IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
April 25, 2023 Session

STATE OF TENNESSEE v. GEOFFREY IAN PASCHEL

Appeal from the Criminal Court for Knox County
No. 116806 Kyle A. Hixson, Judge

No. E2022-00900-CCA-R3-CD

A Knox County jury found the Defendant, Geoffrey Ian Paschel, guilty of aggravated kidnapping, domestic assault, and interference with emergency communications. He was sentenced to eighteen years as a Range II, multiple offender. On appeal, the Defendant argues that the evidence was insufficient to support his convictions. He also argues that (1) the trial court abused its discretion by twice denying a mistrial following improperly admitted evidence; (2) the trial court misapplied enhancement factors and placed too much weight on the testimony of his ex-wife in sentencing; and (3) the cumulative impact of the errors warrants a new trial. Upon review, we respectfully affirm the trial court's judgments.

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

TOM GREENHOLTZ, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and TIMOTHY L. EASTER, JJ., joined.

M. Jeffrey Whitt and Richard L. Gaines, Knoxville, Tennessee (on appeal) and Gregory P. Isaacs, Knoxville, Tennessee (at trial), for the appellant, Geoffrey Ian Paschel.

Jonathan Skrmetti, Attorney General and Reporter; Edwin Alan Groves, Jr., Assistant Attorney General; Charme P. Allen, District Attorney General; and Heather N. Good, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

On December 10, 2019, the Knox County Grand Jury charged the Defendant with aggravated kidnapping, domestic assault, and interference with emergency

communications. The charges originated from a violent episode between the Defendant and Kristen Wilson Chapman, his fiancé at the time. The trial began on October 6, 2021.

A. THE STATE'S CASE-IN-CHIEF

On June 9, 2019, Ms. Chapman had dinner with the Defendant at the Northshore Brasserie in Knoxville, Tennessee. She and the Defendant lived together at her house and had been engaged for three months. They dined for several hours and had plans to meet a friend at a bar afterward.

Before meeting their friend at the bar, Ms. Chapman and the Defendant stopped at her house to walk her dog. Ms. Chapman texted her friend at 11:00 p.m. to tell her they were leaving her house, and she walked up her driveway to go back inside. Ms. Chapman testified that the next thing she remembered was lying on the floor inside her house.

Ms. Chapman said that the Defendant grabbed her "by the back of [her] head and was hitting [her] face into the floor, and [she] was screaming for him to stop." She later testified:

> He was dragging me by my head and by my hair. He had me kind of by the back of the neck and we went up the stairs towards the bedrooms, and I blacked out again. I lost consciousness. . . . I remember going up the stairs and then that's the last thing I remember. I don't know what happened up there, but there's blood splattered on my bedroom door. So something happened up there.

The next thing Ms. Chapman remembered was being shoved against a wall in the corner of her kitchen. The Defendant then pushed her back onto the floor, and he hit her head on the floor until she lost consciousness again. When Ms. Chapman regained consciousness, she sat on the couch in her living room with blood dripping from her chin. The Defendant was pacing behind part of her sectional that had been overturned. Ms. Chapman saw blood splattered down the corner of a wall she did not remember being against.

The Defendant then told Ms. Chapman to get up, wash her face, and go to bed. The Defendant followed her up the stairs and into the bathroom. She said:

> [H]e wouldn't turn the lights on so I couldn't see my face. It was dark. He made me wash my face. He got a piece of toilet paper and handed it to me and told me to blow my nose to get the blood out and then he flushed that down the toilet. And then he said, 'go to bed,' and I did because I didn't want

> [the abuse] to continue. . . . [I]f I had told him no or I tried to get away, he was a hundred percent going to start beat— hitting me again, forcing me.

Ms. Chapman lay in her bed and pretended to sleep. However, while she pretended to be asleep, she occasionally looked to see what the Defendant was doing. At one point, she saw him connect her cellphone to his laptop computer. Ms. Chapman watched the Defendant go through her phone and delete text messages, voicemails, and photographs. Ms. Chapman testified, "It's essentially like he erased every trace of him through my phone." The Defendant also disabled her phone so it could not make calls or send text messages.

Once the Defendant lay down next to her and stopped moving, Ms. Chapman jumped out of bed and ran to the house of her neighbor, Ms. Lauren Gouge. Ms. Gouge answered her door around midnight, and she said that Ms. Chapman "looked like she had been in some kind of accident" and "had a lump on her head." She also noted that Ms. Chapman "was in shock kind of, and scared, very scared."

Ms. Gouge called 911. She stayed with Ms. Chapman while they waited for the police to arrive because, as Ms. Gouge testified, they feared the Defendant might have followed Ms. Chapman to her house. When Officer Matthew Johnson with the Knoxville Police Department arrived, he spoke with Ms. Chapman and observed her injuries. Another officer took photographs of her injuries, and the Family Justice Center took additional pictures the next day.

Ms. Gouge took Ms. Chapman to the hospital, where she was diagnosed with a concussion. Ms. Chapman had a baseball-sized knot on her forehead, which she testified came from the Defendant's hitting the front of her head on the floor and stairs. She believed the abrasions on her elbows and forearm were from her being dragged across the floor by the Defendant. She described similar knee abrasions as feeling "like rug burn." Ms. Chapman testified that the marks on her back were from "being shoved into the walls and furniture, repeatedly."

After speaking with Ms. Chapman and Ms. Gouge, Officer Johnson left to talk with the Defendant. The Defendant said he and Ms. Chapman "were involved in an argument, and she had beat her head against the wall in a portion of their hallway, and she left the residence on foot." The Defendant then showed Officer Johnson the wall where he said Ms. Chapman hit her head, though the officer later testified that he saw no damage to the wall.

According to Officer Johnson, the Defendant said that Ms. Chapman scratched him, and the officer observed scratch marks on the Defendant's chest, stomach, and lower back. Officer Johnson described the scratches as follows:

> They were clearly from fingernails. They appeared to be – the scratch marks were from fingernails. They were from on the chest, they were straight down on the abdomen. They . . . started approximately at the sternum, and they went down and outward. And on the lower back[,] they were scratch marks that were directly horizontal on his lower back.

B. THE DEFENDANT'S CASE-IN-CHIEF

After the State rested its case, the Defendant testified that they left the restaurant around 11:00 p.m. and went to Ms. Chapman's house. The Defendant walked Ms. Chapman's dog and called his son to check on his own dogs. When he returned to the house, Ms. Chapman was "very aggressive, very loud, very accusatory." The Defendant testified that as he walked inside, Ms. Chapman

> was getting in my face, you know. I slowly pushed her back, just kept getting in my personal space. Scratch and slap, I mean she was doing things to me aggressively, but I don't think it was an attempt to be aggressive, I think she was just – she was upset, you know, thinking that I was actually talking to another female out there[.]

The Defendant testified that they both were drunk from the restaurant, and he tried to leave as the argument escalated. He claimed that Ms. Chapman took his keys and "ran smack into the door, side of the door . . . as she ran out[side]." Ms. Chapman tumbled over the hedges outside her house and screamed in her front yard. The Defendant said he finally calmed her down, but she was still upset. Ms. Chapman cleaned herself in the upstairs bathroom and then went to bed. However, she later got out of bed and left the house.

The Defendant followed her outside, asking where she was going. She replied, "I'm calling the cops. Just get out of here." Approximately thirty minutes later, the police arrived. The Defendant said he stayed at Ms. Chapman's house because he "hadn't done anything wrong[.]"

The Defendant also testified that he never deleted anything from her cellphone. He denied having her password to access any information on the phone.

C. JUDGMENT, SENTENCING, AND APPEAL

After the close of proof, the jury found the Defendant guilty on all counts. The trial court sentenced the Defendant to serve eighteen years for the aggravated kidnapping charge. The trial court also imposed concurrent sentences of eleven months and twenty-nine days for each misdemeanor conviction.

The Defendant filed a motion for a new trial on February 23, 2022. The trial court denied the Defendant's motion on June 24, 2022, and the Defendant filed a timely notice of appeal on July 7, 2022.

ANALYSIS

A. SUFFICIENCY OF THE EVIDENCE

The Defendant first challenges the sufficiency of the evidence supporting his convictions for aggravated kidnapping, domestic assault, and interfering with emergency communications. He argues that this case is "almost entirely" about credibility. The Defendant asserts that due to the "equally plausible" explanations between the parties for the incident, the evidence is insufficient to sustain his convictions as a matter of law. The State contends that the evidence overwhelmingly supports the convictions. We agree with the State.

1. Standard of Appellate Review

"The standard for appellate review of a claim challenging the sufficiency of the State's evidence is 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Miller*, 638 S.W.3d 136, 157 (Tenn. 2021) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "The standard of review is the same whether the conviction is based upon direct or circumstantial evidence." *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (internal quotations and citations omitted).

The Defendant's principal argument is that the proof is insufficient for conviction because this case is a credibility contest or a "he said, she said" case. He argues that because each party offered an "equally plausible" story of the events with little corroboration of either story, this court must find the evidence insufficient as a matter of law. For two reasons, we respectfully disagree.

First, the standard of review as to the legal sufficiency of the evidence is "highly deferential" in favor of the jury's verdict. *See State v. Lyons*, 669 S.W.3d 775, 791 (Tenn. 2023). Among other things, the standard requires us to accredit the testimony of the State's witnesses, such as Ms. Chapman. *State v. Shackleford*, __ S.W.3d __, 2023 WL 4537310, at *4 (Tenn. July 14, 2023). It requires us to discard any countervailing evidence, such as the Defendant's conflicting testimony. *State v. Weems*, 619 S.W.3d 208, 221 (Tenn. 2021). It requires us to resolve all conflicts in favor of the State's theory and to view the credited testimony in a light most favorable to the State. *State v. McKinney*, 669 S.W.3d 753, 772 (Tenn. 2023). And, if *any* rational trier of fact could then find the elements of the offense beyond a reasonable doubt, the standard requires us to affirm the jury's verdict. *State v. Little*, 402 S.W.3d 202, 211 (Tenn. 2013). In light of the highly deferential standard of review, this case is not a "he said, she said" case, at least not in this court.

Second, "a defendant may be convicted upon the uncorroborated testimony of one witness." *State v. Wyrick*, 62 S.W.3d 751, 767 (Tenn. Crim. App. 2001). Indeed, it is well settled that the credited "testimony of a victim, by itself, is sufficient to support a conviction." *State v. Strickland*, 885 S.W.2d 85, 87 (Tenn. Crim. App. 1993) (citing *State v. Williams*, 623 S.W.2d 118, 120 (Tenn. Crim. App. 1981)). Thus, our standard of review does not require independent corroboration of a victim's testimony to sustain a verdict. *See State v. Collier*, 411 S.W.3d 886, 900 (Tenn. 2013). Accordingly, looking at the evidence through the lens of the proper standard of review, we address each of the Defendant's convictions in turn.

2. Aggravated Kidnapping

As charged in this case, aggravated kidnapping is "false imprisonment . . . committed . . . [w]here the victim suffers bodily injury." Tenn. Code Ann. § 39-13-304(a)(4). Bodily injury "includes a cut, abrasion, bruise . . . or disfigurement, and physical pain . . . ." *Id.* § 39-11-106(a)(3). False imprisonment occurs when a person "knowingly removes or confines another unlawfully so as to interfere substantially with the other's liberty." *Id.* § 39-13-302. "[A] person acts knowingly with respect to the conduct or circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. *Id.* § 39-11-106(a)(23). Removal or confinement is unlawful when "accomplished by force, threat or fraud." *Id.* § 39-13-301(15).

The State argues that legally sufficient evidence supports the guilty verdict of aggravated kidnapping. We agree. First, a reasonable juror could find that the Defendant falsely imprisoned Ms. Chapman using threats after the assault to keep her from leaving. Ms. Chapman testified that she did what the Defendant ordered because "if [she] had told him no or [if she] tried to get away, he was a hundred percent going to start . . . hitting [her] again." Moreover, the Defendant took Ms. Chapman's car keys, and he disabled her cell

phone, which prevented her from texting or calling for help. A reasonable juror could find that the Defendant was aware of the nature of his conduct in interfering with Ms. Chapman's liberty. This evidence is legally sufficient to support the element of false imprisonment. *See State v. Brush*, No. E2022-00379-CCA-R3-CD, 2023 WL 2911139, at 6 (Tenn. Crim. App. Apr. 12, 2023), *perm. app. denied* (Tenn. Aug. 8, 2023).

Second, a reasonable juror could have found that Ms. Chapman suffered bodily injury. Ms. Chapman testified about the injuries caused by the Defendant to her head, arms, and legs. Officer Johnson and Ms. Gouge testified about observing her injuries, and Ms. Chapman testified that she was diagnosed with a concussion. The State presented scores of photographs at trial depicting Ms. Chapman's injuries, including the large pump knot on her forehead and the bruising and abrasions on her hands, knees, elbows, and back. It also played a video taken from Officer Johnson's body camera that depicted her injuries.

The Defendant argues that because the State did not provide any medical proof or expert testimony showing how the injuries occurred, the evidence is insufficient to support his conviction. This is simply not correct. The State is not required to produce medical records or an expert witness to prove that bodily injury occurred. *See State v. McPherson*, 882 S.W.2d 365, 369 (Tenn. Crim. App. 1994) (finding that "bodily injury" consisting of scratches on the victim's neck, a bruise on her leg, a "busted lip," and a broken scab could be established only by the victim's credited testimony); *State v. Johnson*, No. M2018-01346-CCA-R3-CD, 2020 WL 2079269, at *12 (Tenn. Crim. App. Apr. 30, 2020), *perm. app. denied* (Tenn. Sept. 16, 2020). We conclude that the evidence is sufficient to sustain the Defendant's conviction for aggravated kidnapping.

3. Domestic Assault

A domestic assault is "an assault . . . against a domestic abuse victim." Tenn. Code Ann. § 39-13-111(b). As charged in this case, an assault is committed by "[a] person . . . who intentionally [or] knowingly . . . causes bodily injury to another." *Id.* § 39-13-101(a)(1). As relevant to this case, a domestic abuse victim is any adult who lives with the defendant and any adult who is dating the defendant. *Id.* § 39-13-111(a)(2), (3).

Ms. Chapman testified that she was engaged to and living with the Defendant at the time of these events. As discussed above, the State presented extensive proof that the Defendant caused Ms. Chapman to suffer bodily injury. And a reasonable jury could conclude that the Defendant acted with awareness that his assault of Ms. Chapman was reasonably certain to cause her physical pain, bruising, and abrasions. *See Medley*, No. E2022-00467-CCA-R3-CD, 2023 WL 2060661, at *4 (Tenn. Crim. App. Feb. 17, 2023), *no perm. app. filed*. Although the Defendant again complains about the lack of medical documents or expert testimony to corroborate Ms. Chapman's testimony regarding her

injuries, we reiterate that no such proof is required. As such, we conclude that the evidence is sufficient to sustain the Defendant's conviction for domestic assault.

4. Interference with Emergency Communications

As charged in this case, "[a]n individual commits an offense if the individual knowingly prevents another individual . . . from requesting assistance in an emergency from a law enforcement agency . . . ." Tenn. Code Ann. § 65-21-117(a). An "emergency" is defined as "a condition or circumstance in which any individual is or is reasonably believed by the individual making a telephone call to be in fear of imminent assault[.]" *Id.* § 65-21-117(d).

Ms. Chapman testified specifically that the Defendant took her cell phone and disabled it "from calling 911." A reasonable juror could have found that the Defendant knowingly prevented Ms. Chapman from calling for help during an emergency by taking and disabling her phone. She testified that after the Defendant ordered her to go to bed, she pretended to be asleep because she feared he would start beating her again. A reasonable juror could also have found that Ms. Chapman feared imminent assault, thereby satisfying the definition of an "emergency." We conclude that the evidence is sufficient to support the Defendant's conviction for interference with emergency communications.

B. Defendant's Motions for a Mistrial

The Defendant next argues that the trial court abused its discretion in failing to grant a mistrial on two separate occasions. He first contends that the trial court should have granted a mistrial when Officer Johnson testified that the Defendant's injuries appeared to be self-inflicted. He also asserts that the trial court should have declared a mistrial when Ms. Chapman referred to other acts of violence involving the Defendant during the State's rebuttal proof. For its part, the State argues that the trial court did not abuse its discretion in denying either motion for a mistrial. We agree with the State.

A mistrial should be declared only if there is a manifest necessity for such an action. *State v. Robinson*, 146 S.W.3d 469, 494 (Tenn. 2004). "A manifest necessity exists when something has occurred that would prevent an impartial verdict, thereby resulting in a miscarriage of justice if a mistrial were not declared, and there is 'no feasible alternative to halting the proceedings.'" *State v. Pratt*, No. M2017-01317-CCA-R3-CD, 2018 WL 4005390, at *4 (Tenn. Crim. App. Aug. 20, 2018) (quoting *State v. Land*, 34 S.W.3d 516, 527 (Tenn. Crim. App. 2000)), *no perm. app. filed*. Stated differently, if there is a feasible and just remedy other than halting the proceedings, then no manifest necessity exists for a mistrial. *See State v. Smith*, 871 S.W.2d 667, 673 (Tenn. 1994).

While "[t]he party seeking a mistrial has the burden of establishing its necessity," the "decision whether to grant a mistrial lies within the discretion of the trial court." *State v. Jones*, 568 S.W.3d 101, 126 (Tenn. 2019). An abuse of discretion "occurs when the trial court 'applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party.'" *State v. Johnson*, 401 S.W.3d 1, 21 (Tenn. 2013) (quoting *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010)).

As we have recognized, "Tennessee courts do not apply 'any exacting standard' for determining when a mistrial is necessary after a witness has injected improper testimony[.]" *State v. Horn*, No. E2015-00715-CCA-R3-CD, 2016 WL 561181, at *7 (Tenn. Crim. App. Feb. 12, 2016), *no perm. app.* However, in *State v. Welcome*, 280 S.W.3d 215 (Tenn. Crim. App. 2007), this Court identified three factors that should be considered in determining whether the trial court abused its discretion in denying a mistrial: "(1) whether the State elicited the testimony, (2) whether the trial court gave a curative instruction, and (3) the relative strength or weakness of the State's proof." *Id.* at 222 (citation omitted); *see also State v. Nash*, 294 S.W.3d 541, 547 (Tenn. 2009) (considering same factors in the context of inappropriate testimony). We take each of these issues in turn.

1. Officer Johnson's Testimony

In his first issue, the Defendant argues that the trial court abused its discretion in failing to declare a mistrial after Officer Johnson testified that the Defendant's injuries appeared to be self-inflicted. The Defendant contends that due to the "he said, she said" nature of this case, credibility was the most important issue, and a curative instruction could not cure the error.

As background, the State asked Officer Johnson on direct examination to describe the scratch marks he observed on the Defendant. The Defendant's counsel immediately asked to approach the bench, and he expressed concern that the Officer was about to say that the marks looked self-inflicted. Asserting that this was not its intention, the State replied that it only wanted the officer to "literally describe them." The trial court then suggested that the State rephrase its question, and the following exchange took place:

> [State's Counsel]: Okay. I'm going to ask you that a little bit differently this time. Just, by telling us how they looked, I guess without, without anything further. How did the scratch marks on the body look?

[Officer Johnson]: They looked self-inflicted.

The Defendant immediately objected, and in an out-of-jury hearing, the Defendant moved for a mistrial. The State responded, "I literally said describe without saying anything else, just describe how they looked." The trial court then denied the motion, finding that no manifest necessity existed for a mistrial. When the jury was brought back into the courtroom, the court instructed the jury as follows: "The jury will please disregard the last statement made by the officer and not refer to that at all during your deliberations." Although it did not say as much, the trial court was correct in attempting to limit the officer's opinion testimony on the record as it stood. *See State v. Everett*, No. E1999-02647-CCA-R3-CD, 2001 WL 134607, at *5 (Tenn. Crim. App. Feb. 15, 2001), *no perm. app. filed*.

Taking the *Welcome* factors in turn, the first factor examines whether the State elicited the testimony. *Welcome*, 280 S.W.3d at 222. The State is not deemed to have elicited improper testimony merely because the witness answers a question posed by the prosecutor. Instead, the analysis is more refined. For example, the State will be deemed to have elicited improper testimony when it intended to create an inference of the defendant's guilt with the question. *See State v. March*, 494 S.W.3d 52, 79 (Tenn. Crim. App. 2010). The same is true when the prosecutor "anticipated the response he likely would, and did, receive." *See State v. Self*, No. E2014-02466-CCA-R3-CD, 2016 WL 4542412, at *45 (Tenn. Crim. App. Aug. 29, 2016), *perm. app. denied* (Tenn. Jan. 19, 2017). And courts may infer an intent to elicit an answer when the only logical response to the State's question was the improper testimony. *See State v. Russell*, No. W2020-01323-CCA-R3-CD, 2021 WL 5184070, at *7 (Tenn. Crim. App. Nov. 9, 2021), *perm. app. denied* (Tenn. Mar. 24, 2022); *State v. Higgins*, No. W2021-00316-CCA-R3-CD, 2022 WL 1310831, at *6 (Tenn. Crim. App. May 2, 2022), *no perm. app. filed*.

Conversely, the State is not deemed to have elicited improper testimony when the witness's answer is either volunteered, unsolicited, or unresponsive to the question asked. *E.g.*, *State v. Dotson*, No. E2019-01614-CCA-R3-CD, 2021 WL 3161218, at *25 (Tenn. Crim. App. July 27, 2021), *perm. app. denied* (Tenn. Dec. 9, 2021); *Nash*, 294 S.W.3d at 547. Similarly, the State is not deemed to have elicited improper proof if the testimony differs from what the prosecutor expected. *See State v. Prince*, No. E2019-02058-CCA-R3-CD, 2021 WL 4316838, at *26 (Tenn. Crim. App. Sept. 23, 2021), *perm. app. denied* (Tenn. Jan 12, 2022).

In our view, the State did not deliberately elicit the improper testimony to create an inference of the Defendant's guilt. As we noted, the State denied that it intended to introduce this testimony, and it rephrased its question to avoid Officer Johnson's testifying

that the marks looked self-inflicted.[1] While the officer's answer was responsive to the question asked, the question could also have elicited many responses, including a physical description of the marks, such as their color or length. Although we acknowledge that it is a close question, we conclude that the State did not elicit this testimony from the officer and that the first *Welcome* factor does not weigh in favor of a mistrial.

The second *Welcome* factor looks to "whether the trial court gave a curative instruction." *Welcome*, 280 S.W.3d at 222. Upon Officer Johnson rendering the opinion, the trial court gave a proper curative instruction to the jury, telling the jury to "please disregard the last statement made by the officer and not refer to that at all during your deliberations." The Defendant asserts that this second factor weighs in favor of a mistrial because, as he argues, a reasonable juror could not "wholly disregard" the officer's testimony and that "[t]he bell was rung and could not be unrung." We respectfully disagree.

The trial court's instruction was a proper curative measure. First, the trial court identified the precise testimony for the jury so that the jury could be aware of the specific proof it was being asked to disregard. Second, the curative instruction was given when the issue arose. In this way, the jury could understand its duties as to this particular evidence in the context of the overall case. Third, the trial court did more than merely tell jurors "to disregard" the statement, though such an instruction would have been sufficient here. *See State v. Jones*, 802 S.W.2d 221, 222 (Tenn. Crim. App. 1990). Instead, the instruction also told the jury what it meant: that the jurors were not to refer to the testimony "at all during your deliberations." This instruction was consistent with the Tennessee Pattern Jury Instructions. *See* T.P.I.-Crim., § 1.00.

As the Defendant concedes, the law presumes that the jury will follow the trial court's instructions, unless there is "clear and convincing evidence that the jury failed to follow the trial court's instructions." *State v. Harbison*, 539 S.W.3d 149, 163 (Tenn. 2018). At oral argument, the Defendant asserted that the presumption does not reflect how jurors think and that "there's no way to pretend you didn't hear [the testimony]." However, without proof that the jury did not follow the instructions given, the Defendant's argument is untenable. There is simply no basis, in policy or otherwise, to presume irregularity in proceedings or that the jury would disregard the court's instructions not to consider the improper testimony. *O'Brien v. State*, 326 S.W.2d 759, 765 (Tenn. 1959) ("We think of course that we cannot assume that the jury considered the evidence to the prejudice of the plaintiff in error and we certainly cannot say that the jury disregarded the instruction of the trial judge. The fact of the matter is all presumptions are to the contrary."); *Samia v. United States*, 143 S. Ct. 2004, 2014 (2023) ("The presumption credits jurors by refusing to

[1] Indeed, before jury selection, defense counsel moved to have portions of Officer Johnson's bodycam footage redacted. The State argued in response that "we're certainly not going to argue that the scratch marks were self-inflicted."

assume that they are either 'too ignorant to comprehend, or were too unmindful of their duty to respect, instructions' of the court." (quoting *Pennsylvania Co. v. Roy*, 102 U.S. 451, 459 (1880)). We conclude that the trial court gave a proper curative instruction to the jury and that this instruction supports the decision of the trial court to deny a mistrial under the second *Welcome* factor.

Finally, the third *Welcome* factor examines "the relative strength or weakness of the State's proof." *Welcome*, 280 S.W.3d at 222. Although we have found that the evidence is legally sufficient to sustain each of the Defendant's convictions, the weight of the evidence here exceeds that standard significantly. For example, we respectfully disagree that this appeal involves a simple "he said, she said" case, or one in which the resolution depends solely upon crediting the uncorroborated testimony of one of two witnesses. The State's proof included pictures of the condition of, and injuries to, both parties. These pictures were fully consistent with Ms. Chapman's account of events and did not support the Defendant's version. The State also offered photographs of the scene depicting the blood evidence around the house, and this evidence was again consistent with Ms. Chapman's account of the events and inconsistent with the Defendant's. Moreover, Ms. Chapman's actions in going to her neighbor's house and the neighbor's observations of her were consistent with Ms. Chapman's testimony at trial. The additional proof corroborated Ms. Chapman's version of events. Given this proof, the officer's opinion testimony added very little to the weight of an otherwise strong case for the State. As such, we conclude that the third *Welcome* factor also weighs in favor of denying a mistrial.

We cannot conclude that there was "no feasible alternative to halting the proceedings." *State v. Knight*, 616 S.W.2d 593, 596 (Tenn. 1981). The State did not elicit the testimony from Officer Johnson, a proper curative instruction was timely given to the jury, and the State's proof against the Defendant was strong. We conclude that the trial court acted within its discretion in denying the Defendant's motion for a mistrial on this ground.

2. Ms. Chapman's Testimony

The Defendant next argues that the trial court abused its discretion by denying his second motion for a mistrial after Ms. Chapman alleged the Defendant committed prior instances of abuse. As background, the State recalled Ms. Chapman in rebuttal after the defense rested its case, and she disputed much of the Defendant's testimony. When asked about the items she claimed the Defendant deleted from her phone, Ms. Chapman stated as follows:

> Text messages between us. Every text that we had sent for our relationship, I had -- I didn't delete them and the whole text thread was gone

> when I got my phone back. Voicemails that he had left me were deleted; pictures, some pictures, not all pictures, but some pictures were deleted off my phone. I had some - I don't know if I can say this. I had some pictures of marks that he had left on me previously, from previous –

Defense counsel immediately moved for a mistrial, arguing that the testimony violated Tennessee Rule of Evidence 404(b) and that an instruction would be insufficient to cure the error. The trial court denied the mistrial, finding that the State did not elicit the testimony and that there was no manifest necessity for a mistrial. At the Defendant's request, the court instructed the jury to "put that statement entirely out of your minds" and "not [to] refer to it any at all for any reason during your deliberations[.]"

The Defendant argues, as he did before, that the trial court's curative instruction ignored the "nuances of human perception" and that no reasonable juror would have been able to ignore the statements. The State argues that Ms. Chapman's testimony did not constitute a manifest necessity for a mistrial because the State did not elicit her testimony, a curative instruction was given to the jury, and the State's case was strong. We again agree with the State.

We again turn to the *Welcome* factors to determine whether the trial court acted within its discretion in denying the Defendant's motion for a mistrial. Looking to the first *Welcome* factor, the trial court made an express finding that the State did not elicit the statement from Ms. Chapman. The trial court found that "the statement that Ms. Chapman made in my opinion was not at all elicited by the prosecutor. I want to be clear about that point. I think that the prosecutor had asked an appropriate question, and I think she was surprised by the witness's response." We agree with the trial court.

The record supports the trial court's finding that the State did not elicit the testimony from Ms. Chapman. The State asked an appropriate question, and Ms. Chapman gave a long, narrative answer that was not responsive to the question. The State asserted it did not intend to elicit that particular testimony and had no further questions for her. The statement Ms. Chapman made was unsolicited by the State and was not responsive to its questions. As such, the first *Welcome* factor supports the trial court's decision to deny the Defendant's motion for a mistrial.

The second factor is whether the trial court gave a proper curative instruction to the jury. *Welcome,* 280 S.W.3d at 222. The trial court told the jury to "put that statement entirely out of your minds, pretend that it did not occur. Do not refer to it any at all for any reason during your deliberation in this case." As before, this instruction identified the problematic testimony specifically, and it did so contemporaneously with the testimony. The court also instructed the jury on the specific actions it could not take concerning the evidence. The substance and timing of the instruction allowed the jury to understand its

duties concerning this testimony in the context of the larger case. As we discussed above, juries are presumed to follow the trial court's instructions. *See State v. Millbrooks*, 819 S.W.2d 441, 443 (Tenn. Crim. App. 1991). Thus, the second *Welcome* factor supports the trial court's decision to deny the Defendant's motion for a mistrial.

Finally, the third *Welcome* factor instructs us to look at the strength or weakness of the State's evidence. *Welcome,* 280 S.W.3d at 222. As we concluded earlier, the State's proof against the Defendant was strong. Ms. Chapman's testimony certainly did not strengthen the State's case so much that the State's case would have been weak without it.

We cannot conclude that there was "no feasible alternative to halting the proceedings." *Knight*, 616 S.W.2d at 596. The State did not elicit the testimony from Ms. Chapman, a proper curative instruction was given to the jury, and the State's proof against the Defendant was strong. We conclude that the trial court acted within its discretion in denying the Defendant's motion for a mistrial on this ground.

C. SENTENCING

Finally, the Defendant challenges the length of his sentence for his aggravated kidnapping conviction.[2] He argues that the court misapplied enhancement factors (6) and (12) because the trial court erred in finding Ms. Chapman suffered serious bodily injury. He also argues that the trial court placed too much weight on the uncorroborated testimony of his ex-wife, Ms. Alison Moon. For its part, the State contends that the sentence should be affirmed because the trial court imposed a within-range sentence that complies with the purposes and principles of sentencing. We agree with the State.

1. Standard of Appellate Review

"[W]hen a defendant challenges the length of a sentence that falls within the applicable statutory range and reflects the purposes and principles of sentencing, the appropriate standard of appellate review is abuse of discretion accompanied by a presumption of reasonableness." *State v. King*, 432 S.W.3d 316, 321 (Tenn. 2014) (citing *State v. Bise*, 380 S.W.3d 682, 706-07 (Tenn. 2012)). As such, this Court is "bound by a trial court's decision as to the length of the sentence imposed so long as it is imposed in a manner consistent with the purposes and principles set out" in the Sentencing Act. *State v. Carter*, 254 S.W.3d 335, 346 (Tenn. 2008); Tenn. Code Ann. §§ 40-35-101 and -102 (2018). While trial courts need not comprehensively articulate their findings with regard

[2] The Defendant does not challenge the trial court's sentences for the two misdemeanor convictions, rightfully observing that the aggravated kidnapping conviction "was the only real conviction to drive [the Defendant's] sentence."

to sentencing, "sentences should be upheld so long as the statutory purposes and principles, along with any applicable enhancement and mitigating factors, have been properly addressed [on the record]." *Bise*, 380 S.W.3d at 706.

On February 3, 2022, the trial court held a sentencing hearing. Before the hearing began, defense counsel asked the trial court to exclude testimony from Ms. Moon, the Defendant's ex-wife, or, in the alternative, to grant time to investigate her allegations. Ms. Moon had emailed her statement to the State the day before the hearing, and the State forwarded that email to defense counsel the same day. The trial court denied the Defendant's objection.

At the hearing, the State offered testimony from Ms. Chapman and Ms. Moon. It also offered the presentence investigation report and records related to the Defendant's criminal history, including two theft convictions and four felony drug convictions.

2. Sentencing Hearing

a. Ms. Chapman's Testimony

Ms. Chapman recounted a series of abusive incidents involving the Defendant. In April 2018, early in their relationship, he bent her pinky finger back during a car ride, causing pain. In September 2018, while the Defendant was driving, he grabbed her hair to pull her head down into his lap. He tried to choke her, and she pretended to pass out to make him stop. When she got home, she locked herself in the bathroom. He broke down the door, physically assaulted her, and broke several things in Ms. Chapman's home, such as her television, mirrors, and vases.

In January 2019, after discovering that the Defendant was talking with other women, Ms. Chapman took pictures of the text messages with her phone. He reacted violently, throwing her down, destroying her phone, and pushing her over an electric fence. The Defendant threw her keys into the woods and struck her with his car as she tried to walk away. In a similar incident in April 2019, the Defendant held her down during an argument, smashed his phone into her mouth, and prevented her from calling 911 for help.

Regarding the June 9, 2019 incident, Ms. Chapman said she thought the Defendant would kill her. She said that for at least a year following the attack, "[e]very day I would wake up with horrible neck pain that I had not had before that incident." The knot on her head took over a month to heal, and she could feel scar tissue on the spot for several months. Ms. Chapman also testified that her neck injuries lasted "for at least a year after the fact." Finally, Ms. Chapman described the anxiety and fear that she has to this day.

b. Ms. Moon's Testimony

Ms. Moon testified that she and the Defendant were married from 2006 to 2013 and had a son. Ms. Moon detailed instances of abuse she suffered during their marriage. The first incident occurred four months into their marriage, when, after she raised issues about the Defendant's fidelity, the Defendant "snapped," physically attacking her, covering her mouth, and holding her down.

Ms. Moon described threats against her and her family, including the Defendant's threat to kill her, and she identified an incident when the Defendant confined her in a bathroom after accusing her of lying about spending time with her cousin. When she later came out of the bathroom, the Defendant attacked her, shoved her against a wall, and strangled her.

Ms. Moon also testified about an incident where the Defendant sexually assaulted her under the threat of violence. The abuse escalated, including physical assaults, isolation from friends and family, hiding keys, and disabling her car so she could not leave. She then recounted a specific instance in Florida where the Defendant assaulted her and attempted non-consensual sexual contact, leading her to call the police.

Ms. Moon described a cycle of abuse that occurred throughout their six-year marriage, stating that "[i]t came in cycles. We would be okay, and things would seem normal and then with little notice he would snap, be in like a fit of rage." After the State's evidence, the Defendant offered no additional proof.

c. Trial Court's Sentence

The trial court applied three enhancement factors: that the defendant had a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range; that the personal injuries inflicted upon the victim were particularly great; and that during the commission of the felony, the defendant intentionally inflicted serious bodily injury upon another person. *See* Tenn. Code Ann. § 40-35-114(1), (6), (12). In mitigation, the court found that the Defendant had a college degree, a steady employment record, and had completed additional courses while incarcerated. Tenn. Code Ann. § 40-35-113(13).

The court placed significant weight on enhancement factor (1) and the pattern of violent behavior as shown through Ms. Moon's testimony. The court also found that the Defendant was a Range II, multiple offender.

3. Length of the Aggravated Kidnapping Sentence

The Defendant challenges the length of the eighteen-year sentence he received for his aggravated kidnapping conviction. The trial court found that the Defendant was a Range II, multiple offender, and this finding is not challenged on appeal. Tenn. Code Ann. § 40-35-106. Aggravated kidnapping is a Class B felony. *Id.* § 39-13-304(b)(1). Because the applicable sentencing range was not less than twelve years and no more than twenty years, *id.* § 40-35-112(b)(2), the trial court's eighteen-year sentence was within the applicable range. *King*, 432 S.W.3d at 321.

a. Enhancement Factors (6) and (12)

The Defendant first asserts that the trial court erred in applying enhancement factors (6) and (12) because the State failed to prove that Ms. Chapman suffered serious bodily injury. Enhancement factor (6) permits a court to enhance a sentence when "[t]he personal injuries inflicted upon, or the amount of damage to property sustained by or taken from, the victim was particularly great." Tenn. Code Ann. § 40-35-114(6). Proof of "particularly great" injury exists when the injury is "more serious or more severe than that which normally results from [the] offense." *State v. Arnett*, 49 S.W.3d 250, 260 (Tenn. 2001). This proof can come from the victim alone without expert testimony, and the nature of the injuries inflicted can also include psychological and emotional injuries. *Id.* at 260-61. Similarly, enhancement factor (12) permits a court to enhance a sentence when, "[d]uring the commission of the felony, the defendant intentionally inflicted serious bodily injury upon another person, or the actions of the defendant resulted in the death of, or serious bodily injury to, a victim or a person other than the intended victim." *Id.* § 40-35-114(12). The term "serious bodily injury" can mean, among other things, protracted unconsciousness and extreme physical pain. Tenn. Code Ann. § 39-11-106(37)(B), (C).

We respectfully disagree that the trial court misapplied enhancement factor (6) or (12). Regarding factor (6), Ms. Chapman described that she was in "a lot of pain" due to the Defendant's hitting her head against the floor. At trial, she described the large pump knot on her forehead and the concussion she received. She explained the "rug burn" marks on her knees, elbows, and hands, as well as the bruises on her hands and down her spine. The pictures admitted at trial showed the blood on her face and the swelling inside her lip. And, at the sentencing hearing, Ms. Chapman also testified that the neck injuries she suffered lasted "for at least a year after the fact." We have little hesitation in concluding that the trial court acted within its discretion in finding that these injuries were "particularly great" in the context of aggravated kidnapping.

Concerning factor (12), the trial court found that Ms. Chapman suffered serious bodily injury, partly because she was "in and out of consciousness" due to the Defendant's

assaults. This Court has previously concluded that a victim's losing consciousness "multiple times" can support a finding of serious bodily injury. *See State v. Evans*, No. W2019-01571-CCA-R3-CD, 2020 WL 5626238, at *6 (Tenn. Crim. App. Sept. 18, 2020), *perm. app. denied* (Tenn. Jan. 14, 2021). It does so here as well. We conclude that the trial court acted within its discretion to consider enhancement factors (6) and (12).

b. Ms. Moon's Testimony

The Defendant also argues that his sentence was improperly enhanced because the trial court put too much weight on the uncorroborated testimony of Ms. Moon. A trial court may enhance a sentence when "[t]he defendant has a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range[.]" Tenn. Code Ann. § 40-35-114(1). The trial court believed that Ms. Moon's testimony supported application of this factor because it showed a "pattern of violent behavior that [the Defendant] was engaged in for a long time."

The Defendant argues that relying on Ms. Moon's uncorroborated testimony was an error. Relying on *State v. Gomez*, 239 S.W.3d 733 (Tenn. 2007), the Defendant asserts that the trial court engaged in "the type of judicial fact-finding prohibited by [*Apprendi v. New Jersey*, 530 U.S. 466 (2000)]." Respectfully, however, the Defendant's argument is behind the times. The supreme court's decision in *Gomez* addressed issues involving our sentencing statutes as they existed before 2005. In 2005, our General Assembly amended the Sentencing Reform Act to address the issues arising from *Apprendi* and its progeny, as our supreme court detailed at some length in *State v. Bise*, 380 S.W.3d 682, 696 (Tenn. 2012). Since that time, defendants "cannot claim that the trial court erroneously employed judicial fact finding in its application of enhancement factors because the trial court is free to select any sentence within the applicable range so long as the length of the sentence is consistent with the purposes and principles of [the Sentencing Act]." *State v. Lewter*, No. M2010-01283-CCA-RM-CD, 2011 WL 1197597, at *2 (Tenn. Crim. App. Mar. 31, 2011) (citing *State v. Carter*, 254 S.W.3d 335, 347 (Tenn. 2008) and internal quotation marks omitted), *no perm. app. filed*. As such, we respectfully disagree that the trial court engaged in impermissible judicial fact-finding in considering Ms. Moon's testimony.

Instead, the trial court conscientiously considered her testimony at some length. It recognized that Ms. Moon had a bias against the Defendant. It noted that she and the Defendant had an "acrimonious relationship" since their divorce and were litigating their son's custody. However, against these concerns, the trial court balanced its finding that Ms. Moon was "telling the truth as well." The trial court found that Ms. Moon's testimony showed that the incident with Ms. Chapman was not a "one-off thing" and displayed a pattern of violent behavior. The trial court acted within its discretion in considering Ms.

Moon's testimony, along with the Defendant's criminal history in Tennessee, Texas, and Florida, to apply enhancement factor (1).

The Defendant makes no specific argument about how the eighteen-year sentence fails to comply with the purposes and principles of sentencing. The trial court found that its ruling was necessary to protect society from the Defendant; to avoid depreciating the seriousness of the offense; and to provide an effective general deterrent. Because the within-range sentence is consistent with the purposes and principles of sentencing, the trial court acted within its discretion in imposing the eighteen-year sentence. The Defendant is not entitled to relief on this issue.

D. CUMULATIVE ERROR

Finally, the Defendant argues that the cumulative impact of the errors in this case prevented him from receiving a fair trial. The cumulative error doctrine applies when there have been "multiple errors committed in trial proceedings, each of which in isolation constitutes mere harmless error, but which when aggregated, have a cumulative effect on the proceedings so great as to require reversal in order to preserve a defendant's right to a fair trial." *State v. Hester*, 324 S.W.3d 1, 76 (Tenn. 2010). To that end, more than one actual error must exist before the cumulative error doctrine can apply. *Id.* at 77. Because the Defendant has failed to establish that multiple errors occurred, he is not entitled to cumulative error relief.

CONCLUSION

In summary, we hold that the evidence presented at trial was sufficient to sustain the Defendant's convictions for aggravated kidnapping, domestic assault, and interference with emergency communications. We also hold that the trial court acted within its discretion in denying both of the Defendant's motions for mistrial. Finally, we hold that the trial court acted within its discretion in sentencing the Defendant to eighteen years on his aggravated kidnapping conviction. Accordingly, we respectfully affirm the judgments of the trial court.

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TOM GREENHOLTZ, JUDGE