2019 IL App (1st) 170800-U

SECOND DIVISION
September 17, 2019

No. 1-17-0800

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 15 CR 6432
	)	
RONNIE ROPER,	)	The Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

HELD: State's comments made during rebuttal closing argument that defendant's confession was written down did not comprise erroneous misstatements nor merit reversal and remand of defendant's conviction where the statements were made in response to comments made by defendant in his own closing argument and were otherwise supported by the evidence presented at trial. Additionally, we need not address contention of error in *per diem* sentencing credit, as this was conceded by defendant in reply brief and is otherwise moot.

¶ 1 Following a bench trial, defendant-appellant Ronnie Roper (defendant) was convicted of two counts of possession of a controlled substance with intent to deliver (less than 15 grams of cocaine and less than 15 grams of heroin) and was sentenced to four years in prison. He appeals, contending that the State's rebuttal closing argument prejudiced him when it misstated that a report corroborated a confession he allegedly made when he was taken into custody. He also contends that he is entitled to an additional day of sentencing credit. Accordingly, defendant asks that we reverse his convictions and remand for a new trial or, alternatively, that we award him the proper amount of sentencing credit. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 At trial, police officer Mark Mendez testified that at 10:30 a.m. on March 27, 2015, he and several fellow officers went to 53 East 102nd Place in Chicago to execute a search warrant for the second floor apartment of this multi-unit dwelling. In the rear bedroom of that apartment, officer Mendez found a digital scale on the floor; a green leafy substance which he suspected to be cannabis in Ziploc bags on the bed and floor; multiple Ziploc bags containing a white powdery substance which he suspected to be heroin and numerous knotted bags containing a white rock-like substance which he suspected to be crack cocaine located in a dresser compartment; and several loose pieces of suspect crack cocaine in a knotted bag on the floor. While executing the warrant and collecting this evidence, he saw defendant outside the dwelling in the rear yard being detained by other officers. Officer Mendez further testified that later that afternoon, he met with defendant at the police station and read him his *Miranda* rights. Defendant waived these and told officer Mendez, "not verbatim," that he and others in the apartment were "smoking weed" and that there was a loose Sig .380 gun

under a pillow. Officer Mendez identified several photographs of the rear bedroom and the evidence recovered there for the court, including the dresser where the narcotics were found, the digital scale, several Ziploc bags, and a black bag containing numerous other bags as well as a bottle of the heroin-cutting agent Dorman and two playing cards.

¶ 4 On cross examination, officer Mendez stated that he executed the search warrant in the company of approximately nine other officers. When he entered the second floor apartment, he saw several people there, including two toddlers, an adult female, and an adult male; he also heard, but could not see, several other adult males in the rear bedroom with the door closed. When officers made entry into the apartment, these males fled out the apartment's rear stairway exit. Officer Mendez admitted he did not see defendant leave the rear bedroom, but he testified that his fellow officers were able to detain everyone who fled down the rear stairway in the building's backyard. This is where officer Mendez first saw defendant.

¶ 5 Officer Martin McDonnell testified that he was one of the other officers who assisted in executing the search warrant that morning. Upon entering the second floor apartment, officer McDonnell saw a female adult, two toddlers and several other adult males inside; he identified defendant as one of these adult males. Officer McDonnell participated in the search of the rear bedroom, where he recovered a gun and several empty small baggies. On cross examination, officer McDonnell stated that he never saw defendant touch or buy any of the drugs recovered.

¶ 6 Officer Kevin Omara testified that he, too, assisted in executing the search warrant. He identified defendant as one of the several adult males running down the rear stairs of the apartment building. Officer Omara stopped defendant and searched him at that time, whereupon he recovered defendant's Illinois State ID card. The card contained defendant's

name, his photo and his address, which was listed as 53 East 102nd Place, Chicago, Illinois, matching the address of the apartment building. On cross examination, officer Omara reaffirmed that the search warrant was for the second floor of the apartment building and noted that defendant's identification card did not specify on which floor of the building he lived. Officer Omara further stated that, in executing the warrant, he was stationed in the rear yard of the building along with his partner officer Goche and an officer from another district.

¶ 7 Officer Herman Otero testified that, as the recovery officer, he photographed, collected, transported and inventoried all the items recovered in the rear bedroom. These included a digital scale, crack cocaine, 12 bags of cannabis and 24 bags of heroin. He never saw defendant in possession of these items.

¶ 8 Sergeant Michael Tate testified that he was part of the team that executed the search warrant on the second floor apartment. He was with officers Omara and Goche in the back yard, and first saw defendant when he was being detained, along with several other adult males, in the back of the apartment. When asked if he heard defendant say anything at this time, Sergeant Tate responded:

> "not verbatim[,] he stated I ain't got nothing to do with this. Anything y'all find is mine, something along that line."

The court asked Sergeant Tate to repeat his answer, as it had been unable to hear him. Sergeant Tate responded:

> "I'm sorry. It was said, they ain't got nothing to do with this. Anything that you find is mine, or something along those lines."

On cross examination, Sergeant Tate averred that he did not prepare a written statement with respect to what he had heard defendant say, nor did he personally write it in any report.

¶ 9 On redirect examination, the State asked Sergeant Tate if defendant's statement "is denoted in the police report." Defendant objected, and the trial court overruled this objection. When Sergeant Tate reiterated his prior testimony that he himself did not memorialize defendant's statement, the State again asked him, "But it is denoted by other officers in the case report, would that be fair to say?" Sergeant Tate answered affirmatively.

¶ 10 Recross examination immediately followed, whereupon the instant exchange took place:

"[Defense Counsel:] This report that has that statement in it was prepared by [o]fficer Mendez, correct?

[Sergeant Tate:] Correct.

Q. And there was an [o]fficer Otero, who was the second arresting officer, correct?

A. Correct.

[Defense Counsel:] And the supervisor giving approval was Barton, is that right?

***

[Sergeant Tate:] I approved the general offense case report, which would have the same statement if I'm not mistaken.

Q. But you did not approve the arrest report, correct?

***

A. Not the arrest report –

***

[Defense Counsel:] Just one more thing. You said that you approved the original case incident report, is that correct?

***

[Sergeant Tate:] Yes.

[Defense Counsel:] And although it indicate[s] in here that [defendant] made that statement you yourself never signed off on the report, is that right?

***

[Sergeant Tate:] I approved it so that's the same as my signature."

¶ 11 The parties stipulated that forensic scientist Francis Hay Manieson would testify that she maintained proper control of and tested a portion of the alleged narcotics recovered in this cause, which amounted to 3.1 grams of heroin, 2.1 grams of cocaine, and 4.4 grams of cocaine.

¶ 12 Defendant moved for a directed verdict, arguing that there was no adequate proof that he lived in the residence where the drugs were found. He cited a lack of specificity as to which floor he lived on as reflected on his State ID, the lack of mail or keys found on his person linking him to the second floor apartment, and that no one had witnessed him in the rear bedroom. The State countered by citing the drugs and drug paraphernalia recovered, defendant's flight, the matching address and his statement as testified to by Sergeant Tate. In response, defendant argued that the statement was not written down and even if he had said it, it was "so ambiguous as to be meaningless." The trial court denied defendant's motion for directed verdict, finding that the State "has met its *prima facie* burden at this level."

¶ 13 As the trial proceeded, defendant called his mother, Veronica Higgins, to testify on his behalf. She stated that her grandfather owned the apartment building at 53 East 102nd Place, and that it is a two-flat. She averred that while she does not live there, her brother, her sister and her sister's children occupy the first floor, while an unrelated woman moved into the

second floor. Higgins stated that defendant sometimes stayed in her siblings' first floor unit, sometimes at her home, and sometimes at his grandmother's home.

¶ 14 The parties rested and the cause proceeded to closing argument. In discussing its burden of proof and the evidence presented, the State noted:

> "[Defendant] was fleeing from the second floor apartment. Sure there are other people there, of course, but he's the one that said this ain't anybody else's, all of that stuff is mine, and this is what is found in the rear bedroom, cocaine is found in the rear bedroom, heroine is found, a scale is found, baggies are found, and he makes that statement. And it's uncontroverted and referenced to in the police reports, and a Sergeant [Tate] testifies as to the statement. ***
>
> Now, what else do we have? We have the ID, the Illinois ID. You saw that. It was presented in court. It has that address on it so we have his ID with the address, we have him fleeing specifically the second floor. We have the statement saying that it's his, we have indicia of the intent to distribute, and we have the narcotics ***."

¶ 15 For his part, defendant argued during his closing argument that the only evidence linking him to the narcotics was his address on his ID, which did not even specify that he lived on the second floor. He continued by arguing:

> "The State wants to somehow overcome all of that reasonable doubt by [defendant's] alleged statement that everything you found is mine. He didn't say if you believe the statement, everything in the rear bedroom is mine, everything in the apartment is mine, everything that you've gotten off so and so is mine. We don't even know what they're talking about.

> Secondly, did he really say it? There is no written statement, Judge. The Sergeant, as he emphasized, who knows the rules and regs., he certainly knows how to write a written statement, admits that he didn't write it down, he admits he didn't write it anywhere, and something like that, Judge, to the extent they want to rely on it is extraordinary [*sic*] important."

¶ 16 During its rebuttal closing argument, the State responded:

> "This is how the Defense has defined reasonable doubt that – well, first of all that Sergeant Tate, who took the stand and testified as to the written statement that he heard from the defendant that it's not written down. Well, it is written down. It's written down in the original case incident report ***. It is written down and it's written down in the original case incident report, and that was the testimony. And let's think about the statement for a second because the Defense says it wasn't made so I guess Sergeant Tate is [a] liar and that's the [d]efense although he wasn't impeached by anything when he was asked, did the defendant write it down, and he said no.
>
> When he was asked did he write the report he said no. He's being honest about everything so how was the statement impeached?"

¶ 17 At the close of trial, the trial court found defendant guilty. In its colloquy, the court began by citing the stipulated evidence that the substances recovered tested positive for heroin and cocaine. It continued by noting that, as

> "the drugs were recovered from the rear bedroom of the second floor, the Court finds that the State has met its burden from all reasonable inferences that can be drawn from the circumstance of this search warrant being executed at the second floor of

> this address is on the defendant's state ID that defendant, in fact, fleeing from the second floor, and then his State ID corroborates he lives at that address, and making the statement that everything recovered is mine *** defendant was upon this execution of a search warrant admitting that everything recovered is mine. He was referencing the narcotics and the recovery, and there's no other reasonable inference that can be drawn from that statement under the circumstances.
>
> And his statement is corroborated by the facts of the recovery of the drugs[,] by his address that was on the search warrant, and fleeing from the second floor made it very specific that that's what the search warrant said that he was fleeing from the second floor of that address. ***
>
> There is no reasonable doubt at all that the defendant is guilty of the two charges that he's charged, and there is a finding of guilty."

¶ 18 During posttrial motion practice, defendant argued that the statement he allegedly made to Sergeant Tate was too "vague" to support his conviction and that it was "improper for the State to bolster a police officer's testimony by essentially testifying to what an inadmissible original case incident report stated." The State countered by arguing that its questions to Sergeant Tate were meant to cure defendant's attempt to impeach him, as well as defendant's insinuation at trial that the statement was never written down or memorialized in any police report. The trial court denied defendant's posttrial motion to reconsider, concluding:

> "The Court heard this evidence and very lengthy – actually, I might say, contentious [b]ench [t]rial ***.

> And there were many, many, many speaking objections; but considering all the evidence that went in, the Court only considering relevant evidence[, t]he Court found the Defendant guilty as charged ***.
>
> And as I have already stated, this [a]mended [m]otion is – is denied. I totally agree with the State's take on those – the evidence that did come in."

The court then sentenced defendant to four years in prison and credited him with 519 days served.

¶ 19 ANALYSIS

¶ 20 Defendant's main contention on appeal is that the State's rebuttal closing argument misstated that a police report corroborated a confession. Citing Sergeant Tate's testimony about the statement defendant made while in custody in the backyard of the apartment building that "they ain't got nothing to do with this. Anything that you find is mine," defendant insists that he impeached Sergeant Tate, showing Sergeant Tate never recorded the statement and testified only that some report "would have" recorded it. Defendant further insists that the State then misstated this evidence in its rebuttal closing argument by telling the court that the statement was written in a police report, and that this misstatement prejudiced him so as to require reversal of his conviction and remand for a new trial. We disagree.

¶ 21 Much of the crux of defendant's argument on appeal centers specifically on his reading of the record with respect to those portions of the trial dealing directly with Sergeant Tate's testimony about the statement and the parties' discussion of it during closing argument. In our decision here, we have purposefully included lengthy citations to the testimony and closing argument at issue, so they may be put in the proper perspective pursuant to the entire

context of the record. Before we address this, however, defendant also spends much time defining his appeal as one where the trial court, in this bench trial, lost all presumption of propriety in considering the cited statement, and one where *de novo* review must apply. We examine these legal assertions first.

¶ 22 This appeal involves an allegation of prosecutorial misconduct in closing argument. That is, defendant contends that the State here misstated evidence against him during its rebuttal closing argument. Citing *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007), defendant insists that "[m]ost recently," our state supreme court has applied a *de novo* standard of review to appeals involving an assertion of prosecutorial misconduct and that "[t]his most recent pronouncement controls." He also insists that, although a trial judge in a bench trial ordinarily retains a presumption of having ignored improper evidence, that presumption "burst" here because the trial court allowed improper material over objection. Defendant is incorrect on both points.

¶ 23 As defendant notes, *Wheeler* is our state supreme court's latest comment on the applicable standard of review for claims of prosecutorial misconduct in closing argument. However, that cause was decided over a decade ago and, in our view, does not necessarily solidify the notion that these types of prosecutorial misconduct cases automatically merit a *de novo* standard of review. Only months ago, our court specifically tackled an appeal raising prosecutorial misconduct in closing argument in *People v. Phagan*, 2019 IL App (1st) 153031 (*modified upon denial of rehearing*). In our decision, we acknowledged a " 'split in authority' " surrounding the applicable standard of review and compared *Wheeler*, which prescribed *de novo* review, with *People v. Blue*, 189 Ill. 2d 99, 128 (2000), wherein our supreme court had previously prescribed abuse of discretion review on the same issue.

Phagan, 2019 IL App (1st) 153031, ¶ 47. Unlike defendant here, however, we refused to blindly follow *Wheeler* simply because it was more recent than *Blue* and, instead, looked to the merits of the issue and critically reviewed the reasons why one standard should be employed over the other. See *Phagan*, 2019 IL App (1st) 153031, ¶¶ 49-54. We concluded, based on "the pedigree for an abuse of discretion standard that spans more than a hundred years," as well as an examination of the legal basis on which *Wheeler* was premised, which we found far from legally supported by the cases it relied on (cases that did not even deal precisely with prosecutorial misconduct in closing argument), that abuse of discretion should govern. *Phagan*, 2019 IL App (1st) 153031, ¶¶ 49, 54 ("We conclude that *Blue*, applying an abuse of discretion standard to claims of prosecutorial misconduct in closing argument, properly invoked over a century of Illinois Supreme Court precedent. *Wheeler*, applying a *de novo* standard of review, imported that standard with no explanation from cases that are either unclear or that analyze dissimilar claims").

¶ 24 Under whatever standard, however, several legal principles remain clear. Ultimately, the State is allowed a great deal of latitude in closing argument. See *People v. Nieves*, 193 Ill. 2d 513, 532 (2000); see also *Wheeler*, 226 Ill. 2d at 123; *People v. Caffey*, 205 Ill. 2d 52, 131 (2001). It " 'may comment on the evidence and any fair, reasonable inferences it yields.' " *People v. Phillips*, 392 Ill. App. 3d 243, 275 (2009), quoting *People v. Nicholas*, 218 Ill. 2d 104, 121 (2005). The test for determining whether there was reversible error because a remark resulted in substantial prejudice to a defendant is whether the remark was a material factor in his conviction or whether the trier of fact would have reached a different verdict had the State not made the remark. See *People v. Flax*, 255 Ill. App. 3d 103, 109 (1993); accord *Nieves*, 193 Ill. 2d at 533; see also *Wheeler*, 226 Ill. 2d at 123; *People v. Perry*, 224 Ill. 2d

312, 347 (2007); *People v. Linscott*, 142 Ill. 2d 22, 28 (1991). We review the allegedly improper remark in light of all the evidence presented against the defendant (see *Flax*, 255 Ill. App. 3d at 109), as well as within the full context of the entire closing argument itself (see *People v. Cisewski*, 118 Ill. 2d 163, 176 (1987)). See also *Wheeler*, 226 Ill. 2d at 122; *Caffey*, 205 Ill. 2d at 131. Unless deliberate misconduct by the State during closing argument can be demonstrated, comments will be considered incidental and uncalculated and will not form the basis for reversal. See *People v. Cloutier*, 156 Ill. 2d 483, 507 (1993).

¶ 25 We further note that "[s]tatements will not be held improper if they were provoked or invited by the defense counsel's argument." *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). Thus, when a defendant's own closing argument attacks the State's case and its witnesses, the State is entitled to respond thereto in its rebuttal closing argument, particularly when that response is invited; in such an instance, the defendant cannot then claim prejudice. See *Nieves*, 193 Ill. 2d at 534 (defendant cannot rely upon invited response by State during rebuttal closing argument as error on appeal); accord *People v. Reed*, 243 Ill. App. 3d 598, 606-07 (1993).

¶ 26 Additionally, with respect to a trial court's role in a bench trial, defendant is correct that a trial court's misapprehension of evidence crucial to the defense may violate the defendant's right to due process. See *People v. Mitchell*, 152 Ill. 2d 274, 321 (1992); accord *People v. Bowie*, 36 Ill. App. 3d 177, 180 (1976); see also *People v. Simon*, 2011 IL App (1st) 091197, ¶ 91 (trial court's failure to recall and consider such evidence may result in denial of due process). However, where the record does not affirmatively indicate that the trial court, as the fact finder, was mistaken, there is a presumption that it considered only competent evidence in reaching its verdict. See *People v. Gilbert*, 68 Ill. 2d 252, 258-59 (1977) (this is

rebutted only with affirmative evidence in record). Moreover, the trial court in a bench trial has the responsibility to both weigh the evidence and to make reasonable inferences from that evidence. See *People v. Berland*, 74 Ill. 2d 286, 305-06 (1978); accord *Simon*, 2011 IL App (1st) 091197, ¶ 52. Thus, it is in the direct purview of the trial court to adjudge the credibility of the witnesses, resolve any inconsistencies in their testimony, determine the weight to afford the evidence presented based on this, and draw reasonable inferences therefrom. See *People v. Deleon*, 227 Ill. 2d 322, 332 (2008); accord *People v. Steidl*, 142 Ill. 2d 204, 226 (1991); see also *Simon*, 2011 IL App (1st) 091197, ¶ 94, citing *Berland*, 74 Ill. 2d at 305-06. We, as a reviewing court, will not substitute our own judgment for that of the trial court in this regard. See *Deleon*, 227 Ill. 2d at 322; *Steidl*, 142 Ill. 2d at 226.

¶ 27 Based on the record before us, we do not find that the State's comments during rebuttal closing argument regarding defendant's confession comprised erroneous misstatements or that they merit the reversal and remand of defendant's conviction. Nor do we find that the presumptions afforded to the trial court here in this bench trial somehow "burst," as defendant insists. To the contrary, when viewed within their context and within the entirety of this trial, it is clear that the State was only summarizing the evidence presented in reply to defendant's theory on the case and that the trial court properly drew its own inferences from the evidence presented to refute those asserted by the defense.

¶ 28 After presenting portions of Sergeant Tate's testimony on appeal, defendant insists that the State misstated the evidence by noting in rebuttal closing argument that defendant's statement was written down in the original case incident report. He claims that the testimony did not support such an inference because Sergeant Tate testified only that he surmised the report "would have" contained defendant's statement—not that it actually did. As defendant

explains, by testifying that the case report "would have" memorialized the statement, Sergeant Tate "hedged his testimony" and, subsequently, the State "unhedged what [Sergeant] Tate had hedged" by improperly stating, contrary to the evidence presented, that defendant's statement was written down.

¶ 29 First, in our view of the entire record, and particularly in our reading of Sergeant Tate's testimony as a whole (including his testimony on direct, cross, redirect and recross), we find that defendant wholly mischaracterizes what Sergeant Tate said. Rather, there was no misstatement of the evidence on the part of the State with respect to the evidence presented. That is, on direct examination, Sergeant Tate testified that he was in the backyard of the apartment where defendant and others were detained after fleeing down the back stairs when he heard defendant say, not verbatim, "they ain't got nothing to do with this. Anything that you find is mine." On cross examination, Sergeant Tate admitted that he, himself, did not memorialize the statement he heard defendant make in any way; he did not prepare a written statement with respect to what he heard, and he did not write it down in any report. However, on redirect examination, Sergeant Tate was asked if defendant's statement was "denoted in the police report," despite the fact that he had not memorialized it. Sergeant Tate responded by again admitting that he personally did not write down the statement, but that it had been denoted by other officers in the case report.

¶ 30 Then, on recross examination, Sergeant Tate explained that more than one report was prepared: an arrest report he was not in charge of (that went to a supervisor), and a general offense case report (or case incident report). Sergeant Tate testified that officer Mendez prepared this latter report which contained defendant's statement, that officer Otero was the second arresting officer on the report, and that he himself approved the report which he

clarified "would have the same statement, if I'm not mistaken" that was at issue here. Contrary to defendant's inference that Sergeant Tate's use of the phrase "would have" proves he was somehow "hedging" his testimony or was unsure that the statement had been memorialized, it is clear that the phrase, when read in context, instead referred to Sergeant Tate's clarification that the memorialized statement was contained in the general offense case report which he approved, as opposed to the arrest report (and its contents) for which he was not responsible and to which he could not testify. He was not surmising in any way that the statement had been memorialized or that the report might contain it; he instead specifically testified that it had been memorialized by other officers and was denoted in the general offense case report.

¶ 31 This conclusion is supported not only by a complete reading of Sergeant Tate's testimony, including his full recross examination, but most interestingly by the very questions defendant asked of Sergeant Tate during that recross examination. From those questions, it becomes apparent that even defense counsel believed defendant's statement had been memorialized. At the outset of recross examination, when defense counsel asked Sergeant Tate if officer Mendez was the one who prepared the report, counsel prefaced the question by referring to the report as "[t]his report that has that statement in it." Again later, in referring explicitly to the general offense case report and in asking Sergeant Tate if he signed or approved it, defense counsel stated that "it indicate[s] in here that [defendant] made that statement."

¶ 32 From all this, it is clear that the State's subsequent comment during rebuttal closing argument that defendant's statement was "written down and it's written down in the original case incident report, and that was the testimony," was entirely consistent with Sergeant Tate's

testimony. Sergeant Tate did not record defendant's statement himself. This admission was forthcoming and never in dispute. However, Sergeant Tate repeatedly testified that defendant's statement was memorialized by other officers who partook in the execution of the search warrant, and that this statement, which Sergeant Tate heard orally, was written in the original case incident report which he was in charge of and which he approved. When read together, the entirety of Sergeant Tate's testimony fully supported the State's comment during rebuttal closing argument, as this comprised the evidence presented.

¶ 33 Even if defendant's reading of the exchange between defense counsel and Sergeant Tate on recross examination could be considered accurate in that Sergeant Tate somehow "hedged" his testimony with respect to the memorial of defendant's statement when he testified that the general offense case report "would have" contained the statement (which we do not believe is the correct characterization of this exchange), we would nonetheless find that the State's comment during rebuttal closing argument that defendant's statement was, indeed, memorialized in that report to be proper, since it was invited by defendant himself. Again, a defendant's closing argument that attacks the State's case or its witnesses invites the State to respond thereto, and the defendant cannot subsequently claim prejudice. See *Glasper*, 234 Ill. 2d at 204; *Nieves*, 193 Ill. 2d at 534. In his closing argument, defendant directly attacked Sergeant Tate's credibility and, in promoting his own theory of the case that he never made such a statement or confession, he urged the trial court to impugn Sergeant Tate's testimony. After assailing Sergeant Tate's testimony about where he was during the execution of the search warrant and who else was present during that time, defendant explicitly told the trial court:

> "Did [defendant] really say it? There is no written statement, Judge. The Sergeant, as he emphasized, who knows the rules and regs., he certainly knows how to write a written statement, admits that he didn't write it down, he admits he didn't write it anywhere."

Sergeant Tate's testimony was, indeed, that he did not write down defendant's statement after he heard it. However, his testimony was also that, while he himself did not write down the statement, it was nonetheless memorialized by other officers, specifically, in the original case incident report which he approved. Accordingly, defendant's comment in his closing argument that "[t]here is no written statement" was not true, and this, along with his attack on Sergeant Tate implying that he was not being truthful about his presence in the backyard or the existence of the statement, obviously invited a response from the State, which had previously elicited during its redirect examination of Sergeant Tate that the statement had been denoted by other officers in the report prepared. In his closing argument, defendant argued his theory that he was never in possession of the narcotics and he never provided police with a confession. To support this, he targeted Sergeant Tate's testimony and attacked his credibility. Defendant cannot now claim prejudice against the State which reiterated Sergeant Tate's given testimony of record to rebut his theory, as it was clearly entitled to do in response, based on the record before us. See *Glasper*, 234 Ill. 2d at 204; *Nieves*, 193 Ill. 2d at 534; *Reed*, 243 Ill. App. 3d at 606-07.

¶ 34 Ultimately, even if it could be concluded, as defendant propounds, that the State misstated the evidence in its rebuttal closing argument or that its comments were not an invited response to defendant's own closing argument, we would nonetheless hold that there was no reversible error here because the trial court considered only competent evidence in

reaching its verdict in this bench trial. Defendant insists that, having heard the misstatement at the end of his trial, the trial court improperly credited Sergeant Tate's testimony about the memorial of the confession and found him guilty based on it. However, the record does not affirmatively indicate that the trial court was mistaken in its considerations here at all. First, we have already discussed at length that the State's comment in rebuttal closing argument that defendant's statement was written down was actually in line with Sergeant Tate's testimony; it was not a misstatement but, rather, a restatement of the evidence presented.

¶ 35 Second, and more significant, the trial court, as the trier of fact here, had the responsibility to weigh the evidence and make reasonable inferences from that evidence. It heard Sergeant Tate's testimony, along with all the other evidence presented, including defendant's theory on the case, namely, that he never made such a confession. Thus, it was up to the trial court to resolve any inconsistencies in testimony, determine what weight to afford the evidence presented and draw reasonable inferences therefrom. That the trial court properly did this is clear from its colloquy. In finding that the State had met its burden of proof, the court first pointed out that the execution of the search warrant recovered items from the rear bedroom on the second floor of the dwelling. The parties stipulated that the items in question indeed tested positive for heroin and cocaine. The court next noted that the address on defendant's state ID was the same address as this very dwelling, certifying that he lived in the building. And, the court found significant that defendant was found fleeing the apartment from the second floor staircase when police arrived. It was only after citing all these circumstances that the trial court finally made mention of defendant's statement at issue, from which it concluded, "with no other reasonable inference that can be drawn from that statement under the circumstances," that defendant was referencing the narcotics found

there. Additionally, in reviewing defendant's posttrial motion to reconsider, the trial court made clear that it had arrived at its determination of guilt based on "the Court only considering relevant evidence." From all this, the record is clear that the trial court properly based its finding of guilt, as it stated, on "all reasonable inferences that can be drawn from the circumstances" presented in this cause.

¶ 36 Defendant raises one last issue in his opening brief on appeal, but goes on to subsequently concede it in his reply brief. That is, he initially argues that he is entitled to one additional day of sentencing credit. Admitting that he did not raise this at any time before the trial court, defendant argues that we should employ plain error review of this issue. The State, for its part, responds in its appellate brief by arguing that our Court lacks authority to adjudicate this issue, citing recently enacted Illinois Supreme Court Rule (Rule) 472 (Ill. S. Ct. R. 472 (eff. May 17, 2019)), which sets forth the procedure in criminal cases for correcting sentencing errors in the imposition and calculation of *per diem* credit and specifies that, effective March 1, 2019, the trial court retains jurisdiction to correct such errors at any time following judgment in a criminal case, even during the pendency of an appeal. See Ill. S Ct. R. 472(c) ("No appeal may be taken" on the ground of any of the sentencing errors enumerated in the Rule unless that alleged error "has first been raised in the circuit court"). In his reply brief, defendant acknowledges the State's argument is correct.

¶ 37 We, too, would agree with the State (and defendant, for that matter) that, pursuant to Rule 472, we do not have jurisdiction to adjudicate defendant's unpreserved sentencing claim and would have to remand the matter to the circuit court. Ill. S. Ct. R. 472(a)(1), (2) (eff. May 17, 2019). However, we need not even reach this conclusion, nor order remand in the instant cause. This is because, as defendant clarifies in this appellate brief, he has already both

served his period of incarceration and completed his mandatory supervised release (MSR) period.[1] A challenge against a defendant's sentence is moot once an entire sentence, including MSR, is served and completed. See *People v. Funches*, 2019 IL App (3d) 160644, citing *People v.* McNulty, 383 Ill. App. 3d 553, 558 (2008); accord *People v. Melton*, 2013 IL App (1st) 060039, citing *People v. Lieberman*, 332 Ill. App. 3d 193, 195 (2002). Thus, we need not deal with this secondary issue on appeal.

¶ 38 CONCLUSION

¶ 39 Accordingly, for all the foregoing reasons, we affirm the judgment of the trial court.

¶ 40 Affirmed.

[1] Defendant was serving MSR at the time he filed his appeal in our Court. He was scheduled to complete MSR on August 11, 2019; we have verified that he has, indeed, completed his MSR at this time. See www2.illinois.gov/idoc/ Offender/Pages/InmateSearch.aspx.