

No. S26A1080

In the
Supreme Court of Georgia

T'Lani Robinson,

Appellant,

v.

State of Georgia,

Appellee.

On Appeal from Fulton County Superior Court
Lower Ct. Case No. 22SC184612

**BRIEF OF APPELLEE
BY THE ATTORNEY GENERAL**

Christopher M. Carr 112505
Attorney General

Beth A. Burton 027500
Deputy Attorney General

Meghan H. Hill 342572
Senior Assistant Attorney General

Virginia D. Frazier 911834
Assistant Attorney General

Office of the Attorney General

40 Capitol Square, SW

Atlanta, Georgia 30334

(470) 802-6830

vfrazier@law.ga.gov

Counsel for Appellee

TABLE OF CONTENTS

	Page
Statement of the Facts	1
Statement of the Case	10
Argument.....	12
I. The evidence was sufficient for the jury to convict Robinson beyond a reasonable doubt.	12
II. The verdicts were not repugnant, mutually exclusive, or inconsistent.	16
III. The trial court did not abuse its discretion by permitting the lead detective to testify about the surveillance video.....	20
IV. Trial counsel provided effective assistance.	23
A. Trial counsel was not ineffective for failing to prepare for trial.....	26
B. Trial counsel was not ineffective for failing to move to bifurcate the prior conviction.	27
C. Trial counsel was not ineffective for failing to move for severance from co-defendant Wright.	29
D. Robinson’s prejudice argument lacks merit.....	32
Conclusion	35

STATEMENT OF THE FACTS

On July 1, 2022, Appellant T'Lani Robinson and her boyfriend, co-defendant Daniel Wright, drove to Kelly Street in Fulton County, where they attempted to purchase marijuana from victim Daniel Johnson. V6-76, 153; V8-18.¹ The drug deal went bad when Wright pulled out a gun and shot and killed Johnson. V6-54, 57–59; V8-59, 61; V9-88; V12-18–24.

Johnson and Kayla Tucker had been in a relationship for about five years at the time of the shooting. V6-41–42; V12-3. In April 2022, Johnson lost his job, so he began selling marijuana. V6-44–46. Tucker accompanied him on the drug sales on a couple of occasions, sometimes in Tucker's maroon Acura MDX. V6-44–47.

On July 1, 2022, around 9:00 p.m., Johnson and Tucker drove in Tucker's Acura to an American Deli next to a Shell gas station, near Kelly Street. V6-47–49. They ordered food, Johnson met someone for a drug transaction, and then they parked at a gas pump at the Shell gas station next door. V6-49–51. The car was facing the gas station, and Tucker's side of the car was closest to the gas pump. V6-51–52. Johnson, who had been driving,

¹ Citations to the clerk's record and transcript prepared for appeal are designated "V" followed by the volume number of the electronic record and the PDF page number(s) within the volume (Vol. Number – PDF Page Number; for example, V1-77). Citations to Appellant's Brief are designated "Br." followed by the PDF page number(s) within the brief.

got out of the car, while Tucker stayed in the passenger seat, and then Johnson walked around and had a conversation with a male and female who had gotten out of a gray car that pulled up behind Tucker's car. V6-50–52.

After talking to the couple, Johnson got back in the car with Tucker, drove a few feet away to the side, parked, got out of the car again, and walked to the trunk where he typically kept a fanny pack of marijuana. V6-53, 61. Tucker thought Johnson had about a quarter pound of marijuana at the time of the transaction. V6-63. Johnson opened the trunk and met the two couple from earlier. V6-53. Johnson asked the female, “[D]**n, you good, shawty?” before closing the trunk, and walking back to the driver's side of the car. V6-53–54. Johnson opened the door to get in, and then Tucker heard him say, “[O]h, s**t,” followed by a gunshot. V6-54. Tucker looked up and saw Johnson running in front of their car, and then the male from the drug transaction appeared at the driver's side door, pointed a gun at Tucker, and told her “to get the f**k out of the car.” *Id.* Tucker got out of the car with her hands up and ran. V6-55. She began to follow Johnson as he fled but fell and lost her shoe, so she hid in the bushes. V6-55, 72; V12-9. Tucker had a 40-caliber Glock 27 gun in the driver's side door but did not see Johnson with the gun. V6-55. Johnson normally did not wear a shirt during the summer, and he did not often have a gun with him. V6-56.

Tucker waited for about twenty minutes, and then she decided to look for Johnson or to go to Johnson's dad's apartment nearby. V6-59. She started to go towards the apartment, hopping over the gate to get inside, but she turned around when she saw the car that she had seen earlier. V6-60–61.

Both Tucker and Johnson had left their phones in the car, so Tucker asked someone if she could use their phone, but that person said no. V6-60. When she went back to her car to try to get to her phone, she noticed that both the doors were still open, and the trunk had been reopened. V6-60–61. Tucker got back in the passenger side of the car and asked a homeless man to shut the trunk, because she was scared. V6-62. Tucker locked all the doors and then called her grandmother and told her they were robbed. *Id.* Although Tucker was scared, she did not call the police, and she drove away from the scene when she saw ambulance and police lights, because she knew the shooting had occurred during a drug deal. V6-63–64. When Tucker got home, she noticed the fanny pack with marijuana, her gun, and one of her son's shoes were missing. V6-65, 72; V12-10.

When police arrived at the scene, they found Johnson, who had been shot multiple times, lying on the grass near the bushes. V6-152, 171, 174. Johnson tried to explain to the responding officer what happened and told him his name but then could not talk because he said he was hurting. V6-152, 171. After emergency services transported Johnson from the scene,

officers observed specks of blood on the sidewalk and in the pine straw where Johnson was found; in Johnson's pants, which had been removed by EMS, police located Johnson's wallet, driver's license, and \$223.00 in cash, which had a bullet hole. V6-152, 158–161, 172–173; V8-7; V13-45, 47, 49, 51–53, 58–65.

At the scene, officers located a Samsung cell phone with the screen powered on, a hat, and a toddler shoe in the middle of the road, a Croc shoe in the bushes, and three Winchester nine-millimeter cartridge casings. V6-153; V7-11–12, 20, 79; V13-3–40. The blood trail indicated that Johnson ran across the park, onto Woodward Avenue, along the sidewalk of Woodward Avenue, and then to the middle of the intersection of Woodward and King. V7-24.

The Samsung phone from the scene was open to the application Cash App and was receiving notifications. V7-126, 167. The phone had the Google Maps GPS function open and minimized and it was navigating to a seafood restaurant in Conyers. V7-127. Eventually the phone locked. V7-129. Still able to access emergency services, an officer called 911 from the cell phone to determine the phone number assigned to the device, which was (404) 903-1432 and learned that the phone belonged to Robinson. V7-129, 163–164. At around 3:05 a.m. on July 2, 2022, after police neglected to put Robinson's phone in airplane mode after calling 911 with it, someone remotely accessed

the phone and deleted the Google account associated with the device. V8-11, 33, 35.

A couple hours after the shooting, Tucker received a phone call from a detective, who told her that Johnson had been shot a few times and had been transported alive to Grady Hospital, but it was not looking good. V6-65–66; V7-130. Tucker's mother was driving Tucker to the hospital when Tucker's grandmother called to say that Johnson had passed away. V6-68. Tucker gave police Johnson's phone and unlocked it for them. V6-70; V7-134–135.

On July 6, 2022, in her interview with police, Tucker admitted that Johnson sold marijuana, typically four ounces in a sale, that he kept the marijuana in a black and white cross-body bag, and that they had conducted a marijuana sale while at the Shell gas station where Johnson was approached by Wright. V7-173–174; V8-24. Tucker overheard a conversation where someone said if they did not feel comfortable doing the sale at the Shell that they should go around the corner. V7-174. They left the Shell station and then pulled over to Kelly Street, where Johnson exited the driver's side, went to the trunk, and met two individuals, later identified as Wright and Robinson, and sold them marijuana at the rear of the Acura. *Id.* When Johnson returned to the driver's side, Tucker heard a gunshot, saw Wright come to the driver's side and point a gun at her, and then she exited the vehicle as quickly as she could. *Id.* When Tucker returned to the vehicle,

she noticed the trunk had been reopened and that both the marijuana that was in the trunk and the 40-caliber Glock 27 pistol that she had in the driver's side door were gone. V7-174–175; V8-25.

Police discovered that Johnson communicated through GroupMe with an individual with the last name Ruiz, who Johnson sold marijuana to just before he was killed. V8-22. Tucker admitted to police that she and Johnson met Ruiz at the American Deli just before going to the Shell gas station. *Id.*

Tucker described for police the female she saw as having red, long hair that was either a wig or a weave. V6-69. Police obtained Robinson's driver's license photo in which Robinson had red hair like Tucker had described. V8-17–18. Tucker described the male who pointed the gun at her as light skinned, about six feet tall, with a low haircut or fade, with big or wide eyes, an average build, and between the ages of twenty and thirty. V7-176. Tucker identified Wright in a photo lineup and at trial as the person who shot Johnson and pointed a gun at her. V6-57–59; V8-59, 61; V12-18–24.

Video surveillance from the Shell gas station showed that at about 9:13 p.m., Robinson's Hyundai Sonata, driven by Robinson and with Wright in the passenger seat, parked at pump four at the Shell. V7-137, 140. Another video showed that about a minute later, a vehicle turned from the American Deli restaurant, crossed the street, and went north on Hill Street. V7-141. The vehicle, occupied by Johnson and Tucker, parked at pump one at the Shell

gas station. V7-143. At 9:15 p.m., Johnson, wearing light colored pants and a bright colored hat, stood near the Acura that had just pulled up at pump one talking to an unidentified individual. V7-143–144. The passenger of the gray vehicle, Wright, exited the passenger side at pump four. V7-144. At 9:16 p.m., the gray Hyundai Sonata pulled out of the parking stall at pump four. V7-144. Then Robinson got out of the driver's side of the Hyundai. V7-146. Johnson then returned to his driver's seat at pump one. *Id.* Then both vehicles left the gas station. *Id.* In another video from a camera that was pointing south towards Hill Street, at 9:19 p.m., the Acura occupied by Johnson and Tucker left the gas station and headed towards Kelly Street. V7-148–149. Then about eight seconds later, the Hyundai occupied by Robinson and Wright, turned onto Hill Street out of the gas station and turned back into the gas station parking lot, and then headed towards Kelly Street, following Johnson and Tucker. V7-149. Both cars then parked on Kelly Street. V7-150.

Then, later, in surveillance video from a nearby residence, at 10:37 p.m., Johnson's and Tucker's vehicle drove by the house. V6-133, 137; V7-155. Then about seven seconds later, Robinson and Wright's vehicle was in the driveway of the house. V7-155. A few seconds later, Robinson and Wright exited from the vehicle. V7-157. Then Wright returned to the passenger seat for a second. *Id.* Another camera showed at 10:37 p.m. that the Acura

occupied by Johnson and Tucker, and the Hyundai was parked right behind the Acura. V7-158. Next, Johnson exited the driver's seat, went to the trunk of his car and opened it. V7-158–159. Then, Johnson, Wright, and Robinson met at the trunk of the Acura, between both cars and conducted a drug transaction. V7-159–160. Then the trunk closed and the parties went their separate ways. V7-160. Johnson started to walk back towards the driver's seat, but then suddenly Johnson ran out of the frame of the video, heading north on Kelly Street while Tucker leapt from the passenger seat and ran from the vehicle. V7-160–161. Then the trunk of the Acura had reopened. V7-161. Wright and Robinson returned to their vehicle, and then they turned around on Kelly Street, going back towards the Shell gas station parking lot. V7-162. The Hyundai exited the gas station, heading south on Hill Street, towards I-20. V7-163.

After learning that police contacted her mother, Robinson called police and admitted that she lost her phone during a transaction for “weed” at a gas station, that there was a shooting, she ran, and she dropped her phone. V8-64. When asked about Wright, Robinson admitted she knew him but claimed that she had not spoken to Wright recently. V8-66. Police asked Robinson if she would be willing to come to police headquarters, but she sent a text later saying that she could not come right away. V8-68. Robinson never indicated

to police that she was under duress, nor did she say anything about self-defense. V8-79.

Cell site location showed that on July 1, 2022, at 8:43 p.m., Robinson's phone was utilizing the tower near 341 Henry Street in Marietta, Georgia, which was the address associated with Robinson and Wright. V8-44, 47–48; V18-7. Phone location records showed that both phones moved from northwest Atlanta, along I-20, towards the scene of the shooting. V8-48, 74; V16-4; V18-8. Wright's phone utilized the tower in the area of the shooting on July 1, 2022 at 10:23 p.m. V8-76. Phone records also showed that Wright's phone was in the same area as Robinson's phone when police called Robinson, contradicting her statement that she was alone. V8-78; V9-12–13.

The phone records from July 1, 2022, at midnight to July 2, 2022, at 4:00 a.m., for Robinson's phone number (404) 903-1432, showed that the phone number most frequently called was (770) 568-0517, the phone number associated with Wright. V8-51–52; V9-40, 45, 50–51; V18-10–11. The two phone numbers communicated back and forth and then ceased communicating between about 9:00 and 10:30 p.m., around the time of the shooting. V8-52–53. The phone calls resumed at 10:29 and 10:30 p.m. V8-54. There was another phone number, (469) 982-9999, which was a voicemail call forwarding number for T-Mobile, which forwarded a call from the number associated with Wright made to the number associated with Robinson. V8-

54–55. On June 16, 2022, Robinson switched phone numbers from (470) 563-3326 to (404) 903-1432. V7-188; V8-51, 56.

On July 2, 2022, the Fulton County Medical Examiner’s Office conducted an autopsy of Daniel Johnson. V9-56–57. Johnson had four gunshot wounds: one of the bullets entered the lower left side of Johnson’s back, and the wound indicated that the gun was fired between one to two feet away; another gunshot wound which entered Johnson’s left thigh and went out the back of the thigh, which was consistent with being a contact-range wound; one gunshot wound was to the lower mid-abdomen; and the last gunshot wound was to the back of the forearm. V9-64–67, 73–76, 78–83; V17-7, 13–14. The range of fire for the forearm and abdomen were indeterminate. V9-88. Johnson also had injuries to his knees, which were consistent with a fall. V9-77; V17-17–18. The cause of death was multiple gunshot wounds, and the manner of death was homicide. V9-88.

Further facts will be established as needed to address Robinson’s enumerations of error.

STATEMENT OF THE CASE

On October 11, 2022, Robinson was indicted with co-defendant Wright for murder (count 1); felony murder (counts 2–4); armed robbery (counts 6–7); aggravated assault with a deadly weapon (counts 8–9); attempted purchase of marijuana (count 10); and possession of a firearm during the commission of a

felony (count 11); Robinson was indicted alone for felony murder (count 5) and possession of a firearm by a first offender probationer (count 12), in the shooting death of Daniel Ricardo Johnson. V1-3–7.

After a joint jury trial, on June 20, 2024, the jury found Robinson guilty of felony murder (count 4) and guilty of attempted purchase of marijuana (count 10); not guilty of armed robbery (count 7), felony murder (count 5), and possession of a firearm by a first offender probationer (count 12); and the jury did not reach a verdict on the remaining counts (counts 1–3, 6, 8–9, and 11). V1-164–167; V11-10–13. On the same day, the trial court entered an order declaring a mistrial as to the counts for which the jury was deadlocked and could not reach a verdict, and those counts were later nolle prossed. V1-168–171. On June 21, 2024, attempted purchase of marijuana (count 10) merged with felony murder (count 4), and Robinson was sentenced to life in prison for felony murder (count 4). V1-169–171; V26-22.

On June 24, 2024, Robinson filed a motion for new trial, which she subsequently amended twice. V1-172–174, 208–210, 225–227. On January 28, 2026, the court entered an order denying Robinson’s motion for new trial as amended, however, the trial court did not make any findings regarding the ineffective assistance of counsel claims. V1-240–248

On February 17, 2026, Robinson filed a notice of appeal. V1-1–2. This appeal follows.

ARGUMENT

I. The evidence was sufficient for the jury to convict Robinson beyond a reasonable doubt.

In her first two enumerations, Robinson contends that the evidence was insufficient for the verdict. Br. 5–6. Specifically, she claims that the offense of attempted purchase of marijuana cannot support a conviction for felony murder, because it is a nondangerous felony which did not cause the death of the victim. Br. 3, 5–7. Appellee submits that, since drug transactions are inherently dangerous and carry the reasonably foreseeable consequence that someone may be killed, and the evidence in this case was sufficient to authorize the jury’s verdict under the standard of *Jackson v. Virginia*, 443 U.S. 307 (1979), that these claims lack merit.

The test established in *Jackson v. Virginia*, is the proper standard of review when the sufficiency of the evidence is challenged. *Stansell v. State*, 270 Ga. 147, 148 (1998); *Willis v. State*, 263 Ga. 597, 598 (1993). On appeal, this Court reviews the evidence in the light most favorable to the verdict, resolves conflicts in the evidence in favor of the prosecution, and defers to the jury’s assessment of the weight and credibility of the evidence. *Jackson*, 443 U.S. at 326. The jury’s verdict should not be disturbed unless it is found that, based on the evidence presented at trial, no rational trier of fact could have

found Appellant guilty beyond a reasonable doubt. *Id.* at 323. “As long as there is some competent evidence, even though contradicted, to support each fact necessary to make out the State’s case, the jury’s verdict will be upheld.” *Clark v. State*, 309 Ga. 473, 477 (2020).

Under O.C.G.A. § 16-5-1 (c), “[a] person commits the offense of murder when, in the commission of a felony, he or she causes the death of another human being irrespective of malice.” “Any felony that is ‘inherently dangerous to human life’ or ‘by its circumstances create[s] a foreseeable risk of death’ may serve as a predicate for felony murder.” *Pinion-Lopez v. State*, 322 Ga. 503, 508 (2025) (quoting *Davis v. State*, 290 Ga. 757, 760 (2012) (cleaned up)).

Proximate causation exists in this context if the felony the defendant committed “directly and materially contributed to the happening of a subsequent accruing immediate cause of the death, or if ... the homicide (was) committed within the res gestae of the felony ... and is one of the incidental, probable consequences of the execution of the design to commit the [predicate felony].”

Hood v. State, 303 Ga. 420, 422-423 (quoting *State v. Jackson*, 287 Ga. 646, 652 (2010)). It is up to the jury to determine whether the predicate felony was the proximate cause of the victim’s death. *Id.*

As set out further in the statement of facts above, the evidence was sufficient to support the jury’s verdict of guilty. The evidence demonstrated that Tucker and Johnson went to a Shell gas station in Fulton County, and

Johnson attempted to sell marijuana to Robinson and Wright out of the back of Tucker's car. V6-51–53, 57–59, 61; V8-59, 61; V12-18–24. After the sale, Johnson attempted to get back in the car to leave, but then Tucker heard shots being fired, and then saw Wright pointing a gun at her and demanding that she get out of the car. V6-54. Tucker and Johnson fled from Wright but got separated when Tucker fell and lost her shoe. V6-55, 72; V12-9. A blood trail followed Johnson's flight, indicating that he was shot prior to fleeing from Wright and ending where his body was found, along with bullet-riddled money. V6-158–161, 172–173; V7-24; V8-7; V15-45, 47, 49, 51–53, 58–65. Johnson died of multiple gunshot wounds. V9-88. Robinson dropped her phone, with which she had attempted to pay for the marijuana, at the scene of the shooting after she and Wright fled. V7-129, 163–164; V8-51, 63; V9-109–110, 113–114, 121–122, 141–144.

Despite this, Robinson claims that the evidence was insufficient, because “the underlying felony was an attempted marijuana transaction, not the sale of dangerous drugs.” Br. 6. She also claims that this case was similarly not one where death was a foreseeable consequence of the attempted purchase, such that the underlying felony did not “cause the death” of the victim. *Id.*

However, contrary to Robinson's claim, this Court has “long held that ‘transactions [involving] illegal drugs are inherently dangerous, given that “it is among the ‘incidental, probable consequences’ of an illegal drug transaction

that something may go wrong and someone may be killed.” *Wilson v. State*, 315 Ga. 728, 733-34 (2023); *Pinion-Lopez*, 322 Ga. at 508-09; *State v. Spratlin*, 305 Ga. 585, 595-596 (2019) (“this Court and others have recognized that violence is inherent in the business of dealing illegal drugs”); *Chance v. State*, 291 Ga. 241, 242 (2012) (drug sales are inherently dangerous). This is the case even when, as here, the illegal drug transaction was for the purpose of purchasing marijuana. *Wilson*, 315 Ga. at 733; *Davis*, 290 Ga. at 760-761.

Moreover, the facts in this case, including evidence that Wright was shooting a weapon just after the drug transaction and that Tucker had a weapon in the vehicle during the transaction, demonstrated that the circumstances under which the transaction in this case occurred were inherently dangerous. *See Davis*, 290 Ga. at 760–61 (finding that the circumstances of the transaction were dangerous when “some of the parties to the transaction arrived armed, which is not unusual in the drug trade.”); *See also Brint v. State*, 306 Ga. App. 10, 11-12 (2010) (it is not unreasonable to anticipate that those involved in the drug trade might be armed, as “firearms are tools of the drug trade”).

As set out in the facts above, Wright and Robinson chose “to engage in a dangerous and potentially violent criminal activity” by attempting to purchase marijuana, during which the drug dealer was shot and killed. *Chance*, 291 Ga. at 242. Thus, either per se or under the circumstances of the

present case, Wright and Robinson’s attempt to purchase marijuana was an inherently dangerous felony for the purpose of serving as a predicate felony for felony murder. And, as the shooting that occurred during that transaction was “itself a reasonable foreseeable consequence of the criminal conduct,” the evidence was also sufficient to prove that the underlying criminal conduct of attempting to purchase marijuana was the “cause” of the victim’s death. See *Eubanks v. State*, 317 Ga. 563, 571 (2023); *Robinson v. State*, 298 Ga. 455, 458 (2016); *Davis*, 290 Ga. at 760.

Accordingly, the evidence was sufficient, and the claims in enumerations one and two lack merit.

II. The verdicts were not repugnant, mutually exclusive, or inconsistent.

In her third enumeration of error, Robinson claims that the verdict of felony murder predicated on attempted purchase of marijuana was not consistent with the other verdicts of the jury and that the verdicts were repugnant and mutually exclusive. Br. 3–4, 6–7. Since the verdict was legally and logically consistent, this claim lacks merit.

After trial, Robinson was found guilty of felony murder (count 4); and the underlying felony of attempted purchase of marijuana (count 10), and was found not guilty of armed robbery (count 7); felony murder (count 5) and the underlying felony of possession of a firearm by a first offender

probationer (count 12); the jury did not reach a verdict on the remaining counts. V1-164–167; V11-10–13. Contrary to Robinson’s current claims, these verdicts were not mutually exclusive, repugnant, or even inconsistent.

A. The verdicts were not mutually exclusive

“The term ‘mutually exclusive’ generally applies to *two guilty* verdicts that cannot legally exist simultaneously. In such cases, where it is ‘both legally and logically impossible to convict [on] both counts, a new trial [should be] ordered.’” *McElrath v. State*, 308 Ga. 104, 110 (2020) (quoting *Dumas v. State*, 266 Ga. 797, 799 (2) (1996)).

Here, the guilty verdict for felony murder predicated on attempted purchase of marijuana and the attempted purchase of marijuana were not contradictory, as the felony murder count was predicated on the other count of which the jury found Robinson guilty and thus could not be classified as “mutually exclusive.” See *McElrath*, 308 Ga. at 111 (verdicts of guilty but mentally ill for felony murder and aggravated assault and not guilty of malice murder by reason of insanity were not two contradictory guilty verdicts and could not be classified as “mutually exclusive”).

B. The verdicts were not repugnant or inconsistent

“Repugnant verdicts occur when, in order to find the defendant not guilty on one count and guilty on another, the jury must make *affirmative* findings shown on the record that cannot logically or legally exist at the same

time.” *Feder v. State*, 319 Ga. 66, 68 (2024) (quoting *State v. Owens*, 312 Ga. 212, 216 (1) (b) (2021) (cleaned up; emphasis in original)). “By contrast, ‘inconsistent verdicts occur when a jury in a criminal case renders seemingly incompatible verdicts of *guilty* on one charge and *not guilty* on another.” *Feder*, 319 Ga. at 68-69 (quoting *McElrath v. State*, 308 Ga. 104, 108 (2) (a) (2020) (emphasis in original)). This Court has “‘abolished the rule that inconsistent verdicts require reversal.” *Id.* However, “reversal of an inconsistent verdict may occur in the rare instance where, instead of being left to speculate as to the jury’s deliberations, the appellate record makes transparent the jury’s rationale.” *Guajardo v. State*, 290 Ga. 172, 174 (2011).

“In the absence of such an affirmative finding, determining the precise basis for the jury’s not guilty verdict . . . ‘would be based either on pure speculation, or would require inquiries into the jury’s deliberations that the courts generally will not undertake.” *Feder*, 319 Ga. at 69 (quoting *Carter v. State*, 298 Ga. 867, 868-869 (2016) (citation and punctuation omitted)).

Here, the jury sent four notes back to the court during deliberations: (1) “Can we listen to 911 call and watch Shell Station video southeast facing (Exhibit 92)”; (2) “Is count 10 “attempted purchase of marijuana” a felony regardless of intended volume of purchase? Doesn’t the charge have to be a felony to be felony murder?”; (3) “Can we be hung/unresolved on some but not all the charges . . . can we leave? Pretty Please.”; and (4) “We have reached a

unanimous decision on some, but not all of the charges. On the unresolved charges is it appropriate for us to collectively consider the doubt held by some jurors as ‘reasonable’ and return a not guilty verdict or to be ‘hung’ on those items? Does being ‘hung’ or not reaching a unanimous decision on some issues result in a hung jury even if we are unanimous on some?” V24-17–20.

These notes do not indicate that the jury made affirmative findings of guilty and not guilty that were incompatible.

All that can be inferred from the jury’s verdict that the jurors agreed with one another that the State failed to prove Robinson was in possession of a firearm while being a first offense probationer (count 5, 12) and failed to demonstrate an armed robbery as to Tucker’s firearm (count 7), and that the jury failed to come to an agreement as to the other charges. Nothing in this verdict demonstrates affirmative findings that would be incompatible with the verdict that Robinson committed the felony of attempted purchase of marijuana (count 10) and that Johnson was killed during the commission of that felony (count 4). Thus, since there is nothing in the record to indicate that the jury made affirmative findings that could not logically or legally exist at the same time, the verdict is neither inconsistent nor repugnant.

This claim lacks merit.

III. The trial court did not abuse its discretion by permitting the lead detective to testify about the surveillance video.

In her fourth enumeration of error, Robinson contends that, over objection, the lead detective gave an improper opinion and conclusion testimony regarding identity in a video that was played for the jury. Br. 4, 7. Robinson does not indicate what specific opinion testimony was improper, nor does she explain how such testimony was not admissible, such that this claim should be found abandoned under Rule 22. Alternatively, there was no abuse of discretion.

At trial, prior to Detective McClure's testimony, Robinson moved in limine "to prevent the State from eliciting any opinion or conclusion testimony from investigator McClure" and to prevent him from testifying about what he thought was happening in the surveillance video based on it being an improper opinion on the ultimate issue of the case, not an opinion from an expert in analyzing surveillance, cumulative of the video (which would violate the best evidence rule), speculative, and based on the relevance being "significantly outweighed by the prejudicial effect." V7-97–99.

The State responded that Detective McClure's opinion would be helpful to the jury, based on his own investigation and what he observed, was not cumulative, and that the best evidence rule refers to original documents, not opinion testimony. V7-100. The trial court did not rule at that time. V7-101.

Detective McClure testified that the Shell gas station surveillance video showed Robinson's Hyundai Sonata pulling up to pump four at the Shell, and that it was being driven by Robinson with Daniel Wright in the passenger seat. V7-140. He continued to identify the parties while the Shell gas station surveillance video played for the jury and then while the video from Holmes's house played for the jury, which showed the drug transaction and the shooting. V7-141–163. At the beginning of Detective McClure's testimony about the surveillance videos, Robinson renewed her objection and then asked for a continuing objection, which the trial court overruled. V7-140, 147.

“A witness ordinarily may identify a person in a photo or video if the identification satisfies OCGA § 24-7-701 (a) (Rule 701 (a)).” *Lee v. State*, 322 Ga. 44, 59 (2025). Under O.C.G.A. § 24-7-701:

- (a) If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences shall be limited to those opinions or inferences which are:
 - (1) Rationally based on the perception of the witness;
 - (2) Helpful to a clear understanding of the witness's testimony or the determination of a fact in issue; and
 - (3) Not based on scientific, technical, or other specialized knowledge within the scope of Code Section 24-7-702.

“A number of factors can determine whether a witness is ‘better equipped than jurors’ to correctly identify a person in a video, but the ‘most critical factor’ is ‘the witness’s level of familiarity with the defendant’s

appearance.” *Lee v. State*, 322 Ga. 44, 59 (2025) (quoting *Glenn v. State*, 302 Ga. 276, 280 (II) (2017) (cleaned up)).

In *Dickey v. State*, 313 Ga. 593, 597 n.2 (2022), a case which Robinson cites in her brief, this Court found in a footnote that a police officer’s “testimony identifying Appellant in the recordings of the surveillance video was admissible as lay opinion testimony under OCGA § 24-7-701 (a).”

Furthermore, this Court has held that an officer’s opinion regarding the identity of the shooter in surveillance video does not violate the ultimate issue rule under O.C.G.A. § 24-7-704. *Thompson v. State*, 304 Ga. 146, 153 (2018).

Here Detective McClure’s identification of Robinson was rationally based on his own perceptions and his investigation as to the identity of the individuals in the surveillance videos. Moreover, his identifications of the individuals in the videos and explanation of what was occurring was helpful to the jury due to his greater familiarity with the individuals involved in the shooting and their appearance, such that the trial court did not err in allowing Detective McClure to help orient the jury during the playing of the video. See *Glenn v. State*, 306 Ga. 550, 555 (2019) (holding that lay opinion testimony identifying a defendant in a surveillance video is admissible under OCGA § 24-7-701(a) if there is “some basis” to conclude that the witness is

more likely than the jury to correctly identify the defendant as the individual depicted in the video).

Assuming *arguendo*, any error in this respect, however, any such error was harmless. “A non-constitutional error is harmless if it is ‘highly probable that the error did not contribute to the verdict.’” *Mack v. State*, 306 Ga. 607, 610 (2019). Given the weight of the evidence in this case, including eyewitness identification, the video surveillance, Robinson’s phone found at the site of the shooting, and Robinson’s Hyundai Sonata depicted in the video, Robinson has not shown it was at all likely, much less highly probable, that the Detective McClure’s opinion contributed to the verdict. This is particularly true, as the jury in this case knew that Detective McClure investigated the shooting and reviewed the surveillance video, such that evidence that Detective McClure “believed [Robinson] was [] seen on the surveillance recording would have come as no surprise to the jury.” See *Thompson v. State*, 304 Ga. 146, 153 (2018).

Accordingly, this claim lacks merit.

IV. Trial counsel provided effective assistance.

In her last enumeration of error, Robinson argues that trial counsel provided ineffective assistance of counsel in the following ways: (A) trial counsel did not have sufficient time to prepare for trial because she was appointed only two weeks before trial and only met with Robinson twice

before trial; (B) trial counsel failed to file a bifurcation of the prior conviction for possession of a dangerous weapon; (C) trial counsel failed to move for severance from the codefendant. Br. 4, 7–10. Lastly, Robinson argues that her counsel’s representation was so deficient that prejudice should be presumed under *United States v. Cronin*, 466 U.S. 648 (1984). Br. 8–10. Because which motions to file constitute a matter of reasonable trial strategy, as does her preparation for trial, Robinson has failed to establish deficient performance and prejudice thereby.

Robinson must establish that counsel’s performance was deficient, which requires her to show “that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Robinson must also show that the deficient performance prejudiced her. *Id.* Unless Robinson makes both required showings, she cannot meet *Strickland*’s high burden. *Id.*

This Court’s scrutiny of an attorney’s performance must be “highly deferential.” *Id.* at 689. “A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effect of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Id.* Counsel is “strongly presumed” to have rendered effective assistance and made “all

significant decisions in the exercise of reasonable professional judgment.” *Id.* at 690. A defendant has the burden of proof to overcome the “strong presumption” that counsel’s conduct falls within the wide range of reasonable professional conduct. *Morgan v. State*, 275 Ga. 222, 227 (2002).

As to the prejudice prong, “the defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*

Because *Strickland* is a mixed question of fact and law, the trial court’s factual findings and credibility determinations are reviewed under a clearly erroneous standard, but this Court will independently apply the legal principles to the facts. *Moore v. State*, 306 Ga. 532, 536 (2019).

Strickland does not require this Court to examine both prongs or approach them in a particular order. If Robinson makes an insufficient showing on one prong, this Court need not examine the other. *Lynn v. State*, 310 Ga. 608, 613 (2020).

The trial court did not make any findings on these claims of ineffective assistance of counsel at the motion for new trial. V1-240–248. However, this lack of findings does not bar this Court’s consideration of these claims, because “remand is not mandated if [this Court] can determine from the

record that the defendant cannot establish ineffective assistance of counsel under the two-prong test set forth in *Strickland*.” *Lane v. State*, 312 Ga. 619, 623 (2021) (quoting *Burrell v. State*, 301 Ga. 21, 24 (2017)).

As Robinson failed to establish ineffective assistance of counsel in each of these claims, remand is not required.

A. Trial counsel was not ineffective for failing to prepare for trial.

In her first claim, Robinson claims, without evidence or argument, that her counsel did not have sufficient time to prepare as she was appointed only two weeks before trial and met with Robinson no more than two times. Br. 7. However, Robinson has not shown how her trial counsel failed to prepare for trial or what result additional preparation could have achieved. As such, Robinson has failed to show that her trial counsel was deficient or how she was prejudiced thereby. “[T]here exists no magic amount of time which counsel must spend in actual conference with his client.” *Rice v. State*, 301 Ga. 746, 748 (2017) (finding that Rice failed “to articulate with any specificity how [trial counsel] could have better represented him had she been given more time to prepare” and that Rice failed to show that his counsel was deficient and failed to carry his burden to show ineffective assistance)); *Chapman v. State*, 322 Ga. 237, 244-45 (2025) (“A defendant claiming that his counsel was underprepared must show that more preparation ‘might have

produced [something] that would have made a difference in the outcome of his trial.”) (citing *Roberts v. State*, 305 Ga. 257, 266 (2019)).

Like in *Chapman*, because Robinson “presents no evidence, or even assertion, as to what further investigation or preparation might have produced that would have made a difference in the outcome of [her] trial[,]’ [s]he has failed to demonstrate prejudice, and [her] ineffective assistance of counsel claim fails.” *Id.* at 244-45.

B. Trial counsel was not ineffective for failing to move to bifurcate the prior conviction.

Next, Robinson claims, again without any real argument, that trial counsel’s failure to move for bifurcation of the charges, specifically the charges related to “prior conviction for possession of a dangerous weapon”² was ineffective. Br. 7, 10.

However, “[i]t has long been established that a trial court ‘[does] not err in refusing to bifurcate the charge of possession of a firearm by a first[-]offender probationer’ where, as here, ‘[t]he possession charge was an underlying felony to a murder count of the indictment.’” *Tabor v. State*, 315 Ga. 240, 247 (2022) (quoting *George v. State*, 276 Ga. 564, 565 (3) (2003)); see also *Wilson v. State*, 302 Ga. 106, 110 (2017) (“the trial court properly denied

² Appellee assumes that Robinson here is referring to the failure to seek bifurcation of the charge for possession of a firearm by a first offender probationer.

Wilson’s motion to bifurcate the trial of the counts charging him with possession of a firearm by a convicted felon and felony murder predicated on that felon-in-possession charge”) (citing *Ballard v. State*, 297 Ga. 248, 251 (4) (2015) (motion to bifurcate is properly denied where felon-in-possession count serves as predicate for felony murder)); *Brown v. State*, 295 Ga. 804, 806 (3) (2014) (same).

Because Robinson was indicted for felony murder predicated on possession of a firearm by a first offender probationer, any motion to bifurcate the underlying charge would have been properly denied, and trial counsel is not ineffective for failing to make what would have been a meritless motion. *Fleming v. State*, 306 Ga. 240, 250 (2019) (“counsel cannot be ineffective for failing to make a meritless motion”) (citing *Bradshaw v. State*, 300 Ga. 1, 5 (2016)).

Moreover, Robinson cannot show prejudice, given that she was found not guilty of both felony murder predicated on possession of a firearm by a first offender probationer (count 5) and possession of a firearm by a first offender probationer (count 12). V1-164–167; V11-10–13.

Thus, this claim lacks merit.

C. Trial counsel was not ineffective for failing to move for severance from co-defendant Wright.

Next, Robinson argues, again without any specific argument, that trial counsel was ineffective for failing to move to sever her case from that of co-defendant Wright. Br. 7, 10.

However, generally, “the failure to file a motion to sever does not require a finding of ineffective assistance since the decision whether to seek severance is a matter of trial tactics or strategy, and a decision amounting to reasonable trial strategy does not constitute deficient performance.” *Terrell v. State*, 313 Ga. 120, 131 (2022) (quoting *DeLoach v. State*, 308 Ga. 283, 289 (2) (a) (2020) (citation and punctuation omitted)). As trial counsel did not testify at the motion for new trial, her decision not to move for severance was presumptively strategic, and Robinson has not shown that such strategic decision was one that no competent attorney would have made. See *Washington v. State*, 285 Ga. 541, 543 (2009) (finding that, “in the absence of evidence to the contrary, counsel’s decisions are presumed to be strategic and thus insufficient to support and ineffective assistance of counsel claim.”).

Moreover, Robinson has not shown a reasonable probability that her case would have been severed even if trial counsel had chosen to ask for severance.

A trial court has broad discretion to grant or deny a motion to sever in a murder case in which the death penalty is not sought.

When ruling on such a motion, a court should consider: (1) the likelihood of confusion of the evidence and law; (2) the possibility that evidence against one defendant may be considered against the other defendant; and (3) the presence or absence of antagonistic defenses. To show that the trial court abused its discretion in denying a motion to sever, a defendant must do more than raise the existence of antagonistic defenses or the possibility that a separate trial would have given him a better chance of acquittal. The defendant must make a clear showing that a joint trial was so prejudicial as to amount to a denial of his right to due process.

Ivory v. State, 322 Ga. 315, 319 (2025) (quoting *Saylor v. State*, 316 Ga. 225, 230–31 (2023) (citations and quotation marks omitted)).

Here, the law and evidence were substantially the same for Robinson and co-defendant Wright, since the State argued that both Robinson and Wright acted together to commit the crimes, except that Robinson was indicted alone for felony murder (count 5) and possession of a firearm by a first offender probationer (count 12). V1-3–7. However, Robinson was found not guilty of both counts for which she was indicted alone, indicating that the jury was not confused by the law and the evidence in the case. V1-164–167; V11-10–13. Additionally, the “jury was also ‘instructed on mere association, mere presence, and parties to a crime,’ and it ‘returned a separate verdict for each defendant pursuant to the trial court’s instruction,’ demonstrating that the jury was not confused by the law and the evidence in this case.” *Ivory*, 322 Ga. at 320 (quoting *Harris v. State*, 304 Ga. 276, 280 (2018)); V10-121–123.

Finally, Robinson’s and Wright’s defenses were not antagonistic, Robinson’s testimony at trial amounted to claims that the videos did not show what the State claimed, that she did not know what was going on before the shooting occurred, and that Johnson had a gun, but Wright did not. V9-109–110, 113–114, 121–122, 143. Wright did not testify at trial, but his counsel argued during closing arguments that Wright had a bag in his hand when he was running away from the shooting, and that he did not have a gun. V10-34. Even assuming these defenses were antagonistic, “[t]o show that the trial court abused its discretion in denying a motion to sever, a defendant must do more than raise the existence of antagonistic defenses or the possibility that a separate trial would have given him a better chance of acquittal.” *Saylor*, 316 Ga. at 231 (citing *Smith v. State*, 308 Ga. 81, 85 (2) (2020)).

Ultimately, as Robinsons has not shown a reasonable probability that a motion to sever would have been successful, she has not shown trial counsel was ineffective. *Bradshaw v. State*, 300 Ga. 1, 5 (2016) (finding that “because trial counsel cannot be found ineffective for failing to pursue a meritless motion, Bradshaw . . . failed to show that his attorney’s decision not to file a motion to sever was deficient performance. Consequently, this ineffectiveness claim is without merit”) (quoting *Leonard v. State*, 292 Ga. 214, 217-218 (4) (2012)).

D. Robinson's prejudice argument lacks merit.

To the extent that Robinson alleges in her fourth enumeration of error that her counsel entirely failed to subject the prosecution's case to meaningful adversarial testing, such that *Cronic's* presumption of prejudice is applicable to the case at bar, this claim is unsupported by the record. *See Vendrel v. State*, 318 Ga. 233, 238 (2024) (citations and punctuation omitted) (*Cronic's* exception to the general *Strickland* standard for a constructive denial of the assistance of counsel altogether, which is legally presumed to result in prejudice... is a narrow one that applies only when there was a breakdown in the adversarial process, such that counsel entirely fails to subject the prosecution's case to meaningful adversarial testing").

Robinson's counsel engaged in discovery and filed multiple pre-trial motions, including a motion to introduce other acts evidence under O.C.G.A. §§ 24-4-404(b) and 24-4-403 (even though it was ultimately denied) in order to show Wright's abuse of other girlfriends so she could argue at trial that she was merely doing what Wright told her to do. V1-98–112, 128–129. At trial, contrary to Robinson's assertion, her trial counsel *did* give an opening statement (and a closing argument). V6-31–36; V10-42–80. During the course of Robinson's trial, her counsel cross-examined the State's witnesses, called Robinson to testify, and presented a theory of the case, i.e. that Robinson was just doing what Wright told her to do, which was consistent with Robinson's

testimony at trial. “Under these circumstances, it cannot be said that counsel completely failed to test the State’s case throughout the proceeding.” *Vendrel*, 318 Ga. at 239.

For the first time on appeal, in the context of arguing for *Cronic’s* presumption of prejudice, Robinson claims that her counsel failed to present the affirmative defenses of mutual combat and justification. Because this claim was not raised below, it is waived. *See Robinson v. State*, 306 Ga. 614, 616 (2019) (citation and punctuation omitted) (“In order to avoid a waiver of a claim of ineffective assistance against trial counsel, the claim must be raised at the earliest practicable moment, and that moment is before appeal if the opportunity to do so is available... because [the appellant] was represented at the motion for new trial by different counsel than at trial, he had the opportunity to raise the ineffective assistance of trial counsel claims at that point, and by failing to do so he has waived those claims.”). Moreover, the claim lacks merit.

As it relates to Robinson’s claim regarding her counsel’s purported failure to present the defenses of mutual combat and justification, trial counsel presented a defense that was contrary to a defense of mutual combat and justification. Indeed, it would have been unreasonable for Robinson’s counsel to argue either mutual combat or justification where Robinson argued that Johnson had a gun while Wright did not, and that Robinson did

not know what was going on, because she had a bad relationship with Wright and “she learned to do what he said to do without knowing why.” V10-42.

Moreover, even assuming *arguendo* that trial counsel could have argued justification or mutual combat based on the facts of this case, trial counsel was not called as a witness at the motion for new trial hearing and questioned about her decision to pursue the defense she advanced at trial. “In the absence of testimony from trial counsel...it is extremely difficult to overcome the presumption that [her] conduct was reasonable.” *Keller v. State*, 308 Ga. 492, 499 (2020) (citation and punctuation omitted).

Accordingly, Robinson’s presumption of prejudice argument lacks merit.

CONCLUSION

For the reasons set out above, this Court should affirm Robinson's convictions.

This submission does not exceed the word count imposed by Rule 20.

Respectfully submitted,

/s/ Virginia D. Frazier

Christopher M. Carr 112505
Attorney General

Beth A. Burton 027500
Deputy Attorney General

Meghan H. Hill 342572
Senior Assistant Attorney General

Virginia D. Frazier 911834
Assistant Attorney General

Counsel for Appellee

Please serve:
VIRGINIA D. FRAZIER
Assistant Attorney General
Georgia Department of Law
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
(470) 802-6830
vfrazier@law.ga.gov

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the within and foregoing BRIEF, by email, properly addressed upon the below-listed parties.

I further certify that there is a prior agreement with Counsel for Appellant and the Fulton County District Attorney's Office to allow documents in PDF format sent via email to suffice for service under Supreme Court Rule 14.

J.M. Raffauf
Attorney for Appellant
280 South Atlanta St.
Roswell GA 30075
404-452-6390
Raffaufmike@gmail.com

Ruth M. Pawlak
Senior Assistant District Attorney
Appellate Division
Fulton County District Attorney's Office
136 Pryor Street, S.W.
Third Floor
Atlanta, GA 30303
(404) 612-4904
ruth.pawlak@fultoncountyga.gov

This 4th day of May 2026.

/s/ Virginia D. Frazier
Virginia D. Frazier
Assistant Attorney General