

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
JEFFREY LYNN THOMAS	:	
	:	
Appellant	:	No. 1412 WDA 2023

Appeal from the Judgment of Sentence Entered August 17, 2023
 In the Court of Common Pleas of Somerset County Criminal Division at
 No(s): CP-56-CR-0000700-2021

BEFORE: KUNSELMAN, J., SULLIVAN, J., and BECK, J.

OPINION BY BECK, J.:

FILED: April 29, 2025

Jeffrey Lynn Thomas (“Thomas”) appeals from the judgment of sentence entered by the Somerset County Court of Common Pleas (“trial court”) after a jury convicted him of strangulation, criminal trespass, unlawful restraint, indecent assault, false imprisonment, and simple assault.¹ Thomas challenges the trial court’s exclusion of certain evidence under the Rape Shield Law,² the trial court’s denial of his request for a mistrial based on allegations of prosecutorial misconduct, and the sufficiency of the evidence to support his criminal trespass, unlawful restraint, and false imprisonment convictions. As we find no merit to any of Thomas’ claims, we affirm.

¹ 18 Pa.C.S. §§ 2718(a)(1), 3503(a)(1)(i), 2902(a)(2), 3126(a)(1), 2903(a), 2701(a)(1).

² 18 Pa.C.S. § 3104.

This case arises out of Thomas' sexual assault of L.N. At the time the sexual assault occurred, Thomas was the District Attorney of Somerset County. Thomas initially met L.N. at a restaurant in Windber, Pennsylvania. After their initial meeting, Thomas visited L.N. at the car dealership where she worked and obtained her phone number from one of her business cards. Thomas then began regularly texting L.N. and, over time, made it clear that he desired a sexual relationship with her. L.N. indicated, however, that she did not have any interest in a sexual relationship or sexual encounter with Thomas.

On the evening of September 18, 2021, Thomas began sending L.N. text messages that were sexual in nature. Although L.N. responded to these messages, she did not indicate that she desired a sexual encounter with Thomas. She also rebuffed his request to come to her home that night because her eight-year-old daughter was present and asleep. On September 19, 2021, shortly after midnight, Thomas arrived at L.N.'s residence uninvited. L.N. instructed Thomas to leave the premises and informed him that he was not welcome in her home. Nevertheless, without her permission, Thomas entered L.N.'s home through an unlocked door carrying a six pack of beer. Thomas proceeded to retrieve a bong, sat on L.N.'s couch, and began attempting to smoke marijuana.

While Thomas and L.N. were sitting on the couch, Thomas suddenly pulled down L.N.'s bra, pinned her against the couch, and began sucking on

and biting her nipples. When L.N. attempted to resist, Thomas punched her in the face and strangled her. Thomas then pushed L.N. face first into the couch and began spanking her, after which he turned her face up, placed the entire weight of his body on top of her, and began digitally penetrating her vagina and anus.

L.N. was eventually able to escape from Thomas by telling him that she heard her eight-year-old daughter calling for her upstairs. L.N. went upstairs for approximately ten minutes and when she came back downstairs, she found Thomas masturbating on the couch. When L.N. attempted to retrieve her phone, Thomas grabbed her by the hair and asked if she was going to call the police. L.N. told Thomas that she would not contact the police if he immediately left her house. Thomas then got dressed and left the premises.

The next day, L.N. developed bruises around her eyes, nose, and throat. She did not seek any treatment for her injuries, and she did not immediately report the sexual assault to police. On September 21, 2021, however, L.N. encountered Windber Police Chief Andy Frear at the local Moose Lodge and told him about what Thomas had done to her. Chief Frear arranged for L.N. to undergo an interview with the Pennsylvania State Police.

Police subsequently arrested Thomas and charged him with sexual assault, aggravated indecent assault, strangulation, criminal trespass, unlawful restraint, indecent assault, false imprisonment, and simple assault. DNA testing of the shorts L.N. wore the night of the sexual assault revealed

the presence of Thomas' non-sperm DNA on the waistband and the sperm DNA of two other unidentified individuals on the crotch area of the shorts. The Commonwealth filed a motion in limine to exclude the sperm DNA evidence of the unidentified individuals pursuant to the Rape Shield Law. Additionally, Thomas filed a motion in which he sought to admit a sexually suggestive Snapchat photograph and message that L.N. sent to a third party on the night in question, just prior to Thomas' arrival at her home. After hearing argument on both motions, the trial court ruled that the sperm DNA evidence of the unidentified individuals that was present on the crotch of L.N.'s shorts and the Snapchat photograph and message were inadmissible under the Rape Shield Law.

On March 16, 2023, after a seven-day trial, the jury acquitted Thomas of sexual assault and aggravated indecent assault, but convicted him of strangulation, criminal trespass, unlawful restraint, indecent assault, false imprisonment, and simple assault. On August 17, 2023, the trial court sentenced Thomas to an aggregate term of twenty-seven to eighty-four months in prison.

On August 21, 2023, Thomas filed post-sentence motions that the trial court denied. Thomas timely appealed to this Court. Both Thomas and the trial court have complied with Pennsylvania Rule of Appellate Procedure 1925. Thomas presents the following issues for review:

[1.] Did the trial court err and/or abuse its discretion when it prohibited the defense from cross-examining [L.N.] about the

presence of seminal fluid from other individuals on her clothing as well as regarding a Snapchat message to another individual regarding a sexual encounter thereby denying [Thomas] the opportunity to impeach [L.N.] and fully develop [his] theory of defense?

[2.] Did the trial court err and/or abuse its discretion when it denied [Thomas'] motion for a mistrial after the Commonwealth engaged in impermissible burden shifting during its closing argument to the jury?

[3.] Did the trial court err when it denied [Thomas'] post-sentencing motion for judgment of acquittal where the Commonwealth failed to prove beyond a reasonable doubt that [Thomas] was not licensed or privileged to enter her apartment?

[4.] Did the trial court err when it denied [Thomas'] post-sentencing motion for judgment of acquittal when the Commonwealth failed to prove the elements of unlawful restraint beyond a reasonable doubt?

[5.] Did the trial court err when it denied [Thomas'] post-sentencing motion for judgment of acquittal when the Commonwealth failed to prove the elements of false imprisonment beyond a reasonable doubt?

Thomas' Brief at 5 (formatting modified).

Rape Shield Law

In his first issue, Thomas argues that the trial court abused its discretion in precluding him from introducing certain evidence under Pennsylvania's Rape Shield Law. ***See id.*** at 13-27. Specifically, Thomas asserts that the trial court should have permitted him to introduce evidence indicating that DNA testing found semen from two other individuals on the crotch area of the shorts L.N. wore on the night of the sexual assault and a sexually suggestive Snapchat photograph and message L.N. sent to an unidentified third party on

the night in question. **See id.** Thomas maintains that this evidence was admissible because he sought to introduce it to impeach L.N.'s credibility and "not to attack her as an unchaste individual or to focus the jury on her sexual history." **Id.** at 17. Thomas further contends that that the preclusion of this evidence prevented him from developing his defense theory, namely, that the sexual contact he engaged in with L.N. was consensual. **Id.** at 26.

"A trial court's ruling on the admissibility of evidence of the sexual history of a sexual abuse complainant will be reversed only where there has been a clear abuse of discretion." **Commonwealth v. Jerdon**, 229 A.3d 278, 284 (Pa. Super. 2019) (citation omitted). "An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will, as shown by the evidence of record, discretion is abused." **Id.**

The Rape Shield Law provides:

Evidence of specific instances of the alleged victim's past sexual conduct, past sexual victimization, allegations of past sexual victimization, opinion evidence of the alleged victim's past sexual conduct, and reputation evidence of the alleged victim's past sexual conduct shall not be admissible in prosecutions of any offense listed in subsection (c) except evidence of the alleged victim's past sexual conduct with the defendant where consent of the alleged victim is at issue and such evidence is otherwise admissible pursuant to the rules of evidence.

18 Pa.C.S. § 3104(a).

The Rape Shield Law is designed to protect alleged victims of sexual assault in criminal trials and, “[s]ubject to limited exceptions, it excludes evidence of an alleged victim’s past sexual history.” **Commonwealth v. Rogers**, 250 A.3d 1209, 1212 (Pa. 2021). “Its purpose is to prevent the trial from shifting its focus from the defendant’s guilt or innocence to the victim’s reputation or moral virtue.” **Id.** Importantly, “[t]his protective measure is salient where defendants attempt to utilize evidence of the complainant’s alleged promiscuity to bolster their claim of **consent**.” **Id.** at 1216 (emphasis added). Additionally, “the Rape Shield Law applies to sexual activity that occurred before trial regardless of whether it was before or after the alleged sexual assault.” **Jerdon**, 229 A.3d at 285.

Courts, however, cannot apply the Rape Shield Law “in a manner that violates a defendant’s constitutional right to a fair trial, including his right to present evidence and cross-examine witnesses.” **Rogers**, 250 A.3d at 1216. The Sixth Amendment to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution “both protect a defendant’s right to be confronted with adverse witnesses.” **Id.** (citing U.S. CONST. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him[.]”); PA. CONST. art. I, § 9 (same)). “The federal right to ‘be confronted with’ such witnesses has been incorporated to the States and includes the right to conduct reasonable cross-examination.” **Id.** at 1216. “Courts have found the law unconstitutional as applied in

circumstances where the defendant seeks to introduce evidence for reasons unrelated to impugning the complainant's character, and the probative value of that evidence outweighs the danger of unfair prejudice." **Id.** at 1217.

Nonetheless, "the confrontation right is not absolute" and it only "guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." **Id.** at 1216 (quotation marks and citation omitted). Trial courts "retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." **Id.** (citation omitted). Consequently, "Pennsylvania courts have sought to balance the defendant's fundamental right to a fair trial, including his right to confront his accuser, against the state's interests embodied in the statute ... and in the rules of evidence." **Id.** at 1217.

When determining the admissibility of evidence that the Rape Shield Law may bar, trial courts hold an in camera hearing and conduct a balancing test consisting of the following factors: (1) whether the proposed evidence is relevant to show bias or motive or to attack credibility; (2) whether the probative value of the evidence outweighs its prejudicial effect; and (3) whether there are alternative means of proving bias or motive or to challenge credibility.

Commonwealth v. K.S.F., 102 A.3d 480, 484 (Pa. Super. 2014) (quotation marks and citation omitted). "[T]o constitute unfair prejudice, the evidence

must inflame the minds of the jurors.” ***Commonwealth v. Palmore***, 195 A.3d 291, 296 (Pa. Super. 2018) (quotation marks and citation omitted).

The record reflects that on August 10, 2022, Thomas filed a motion in which he sought to introduce evidence as an exception to the Rape Shield Law. **See** Thomas’ Motion, 8/10/2022, at 1-14. Specifically, Thomas sought to introduce a Snapchat photograph of L.N. that she sent to an unidentified third party with a message that read, “You’re going to have to be a freak to fuck me the way I should be fucked in that state....” ***Id.***, Exhibit A. L.N. sent the photograph and message just prior to Thomas’ arrival at her home. Commonwealth’s Response, 8/11/2022, ¶¶ 4-8. Thomas argued that the photograph and message were admissible because he sought to use them to impeach her credibility and not to impugn her character. Thomas’ Motion, 8/10/2022, at 13-14. Thomas contended that the photograph and message captured L.N.’s state of mind around the time their sexual encounter occurred and demonstrated that his sexual encounter with her was consensual. **See *id.***

Subsequently, the Commonwealth filed a motion in limine in which it sought to exclude certain evidence that DNA testing uncovered in this case. **See** Commonwealth’s Motion in Limine, 12/15/2022, § B, ¶¶ 1-8. While the testing found Thomas’ non-sperm DNA on the waistband of the shorts L.N. wore during the sexual assault, it also found sperm DNA from two other unidentified contributors on the crotch area of those same shorts. ***Id.*** ¶¶ 3-

4. The Commonwealth sought to exclude any reference in the report to the two unidentified sperm contributors or any cross-examination of L.N. related to those two individuals under the Rape Shield Law. ***Id.*** ¶¶ 6-8.

The trial court ruled that the evidence relating to the Snapchat photograph and message and the DNA evidence regarding the unidentified sperm contributors to the crotch area of L.N.'s shorts were inadmissible under the Rape Shield Law. ***See*** N.T., 3/8/2023, at 32-33; N.T., 10/25/2022 (Motion in Limine Hearing), at 10-11. The trial court determined that none of this evidence was probative of whether Thomas' sexual encounter with L.N. was consensual, that it tended to impugn L.N.'s character, and thus, that it was inadmissible under the Rape Shield Law. ***See id.***

With respect to the Snapchat photograph and message, the trial court explained:

And my -- my sense is that these -- that particular Snapchat message is, is clearly irrelevant and not probative. I don't see -- first of all, it -- the question is ... that there are three exceptions under which the limitations of the Rape Shield Law should be relaxed, and those are to be relevant to show bias, the motive, or credibility. And I will discuss that issue of credibility hereafter, but I don't believe that it in any way would address bias or motive. Whether the probative value outweighs the prejudicial effects, and I'm not sure that it does; and, third, whether there would be an alternative way to address the issue or to attack the credibility of the complaining witness here.

These, as I read it that -- that particular picture in no way is an attack on the victim's credibility as it would relate to this incident in my opinion. And the -- the hint that this is not how a rape victim should be acting prior to the assault is inappropriate. The victim is not, in my opinion, advertising for availability, and, particularly not to [Thomas]. If -- if she had a relationship with

someone else, that does not mean that if [Thomas] walks through the door, he can take the place of whoever it was that she initially sent this text to.

So my ruling is going to prohibit the use of that Snapchat message because, first of all, I don't think it -- even had it been to [Thomas], there's no -- there's no allegation that they -- [Thomas] and the victim here had a prior sexual relationship, which is a predicate of the Rape Shield Law and a predicate of waiving the effect of the Rape Shield Law. I do not think that it -- the probative value -- it has any probative value and it certainly is prejudicial because it would -- it would hint that if ... the victim did have a sexual relationship with someone else, that it in any way lessens the -- the legal impact or legal implications of this conduct as alleged -- as attributed to [Thomas].

N.T., 10/25/2022 (Motion in Limine Hearing), at 10-11.

In its Pennsylvania Rule of Appellate Procedure 1925(a) opinion, the trial court further explained, "[a]s to victim's Snapchat message in which she indicated to a third party that she enjoyed rough sex, the court similarly ruled that such evidence was merely probative of a sexual relationship with a third party, testimony about which was prohibited by the protections of the Rape Shield Law." Trial Court Opinion, 12/29/2023, at 4. Additionally, the trial court reasoned that because L.N. did not send the Snapchat photograph to Thomas, it did not support his claim that his sexual encounter with L.N. was consensual. ***Id.***

Regarding its decision to exclude the DNA test results that revealed the presence of sperm DNA of unidentified third parties on the crotch area of L.N.'s shorts, the trial court explained:

As to the presence of another person's DNA in the victim's underpants, the [trial court] ruled that such evidence must be

excluded under the Rape Shield Law, codified at 18 Pa.C.S. § 3104(a). The [trial court] explained that the evidence tended to show sexual relations with a third party, an inquiry the statute was meant to prohibit. [N.T., 3/8/2023 at 32]. The court also found the evidence to be irrelevant with respect to the defense'[s] theory, which was consent. **Id.** Later in the trial, prior to the introduction of testimony relating to the DNA evidence, the court reiterated that the introduction of a different person's DNA "would raise an improper inference and raise a question that the jury would understandably want an answer to, but would not get." [N.T., 3/14/23, at 5].

Id. at 2.

In support of his claim of error, Thomas relies on this Court's decision in **Palmore**. In that case, the defendant sought to admit evidence that he witnessed the victim, who had a boyfriend, perform oral sex on his roommate, that the defendant later confronted the victim about cheating on her boyfriend, and that the defendant later informed the victim's boyfriend about what he had observed. **Id.** at 294. It was the defendant's defense theory that the victim accused him of sexual assault so that her boyfriend would not believe his story that he witnessed her engaging in sexual activity with the defendant's roommate. **Id.** at 295. We held that the trial court erred in excluding this evidence under the Rape Shield Law. **See id.** at 298. We explained:

[The defendant] did not seek admission of the evidence to impugn [the victim]'s character or label her as a promiscuous college student. Instead, [the defendant] sought admission of the evidence to get to the truth by challenging [the victim]'s credibility. Thus, admission of the evidence does not deviate from the Rape Shield Law's purpose of preventing a trial from shifting its focus away from the culpability of the accused towards the virtue and chastity of the victim.

* * *

[The defendant]'s defense rested on his assertion that [the victim] reported the sexual assault to discredit his statement that she had sexual contact with [the defendant]'s roommate. The timing of [the victim]'s report and [the defendant]'s communication with [the victim]'s boyfriend are logically consistent with his theory. Hence, the probative value of the evidence is relatively high. Moreover, the risk of unfair prejudice is low. As we have discussed above, [the defendant] did not seek to portray [the victim] as promiscuous or claim that she somehow enticed the assault. Instead, he denied that the assault occurred and sought to attack her credibility by pointing out a plausible motive for her report to police.

Id. at 296-97 (quotation marks, citation, and brackets omitted).

Palmore, however, does not help Thomas' case and is readily distinguishable in several respects. First, the defendant in ***Palmore*** sought to introduce evidence that implicated more than the victim's prior sexual activity, as it also involved verbal interactions between the defendant and the victim as well as the defendant and the victim's boyfriend. ***See id.*** at 294-95. Second, and more importantly, the defendant in ***Palmore*** did not simply assert that he had a consensual sexual encounter with the victim, he asserted that he had no sexual encounter with the victim. ***Id.*** at 297-98. Indeed, as the ***Palmore*** Court recognized, this Court has held that "a victim's past sexual conduct with a third-party was inadmissible in an attempt to bolster a consent defense because it attempted to prove that the victim acted in conformity with past behavior on the date in question." ***Id.*** at 297 (quotation marks and citation omitted). We explained:

[O]ur case law draws a sharp distinction between a defendant who offers evidence of a victim's past sexual conduct to attack his or her credibility and a defendant who seeks to offer such evidence to advance a consent defense. In the former cases, this Court has held that exclusion of the evidence sometimes violates a defendant's Confrontation Clause rights. In the latter cases, this Court has held that exclusion of the evidence does not violate a defendant's Confrontation Clause rights.

In this case, [the defendant] attempted to introduce evidence of [the victim]'s past sexual conduct in order to attack her credibility. [The defendant] did not seek to portray [the victim] as promiscuous or prove that she consented to a sexual encounter. To the contrary, [the appellant]'s defense was that no such contact occurred between himself and Victim.

Id.

Here, Thomas' theory of defense was that he had a consensual sexual encounter with L.N. **See** Thomas' Brief at 13-27. Thus, admitting evidence of L.N.'s other sexual encounters and her sexually suggestive Snapchat photograph message would not only clearly run afoul of ***Palmore***, but also our Supreme Court's decision in ***Rodgers***. **See *Rodgers***, 250 A.3d at 1212 (Pa. 2021) (explaining that the Rape Shield Law "is salient where defendants attempt to utilize evidence of the complainant's alleged promiscuity to bolster their claim of consent"). ***Id.*** at 1216. Furthermore, this Court has expressly held that DNA evidence indicating that there were multiple contributors of sperm, other than the defendant, in a sexual assault victim's underwear is inadmissible under the Rape Shield Law. **See *Commonwealth v. Cramer***, 195 A.3d 594, 603-05 (Pa. Super. 2018) (holding DNA testing that showed three contributors of sperm in the victim's underwear was inadmissible under

the Rape Shield Law because it was of “little relevance” where the issue at hand was the consent of the victim).

Additionally, given that Thomas sought to introduce evidence indicating that L.N.’s shorts had seminal fluid from multiple individuals in the crotch area, and the suggestive characteristics of the Snapchat photograph and message, we cannot conclude that Thomas was seeking to introduce this evidence merely to attack L.N.’s credibility. **See K.S.F.**, 102 A.3d at 484. To the contrary, this evidence, given its highly provocative nature, would have inflamed the minds of the jurors. **See Palmore**, 195 A.3d at 296. Thus, not only does the evidence have little probative value, as it does not in any way tend to show that Thomas’ sexual encounter with L.N. was consensual, but it is also highly prejudicial, as it represents an attempt by Thomas to portray L.N. as consenting to sexual contact with him because she is promiscuous—the precise evidence the Rape Shield Law was designed to exclude. **See Rogers**, 250 A.3d at 1212; **see also K.S.F.**, 102 A.3d at 484. Accordingly, we conclude that the trial court did not abuse its discretion.

Prosecutorial Misconduct

In his second issue, Thomas argues that the trial court erred in denying his request for a mistrial based on his claim of prosecutorial misconduct during closing arguments. **See** Thomas’ Brief at 27-31. Thomas contends that the prosecutor engaged in improper burden shifting during his closing statement when he commented on the defense’s failure to prove that L.N. had a weed-

growing operation in her basement after the defense had promised such evidence in its opening remarks. **Id.** at 29-30.

We recognize that an appellate court will not overturn a trial court's denial of a mistrial absent an abuse of discretion. **Commonwealth v. Leap**, 222 A.3d 386, 392 (Pa. Super. 2019). "A mistrial is an extreme remedy that is appropriate only where the incident upon which the motion is based is of such a nature that its unavoidable effect is to deprive the defendant of a fair trial by preventing the jury from weighing and rendering a true verdict." **Id.** (quotation marks and citation omitted).

When reviewing a motion for mistrial based upon prosecutorial misconduct, courts recognize that "not every inappropriate remark by a prosecutor constitutes reversible error[;]" rather, prosecutorial misconduct occurs only when "the unavoidable effect of the comments at issue was to prejudice the jurors by forming in their minds a fixed bias and hostility toward the defendant, thus impeding their ability to weigh the evidence objectively and render a true verdict." **Commonwealth v. Noel**, 53 A.3d 848, 858 (Pa. Super. 2012) (quotation marks and citation omitted). "[A] prosecutor has considerable latitude during closing arguments and his or her statements are fair if they are supported by the evidence or use inferences that can reasonably be derived from the evidence." **Id.** In reviewing a trial court's determination to deny a mistrial, we recognize that "[t]he trial court is in the best position to assess the effect of an allegedly prejudicial statement on the

jury[.]” **Commonwealth v. Rega**, 933 A.2d 997, 1016 (Pa. 2007) (citation omitted). Additionally, if the trial court provides a cautionary instruction to address the alleged prejudice, we presume that the jury followed the instruction. **Leap**, 222 A.3d at 392. Where the instruction is adequate, the grant of a mistrial is not necessary. **Id.**

The comments to which Thomas objected were as follows:

One of them was there’s -- we’re -- we are going to uncover a destruction of evidence scandal.

I wonder why [defense counsel] didn’t talk about that at all in his closing argument right now? That’s because he didn’t deliver you on his promise that he was going to uncover in the course of this trial some sort of destruction of evidence scandal.

How about the -- how about the -- how about the -- the -- the promise when he called witnesses for the Commonwealth felons and that the victim was running some sort of marijuana dispensary out of her basement?

Did you hear one witness come in here and tell you anything about that?

They put on a defense. Where were the buyers from this so-called marijuana farm in her basement?

* * *

The weed farm. The weed farm in the basement of the victim’s house. Did you hear from one witness that there was a weed farm in the basement of the victim’s house? What that has anything to do, again, about this trial is -- completely mystifies me, but did you hear anything? They put on a defense. Where are those witnesses?

N.T., 3/16/2023, at 7.111-12, 7.114.

The trial court declined Thomas' request for a mistrial and instead gave the jury the following curative instruction:

One thing I did want to say: In [the prosecutor]'s closing, he made reference to the failure of the [defense], as he stated it, I believe, to meet up -- or to satisfy the promises that they made at the beginning of the trial in opening statements. Please understand that there is no shift of responsibility, no shift in the burden of proof.

I will say now, and I will say probably two more times in my instructions to you, the burden never shifts. The defendant has no burden of proving anything or disproving anything in this case. The burden is solely on the Commonwealth, and neither the attorneys for [Thomas] or his investigative office, as he was D.A., had any responsibility to investigate or prove anything in the case.

Id. at 7.132.

At the outset, we observe that we have held the Commonwealth's "response to the absence of evidence promised by a defendant" during closing arguments is "within the bounds of permissible advocacy under the circumstances." ***Commonwealth v. Scott***, 212 A.3d 1094, 1113 (Pa. Super. 2019). To the extent that the prosecutor's comments could nonetheless be viewed as inappropriate and improperly gave the jury the impression that Thomas possessed a burden of proof at trial, the trial court cured any defect with a curative instruction reminding the jury that Thomas had no burden of proof. ***See id.*** at 7.111, 7.114, 7.132; ***see also Leap***, 222 A.3d at 392. Thus, there was no unavoidable effect of the prosecutor's statements that would prejudice the jury to develop a fixed bias and hostility toward Thomas.

See Noel, 53 A.3d at 858. Based on the foregoing, we conclude that the trial court did not abuse its discretion in denying Thomas' request for a mistrial.

Sufficiency of the Evidence

In his final three issues, Thomas challenges the sufficiency of the evidence to support his criminal trespass, unlawful restraint, and false imprisonment convictions. **See** Thomas' Brief at 31-46. "A claim challenging the sufficiency of the evidence is a question of law." **Commonwealth v. Widmer**, 744 A.2d 745, 751 (Pa. 2000). "We review claims regarding the sufficiency of the evidence by considering whether, viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt." **Commonwealth v. Miller**, 172 A.3d 632, 640 (Pa. Super. 2017) (quotation marks and citation omitted). Furthermore, "a conviction may be sustained wholly on circumstantial evidence, and the trier of fact—while passing on the credibility of the witnesses and the weight of the evidence—is free to believe all, part, or none of the evidence." **Id.** "In conducting this review, the appellate court may not weigh the evidence and substitute its judgment for the fact-finder." **Id.**

Criminal Trespass

In his challenge to the adequacy of the evidence presented in support of his criminal trespass conviction, Thomas argues that the record contains evidence that he reasonably believed that he was invited to L.N.'s home on

the night of the sexual assault because L.N. had invited him to her home on previous occasions, the two were exchanging sexually explicit messages on the night in question, and the door to L.N.'s residence was unlocked. Thomas' Brief at 35-37. Thomas further contends that the record did not support L.N.'s testimony that he was not permitted in her residence on the night of the sexual assault, "as [L.N.] herself indicated on prior occasions that [Thomas] was invited to her residence[.]" **Id.** at 37. Thomas maintains that, based on the evidence the parties presented, the jury could have drawn "two equally reasonable and mutually inconsistent inferences" from the evidence, thus, rendering the evidence insufficient to sustain his conviction of criminal trespass. **Id.** at 36-37.

Section 3503(a)(1)(i) of the Crimes Code states that a person commits the offense of criminal trespass if, "knowing that he is not licensed or privileged to do so, he ... enters, gains entry by subterfuge, or surreptitiously remains in any building or occupied structure or separately secured or occupied portion thereof[.]" 18 Pa.C.S. § 3503(a)(1)(i). Section 3501 of the Crimes Code defines "occupied structure" as "[a]ny structure, vehicle[,], or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present." **Id.** § 3501. "A person acts knowingly with respect to a material element of an offense ... if the element involves the nature of his conduct or the attendant

circumstances, he is aware that his conduct is of that nature or that such circumstances exist[.]” **Id.** § 302(b)(2)(i).

There is no dispute in this case that L.N.’s residence is an “occupied structure” or that Thomas entered L.N.’s residence. **See** 18 Pa.C.S. § 3503(a)(1)(i); **see also** Thomas’ Brief at 31-37. Thus, the sole dispute involves whether the Commonwealth established that Thomas entered L.N.’s residence knowing that he was not licensed or privileged to do so. **See id.**

The record reflects that L.N. testified that on the night of the sexual assault, Thomas told her that he was coming to her home, but she told him not to come over because her daughter was at her house and that “[u]nder no circumstances are you allowed at my house.” N.T., 3/8/2023, at 168-69. L.N. reported that shortly thereafter, Thomas arrived on her front porch and yelled at her through the window to let him in and that “[i]f you’re not going to let me in, I’m going to sit out here and drink all of this beer by myself until it’s gone.” **Id.** at 171. L.N. stated that Thomas then entered her home through an unlocked door. N.T., 3/9/2023, at 9. L.N. further testified that when she later met with Thomas to talk about the sexual assault, they discussed that she never told him that he was allowed to enter her home, that she had, in fact, told him to leave, and that he admitted that “he was never supposed to be there.” **Id.** at 159.

Thomas is correct that our Supreme Court has held that evidence is insufficient to sustain a conviction when it “equally support[s] two reasonable

but diametrically opposed ultimate inferences,” only one of which is a defendant’s guilt. ***In Interest of J.B.***, 189 A.3d 390, 409 (Pa. 2018). In such cases, a finder of fact “must not be permitted to guess which” of “two equally and mutually inconsistent inferences” to adopt. ***Id.*** at 409, 412 (citation omitted). In these “admittedly rare,” “atypical situations,” an appellate court will reject the jury’s verdict and reverse the appellant’s conviction. ***Id.*** That is not the situation with which we are faced in the case at bar. In this case, L.N. plainly testified that Thomas was not licensed or privileged to enter her residence on the night in question and that he was aware that he was not welcome in her home. ***See*** N.T., 3/8/2023, at 168-69; N.T., 3/9/2023, at 9, 159. The jury was free to believe this testimony or to disregard it, finding that she lacked credibility. ***See Commonwealth v. Holt***, 270 A.3d 1230, 1233 (Pa. Super. 2022) (explaining that in a sufficiency challenge, we recognize that the factfinder was free to believe all, part, or none of the trial testimony). Although the record does reflect that L.N. and Thomas exchanged sexually suggestive texts on the night in question, and he had, in fact, previously been to L.N.’s residence, this does not establish that he was invited into her home on the night in question or create an equally reasonable and mutually inconsistent inference that he entered the residence knowing he was licensed to do so. ***See*** Thomas’ Brief at 31-37.

The jury found L.N.'s testimony to be believable and accepted her version of events. **See Holt**, 270 A.3d at 1233. We therefore conclude that the evidence was sufficient to sustain Thomas' conviction of criminal trespass.

Unlawful Restraint and False Imprisonment

In his fourth and fifth issues, Thomas challenges the sufficiency of the evidence to support his unlawful restraint³ and false imprisonment convictions. **See** Thomas' Brief at 37-43. Because Thomas makes the same argument with respect to both offenses, we address them together. Specifically, Thomas argues that the Commonwealth failed to present evidence to establish either crime because L.N. was able to freely move about her home while Thomas was in the residence, both before and after the sexual assault. **See id.** He therefore contends that the Commonwealth failed to establish the "involuntary servitude" element of unlawful restraint and the "interfering substantially with liberty" element of false imprisonment. **See id.**

This Court has held that "involuntary servitude" occurs where the victim cannot act freely and where the defendant "had deprived [the victim] of freedom of choice and had subjected to [them] his will." **Commonwealth v. Wells**, 460 A.2d 328, 330 (Pa. Super. 1983). We have further held that

³ Relevantly, a person commits the offense of unlawful restraint "if he knowingly ... holds another in a condition of involuntary servitude." 18 Pa.C.S. § 2902(a)(2).

“involuntary servitude has no time dimension—that any involuntary servitude, from brief to prolonged, may represent unlawful restraint.” ***Id.***

A person commits the offense of false imprisonment “if he knowingly restrains another unlawfully so as to interfere substantially with his liberty.” 18 Pa.C.S. § 2903(a). This Court has recognized that the crime of unlawful restraint “was intended to cover restraints which do not reach the magnitude of kidnapping[,] but are somewhat more serious than mere false imprisonment.” ***Commonwealth v. Prince***, 719 A.2d 1086, 1087-88 (Pa. Super. 1998).

The record reflects that on the night of the assault, while Thomas and L.N. were sitting on her couch, Thomas exposed L.N.’s breasts, pushed his weight against her body and began kissing and sucking her nipples. N.T., 3/9/2023, at 26-27. When L.N. attempted to push Thomas off her body, he proceeded to punch her the face, pin her to the back of the couch, and strangle her to the point that she struggled to breathe. ***Id.*** at 27-30. Thomas then grabbed L.N. by the hair and shoved her face first into the corner of the couch and held her there as he spanked her. ***Id.*** at 31-33. Immediately thereafter, Thomas removed L.N.’s shorts, turned her around so that she was face up, and placed the entire weight of his body on top of her again. ***Id.*** at 32-36.

Viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, L.N.’s testimony clearly established that Thomas deprived L.N. of the freedom of choice and subjected her to his will, as he

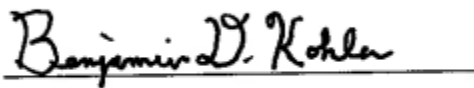
forcibly restrained her and assaulted her. **See** 18 Pa.C.S. § 2902(a)(2); **see also Miller**, 172 A.3d at 640. We emphasize that the involuntary servitude element of unlawful restraint has no time dimension and can occur in a brief period. **See Wells**, 460 A.2d at 330. We further emphasize that the crime of unlawful restraint was intended to cover restraints more serious than false imprisonment, and, consequently, L.N.'s testimony was also sufficient to establish that Thomas substantially interfered with her liberty. **See** 18 Pa.C.S. § 2903(a); **see also Prince**, 719 A.2d at 1087-88. We therefore conclude that the evidence was sufficient to sustain Thomas' convictions of both unlawful restraint and false imprisonment.

Conclusion

Because we find no merit to Thomas' Rape Shield Law, prosecutorial misconduct, and sufficiency of the evidence claims, we affirm his judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

4/29/2025