IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2025-KA-00282-COA

KOBE DEWAYNE BADY A/K/A KOBE D. BADY A/K/A KOBE BADY **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

DATE OF JUDGMENT:	09/26/2024
TRIAL JUDGE:	HON. PAUL S. FUNDERBURK
COURT FROM WHICH APPEALED:	LEE COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	MARK KEVIN HORAN BRADLEY DAVID DAIGNEAULT
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JULIANNE KAY BAILEY
DISTRICT ATTORNEY:	JASON D. HERRING
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 09/22/2026
MOTION FOR REHEARING FILED:	

BEFORE BARNES, C.J., McDONALD AND LASSITTER ST. PÉ, JJ.

McDONALD, J., FOR THE COURT:

¶1. Kobe Dewayne Bady was convicted by a jury of trafficking fentanyl. The Lee County Circuit Court sentenced him to a term of thirty years in the custody of the Mississippi Department of Corrections, with five years suspended and twenty-five years to serve day for day, followed by a five-year period of post-release supervision. Bady appeals, raising four issues: (1) that there was insufficient evidence to prove that he constructively possessed the fentanyl pills; (2) that the verdict was contrary to the weight of the evidence; (3) that jury instruction S-4 was not an accurate statement of the law; and (4) that he was prejudiced by the cumulative effect of errors that occurred during his trial.

FACTS

¶2. On March 5, 2022, Bady was driving his mother's vehicle in Tupelo, Mississippi, when Ahmad Tubbs, a police officer for the Tupelo Police Department, saw that Bady failed to use a turn signal. Tubbs followed Bady and initiated his lights as Bady proceeded into the parking lot of an Exxon Blue Sky convenience store. As Bady got out of his vehicle, Tubbs exited his patrol vehicle and claimed he saw Bady drop what appeared to be narcotics. Tubbs asked, "What's up man?" Bady responded, "What's going on," while raising his hands and placing them on top of his vehicle. Tubbs pulled Bady's right arm, spun him around, and told him to "put your hands behind your f*cking back," adding that "nobody is playing with you, I'll break your f*cking arm." Bady complied and stated, "I didn't do nothing." Allegedly, Tubbs continued to berate Bady, calling him a derogatory term and handling him like he was resisting arrest, although the video does not substantiate that claim. Bady continued to ask, "What did I do? I did[n]'t do nothing."

¶3. Officer Cunningham arrived, and Tubbs told him to "go pick up that for me." Cunningham picked up a clear baggie containing several blue pills and put them on the driver's seat of Tubbs's vehicle. Tubbs later put the pills in an envelope. Bady told Tubbs that "yall didn't find that on me," but Tubbs responded, "I watched you throw that down on the ground." Bady asked why Tubbs had "pulled up" on him and why he was being detained. Tubbs responded that he was not being detained but was under arrest "for drugs." Bady then stated that he wanted to call his lawyer.

¶4. Tubbs continued searching Bady's pants pockets, and Bady stated he did not have

drugs on him. Tubbs then placed Bady in the back of the patrol vehicle. After Tubbs searched Bady's car, he also noticed that Bady's tag was expired. No drugs were found in Bady's vehicle.

¶5. The video continued and showed that Tubbs contacted dispatch and requested assistance from a narcotics officer to review "about 30 pills that look like the M30." Tubbs informed dispatch that he would wait on the narcotics officer. Bady continued asking for his lawyer and for someone to be present while he was detained.

¶6. Narcotics Officer Jason Henson arrived on the scene and spoke with Bady, as Bady explained his side of the story. Henson also took control of the envelope containing the pills that Bady had allegedly dropped.

¶7. During transport, Tubbs and Bady continued discussing their respective accounts of the events leading up to and during the interaction. Tubbs and Bady later arrived at the jail. Bady again asked to inform his mother about the location of her car.

PROCEDURAL HISTORY

¶8. On June 30, 2022, a Lee County grand jury indicted Bady for trafficking, in violation of Mississippi Code Annotated section 41-29-139(f) (Supp. 2022),[1] by possessing[2] forty or

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[1] Mississippi Code Annotated section 41-29-139(f)(2)(A) provides:

> (2) "Trafficking in controlled substances" as used herein means:
>
> (A) A violation of subsection (a) of this section involving thirty (30) or more grams or forty (40) or more dosage units of a Schedule I or II controlled substance except marijuana and synthetic cannabinoids.

[2] Mississippi Code Annotated section 41-29-139(c) provides:

more dosage units of fentanyl, a Schedule II controlled substance. Bady was arraigned on July 19, 2022, and entered a plea of not guilty to the trafficking charge.

¶9. Bady's three-day jury trial was held from August 19, 2024, through August 21, 2024. But Bady never appeared. Before the jury was sworn in and impaneled, the court entered a judgment nisi, requiring the bonding company to produce Bady or show cause why the bond should not be forfeited.[3] The court revoked Bady's bond and issued a bench warrant. Defense counsel moved for a continuance. Later, he renewed his motion for a continuance for "obvious reasons." The court denied his motion to continue.

¶10. The State called its first witness, Officer Ahmad Tubbs, who testified regarding his encounter with Bady on March 5, 2022. Tubbs, who worked in the special operations unit of the Tupelo Police Department, testified Bady failed to use a turn signal at the intersection of Madison Street and North Green Street.[4] After pulling into the parking lot of the Exxon, Bady exited his vehicle, with his left hand out first, and then his right hand. Tubbs stated that he personally observed Bady open his hand and drop the "blue pills" to the ground, and

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> (c) Simple possession. Except as otherwise provided under subsection (i) of this section for actions that are lawful under the Mississippi Medical Cannabis Act and in compliance with rules and regulations adopted thereunder, it is unlawful for any person knowingly or intentionally to possess any controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article. . . .

[3] On September 23, 2024, because Bady had been arrested, the court entered an order setting aside the judgment nisi.

[4] Tubbs worked in special operations; therefore, his patrol car was not equipped with a dash camera, and no video footage captured the traffic violation.

Tubbs said that they were "right behind where he stood up to get out of the vehicle." Tubbs stated that he instructed Bady to place his hands on the car and then placed Bady under arrest. Tubbs also issued Bady citations for an improper turn and an expired tag. Cunningham retrieved the narcotics and placed them on the driver's seat of Tubbs's vehicle. Later, after securing Bady in the back of the patrol car, Tubbs put the narcotics inside an envelope and placed Bady's identifying information on it.

¶11. Mitchell Cunningham, Tubbs's partner in the special operations division, testified next for the State. Cunningham arrived at the Exxon approximately two minutes after Tubbs arrived. He confirmed that when he arrived, the narcotics had been dropped to the ground, and Bady was in custody. Tubbs advised Cunningham to pick up the narcotics, which he did. Cunningham also put the narcotics in the driver's seat of Tubbs's vehicle and shut the door.

¶12. The State's third witness, Jason Henson, was a narcotics agent working in the North Mississippi Narcotics Unit of the Tupelo Police Department. Henson testified that he was on call the day of Bady's arrest and that he was contacted by Tubbs regarding suspected M30 pills. Henson explained that these M30 pills contained fentanyl and are considered counterfeit thirty milligram OxyContin pills because true M30 pills do not contain fentanyl.[5] Then, Henson said the fentanyl is usually cut with acetaminophen, which acts as a filler, as the manufacturer attempts to "cheat the illegal drug consumer." When Henson arrived,

[5] Henson stated that fentanyl is shipped from China, explaining that the cartel gets it and pours all the fentanyl powder into a mixing bowl that is as large as the courtroom. Henson stated that the danger in fentanyl is that no unit has the same amount of fentanyl. One pill may contain only filler, but another pill may have an amount of fentanyl so high that it becomes fatal to the user.

Tubbs gave him the pills, which he later transported to the North Mississippi Narcotics Office and placed inside his drug safe. He also testified that he knew Bady, so he spoke with him.

¶13. On the following Monday, Henson filled out an evidence submission form and transported the suspected M30 pills to the Tupelo Crime Lab. There, a forensic scientist tested the drugs and provided Henson with the test results. The test results showed that there were forty-three tablets that contained fentanyl. Henson then "signed the drugs out" from the Tupelo Crime Lab and maintained them in his possession. Henson showed the sealed packet of fentanyl pills to the jury, and the court admitted them into evidence. Henson also explained to the court that he initially charged Bady with two-to-ten dosage units because of the standard protocol for handling drugs that pose a potential danger to himself and others. Instead, the drugs are transported to the crime lab to provide a report as to the actual quantity. In this case, after receiving the report, he changed it to the current charge of more than forty units.

¶14. Alicia Waldrop, a forensic scientist at the Tupelo Crime Lab, was the State's final witness. She was qualified as an expert forensic scientist in the field of narcotics testing. Waldrop confirmed the chain of custody, including where she initialed receipt of the evidence. She described her testing-analysis process of using gas chromatography with mass spectrometry, which is an analytical instrument that chemically identifies substances based on their mass fragmentation patterns. Finally, Waldrop confirmed that she tested each of the forty-three pills and that each pill contained fentanyl.

¶15. The State rested. Bady's counsel did not call any witnesses, and Bady never appeared during the trial.

¶16. After deliberating, the jury returned a verdict of guilty. The court entered its judgment based on the jury's verdict. Additionally, because Bady was not present at trial, the court ordered that the Lee County Sheriff's Department apprehend and hold Bady in custody until his sentencing. On September 16, 2024, the Lee County Sheriff's Department arrested Bady and held him in custody. On September 20, 2024, the court entered an order scheduling sentencing for September 26, 2024.

¶17. Bady, represented by counsel, was sentenced to a term of thirty years in the custody of the Mississippi Department of Corrections, with five years suspended and twenty-five years to be served day for day pursuant to Mississippi Code Annotated section 47-7-3 (Supp. 2021), followed by a five-year period of post-release supervision.

¶18. On October 3, 2024, Bady filed a motion for a judgment notwithstanding the verdict (JNOV) or, alternatively, for a new trial. On January 27, 2025, the court entered an order denying Bady's motion. Bady filed his notice of appeal on February 25, 2025.

STANDARD OF REVIEW

¶19. "[We] review[ ] de novo a trial court's ruling on the legal sufficiency of the evidence." *Reindollar v. State*, 296 So. 3d 739, 742 (¶11) (Miss. Ct. App. 2020). In this regard, we must examine the evidence "in the light most favorable to the State," *id.*, bearing in mind that "all credible evidence which is consistent with guilt must be accepted as true, and the State is given the benefit of all favorable inferences that may be reasonably drawn from the

evidence." *Id*. We "will reverse and render only if the facts and inferences point in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty." *Johnson v. State*, 224 So. 3d 66, 68 (¶4) (Miss. 2016). In short, "[t]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Shelton v. State*, 214 So. 3d 250, 256 (¶29) (Miss. 2017).

¶20. "When reviewing a challenge to the weight of the evidence, this Court considers the evidence in the light most favorable to the verdict, and the State receives all favorable inferences that reasonably may be drawn from the evidence." *Young v. State*, 236 So. 3d 49, 55 (¶22) (Miss. 2017). This Court "will not order a new trial unless it is convinced that the verdict so contradicts the overwhelming weight of the evidence that to allow the verdict to stand would sanction an unconscionable injustice." *Id*.

¶21. When we review the denial of a motion for a directed verdict or JNOV de novo, we also must view the evidence "in a light most favorable to the State." *Johnson v. State*, 904 So. 2d 162, 166 (¶7) (Miss. 2005). "Essentially, all credible evidence supporting a defendant's guilt should be accepted as true, and all favorable inferences drawn from the evidence must be reconciled in the prosecution's favor." *Id*. "We determine if any rational juror could have found the essential elements of the crime beyond a reasonable doubt." *Williams v. State*, 285 So. 3d 156, 159 (¶11) (Miss. 2019). "We are not required to decide—and in fact we must refrain from deciding—whether we think the State proved the

elements." *Poole v. State*, 46 So. 3d 290, 293-94 (¶20) (Miss. 2010). Rather, we must affirm the conviction as long as there is sufficient evidence for a rational juror to find beyond a reasonable doubt that the State proved its case. *Id*.

¶22. "Jury instructions are generally within the discretion of the trial court, and the settled standard of review is abuse of discretion." *Diming v. State*, 376 So. 3d 1231, 1245 (¶50) (Miss. Ct. App. 2023).

¶23. We review a trial judge's denial of a motion for a new trial only for an abuse of discretion. *Little v. State*, 233 So. 3d 288, 292 (¶21) (Miss. 2017). Our standard of review is deferential because the "trial judge is in the best position to view the trial." *Id*. at 291 (¶18) (quoting *Amiker v. Drugs For Less Inc*., 796 So. 2d 942, 947 (¶16) (Miss. 2000)). "The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to [rule on a new trial motion]." *Id*. at 291-92 (¶18) (quoting *Amiker*, 796 So. 2d at 947 (¶16)). "To be clear, when reviewing a motion for new trial, neither this Court nor the Court of Appeals 'sits as thirteenth juror.'" *Id.* at 292 (¶20). As stated above, we do "[not] reweigh the evidence" or "make independent resolutions of conflicting evidence"—that is the sole province of the jury. *Id.*

DISCUSSION

I. There was sufficient evidence to prove that Bady actually possessed the fentanyl pills.

¶24. Bady contends that because "the fentanyl pills were not found on [his] person, the State's burden was to prove constructive possession," which it did not establish. The State responds that it established actual possession; therefore, Bady's claim fails. Bady cites

several cases in support of his constructive-possession argument. These cases may, or may not, have been persuasive if this was a constructive-possession case. But it is not. It is, in fact, an actual-possession case.

¶25. "Possession of a controlled substance may be actual or constructive . . . ." *Carson v. State*, 341 So. 3d 995, 1000 (¶12) (Miss. Ct. App. 2022) (quoting *Dixon v. State*, 953 So. 2d 1108, 1112 (¶4) (Miss. 2007)).[6] As this Court previously stated, "actual possession can be established if an officer witnesses the defendant tossing an object later found to be drugs." *Id.* (quoting *Cooper v. State*, 145 So. 3d 1219, 1228 (¶34) (Miss. Ct. App. 2013) (citing *Dampeer v. State*, 989 So. 2d 462, 465 (¶9) (Miss. Ct. App. 2008); *Boyd v. State*, 634 So. 2d 113, 116 (Miss. 1994); *Lee v. State*, 767 So. 2d 1025, 1027 (¶8) (Miss. Ct. App. 2000)), *aff'd*, 145 So. 3d 1164 (Miss. 2014)). "An officer's testimony stating that he observed the defendant throw the drugs is sufficient to show actual possession." *Id*. (quoting *Cooper*, 145 So. 3d at 1228 (¶34) (citing *Lee*, 767 So. 2d at 1027 (¶8)); *accord Boyd*, 634 So. 2d at 116 ("Hicks clearly stands for the proposition that actual possession of drugs can be established by testimony from an officer that he observed the defendant tossing an object which was

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[6] As our Supreme Court has explained,

> [t]he concept of 'possession' is a question which is not susceptible to a specific rule. However, there must be sufficient facts to warrant a finding that defendant was aware of the presence and character of the particular substance and was intentionally and consciously in possession of it. It need not be actual physical possession. Constructive possession may be shown by establishing that the drug involved was subject to his dominion or control. Proximity is usually an essential element, but by itself is not adequate in the absence of other incriminating circumstances.

Id. (quoting *Curry v. State*, 249 So. 2d 414, 416 (Miss. 1971)).

subsequently located at the same site and, upon examination of the object, it was determined to be a controlled substance.")).

¶26. In *Carson*, 341 So. 3d at 998 (¶3), officers with the Vicksburg Police Department activated their blue lights and sirens after observing that Carson was parked in a vehicle with a temporary license plate in the middle of a lane of traffic on Bowman Street. Carson drove away, so the officers followed him. *Id*. While in pursuit, officers observed an object fly out of the vehicle's passenger window and relayed the object's location to dispatch. *Id*. Carson finally stopped in a parking lot several blocks away from the initial violation, and officers returned to the reported location, where they found a plastic bag containing a large "cookie" of crack cocaine. *Id*. at 998-99 (¶3). The jury found Carson guilty of possession of cocaine. *Id.* at 999 (¶7). Carson then filed a JNOV motion, which was denied. *Id*. On appeal, this Court found sufficient evidence to support the jury's verdict, noting that police testimony about observing Carson throw the cocaine from the window was adequate for a finding of actual possession. *Id*. at 1001 (¶16).

¶27. In the instant case, we find that the sequence of events here is similar to the events in *Carson* in that Officer Tubbs testified that he personally observed Bady open his hand and drop the narcotics to the ground. He further testified that the clear baggie of narcotic pills was located on the sidewalk "right behind where [Bady] stood up to get out of his vehicle." The video also captures Tubbs's instruction to Officer Cunningham, who arrived moments after Bady was arrested, to pick up the contraband from the parking lot. Thus, Bady's reliance on a theory of constructive possession is misplaced. As held in *Carson* and other

Mississippi cases, our law has clearly established that the State could show actual possession by Bady when Officer Tubbs testified that he witnessed Bady drop the contraband from his hand to the ground, the contraband was located in close proximity to Bady's feet, and the video showed Cunningham walk up to Bady's car and pick up something from the ground. Therefore, we conclude that the evidence is sufficient to support Bady's conviction because a rational juror could have found beyond a reasonable doubt that the State proved its case. *Poole*, 46 So. 3d at 293-94 (¶20).

II. The jury's verdict was not against the overwhelming weight of the evidence.

¶28. Alternatively, Bady contends that because clear evidence was "lacking," such as the Exxon's surveillance camera footage, his conviction is contrary to the weight of the evidence and resulted in an unconscionable injustice.

¶29. "When reviewing challenges to the weight of the evidence," this Court "views the evidence 'in the light most favorable to the verdict[.]'" *Moody v. State*, 421 So. 3d 1236, 1240 (¶20) (Miss. 2025) (quoting *Little*, 233 So. 3d at 292 (¶21)). "This Court will only disturb a verdict 'when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.'" *Id*. (quoting *Little*, 233 So. 3d at 292 (¶21)).

¶30. We conclude above that the State presented sufficient evidence to establish Bady's actual possession and uphold Bady's conviction. In addition to that evidence, coupled with the officer's testimony, the State presented the forensic scientist whose testimony confirmed that the pills Bady possessed were controlled substances. Accordingly, we find that the

jury's verdict is not against the overwhelming weight of the evidence, nor does upholding it sanction an unconscionable injustice.

III. The challenge to the jury instruction is without merit and moot.

¶31. Bady next contends that the court erred in giving jury instruction S-4. Bady claims S-4 was not an accurate statement of the law, and should have stated, "[T]o establish constructive possession there has to be a nexus shown between the controlled substance and the defendant." Further, because the encounter occurred at a busy gas station, Bady claims it would have been reasonable for a jury to conclude that the narcotics belonged to another store patron, and not Bady. In response, the State argues that S-4 was a correct statement of the law and that because Bady was alone in the vehicle, a presumption of constructive possession existed, and there was no requirement for the State to show additional incriminating facts. Further, because this case concerns actual possession—not constructive possession—any error would be harmless. However, both parties are in error. This Court has thoroughly reviewed the record and notes that the parties argued the merits of S-4 during the jury instruction conference. The trial court decided to give the instruction. However, after the conference, but before the court addressed the jury, the State withdrew S-4. The defense made no objection, and the court never gave the instruction. Thus, the issue before our Court is without merit and moot.

IV. There is no cumulative error because there was no individual error, and Bady was not prejudiced.

¶32. Finally, Bady contends that he was prejudiced by the cumulative effect of errors that he claims occurred during his trial: (1) he was not present at his trial; (2) the trial court

overruled his counsel's objection to Tubbs's trial testimony, which speculated on the reason why Bady pulled into the Exxon parking lot; and (3) his proposed jury instructions presenting his theory of the case were not given. The State argues, in response, that Bady has failed to show any individual error; thus, there was no cumulative error.

¶33. "Under the cumulative-error doctrine, individual errors may combine with other errors to make up reversible error, where the cumulative effect of all errors deprives the defendant of a fundamentally fair trial." *Black v. State*, 400 So. 3d 464, 471-72 (¶26) (Miss. Ct. App. 2024). "However, where there is no error in part, there can be no reversible error to the whole." *Id*. (quoting *Harris v. State*, 970 So. 2d 151, 157 (¶24) (Miss. 2007)). Finding no error and the evidence more than sufficient, there is no cumulative error in this case.

1. Failure to Appear

¶34. First, the record reflects that Bady's absence was voluntary and that Bady thus waived his right to be present at trial. Bady's father came to the courthouse that morning and told defense counsel that Bady asked him to come to the trial. The father said that Bady texted him that he was on his way. Bady did not appear, and the court proceeded with voir dire. The court questioned Bady's attorneys at length about their notice to Bady of the trial date. The attorneys explained they mailed notice three weeks ago and that they had met with Bady the day before the trial began. Bady was made aware that the trial started at 9:00 a.m., but his lawyers requested that he arrive at 8:00 a.m. One of Bady's attorneys told the court that Bady had texted him that morning and told him he was on the way. The court had the bailiff call for Bady three times, with no response.

¶35. In *Nevels v. State*, 325 So. 3d 627, 634 (¶23) (Miss. 2021), the Mississippi Supreme Court held that the United States Constitution and the Mississippi Constitution guarantee a defendant the right to be "present at every stage of his or her trial." (Citing *Hampton v. State*, 309 So. 3d 1055, 1060 (¶25) (Miss. 2021)). However, *Nevels* further states that this right can be waived, citing Mississippi Rule of Criminal Procedure 10.1(b)(1)(B). The rule states that this right may be waived if the court finds that a "defendant's absence from any proceeding was voluntary and constitutes a knowing and intelligent waiver of the right to be present." MRCrP 10.1(b)(1)(B). In this case, the evidence as to Bady's absence from his trial clearly supports the judge's finding that Bady knowingly and intelligently waived his right to appear at the trial. Thus, the trial court did not commit reversible error regarding Bady's failure to appear.

2. Tubbs's Testimony

¶36. Second, Bady argues that a portion of Tubbs's testimony was speculative. During direct examination of Tubbs, the State asked whether Bady "pull[ed] over because you made him, or did he pull over on his own?" Tubbs responded that Bady "pulled over due to my blue lights being behind him." Defense counsel objected, contending that the question called for speculation regarding Bady's reason for pulling over. But the court overruled the objection. Bady now challenges the ruling under Mississippi Rule of Evidence 701,[7]

[7] Mississippi Rule of Evidence 701, "Opinion Testimony by Lay Witnesses," provides:

> If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

contending that Tubbs improperly testified about Bady's internal thought process and that the jury should not have considered such testimony.

¶37. But Tubbs's testimony merely provided context surrounding how the traffic stop unfolded when he activated his blue lights. The testimony did not relate to Bady's possession, knowledge, or trafficking of the fentanyl that was found during the traffic stop. Accordingly, even if we were to assume that this portion of Tubbs's testimony was speculation, Bady has failed to demonstrate prejudice, as there was overwhelming evidence to support a verdict of trafficking when it was shown that Bady possessed forty or more dosage units of fentanyl. *Saddler v. State*, 297 So. 3d 234, 242 (¶¶25-26) (Miss. 2020). Moreover, whether Bady pulled into the Exxon parking lot before or after Tubbs activated his lights is irrelevant to the events that followed. "The question is whether there is a reasonable possibility that the evidence complained of may have contributed to the conviction." *Id.* at (¶26). Tubbs's testimony that Bady challenges did not relate to any essential element of the trafficking charge, nor did it contribute to Bady's conviction or prejudice Bady's defense. The State presented independent evidence supporting the trafficking conviction, including Tubbs's testimony that he saw Bady drop the narcotics from his hand onto the ground, and laboratory testing confirming that the forty-three pills

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(a) rationally based on the witness's perception;

(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

contained fentanyl.

3. Proposed Jury Instructions

¶38. Finally, Bady contends that the trial court erred by refusing to give his proposed jury instructions to present his theory of the case. Bady submitted four proposed jury instructions, but he withdrew two before the trial court ruled on them. The trial court refused the remaining two instructions, both of which related to the number of dosage units of a Schedule II controlled substance.[8] Specifically, the refused instructions included the lesser dosage ranges of two-to-ten and ten-to-thirty dosage units.

¶39. At trial, Henson testified that when he initially charged Bady, he charged him with possession of a Schedule II controlled substance containing two-to-ten dosage units. Henson explained that for safety reasons, he did not attempt to count the pills at the scene because he did not want to get too close to the fentanyl. Instead, he estimated the amount, two-to-ten dosage units, and that is the amount that he included in his signed affidavit. However, after the crime lab confirmed that the seized narcotics consisted of forty-three pills containing fentanyl, the charge was amended to reflect the correct amount. Obviously, Bady was trying to avoid the grand jury charge involving forty dosage units.

¶40. Bady fails to show any individual errors that warrant reversal; thus, there can be no combined effect to deprive Bady of a fundamentally fair trial. Therefore, the cumulative error doctrine does not apply. *See Thomas v. State*, 416 So. 3d 102, 117 (¶53) (Miss. Ct. App. 2025).

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[8] Obviously, if convicted, Bady would want the lesser punishments set forth in Mississippi Code Annotated section 41-29-139(b)(1)(B)-(C).

CONCLUSION

¶41. The evidence was sufficient to support Bady's conviction of trafficking fentanyl. The trial court did not abuse its discretion by denying his motion for a new trial, as the verdict was not against the overwhelming weight of the evidence. The trial court did not abuse its discretion by refusing Bady's proposed jury instructions. Finally, there is no cumulative error.

¶42. **AFFIRMED.**

BARNES, C.J., CARLTON, P.J., LAWRENCE, McCARTY, EMFINGER AND LASSITTER ST. PÉ, JJ., CONCUR. WESTBROOKS, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION, JOINED BY McDONALD, McCARTY AND LASSITTER ST. PÉ, JJ. WILSON, P.J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION. WEDDLE, J., NOT PARTICIPATING.

WESTBROOKS, J., SPECIALLY CONCURRING:

¶43. I concur in full with the majority. I write separately to discuss Bady's invocation of his right to an attorney during his arrest. After Bady was arrested and placed in the police car, he stated, "You need to find my lawyer," and, "Someone needs to be present while I'm being detained." When the narcotics officer arrived, the arresting officers did not mention that Bady had asked for an attorney. The narcotics officer, who knew Bady, leaned into the police vehicle and had a conversation with Bady that is not audible on the arresting officer's body-camera recording. The audible statements Bady made on the recording include repeated assertions that he did not have drugs, that the police did not have a good reason for pulling him over, and that the police planned the stop.

¶44. "[A]n accused . . . having expressed his desire to deal with the police only through

counsel[] is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." *Edwards v. Arizona*, 451 U.S. 477, 484 (1981); *see also Jackson v. State*, 299 So. 3d 823, 833-34 (¶¶22-27) (Miss. Ct. App. 2020). "If the individual states that he wants an attorney, the interrogation must cease until an attorney is present." *Chamberlin v. State*, 989 So. 2d 320, 332 (¶36) (Miss. 2008) (citing *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)). Further, "[w]hen an accused makes an in-custody inculpatory statement without the advice or presence of counsel, even though warnings and advice regarding his privilege against self-incrimination have been fully and fairly given, the State shoulders a heavy burden to show a knowing and intelligent waiver." *Neal v. State*, 451 So. 2d 743, 753 (Miss. 1984).

¶45. Here, the State did not seek to admit inculpatory statements made by Bady following his request for an attorney. Had they, the defense would have been entitled to move for the suppression of such statements as the proper remedy for any violation of the defendant's Fifth or Sixth Amendment rights. *See Edwards*, 451 U.S. at 484*; Martin v. State*, 596 So. 2d 859, 861 (Miss. 1992); *Benjamin v. State*, 116 So. 3d 115, 124 (¶20) (Miss. 2013); *Pannell*, 7 So. 3d 277, 288 (¶31) (Miss. Ct. App. 2008). It "best serves all interests, especially law enforcement, to remain close to the 'bright line': interrogation must cease when the accused in custody requests the presence of a lawyer before further interrogation." *Pannell*, 7 So. 3d at 286 (¶24) (quoting *United States v. Johnson*, 812 F.2d 1329, 1331 (11th Cir. 1986)). "It is this Court's position that when in doubt, adhering to the 'bright line' rule is necessary to

ensure that an accused's Fifth and Sixth Amendment rights are fully protected." *Id.* at 288 (¶24).

¶46. I therefore specially concur.

McDONALD, McCARTY AND LASSITTER ST. PÉ, JJ., JOIN THIS OPINION.