and left a window unlocked. She and Defendant then drove to Mr. Martin's residence where they met Mr. Martin. Defendant and Mr. Martin left for Atlanta in Defendant's car. During the drive, Defendant and Mr. Martin agreed that the victim was unlikely to be at his condominium, which the two men thought was "good news." When they arrived, the two men each took a gun and headed toward the victim's condominium where they entered through an unlocked window. They searched the residence and found a man sleeping on a couch. Mr. Martin and Defendant knew the man was too short to be the victim so they left him asleep and climbed out of the same window and drove back toward Memphis. Mr. Martin said they were relieved that they did not kill the victim. On the drive home, the two men agreed the murder plot was "getting too ridiculous." Defendant took Mr. Martin to his home in Mississippi before returning to Memphis.

In late June and early July 2010, Mr. Martin and Ms. Wright began exchanging Facebook messages in which they wrote in code plans to harm the victim. Generally speaking, they wrote about parties, getting equipment, and making sure there were no "kids" at the "party." Mr. Martin explained the "equipment" meant the guns to be used in the killing, the "party" was the killing itself, and discussion about ensuring no "kids" were present referenced making sure there were no witnesses to the killing. Mr. Martin testified that when he referenced selling or trading his "big keyboard" and acquiring a "nine-inch studio monitor" on Facebook, he was talking about disposing of the .357 magnum Ms. Wright had given him in exchange for a 9 mm firearm, which they thought was better suited for the task. Mr. Martin said that some of his messages to Ms. Wright were written while he was driving in a car and he dictated the messages to a male passenger. Mr. Martin stated that this male passenger was not Defendant.

On July 18, 2010, the day before the victim was killed, Ms. Wright contacted Mr. Martin and instructed him to come to Memphis. Mr. Martin then tried to contact Defendant to arrange travel to Memphis, calling Defendant several times on both a pay phone and a cellular phone. But Mr. Martin was unable to reach Defendant before the morning of July 19. Mr. Martin acknowledged there were no witnesses to corroborate his whereabouts the night the victim was killed.

A few days after the July 18 call from Ms. Wright, she contacted Mr. Martin again and said she and Defendant were coming to Batesville. When they arrived, they retrieved Defendant's car. Mr. Martin noticed Defendant and Ms. Wright were acting "spooked" and "shaky" and were dodging questions. At that time, Mr. Martin did not know the victim was dead. Sometime after Defendant and Ms. Wright left, Ms. Wright called Mr. Martin and told him that she was coming to Batesville again. Ms. Wright also asked to speak to Mr. Martin's mother about borrowing a metal detector. After obtaining the metal detector, Ms. Wright and Mr. Martin drove back to Memphis. On the drive, Ms. Wright said the victim was dead, and she needed the metal detector to find one of the guns they had lost after the killing. Ms. Wright and Mr. Martin picked up Defendant and proceeded to what Mr. Martin described as "an empty area in east Memphis." They entered a field with a barbed wire fence, and Defendant produced a pair of wire cutters. Ms. Wright explained that the victim had "jumped the fence" during the attack "like a deer," and she was going to cut the fence because she did not want to "leave anything behind." The barbed wire fence was cut and a six-to-eight-foot section of the wire was wrapped in rags. In an earlier statement, Mr. Martin claimed that although he was present at the time the fence was cut, he did not cut the barbed wire because he was looking for the missing gun. After the fence was cut, Defendant, Ms. Wright, and Mr. Martin split up. Ms. Wright left in a van and Defendant and Mr. Martin headed to a dump where they left the wire, rags, and wire cutters.

Mr. Martin testified that Ms. Wright told him that on the night of the killing, she and the victim went to the Callis Cut Off Road area to "meet somebody for some money." Once they arrived at the field that night, Defendant showed up, and he and Ms. Wright ambushed the victim, who ran away and jumped the barbed wire fencing. Ms. Wright and Defendant chased the victim, firing guns at him. Eventually, the victim fell, and Defendant and Ms. Wright caught up to the victim and shot him.

Sometime after visiting the field and cutting the barbed wire fence, Mr. Martin and Defendant drove around looking for a place to dispose of one of the guns used in the killing. Eventually, Defendant threw the gun into a lake. In 2012, Mr. Martin drew a map which led investigators to the lake. The gun was not recovered until FBI divers found it in 2017. A few days after the gun was tossed into the lake, Ms. Wright told Mr. Martin that "she found the other gun." Mr. Martin testified that because he feared for his safety, he did not come forward to the police until he was convicted in a criminal trial in 2012. After his conviction, Mr. Martin thought he "was more safe in jail to come forward." After he came forward, Mr. Martin identified Defendant in a photo array.

Mr. Martin acknowledged giving at least three statements to law enforcement and meeting with the prosecutor before testifying at Defendant's trial. He denied talking to anyone "on the street" about this case at the same time he was meeting with law enforcement. Mr. Martin acknowledged some inconsistencies between his trial testimony and statements he had given earlier to the police. For instance, in an earlier statement, he claimed he did not go into the victim's Atlanta-area condo when he and Defendant drove there because he (Martin) did not have a gun. In the statement, Mr. Martin said that only Defendant went into the condo, and when he came out, Defendant told Mr. Martin there was a "bald-headed" man lying on the couch. Mr. Martin also acknowledged not discussing his sale of guns and purchasing a 9 mm handgun in earlier statements.

Previously, Mr. Martin told law enforcement that during the second meeting at Ms. Wright's house before the victim's death, he did not remember whether Defendant was present—in fact, he said he had no memory of Defendant being at the house. He told police that Defendant "must have been there" because Ms. Wright gave Mr. Martin Defendant's car. He also acknowledged giving differing accounts about the types of guns he was given after the second meeting in his various statements and during his trial testimony. Also, while he did not testify as such at trial, Mr. Martin acknowledged that, in a 2017 statement to law enforcement, he claimed the "pregnant lady" he saw at the first meeting was to receive $10,000 in hush money and the shooter would receive $50,000. Mr. Martin, in an earlier statement to law enforcement, stated he needed money to pay his lawyers, and he did not tell the interviewers that Defendant needed money.

Mr. Martin acknowledged that at different times, he told police that Defendant and Ms. Wright shot the victim, while at other times he told police Defendant was the only shooter. Despite the various inconsistencies, Mr. Martin insisted that every statement to law enforcement and his trial testimony referenced Defendant, Ms. Wright, and Mr. Martin participating in a conspiracy to kill the victim; and in each retelling of the relevant facts Mr. Martin referenced a pregnant woman being present at Ms. Wright's house when killing the victim was first discussed. He also asserted he was consistent about Defendant throwing the gun in the Mississippi lake.

MPD Detective Fausto Frias was also part of Operation Rebound investigation in 2016 and 2017. As part of his investigation, on December 5, 2017, Det. Frias and another detective interviewed Defendant after his arrest. Detective Frias advised Defendant of his *Miranda* rights, and Defendant waived his rights and agreed to speak with the detectives. Under MPD policy at the time, after a suspect waived his *Miranda* rights, the detective would engage in an oral interview with the suspect, after which a typed statement, in question-and-answer form, would be prepared. The suspect would have a chance to review the typed statement before signing it. Occasionally, detectives would prepare "supplements," or written reports which Det. Frias described as "notes of the interview and of events that took place and . . . just to help out with a timeline, to help out at time of court." Under department policy at that time, the police were not allowed to audio or video record an oral interview.

During the interview, Defendant told Det. Frias that he had no personal or professional relationship with the victim, but he was the yard man for Ms. Wright. Defendant explained to the detective that Defendant knew one of Ms. Wright's aunts who lived in Batesville. Defendant told the detective that he had seen the aunt's son, Jimmie Martin, "a couple of times." Defendant knew that Mr. Martin had gotten in a "little trouble" for killing his girlfriend.

When Det. Frias asked Defendant whether he had a sexual relationship with Ms. Wright, Defendant told the detective they had been intimate one time. Detective Frias pressed Defendant for more information about the relationship, suggesting that their sexual relationship may have been more involved, but Defendant did not respond. Defendant told the detective he did not recall his whereabouts at the time of the victim's death, and claimed that he may have been with his sister, but he was unsure of his exact location. When the detective questioned Defendant about his car being seen in front of Ms. Wright's house the morning after the victim was killed, Defendant had no verbal answer, but "dropped his head and "put[] his head down" when asked this question.

Detective Frias testified that he showed Defendant photo arrays containing pictures of Mr. Martin and Ms. Wright. Defendant did not identify these persons at first but did so

once the detective confronted Defendant about lying. The detective asked Defendant about business cards and the victim, an apparent reference to the text message, "Imma need my commission. Ren want you to bring your cards in the a.m. before he fly out. You owe me, boy." Defendant visibly reacted, and "shook his head up and down in agreement with that." Detective Frias showed Defendant a picture of the 9 mm handgun retrieved from the lake, and the detective described Defendant's manner quickly changed: "[I]t was like seeing a ghost. [Defendant] got, like, real nervous, and you could see his entire demeanor and body language change. You could actually see his heartbeat through his shirt." Defendant admitted that he had handled guns before and owned a .38 caliber revolver and a shotgun, but he was unsure whether he had handled the gun depicted in the photograph. Defendant also claimed Ms. Wright owned a .38 caliber handgun, but it had been stolen from her car before the murder.

During the December 2017 interview, Defendant denied any involvement in killing the victim or conspiring with Ms. Wright and Mr. Martin to plan the killing. Defendant claimed he had last seen Ms. Wright a couple of weeks before the interview, when she had "randomly showed up" at Defendant's church. Detective Frias confronted Defendant with a text message sent by Ms. Wright from another person's phone in which Ms. Wright asked to meet with Defendant, and the detective told Defendant that police had observed a meeting between Defendant and Ms. Wright. Defendant did not respond to the detective's comments. The detective then confronted Defendant with Mr. Martin's statement to police, to which Defendant replied that he had driven Ms. Wright to Batesville after the victim's death. Defendant claimed that Ms. Wright told him that she needed a metal detector because she had lost a diamond ring and needed to find it. Defendant also acknowledged visiting Atlanta before the victim's death, but told Det. Frias that he was visiting relatives and that Mr. Martin was in Atlanta by coincidence. But when Det. Frias asked Defendant for the names and phone numbers of the relatives, Defendant could not provide this information. Shortly after this exchange, Defendant ended the interview by invoking his right to counsel. Detective Frias explained that because the interview ended during the oral question-and-answer phase, no written statement memorializing the interview was prepared. Instead, Det. Frias prepared a supplement to memorialize the interview which the detective used to refresh his recollection during his testimony.

Michael Gipson testified that he was a lifelong friend of the victim. At the time of the victim's death, the victim and Mr. Gipson were roommates in a condominium in Smyrna, Georgia. They moved into the condominium in April 2010, and Mr. Gipson left after the victim was killed. Mr. Gipson said that if anyone saw a bald man lying on the couch inside the condo, he would be that person. Mr. Gipson testified that in June 2010, the victim told him that Ms. Wright had visited the condo and that Mr. Gipson had "just missed" her. Mr. Gipson later spoke with Ms. Wright who said she had "checked out" or

"scoped out" the area. The witness claimed Ms. Wright told him, "Y'all got a nice little spot[.]" Mr. Gipson said he never met Mr. Martin.

MPD Lieutenant Brian Beasley was part of Operation Rebound. On June 5, 2018, he learned that Earl Smith, Defendant's cousin, had "dragged" Defendant's gray Dodge Stratus from a rural area and loaded it onto a trailer to scrap it. However, a neighbor had persuaded Mr. Smith to call the police about the car. Lieutenant Beasley testified he met Mr. Smith at Mr. Smith's house and took Defendant's car to an MPD impound lot. Upon searching the Dodge's trunk, police recovered red-handled wire cutters, about seventeen shotgun shells, and paperwork, including a bill of sale that showed Defendant owned the car.

The gray Dodge the lieutenant recovered was consistent with the description of the vehicle provided by Mr. Martin. Lieutenant Beasley acknowledged, however, that while Mr. Martin had described red-handled wire cutters, the tool found in the trunk of Defendant's car was smaller than that depicted in Mr. Martin's description. Forensic testing attempted to link the wire cutters to barbed wire fencing found near the victim's body, but such testing proved inconclusive. Forensic testing was also conducted on certain stains inside the car but yielded no usable results.

Turning to his other involvement in the investigation, Lt. Beasley testified that wiretaps were placed on Defendant's and Ms. Wright's phones after the gun was found in the Mississippi lake. After the media publicized the gun's recovery, Ms. Wright contacted Defendant on another person's phone after she traveled from California to Memphis. They arranged to meet at Janice Taylor's house. Memphis police observed the meeting between Ms. Wright and Defendant, but because there was no audio surveillance, the police did not know what they discussed.

Another MPD detective and MGU member, whose name appears in the record, but who will not be identified here because of his routine undercover work, testified that on November 12, 2017, he was conducting surveillance on Defendant and Ms. Wright. This MGU detective knew, based on information obtained from a wiretap, that Defendant and Ms. Wright were planning to meet at a particular Shelby County location. The detective and other officers surveilling the co-defendants stayed nearby in unmarked police cars. Defendant and Ms. Wright met at the arranged meeting place and were seen walking up and down the street and talking for around thirty-five minutes. Photographs the detective took of the two as they spoke were introduced into evidence at trial.

Defendant's sole witness was Jennifer Bogan. Ms. Bogan testified that on July 17, 2010, she had a cookout at her residence. Because she had leftover food, she invited members of her church to her house to eat the next day. Ms. Bogan testified Defendant

arrived at her house between 2:00 and 3:00 p.m. on July 18, and several persons at her house interacted with him. She also claimed Defendant stayed into the evening to help her clean up, and she also testified Defendant was one of the last persons to leave the house. She said Defendant left around 10:00 that evening, but she did not know where Defendant went after he left. Ms. Bogan testified she knew Ms. Wright, but she was not at the house on July 18.

After deliberations, the jury found Defendant guilty as charged on all three counts. The State filed no notice for enhanced punishment on the first degree murder charge. The trial court imposed a life sentence on the murder charge, and twenty-five-year sentences for the Class A felony convictions for attempted first degree murder and conspiracy to commit first degree murder. The trial court ordered the two twenty-five-year sentences to be served concurrently with each other, but consecutively to the life sentence. Further, the trial court ordered Defendant to serve his sentence in this case consecutively to a previously-imposed sixteen-year sentence for possession of a firearm by a convicted felon, for an effective total sentence of life plus forty-one years. This timely appeal followed.

II. Analysis

A. Trial Court's Refusal to Admit Recorded Conversation to Impeach Witness

Defendant contends the trial court erred by refusing to allow defense counsel to present an audio recording of a phone conversation between Ms. Wright and Ms. Robinson. Defendant contends the conversation was admissible as a prior inconsistent statement, and the trial court's exclusion of the evidence denied Defendant the opportunity to impeach Ms. Robinson. The State contends that the issue is waived, as Defendant did not include the phone call in the record on appeal. Alternatively, the State contends that the trial court properly excluded the phone call, as Defendant has not identified "any specific statement made at trial that is inconsistent with a statement made in a recorded phone call." We agree with the State that this issue has been waived.

During Ms. Robinson's cross-examination, the following exchange occurred between defense counsel and the witness:

> Q: Do you remember . . . when you had these calls with your—when you said you were leaving the police station, do you remember having a call with Sherra? Do you remember calling Sherra?
>
> A: Per their request, yes.
>
> Q: Okay. Do you remember the conversation that you had with her?

A: I don't. I had several conversations with her per their request.

Q: If you heard it, would it jog your memory some?

A: Probably.

Q: Would you know your voice if you heard it?

A: Of course.

Q: When you heard it with—did you listen to it with [the State]?

A: I did not.

In a bench conference, defense counsel then announced his intent to impeach Ms. Robinson using a recorded conversation between Ms. Wright and Ms. Robinson. The trial court prevented defense counsel's attempts to introduce the recorded calls because the proof reflected that Ms. Robinson could not recall the content of the calls in their entirety rather than specific statements made within the calls. The trial court said:

> [Defense counsel], it has to be specific statements that you believe that she is testifying in court that is inconsistent with previously written or recorded statements. And, again, those are very narrow rules, and 613 says it shall not be admitted, extrinsic proof, unless those things happen, and not admissible, and she has to be given afforded an opportunity to explain or deny those statements.
>
> And, again, I don't know what the statements are because I haven't heard anything that says, "You told the police this, and you're saying something in court that is different today." The only thing that she is saying is that, "I made these calls because the police gave me a script. They asked me to ask certain questions, and I don't remember all the questions the police asked me to ask Sherra Wright."

Defendant did not make an offer of proof of the recordings for the record.

"Extrinsic evidence of a prior inconsistent statement is not admissible unless and until the witness is afforded an opportunity to explain or deny the same." Tenn. R. Evid. 613(b); *see also State v. Martin*, 964 S.W.2d 564, 567 (Tenn. 1998) (stating that "extrinsic evidence remains inadmissible until the witness either denies or equivocates as to having made the

prior inconsistent statement"). "Extrinsic evidence of a prior inconsistent statement remains inadmissible when a witness unequivocally admits to having made the prior statement" because "[t]he unequivocal admission of a prior statement renders the extrinsic evidence both cumulative and consistent with a statement made by the witness during trial." *Martin*, 964 S.W.2d at 567. Conversely, extrinsic evidence of a prior inconsistent statement is admissible if the witness denies making the statement, equivocates about having made the statement, or testifies that he or she does not recall making the prior inconsistent statement." *Id.* (citing *State v. Kendricks*, 947 SW.2d 875, 881 (Tenn. Crim. App. 1996)).

When Defendant objected, Ms. Robinson had not denied making, or equivocated about making, specific comments that could have been inconsistent with her trial testimony. Yet the primary issue is that the purported phone calls between Ms. Wright and Ms. Robinson do not appear in the record on appeal, so Defendant cannot establish the existence of any prior inconsistent statements which could have impeached Ms. Robinson.[1] There are no such statements in the record for us to review. *See* Tenn. R. Evid. 103(a). "[I]n the absence of an adequate record, this court must presume the trial court's ruling was correct." *State v. Worthington*, No. W2018-01040-CCA-R3-CD, 2019 WL 2067926, at *6 (Tenn. Crim. App. May, 8 2019) (citing *State v. Richardson*, 875 S.W.2d 671, 674 (Tenn. Crim. App. Sept. 15, 1993)). Thus, without proof of such statements, we cannot conclude the trial court prejudiced Defendant by excluding the statements from trial. The issue is waived, and Defendant is therefore not entitled to relief on this issue.

B. State's Leading Questions

Defendant next contends the trial court erred by allowing the State to ask leading questions of Sgt. Evans during his testimony on cellular phone evidence. Defendant argues the State's leading questions "suggested answers for the witness." The State contends the trial court did not abuse its discretion in overruling Defendant's objection to these questions. We agree with the State.

During Sgt. Evans' redirect examination, the State asked about what was referenced during cross-examination as "duplicate calls," or as the prosecutor described during a question on redirect, "[W]hat appears to be a phone call and then maybe during the duration of that phone call, a second call between the same people[.]" Sergeant Evans replied, in

[1] During the jury-out hearing, defense counsel claimed that during one phone call, Ms. Robinson and Ms. Wright discussed several of Ms. Wright's supposed romantic interests, and Defendant was not included in the list of Ms. Wright's paramours. However, Ms. Robinson testified that she did not tell the police in 2016-17 that Ms. Wright and Defendant were romantically involved, so the jury was already aware that her testimony regarding the relationship between Defendant and Ms. Wright was inconsistent with her earlier statements concerning the victim's death.

relevant part, "It's not truly a duplicate call. . . . [S]ometimes, the cell phone carriers, they show duplicate records. We have one carrier that constantly shows duplicate records, so it's with the carrier." The following exchange then took place:

Q:	And I think on some of the duplicate records that you looked at with [defense counsel], they would show different towers. Is that correct?
A:	They shouldn't, no, sir. I believe—
Q:	I think they would. I think if you look at—
A:	They could have.
Q:	—some of the ones we went over earlier—
Defense Counsel:	Objection, Your Honor.
Trial Court:	Yes, sir.
Defense Counsel:	He's leading. He's leading, and he's suggesting the answer. He said, "I don't think that they would necessarily."
Trial Court:	That's the answer, and what [the prosecutor] is doing is getting a clarification because [he] remembers—and I can't comment on what was said—is that he believes there may have been instances that were asked that showed duplicate records on different towers, so he's asking [Sgt. Evans] to clarify that. And, if it isn't, he'll say there isn't.

After this exchange and upon further questioning, Sgt. Evans acknowledged that certain phone records from near the time of the victim's death appeared to show a "duplicate call . . . showing different towers." Sergeant Evans said that in the case of records showing apparent duplicate phone calls, he would examine the raw phone data to "verify" a particular call. When asked about whether the records showed "any duplicate calls at the critical time of the homicide with different cell towers showing on them," Sgt. Evans replied, "No, sir[.]"

The trial court has wide discretion in controlling the presentation of evidence. *See* Tenn. R. Evid. 611(a). Accordingly, this court reviews a trial court's decision on the presentation of evidence under an abuse of discretion standard. *State v. Caughron*, 855 S.W.2d 526, 540 (Tenn. 1993). "A trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party." *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010).

Leading questions are permitted on direct examination if "necessary to develop the witness's testimony." Tenn. R. Evid. 611(c)(1). Here, the brief leading questions from the State were used to develop Sgt. Evans' earlier testimony about "duplicate phone calls." Sergeant Evans was then able to explain to the jury that the term represented duplicate records of a phone call as memorialized by the phone carrier rather than multiple phone calls. The State's use of leading questions under these circumstances was proper, and the trial court did not abuse its discretion in allowing the State the limited opportunity to ask leading questions. Defendant is not entitled to relief on this issue.

C. State's "Speaking Objection"

Defendant next argues he was prejudiced by what he claims was a "speaking objection" by the State during the cross-examination of Mr. Martin. The State contends that the trial court did not abuse its discretion regarding the State's objection, nor has Defendant shown how the objection prejudiced him. We agree with the State.

The record reflects that on direct examination, Mr. Martin testified that during his initial May 2010 meeting with Ms. Wright in Mississippi, she told Mr. Martin that the victim "needed somebody to take care of his Rottweilers." Mr. Martin also testified that the victim had earlier contacted him about "train[ing] his Rottweilers the same way I trained my dog." On cross-examination, this exchange occurred:

Defense Counsel: But, when you previously talked to the detectives, the only thing you said about a dog was that, "Previously, when she had come down, she wanted me to watch dogs," about a month – I mean, about a year earlier, but you didn't say anything about keeping [the victim's] dogs or anything like that during either of the three previous interviews. Right?

Prosecutor: Your Honor, again, I think he needs to be—was he asked about –did they ask you about training the Rottweilers, and the answer to that question is, no, they

> didn't, so, I mean, I don't understand this to be impeachment. I think this is [defense counsel] reading—

Defense counsel, after requesting a bench conference, objected on the grounds that the State was making an improper "speaking objection" in which the prosecutor was "guiding the answer to [defense counsel's] questions[.]" The trial court did not explicitly sustain or overrule the objection, but stated that the witness "wasn't asked [about training dogs] in the statement, and he can't provide a statement if he wasn't specifically asked about that subject." After the bench conference ended, defense counsel did not ask other questions about whether Mr. Martin had told police about the request to train the victim's dogs.

There is no explicit prohibition against speaking objections under Tennessee law, but as the State notes in its brief, the Rules of Evidence state, "In jury cases, proceedings shall be conducted to the extent practicable so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury." Tenn. R. Evid. 103(c). In the current case, we fail to see how the State's objection constituted the improper introduction of evidence or otherwise prejudiced Defendant. Even if the trial court's response to the State's objection prevented defense counsel from asking one impeaching question of Mr. Martin, defense counsel was still able to impeach Mr. Martin extensively during the rest of counsel's cross-examination. Accordingly, Defendant is not entitled to relief on this issue.

D. Venue for Attempted First Degree Murder Case

Defendant contends Shelby County was not the proper venue in which to try him for attempted first degree murder because the "alleged relevant conduct and substantial steps took place in Atlanta, Georgia." The State responds that "the trial court had jurisdiction to hear the [attempted first degree murder] case and venue was proper." We agree with the State.

Article I, section 9 of the Tennessee Constitution provides that the accused "in all criminal prosecutions" has the right to "a speedy public trial, by an impartial jury of the County in which the crime shall have been committed[.]" (capitalization in original); *see also* Tenn. R. Crim. P. 18(a) ("Except as otherwise provided by statute or by these rules, offenses shall be prosecuted in the county where the offense was committed."). "Proof of venue is necessary to establish the jurisdiction of the court, but it is not an element of any offense and need only be proven by a preponderance of the evidence." *State v. Hutcherson*, 790 S.W.2d 532, 535 (Tenn. 1990); *see also* Tenn. Code Ann. § 39-11-201(e) ("No person may be convicted of an offense unless venue is proven by a preponderance of evidence.") The evidence presented by the State to establish venue "may be direct, circumstantial, or a

combination of both." *State v. Smith*, 926 S.W.2d 267, 269 (Tenn. Crim. App. 1995). "Venue is a question for the jury[.] . . . In determining venue, the jury is entitled to draw reasonable inferences from the evidence." *State v. Young*, 196 S.W.3d 85, 101-02 (Tenn. 2006). "Importantly, where different elements of the same offense are committed in different counties, 'the offense may be prosecuted in either county.'" *Id.* at 102 (quoting Tenn. R. Crim. P. 18(b)).

Although not raised by Defendant, in its brief the State addresses whether the Criminal Court for Shelby County possessed territorial jurisdiction. "[B]efore a court may exercise judicial power to hear and determine a criminal prosecution, that court must possess three types of jurisdictions: jurisdiction over the defendant, jurisdiction over the alleged crime, and territorial jurisdiction." *State v. Legg*, 9 S.W.3d 111, 114 (Tenn. 1999). "The basic requirement that a court possess territorial jurisdiction, which recognizes the power of a state to punish criminal conduct within its borders, is imbodied in the constitutional right to a trial 'by an impartial jury of the county in which the crime shall have been committed.'" *Id.* (first quoting Tenn. Const. art. I, § 9; and then citing U.S. Const. amend. VI). Territorial jurisdiction must be established beyond a reasonable doubt. *See State v. Beall*, 729 S.W.2d 270, 271 (Tenn. Crim. App. 1986).

In *Legg*, the Tennessee Supreme Court concluded that "when an offense is continuing in nature and has continued into Tennessee from another state, the offense is deemed to have both commenced and consummated anew in Tennessee so long as *any* essential element of the offense continues to be present in Tennessee." 9 S.W.3d at 116 (emphasis added). Logically, then, the converse is true: for a continuing offense commencing in Tennessee but consummated in another state, territorial jurisdiction will lie in Tennessee as long as an essential element was present in Tennessee. "An offense may be considered a continuing offense only when 'the explicit language of the substantive criminal statue compels such a conclusion, or the nature of the crime involved is such that [the legislature] must assuredly have intended that it be treated as a continuing one.'" *Id.* (quoting *Toussie v. United States*, 397 U.S. 112, 115 (1970)). In determining whether an offense constitutes a continuing offense, the reviewing court "will look to the statutory elements of the offense and determine whether the elements of the crime themselves contemplate a continuing course of conduct." *Id.*

Here, count 3 of the indictment, charging Defendant and Ms. Wright with attempted first degree murder, alleged that the co-defendants:

> [D]id unlawfully attempt to commit the offense of First Degree Murder, as defined in T.C.A. 39-13-202, in that they did unlawfully, intentionally and with premeditation attempt to kill [the victim]. The said BILLY TURNER and said SHERRA WRIGHT did meet and agree to kill [the victim] and did

> take substantial steps toward the completion of this crime by acquiring firearms to commit the act, recruiting an unindicted co-conspirator to help and, on the part of said BILLY TURNER, traveling to and entering [the victim's] home outside of Atlanta, Georgia, to commit said criminal offense. While this offense was committed in part in other jurisdictions, it began in Shelby County, Tennessee, all in violation of T.C.A. 39-12-101, against the peace and dignity of the State of Tennessee.

(emphasis in original).

In charging the jury, the trial court issued the following instruction on attempted first degree murder:

> For you to find the defendant guilty of this offense, the State must have proven beyond a reasonable doubt the existence of the following essential elements:
>
> (1) that the defendant, or one for whom the defendant is criminally responsible, intended to commit First Degree Murder of [the victim]; and
>
> (2) that the defendant, or one for whom the defendant is criminally responsible, did some act intending to complete a course of action or cause a result that would constitute First Degree Murder under the circumstances as the defendant believed them to be at the time, and his actions constituted a substantial step toward the commission of First Degree Murder. The defendant's actions do not constitute a substantial step unless the defendant's entire course of action clearly shows his intent to commit First Degree Murder.

Defendant argues the only "substantial steps" which could constitute attempted first degree murder were "approaching the apartment [sic], opening the window, entering through that window, and looking for Mr. Wright with guns." These events were substantial steps, and they took place in Georgia. That said, the attempted first degree murder of the victim was a continuing course of conduct that began in Shelby County, Tennessee, with Defendant and Ms. Wright twice meeting to plan the victim's murder—meetings which were confirmed through the testimony of Mr. Martin and Ms. Robinson. After one of the meetings, Ms. Wright—for whose actions Defendant was criminally responsible—provided Mr. Martin with Defendant's car, guns, and money to carry out the offense. Additionally, Ms. Wright phoned Mr. Martin from Shelby County twice to instruct Mr. Martin to kill the victim in Atlanta; on the second occasion, she and Defendant

drove from Shelby County to Mr. Martin's home in Mississippi, before Defendant and Mr. Martin drove to the victim's Georgia condominium.

Based on the above evidence, the jury could reasonably conclude beyond a reasonable doubt that those actions of Defendant—and those of Ms. Wright and Mr. Martin, for whom Defendant was criminally responsible—were the first in a continuing series of substantial steps which ended with Defendant and Mr. Martin entering the victim's Georgia condominium. Therefore, the Shelby County Criminal Court had territorial jurisdiction over the attempted first degree murder case, and Shelby County was a proper venue for the trial on that charge. Defendant is not entitled to relief on this issue.

E. Sufficiency of the Evidence

Defendant contends the evidence was insufficient to sustain his convictions. We disagree.

The standard of review of a claim challenging 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) (citing *Johnson v. Louisiana*, 406 U.S. 356, 362 (1972)); *see* Tenn. R. App. P. 13(e); *State v. Davis*, 354 S.W.3d 718, 729 (Tenn. 2011). This standard of review is identical whether the conviction is predicated on direct evidence or circumstantial evidence, or a combination of both. *State v. Williams*, 558 S.W.3d 633, 638 (Tenn. 2018) (citing *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011)). "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).

A guilty verdict removes the presumption of innocence and replaces it with one of guilt on appeal, therefore, the burden is shifted to the defendant to prove why the evidence is insufficient to support the conviction. *Davis*, 354 S.W.3d at 729 (citing *State v. Sisk*, 343 S.W.3d 60, 65 (Tenn. 2011)). On appeal, "we afford the prosecution the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences which may be drawn therefrom." *Id.* at 729 (quoting *State v. Majors*, 318 S.W.3d 850, 857 (Tenn. 2010)); *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). In a jury trial, questions involving the credibility of the witnesses and the weight and value to be given to evidence, as well as all factual disputes raised by such evidence, are resolved by the jury as the trier of fact. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *State v. Pruett*, 788 S.W.2d 405, 410 (Tenn. 1990). Therefore, we are precluded from re-weighing or reconsidering the evidence when evaluating the convicting proof. *State v. Stephens*, 521 S.W.3d 718, 724 (Tenn. 2017).

1. First Degree Murder

Defendant was charged with and convicted of first degree murder. Defendant does not appear to contest that the victim died as the result of an intentional and premeditated killing. Rather, Defendant argues there was "no proof" that he killed the victim. He asserts there was "no direct testimony that placed [Defendant] on the scene the night of the murder." He claims the only evidence against him came from the testimony of Mr. Martin, "who gave conflicting testimony and was impeached, and circumstantial evidence based on phone location information."

As charged, "first degree murder is: [a] premeditated and intentional killing of another[.]" Tenn. Code Ann. § 39-13-202(a)(1). A person acts intentionally "when it is the person's conscious objective or desire to engage in the conduct or cause the result." *Id.* § 39-11-302(a). Premeditation is defined in Tennessee Code Annotated section 39-13-202(e) as:

> An act done after the exercise of reflection and judgment. "Premeditation" means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill preexist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

"The element of premeditation is a factual question to be decided by a jury from all the circumstances surrounding the killing." *State v. Jackson*, 173, S.W.3d 401, 408 (Tenn. 2005) (citing *State v. Davidson*, 121 S.W.3d 600, 614 (Tenn. 2003)). The jury "may infer premeditation from the manner and circumstances of the killing." *Id.* (citing *Bland*, 958 S.W. 2d at 660). Among the circumstances that may support a finding of premeditation are:

> [E]vidence of procurement of a weapon, the use of a deadly weapon upon an unarmed victim, the particular cruelty of the killing, infliction of multiple wounds, preparation before the killing for concealment of the crime, destruction or secretion of evidence of the murder, and calmness immediately after the killing.

Id. at 409 (quoting *State v. Nichols*, 24 S.W.3d 297, 302 (Tenn. 2000)). "If the killing is accomplished by . . . lying in wait, premeditation is obvious." *State v. Bullington*, 532 S.W.2d 556, 560 (Tenn. 1976). Additionally, a jury may infer premeditation from a lack

of provocation by the victim and the defendant's failure to aid the victim. *See State v. Lewis*, 36 S.W.3d 88, 96 (Tenn. Crim. App. 2000).

Given Mr. Martin's criminal history and his involvement in the plot to kill the victim, Defendant correctly argues there were credibility concerns associated with Mr. Martin's testimony. However, these were matters for the jury to decide. Through its verdict, the jury credited the testimony of Mr. Martin despite these issues. The verdict reflects the jury also found credence in Sgt. Evans' testimony. We will not disturb those determinations on appeal.

In reviewing the evidence in the light most favorable to the State, Defendant, along with Ms. Wright and Mr. Martin, took part in planning and executing the victim's murder. Both Ms. Robinson and Mr. Martin testified that Defendant was present at two separate meetings at which Ms. Wright expressed her desire to have the victim killed. Before the victim's death, Defendant and Mr. Martin went to Atlanta to kill the victim, but the victim was not home when the two men arrived. In the early morning hours of July 19, 2010, Defendant's and the victim's cellular phone both made calls from the same cell-phone tower near the wooded area in which the victim's body was recovered—the victim's 911 call was placed at 12:12 a.m., and the Defendant placed a call two minutes later. After the murder, Ms. Wright told Mr. Martin how she had led the victim to Callis Cut Off Road in an attempt to "see someone about some money" before she and Defendant ambushed and killed the victim. After the victim was dead, Defendant, Ms. Wright, and Mr. Martin went to the field where the victim was killed to retrieve the 9 mm handgun and cut barbed wire the victim may have jumped over during the killing. Defendant and Mr. Martin disposed of this evidence, with Defendant and Mr. Martin driving to a Mississippi lake and Defendant throwing the 9 mm handgun into the lake. After FBI divers recovered the gun from the lake, TBI forensic testing matched it with 9 mm bullet casings and two 9 mm hollow-point bullets found at the crime scene.

This evidence was sufficient to establish beyond a reasonable doubt that Defendant was directly involved in the planning and execution of the victim's death. The evidence was sufficient for the jury to conclude beyond a reasonable doubt that Defendant shot the victim and later attempted to hide or destroy evidence of the victim's murder, which was intentional and premeditated. Defendant is not entitled to relief on this issue.

2. Conspiracy to Commit First Degree Murder

Defendant was charged and convicted of conspiracy to commit first degree murder. Defendant's main argument appears to be that his conviction was based on the testimony of an accomplice, Mr. Martin, and there was insufficient evidence to corroborate his testimony. We disagree.

A conspiracy exists when:

> [T]wo (2) or more people, each having the culpable mental state required for the offense that is the object of the conspiracy, and each acting for the purpose of promoting or facilitating commission of an offense, agree that one (1) or more of them will engage in conduct that constitutes the offense.

Tenn. Code Ann. § 39-12-103(a). "No person may be convicted of conspiracy to commit an offense, unless an overt act in pursuance of the conspiracy is alleged and proved to have been done by the person or by another with whom the person conspired." *Id.* § 39-12-103(d).

"Conspiracy is a continuing course of conduct that terminates when the objectives of the conspiracy are completed or the agreement that they be completed is abandoned by the person and by those with whom the person conspired." *Id.* § 39-12-103(e)(1). "The objectives of the conspiracy include, but are not limited to, escape from the crime, distribution of the proceeds of the crime, and measures, other than silence, for concealing the crime or obstructing justice in relation to it." *Id.*

The essential feature of a conspiracy is the agreement or understanding to accomplish a criminal or unlawful act. *See State v. Pike*, 978 S.W.2d 904, 915 (Tenn. 1998). "[T]he agreement need not be formal or expressed, and it may be proven by circumstantial evidence." *Id.* at 915 (internal citation omitted). "The unlawful confederation may be established by circumstantial evidence and the conduct of the parties in the execution of the criminal enterprise. Conspiracy implies concert of design and not participation in every detail of execution." *Randolph v. State*, 570 S.W.2d 869, 871 (Tenn. Crim. App. 1978).

At trial, the court instructed the jury that Mr. Martin was an accomplice to attempted first degree murder and conspiracy to commit first degree murder. "Evidence is insufficient to sustain a conviction if it is solely based upon the uncorroborated testimony of accomplices." *State v. Little*, 402 S.W.3d 202, 211-12 (Tenn. 2013) (citations omitted). However, "'[o]nly slight circumstances are required to corroborate an accomplice's testimony.'" *State v. Fusco*, 404 S.W.3d 504, 524 (Tenn. Crim. App. 2012) (quoting *State v. Griffis*, 964 S.W.2d 577, 589 (Tenn. Crim. App. 1997)). "The corroborating evidence is sufficient if it connects the accused with the crime in question." *Griffis*, 964 S.W.2d at 577. While only "slight" evidence is needed to corroborate an accomplice's testimony, "[e]vidence which merely casts a suspicion on the accused or establishes he or she had an opportunity to commit the crime in question is inadequate to corroborate an accomplice's testimony." *Id.* "Also, evidence that the accused was present at the situs of the crime and had the opportunity to commit the crime is not sufficient." *Id.*

Much of the evidence connecting Defendant to the victim's murder was presented through the testimony of Mr. Martin, who the trial court properly determined to be an accomplice. Even so, sufficient evidence existed to corroborate Mr. Martin's testimony. Ms. Robinson testified about the meetings involving Ms. Wright and Defendant at which the plans to kill the victim were discussed. Investigators identified the text message from Ms. Wright to Defendant the night of July 18 in which she told Defendant "Imma need my commission. . . . You owe me, boy." Cell-phone records show 186 calls placed between Defendant's and Ms. Wright's phones between July 5 and August 5, 2010. Sergeant Evans' testimony established Defendant's cell phone was in the same area as the victim's shortly after the victim dialed 911, as Defendant's phone was used two minutes after the 911 call. Furthermore, FBI divers located the 9 mm handgun in the Mississippi lake where Mr. Martin led them. This handgun was connected to bullets and shell casings left at the crime scene. Also, consistent with Mr. Martin's testimony, red-handled wire cutters were found in Defendant's car. This evidence was sufficient to corroborate Mr. Martin's testimony, and the proof was sufficient to find Defendant guilty of conspiracy to commit first degree murder beyond a reasonable doubt. Defendant is not entitled to relief on this issue.

3. Attempted First Degree Murder

Finally, Defendant was charged and convicted of attempted first degree murder. As with conspiracy to commit first degree murder, Defendant contends the proof was insufficient to corroborate Mr. Martin's testimony. We disagree.

As relevant to this case:

> (a) A person commits criminal attempt who, acting with the kind of culpability otherwise required for the offense:
>
> . . . .
>
> (3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.
>
> (b) Conduct does not constitute a substantial step under subdivision (a)(3), unless the person's entire course of action is corroborative of the intent to commit the offense.

Tenn. Code Ann. §§ 39-12-101(a)(3), (b).

As with the conspiracy conviction, much of the evidence of Defendant's attempted first degree murder conviction came from Mr. Martin's testimony. For instance, Mr. Martin testified that he met with Defendant and Ms. Wright to discuss the victim's murder, that Ms. Wright instructed him and Defendant to drive to the victim's condominium to kill the victim, and that he and Defendant drove to the condominium, armed themselves, entered through a window Ms. Wright had left unlocked, and searched the condo for the victim, only to leave once they realized the victim was not there. However, Ms. Robinson testified that she was present at two meetings at which Ms. Wright and Defendant discussed killing the victim. She testified that at the second meeting, Mr. Martin was there for the discussion. Mr. Martin testified that at the second meeting, killing the victim in Atlanta was discussed as a possibility.

Although such evidence may be "slight," as stated above, only slight corroboration of an accomplice's testimony is necessary to sustain a defendant's conviction. Given this corroboration of Mr. Martin's testimony, we conclude the evidence was sufficient to find Defendant guilty of attempted first degree murder beyond a reasonable doubt. Defendant is not entitled to relief on this issue.

III. Conclusion

For the above-stated reasons, the judgments of the trial court are affirmed.

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MATTHEW J. WILSON, JUDGE