IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs May 12, 2026

STATE OF TENNESSEE v. BRADLEY MICHAEL LESNIEWSKI

Appeal from the Circuit Court for Rutherford County
No. 2023-CR-90271 Howard W. Wilson, Chancellor

No. M2025-00354-CCA-R3-CD

Following a jury trial, Defendant, Bradley Michael Lesniewski, was convicted of possession of a handgun by a felon; possession of a firearm by a felon-prior felony drug conviction; false imprisonment; evading arrest; possession of a Schedule I controlled substance with intent to sell or deliver (Heroin); possession of a Schedule II controlled substance with intent to sell or deliver (0.5 grams or more of Methamphetamine); possession of a Schedule II controlled substance with intent to sell or deliver (Fentanyl); possession of drug paraphernalia; and driving while license is suspended, cancelled, or revoked. For these offenses, the trial court imposed a total effective sentence of twenty years' incarceration. On appeal, Defendant challenges the sufficiency of the evidence supporting his convictions. Following a thorough review, we affirm Defendant's convictions but remand for the merger of two counts and the entry of corrected judgment forms.

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

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which TIMOTHY L. EASTER and STEVEN W. SWORD, JJ., joined.

Christian T. Moore, Nashville, Tennessee, for the appellant, Bradley Michael Lesniewski.

Jonathan Skrmetti, Attorney General and Reporter; Kelly M. Telfeyan, Assistant Attorney General; Jennings H. Jones, District Attorney General; and Tammy J. Rettig, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual and Procedural Background

In August 2023, the Rutherford County Grand Jury issued an indictment charging Defendant with the following offenses:

Count	Offense	Classification
1	Possession of a firearm by a felon-prior violent felony conviction	Class B felony
2	Possession of a firearm by a felon-prior felony drug conviction	Class C felony
3	Kidnapping	Class C felony
4	Evading arrest creating a risk of death or injury to bystanders	Class D felony
5	Possession of a Schedule I controlled substance with intent to sell or deliver (Heroin)	Class B felony
6	Possession of a Schedule II controlled substance with intent to sell or deliver (0.5 grams or more of Methamphetamine)	Class B felony
7	Possession of a Schedule II controlled substance with intent to sell or deliver (Fentanyl)	Class C felony
8	Possession of drug paraphernalia	Class A misdemeanor
9	Driving while license is suspended/cancelled/revoked	Class A misdemeanor

The case proceeded to trial in May 2024. Sergeant Dominick Riley with the Murfreesboro Police Department (MPD) testified that in 2021, he worked in the department's Narcotic and Overdose Unit. Sergeant Riley said that, in October of that year, the department received several crime stopper tips regarding "a bunch of traffic moving back and forth through" a particular residence on NYU Place ("the NYU Place residence") in Murfreesboro. He explained that he conducted a "trash pull" at the residence on the morning of October 21, 2021. In the trash from the NYU Place residence, Sergeant Riley found evidence of drugs and drug use, including several syringes and pipes used to smoke narcotics. Sergeant Riley testified that he also found several used baggies that had drug residue on them. He stated that he performed a field test on the residue and that it

"came back positive for methamphetamine." He said that, in addition to the drug evidence, he found "a bunch of mail" and pictures belonging to Defendant in the trash.

Sergeant Riley testified that, after the trash pull, the police department placed a "drop car" on the side of the road near the residence. He explained that the drop car "fit[] into the neighborhood" and that officers placed cameras inside it. He said that the cameras were controlled remotely; he was able to live-stream from the cameras and watch "what [was] going on" at the NYU Place residence. He said that the residence was a "high traffic area[,]" meaning that there were "waves of individuals coming back and forth" from the residence in increments of five to ten minutes.

Sergeant Riley testified that he saw three people at the residence for longer periods of time, whom he identified as Defendant, Destiny Finch, and Ersel "Tim" Cooper. Sergeant Riley said that he observed Defendant frequently going back and forth to a gold SUV parked at the residence; he said Defendant "would enter that SUV, leave the residence for a short amount of time. Come back." He stated that Defendant always carried a "T-Mobile" bag back with him. Sergeant Riley continued, "And, normally, when I saw those waves of people, [Defendant] would be the one letting them in the door or outside with them waiting on them in his car."

Sergeant Riley testified that, during his investigation, he learned that Mr. Cooper had the lights at the NYU Place residence "on in his name[.]" He said that, in watching the residence, Mr. Cooper appeared to have a job; he would leave the residence for eight to ten-hour blocks of time while wearing a "labor-intensive uniform." Sergeant Riley said that he rarely saw Ms. Finch at the residence during the drop car surveillance.

Sergeant Riley stated that, following the trash pull, he obtained a search warrant for the NYU Place residence but that, before he could execute the search warrant, the Rutherford County Sheriff's Office (RCSO) made a traffic stop of Defendant's vehicle. Sergeant Riley explained that the RCSO then obtained its own search warrant for the residence and took over the investigation.

RCSO Detective Christian Wrather testified that he worked in the Narcotics Unit and had extensive training specifically related to narcotics investigations. Detective Wrather said that in October 2021, he was assigned to investigate the NYU Place residence after an anonymous tip said that "there was a high volume of traffic coming in and out of this particular house[.]" Detective Wrather recalled that the tip provided a description of "a tall, slender, white male, approximately, 6-foot tall[,]" who was associated with the residence. Detective Wrather said that he had been unaware of Sergeant Riley's concurrent investigation.

Detective Wrather said that, as part of his investigation, he or a member of his team would sit and watch the NYU Place residence for hours looking for a tall, skinny, white male that matched the description from the tipster. He said that he observed such a man at the residence, whom he later identified as Defendant. Detective Wrather explained that, when people would come to the NYU Place residence, Defendant would "open the door and . . . numerous individuals would either go into the house and come back out, or they would . . . go sit in [Defendant's] car[,]" which Detective Wrather identified as a gold SUV. Detective Wrather testified that every time Defendant came out of the residence, he would turn around and lock the front door. Detective Wrather testified, "[Defendant] would walk over to the car. Not leave. Go back to the house. And unlock the front door. Go in. And he did that three or four times." Detective Wrather said that Defendant's behavior was "highly unusual[.]" He continued:

> There were a couple people they would hang out in a vehicle out in the cul-de-sac . . . but for the most part, majority of the people [would] knock on the door. The door would open. Sometimes you would see [Defendant's] head in the doorway.
>
> Otherwise, you would see the person going in. It is a very short period of time. I would say no more than five minutes most of the time.

Detective Wrather testified that he never saw Mr. Cooper at the residence because he watched the residence between the hours of 8:00 a.m. and 6:00 p.m. He said that he later learned that Mr. Cooper was a longtime employee of the US Postal Service and "worked primarily most of the days." Detective Wrather noted that, in contrast to Defendant, Mr. Cooper's driver's license identified Mr. Cooper as being five feet, one inch and 200 pounds. He said that Mr. Cooper drove a maroon Chevy Malibu.

The State introduced a certified copy of a report from the Tennessee Department of Safety and Homeland Security, showing that as of October 26, 2021, Defendant's driver's license was revoked. Detective Wrather said that on October 26, 2021, he saw Defendant and Ms. Finch come in and out of the residence numerous times carrying luggage. He said that it became apparent they were leaving; Defendant got in the driver's seat of the gold SUV, and Ms. Finch got in the front passenger seat. After Defendant drove away from the residence and turned right onto Church Street, Detective Wrather, who was aware of the status of Defendant's license, requested that Deputy Aaron Price, who was in a marked patrol car, conduct a traffic stop of Defendant. Detective Wrather testified that he saw the marked patrol car activate its blue lights and then he heard on the police radio that Defendant was not stopping. He stated that Defendant was driving into oncoming lanes of traffic, so Deputy Price turned off his lights and sirens but continued to watch Defendant. Deputy Price reported that Defendant had turned onto Veterans Parkway.

Detective Wrather said that the traffic on Church Street "stays consistently heavy, pretty much all day long." He said that Defendant would have driven about a half a mile down Church Street before turning onto Veterans Parkway. He explained that Defendant eventually abandoned the gold SUV in a neighborhood and took off on foot; Defendant was later found hiding under a tree between two houses.

Detective Wrather stated that, after Defendant was arrested, officers conducted a search of Defendant's vehicle and found approximately .5 grams of heroin, two sets of digital scales, and syringes inside a black pouch located in the gold SUV. He said that, based upon his experience as a narcotics detective, digital scales were used to measure out "in-coming" and "out-going" narcotic packages, explaining that "you want to typically weigh it to make sure you are not getting ripped off, so you get what you pay for."

Detective Wrather testified that a traffic stop was also conducted of Mr. Cooper's vehicle; he said that Mr. Cooper was also arrested because he "had narcotics on him" when he was stopped. Detective Wrather testified that Mr. Cooper was eventually charged with maintaining a dwelling where controlled substances are used or sold because the NYU Place residence was being used to facilitate narcotics use and, as the lessee of the residence, Mr. Cooper was "responsible for what [went] on in his house."

Detective Wrather said that he obtained a search warrant for the NYU Place residence after Defendant's arrest. Detective Wrather explained that, during the execution of the search warrant, he prepared a sketch of the residence and took photographs; he explained that the residence contained three bedrooms, which he labeled "Bedroom One," "Bedroom Two," and "Bedroom Three." Detective Wrather stated that Bedroom One contained female clothing and female personal hygiene products. He said that, when he went to search Bedroom Two, he found that the door to the room was locked. Detective Wrather explained that he asked Mr. Cooper, who was present at the residence during the execution of the search warrant, if there was anyone inside Bedroom Two. Mr. Cooper denied that anyone was inside the bedroom, and he explained that he locked his bedroom door because he did not trust the other individuals staying in the residence. Detective Wrather testified that Mr. Cooper had a key to Bedroom Two, which he provided to Detective Wrather to unlock the door. Detective Wrather stated that, once inside Bedroom Two, he found clothing that clearly belonged to Mr. Cooper based upon the pant-length and waist size.

Detective Wrather explained that Bedroom Three was "extremely unkept[,]" in contrast to Bedroom One and Bedroom Two. Detective Wrather said that he found documents in Bedroom Three that had Defendant's name on them and that the clothing found in Bedroom Three was "distinctive" and clearly belonged to Defendant rather than Mr. Cooper or Ms. Finch. He said that, in searching Bedroom Three, he found various

items of drug paraphernalia. Specifically, he found numerous syringes, plastic baggies, and "filters" that were often utilized by drug users to remove impurities in drugs before injecting them. Detective Wrather testified that he also found powdered narcotics wrapped in cellophane in various locations inside Bedroom Three, including on top of a dresser, and a loaded .22 caliber revolver pistol hidden in between the mattress and box spring of the bed.

Regarding Bedroom Three, the following exchange took place:

> Q. Was there intent to re-sell items in the room that you are attributing to [Defendant]?
>
> A. Based on the totality of everything, yes.
>
> Q. Okay. What were those items?
>
> A. The abundance of individual formed cellophane wrappers that are used to commonly distribute narcotics. The amount of needles in there. And the narcotics that was found in the room.

Detective Wrather testified that, during the search, he noticed that there were cameras inside the residence, which he found "abnormal." He said that he asked Mr. Cooper about the presence of the cameras and that Mr. Cooper explained it was "just a live-stream." Detective Wrather said that investigators attempted to retrieve evidence from the camera system but were unable to access or obtain any data from it.

At the conclusion of Detective Wrather's testimony, the State entered a certified copy of Defendant's prior conviction for robbery on September 11, 2006, in the Circuit Court of Rutherford County.

MPD Officer Dwight Whitaker testified that he worked in the department's Crime Suppression Unit, which was assigned to high-crime and "drug-infested" areas. He explained that, as part of his work, he was familiar with

> what [narcotics] look like; how they form; how they set; how they are used; how they are exchanged from one user to another; how they are delivered from one to another, the various types of containers they may or may not use to transport their drugs in and out of the hotels.

When shown photographs of items located in Bedroom Three of the NYU Place residence, Officer Whitaker identified "various hypodermic needles, punches, scrapers,

[and] . . . some sort of . . . butane lighter[.]" He also identified an aluminum soda can with what appeared to be narcotics in the top of it. Officer Whitaker testified that the can would have been used "as a cooker or some type of oven." He stated:

> They have an opening on the bottom of [the can]. They can apply heat to it. Once they heat that up, whatever narcotics they have in the top of it, they can heat that up. Once they get it heated up to a point to where [the narcotics] could be liquified, they can take the syringes, the hypodermic needles, they can take the end of that needle and place it in the top of the can.
>
> . . . .
>
> That way, whenever they suck up the liquid, . . . they are able to inject that into their veins, whether it be through their fingers, through the web of their fingers, whether that be in the hand, elbow, toes, thigh, wherever they can get it into their body.

Officer Whitaker explained that, once the liquified narcotics cooled, a hard substance would reform in the top of the can. The following exchange then occurred:

> Q. Okay. That substance there, can you really tell the jury anything about whether that would be a single use or a more than a single use?
>
> A. Based off of the photograph with the narcotics being in the top of the can. I would say that this would be more of a communal use. This right here, just based off the photograph, I would say it would be more probably about -- I don't know, a half or maybe a little bit more, a half a gram.

Detective Corey Floyd testified that he was assigned to the Narcotics Unit of the RCSO and that he assisted Detective Wrather with the investigation of the NYU Place residence. Detective Floyd stated that, on October 26, 2021, he followed the gold SUV as it left the residence until Deputy Price could initiate a traffic stop. Detective Floyd said that, when Deputy Price attempted the traffic stop, Defendant accelerated at a high rate of speed. Detective Floyd said that Defendant then turned onto Church Street where he began "driving at a very high rate of speed going in and out of traffic around vehicles" trying to elude officers. He recalled that there was a "good amount of traffic" on Church Street, explaining that it was "one of the busiest streets in the city." He said that Defendant then turned onto Veterans Parkway, "moving at a very high rate of speed fleeing from deputies down Veterans." He recalled that Deputy Price terminated the pursuit for safety reasons.

Detective Floyd testified that, at the intersection of Weston Boulevard and Veterans Parkway, Defendant turned onto Weston Boulevard. He said that Defendant then abandoned the gold SUV in the middle of the roadway on Weston Boulevard. Detective Floyd testified that Ms. Finch exited the vehicle and began walking away but that officers quickly detained her. Detective Floyd then began looking for Defendant in between houses in the subdivision surrounding Weston Boulevard. Detective Floyd testified that he eventually located Defendant under an evergreen tree that had "limbs go[ing] all the way to the ground." Detective Floyd explained that he held Defendant at gunpoint and gave him verbal commands to come out and surrender. He testified that Defendant initially said he was homeless and had been napping under the tree. Detective Floyd took Defendant into custody and read Defendant his *Miranda* rights.

Detective Floyd said that he was later involved in the execution of the search warrant at the NYU Place residence and that he specifically searched Bedroom Two. He testified that, inside a safe in Bedroom Two, he found several prescription bottles with Mr. Cooper's name on them, a set of digital scales, and some ammunition. He said that another officer assisting in the search located three guns inside Bedroom Two and that officers located another gun when they searched Mr. Cooper's vehicle.

Deputy Aaron Price with the RCSO testified that on October 26, 2021, he was in a marked patrol car that was parked about half a mile from the NYU Place residence. Deputy Price said Detective Wrather requested that he conduct a traffic stop of Defendant's gold SUV. He said that he got behind Defendant and attempted to make the stop by activating his patrol car's emergency equipment. Deputy Price recalled that Defendant continued at the same speed for "maybe a second or two and then accelerated away . . . pulling out onto South Church Street at a high rate of speed." Deputy Price testified that, on Church Street, Defendant drove "into the center turning lane, where vehicles are on the left and the right" and accelerated down the center lane. Deputy Price said that Defendant then "went into on-coming traffic to get around other vehicles that were in the turning lane." At that time, Deputy Price turned off his emergency equipment and advised other officers that Defendant was fleeing the traffic stop.

Deputy Price testified that he ended the pursuit for public safety reasons but that he continued to follow Defendant's gold SUV down South Church Street. He said that he could see the gold SUV "weaving in and out of traffic at a high rate of speed until it turned right onto Veterans Parkway." The following colloquy then took place:

> Q. Based on the driving that you saw that day, did you believe there were safety issues with the passenger or the other people on Church Street?

> A. Everyone within the area of [Defendant's] motor vehicle was in danger. He was driving in wrong lanes of traffic. He was driving into on-coming traffic weaving in and out of traffic.
>
> Even when he was in his direction of travel, there was -- South Church is a very busy road. And there's a lot of traffic. So everyone in the area was certainly in danger due to the driving on that road.

Deputy Price testified that, once Defendant turned onto Veterans Parkway, he lost sight of the gold SUV. He said that a detective eventually called out the location of the vehicle on Weston Boulevard; the detective reported that the SUV was parked in the middle of the road, that there was a female at the vehicle, and that Defendant fled on foot.

Deputy Price stated that, once Defendant was located and taken into custody, he assisted in the search of the gold SUV. He testified that several needles and multiple digital scales were recovered in the search. Deputy Price said that, after he was taken into custody, Defendant admitted that Ms. Finch was "probably scared due to his driving." He said that, while booking Defendant into the detention center, Defendant reported his height as six feet, two inches and his weight as 165 pounds.

Ms. Finch, who stayed with Defendant's vehicle when he abandoned it, gave a written statement to Deputy Price. In it, she stated that she had asked Defendant to take her to Sonic and to her grandmother's house so that she could retrieve her I.D. However, Defendant did not turn into Sonic as she expected and instead went straight and then turned onto Church Street "accelerating quickly." Although she told Defendant "to slow down and drive normally," Defendant "continued driving wreckless [sic] even going onto the wrong side of the road." Ms. Finch said that she "was scared and didn't know what was happening." She said that Defendant "continued driving wreckless [sic] until [they] got to a stop sign on New Salem Hwy where he proceeded to stop the vehicle and get out." When she asked Defendant if he was going to leave her there, he told her to "get out and run."

David Hutsell testified that he was the Administrative Lieutenant for the Rutherford County Adult Detention Center ("the detention center"). Lieutenant Hutsell said that inmates at the detention center had the ability to communicate with individuals outside the center through a telephone system and a video visitation system. He said that inmates also had the ability to send emails and text messages through "jail mail." Lieutenant Hutsell stated that the jail mail communications were recorded and stored by the detention center.

Lieutenant Hutsell explained that he reviewed several of Defendant's emails and text messages. He testified that on December 5, 2021, Defendant sent a text message to someone outside of the detention center. The text message read:

> Hey, Tim, man, you know I have 2,000 invested in my truck, man. Will you buy it for 800? If so, will you put it on my books? They confiscated all my money. And I am broke . . . . I'm going to tell them . . . you don't know what I was doing so they will drop the charges against you.

Lieutenant Hutsell then read a text message sent by Defendant on December 8, 2021, which stated:

> I don't like it either, but I had the monkey on my back. And that was the only thing I could find. But I made sure not to let anyone die. And I wasn't selling it. If one of my friends were withdrawal or dope sick, I gave them some. I'm not a drug dealer.
>
> I got my motion today at court with [Ms. Finch's] signed statement she got me. They got a warrant to search Tim's house. And the only room they didn't search was hers.
>
> Now she's . . . got me out of the way. She has her boyfriend there selling dope.

Special Agent John Scott testified that he worked as a forensic scientist at the Tennessee Bureau of Investigation Nashville Crime Laboratory in the drug identification section. Agent Scott said that, in connection with Defendant's case, he received two items of evidence for analysis from the RCSO. Agent Scott first tested a powdery substance and found that it contained methamphetamine and fentanyl; he said that the weight of the substance was 0.85 grams. Agent Scott described the second item of evidence he tested as "a black substance." He said that his analysis showed the black substance contained heroin and weighed 0.32 grams.

The State introduced a certified copy of Defendant's April 24, 2013 conviction for sale of a Schedule II controlled substance (a Class C felony).[1]

Following deliberations, the jury found Defendant guilty as charged in Counts 1-2, and 4-9. As to Count 3, the jury found Defendant guilty of the lesser-included offense of false imprisonment.

At a subsequent hearing, the trial court imposed the following sentences:

[1] The admission of this prior conviction occurred at a bifurcated hearing.

Count	Offense	Offender Classification	Sentence
1	Possession of a handgun by a felon[2]	Career	6 years at 85%
2	Possession of a firearm by a felon-prior felony drug conviction	Persistent	12 years at 85%
3	False imprisonment	N/A	11 months and 29 days
4	Evading arrest creating a risk of death or injury to bystanders	Career	12 years at 60%
5	Possession of a Schedule I controlled substance with intent to sell or deliver (Heroin)	Persistent	20 years at 45%
6	Possession of a Schedule II controlled substance with intent to sell or deliver (0.5 grams or more of Methamphetamine)	Persistent	20 years at 45%
7	Possession of a Schedule II controlled substance with intent to sell or deliver (Fentanyl)	Persistent	12 years at 45%
8	Possession of drug paraphernalia	N/A	11 months and 29 days
9	Driving while license is suspended/cancelled/revoked	N/A	11 months and 29 days

The trial court ordered the counts to run concurrently with one another for a total effective sentence of twenty years' incarceration.

Defendant filed a timely motion for new trial and two amended motions for new trial. Following a hearing, the trial court filed a written order, denying Defendant's request for a new trial. This timely appeal follows.

II. Analysis

On appeal, Defendant challenges the sufficiency of the evidence only as it relates to his convictions for possession with intent to sell or deliver in Counts 5-7, possession of a weapon by a felon in Counts 1 and 2, and evading arrest in Count 4. The State responds that Defendant's appeal should be dismissed because his brief was untimely filed. In the

[2] At the motion for new trial hearing, the trial court reduced Defendant's conviction in Count 1 to possession of a handgun by a felon, *see* Tenn. Code Ann. § 39-17-1307(c)(1), based upon *State v. Curry*, 705 S.W.3d 176, 190-91 (Tenn. 2025), in which our supreme court determined that a certified judgment of a defendant's prior conviction of robbery was insufficient to establish that a prior robbery was a crime of violence within the meaning of unlawful possession of a firearm statute.

alternative, the State argues that the evidence is sufficient to support the challenged convictions.

A. Untimely Brief

The State argues that the instant appeal should be dismissed because Defendant's brief did not comply with the timely filing requirement found in Rule 29 of the Tennessee Rules of Appellate Procedure. Defendant did not file a reply brief, a motion to waive the timeliness requirement, or otherwise respond to the State's argument.

Rule 29 of the Tennessee Rules of Appellate Procedure provides that an appellant must serve and file a brief within thirty days of the record being filed with the clerk. Tenn. R. App. P. 29(a). If an appellant fails to file a brief within the time provided by the rules or within the time as extended, an appellee may move for dismissal of the appeal. Tenn. R. App. P. 29(c).

In this case, the record was filed on November 13, 2025, making Defendant's brief due on December 15, 2025. On December 17, 2025, this court entered an order granting a motion for extension of time filed by Defendant. The order stated that Defendant "shall now have until January 14, 2026, to file his brief." Defendant filed his brief on January 15, 2026. Although Defendant's brief was filed one day late, the brief complies with the applicable Rule of Appellate Procedure in all other respects. As such, we decline to dismiss this appeal based solely upon the late filing of Defendant's brief.[3]

B. Sufficiency of the Evidence

Our standard of review for a sufficiency of the evidence challenge is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); *see also* Tenn. R. App. P. 13(e). Questions of fact, the credibility of witnesses, and the weight of the evidence are resolved by the fact finder. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh the evidence. *Id.* Our standard of review "is the same whether the conviction is based upon direct or circumstantial evidence." *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)) (internal quotation marks omitted).

[3] Nevertheless, we urge defense counsel to always respond by motion or reply brief to a request from the State that this court dismiss an appeal.

A guilty verdict removes the presumption of innocence, replacing it with a presumption of guilt. *Bland*, 958 S.W.2d at 659; *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). The defendant bears the burden of proving why the evidence was insufficient to support the conviction. *Bland*, 958 S.W.2d at 659; *Tuggle*, 639 S.W.2d at 914. On appeal, the "State must be afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom." *State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007).

1. Possession of Controlled Substances with Intent to Sell or Deliver

Regarding Counts 5-7, Defendant asserts that the State presented only circumstantial evidence of his possession of the drugs and that the evidence did not exclude the possibility that the drugs belonged to Mr. Cooper or Ms. Finch or that Defendant was unaware of the existence of the drugs. Defendant further asserts that the shared nature of the NYU Place residence, the absence of direct links of his possession, and the "lack of intent evidence" render the evidence insufficient.

It is an offense for a defendant to knowingly possess a controlled substance with intent to manufacture, deliver, or sell the controlled substance. Tenn. Code Ann. § 39-17-417(a)(4). As relevant here, "a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist." Tenn. Code Ann. § 39-11-106(a)(23). A "controlled substance" includes any drug, substance, or immediate precursor in Schedules I through VII of Tennessee Code Annotated section 39-17-403 through Tennessee Code Annotated section 39-17-416. *See* Tenn. Code Ann. § 39-17-402(4).

"'Possession' may be actual or constructive and may be proven by circumstantial evidence." *State v. Belew*, 348 S.W.3d 186, 189 (Tenn. Crim. App. 2005) (citing *State v. Shaw*, 37 S.W.3d 900, 903 (Tenn. 2001); *State v. Bigsby*, 40 S.W.3d 87, 90 (Tenn. Crim. App. 2000)). Establishing constructive possession requires proof that a defendant had "the power and intention at a given time to exercise dominion and control over the drugs either directly or through others." *Id*. (citing *Shaw*, 37 S.W.3d at 903). Stated another way, "[C]onstructive possession is the ability to reduce an object to actual possession." *State v. Ross*, 49 S.W.3d 833, 845-46 (Tenn. 2001) (citation omitted). Ultimately, constructive possession depends on the totality of the circumstances in each case and may be established through circumstantial evidence. *State v. Robinson*, 400 S.W.3d 529, 534 (Tenn. 2013).

Additionally, because possession is about control, a defendant may be subject to criminal liability even if his control over an object is not exclusive. *State v. Waggoner*, No. M2013-00731-CCA-R3-CD, 2014 WL 1354938, at *4 (Tenn. Crim. App. Apr. 4, 2014) (stating that "[c]riminal liability may result from sole possession or joint possession

with another person"), *perm. app. denied* (Tenn. Sept. 2, 2014). When, as here, an "accused is not in exclusive possession of the place where the controlled substance is found, additional incriminating facts and circumstances must be presented" that "affirmatively link the accused to the controlled substance." *State v. Richards*, 286 S.W.3d 873, 885-86 (Tenn. 2009) (Koch, J., dissenting). These include:

> (1) whether the drugs were in plain view[;] (2) whether contraband was in close proximity to the defendant[;] (3) conduct on the part of the defendant indicative of guilt, including furtive gestures and flight; (4) the quantity of drugs present; (5) the proximity of the defendant's effects to the contraband; (6) the presence of drug paraphernalia; (7) whether the defendant was under the influence of or possessed additional narcotics; (8) the defendant's relationship to the premises; and (9) incriminating statements made by the defendant.

Id. (footnotes omitted).

"Sale" is defined as a bargained-for offer and acceptance and an actual or constructive transfer or delivery of the controlled substance. *See State v. Holston*, 94 S.W.3d 507, 510 (Tenn. Crim. App. 2002). Tennessee Code Annotated section 39-17-402(6) defines "deliver" or "delivery" as "the actual, constructive, or attempted transfer from one person to another of a controlled substance[.]" A jury may infer "from the amount of a controlled substance or substances possessed by an offender, along with other relevant facts surrounding the arrest, that the controlled substance or substances were possessed with the purpose of selling or otherwise dispensing." Tenn. Code Ann. § 39-17-419. "Other relevant facts" include the weight and street value of the drugs, the packaging of the drugs, the presence of a large amount of cash, and the presence of weapons. *See*, *e.g.*, *State v. Nelson*, 275 S.W.3d 851, 867 (Tenn. Crim. App. 2008); *State v. Brown*, 915 S.W.2d 3, 8 (Tenn. Crim. App. 1995); *State v. Matthews*, 805 S.W.2d 776, 782 (Tenn. Crim. App. 1990).

When viewed in the light most favorable to the State, a rational trier of fact could have found, beyond a reasonable doubt, that Defendant was guilty of knowingly possessing heroin, methamphetamine, and fentanyl with the intent to sell or deliver those controlled substances to others. The evidence presented at trial established that, during the execution of a search warrant at the NYU Place residence where Defendant lived, officers found white powdered narcotics wrapped in cellophane in various locations inside Bedroom Three. Testing of the powdered substance showed that it was a mixture of methamphetamine and fentanyl and weighed 0.85 grams. Methamphetamine and fentanyl are Schedule II controlled substances. Tenn. Code Ann. § 39-17-408(c)(9), (d)(2) (2021). Additionally, during the search of Defendant's gold SUV, officers found a black substance

that tested positive for heroin and weighed 0.32 grams. Heroin is a Schedule I controlled substance. Tenn. Code Ann. § 39-17-406(c)(11) (2021).

The evidence established that Defendant was in constructive possession of the heroin found in the vehicle. Specifically, the undisputed evidence at trial established not only that Defendant occupied and drove the vehicle in which the heroin was found but also that Defendant refused to stop when Deputy Price attempted to pull him over and then abandoned the vehicle and fled on foot. *See State v. Shaw*, 37 S.W.3d 900, 903-04 (Tenn. 2001) (finding the evidence sufficient to support the defendant's conviction for constructive possession of cocaine with the intent to deliver when cocaine was recovered from the vehicle the defendant had occupied and possessed and when the defendant walked away from the car shortly after it was stopped by law enforcement).

The evidence also showed that Defendant constructively possessed the methamphetamine and fentanyl. While Defendant was not in exclusive possession of the residence where the controlled substances were found, the State presented additional incriminating facts affirmatively linking Defendant to the methamphetamine and fentanyl. *See Richards*, 286 S.W.3d at 885-86. Drugs and drug paraphernalia were found in plain view in Bedroom Three, including on top of a dresser beside the bed. Officers found Defendant's personal effects, such as clothing that would fit a man with a taller, slimmer build consistent with Defendant's stature and various documents with Defendant's name on them, in the same bedroom as the contraband. Additionally, in his communications from jail, Defendant admitted that he had been giving drugs to people who were going through withdrawal and who were "dope sick."

Because Defendant had control over the bedroom in which the methamphetamine and fentanyl were found and control over the vehicle in which the heroin was found, a rational trier of fact could have found, beyond a reasonable doubt, that Defendant's possession of the controlled substances was "knowing." *See Brown*, 915 S.W.2d at 7 ("Knowledge may be inferred from control over the vehicle in which the contraband is secreted.") (citing *United States v. Pierre,* 932 F.2d 377, 392 (5th Cir. 1991)).

Regarding Defendant's intent to sell or deliver the controlled substances, the evidence established that, in the days leading up to the search of the residence, both the MPD and the RCSO received anonymous tips about the "high volume of traffic coming in and out" of the NYU Place residence. In watching the residence, officers observed "waves of individuals coming back and forth" from the residence in increments of five to ten minutes, and they identified Defendant as "the one letting them in the door or outside with them waiting on them in his car." In addition to the controlled substances found during the search of Defendant's bedroom and vehicle, officers found digital scales commonly used to measure out "in-coming" and "out-going" narcotic packages; an abundance of individual

formed cellophane wrappers commonly used to distribute narcotics; numerous syringes, plastic baggies, and needles; and a loaded .22 caliber revolver pistol hidden in between the mattress and box spring of the bed. Moreover, Officer Whitaker testified that the presentation of the controlled substances in Defendant's bedroom was consistent with communal, as opposed to individual or personal, use. Finally, Defendant admitted having provided drugs to people who were going through withdrawal and who were "dope sick." Under these circumstances, a rational juror could conclude that Defendant possessed the controlled substances with the intent to sell or deliver. Defendant is not entitled to relief.

2. Possession of a Weapon by a Felon

Regarding his convictions for possession of a handgun by a felon in Count 1 and possession of a firearm by a felon-prior felony drug conviction in Count 2, Defendant argues that the evidence was insufficient to support his convictions because the State did not establish that he had dominion and control over the gun located in Bedroom Three, noting that the State presented no testimony that his fingerprints were on the gun and no evidence linking the gun's ammunition to Defendant.

Relevant to Count 1, "A person commits an offense who possesses a handgun and has been convicted of a felony[.]" Tenn. Code Ann. § 39-17-1307(c)(1) (2021). A handgun is "any firearm with a barrel length of less than twelve inches (12") that is designed, made or adapted to be fired with one (1) hand[.]" Tenn. Code Ann. § 39-11-106(a)(19) (2021). As charged in Count 2, "A person commits an offense who unlawfully possesses a firearm . . . and . . . [h]as been convicted of a felony drug offense." Tenn. Code Ann. § 39-17-1307(b)(1)(B) (2021). A firearm is defined, in relevant part, as "[a]ny weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive[.]" Tenn. Code Ann. § 39-11-106(a)(13)(A)(i) (2021).

Constructive possession "'may occur only where the personally unarmed participant has the power and ability to exercise control over the firearm.'" *State v. Ford*, No. W2015-02407-CCA-R3-CD, 2017 WL 838483, at *4 (Tenn. Crim. App. Mar. 3, 2017) (quoting *Key v. State*, 563 S.W.2d 184, 188 (Tenn. 1978)), *no perm. app. filed*. For example, in *Ford*, this court held that there was sufficient proof of constructive possession where the weapon was found in the defendant's bedroom. *Id.* at *4. Similarly, in *State v. Fife*, this court concluded that the defendant was in constructive possession of a weapon where the weapon was found in the defendant's bedroom. *State v. Fife*, No. M2013-02211-CCA-R3-CD, 2014 WL 2902276, at *4 (Tenn. Crim. App. June 26, 2014), *no perm. app. filed*.

Viewing the evidence in the light most favorable to the State and drawing all reasonable inferences therefrom, we conclude that the evidence is sufficient to sustain Defendant's convictions in Counts 1 and 2. First, the State introduced certified copies of

Defendant's prior felony convictions, showing that Defendant had been convicted of robbery on September 11, 2006, and of sale of a Schedule II controlled substance on April 24, 2013, which established Defendant's status as a convicted felon on October 26, 2021. Additionally, the evidence established Defendant's constructive possession of a pistol on that date. Officers testified that on October 26, 2021, they executed a search warrant at the NYU Place residence where Defendant lived. During the search, they found a loaded .22 caliber revolver pistol in the bedroom identified as Defendant's, based upon the bedroom containing clothing fitting a man with Defendant's taller, slimmer build as well as documents with Defendant's name on them. The pistol was hidden in between the mattress and box spring of Defendant's bed. The jury reasonably inferred that Defendant was aware that he had a gun hidden under his mattress and that Defendant intentionally and knowingly kept the pistol hidden because he was aware that it was unlawful for him to be in possession of it due to his status as a convicted felon.

Although Defendant suggests in his brief that the gun could have belonged to Mr. Cooper, the testimony established that Mr. Cooper stored his guns in his bedroom, which he kept locked because he did not trust the other people in the residence. Moreover, even if the pistol hidden under Defendant's mattress did belong to Mr. Cooper, Defendant's lack of ownership would not relieve him of liability. As recognized in *Fife*, ownership is not the dispositive factor because convicted felons are prohibited from being in possession of a weapon and one may also be in possession of the property without holding actual title to it. *Fife*, 2014 WL 2902276, at *4; *see also State v. Hart*, No. W2023-00122-CCA-R3-CD, 2024 WL 17255, at *4 (Tenn. Crim. App. Jan. 2, 2024), *no perm. app. filed*. The evidence was sufficient to sustain Defendant's convictions in Counts 1 and 2, and he is not entitled to relief on this claim.

3. Evading Arrest

As to his conviction for evading arrest creating a risk of death or injury to bystanders in Count 4, Defendant argues that, although Deputy Price testified that he accelerated on Church Street and drove into oncoming lanes of traffic, "no specific speeds were given, no accidents occurred, and no bystanders testified to risk." Defendant maintains that the pursuit was short, that it terminated quickly, and that the officers' "vague descriptions" of his driving "permit doubt that the driving was sufficiently reckless" to support a conviction.

"It is unlawful for any person, while operating a motor vehicle on any street, road, alley or highway in this state, to intentionally flee or attempt to elude any law enforcement officer, after having received any signal from the officer to bring the vehicle to a stop." Tenn. Code Ann. § 39-16-603(b)(1). The defendant must have the "conscious objective or desire" to evade arrest. Tenn. Code Ann. § 39-11-302(a). As in this case, the offense becomes a Class D felony when "the flight or attempt to elude creates a risk of death or

injury to innocent bystanders." Tenn. Code Ann. § 39-16-603(b)(3)(B). An "innocent bystander" is any person other than the defendant or "officer giving the signal to stop." *State v. Cross*, 362 S.W.3d 512, 521 (Tenn. 2012) (internal citation omitted). In *Cross*, our supreme court stated that, "[b]y the plain language of the statute, proof of actual injury or death is not necessary for conviction. All that needs to be shown is that the defendant evaded arrest and that in so doing, he created the *risk* of death or injury." *Id*. at 524 (quoting *State v. Turner*, 193 S.W.3d 522, 525 (Tenn. 2006)) (emphasis in original)).

When viewed in the light most favorable to the State, the evidence shows that, when Defendant left the NYU Place residence in his gold SUV, Deputy Price attempted to conduct a traffic stop of Defendant. Deputy Price, who was in a marked patrol car, got behind Defendant and activated the patrol car's lights and sirens. Instead of stopping the vehicle, Defendant accelerated at a high rate of speed and turned onto Church Street, which was described as "one of the busiest streets in the city" of Murfreesboro. Once on Church Street, Defendant drove "into the center turning lane, where vehicles [were] on the left and the right" and accelerated down the center lane. Defendant then "went into on-coming traffic to get around other vehicles that were in the turning lane." At that time, Deputy Price ended the pursuit for public safety reasons but continued to trail Defendant down South Church Street. Deputy Price testified that Defendant continued "weaving in and out of traffic at a high rate of speed until [Defendant] turned right onto Veterans Parkway."

When asked about the risks to public safety created by Defendant's behavior, Deputy Price stated:

> Everyone within the area of [Defendant's] motor vehicle was in danger. He was driving in wrong lanes of traffic. He was driving into on-coming traffic weaving in and out of traffic.
>
> Even when he was in his direction of travel, there was -- South Church is a very busy road. And there's a lot of traffic. So everyone in the area was certainly in danger due to [Defendant's] driving on that road.

Under these circumstances, a jury could easily find that Defendant's flight and attempt to elude law enforcement officers created a risk of death or injury to his passenger, Ms. Finch, and to other drivers on the road near him that day. The evidence is more than sufficient to support Defendant's conviction for evading arrest. He is not entitled to relief on this claim.

C. Merger

While not raised by the parties, we conclude that this case must be remanded to the trial court for the merger of Count 1 (possession of a handgun by a felon), *see* Tenn. Code Ann. § 39-17-1307(c)(1), into Count 2 (possession of a firearm by a felon-prior felony drug conviction), *see* Tenn. Code Ann. § 39-17-1307(b)(1)(B), resulting in a single conviction for possession of a firearm by a felon-prior felony drug conviction.

While generally this court shall review only those issues presented for review, we may exercise "discretion to consider issues that have not been properly presented in order to achieve fairness and justice." *State v. Bristol*, 654 S.W.3d 917, 926-27 (Tenn. 2022) (citing Tenn. R. App. P. 13(b), 36(a); *In re Kaliyah S.*, 455 S.W.3d 533, 540 (Tenn. 2015)). Further, an appellate court may "consider an error that has affected the substantial rights of a party at any time, even though the error was not raised in the motion for a new trial or assigned as error on appeal." *Id*. at 927 (citing Tenn. R. App. P. 36(b)). However, "this discretion should be 'sparingly exercised.'" *Id*.; *see, e.g., State v. Locust*, No. W2022-01026-CCA-R3-CD, 2023 WL 8940830, at *24 (Tenn. Crim. App. Dec. 28, 2023) (concluding that "[e]rroneous merger of convictions clearly results in prejudice to the judicial process and the interests of the public, and as such, we choose to address it pursuant to Rule 13(b)"), *perm. app. denied* (Tenn. Sept. 12, 2024); *Hart*, 2024 WL 17255, at *5 (concluding after sua sponte review that the case must be remanded to the trial court for merger of three counts of unlawful possession of a firearm by a convicted felon into one conviction).

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, states, "No person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. amend. V. Similarly, the Tennessee Constitution guarantees "[t]hat no person shall, for the same offense, be twice put in jeopardy of life or limb." Tenn. Const. art. I, § 10. Both clauses provide three distinct protections: "(1) protection against a second prosecution for the same offense after acquittal; (2) protection against a second prosecution for the same offense after conviction; and (3) protection against multiple punishments for the same offense." *State v. Watkins*, 362 S.W.3d 530, 541 (Tenn. 2012).

With respect to the third category, the double jeopardy prohibition operates to prevent prosecutors and courts from imposing punishment that exceeds that authorized by the legislature. *Id*. at 542. Such single prosecution, multiple punishment claims ordinarily fall into one of two categories: (1) "unit-of-prosecution" or (2) "multiple description" claims. *Id*. at 543. Multiple description claims arise in cases where the defendant had been convicted of multiple criminal offenses under different statutes but the statutes punished the same alleged offense. *Id*. at 544. Unit-of-prosecution claims arise when the defendant

has been convicted of multiple violations of the same statute and asserts that the multiple convictions are for the same offense. *Id*.

When reviewing multiple description cases, courts must determine whether the defendant committed two offenses or only one. *Id*. at 544. To do so, courts apply the test articulated in *Blockburger v. United States*, 284 U.S. 299 (1932). *Blockburger*, 284 U.S. at 304; *Watkins*, 362 S.W.3d at 544. The reviewing court should first determine whether the Tennessee General Assembly expressed an intent to permit or preclude multiple punishments. *Watkins*, 362 S.W.3d at 556. "Where the General Assembly's intent is not clearly expressed, the *Blockburger* test should be applied to determine whether multiple convictions under different statutes punish the 'same offense.'" *Id*. To make this determination, appellate courts must "examin[e] statutory elements of the offenses in the abstract, rather than the particular facts of the case." *State v. Cross*, 362 S.W.3d 512 (Tenn. 2012). A *Blockburger* analysis requires two steps: (1) determine whether the statutory violations arose "from the same act or transaction" and (2) if they did arise from the same act or transaction, determine whether the offenses for which the defendant was convicted constitute the same offense by comparing the elements of the offenses for which the defendant was convicted. *Id*. at 545. If each offense contains an element that the other does not, the statutes are treated as distinct, and courts presume that the legislature intended that the offenses be punished separately. *Id*. at 545-46. Whether multiple convictions violate the principles of double jeopardy is a mixed question of law and fact that appellate courts review de novo with no presumption of correctness. *State v. Smith*, 436 S.W.3d 751, 766 (Tenn. 2014).

We will apply the multiple description test to determine whether Counts 1 and 2 should merge. *See id.* at 766-68 (applying the multiple description test to determine whether convictions under multiple subsections of the same statute violated double jeopardy); *State v. Gray*, No. W2017-01897-CCA-R3-CD, 2018 WL 4382093, at *8-10 (Tenn. Crim. App. Sept. 14, 2018) (same), *no perm. app. filed*. Regarding Counts 1 and 2, we initially conclude that the Tennessee General Assembly did not express intent to either preclude or permit multiple convictions under section 39-17-1307. Titled "Carrying or possession of weapons[,]" section 39-17-1307 does not contain an express provision permitting or prohibiting prosecution for the same criminal conduct under multiple subsections. Therefore, we must apply the two-step test from *Blockburger*.

Applying the *Blockburger* analysis to Counts 1 and 2, we conclude that the statutory violations charged in those counts arise from the same criminal act. *See Gray,* 2018 WL 4382093, at *9 (citing *Watkins*, 362 S.W.3d at 545). Both convictions are based upon Defendant's constructive possession of one handgun, which was located in his bedroom in between the mattress and box spring during the execution of the search warrant on October 26, 2021.

Having concluded that Counts 1 and 2 arise from the same criminal act or transaction, we must determine whether the offenses for which Defendant was convicted constitute the same offense based on an analysis of the elements. As relevant to Count 1, "[a] person commits an offense who possesses a *handgun* . . . and has been convicted of a *felony*[.]" Tenn. Code Ann. § 39-17-1307(c)(1) (emphasis added). As charged in Count 2, "[a] person commits an offense who unlawfully possesses a *firearm* . . . and . . . [h]as been convicted of a *felony drug offense*." Tenn. Code Ann. § 39-17-1307(b)(1)(B) (emphasis added). In the two subsections at issue, the mens rea is not specified,[4] and the actus reus is the act of possession. Additionally, both statutes require Defendant to have been previously convicted of a felony, another essential element. Because *Watkins* and its progeny apply the *Blockburger* test with an objective or abstract view, we conclude that the differences between the two subsections—a handgun versus a firearm and a prior felony conviction versus a prior felony drug conviction—do not constitute separate elements. *See Gray*, 2018 WL 4382093, at *10. We note that the category of "handgun" is subsumed within the category of "firearm," *see* Tenn. Code Ann. § 39-11-106(a)(13), (19) (2021), and the category of a felony drug conviction is subsumed within the category of a felony conviction. *See Gray*, 2018 WL 4382093, at *10. Thus, we conclude that these two offenses do not each have an element that the other does not have, and Defendant's convictions in Counts 1 and 2 must merge. *Id.*

On remand, the trial court should merge the Class E felony conviction for possession of a handgun by a felon in Count 1 into the Class C felony conviction for possession of a firearm by a felon-prior felony drug conviction in Count 2. *See id*. (citing *State v. Banes*, 874 S.W.2d 73, 81 (Tenn. Crim. App. 1993)).

III. Conclusion

Based upon the foregoing, we affirm Defendant's convictions but remand for merger of Count 1 into Count 2 and for entry of corrected judgment forms.

s/Robert L. Holloway, Jr.

[4] Because section 39-17-1307 does not specify a mental state, "intent, knowledge or recklessness suffices to establish the culpable mental state." Tenn. Code Ann. § 39-11-301.