NOT DESIGNATED FOR PUBLICATION

No. 124,628

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

PAUL RANDALL RANSDELL,
Appellant.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; MICHAEL A. RUSSELL, judge. Opinion filed March 24, 2023. Affirmed.

Randall L. Hodgkinson, of Kansas Appellate Defender Office, for appellant.

Taylor A. Hines, assistant district attorney, *Mark A. Dupree Sr.*, district attorney, and *Derek Schmidt*, attorney general, for appellee.

Before GREEN, P.J., HURST, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: Paul Randall Ransdell appeals from his burglary conviction, arguing the following: (1) that there was insufficient evidence to support the conviction, (2) that the prosecutor committed reversible error during closing argument, (3) that the trial court should have instructed the jury about mistake of fact, and (4) that he was entitled to a new trial based on the cumulative effects of trial errors. After reviewing the arguments and the record, we find that no reversible errors exist and affirm Ransdell's conviction.

FACTS

On September 13, 2018, Benard Grado woke up around noon and heard a loud truck going through his neighborhood. He got up and looked out his front door and saw a large full-sized truck backing into his neighbor's driveway. He had lived in his house for 23 years, been retired for 10 of those years, and knew everyone in the neighborhood. Kenneth Grable and Barbara Morris owned the house, but Morris' son-in-law, Leonard Ira Leonard, lived there. Grado called Morris to tell her that there was an unusual truck at her house. Morris told him she was not expecting anyone and would come to the house and meet him outside. While he waited for Morris, Grado saw two men get out of the truck. One of them walked up toward the front door, and then they both walked toward the back of the house.

Morris arrived, five to seven minutes later, and they called the police. Before the police arrived, Morris' nephew Jeff Grable arrived and drove past the back of the house. He saw an open window and no one in the back yard. He drove back around to the front of the house, at which point Leonard arrived in front of the house and started yelling into the house.

Eventually, two men came around from the back of the house, one with a shotgun on his shoulder and the other one carrying a small electronic tablet. Both items had been in the house when Leonard left that morning. Leonard took the items from the men, and one of the men got into the truck they had arrived in and drove off. The other man—Ransdell—stayed and was arrested after the police arrived.

The State charged Ransdell with one count of burglary and one count of criminal damage to property. Before trial, the State filed a motion to admit statements Ransdell made to police while in custody. The trial court held a hearing on the motion, and after considering testimony from the officer who interrogated Ransdell and argument from the

parties, the trial court determined that Ransdell knowingly, voluntarily, and intelligently waived his rights before talking to law enforcement. The trial court, therefore, granted the State's motion to admit the statement.

Ransdell's jury trial started on April 29, 2019. Kansas City, Kansas, Police Officer Audra K. Moore testified that at 11:37 a.m. on September 13, 2018, she was dispatched to a burglary in progress at an address on 33rd Street. She was told that there were two suspects, and one had fled. When she and her partner arrived at the address, the only person there was the suspect, which she identified in the courtroom as Ransdell. He was sitting down when she arrived. His appearance was unkempt, and he had a beverage in his hand. He complied when she asked him to put his hands behind his back.

Officer Moore testified that the person who called in the burglary got a tag for the vehicle that was involved. When they ran the tag through dispatch, however, they discovered it was issued to a different vehicle than the one described by the witnesses. They determined that the tags had been switched.

Grado testified about what he observed on September 13, 2018, starting from when he saw the truck until the police arrived. Grado testified that while he waited for Morris to arrive, he saw a thin man get out of the passenger side of the truck; a heavyset man was driving the truck. Grado said that the thin man walked toward the front door. Then both men walked toward the back of the house. The next time Grado saw the two men was after Grable and Leonard had arrived, and Leonard was bringing the men around from the back of the house. According to Grable, Leonard had a shotgun and a book in his hand. He stated that the thin man tried to run, but Leonard knocked him down and he was eventually arrested. The larger man ran.

Jeff Grable testified that Morris is his aunt. He was with Morris at her other house when she received the call that someone was breaking into the house on 33rd Street. He

and Morris each got into their own car and drove to the house about two blocks away. When they arrived, Grable stated that he drove to the back of the house, which has a front and back driveway. Still in his car, he saw that a back window to the house was either broken or open, and he testified that he saw people moving around inside. He testified that he saw more than one person inside, but he was not sure how many. He saw no one in the back yard. He then drove around to the front of the house to be with Morris, and that was when Leonard arrived. He heard Leonard yell something, and then the two men came running toward the front of the house. The larger man jumped in the truck and left. The thinner man was apprehended by the police.

Leonard testified that he lived in two homes, one of which is the one on 33rd Street where this incident occurred. Leonard stayed there some nights, including the night before September 13, 2018. He testified that he locked the house before he left for work that morning, and then called Morris sometime between 11:15 a.m. and 11:30 a.m. as he was leaving work—which is around 23 miles from the house. When Leonard arrived at the home, he saw Morris standing in the street with a strange look on her face. He then saw the truck parked in his narrow driveway. Morris asked him whose truck it was and who was in the house, and he said he did not know. Grable was in his truck at the back of the house, and Leonard started yelling into the house. Grable then drove to the front of the house and talked to Leonard. He asked Leonard if he left a window open in the back. Leonard said he did not.

Leonard went to the back and saw the dining room window was wide open with the screens up, and the back door was open. He was still yelling, "'Come out of the house,'" when two men walked around the corner. The bigger of the two men had Leonard's father-in-law's display shotgun over his shoulder. The smaller man—which Leonard confirmed was Ransdell—was carrying a small electronic tablet. Both items had been inside the house when Leonard left. Leonard took the shotgun out of the man's hands. He asked the men to go to the front of the house and wait for the police. But once

they got to the front, the bigger man "catapulted himself" through the window of his truck. The other man—Ransdell—stayed.

During Leonard's testimony, the State introduced exhibits that were pictures of Leonard's house, some of which depicted what the house looked like after the incident. There was a door that was broken when Leonard got home, which Leonard testified was not broken when he left that morning. The photos also showed a door that had been shut and locked when Leonard left that morning. Another photograph showed a room with things scattered around, which Leonard testified were in drawers when he left that morning. One of the photographs showed the electronic tablet that Ransdell was carrying when Leonard encountered him. It was an Amazon brand tablet. Another photograph showed a laptop computer that had been moved to a different place than where Leonard left it.

Leonard testified that he did not know Ransdell and that Ransdell lacked authority to be in his house that day or to take the shotgun or tablet.

On cross-examination, Leonard testified that the bigger man did most of the talking when he encountered them and that the bigger man tried to act like he was supposed to be there. The gun he took from the bigger man was not loaded, and both men handed him what they were carrying when he asked for it back. Leonard also testified that Ransdell did not try to get into the truck when the other man left but that Leonard got between Ransdell and the truck.

Detective Jason Vaughn of the Kansas City, Kansas, Police Department testified that he investigated the incident at the house on 33rd Street. He interviewed Ransdell. Ransdell told Detective Vaughn that he had been working painting garbage cans when he met a guy who asked him for a cigarette. The man told Ransdell he would buy him a pack of cigarettes if he went with him to pick up some scrap. Ransdell told Detective Vaughn

that the man's name was Bubba Klumski. They went in Bubba's truck to Bubba's mom's house, and she gave Bubba some steak. They picked up some scrap before heading to the house on 33rd Street to pick up some more scrap.

Detective Vaughn said that when he asked Ransdell why they entered through the window to get in and get the scrap, Ransdell stated that Bubba told him it was his house. The trial court admitted the recording of the interview and played it for the jury. During the audio recording of the interview, Ransdell told Detective Vaughn that Bubba entered the house through the window because he said he did not have his keys. Ransdell stated he did not go in the house. He said Bubba wanted him to hold the door open for him so he could come out with the stuff. And then Bubba handed him the blue tablet once he came out of the house. Detective Vaughn testified that he tried to find a Bubba Klumski in his database and found no one.

On cross-examination, Detective Vaughn testified that he also interviewed Grado about 30 minutes after the incident, and Grado told him that the bigger guy went up and tried the front door—not Ransdell. Grado also told him that the truck had a lot of junk—or scrap—in the back of it. Detective Vaughn testified that he also spoke to Grable, and Grable never told him that he saw people moving around inside the house. After refreshing his recollection by listening to the audio recording of his interview with Grable, Detective Vaughn again testified that Grable never told him he saw people inside the house. Instead, Grable stated that when he was behind the house, he did not see any people.

After Detective Vaughn testified, the State rested. Ransdell moved for a directed verdict, arguing that the State failed to establish the elements of burglary. The trial court denied the motion. Ransdell presented no evidence. The trial court held a jury instruction conference, after which the parties presented their closing arguments.

The jury convicted Ransdell of one count of burglary but found him not guilty of criminal damage to property. Ransdell filed a motion for a new trial in which he argued that during its closing arguments, the State talked about facts not in evidence and misled the jury. After hearing arguments from the parties, the trial court denied the motion.

On August 30, 2019, the trial court denied Ransdell's motion for a departure sentence and sentenced Ransdell to 19 months of prison. Ransdell timely filed a notice of appeal. On November 23, 2021, the trial court issued a journal entry denying Ransdell's motion for a new trial, which it had decided on July 11, 2019.

ANALYSIS

Was there sufficient evidence to support Ransdell's conviction for burglary?

Ransdell argues that his burglary conviction should be reversed because it was supported by insufficient evidence. Although Ransdell did not raise this issue before the trial court, he correctly argues that there is generally no requirement that a criminal defendant challenge the sufficiency of the evidence before the trial court to preserve the issue for appeal. *State v. Hilyard*, 316 Kan. 326, 330, 515 P.3d 267 (2022).

> "'When the sufficiency of the evidence is challenged in a criminal case, we review the evidence in a light most favorable to the State to determine whether a rational factfinder could have found the defendant guilty beyond a reasonable doubt. An appellate court does not reweigh evidence, resolve conflicts in the evidence, or pass on the credibility of witnesses.'" *State v. Aguirre*, 313 Kan. 189, 209, 485 P.3d 576 (2021).

"There must be evidence supporting each element of a crime to meet the sufficiency of the evidence standard." *Hilyard*, 316 Kan. at 330. Ransdell was convicted of burglary under K.S.A. 2018 Supp. 21-5807(a)(1)(A), which lists the elements as: "(a)

Burglary is, without authority, entering into or remaining within any: (1)(A) Dwelling, with intent to commit a felony, theft or sexually motivated crime therein."

The jury was instructed on this charge as follows:

> "The defendant is charged, in count I, with burglary. The defendant pleads not guilty.
>
> "To establish this charge, each of the following claims must be proved:
>
> 1. The defendant entered a dwelling, to-wit: [address of the house on 33rd Street].
> 2. The defendant did so without authority.
> 3. The defendant did so with the intent to commit a theft therein.
> 4. This act occurred on or about the 13th day of September 2018, in Wyandotte County, Kansas.
>
> "The State must prove that the Defendant committed the crime of burglary intentionally.
>
> "A Defendant acts intentionally when it is the Defendant's desire or conscious objective to do the act complained about by the State.
>
> "The elements of theft are as follows:
>
> 1. Leonard Leonard was the owner of the property.
> 2. The defendant obtained or exerted unauthorized control over the property.
> 3. The defendant intended to deprive Leonard Leonard permanently of the use or benefit of the property."

Ransdell argues that the record does not contain sufficient evidence to support a finding that he had the specific intent to commit a theft beyond a reasonable doubt. Ransdell admits that forced entry into a dwelling may create a reasonable inference of intent to commit a theft, but he maintains that the facts of his case do not show a state of mind consistent with intent to steal. Specifically, he argues that the evidence showed that he was a homeless man who got into a truck with a stranger to collect scrap in exchange for a pack of cigarettes. The officers found no burglary tools, and Bubba had entered through an unlatched window. Ransdell offered a lawful explanation for being on the

property—that he was collecting scrap with Bubba at a property Bubba owned. He contends that this was bolstered by the fact that Bubba was driving a full-size pickup truck heavy with scrap and supplies. He also points out that the entry was during the day, and Bubba was driving a loud truck, which would alert neighbors, and they backed it into the driveway of a home in a residential neighborhood at lunch time. And he did not flee with the driver, who got away. In fact, he points out that the evidence showed he waited peacefully for law enforcement and furnished a reasonable explanation that is inconsistent with the state of mind associated with an intent to steal. He claims that Leonard corroborated Ransdell's explanation by testifying that when he talked to Bubba after apprehending him, Bubba acted like he was supposed to be in the house and Ransdell told Leonard that he did not know Bubba.

Ransdell relies on *State v. Harper*, 235 Kan. 825, 685 P.2d 850 (1984), in which the defendant argued there was insufficient evidence to support his burglary conviction when he was found hiding after officers responded to a break-in at a school at night when nothing was taken from the school. The issue in *Harper* was not whether there was sufficient evidence of unauthorized entry but whether there was sufficient evidence to prove intent to commit a theft inside the building. 235 Kan. at 827. The *Harper* court stated that "intent with which an entry is made is rarely susceptible of direct proof; it is usually inferred from the surrounding facts and circumstances." 235 Kan. at 828. The court gave these examples of what type of evidence can prove intent to commit a theft:

> "Assume that an accused, a lone backpacker in a rural area, ignores a prominently posted 'No Trespassing' sign and steps inside the open door of an empty barn in order to gain shelter from a sudden downpour at midday. Such facts, standing alone, could not reasonably give rise to an inference that the trespasser entered with theft in mind. Assume, however, that the accused breaks the lock on a rear door and enters a pharmacy or a jewelry store at midnight, and shortly thereafter is found concealing himself inside the store. Is not an inference of intent to commit a theft logical?" 235 Kan. at 828.

The court stated that several things are important when determining whether an inference arises that the intruder intended to commit a theft, such as the time and manner of entry, the character and contents of the building, the person's actions after entry, the intruder's explanation, and the totality of the surrounding circumstances. 235 Kan. at 828-29. Considering these factors with the evidence presented in the case, the *Harper* court determined that the jury's guilty verdict was supported by the evidence. 235 Kan. at 832.

Ransdell argues that his case is unlike *Harper*, where the defendant offered inconsistent or implausible explanations for his presence after attempting to hide or flee. Ransdell argues that his "acts, conduct and inferences reasonably to be drawn therefrom" cannot support an inference of intent to steal. According to Ransdell, the State has asked the jury to make a presumption based on other presumptions, which means there is not sufficient evidence. While it is true that Kansas courts do not permit inference stacking, Ransdell does not specify what inferences were stacked in his case. See *State v. Banks*, 306 Kan. 854, 859, 397 P.3d 1195 (2017) ("Where the State relies on such inference stacking, *i.e.*, where the State asks the jury to make a presumption based upon other presumptions, it has not carried its burden to present sufficient evidence."). In Ransdell's trial, the State presented evidence to the jury on which it could find that Ransdell entered the house on 33rd Street with the intent to commit theft. The only inference that he did not intend to commit theft was his own explanation that he thought the house was Bubba's and he thought Bubba had permission to retrieve scrap at the house. Here, there was no improper inference stacking.

The State argues that this court should view the evidence in the light most favorable to the State—as the prevailing party—and find that there was sufficient evidence for a reasonable fact-finder to conclude that Ransdell aided and abetted Bubba in committing the burglary. The State points out that Ransdell had a tablet in his hand and not scrap metal. The State also notes that Ransdell gave an implausible explanation for why he was at the home and although the break-in occurred during the day, the evidence

showed that it was a forced entry on a concealed part of the home. The State points out this was circumstantial evidence supporting that Ransdell entered the home or aided Bubba in entering the home to commit theft.

Then, based on Ransdell's and the State's arguments, the fulcrum point of both arguments is not about whether the act of entering the house on 33rd Street by either Bubba or Ransdell or both occurred, it is about: What should we call it? We can refer to it as the stasis of definition. Thus, we are tasked with this question: Did evidence exist beyond a reasonable doubt that Ransdell entered the house with Bubba, with the specific intent to commit a theft, or if he did not enter the house, did he aid Bubba with the specific intent to commit a theft?

Let us consider some of the evidence in this case. We note that there was evidence that the house on 33rd Street had been entered through a window after either Bubba or Ransdell attempted to enter the house through the front door. As he testified earlier, Leonard stated that he found the back storm door broken. So, force was used to enter the house. Leonard also testified that after entering the house, he saw where things had been strewed across the floor of one room from opened drawers.

Also, Ransdell was found walking from behind the house holding an electronic tablet while Bubba was carrying Leonard's father-in-law's shotgun. Both articles had been located inside the house. Although his explanation about why he was at the house stayed consistent, it was contradicted by the fact that the items he and Bubba took from the house were not scrap. Also, Ransdell's justification for the entry into the house varied from his explanation that Bubba either owned the house or had permission to be there.

When you consider Ransdell's alleged reason for going to the house with Bubba to remove scrap from the house and when you contrast it with the electronic tablet and the shotgun that they had removed from the house, Ransdell's contention that he did not have

a specific intent to commit theft topples like a house of cards. We determine that these facts give rise to an inference that Ransdell had an intent to commit theft, and thus burglary. The jury's verdict was reasonable and is supported by the evidence. Viewing the evidence in the light most favorable to the State, we are convinced that a rational fact-finder could have found Ransdell guilty beyond a reasonable doubt. So, we affirm Ransdell's burglary conviction.

Should Ransdell's conviction be reversed based on prosecutorial error?

Ransdell argues his conviction should be reversed because the prosecutor erred during closing argument by arguing facts that were not in evidence. Ransdell apparently concedes that he did not raise this issue before the trial court because he correctly points out that appellate courts will review a prosecutorial error claim based on a prosecutor's comments made during closing argument even without a timely objection. See *State v. Bodine*, 313 Kan. 378, 406, 486 P.3d 551 (2021).

Appellate courts evaluate claims of prosecutorial error by considering the two steps of error and prejudice. *State v. Sherman*, 305 Kan. 88, 109, 378 P.3d 1060 (2016).

> "First, the court decides whether the prosecutorial acts complained of fall outside the wide latitude afforded prosecutors to conduct the State's case and attempt to obtain a conviction in a manner that does not offend the defendant's constitutional right to a fair trial. Then, if the court finds error, it next determines whether the error prejudiced the defendant's due process rights to a fair trial. In evaluating prejudice, the court adopts the traditional constitutional harmlessness inquiry—prosecutorial error is harmless if the State can demonstrate beyond a reasonable doubt that the error did not affect the outcome of the trial in light of the entire record, which is to say, there is no reasonable possibility that the error contributed to the verdict. [Citation omitted.]" *State v. Fraire*, 312 Kan. 786, 791-92, 481 P.3d 129 (2021).

Ransdell argues that the prosecutor erred during closing argument by arguing facts that were not in evidence. A prosecutor errs by arguing a fact with no evidentiary foundation or by making a factual inference with no evidentiary foundation. *State v. Watson*, 313 Kan. 170, 179, 484 P.3d 877 (2021).

Ransdell maintains that during closing argument, the prosecutor repeatedly misstated that Ransdell did things that Bubba actually did. He complains that the prosecutor stated that Ransdell was part of a "two-man crew" and continued to say "they" did things that the evidence showed only Bubba did. For instance, Ransdell quotes the following statement from the start of the State's rebuttal closing argument: "Mr. Ransdell was in that house. They went there to burglarize that house. They parked in the driveway with those big retaining walls that hid them. They could have parked on the street, but they went out of their way to park for cover."

Additionally, he claims the prosecutor misstated the facts in saying, "And they went to the back, and they tried to get in through that storm door. So they broke that glass."

Ransdell argues that this was a misstatement of the facts because there was no testimony that Ransdell did these things by riding in the truck while Bubba did the things. Moreover, he points out that the truck was loud, and it was during broad daylight, so they were not parking for cover. He contends that it was Bubba's decision to park there, so any inference that parking in the secluded driveway meant they were doing something illegal should not be transferred to Ransdell.

Ransdell maintains there was no evidence that he intended to aid and abet Bubba's actions. But that is exactly what the evidence the State presented was showing—that Ransdell was with Bubba while illegal actions occurred. The prosecutor was asking the jury to decide if Ransdell was culpable for these actions. Ransdell tries to argue that there

was no evidence that he broke the glass, noting that the jury acquitted him of criminal damage to property. But a photograph was admitted showing broken glass, and the house's resident testified that there was no broken glass on the porch when he left the house that morning. That evidence could show that Ransdell broke or aided Bubba in breaking the glass.

Ransdell next argues that the prosecutor misstated the facts when he claimed that Ransdell must have been inside because he said "we came out" several times, when Ransdell never said he was inside. The prosecutor made these statements when playing Ransdell's actual statements to the jury. So, the jury heard Ransdell's actual statement and could compare it to what the prosecutor was arguing.

Also, the prosecutor used the word "they" when discussing jury instruction No. 8, which required the State to prove that Ransdell aided Bubba in committing the crime of burglary. In discussing this instruction, the prosecutor explained Ransdell's culpability in aiding Bubba.

The State contends that the prosecutor's statements were within the wide latitude prosecutors are allowed during closing argument, and there was no prosecutorial error. The State is correct. Ransdell has not shown that the prosecutor misstated the facts; thus, Ransdell has not met the first step required to reverse based on prosecutorial error.

Was it clearly erroneous for the trial court not to instruct the jury on mistake of fact?

Ransdell argues the trial court erred by not instructing the jury on mistake of fact. Ransdell admits that he did not request a mistake of fact instruction but contends that this court can reach the issue anyway under K.S.A. 2018 Supp. 22-3414.

A party cannot "assign as error" the failure to give an instruction without specifically objecting to the failure to give an instruction unless the failure to give the instruction is clearly erroneous. K.S.A. 2018 Supp. 22-3414(3). For jury instructions to be clearly erroneous, the instructions must be legally or factually inappropriate and the court must be firmly convinced the jury would have reached a different verdict if the jury instruction error had not occurred. The party claiming clear error has the burden to show both error and prejudice. See *State v. Crosby*, 312 Kan. 630, 639, 479 P.3d 167 (2021).

The mistake of fact instruction is legally appropriate under K.S.A. 2018 Supp. 21-5207(a) and (c) and PIK Crim. 4th 52.090. The PIK instruction Ransdell argues should have been given states:

> "It is a defense in this case if by reason of ignorance or mistake of (fact) (law) the defendant did not have at the time the mental state which the statute requires as an element of the crime.
>
> "[The defendant may be convicted of a lesser offense if the facts were as (he) (she) believed them to be and the other evidence in the case establishes the lesser offense.]" PIK Crim. 4th 52.090 (2021 Supp.).

Ransdell argues the instruction was factually appropriate because according to him, until he was confronted by the actual owners of the property, he thought the house was Bubba's house. Until that time, he claims he was operating under a mistake of fact and did not have the culpable mental state required for burglary. The State does not contest that a mistake of fact instruction would have been legally or factually appropriate if Ransdell had requested it.

Because the parties agree that the instruction was legally and factually appropriate, the next step in the analysis is to determine whether it was clearly erroneous for the court not to have given the instruction. Ransdell contends that if the jury had been given this instruction, there is a real possibility that one or more jurors would have formed a

reasonable doubt. He argues that although there might have been substantial evidence that Bubba entered the residence with intent to commit a theft, there was not substantial evidence that Ransdell knew what Bubba was doing and intended to assist him. Ransdell claims the evidence was that he was just along to help Bubba with legitimate scrap collection in exchange for a pack of cigarettes. He maintains that if the jury had been correctly told that a mistake of fact about Bubba's authority and intent would be a defense to the burglary charge, then there is a real possibility that one or more of the jurors would have formed a reasonable doubt.

The State, on the other hand, argues that the failure to give a mistake of fact instruction was not clearly erroneous because the jury would not have reached a different verdict if the instruction was given. The State maintains that it presented sufficient evidence that Ransdell aided and abetted Bubba in committing burglary by entering the house with intent to commit a theft, and the jury could weigh the evidence and access witness credibility to determine whether Ransdell was guilty beyond a reasonable doubt.

Included with other instructions, the jurors were instructed that in their fact-finding, they "should consider and weigh everything admitted into evidence." Additionally, the jurors were instructed: "It is for you to determine the weight and credit to be given the testimony of each witness. You have a right to use common knowledge and experience in regard to the matter about which a witness has testified." The jurors were also instructed that they could find Ransdell guilty if he aided another to commit the crime. Part of that instruction stated: "All participants in a crime are equally responsible without regard to the extent of their participation. However, mere association with another person who actually commits the crime or mere presence in the vicinity of the crime is insufficient to make a person criminally responsible for the crime."

The jurors heard evidence that maybe Ransdell did not know he was being taken to burglarize a house, but the evidence also showed that Bubba and Ransdell entered the

house through a window after breaking a storm door, and the men took items from inside the house that were not what would normally be considered scrap. The jury was sufficiently instructed that it could weigh this evidence and make a decision. We determine that there is not a real possibility that the jury would have reached a different conclusion if it had been given this specific instruction about mistake of fact.

Should Ransdell's conviction be reversed based on cumulative error?

Ransdell argues that even if none of the errors in this case constitute a reversible error on its own, his conviction should be reversed because of the cumulative effect of the errors. Cumulative trial errors, when considered together, may require reversal of the defendant's conviction when the totality of the circumstances establish that the defendant was substantially prejudiced by the errors and denied a fair trial. When measuring the cumulative effect of errors during the trial, appellate courts consider the errors in context and look at how the trial judge dealt with the errors as they arose. Appellate courts also examine the nature and number of errors and whether they are interrelated as well as the overall strength of the evidence. If any of the errors being aggregated are constitutional in nature, the party benefitting from the error must establish beyond a reasonable doubt that the cumulative effect did not affect the outcome. *State v. Alfaro-Valleda*, 314 Kan. 526, 551-52, 502 P.3d 66 (2022). The cumulative error rule does not apply if there are no errors or only a single error. *State v. Gallegos*, 313 Kan. 262, 277, 485 P.3d 622 (2021).

Ransdell contends that the prosecutor's erroneous statements during closing argument combined with the instructional error substantially prejudiced him. The State argues that there was no cumulative error because the prosecutor's comments during closing argument were not error and although it was error for the trial court not to instruct the jury on the mistake of fact defense, it did not amount to clear error.

The first issue raised on appeal by Ransdell involved his sufficiency of the evidence argument, which we previously determined that sufficient evidence existed to support his burglary conviction. The third issue raised on appeal was the jury instruction issue, and the State agrees that it would have been legally and factually appropriate to give that instruction. Then, it could be said that there was one jury instruction error. The second issue Ransdell raises on appeal was the prosecutorial error claim. We determine that the prosecutor's comments were not outside the wide latitude prosecutors are allowed during closing argument. So, we conclude that there was only one error. On that basis, no cumulative error occurred.

Affirmed.