

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs March 7, 2023

FILED

07/28/2023

Clerk of the
Appellate Courts

**STATE OF TENNESSEE v. CEDEDRICK IVORY A/K/A CEDERICK
IVORY**

**Appeal from the Criminal Court for Shelby County
No. C2002058, 20-01006 J. Robert Carter, Jr., Judge**

No. W2022-00843-CCA-R3-CD

The Defendant-Appellant, Cededrick Ivory, was indicted by a Shelby County Grand Jury for first-degree premeditated murder in the shooting death of Anthony Travis (count one), the attempted first-degree murder of Malik Muhammad (count two), and unlawful employment of a firearm during the commission of first-degree murder (count three). Prior to trial, the State dismissed counts two and three. The Appellant was convicted as charged by a Shelby County jury of first-degree premeditated murder (count one) and sentenced to life in prison. In this appeal as of right, he raises the following issues for our review: (1) whether the evidence is sufficient to support his conviction of first-degree premeditated murder; (2) whether the trial court erred in refusing to instruct the prosecutor to correct the testimony of a state witness; and (3) whether the trial court erred in excluding the dates of prior charged offenses during the cross-examination of two state witnesses.¹ Upon our review, we must remand this case for entry of separate judgment forms reflecting a dismissal of counts two and three. In all other respects, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed
and Remanded for Entry of Judgments on Dismissed Counts**

CAMILLE R. McMULLEN, P.J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and ROBERT H. MONTGOMERY, JR., JJ., joined.

Phyllis Aluko, Shelby County District Public Defender; Barry W. Kuhn (on appeal), Samuel Christian (at trial), and Jennifer H. Case (at trial), Assistant District Public Defenders, for the Appellant, Cededrick Ivory.

¹ We have reordered the Appellant's issues for clarity.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Neil Umsted, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

Trial. On December 11, 2019, the victim, Anthony Travis was shot to death outside of the James Lounge, a nightclub in Memphis, Tennessee. The following proof was adduced at the Appellant’s trial, which occurred April 18 through 21, 2022.

Memphis Police Department (MPD) dispatch had relayed to Officer Anthony Henderson, the first officer to arrive on the scene at the nightclub, that a nineteen-year-old male had been shot by a suspect wearing all black clothing and a ski mask, that at least thirty shots had been fired, and persons were actively shooting. Upon arrival, Officer Henderson observed “pandemonium, chaos” with approximately one hundred people “screaming, running, yelling,” and cars “flying.” He approached the front door of the lounge and located the victim lying on his back. There was a crowd around the victim and a woman was draped over him screaming and applying pressure to the victim’s wound. While on the scene, Officer Henderson heard numerous calls from dispatch reporting additional shooting victims and a car accident up the road from the lounge. A portion of Officer Henderson’s body camera footage was played for the jury and admitted into evidence.

On cross-examination, Officer Henderson clarified that he did not respond to the additional reports of shooting victims or the car accident. Asked whether he was looking for the suspect described by dispatch as a black male wearing all black and a black mask, Officer Henderson responded, “yes and no.” Officer Henderson explained that once he located the victim, he turned his focus to rendering aid because he did not hear any gunshots or see anyone with a gun.

Officer Vanessa Thayer of the MPD responded to the shooting call on the night of the offense and, upon her arrival, observed “complete chaos.” She was advised that a shooting victim was located towards the Pope area, the street directly west of Summer near the nightclub. Officer Thayer located a shooting victim, whom she identified as Malik Muhammad, a black, nineteen-year-old male with a gunshot wound to his left torso area. Officer Thayer placed the letter “M” on a map of the area to show where she found Malik Muhammad in relation to the nightclub. A portion of Officer Thayer’s body camera footage which was played for the jury and admitted into evidence.

MPD Officer Valesha Jennings testified that on the night of the offense, she responded to a shooting call seven blocks away from the James Lounge at Guernsey and

Hudson. Officer Jennings located a black male suffering from a gunshot wound, whom she later identified as the Appellant. Although it was “freezing cold” outside, the Appellant was not wearing a jacket, and had on a short sleeve t-shirt and blue jeans. The Appellant told Officer Jennings that he had been shot at the James Lounge and that someone picked him up from the lounge and dropped him off at the apartment. A portion of Officer Jennings’s body camera footage was played for the jury and admitted into evidence. On cross-examination, Officer Jennings stated that she did not find a gray or black hoodie at the scene.

Sergeant Wayne Gillard of the MPD testified that on the night of the offense, he retrieved the Appellant’s clothing from the hospital. Two photographs of a pair of blue jeans and a pair of men’s underwear with what appeared to be blood were admitted into evidence. On cross-examination, Sergeant Gillard stated that he collected the Appellant’s clothing from hospital personnel, and he agreed that those were the only items of clothing he collected that belonged to the Appellant.

Sergeant Philip Perez, a crime scene investigator, responded to the scene on the night of the offense. At trial, he placed an “X” on a map of the area to mark the location of the James Lounge. Sergeant Perez described the building where the James Lounge was located as a “L-shaped building” with the western end running north and south and the northern end running east and west. The James Lounge was located in the corner where the two parts of the building met. Summer Avenue was located at the front of the building and Hillcrest was located on the east side of the building. There were three businesses on the east side of the building, and the James Lounge was located on the south side of the building.

When Sergeant Perez arrived, the crime scene was secured, and both Summer Avenue and Hillcrest were shut down. There were numerous cars in the parking lot with possible bullet defects, and the victim was lying in the corner where the two parts of the building met. Sergeant Perez picked up and tagged each piece of evidence. Evidence placards were used to mark where evidence was located and to document the number of pieces of evidence present. The State introduced Sergeant Perez’s sketch of the area, which indicated the location of the evidence collected and a “sketch key” that described each piece of evidence. Sergeant Perez located one .380 casing, twenty-two 5.56 rifle casings, six spent 9-millimeter casings, and seven spent .45 caliber casings. One .380 casing was found right in front of address 3174 Summer Ave., nearby the James Lounge at 3172 Summer Ave. All twenty-two of the 5.56 rifle casings were located on the east end of the building in front of addresses 3182 and 3178. Five spent 9-millimeter casings were found on the western side of the building in front of the James Lounge and one live 9-millimeter round was found at the east end of the building. Sergeant Perez took over two hundred photographs of the crime scene, and the State introduced eighteen of those photographs.

On cross-examination, Sergeant Perez clarified that he took pictures of thirty-two shell casings and seven cars with bullet defects. Two photographs of a white Toyota Corolla with the appearance of blood on the driver's side front door, front bumper, rear door, and rear window were admitted into evidence by defense counsel. Sergeant Perez agreed that the Toyota Corolla appeared to have been struck by gunshots five times.

Michael Harber, the custodian of recorded jail phone calls at the Shelby County Jail, testified that he worked for the Shelby County Sheriff's Office Homeland Security Division. The State requested access to the Appellant's jail phone calls, and Harber prepared a disc containing eleven of the Appellant's jail phone calls. Call number five, made by the Appellant on March 28, 2022, was played for the jury in its entirety.²

Makasha Pounder, the victim's mother, testified that the victim, Anthony Travis, was engaged to Denise Wilson and had a ten-year-old daughter at the time of trial. Shanquaneake Thompson testified that she and the victim, whom she also knew as "CT," had a close relationship and that the victim formerly lived with her. Thompson knew the Appellant and stated that the Appellant was also known as "Little Ced." She observed the Appellant and the victim interact with one another two or three times inside of her home.

Thompson explained that prior to the victim's death, the Appellant and the victim had a "dispute" with each other "when [the victim's] gun 'came up missing'" from her home. Thompson knew the victim owned a large gun because she had seen it in her home when she and the victim lived together. On November 23, 2019, Thompson, the Appellant and four other people, "Camirial," "Kendra," "Little Marcus," "Little Ty,"³ were the only people in her home when the gun disappeared. Asked to describe the circumstances, Thompson said that she and the others had been asleep and awoke to find the front door "wide open like somebody just walked in here and broke in." Thompson did not believe that anyone had broken into her home because everything including the television was still in place. However, the Appellant was no longer there, and the victim's gun was missing.

Thompson testified that the victim was upset that his gun went missing while he was not at Thompson's home and that the victim "was blaming it on everybody in the house." She agreed that there was an obvious disagreement between the victim and the Appellant leading up to the shooting. Thompson stated that the Appellant and the victim exchanged words about the missing gun in a group message where the victim questioned the Appellant about the whereabouts of his gun.

² Exhibit nineteen, the disc which contained eleven of the Appellant's recorded jail phone calls, was included in the record on appeal, but we were unable to listen to the audio associated with any of the calls because the audio format was inoperable.

³ No surnames were provided at trial for these individuals.

On the night of the offense, Thompson went to the James Lounge with the victim, “Camirial,” “Kendra,” Darren Askew, “Rah Rah,” “Love,” “Sedric,” and Malik Muhammed. The nine of them rode in two cars. The victim parked in the parking lot and Thompson parked on the backside of the lounge. As they were walking toward the lounge, Thompson stated that she saw “some dudes” ducking down in a car with the seats reclined and that, because of this, she no longer wanted to enter the lounge. Once they made it inside, Thompson stated that they were “feeling tension,” like people were looking at all of them. Thompson stated that Darren Askew and Frank Walls got into an argument inside the lounge about Askew’s girlfriend, and this argument eventually led to the parking lot. The State introduced three photographs of the outside of the James Lounge, which encompassed Thompson’s written statements identifying individuals in the photographs, including the Appellant and Frank Walls. Thompson saw the Appellant for the first time that night, standing behind Askew as Walls and Askew were arguing. Thompson agreed that the argument between Askew and Walls had nothing to do with the victim and the Appellant’s disagreement.

As Thompson was preparing to exit the lounge, the victim asked, “sister, y’all fixing to go [sic], we just got here.” Thompson responded, “yeah, because it’s too much going on, and we supposed to be watching your back[.]” Thompson saw the victim exit the lounge and attempt to stop Askew and Walls from arguing. Thompson did not see the victim with a gun that night. Thompson did see Walls with a gun. As everyone was standing outside, Thompson saw the victim look at the Appellant, smile, and say “I’m about to go back in the club.” Then, the Appellant turned around, put a hood on his head, and pulled a “chopper” out of his jacket. Thompson heard the Appellant state to Askew, “move I’m trying to hit my man” before the Appellant started shooting at the victim. Thompson saw the victim fall after he was shot. She stated that Malik Muhammed ran up to her and said “I’m shot. CT dead.” Thompson stated that she looked at the Appellant and told him he was wrong for shooting the victim. Thompson identified the Appellant as the shooter in a six-person photograph lineup, which was admitted as an exhibit.

Thompson testified that the “chopper” the Appellant used looked like the victim’s missing gun. A photograph of the victim holding the missing gun was admitted as exhibit two, and Thompson agreed that the gun the victim was holding in the photograph looked like the gun she saw the Appellant firing that night. Surveillance footage of the parking lot and surveillance footage of the front door of the lounge were admitted into evidence as exhibits six and seven respectively. In the surveillance footage of the parking lot, Thompson identified Tarshawn Gibson as wearing a green jacket and the victim as wearing brown pants. Thompson identified the Appellant shooting in the video and Frank Walls shooting in the air next to a truck.

On cross-examination, Thompson clarified that the Appellant reached out to her first on Facebook messenger and that she added the victim to the Facebook messenger conversation with the Appellant. Thompson stated that the Appellant asked whether she told people that he stole the victim's gun. Thompson stated that other individuals were in the group message. She clarified that these individuals were the victim's friends and were only in the group message the day the victim's gun went missing. Thompson agreed that individuals in the group message were making threats toward the Appellant and were upset with the Appellant because he stole the victim's gun. Thompson reiterated that the victim was not present in her home when his gun went missing.

Thompson clarified that on the night of the offense, the victim, "Kendra, her sister," "Camirial, her cousin," "Rah Rah, the victim's brother," Darren Askew, "Love, Malik and Sedric" were present at her home before they left to go to the James Lounge. She stated that they drank alcohol around 9 or 10 p.m. Thompson rode with "Kendra, Camirial, Rah Rah, and Darren Askew" in a white Lexus to the James Lounge. The victim, "Love, Malik and Sedric" rode together in Love's vehicle. They all arrived at the lounge around midnight.

Thompson clarified that she did not want to go out that night because the victim told her that he had previously gone to the James Lounge and seen the Appellant "spinning in the street with guns out the window[.]" She stated that she had stopped going out because the victim and the Appellant were arguing and making too many threats toward one another. Thompson clarified that everyone that went to the lounge together that night was supposed to watch each other's back because everyone knew about the disagreement between the victim and the Appellant and it was possible that the Appellant might be at the lounge.

Thompson stated that Tarshawn Gibson and Frank Walls had a gun that night. Thompson explained that the Appellant was the only person she saw shooting an assault rifle or a "long" gun. Thompson reiterated that she saw Frank Walls shooting a gun in the air. Thompson clarified that she did not see where the victim was shot, but she saw blood everywhere when the victim's brother turned him over. Thompson explained that "Love" went into the victim's pocket after the victim was shot to retrieve his car key and "Love" took the victim's phone and identification in the process. Thompson reiterated that the victim did not have a gun that night, and that the victim gave his gun to "Love" at her house before the group left to go to the lounge. Thompson, Camirial, Rah Rah, and Darren Askew went to Thompson's house after the shooting. Shortly after, they all went to Love's house, where Denise Wilson, the victim's fiancée and mother of the victim's child, picked up Thompson and Camirial and drove to the hospital.

On redirect examination, Thompson clarified that she never saw the Appellant inside the lounge and only saw the Appellant outside the lounge. She agreed that she did not hear the victim make any threats to the Appellant or point any firearms at the Appellant that night.

Tarshawn Gibson testified that his nickname was “Woo.” Gibson knew the victim and referred to the victim by his nickname, “CT.” Gibson knew the Appellant by his nickname “Lil Ced” and stated that he had seen the Appellant a couple of times, but he did not have a relationship with him. Gibson testified that he knew Shanquaneake Thompson, but they had not spoken since the shooting.

Gibson was present at the James Lounge on the night of the offense. He went to the lounge with a couple of friends, including Frank Walls. Gibson stated that a disagreement arose between Frank Walls and Darren Askew “over a girl” and that security put them outside the lounge because of the disagreement. Gibson stated that everyone was standing outside when he heard the Appellant say, “move, Askew, I see my man.” Gibson agreed that he saw Thompson and the victim outside the lounge. Gibson did not see the Appellant inside the lounge, and explained that he saw the Appellant “pop out from the side” while he was standing outside the lounge. Gibson knew it was the Appellant when “he came from around the wall” even though the Appellant’s face was covered up and a hood was over his head because he had seen the Appellant a couple of times and recognized that it was him. Gibson described the Appellant as wearing a gray hoodie and some black pants that night. Gibson stated that the Appellant was the first person to fire a gun and that he had not heard any gunshots before the Appellant started shooting. Asked if the Appellant was firing in the direction of the victim, Gibson stated, “All of us was right there. Yeah, he was firing in the direction of CT though.” Gibson stated that the Appellant fired numerous shots, but he could not state how many shots the Appellant fired.

Gibson had seen the victim’s gun in the past and opined that the Appellant used the victim’s gun that night. Gibson agreed that Frank Walls was shooting a gun in the air and that the Appellant was the only person shooting in the direction of the victim. Gibson fired one shot from his .380, a small handgun, when he noticed the Appellant preparing to “put another clip in the gun.” After he fired the shot, Gibson left the lounge and tossed the gun he used over the bypass. The next day, Gibson identified the Appellant as the shooter from a six-person photographic lineup. The surveillance footage, previously introduced as exhibit six, was played during Gibson’s testimony. Gibson identified the Appellant wearing a gray hoodie, Darren Askew, Frank Walls, the victim, and himself in the surveillance footage.

On cross-examination, Gibson agreed that he had not been charged for firing his gun at the James Lounge. Gibson agreed that he was arrested at his home and taken into

custody as a suspect in this case. Gibson stated that the police officers did not tell him who they wanted him to name as the shooter, but that the police officers asked him what happened and he told them what he saw that night. Gibson clarified that he was not charged and had not been charged in the instant case and that he went home the same day he was arrested.

Gibson did not know that the victim would be at the lounge. Gibson agreed that he brought a loaded .380 gun with him that night and explained it was for protection because he had been shot numerous times in the past. Gibson carried his gun in his shoe. Security checked Gibson for weapons, but they did not check his shoe. Gibson explained that he knew the victim did not have a gun because he spoke to the victim and he “[did not] see no gun on his waist or nothing at all.” Gibson clarified that he knew Darren Askew and Frank Walls were arguing over a girl that night because he saw both of them dancing with the same girl. Gibson stated that Thompson and the Appellant had an intimate relationship.

Six still photographs taken from the surveillance footage previously admitted were admitted into evidence during Gibson’s cross-examination. Gibson identified himself, Darren Askew, and Frank Walls in exhibit thirteen. Gibson was unable to make any identifications from exhibit fourteen because the picture was blurry, but Gibson agreed that the photograph depicted a group of people, including himself, talking outside the lounge. Gibson made no identifications in exhibits fifteen and sixteen because the photographs were blurry. The court noted for the record that exhibit seventeen had the same time stamp of 12:24:37 as exhibit fifteen. Gibson originally stated that the flash of light seen in exhibit seventeen appeared to be headlights on a car. After watching a portion of the surveillance footage, Gibson agreed that the flash of light was a gun flash. Gibson identified himself, Darren Askew, the victim, and “Big Hue” in exhibit seventeen. Gibson agreed that “Big Hue” was the large, tall person, that Darren Askew was the person standing close to “Big Hue” in light-colored clothing, and that he was standing with his back against the wall in between the windows. Gibson agreed that Darren Askew was facing the entrance of the lounge and that the victim was the person standing against a white car. Gibson agreed that “Big Hue” was between the shooter, himself, and Darren Askew. Gibson reiterated that he heard the shooter say “move Askew, I see my man.” Gibson agreed that “Big Hue” was closer to the shooter than Darren Askew, and explained, “[b]ut if you see on the video, Askew had went behind Big Hue some.” Gibson agreed that the victim was to his right when the victim got shot. Gibson explained that everyone, including himself and Darren Askew, was standing on the concrete pavement and the victim was a step down, standing on the parking lot.

Gibson agreed that he left the crime scene and went home. He did not go to the police station to report what he observed that night. The next day, officers arrested Gibson

at his home and Gibson told officers that the Appellant, referring to the Appellant by his nickname "Lil Ced," shot the victim that night.

Frank Walls testified that he was friends with the victim and had known the victim for a couple of years. Walls stated that he knew Shanquaneake Thompson but they were not very close. Walls and Tarshawn Gibson had a close relationship. Walls knew the Appellant by the name "Lil Ced." Walls stated that he did not know the Appellant "like that" and he only saw the Appellant when he used to visit Thompson's house.

Walls went to the James Lounge on the night of offense, and saw the victim at the lounge that night. He did not see the victim with a gun, and he did not see the victim threaten anyone. Walls got into a verbal disagreement with Darren Askew while inside the lounge. The disagreement was about Walls "playing with [Askew's] girlfriend." Walls agreed that the disagreement eventually led outside to the parking lot. Walls stated that once the argument continued outside, "he looked up," saw the victim walking past him "going towards the back," and then he saw the Appellant "come from behind the building and start shooting." Walls saw the Appellant's face as he was shooting. Walls stated that the gun the Appellant used was the victim's gun. Walls stated that the gun was "like a chopper," "like a AK." Walls stated that the Appellant was firing in the direction of the victim, and the Appellant was the only person he saw firing in the victim's direction. Walls saw the victim fall to the ground. Asked what happened to the victim after the Appellant started shooting, Walls responded, "He tried to run I guess. By the time he was shooting, he was already hit but he was still trying to get back in the building. And by the time he just dropped." Walls saw the Appellant inside the lounge at one point that night and described his clothing as black.

Walls agreed that he carried a handgun, "a black and gray, 9" that night. Walls understood that he was not supposed to have a gun because of his prior felony convictions. Walls fired three or four shots in the air to stop the Appellant from shooting. Walls stated that no one fired shots before the Appellant shot his gun. The victim had already been shot when Walls fired shots in the air. Walls ran and went home after firing the shots in the air. Walls did not give a statement to police officers that night.

Exhibit six, surveillance footage of outside the lounge, was played during Walls's testimony. Walls identified himself as wearing a black and white jacket and Darren Askew as wearing white. Walls stated that Askew had a handgun and was holding it in his hand at some point in the video before the first shot occurred. Walls saw the victim in the surveillance footage. Walls stated that he saw the Appellant in the same area where he saw the gun fire flash in the surveillance footage.

On cross-examination, Walls agreed that, during his direct examination, he stated that he saw the Appellant wearing all black that night. Walls agreed that the person he saw firing shots in the surveillance footage was wearing a gray hoodie. Walls explained, “[the Appellant] had on black when he was in the club . . . But when he got out the club, I don’t know what he had on. But I know when I saw him, I saw him in his face when he came through that corner.” Walls saw the face of the shooter moments before the gunfire began and stated that the shooter was not wearing a mask. Walls admitted that he previously told the prosecutor that the person in the surveillance footage seen firing a gun in a gray hoodie was not the Appellant because he saw the Appellant wearing all black. Walls confirmed that his trial testimony was that the person in the gray hoodie was the Appellant “because that’s the only person that was shooting.”

Walls clarified that he did see Gibson with a handgun. Walls stated that he and Darren Askew were not trying to dance with Askew’s girlfriend at the same time. Walls stated that he did not dance with Darren Askew’s girlfriend, and Askew did not dance with his girlfriend. Asked why he stepped outside the lounge, Walls responded, “[c]ause we got to arguing and I didn’t want to get caught up in there.” Walls disagreed that anyone asked him to leave.

Dr. William Sago, a staff forensic pathologist/medical examiner, testified as an expert in the field of forensic pathology. On December 11, 2019, Dr. Sago performed an autopsy on the victim and determined the cause of death was a gunshot wound to the chest, and the manner of death was homicide. The victim suffered a penetrating gunshot wound to the chest and a perforating gunshot wound to the right forearm before entering the chest. One bullet entered the victim’s body. The bullet entered the victim’s right forearm, exited the forearm on the other side, and re-entered the victim’s body on the right side of the chest. The gun was not fired while in contact with the victim’s skin, and Dr. Sago was unable to determine how far away the shooter was from the victim. The bullet was recovered from the victim’s left shoulder, which injured both of the victim’s lungs, right third and fourth rib, left third rib, aorta and heart. There were two bullet fragments from a previous gunshot wound to the victim’s left shoulder. A photograph of the victim taken by Dr. Sago before he began the autopsy and a photograph showing an entrance wound on the right forearm and a re-entrance wound on the right side of the chest were introduced as exhibits. On cross-examination, Dr. Sago stated that he did not perform a gunshot residue test on the victim and affirmed that there were not any gunshot wounds to the victim’s face or head.

Special Agent Kasia Lynch with the Tennessee Bureau of Investigation testified as an expert in the field of forensic firearm examination. Special Agent Lynch defined “caliber” as the size of the cartridge or the ammunition that will fit in a gun. Special Agent Lynch was given one .380 auto caliber cartridge case, eleven 9-millimeter Luger caliber cartridge cases, seven .45 auto caliber cartridge cases, one live 9-millimeter Luger cartridge

round, and one bullet and a couple of fragments from the medical examiner's office. She determined that five of the 9-millimeter cartridge cases were all fired from the same firearm because she found the pattern to be consistent on all five of them. Special Agent Lynch determined that the seven .45 auto caliber cartridge cases were all fired from the same firearm. She also concluded that all twenty-two 5.56 by 45-millimeter caliber cartridge cases, previously admitted as exhibit forty-one, were fired from the same firearm.

Special Agent Lynch explained that a vast majority of 9-millimeter bullets are fired in a pistol or semiautomatic pistol and the vast majority of .380 bullets are fired from a revolver. She stated that 9-millimeter caliber bullets were popular so there were rifles that could also fire 9-millimeter caliber bullets. The difference between a pistol and a rifle is that a pistol is intended to be fired in hand while a rifle is intended to be fired using the shoulder as a brace. Special Agent Lynch explained that the seven .45 auto cartridge cases were normally fired from a pistol, and the twenty-two 5.56 by 45-millimeter caliber cartridge cases were commonly fired in a rifle, but there were some pistols that could fire them.

Special Agent Lynch analyzed the bullet fragment recovered from the victim's left arm. She determined that the bullet fragment recovered was most consistent with a .223 or a 5.56 by 45-millimeter caliber ammunition. Asked "Is that caliber the type of casing that I previously passed forward in Exhibit [forty-one]?" Special Agent Lynch responded, "So those cartridge cases are 5.56 by 45-millimeter cartridge cases and this bullet is consistent with either a .223 Remington or a 5.56 by 45-millimeter caliber so yes, they could both be the same caliber." Special Agent Lynch stated that she was not able to determine the caliber of the bullet fragments recovered from the victim from a separate incident because the damage to the bullet was too significant.

Special Agent Lynch stated that a 5.56 bullet could not be fired from the same firearm that fires a 9-millimeter bullet because the size of the two bullets are different, making it hard for the bullets to fit in the same firearm properly. She denied that a firearm capable of firing a .380 or .45 caliber bullet could be capable of firing a 5.56 caliber bullet.

On cross-examination, Special Agent Lynch agreed that all of the cartridge cases that she examined came from five different firearms, meaning that at least five different firearms were fired at the crime scene. She agreed that there could have been more than five firearms fired at the crime scene. Special Agent Lynch explained that it was not uncommon to not have cartridge cases left if a revolver was used in a crime scene and that it is possible that cartridge cases were picked up and taken away from the crime scene. She reiterated that the .223 Remington and the 5.56 were the same gun and explained that "the caliber[s] [were] pretty close to interchangeable." The size of the two bullets are "very close" and "a .223 Remington caliber can be fired in a 5.56 by 45-millimeter gun and it's

not recommended to do it the other way around because of the higher pressures you can damage the gun pretty significantly.” She agreed that the .223 and 5.56 by 45 millimeters were known as assault rifles and that other types of assault rifles exist. Special Agent Lynch stated that there were assault rifles, known as AK-47s, that fire 7.62 by 39-millimeter caliber bullets. She explained that a firearm intended to fire a 7.62 by 39-millimeter caliber could not fire .223 Remington or a 5.56 by 45 caliber bullet because a 7.62 by 39-millimeter caliber bullet is much larger than the .223 and 5.56 by 45-millimeter calibers.

Special Agent Lynch was presented with a photograph of the victim holding a gun, and she described the gun as an assault rifle. Asked whether it was possible that the gun the victim was holding was a 7.62 by 39-millimeter, she responded as follows:

I can't in that photo see any caliber designations so it could be any caliber. The design style of the gun itself is consistent to me with an AK-47. As I said they are typically made in 7.62 by 39[-]millimeter, however, I do know there are other calibers that are commercially available in a gun that looks like that. So without being able to see the stamped caliber designation or to measurement the barrel on it or something like that, there's no way for me to know exactly what caliber that is capable of shooting.

Special Agent Lynch agreed that the curve style magazine on the gun in the photograph was consistent with an AK-47 rifle. She stated that an AK-47, a 7.62 assault rifle, would not be able to fire the bullet that was recovered from the left shoulder of the victim. She agreed that the bullet recovered from the victim's shoulder was “five right,” referring to five lands and five grooves twisting in the direction to the right.

On redirect examination, Special Agent Lynch clarified that the bullet recovered from the victim's shoulder was not a 7.62 by 39-millimeter caliber bullet. She reiterated that the bullet recovered from the victim's shoulder was consistent with a 5.56 or a .223 Remington caliber bullet.

Two stipulations were read into evidence by the court noting that all the cartridge cases collected by the MPD at 3172 Summer Avenue and the bullet, bullet jacket fragment, and lead fragment collected by the medical examiner from the victim's body were forwarded to the Tennessee Bureau of Investigation for examination. This concluded the State's proof.

The Defendant moved for judgment of acquittal, arguing that the State had not met its burden of proof and that the State's witnesses were not credible. The trial court denied the motion.

Two witnesses, Kedevial Herring and Eric Warren, testified on behalf of the Appellant. Kedevial Herring testified via Zoom because she tested positive for COVID-19 the day she was scheduled to testify. Herring testified that on the night of the offense, she was in a car parked outside of the James Lounge with her cousin, and her cousin's ex-girlfriend, Kyler. She described the location of the parked car as on the right side "in the driveway on the sidewalk" of the lounge parking lot. Herring explained, if standing on Summer Avenue facing the lounge, the car was parked to the left and facing towards the left, towards the light, and towards downtown. Herring never went inside the lounge that night.

Herring sat in the backseat, her cousin in the front passenger seat, and Kyler in the driver's seat. Herring heard men arguing, and she noticed that it was two men on the right side of the car on the sidewalk yelling at someone closer to the lounge. The two men "faded into the night" because Herring could no longer see them as they continued to walk down the sidewalk. The next thing she heard was the screech of car tires and then gunshots. She noticed that a car was driving on the wrong side of the street in the direction of the lounge. Herring explained that she saw gunfire coming from the back window of the car. Herring stated that the two men were not arguing with individuals in the car because the arguing had stopped when she noticed the car turn from a side street onto the street where she was located. When Kyler started the car and pulled off towards downtown, the cars collided head on. The collision caused Kyler's car to spin out in the middle of Summer Avenue, hitting Sal's Auto and a metal pole. Herring blacked out. When she regained consciousness, her cousin was arguing with the driver of the other car. Herring stated that she never saw the driver. Herring recalled hearing at least seven gunshots that night.

Eric Warren, self-employed as a consultant and co-owner of SEP Forensic Consultants, testified as an expert in the field of firearms identification. Warren reviewed items of discovery from the State and the firearms report created by Special Agent Lynch. Warren stated that he did not disagree with Special Agent Lynch's findings relating to the casings, bullet, and bullet fragments.

Warren was presented with a photograph of the victim holding a gun, previously admitted as exhibit two, and stated that the design features and shape of the firearm in the photograph indicated that the firearm was "an AK-47 style firearm." Warren explained the design features of an AK-47 style firearm as the stock, the shape of the magazine, and the way the magazine inserts and connects with the actual firearm. Asked whether there were any names commonly used to refer to an AK-47, Warren stated that "AK-74" and the slang term "chopper" were commonly used. Warren explained if the wooden stock at the back of an AK-47 was removed, it may be referred to as a "Draco." Warren showed the jury the stock or buttstock, using the photograph of the victim holding a gun. The stock was the

rear portion of the firearm that rested against a shoulder. Warren explained that the stock angle was “kind of triangle shape[d]” and “a little bump or protrusion [indicating] where it meets the actual receiver of the firearm” were design features of an AK-47 style rifle. Warren explained that the magazine in the photograph was common or specific to an AK-47 style rifle, indicating the location of the tab right next to the trigger. Warren also explained the curvature of the magazine accommodated the 7.62 by 39-millimeter caliber ammunition used in AK-47 style firearms.

To demonstrate for the jury, Warren displayed one live round of a 7.62 by 39-millimeter, one live round of a 5.56 by 45-millimeter or .223 Remington cartridge case, and one magazine for each caliber. Warren said that a .223 Remington or a 5.56 cartridge was commonly used in an AR-15 style firearm. The difference in the size and shape of the cartridges accounted for the different magazine shapes. Warren explained that the magazine for an AR-15 did not taper a lot because the cartridges were cylindrical while the magazine for an AK-47 was much more tapered. Demonstrating to the jury the difference between the two magazines, Warren agreed that the magazine he was holding was similar to the magazine pictured in exhibit two. Warren said that the foregrip was the part of the gun where a hand rested, explaining that common to an AK-47 style rifle, there was a rear bump in the foregrip.

Warren prepared a diagram that displayed the weapon in the photograph admitted as exhibit two and compared it with an image of an AK-47. Consistent with his testimony discussing the various design features common to an AK-47 style firearm, Warren identified five points of comparison on the diagram. He stated point one referred to the bump and shape of the buttstock, point two referred to the rear sight protrusion, point three referenced the magazine release tab, point four referenced the curvature and groove at the forward portion of the magazine, and point five referred to the bump in the foregrip.

Warren agreed that Special Agent Lynch concluded that twenty-two cartridge cases recovered from the scene were .223 Remington or 5.56 by 45-millimeter, explaining that those were “two designations of what is essentially the same cartridge.” Warren further agreed with Special Agent Lynch’s conclusion that the .223 Remington or 5.56 by 45-millimeter caliber cartridge cases were fired with an assault rifle. Warren explained that because the features of the magazine and gun in the photograph suggest that it holds a 7.62 by 39-millimeter caliber cartridge, the gun would not be able to hold a .223 Remington caliber cartridge. Warren stated that a .223 Remington caliber cartridge could not be fired from the firearm pictured in exhibit two. After being presented with the photograph of the bullet recovered from the victim’s left shoulder and the actual bullet itself, Warren stated that the bullet recovered from the victim’s left shoulder could not have been fired from the gun pictured in exhibit two. From Special Agent Lynch’s report and looking at the bullet visually, Warren explained that the bullet did not appear to be a 7.62-millimeter bullet

because the diameter of the bullet was 5.56 millimeters. Warren agreed that the bullet appeared to be a .223 or 5.56 by 45-millimeter bullet. Warren stated that, consistent with Special Agent Lynch's report, visually, after counting the lands and grooves on the bullet, Warren determined the bullet had five right rifling. Warren explained that all AK-47 style firearms he handled previously were four right, four lands and grooves with four stripes that twist to the right. Because there are not five right rifling characteristics for an AK-47 style firearm, the bullet could not have been fired through the gun depicted in exhibit two.

On cross-examination, Warren clarified that he had been previously retained by private individuals, insurance companies in civil cases, defense attorneys, and law enforcement agencies. Warren explained that his clientele were close to half prosecution, half defense, and his biggest individual client was law enforcement agencies. Warren agreed that he had been retained in the instant case since last year, received discovery in the instant case in November of last year, and finished his expert report the night before testifying. Warren knew that experts could sit through trial testimony and give advice to their clients. Warren agreed that he did not sit through the trial testimony in the instant case. Warren agreed that his opinion did not take into account Thompson's, Walls's, or Gibson's trial testimony. Warren disagreed that his entire premise would be defeated if Thompson testified that the gun the Appellant used "looked like" the gun in exhibit two. Warren stated that his testimony would stay the same regardless of Thompson's trial testimony. Warren agreed that he noted that Thompson identified the firearm used by the Appellant as an AK-47 based on her use of the slang term "chopper." Warren agreed that there were "a small subset of AK-47 styles that [could] be chambered in 5.56."

Warren clarified that all of his testimony was based on the appearance of the firearm in exhibit two and that he could not say for certain the caliber of the firearm without actually examining the firearm pictured. Warren stated that it was not uncommon to provide expert opinion testimony when there was no firearm to examine. Warren agreed that he concluded in his report that there was no scientific evidence that the gun pictured in exhibit two was the gun that killed the victim. Warren explained that he did not need the bullet, cartridge casing, and the gun pictured in exhibit two to say with certainty that it was not the weapon used to kill the victim, reiterating that characteristics and design features determined by a manufacturer before a particular item was made allowed him to eliminate the gun pictured in exhibit two as the murder weapon because a .223 cartridge case could not be loaded into the gun.

Based on the above proof, the jury found the Appellant guilty as charged of first-degree premeditated murder. The Appellant filed a motion for a new trial, and a hearing was held on May 27, 2022. The trial court orally denied the Appellant's motion. This timely appeal followed.

ANALYSIS

I. Sufficiency of the Evidence. The Appellant argues that the evidence presented at trial is insufficient to sustain his first-degree murder conviction. In response, the State avers that the evidence is sufficient to support the Appellant's conviction of first-degree murder because ample evidence was introduced at trial to allow a reasonable juror to conclude that the Appellant committed a premeditated and intentional killing of the victim. We agree with the State.

“Because a verdict of guilt removes the presumption of innocence and raises a presumption of guilt, the criminal defendant bears the burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict.” State v. Hanson, 279 S.W.3d 265, 275 (Tenn. 2009) (citing State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992)). “Appellate courts evaluating the sufficiency of the convicting evidence must determine ‘whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” State v. Wagner, 382 S.W.3d 289, 297 (Tenn. 2012) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)); see Tenn. R. App. P. 13(e). When this court evaluates the sufficiency of the evidence on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence. State v. Davis, 354 S.W.3d 718, 729 (Tenn. 2011) (citing State v. Majors, 318 S.W.3d 850, 857 (Tenn. 2010)).

Guilt may be found beyond a reasonable doubt where there is direct evidence, circumstantial evidence, or a combination of the two. State v. Sutton, 166 S.W.3d 686, 691 (Tenn. 2005); State v. Hall, 976 S.W.2d 121, 140 (Tenn. 1998). The standard of review for sufficiency of the evidence “‘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)). The jury as the trier of fact must evaluate the credibility of the witnesses, determine the weight given to witnesses' testimony, and reconcile all conflicts in the evidence. State v. Campbell, 245 S.W.3d 331, 335 (Tenn. 2008) (citing Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978)). Moreover, the jury determines the weight to be given to circumstantial evidence, and the inferences to be drawn from this evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury. Dorantes, 331 S.W.3d at 379 (citing State v. Rice, 184 S.W.3d 646, 662 (Tenn. 2006)). When considering the sufficiency of the evidence, this court “neither re-weighs the evidence nor substitutes its inferences for those drawn by the jury.” Wagner, 382 S.W.3d at 297 (citing State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997)).

First-degree murder is the premeditated and intentional killing of another person. Tenn. Code Ann. § 39-13-202(a)(1). Premeditation is defined as “an act done after the exercise of reflection and judgment.” Id. § 39-13-202(e). This section further defines premeditation as follows:

“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.

Id. The existence of premeditation is a question of fact for the jury to determine and may be inferred from the circumstances surrounding the offense. State v. Clayton, 535 829, 845 (Tenn. 2017) (citing State v. Dotson, 450 S.W.3d 1, 86 (Tenn. 2014); State v. Davidson, 121 S.W.3d 600, 614 (Tenn. 2003)). “Proof of premeditation may be supported by either direct or circumstantial evidence.” Id. (citing State v. Brown, 836 S.W.2d 530, 541 (Tenn. 1992)). Factors that may support the existence of premeditation include but are not limited to the use of a deadly weapon upon an unarmed victim, the particular cruelty of the killing, the infliction of multiple wounds, declarations by the defendant of an intent to kill, lack of provocation by the victim, failure to aid or assist the victim, evidence of procurement of a weapon, preparations before the killing for concealment of the crime, destruction and secretion of evidence of the killing, and calmness immediately after the killing. State v. Kiser, 284 S.W.3d 227, 268 (Tenn. 2009); State v. Leach, 148 S.W.3d 42, 53-54 (Tenn. 2004); State v. Davidson, 121 S.W.3d 600, 615 (Tenn. 2003); State v. Bland, 958 S.W.2d 651, 660 (Tenn. 1997). This Court has also noted that the jury may infer premeditation from any planning activity by the defendant before the killing, evidence concerning the defendant’s motive, and the nature of the killing. State v. Bordis, 905 S.W.2d 214, 222 (Tenn. Crim. App. 1995) (citation omitted).

Three eyewitnesses, Shanquaneake Thompson, Tarshawn Gibson, and Frank Walls, testified that on December 11, 2019, they saw the Appellant shoot the victim in the parking lot of the James Lounge. Thompson and Gibson heard the Appellant state to Askew to some effect, “move I’m trying to hit my man” before pulling out a gun and shooting the victim. Walls testified that he looked the Appellant in the face as he was shooting. Thompson testified that, moments after the shooting, she looked the Appellant in the face and told him he was wrong for shooting the victim. All three witnesses agreed that they saw the victim fall to the ground after the Appellant shot in the direction of the victim. Thompson, Gibson, and Walls agreed that the Appellant was the first person to shoot a gun that night. All three witnesses testified that the Appellant was the only person shooting in the direction of the victim. Both Thompson and Gibson identified the Appellant as the

shooter in a six-person photographic lineup. Although Thompson and Gibson described the Appellant as wearing a gray hoodie, and Walls described the Appellant as wearing all black that night, Thompson, Gibson, and Walls identified the Appellant as the shooter wearing a gray hoodie in the surveillance footage.

The Appellant insists that the evidence is insufficient to sustain his conviction of first-degree murder because “the murder weapon cannot be identified” and the weapon indicated as the murder weapon would not have been able to fire the bullet recovered from the victim’s shoulder. Thompson stated that the gun the Appellant used that night “looked like” the victim’s missing gun. Gibson and Walls testified that the Appellant used the victim’s missing gun, and Walls further described the gun as looking like a “chopper.” The State and defense firearm experts acknowledged the possibility that the gun pictured in exhibit two, established at trial as the victim’s missing gun, could have been an AK-47 style assault rifle. Neither expert could definitively conclude the caliber of the gun pictured in exhibit two without the benefit of physically examining the weapon. Thompson, Gibson, and Walls testified that they saw the Appellant shoot the victim. Even if the Appellant did not use the victim’s missing gun to shoot the victim, the evidence demonstrates that the Appellant used an assault rifle to shoot the victim. The fatal bullet recovered from the victim was identified as a 2.23 or a 5.56 by 39-millimeter caliber bullet. Both bullets could be fired from an assault rifle. To the extent that there was conflicting evidence relating to the caliber of the firearm used by the Appellant that night, the jury was presented with the evidence and argument on the issue and resolved the conflict in favor of the State.

The Appellant contends that there is no way the evidence supports that the Appellant fired the shot that killed the victim in the presence of chaos and gunfire from multiple weapons. The jury was presented with testimony from multiple witnesses describing the crime scene as chaotic and heard evidence that thirty-two shell casings fired from at least five different firearms were recovered from the scene. The proof established that Walls fired warning rounds in the air after the Appellant began shooting, and Gibson fired one shot in the direction of the Appellant before fleeing from the scene. The victim had been shot before Walls and Gibson fired any shots. Gibson and Walls testified that the Appellant was the only person shooting in the direction of the victim. The jury was presented with evidence that the fatal bullet entered the victim’s body on the right side. The eyewitness testimony and the surveillance footage show that the Appellant fired shots from the east end of the building toward the victim’s right side. The evidence established that the Appellant fired the only assault rifle that night and the fatal bullet recovered from the victim had to have been fired from an assault rifle. Based on this evidence, the jury could reasonably infer that the Appellant shot and killed the victim.

Further, the Appellant argues that the State failed to prove the element of premeditation because there was “no testimony from anyone regarding the mental state of

the [Appellant] at the time of the shooting.” Because there had been evidence of a disagreement between the victim and the Appellant regarding a missing gun, the Appellant contends that there was no testimony “showing whether the [Appellant] was in a cool, deliberate state of mind or whether he was in a state of passion or agitation.” In the surveillance footage, the Appellant is seen standing alone on the east end of the building wearing a gray hoodie with the hood over his head throughout most of the video. Once the victim is seen entering the parking lot from the lounge, the Appellant immediately begins to run back and forth and jump up and down. Individuals run and take cover moments before the Appellant repeatedly fires multiple shots in the direction of the victim and towards the lounge. The evidence showed that the Appellant fled the scene after shooting the victim. Thompson, Gibson, and Walls testified that the victim did not have a gun that night. Thompson and Gibson heard the Appellant state to Askew to some effect, “move I’m trying to hit my man” before pulling out a gun and shooting the victim. Thompson and Walls testified that they did not hear the victim threaten the Appellant that night. Viewed in the light most favorable to the State, the proof established that the Appellant shot and killed the victim intentionally and with premeditation. Because a rational juror could have found that the Appellant committed each element of first-degree premeditated murder beyond a reasonable doubt, the evidence introduced at trial is sufficient to support the Appellant’s conviction. The Appellant is not entitled to relief.

II. False Testimony. The Appellant argues that the trial court erred in denying defense counsel’s request to instruct the State to correct the record after a State’s witness testified falsely. The Appellant cites Spurlock, Giglio, and Napue for the proposition that the State has an obligation to correct the false testimony of its witnesses, even if the testimony relates purely to witness credibility and is solicited by the defense. State v. Spurlock, 874 S.W.2d 602, 617 (Tenn. Crim. App. 1993) (citing Giglio v. United States, 405 U.S. 150 (1972) and Napue v. Illinois, 360 U.S. 264 (1959)). The Appellant contends “[i]f the prosecution fails to correct the false testimony, the accused is denied due process of law as guaranteed by the United States and Tennessee Constitutions.” In response, the State argues that the trial court’s refusal to instruct the State to correct the record was proper because the trial court determined that the State’s and Gibson’s accounts of the arrangement were “essentially the same.”

This court has held that “[w]hen a state witness answers questions on either direct or cross examination falsely, the district attorney general, or his assistant, has an affirmative duty to correct the false testimony.” State v. Spurlock, 874 S.W.2d 602, 617 (Tenn. Crim. App. 1993) (citations omitted). This affirmative duty applies regardless of whether the district attorney general solicited the false testimony. Id. at 618 (citing United States v. Barham, 595 F.2d 231, 232 (5th Cir. 1979)). This affirmative duty also applies “when the false testimony is given in response to questions propounded by defense counsel for the purpose of impeaching the witness.” Id. (citations omitted). If the State fails to correct

the witness's false testimony, then the defendant's due process rights are violated. Id. (citing Giglio v. United States, 405 U.S. 150, 153-54 (1972); Napue v. Illinois, 360 U.S. 264, 269 (1959)). "In order to obtain a new trial, 'the defendant must demonstrate that the State presented false testimony, the State knew the testimony was false, and the testimony was material.'" State v. Gilles, 493 S.W.3d 504, 525 (Tenn. 2016) (quoting State v. Cureton, 38 S.W.3d 64, 74-75 (Tenn. Crim. App. 2000)). The defendant must prove these allegations by a preponderance of the evidence. Id.

As relevant here, the following exchange occurred between the State and Gibson on direct examination:

[STATE:] You have currently pending three criminal cases against you; correct?

[GIBSON:] Yeah.

[STATE:] Two felonies one misdemeanor; is that right?

...

[GIBSON:] Yes, sir.

[STATE:] With regard to those cases, have you and I ever had any discussions about those cases?

[GIBSON:] No, sir.

[STATE:] Have I given you any type of deals or anything like that in exchange for you being up there on the witness stand?

[GIBSON:] No, sir.

[STATE:] Have I attempted to influence anything that you're saying in relation to this case?

[GIBSON:] No, sir.

On cross-examination, the following exchange occurred between defense counsel and Gibson:

[DEFENSE:] Mr. Gibson, isn't it true that by testifying today, you're hoping that you may get a deal in your criminal cases?

[GIBSON:] No, ma'am.

[DEFENSE:] Isn't it true that the prosecutors have told you that if you testify, they will give you some consideration and it's possible that you'll get a break in your criminal cases?

[GIBSON:] They never told me nothing. Ain't never told me nothing. No cooperation, none of that. They never told me nothing. I just did it. This my friend. I know he would have did it for me.

[DEFENSE:] Now they didn't tell you of course exactly what you might get, what kind of deal.

[GIBSON:] They ain't tell me nothing about no deal or nothing, ma'am.

[DEFENSE:] You're testifying that they haven't even made it clear to you that there's the possibility that you'll do better in your criminal cases if you testify than if you don't?

[GIBSON:] No, ma'am, they never told me nothing like that. Nobody never told me nothing like that. I hope it help me, but nobody never told me nothing like that though.

[DEFENSE:] But you're hoping that that might be the result of your testifying' is that correct? You just said so.

[GIBSON:] Yeah . . . But I ain't do this for no deal or nothing like that.

After Gibson's testimony concluded, a bench conference was held regarding defense counsel's request for the State to correct the record.

[DEFENSE:] Your Honor, as [the State] told the Court earlier this morning, [] Gibson was told that if he cooperates and testifies honestly, his testimony will be given consideration by the State. And just now when I asked him about what the State said to him, it's my opinion that his responses conflicted with what [the State] advised the Court [] Gibson had been told. And I am asking that the State correct the record, which it has a duty to do if the witness has testified falsely.

[COURT:] If that is true. [State], when you said you haven't made a deal, have you spoken to [] Gibson directly on that?

[STATE:] The discussion I had with him on that were with him and his lawyer.

[COURT:] But was he told you will be given some consideration or whatever or was that told to his lawyer?

[STATE:] To his lawyer and he was present when those discussions were had. It would be my position he testified he hopes he gets a deal. And I don't know what his understanding of these communications are, but it's clear that he's hopeful that he can get some type of concession. I think that's clear in front of the jury.

[COURT:] I'm not in a position of making – you've asked him you received. You can argue to this jury that somehow that's not true, that the State is lying or they're doing this or Mr. Walls was incorrect in that. You can suggest that. But I don't know what else to correct.

[DEFENSE:] Well, the jury doesn't know what [the State] just said.

[COURT:] That's right. That's correct.

[DEFENSE:] And because the witness denied that the State made representations of that kind to him.

[COURT:] No, and I don't find that he did. You didn't ask – you're asking about some general representations. This case has now been pending for three years and you said were you promised something. He said no, I wasn't promised anything. If you had said was there ever any time when a discussion was had in your presence, even though the lawyers are talking to one another, and did they say that, that might have been different from what he testified to. But I really -- I find it to be not using the same words but not testifying to something different than what was spoken. And again, you can argue that to the jury. I don't know what – [the State] has told me what they told me how it went and I'm not in a position to order them to then do

something different or make him do it. Like I said, you may argue that to the jury that sure he's testifying because he wants favor. But I just don't think that's an incorrect statement, especially when he suggested at the end actually not in response to your question and he said I hope it does. That was a spontaneous uttering and I think that's where we are with that.

[DEFENSE:] I would just point out, Your Honor, that saying he hopes it does and admitting that the State actually gave him reason to think that it might are two different things. And it's my position that he testified dishonestly and that the State has a duty to correct the record and I'll leave it at that. I understand the Court's ruling.

[COURT:] You may argue that 'cause I'm not finding that he testified dishonestly. I do not find that. It will not be for me to decide what his credibility is, however. It will be for the jury to decide that. And you may argue and suggest to them that they find like you think that he testified dishonestly, you know, and it will be for ultimately the jury to decide what they -- what credibility they give his testimony and what they don't . . .

At a minimum, the record demonstrates that Gibson's testimony was misleading. However, "[a] new trial is required if 'the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . .'" Giglio 405 U.S. at 154 (citing Napue, 360 U.S. at 271). In other words, the uncorrected false testimony must have been material to warrant a new trial. As significant here, the State's case did not rely solely upon the testimony or credibility of Gibson to convict the Appellant. The record shows that the jury heard corroborated testimony from multiple witnesses of the events that led to the Appellant shooting the victim. Accordingly, any error in the trial court's failure to instruct the State to correct the false testimony of Gibson was harmless, and the Appellant is not entitled to relief.

III. Cross-Examination. Prior to trial, the Appellant filed a motion based on the Confrontation Clause of the 6th Amendment and Rule 16 of the Tennessee Rules of Evidence to allow cross-examination of State witnesses Tarshawn Gibson and Frank Walls. The Appellant asserted that Gibson had pending criminal charges in Shelby County from three separate indictments with the following offense dates: July 16, 2019, July 22, 2019 and March 25, 2021. Similarly, the Appellant asserted that Walls's had pending criminal charges in Shelby County from three separate indictments with the following offense dates:

December 11, 2019, February 8, 2020, and June 3, 2021. On April 20, 2022, before the second day of trial began, defense counsel argued the motion before the trial court, explaining that he intended to illicit testimony from both Gibson and Walls about the dates of their prior charged offenses at the time of the instant offense to establish bias. The trial court ruled that defense counsel was permitted to question Gibson and Walls about the existence of pending charges at the time of the instant offense, but limited defense counsel's ability to question Gibson and Walls about when the offenses were committed because it was not relevant to establish bias. The trial court reasoned as follows:

[COURT:] What's relevant is when he testifies today, if there is a bias that a jury might accredit and then use that to decide whether they give credence to his testimony, that's the only time it's relevant for us here. In other words, if he was biased during the statement he gave to the police, it just simply that's not relevant to this case. Your client is not being tried on a statement that a witness gave to the police, you know, some years ago.

[DEFENSE:] If the witness committed to identifying [the Appellant] at a time when his bias was in play, then that is relevant, Your Honor, and that is our position.

[COURT:] No. And I respectfully disagree. Bias has to do with the credibility of the testimony given today, not with the statement given to police. That's not what the State is relying on to try to get this jury to convict your client, a statement he made to the police . . .

The Appellant asserts that the trial court erred by not allowing defense counsel to attack the bias or motive of Gibson and Walls. He specifically argues it was error for the trial court to prevent defense counsel from questioning Gibson and Walls about the dates of prior charged offenses to show that Gibson and Walls had pending charges at the time they gave statements to the police about the instant offense. The Appellant contends that "all of the circumstances that might show an influence on the witness's testimony should be admissible." In response, the State contends, and we agree, that the trial court properly determined that the specific dates of Gibson's and Walls's prior offenses were not relevant for defense counsel to show motive or bias because both Gibson and Walls "readily agreed that there were charges pending against them at the time that they testified at trial." Alternatively, the State asserts that the alleged error is harmless because "[e]ven if the jury had been presented with the dates that these offenses occurred, the additional evidence had little, if any, bearing on the witnesses' credibility."

“The propriety, scope, manner, and control of cross-examination of witnesses . . . remain within the discretion of the trial court.” State v. Gentry, 538 S.W.3d 413, 429 (Tenn. 2017) (citing State v. Echols, 382 S.W.3d 266, 285 (Tenn. 2012)). “A defendant has the right to examine witnesses to impeach their credibility or to establish that the witnesses are biased. This includes the right to examine a witness regarding any promises of leniency, promises to help the witness, or any other favorable treatment offered to the witness.” State v. Sayles, 49 S.W.3d 275, 279 (Tenn. 2001); Tenn. R. Evid. 616. “[A] defendant’s right to confrontation does not preclude a trial court from imposing limits upon cross-examination which take into account such factors as harassment, prejudice, issue confrontation, witness safety, or merely repetitive or marginally relevant interrogation.” State v. Reid, 882 S.W.2d 423, 430 (Tenn. Crim. App. 1994). We will not disturb a trial court’s limits on cross-examination unless the court unreasonably restricted this right. Id. (citing State v. Reid, 213 S.W.3d 792, 839 (Tenn. 2006)).

Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Tenn. R. Evid. 401. Generally, relevant evidence is admissible, while irrelevant evidence is inadmissible. Tenn. R. Evid. 402. The Appellant’s argument distinguishes between establishing that Gibson and Walls had pending charges at the time of trial and pending charges at the time they gave statements to police officers. The trial court limited defense counsel’s ability to question Gibson and Walls about the specific dates prior offenses were committed. The Appellant had the opportunity to cross-examine Gibson and Walls regarding the existence of pending charges at the time they gave statements to police officers and at the time of trial. The jury heard, during the direct and cross-examination testimony of both Gibson and Walls, that they had charges pending against them at the time of trial. The jury was exposed to facts from which jurors could appropriately determine whether bias existed. Accordingly, the trial court’s limitation was not an unreasonable restriction of the Appellant’s right to cross-examination. See State v. Echols, 382 S.W.3d 266, 287 (Tenn. 2012). The Appellant is not entitled to relief on this basis.

Finally, our review of the trial transcript and the special condition box in count one reflects that counts two and three were to be dismissed, but the record does not contain separate judgment forms for these counts reflecting dismissal. Accordingly, we remand this matter for entry of separate judgment forms in counts two and three reflecting dismissals of those charges consistent with the judgment form in count one. See Tenn. R. Crim. P. 32(e)(3) (“If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall enter judgment accordingly.”); State v. Berry, 503 S.W.3d 360, 364 (Tenn. 2015) (order) (“For charges resulting in a not guilty verdict or a dismissal, the trial court should “enter judgment accordingly” as to the respective count.”).

CONCLUSION

We therefore remand this case for entry of judgment forms to reflect dismissal of counts two and three. In all other respects, the judgment of the trial court is affirmed.

CAMILLE R. MCMULLEN, PRESIDING JUDGE