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IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs June 6, 2023

STATE OF TENNESSEE v. HALLEY OBRIEN THOMPSON

Appeal from the Circuit Court for Madison County
No. 20-663 Kyle C. Atkins, Judge

No. W2022-01535-CCA-R3-CD

A Madison County Circuit Court jury found the Defendant, Halley OBrien Thompson,[1] guilty of aggravated sexual battery. The trial court sentenced the Defendant to fourteen years in the Tennessee Department of Correction. On appeal, the Defendant contends that the trial court erred by allowing an investigator to testify that it was common for child victims to delay reporting allegations of sexual assault. He also argues that the State presented improper prosecutorial argument during its rebuttal closing argument. Upon review, we respectfully disagree and affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right;
Judgment of the Circuit Court Affirmed

TOM GREENHOLTZ, J., delivered the opinion of the court, in which J. ROSS DYER and JOHN W. CAMPBELL, SR., JJ., joined.

Lloyd R. Tatum, Henderson, Tennessee (on appeal), and C. Mark Donahoe, Jackson, Tennessee (at trial), for the appellant, Halley OBrien Thompson.

Jonathan Skrmetti, Attorney General and Reporter; Lacy E. Wilber, Senior Assistant Attorney General; Jody S. Pickens, District Attorney General; and Alfred L. Earls and Nina W. Seiler, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

[1] The spelling of the Defendant's middle name appears in various forms in the record. We use the spelling as it appears in the indictment.

FACTUAL BACKGROUND

On November 2, 2020, a Madison County grand jury charged the Defendant with the aggravated sexual battery of the victim, R.H.,[2] a person less than thirteen years of age, on or about December 7, 2019. *See* Tenn. Code Ann. § 39-13-504. The Defendant's trial began on September 15, 2021.

The victim testified that she was born on August 22, 2010, and that she was eleven years old at the time of trial. The victim had one biological brother and three stepsisters. She referred to the Defendant as "Uncle Brian." She said that she had known the Defendant for a year and a half or two years at the time of the offense.

On Saturday, December 7, 2019, the victim went to her great-grandmother's house. At some point that day, the Defendant picked her up and took her to his house. The victim wanted to go to his house because she thought two of her cousins were there and wanted to play with them. The Defendant's girlfriend was there when they arrived, but no one else was present.

The victim spent most of the day watching television. Although her cousins never arrived, she spent the night at the Defendant's house. The victim said that it was not uncommon for her to spend the night at the Defendant's house but that her cousins were usually there when she did so.

Before the victim went to sleep, she went into the bathroom and changed into green and black "onesie" pajamas that zipped up in the front. Although she fell asleep on the couch, something on television woke her. The victim was lying down, and the Defendant was sitting up.

As she woke, she felt her "onesie being unzipped and [the Defendant's] hand going into [her] underwear." His hand went inside her underwear and was on her vagina. The victim said, "He just moved his hand down and moved it back up." The victim did not know what to do, so she lay still. She did not tell him not to unzip her onesie or to stop touching her. After the Defendant stopped, she zipped her onesie back up. The victim thought the Defendant returned to his bedroom, and she went back to sleep.

The following day, Sunday, the Defendant, his girlfriend, and the victim went to church. The victim saw her mother at church and went home with her. The victim told her mother that the Defendant had touched her. The victim thought her mother immediately called 911.

[2] It is the policy of this Court to identify the victims of sexual offenses by only their initials.

Daniel Long, an investigator with the Major Crimes Unit of the Jackson Police Department, testified that he thought the offense occurred on December 7, 2019, but that it was not reported until Tuesday, December 10, 2019. Investigator Long said, "We'll get instances of this nature reported immediately up to years after the event." He further stated that it was common for children not to report a sexual assault because "[t]hey just don't know what to do, so they don't do anything. And children don't usually fight."

Investigator Long also identified other aspects of his investigation. For example, the investigator spoke with the Defendant, who denied touching any children inappropriately. The investigator did not interview any other children in the Defendant's life, such as his nieces and nephews, noting that only the victim and the Defendant were present during the offense.

Investigator Long confirmed that the victim was forensically interviewed on December 18, 2018. The victim was directed to go to the hospital for an examination, but no physical evidence of the offense was found. On cross-examination, Investigator Long recalled being advised of communications between the Defendant and the victim's mother, but he did not recall whether the communications consisted of text messages, "a voice call," or both. Investigator Long did not have the messages at trial.

Although the Defendant elected not to testify, his sister and daughter testified in his defense. Both witnesses confirmed that they were comfortable with the Defendant being around their children. They each testified that the police never interviewed their children to investigate whether the Defendant ever acted inappropriately with them.

Following the proof, the jury found the Defendant guilty of the charged offense of aggravated sexual battery, a Class B felony. The trial court sentenced the Defendant as a Range II, multiple offender to fourteen years in the Tennessee Department of Correction. The trial court further required the Defendant to register as a sex offender and to be subject to community supervision for life following his release from confinement.

On November 3, 2021, the Defendant filed a motion for a new trial, and he filed an amended motion for a new trial on April 8, 2022. The trial court denied the Defendant's motion for a new trial on October 25, 2022, and eight days later, the Defendant filed a timely notice of appeal.

ANALYSIS

A. INVESTIGATOR LONG'S TESTIMONY

The Defendant first argues that the trial court erred in permitting the State to introduce Investigator Long's opinion "as to how often and why children delay reporting

sex crimes." The State asserts that the Defendant waived this issue because he did not raise at trial the objections that he advances in this Court. We agree with the State.

1. Background

As background for this issue, the victim testified that she told her mother about the molestation the day after it happened, recalling that the offense happened on Saturday and that she told her mother about the offense on Sunday after they had been at church. During Investigator Long's direct examination, he said, "The event happened on the 7th. It was reported on the 10th." The State asked if it was uncommon "to get one that old?" Investigator Long responded, "It's not uncommon. . . . We'll get instances of this nature reported immediately up to years after the event."

At that point, defense counsel objected on the basis that the State was "getting ready to ask this witness an expert opinion about how things go on or are done." Defense counsel argued that he had received no notice that Investigator Long would testify as an expert witness. Defense counsel further argued that Investigator Long was not qualified to give expert testimony because "[i]t's all based on hearsay and speculation."

The State clarified that its question would be, "[I]s it uncommon for sexual assault victims to not report things immediately?" Defense counsel asserted that the State was asking Investigator Long to give an opinion he was not qualified to give. The trial court replied, "You don't have to be an expert to give an opinion. Lay people can give an opinion."

The State maintained that it could ask Investigator Long what he had observed in his experience and training. The trial court said, "I don't think he's giving expert opinions when he says people—that they sometimes wait. I mean, that's just his personal observations, which a layperson can give." The trial court then overruled the objection, and Investigator Long testified that it was common for a child to delay reporting sexual assaults because "[t]hey just don't know what to do so they don't do anything."

1. Lay Opinion Testimony and Bolstering Credibility

On appeal, the Defendant argues, in part, that Investigator Long's testimony was inadmissible because it was both improper lay opinion testimony and improper witness vouching. He argues that lay opinion testimony "must be based on the witness's own observations, should require no expertise, and ought to be within the range of common experience." The Defendant also asserts that Investigator Long essentially testified that

the victim was a believable witness and that the delay in reporting did not affect her credibility.

The State responds that the Defendant raises both arguments for the first time in this appeal. The State notes that the Defendant's sole objection at trial was that the testimony was inadmissible for a procedural reason: that the State had failed to give advanced notice to the defense that it would be offering expert testimony through Investigator Long. It asserts that the Defendant's present objections are waived because he never raised them at trial or in his motions for a new trial. We agree with the State.

Ordinarily, before a party can challenge the admission of evidence on appeal, the party must have preserved the issue in the trial court. To preserve an issue, the party should first assert a timely objection identifying a specific ground. The party then must later raise that issue in a motion for a new trial. Tenn. R. Evid. 103(a)(1); Tenn. R. Crim. P. 51(b); Tenn. R. App. P. 3(e). Otherwise, the party waives the issue on appeal and cannot seek plenary review. *See*, *e.g.*, *State v. Myles*, No. E2016-01478-CCA-R3-CD, 2017 WL 2954690, at *7 (Tenn. Crim. App. July 11, 2017) ("When the defendant fails to object to expert testimony offered by a lay witness, the defendant is not entitled to plenary review."), *perm. app. denied* (Tenn. Nov. 16, 2017); *State v. Hayes*, No. M2008-02689-CCA-R3-CD, 2010 WL 5344882, at *10 (Tenn. Crim. App. Dec. 23, 2010) (finding waiver of an appellate issue alleging improper admission of expert testimony from a lay witness when the issue was not included in a motion for a new trial), *perm. app. denied* (Tenn. May 25, 2011).

A party's "specific ground" for an objection is important because a party generally may not "assert a new or different theory to support the objection in the motion for a new trial or in the appellate court." *State v. Howard*, No. M2020-01053-CCA-R3-CD, 2021 WL 5918320, at *6 (Tenn. Crim. App. Dec. 15, 2021), *no perm. app. filed*; *see also State v. Vance*, 596 S.W.3d 229, 253 (Tenn. 2020) ("[A] party is bound by the ground asserted when making an objection to the admission of evidence and cannot assert a new or different theory to support the objection in the motion for new trial."). Indeed, it is well-established that "[w]hen a party abandons the ground asserted when the objection was made and asserts completely different grounds in the motion for a new trial and in [the appellate] court, the party waives the issue." *Howard*, No. M2020-01053-CCA-R3-CD, 2021 WL 5918320, at *6; *see also State v. Schiefelbein*, 230 S.W.3d 88, 129 (Tenn. Crim. App. 2007); *State v. Aucoin*, 756 S.W.2d 705, 715 (Tenn. Crim. App. 1988). And, of course, these principles certainly apply in the context of objections to expert and lay opinion testimony. *See State v. Dooley*, 29 S.W.3d 542, 549 (Tenn. Crim. App. 2000) (finding waiver of an appellate issue alleging improperly admitted lay opinion testimony when counsel objected at trial on the basis of hearsay only); *see also State v. Himes*, No. M2020-00407-CCA-R3-CD, 2022 WL 1088242, at *9 (Tenn. Crim. App. Apr. 12, 2022) (finding waiver of an appellate issue alleging improperly admitted lay opinion testimony by a police detective when counsel did not challenge the testimony on this basis in the trial court.) *no perm. app. filed*.

These principles serve important functions. As an appellate court, our authority to decide cases generally extends only to those issues that "ha[ve] been formulated and passed upon in some inferior tribunal." *State v. Bristol*, 654 S.W.3d 917, 925 (Tenn. 2022) (citation and internal quotation marks omitted). More importantly, issue-preservation principles advance important fairness objectives. *See Vance*, 596 S.W.3d at 253 (stating that error preservation "requirements serve to promote fairness, justice, and judicial economy" (citation and internal quotation marks omitted)). As we have recognized, timely objections "permit the judge to rule on the admissibility of the evidence before it is introduced to the jury," and they "provide the proponent of the evidence with the opportunity to offer the evidence by an alternative, nonobjectionable method." *State v. McDowell*, No. E2020-01641-CCA-R3-CD, 2022 WL 1115577, at *17 (Tenn. Crim. App. Apr. 14, 2022) (citation omitted), *perm. app. denied* (Tenn. Oct. 4, 2022). These principles also "prevent sandbagging, whereby a lawyer holds back an objection but raises it on appeal if an unfavorable verdict is returned." *Id.*; *see also State v. Adkisson*, 899 S.W.2d 626, 635 (Tenn. Crim. App. 1994) ("[A]n appellate court will not permit a party to take advantage of its adversary when it is too late to remedy the basis of the objection." (footnote omitted)). For these reasons, among others, we have been "extremely hesitant to put a trial court in error where its alleged shortcoming has not been the subject of a contemporaneous objection." *State v. Thompson*, 36 S.W.3d 102, 108 (Tenn. Crim. App. 2000).

At trial, the Defendant objected to Investigator Long's testimony for a procedural reason: he believed that the investigator would be offering an unqualified expert opinion, and he had not been notified that the State was offering expert testimony. Aside from passing remarks characterizing the proposed testimony as being based on "hearsay and speculation," which we address below, the Defendant did not object to Investigator Long's testimony otherwise. For example, when the trial court observed that "I don't think he's giving expert opinions," the Defendant did not further object that the investigator's opinion was also inadmissible as lay opinion under Tennessee Rule of Evidence 701, as he does now. He likewise voiced no concerns that the investigator's testimony would impermissibly vouch for the victim's credibility.

Similarly, the Defendant failed to raise these objections in his original and amended motions for a new trial. Instead, he argued that the trial court erred when it "allowed testimony over objection of the defendant with regard to what essentially amounted to expert testimony without notice to the defendant that the [State's] witness would render an expert opinion."

Our supreme court has recognized that "[a] trial court cannot evaluate an objection that is not made," and as such, "we will not fault a trial court for failing to rule on an unexpressed objection even if, in hindsight, the objection appears appropriate." *Vance*, 596 S.W.3d at 253. Because the Defendant did not raise an objection based on Rule 701 or improper witness vouching before the trial court, the court had no opportunity to consider the issues the Defendant now raises. And the State had no occasion to offer the

evidence in another way to compensate for any objections. We, therefore, agree with the State that the Defendant has waived plenary review of these issues. *State v. Dotson*, 450 S.W.3d 1, 95 (Tenn. 2014).

2. Hearsay

The Defendant also argues that Investigator Long's testimony was inadmissible hearsay. The State again responds that the Defendant waived any issue regarding hearsay because he did not, among other things, raise a hearsay objection in his motions for a new trial. We agree with the State.

While asserting his procedural objections to Investigator Long's testimony, the Defendant also noted that the investigator's testimony was based on "hearsay and speculation." The Defendant did not make any substantive arguments based upon the hearsay rule, and the trial court did not address the issue. We doubt that a single passing reference to "hearsay" without further argument properly placed a hearsay objection before the trial court. *See State v. Arradi*, No. M2013-00613-CCA-R3-CD, 2014 WL 891536, at *4 (Tenn. Crim. App. Mar. 7, 2014) ("The general statement regarding the 'speculative testimony' . . . failed to put the court on notice of claims regarding expert testimony."), *perm. app. denied* (Tenn. June 25, 2014). Nevertheless, it is also true that the Defendant did not raise a hearsay objection to this testimony in his original or amended motions for a new trial.

"[I]n all cases tried by a jury, no issue presented for review shall be predicated upon error in the admission or exclusion of evidence . . . unless the same was specifically stated in a motion for new trial[.]" Tenn. R. App. P. 3(e). Therefore, because the Defendant failed to raise a hearsay objection to Investigator Long's testimony in his motions for a new trial, he has waived plenary review of that objection in this court. *See also State v. Nuchols*, No. E2021-01415-CCA-R3-CD, 2022 WL 17694141, at *3 (Tenn. Crim. App. Dec. 15, 2022) ("Defendant failed to include the [hearsay] issue in his motion for new trial. As such, the issue has not been preserved for appellate review."), *perm. app. denied* (Tenn. Apr. 17, 2023).

3. Plain Error Review

Despite the Defendant's failing to preserve his issues related to Investigator Long's testimony for plenary review, this Court retains the discretion to consider "an error that has affected the substantial rights of a party at any time, even though the error was not raised in the motion for a new trial or assigned as error on appeal." Tenn. R. App. P. 36(b); *see also Bristol*, 654 S.W.3d at 927. However, we decline to do so for two reasons.

First, the Defendant does not request that we conduct a plain error review, and we generally refrain from addressing issues not raised by the parties. *See State v. Nelson*, 275 S.W.3d 851, 864 (Tenn. Crim. App. 2008) ("Appellate courts are advised to use plain error sparingly in recognizing errors that have not been raised by the parties or have been waived due to a procedural default."). Because the "[d]efendant bears the burden of persuasion to show that he is entitled to plain error relief," *State v. Dixon*, No. M2021-01326-CCA-R3-CD, 2022 WL 5239289, at *21 (Tenn. Crim. App. Oct. 6, 2022), *perm. app. denied* (Tenn. Feb. 8, 2023), a defendant's failure to request this relief weighs against any such consideration on our own. *See State v. Cornwell*, No. E2011-00248-CCA-R3-CD, 2012 WL 5304149, at *18 (Tenn. Crim. App. Oct. 25, 2012) (declining to conduct a plain error review of an expert testimony issue because the defendant "does not request plain error review of this issue, and we do not discern a basis for such under the facts of this case"), *perm. app. denied* (Tenn. Mar. 5, 2013).

Second, and more importantly, the State specifically argued in its response brief that the Defendant waived these issues by failing to raise them in the trial court. Despite being on notice that his issues may be waived, the Defendant did not respond to this argument in a reply brief or otherwise. Where a defendant fails to respond to a waiver argument, only particularly compelling or egregious circumstances could typically justify our *sua sponte* consideration of plain error relief. *See*, *e.g.*, *State v. Powell*, No. W2011-02685-CCAR3-CD, 2013 WL 12185202, at *8 (Tenn. Crim. App. Apr. 26, 2013) (declining plain error review, in part, when "Defendant did not request in his brief on appeal that this issue be reviewed for plain error, nor has Defendant filed a reply brief in which he requests plain error review" (citation omitted)), *perm. app. denied* (Tenn. Sept. 11, 2013). Because no such circumstances exist here, we respectfully decline to analyze the Defendant's issues further for plain error.

B. THE STATE'S REBUTTAL CLOSING ARGUMENT

The Defendant next argues that the State made an improper argument during its rebuttal closing argument. Essentially, he asserts that the State attempted to shift the burden of proof by arguing that the Defendant could have brought forward evidence to the jury to support his defense. For its part, the State argues that the statements were not so inflammatory or improper as to result in prejudice, particularly in light of the trial court's curative instruction. We agree with the State.

1. Background

To address the Defendant's issue properly, context is important. During his closing argument, the Defendant argued that reasonable doubt existed as to his guilt for the crime charged, and he pointed to the absence of evidence presented by the State. For example, he emphasized that Investigator Long did not "follow up on" reports of text messages and questioned why the investigator did not obtain the text messages as part of the investigation. He also questioned why the State failed to present any DNA evidence, medical reports, or testimony from a medical expert.

The Defendant also questioned why the investigator did not speak with various witnesses or why the State did not present their testimony at trial. He emphasized, for example, that the State did not call the victim's mother to testify. He argued that no one else had ever made similar allegations against him, even though he "routinely kept and cared for his other nieces and nephews of a similar age." Focusing on the importance of these other possible witnesses, the Defendant argued as follows:

> You also didn't see any corroboration of anything. There was no follow-up investigation at all on the other children, no follow-up investigation with [the Defendant's girlfriend], who was there at the time, the only other person who we've heard a big deal about, people who were there at the time. [W]ell, she was there. Nobody talked to her. Nobody got her version. Maybe we wouldn't be here if they'd done that.

During its rebuttal closing argument, the State acknowledged it had the burden to prove the Defendant's guilt beyond a reasonable doubt. The State asserted that its proof of guilt was uncontroverted and that the Defendant's argument did not raise any reasonable doubt as to his guilt. More specifically, the State argued as follows:

> Now a lot of this evidence that [the Defendant] wants to bring up that's not here, he's got an investigator sitting right over there. And he's got the same

> subpoena power I do. If he wanted to have evidence put before you, all he had to do is bring it.

The Defendant objected to these statements and moved for a mistrial, arguing that he did not have the burden of proof. The State responded that the Defendant had "opened the door" by arguing in his closing that the State failed to present certain evidence. In the State's view, it was "just pointing out in rebuttal to his response he could have brought it, the same as [the State] could."

The trial court denied the motion for a mistrial because the defense "did kind of bring it up." But the court gave the jury the following curative instruction: "Ladies and gentlemen, I'll just remind you that the State carries the burden of proof to prove the defendant's guilt beyond a reasonable doubt. And it never shifts, it remains with the State throughout the trial of the case." As the court noted, this curative instruction essentially repeated the general jury instructions that it gave the jury before the start of the trial, which stated as follows:

> The State has the burden of proving the guilt of the defendant beyond a reasonable doubt and this burden never shifts but remains on the State throughout the trial of the case. The defendant is not required to prove his innocence.

2. Responsive Arguments in Rebuttal Closing

"The basic purpose of closing argument is to clarify the issues that must be resolved in a case." *State v. Sexton*, 368 S.W.3d 371, 418 (Tenn. 2012). When analyzing an issue regarding improper closing arguments, this Court recognizes that "closing arguments are an important tool for the parties during the trial process. Consequently, the attorneys are usually given wide latitude in the scope of their arguments." *State v. Carruthers*, 35 S.W.3d 516, 577-78 (Tenn. 2000). A trial court is afforded wide discretion in controlling closing arguments, and this Court will not reverse a finding regarding those arguments absent an abuse of discretion. *State v. Berry*, 141 S.W.3d 549, 586 (Tenn. 2004).

Nevertheless, "arguments must be temperate, based upon the evidence introduced at trial, relevant to the issues being tried, and not otherwise improper under the facts or law." *State v. Goltz*, 111 S.W.3d 1, 5 (Tenn. Crim. App. 2003). Importantly, a "criminal conviction should not be lightly overturned solely on the basis of the prosecutor's closing argument." *State v. Banks*, 271 S.W.3d 90, 131 (Tenn. 2008). "In determining whether statements made in closing argument constitute reversible error, it is necessary to determine whether the statements were improper and, if so, whether the impropriety affected the verdict." *State v. Pulliam*, 950 S.W.2d 360, 367 (Tenn. Crim. App. 1996); *State v. Jordan*,

325 S.W.3d 1, 65 (Tenn. 2010) ("We will not overturn a verdict on the basis of a prosecutor's improper argument unless the impropriety affected the verdict."). To determine the prejudicial impact of an allegedly improper argument, this Court considers:

> (1) the facts and circumstances of the case; (2) any curative measures undertaken by the court and the prosecutor; (3) the intent of the prosecution; (4) the cumulative effect of the improper conduct and any other errors in the record; and (5) the relative strength or weakness of the case.

Goltz, 111 S.W.3d at 5-6.

To the extent that the Defendant argues, as he did at trial, that the State's remarks impermissibly shifted the burden of proof, we respectfully disagree. "It is well-established that a prosecutor may comment upon the failure of a defendant to call an available and material witness whose testimony would ordinarily be expected to favor the defendant." *State v. Francis*, 669 S.W.2d 85, 88 (Tenn. 1984). So long as the prosecutor is responding to a defense argument about why the State did not call certain witnesses, the State may comment that the witnesses were available to both sides. *See State v. Campbell*, No. M2020-01045-CCA-R3-CD, 2022 WL 872199, at *13 (Tenn. Crim. App. Mar. 24, 2022) ("Relative to the allegation of improper burden shifting, we reiterate that the State merely noted that the witnesses in question were equally available to both parties. The trial court did not err by finding that the State's argument was proper in this respect."), *perm. app. denied* (Tenn. July 13, 2022); *State v. Cofer*, No. E2011-00727-CCA-R3-CD, 2012 WL 3555310, at *20-22 (Tenn. Crim. App. Aug. 20, 2012), *perm. app. denied* (Tenn. Dec. 10, 2012).

In this case, a significant thrust of the Defendant's closing argument was that the State failed to investigate or obtain key evidence, implying that the evidence would have been favorable to the defense. In this context, the State's remarks merely suggested that the missing evidence the Defendant complained about was "equally available to both parties." *Campbell*, 2022 WL 872199, at *13; *see also State v. Ibrahim*, No. M2015-01360-CCA-R3-CD, 2016 WL 4449571, at *15 (Tenn. Crim. App. Aug. 22, 2016) (concluding that "the State's rebuttal argument was prompted by and made in response to trial counsel's argument that law enforcement personnel should have conducted further examination of the evidence and that, therefore, no [improper prosecutorial argument] occurred"), *perm. app. denied* (Tenn. Jan. 19, 2017). In fact, the State's identified intent at trial was that it was "just pointing out in rebuttal to [the Defendant's] response [that] he could have brought it, the same as [the State] could."

Moreover, the trial court, *sua sponte*, took steps to cure any possible prejudice by giving a curative instruction to the jury. This instruction reminded the jury that the State has the burden of proving the Defendant's guilt beyond a reasonable doubt and that this

burden does not shift to the Defendant. This instruction supplemented an earlier instruction given by the trial court in its opening instructions, which also emphasized that "[t]he defendant is not required to prove his innocence." In addition, the final jury instructions given after the argument emphasized that the "defendant is presumed innocent, and the burden is on the state to prove his guilt beyond a reasonable doubt." In the context of the parties' closing arguments, as elsewhere, "[w]e presume that the jury follows its instructions." *Jordan*, 325 S.W.3d at 66.

Considering the parties' arguments as a whole and in the context in which they were offered, the trial court's multiple instructions, and the evidence introduced at trial, we conclude that the State's rebuttal closing argument did not affect the jury's verdict. As such, we hold that the trial court acted within its discretion in allowing the State's rebuttal argument.

CONCLUSION

In summary, we hold that the Defendant has waived his arguments regarding the admissibility of Investigator Long's testimony. We also hold that he is not entitled to relief due to the State's rebuttal closing argument. We respectfully affirm the judgment of the trial court.

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TOM GREENHOLTZ, JUDGE