

NOT DESIGNATED FOR PUBLICATION

No. 125,061

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

BECKY LYNN KELLY,
Appellant.

MEMORANDUM OPINION

Appeal from Leavenworth District Court; GERALD R. KUCKELMAN, judge. Opinion filed September 15, 2023. Affirmed.

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

Natalie Chalmers, assistant solicitor general, and *Kris W. Kobach*, attorney general, for appellee.

Before SCHROEDER, P.J., MALONE, J., and MARY E. CHRISTOPHER, S.J.

PER CURIAM: Becky Lynn Kelly appeals her conviction of aggravated battery for stabbing Roger Bressman multiple times, arguing for the first time on appeal that three instances of reversible error occurred. First, Kelly argues the district court committed reversible error by failing to give an unrequested jury instruction as to the State's burden to prove beyond a reasonable doubt that Kelly did not act in self-defense. The failure to provide this instruction was error, but not clear error because the instructions as a whole provided everything necessary for the jury to consider the requisite burden of proof for Kelly's self-defense claim. Kelly also claims the district court committed reversible error because it failed to give a limiting instruction on the proper use of evidence relating to Kelly's prior forgery conviction. Here, a limiting instruction was not legally appropriate

because the State used evidence that Kelly had committed forgery to impeach her credibility after she opened the door on direct examination. Thus, no error occurred. Finally, Kelly asserts the prosecutor committed reversible error by making statements that were not supported by the evidence during the State's closing argument. The prosecutor's claim that Kelly stabbed Bressman to take money for drugs was not supported by the evidence, but the district court instructed the jury to disregard any statements made by counsel that were not supported by facts in evidence. The prosecutor's isolated improper statement was not so egregious to overcome this presumption, and thus, the error did not affect the outcome of the trial. Kelly also argues the cumulative impact of the alleged errors deprived her right to a fair trial, but the overwhelming evidence against Kelly overcomes any prejudicial effect. Finding no reversible error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 7, 2021, Kelly stabbed Bressman 13 times with a pocketknife. Bressman had 11 stab wounds across his torso, chest, and back side, and 2 more lacerations to his right knee and left cheek. Kelly punctured both of Bressman's lungs, and one stab wound penetrated the inside of his colon. The State charged Kelly with a single count of aggravated battery. At trial, Kelly testified that she stabbed Bressman to defend herself from Bressman's attempt to rape her.

Kelly became acquainted with Bressman through her close friend, Alice Moore. Moore and Bressman were neighbors at the same apartment complex. Kelly often stopped by Bressman's apartment to check in on him whenever she would visit Moore. Over time, their relationship grew closer, although Bressman and Kelly disputed the nature and extent of their relationship.

Kelly testified that the two began dating in October 2020. Around that time, Kelly moved into Bressman's apartment and lived with him until December. Despite Bressman's struggles with impotence, Kelly maintained that the two had a consensual sexual relationship. Kelly admitted to using crack cocaine while living with Bressman, but said she stopped in December 2020 because she believed she was pregnant. Kelly testified she later learned she was not pregnant, and her swollen belly was caused by a tumor that required a hysterectomy. In January 2020, Kelly moved out because she had felt that Bressman was too controlling of her.

Bressman testified that he was in a relationship with Kelly, but it was not a sexual relationship and Kelly never lived with him. Bressman enjoyed Kelly's company and occasionally allowed her to spend the night at his apartment if their conversation went late into the night. Bressman admitted that he had a prescription for erectile dysfunction medication, but it was unsuccessful. He testified, "I can't have sex." As a result, Bressman stated that he and Kelly never had sex due to his impotence.

The night before the incident, Bressman stated he received a call from Kelly asking him to pick her up from her daughter Rosa's house, where Kelly had been staying. Bressman believed that Kelly had upset Rosa, which caused Rosa to ask Kelly to leave. Bressman picked Kelly up and took her to her mother's house the next morning. Kelly's mother also became upset with Kelly and kicked her out. Bressman was unsure what had caused the rift between Kelly and her family, but he again picked Kelly up and took her back to his apartment.

Bressman asked Kelly about what had happened. Kelly responded no one loved her and she wanted to kill herself. Kelly then held up a knife to her throat. Bressman had to calm Kelly down a couple times before he finally told her that he could do nothing to prevent her from killing herself. Kelly then stated, "I love you and I'm going to take you with me." Kelly stabbed Bressman in the stomach causing him to fall back into his chair.

Kelly then stabbed Bressman in the face and continued to cut him several more times across his entire body.

Kelly took the keys to Bressman's truck and left the apartment. Bressman attempted to follow Kelly, but he fell down the stairs leading up to his apartment. Bressman was bleeding profusely. Hearing the commotion inside the apartment, Bressman's neighbor Maresa Lofton had already called 911. Another neighbor, Carlos Santos-Rivera, noticed Bressman outside in agony and applied pressure to Bressman's wounds until the paramedics arrived. The paramedics transported Bressman to the University of Kansas Medical Center, where he stayed for seven days.

Kelly testified, however, that Bressman had picked her up from her mother's house a few days before the incident occurred. Bressman had helped move Kelly's belongings back to his apartment. Then, on the day of the incident, the two had been arguing for hours. They left to go grocery shopping and then later to buy whiskey from the liquor store. According to Kelly, after coming back to the apartment, Bressman demanded that she drink with him, but she refused and went outside for a bit. When Kelly returned inside, Bressman sat beside her on the futon and began groping her. Bressman pulled down Kelly's pants and told her that if she was going to stay at his apartment then she needed to have sex with him.

Kelly testified she told Bressman to stop and pulled out her pocketknife. Bressman then retreated to his chair but came back over to Kelly. He went back and forth from the chair to the futon repeatedly until Kelly stabbed him in the stomach. Kelly tried to leave, but Bressman grabbed a machete. Attempting to back away, Kelly tripped and fell to the ground. Bressman got on top of Kelly, so she stabbed him in the face. Bressman got off her and went to sit down in his chair. He begged Kelly to help him. Kelly told him that she would take him to the hospital and grabbed his keys. When Kelly exited the

apartment, she saw Lofton yelling and cussing at her. She told Lofton that Bressman tried to rape her and she had stabbed him to defend herself.

Moore testified that a crying and hysterical Kelly knocked on her door that evening and told her that Bressman had tried to rape her. Moore saw Kelly leave toward the parking lot, but she did not know where she went. Moore tried to call Kelly's mom to figure out what had happened.

When the police arrived, Kelly was gone and Bressman was outside with Lofton and Santos-Rivera. Lofton told them she called 911 after hearing Bressman say, "I didn't do anything" and "you stabbed me once already." Lofton said she spoke with Kelly outside her apartment, and Kelly told her Bressman tried to rape her. Lofton indicated to police she did not believe Bressman tried to rape Kelly. But at trial, Lofton testified when she turned to Bressman and asked, "[W]hat the hell are you doing," that he did not respond.

The police found a trail of blood leading from the entry way of the apartment to a black leather chair in the living room. There was no blood around the area near the futon or in any other parts of the apartment. Thus, the officers believed the stabbing had occurred while Bressman was sitting in the chair. The officers also located a machete with dried blood on it six to eight feet from the doorway. Bressman testified he had brought the machete home after finding it in the street, but said he did not use it on Kelly because doing so would have killed her. Inside the apartment, the police also found a pink bag with drug paraphernalia, pipes, and pawn slips with Kelly's name on them. Kelly admitted the pink bag, paraphernalia, and pipes belonged to her.

The lead detective testified that she did not believe the evidence found at the scene supported the theory that an attempted rape had occurred. She reasoned the blood was isolated in a single location, Bressman was fully clothed, and nothing in the apartment

had been disturbed to indicate a struggle. Two other officers who responded to the call and assisted in the investigation shared the opinion that there was no sign of a struggle in the apartment.

The jury convicted Kelly of aggravated battery. The district court sentenced Kelly to 60 months in prison with 36 months of postrelease supervision. Kelly timely appeals.

ANALYSIS

I. *Did the district court err in failing to give the jury an unrequested jury instruction on the burden of proof relating to Kelly's self-defense claim?*

Kelly argues the district court committed reversible error by failing to instruct the jury that the State was required to prove beyond a reasonable doubt that she did not act in self-defense.

"When analyzing jury instruction issues, we follow a three-step process:

"(1) determining whether the appellate court can or should review the issue, *i.e.*, whether there is a lack of appellate jurisdiction or a failure to preserve the issue for appeal; (2) considering the merits of the claim to determine whether error occurred below; and (3) assessing whether the error requires reversal, *i.e.*, whether the error can be deemed harmless.'" *State v. Holley*, 313 Kan. 249, 253, 485 P.3d 614 (2021) (quoting *State v. McLinn*, 307 Kan. 307, 317, 409 P.3d 1 [2018]).

See K.S.A. 2022 Supp. 22-3414(3) ("No party may assign as error the giving or failure to give an instruction . . . unless the party objects thereto before the jury retires to consider its verdict . . . unless the instruction or the failure to give an instruction is clearly erroneous.").

At the second step, appellate courts consider whether the instruction was legally and factually appropriate, using an unlimited standard of review of the entire record. In determining whether an instruction was factually appropriate, courts must determine whether there was sufficient evidence, viewed in the light most favorable to the defendant or the requesting party, that would have supported the instruction. *Holley*, 313 Kan. at 254-55.

Whether a party has preserved a jury instruction issue affects the appellate court's reversibility inquiry at the third step. 313 Kan. at 254. When a party fails to object to a jury instruction before the district court, an appellate court reviews the instruction to determine if it was clearly erroneous. K.S.A. 2022 Supp. 22-3414(3). For a jury instruction to be clearly erroneous, the instruction must be legally or factually inappropriate and the court must be firmly convinced the jury would have reached a different verdict if the erroneous instruction had not been given. The party claiming clear error has the burden to show both error and prejudice. *State v. Crosby*, 312 Kan. 630, 639, 479 P.3d 167 (2021).

At trial, Kelly did not request an instruction that explained the burden of proof for self-defense. Therefore, the panel must determine whether the jury instruction was clearly erroneous. See K.S.A. 2022 Supp. 22-3414(3).

Kelly argues that, in order to find her guilty, the district court had to instruct the jury that the State had the burden of proving beyond a reasonable doubt that she did not act in self-defense.

In giving Instruction No. 6, the district court informed the jury of the general burden of proof to find Kelly guilty:

"The State has the burden to prove the defendant is guilty. The defendant is not required to prove that she is not guilty. You must presume that she is not guilty until you are convinced from the evidence that she is guilty.

"The test you must use to—in determining whether the defendant is guilty or not guilty is this: If you have a reasonable doubt as to the truth of any of the claims required to be proved by the State, you must find the defendant not guilty. If you have no reasonable doubt as to the truth of each of the claims required to be proved by the State, you should find the defendant guilty."

Instruction No. 8 informed the jury of the elements the State was required to prove:

"The State of Kansas charges the defendant, Becky L. Kelly, with the crime of aggravated battery.

"The defendant pleads not guilty.

"To establish this charge, the State must prove each of the following claims:

"1. The defendant knowingly caused great bodily harm to Roger Eugene Bressman.

"2. This act occurred on or about January 7, 2021, in Leavenworth County, Kansas."

Instruction No. 9 explained Kelly's theory of self-defense:

"The defendant claims that her use of force was permitted as self-defense.

"Defendant is permitted to use physical force against another person, when and to the extent that it appears to her and she reasonably believes that such physical force is necessary to defend herself against the other person's imminent use of unlawful force. Reasonable belief requires both a belief by the defendant and the existence of facts that would persuade a reasonable person to that belief.

"When use of force is permitted as self-defense, there is no requirement to retreat."

The district court, however, did not include PIK Crim. 4th 51.050 (2020 Supp.), which provides:

"The defendant raises [self-defense] as a defense. Evidence in support of this defense should be considered by you in determining whether the State has met its burden of proving that the defendant is guilty. The State has the burden to disprove this defense beyond a reasonable doubt. The State's burden of proof does not shift to the defendant."

Based on the testimony here, the self-defense jury instruction was legally and factually appropriate. Once a defendant properly asserts a self-defense affirmative defense, the State must disprove that defense beyond a reasonable doubt. *State v. Staten*, 304 Kan. 957, 965, 377 P.3d 427 (2016); see also K.S.A. 2022 Supp. 21-5108(c) ("A defendant is entitled to an instruction on every affirmative defense that is supported by competent evidence Once the defendant satisfies the burden of producing such evidence, the state has the burden of disproving the defense beyond a reasonable doubt."). Through her own testimony, Kelly maintained that she stabbed Bressman in self-defense, and thus, provided competent evidence to support her defense. Although Kelly did not request the instruction, the district court should have instructed the jury on the burden of proof for self-defense because it was legally and factually appropriate.

Nevertheless, the district court's failure to provide the jury instruction was not clearly erroneous. A nearly identical situation arose in *Staten*. The defendant was convicted of aggravated battery and argued on appeal the district court's failure to give an instruction on the burden of proof relating to self-defense constituted clear error. 304 Kan. at 962. The Kansas Supreme Court found error had occurred, but determined it was not clear error. The *Staten* court reasoned that the jury instructions as a whole provided everything necessary for the jury to consider the requisite burden of proof for the defendant's self-defense assertion. 304 Kan. at 966-67.

Appellate courts consider jury instructions as a whole, without focusing on any single instruction in isolation, to determine if they properly and fairly state the applicable law or if it is reasonable to conclude that they could have misled the jury. *State v. Buck-Schrag*, 312 Kan. 540, 553, 477 P.3d 1013 (2020). Here, as in *Staten*, the district court instructed the jury on the State's burden to prove Kelly's guilt beyond a reasonable doubt, the elements of aggravated battery that the State must prove, and the substance of Kelly's self-defense theory. Further, the district court instructed the jury that Kelly was not required to prove that she is not guilty. Considering the generally correct nature of the instructions as a whole, we conclude the jury would not have returned a different verdict had the error not occurred.

Kelly presents three arguments why the panel should not follow *Staten*. First, Kelly argues *Staten* relied on a faulty premise. Because the State has the general burden of proof for the underlying crimes with which it is charging the defendant, a juror may consider this to be a claim raised by the State. Kelly believes it would inextricably follow that a juror may then believe self-defense is a claim raised by the defendant, and therefore, the defendant has the burden to prove he or she acted in self-defense. The Kansas Court of Appeals is duty bound to follow Kansas Supreme Court precedent unless there is some indication that the Supreme Court is departing from its previous position. *State v. Rodriguez*, 305 Kan. 1139, 1144, 390 P.3d 903 (2017). There is no indication the Kansas Supreme Court has deviated from its decision in *Staten*. See *State v. Allen*, No. 118,824, 2019 WL 2063901, at *8 (Kan. App. 2019) (unpublished opinion).

Next, Kelly states the district court mistakenly instructed the jury that it had to presume Kelly was not guilty "until" it was convinced she was guilty instead of "unless" it was convinced she was guilty. The Kansas Supreme Court has held that the use of "until" instead of "unless" constitutes error, but not clear error. *State v. Wilkerson*, 278 Kan. 147, 158, 91 P.3d 1181 (2004). Kelly argues that this error weakens the conclusion in *Staten* that the general accuracy of the instructions as a whole overcome the failure to

include the burden of proof instruction for self-defense. Despite the erroneous instruction, in light of the evidence supporting Bressman's version of events, this court is not convinced the jury would have returned a different verdict. The instructions as a whole accurately stated the law—the State had the burden to prove Kelly's guilt beyond a reasonable doubt and Kelly claimed her use of force was permitted by self-defense.

Finally, Kelly argues that the evidence of self-defense in her case was stronger than the evidence provided in *Staten*. She believes this case turns on the credibility of her testimony compared to Bressman, and Bressman had significant credibility issues. This argument, however, ignores the testimony from the detective and officers who shared the conclusion that there were no signs of an attempted rape matching Kelly's testimony. The trail of blood led from the outside doorway to the chair where Bressman claimed Kelly stabbed him, and there was no blood near the futon where Kelly claimed she stabbed him. Further, none of Bressman's belongings were knocked over to indicate a struggle, and Bressman was fully clothed. The evidence of self-defense was not substantial enough to show that the jury would have returned a different verdict had it been instructed on the burden of proof relating to self-defense.

Thus, we find the district court's failure to instruct the jury on the burden of proof for self-defense was not clearly erroneous.

II. *Did the district court err in failing to give a limiting instruction?*

Kelly next argues the district court committed reversible error because it excluded a limiting instruction on evidence relating to her prior forgery convictions. In analyzing this issue, the panel again follows the three-part test for jury instruction issues set forth in *Holley*, 313 Kan. at 253.

At the second step, appellate courts consider whether the instruction was legally and factually appropriate, using an unlimited standard of review of the entire record. In determining whether an instruction was factually appropriate, courts must determine whether there was sufficient evidence, viewed in the light most favorable to the defendant or the requesting party, that would have supported the instruction. 313 Kan. at 254.

When a party asserts an instruction error for the first time on appeal, the failure to give a legally and factually appropriate instruction is reversible only if the failure was clearly erroneous. *State v. Butler*, 307 Kan. 831, 845, 416 P.3d 116 (2018). For a jury instruction to be clearly erroneous, the appellate court must be firmly convinced the jury would have reached a different verdict if the erroneous instruction had not been given. The party claiming clear error has the burden to show both error and prejudice. *Crosby*, 312 Kan. at 639.

Kelly did not request a limiting instruction at trial, but she argues the district court's failure to give such an instruction was clearly erroneous because it prejudiced the credibility of her testimony. Kelly's argument rests on the assumption that the State introduced evidence of her prior bad acts under K.S.A. 2022 Supp. 60-455, which provides that evidence of a prior bad act is inadmissible to prove the defendant committed the alleged crime but is admissible when relevant to prove some other fact including motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Even where K.S.A. 60-455 prior bad acts evidence is properly admitted, the district court must provide a limiting instruction to inform the jury of the proper purpose for which the evidence was admitted. *State v. Evans*, 313 Kan. 972, 987, 492 P.3d 418 (2021).

The State correctly points out, however, that it introduced evidence of Kelly's prior bad acts through K.S.A. 60-421, which provides:

"Evidence of the conviction of a witness for a crime not involving dishonesty or false statement shall be inadmissible for the purpose of impairing his or her credibility. If the witness be the accused in a criminal proceeding, no evidence of his or her conviction of a crime shall be admissible for the sole purpose of impairing his or her credibility unless the witness has first introduced evidence admissible solely for the purpose of supporting his or her credibility."

Under this statute, evidence of a defendant's prior crimes involving dishonesty may be admissible to impeach his or her credibility, so long as the defendant has opened the door on direct examination by introducing evidence that he or she is credible. See *State v. Woolverton*, 284 Kan. 59, 64, 159 P.3d 985 (2007). Kelly opened the door several times during her testimony by proclaiming to the jury that Bressman was a liar and she was telling the truth about what happened that night. Then, to impeach Kelly's claims that she was telling the truth, the State introduced evidence on cross-examination that Kelly had multiple forgery convictions. See *State v. Davis*, 255 Kan. 357, 364, 874 P.2d 1156 (1994) (forgery is crime of dishonesty admissible for purposes of evaluating witness credibility).

A limiting instruction relating to the proper use of evidence that Kelly had previously committed forgery was not legally appropriate. When evidence of prior bad acts is admissible independent of K.S.A. 60-455, a limiting instruction is not required. *State v. Cromwell*, 253 Kan. 495, 509, 856 P.2d 1299 (1993); *State v. Prosper*, 21 Kan. App. 2d 956, 958, 910 P.2d 859 (1996). Because the evidence of Kelly's prior convictions for forgery was admissible under K.S.A. 60-421, the district court did not err in failing to give a limiting instruction.

III. *Did the State commit prosecutorial error?*

Kelly contends the prosecutor committed reversible error by making arguments unsupported by the evidence during the State's closing argument.

Appellate courts will review a prosecutorial error claim based on a prosecutor's comments made during voir dire, opening statement, or closing argument—even without a timely objection—but the court may figure the presence or absence of an objection into its analysis of the alleged error. *State v. Bodine*, 313 Kan. 378, 406, 486 P.3d 551 (2021). Although Kelly did not timely object to the State's closing argument, the panel may review her claim for the first time on appeal.

The appellate court uses a two-step process to evaluate claims of prosecutorial error: error and prejudice. *State v. Sherman*, 305 Kan. 88, 109, 378 P.3d 1060 (2016).

"To determine whether prosecutorial error has occurred, the appellate court must decide 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. If error is found, the appellate court must next determine whether the error prejudiced the defendant's due process rights to a fair trial. In evaluating prejudice, we simply adopt the traditional constitutional harmless inquiry demanded by *Chapman* [*v. California*, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)]. In other words, prosecutorial error is harmless if the State can demonstrate 'beyond a reasonable doubt that the error complained of will not or did not affect the outcome of the trial in light of the entire record, *i.e.*, where there is no reasonable possibility that the error contributed to the verdict.' [Citation omitted.]" *Sherman*, 305 Kan. at 109.

See also *State v. Slusser*, 317 Kan. 174, 192-93, 527 P.3d 565 (2023).

The Kansas Supreme Court has repeatedly emphasized that it is improper for a prosecutor to comment on facts not in evidence. Doing so exceeds the "'wide latitude'" afforded to prosecutors in closing. *State v. Owens*, 314 Kan. 210, 240, 496 P.3d 902 (2021). Kelly points to two instances during the State's closing argument in which she argues the prosecutor committed reversible error by commenting on facts not in evidence.

First, the prosecutor stated, "And you even heard the testimony from the officers of—that at the scene the neighbor, Miss Lofton, didn't even believe that a rape occurred. And that's because it didn't occur." Kelly claims this conclusion is not supported by the evidence. When asked why she told the officers she did not believe that a rape had occurred, Lofton stated, "I didn't—I didn't think—I mean, I thought they were involved." Lofton further stated that she did not believe she would be helpful to the prosecution because "nobody has the right to take nobody's privates" and "[Kelly has] the right to protect herself."

But the State responds that the statement was supported by evidence, emphasizing the prosecutor used the term "at the scene." It is evident from the officer's body camera footage that when police interviewed Lofton on the night of the incident, she stated, "He ain't did nothing to that girl. I'm pretty sure he ain't did nothing." Soon after, Lofton can be heard saying, "He ain't raped that girl. Can't rape the willing." Although Lofton recanted these statements during her testimony, this does not change the fact that she made the original statements to the officers immediately after the incident. Therefore, the prosecutor's statement was supported by the evidence and not erroneous.

Next, the prosecutor stated during closing argument that, "This [case] was about getting money. This is about getting money for drugs." But Bressman did not testify that he believed Kelly stabbed him in order to steal money from him. Rather, Bressman maintained that Kelly was acting suicidal and stabbed him so that she could "take [him] with [her]." Nor did any of the law enforcement officers testify that they believed Kelly's motivation for stabbing Bressman was to take money from him. The prosecutor's statement that Kelly stabbed Bressman to take his money to buy drugs was not supported by the evidence and, therefore, was erroneous.

The State argues the statement was not prejudicial because it was not required to prove a motive for Kelly's attack, and thus, it was irrelevant to the jury's determination. The sole question before the jury was whether it believed that Kelly's self-defense claim was credible, and there was ample evidence to establish she did not act in self-defense. In fact, the State argues this claim was more harmful to its case because it detracted from Bressman's testimony that Kelly stabbed him because she was suicidal and wanted to take him with her. Finally, because the jury was instructed to disregard any statements made that were not supported by the evidence, the State argues this ameliorated any prejudicial impact.

While the statement may have created a small risk of impact on Kelly's credibility or painted a different motive for her actions than what Bressman testified to, it is unlikely this statement had any bearing on the jury's verdict. Kelly herself told jurors she had a drug habit and her drug of preference was crack cocaine, and it was not until December 2020 that she got clean because she thought she was pregnant. Further, after making the comment, the prosecutor went on to state,

"This is about her being—having, as he said, the grayish eyes, hysterical and—and she just said I want to take—I want to take you and I want to take me with him. And that's what she tried to do. Except she didn't try to take herself, she left. And he still followed her. For his car keys, for his concern for her, I don't know."

The improper statement was isolated, and the prosecutor immediately clarified that Kelly was acting hysterical and stabbed Bressman because she wanted to take him with her—a conclusion consistent with Bressman's testimony. Most of the prosecutor's closing argument focused on evidence that supported Bressman's version of events—there was only blood trailing from the chair to the door, nothing in the apartment was disturbed, and he was fully clothed.

Jurors are presumed to follow the instructions they are given by the district court and to focus on the evidence presented during the course of trial. *State v. Peppers*, 294 Kan. 377, 392, 276 P.3d 148 (2012). Here, the district court appropriately instructed the jury that "[s]tatements, arguments, and remarks of counsel are intended to help you in understanding the evidence and in applying the law, but they are not evidence. If any statements are made that are not supported by the evidence, they should be disregarded." The prosecutor's isolated improper statement was not so egregious as to overcome the presumption that the jury disregarded this conclusion in reaching its verdict. The State presented a significant amount of evidence to prove beyond a reasonable doubt that Kelly did not stab Bressman out of self-defense.

In light of the substantial evidence presented by the State at trial and the district court's instructions to the jury, we conclude the State has proven beyond a reasonable doubt that the prosecutor's improper statement during closing argument did not affect the outcome of the trial.

IV. *Did cumulative error deny Kelly's right to a fair trial?*

Finally, Kelly argues the cumulative effect of the erroneous jury instructions and the prosecutor's improper statements during closing argument denied her right to a fair trial and requires reversal.

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. In assessing the cumulative effect of errors during the trial, appellate courts examine the errors in context and consider how the trial judge dealt with the errors as they arose; the nature and number of errors and whether they are interrelated; and 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 two errors that occurred in this case were the district court's failure to instruct the jury on the State's burden to prove beyond a reasonable doubt that Kelly did not act in self-defense, and the prosecutor's improper statement during closing argument that Kelly stabbed Bressman to get money for drugs.

In both instances, the jury instructions provided by the district court rendered the errors harmless. Under the instructional error issue, the instructions as a whole provided everything necessary for the jury to consider the requisite burden of proof for Kelly's self-defense claim. As to the prosecutorial error issue, the district court instructed the jury to disregard any statements by counsel that were not supported by the evidence. Next, the two errors are not interrelated. See *Owens*, 314 Kan. at 242 (finding cumulative impact of errors affecting separate and distinct subject matter no greater than sum of individual parts). Finally, the State presented sufficient evidence to show that Kelly did not act in self-defense when she stabbed Bressman, including evidence that the blood was isolated around the chair where Bressman claimed Kelly stabbed him; there was no blood near the futon where Kelly claimed Bressman tried to rape her; and nothing inside the apartment was knocked over to indicate a struggle. See *State v. Rhoiney*, 314 Kan. 497, 505, 501 P.3d 368 (2021) (there is no prejudicial effect if the evidence is overwhelming against the defendant).

Considering the totality of the circumstances, we find that the cumulative effect of the two errors in this case did not deny Kelly her right to a fair trial and affirm Kelly's conviction for aggravated battery.

Affirmed.