

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2025-KA-00561-COA

MARQUIS LANE

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	04/02/2025
TRIAL JUDGE:	HON. CHARLES E. WEBSTER
COURT FROM WHICH APPEALED:	TUNICA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	ARTHUR HUGO CALDERON
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JULIANNE KAY BAILEY
DISTRICT ATTORNEY:	BRENDA FAY MITCHELL
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 10/13/2026
MOTION FOR REHEARING FILED:	

BEFORE CARLTON, P.J., WEDDLE AND LASSITTER ST. PÉ, JJ.

CARLTON, P.J., FOR THE COURT:

¶1. A Tunica County Circuit Court jury found Marquis Lane guilty of first-degree murder for the fatal shooting of James Payno. The circuit court sentenced Lane to life imprisonment in the custody of the Mississippi Department of Corrections.

¶2. On appeal, Lane argues that the circuit court erred by failing to grant his motion for a mistrial. Lane also maintains that the evidence was insufficient to support his conviction and that the jury's verdict is contrary to the overwhelming weight of the evidence.

¶3. After our review, we find no error. We therefore affirm Lane's conviction and sentence for first-degree murder.

FACTS

¶4. Sherra Payno lived in an apartment in Tunica, Mississippi, with her mother. On September 15, 2019, Sherra was home babysitting four children, including Lane’s daughter. Sherra’s niece Manika Kelly was staying there as well.

¶5. In the early morning hours of September 15, Manika’s uncle (and Sherra’s brother) James Payno moved several of his belongings into the apartment. Manika’s brother Christopher McKenzie and her cousin Kendrick Scott helped Payno with the move. Prior to moving in with Sherra, Payno had lived with Lane’s mother, Kimberly Lane. Payno and Kimberly had been in a relationship for twenty years, and the record reflects that Lane was approximately two years old when Payno and Kimberly started dating.

¶6. After Payno, Christopher, and Kendrick finished bringing Payno’s belongings to the apartment, the three men walked outside. Approximately ten minutes later, Manika heard four gunshots, so she and Sherra went outside to investigate. Manika testified that she saw Carl Grant putting Lane—two men she knew well—into the backseat of a car. Grant then “jumped in the front seat, and the car sped off.” Manika did not see the driver of the vehicle. Manika testified that although it was dark outside, she could identify the men because of the light from the streetlights.

¶7. Manika noticed Payno lying on the ground with a gunshot wound, so she ran downstairs. Manika applied pressure to Payno’s wound, but he soon stopped moving. Sherra was with Manika, and she testified that she did not observe any weapons around Payno’s body.

¶8. That same night, apartment neighbor Tarry Bass was home watching television while

trying to fall asleep. Tarry testified that she woke up when she “heard a loud commotion” outside her apartment, and she “peeped out the window.” Tarry observed around six or seven people standing outside arguing. Tarry testified that she saw Payno place a “beer can on top of the hood” of a car, and “something was said.” Tarry then saw another man “pull[] out a gun” and shoot Payno. Tarry testified that two men, including the man who shot Payno, fired shots at the “other guys” as they ran away. The two men then got into a vehicle and “took off fast.” Tarry testified that the shooting occurred approximately ten feet away from her apartment.

¶9. Christopher McKenzie testified that prior to the shooting, he and Kendrick were helping Payno move his belongings to Sherra’s apartment. After they moved Payno’s belongings, the three men left the apartment and went outside. Christopher testified that Lane, Sherika Byrd, and Carl Grant arrived in a vehicle, with Sherika driving. Christopher overheard Lane angrily confront Payno, but Christopher did not pay close attention to their conversation. Christopher nonetheless observed that Lane was mad, and he testified that Lane pulled out a gun. Payno told Lane to get the gun out of his face, and the men started “wrestling and tussling.” Christopher testified that while the men were wrestling, Lane shot Payno. Christopher stated that Payno did not have a weapon.

¶10. After shooting Payno, Lane then tried to shoot Christopher and Kendrick, but neither was hit. Christopher testified that he heard Sherika ask Lane why he was shooting at everyone, and then “they got in the car and left.”

¶11. Law enforcement arrived and recovered four shell casings from the scene. Lieutenant

Favian Jones with the Tunica County Sheriff's Department testified that Lane "[b]ecame a suspect while we were actually on scene processing the initial part of the investigation." Officers eventually apprehended Lane on the evening of September 15—the same day as the shooting. Lieutenant Jones testified that he did not observe any injuries on Lane's neck when apprehending him.

¶12. Officers interviewed Lane at the Tunica County Sheriff's Department. Lieutenant Jones testified that during the interview, Lane admitted he shot Payno after they got into a "physical altercation." According to Lieutenant Jones, Lane claimed that Payno "started choking" him, but Lane never used the word "self-defense."

¶13. Lane was indicted for one count of first-degree murder under Mississippi Code Annotated section 97-3-19(1)(a) (Rev. 2020) with a firearm enhancement under section 97-37-37(1) (Rev. 2020), and Sherika was indicted for one count of accessory-after-the-fact.

¶14. Lane and Sherika were tried jointly.¹ At trial, the jury heard testimony from officers with the Tunica County Sheriff's Department, Tarry, Manika, Sherra, Christopher, forensic pathologist Dr. Mark LeVaughn, and Kimberly. Dr. LeVaughn testified that Payno was shot seven times, with six of those shots fired from a distance "greater than three feet." He testified that one gunshot to Payno's chest was a "contact wound, meaning the gun barrel was very close to if not touching the skin." Dr. LeVaughn found Payno's manner of death to be homicide and the cause of death multiple gunshot wounds.

¶15. Defense counsel argued that Lane shot Payno in self-defense because Payno was

¹ Sherika was ultimately acquitted.

choking Lane. Kimberly—Payno’s long-time girlfriend and Lane’s mother—testified for the defense. Kimberly testified that Lane went to Sherra’s apartment on the day of the shooting to pick up his daughter. Kimberly testified that she had seen Lane earlier in the day, prior to the shooting, and his face and neck were not bruised at that time. However, Kimberly testified that when she saw Lane hours after the shooting, his face and neck were bruised and swollen.

¶16. After Manika’s testimony and prior to Sherra’s testimony, defense counsel moved for a mistrial based on alleged improper witness communications. (We will discuss this issue in full below.) After questioning the witnesses, the circuit court denied the motion for a mistrial.

¶17. Following its deliberations, the jury found Lane guilty of first-degree murder for Payno’s death. The circuit court sentenced Lane to life imprisonment. Lane unsuccessfully moved for judgment notwithstanding the verdict or, alternatively, a new trial. Aggrieved, Lane now appeals.

DISCUSSION

I. Motion for a Mistrial

¶18. Lane argues that the circuit court erred by failing to grant a mistrial based on alleged witness misconduct; specifically, Lane alleges that the State’s witnesses were improperly communicating and discussing their testimonies with each other. Lane asserts that the witnesses’ conduct “cast a shadow of impropriety among the remainder of the proceedings.”

¶19. We review a circuit court’s denial of a motion for a mistrial for an abuse of discretion.

Armistad v. State, 412 So. 3d 399, 416 (¶70) (Miss. Ct. App. 2024). We recognize that “[t]he trial judge is permitted considerable discretion in determining whether a mistrial is warranted since the judge is best positioned for measuring the prejudicial effect.” *Tate v. State*, 912 So. 2d 919, 932 (¶41) (Miss. 2005). “A trial judge need declare a mistrial only when there is an error in the proceedings resulting in substantial and irreparable prejudice to the defendant’s case.” *Hutto v. State*, 227 So. 3d 963, 984 (¶66) (Miss. 2017); *see also* MRCrP 23.5 (governing mistrials).

¶20. The transcript shows that Manika Kelly testified after Tarry Bass. After Manika’s testimony, co-defendant Sherika’s father, Robert Byrd, advised defense counsel that he observed Tarry exit the courtroom and communicate with two other State witnesses (later identified as Manika and Sherra) who were directly outside the courtroom. Defense counsel informed the circuit court of the allegation, and the court held a hearing outside the presence of the jury to ascertain what the witnesses communicated and to determine what, if any, prejudice Lane suffered.

¶21. The circuit court first questioned Byrd, who testified that he heard the witnesses talk about what was asked during their testimony and what they should or should not say. Byrd recounted that he heard Tarry say, “This is what’s going on in there. Do this, say this, or say that.” However, Byrd admitted that he could not hear specifics of Tarry’s statements or what the other women said in response.

¶22. The circuit court next heard from Shirley Kelly, Manika’s mother. She testified that she was outside the courtroom door and saw Tarry, Manika, and Sherra talking, but she did

not pay attention to what they were saying. Shirley stated that she asked the women if they could find her son Christopher; so the women called Christopher, but he did not answer.

¶23. Next, the circuit court heard from Manika, who testified that when Tarry stepped outside the courtroom, she was emotional. Manika denied that Tarry made any statements about what testimony should or should not be offered in the trial.

¶24. Finally, the court heard from Sherra. Sherra testified that Tarry talked to her and Manika about the crime scene photographs presented by the State, specifically, the pictures of Payno lying on the ground, deceased. Sherra stated that Tarry was crying and emotional. Sherra denied that Tarry made any comments about her testimony during trial. However, Sherra could not recall if Tarry talked about any of the questions she had been asked during her testimony.²

¶25. As to why the witnesses were all outside the courtroom, Sherra told the circuit court judge that she and other witnesses were advised by the State to sit outside the courtroom rather than in the witness room. The District Attorney responded and informed the circuit court that this particular floor in the courthouse did not have any witness rooms. The District Attorney explained that having the witnesses for that courtroom sit in the hall, rather than in a room on a different floor, helped the trial move efficiently.

¶26. After hearing from the witnesses, defense counsel moved for a mistrial on the ground of improper communication between the State's witnesses. The circuit court judge commented that defense counsel's motion "may be a little premature" because there was

² The record reflects that Tarry had already left the courthouse by the time of Byrd's allegation; as a result, the circuit court could not question her.

nothing to show that any communication with Tarry had affected the trial testimony. After hearing arguments from both sides, the circuit court denied the motion for a mistrial. The circuit court judge acknowledged that the testimony was conflicting, but he agreed with Sherra and Manika's statements that Tarry was emotional after testifying. The circuit court ultimately ruled that it had not heard anything that would actually disqualify a witness. The circuit court then stated that defense counsel would have the opportunity to cross-examine the witnesses regarding any improper communication. The transcript reflects that defense counsel chose not to cross-examine the witnesses on this issue.³

¶27. Mississippi Rule of Evidence 615 provides in part, "At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony." MRE 615. The purpose of this rule is to prevent witnesses from "'tailoring' their testimony to that of earlier witnesses[.]" *Avery v. State*, 119 So. 3d 317, 319 (¶7) (Miss. 2013). As the State correctly points out, the record does not show that Rule 615 was invoked; however, the record is clear that neither Sherra nor Manika were present during Tarry's testimony. Nevertheless, the Mississippi Supreme Court has established that it is proper for a trial court to treat cases involving improper witness communication during trial as a Rule 615 violation. *Hughes v. State*, 735 So. 2d 238, 258 (¶76) (Miss. 1999). When a Rule 615 violation occurs, "the remedy lies within the court's discretion." *Id.* at (¶77). The supreme court has approved the following remedies in such matters: "prospectively excluding the witness where prejudice will otherwise ensue; striking the witness's testimony where connivance gave rise to the

³ The transcript reflects that Sherra testified immediately after the hearing on Lane's motion for a mistrial.

testimony; striking the witness’s testimony where the testimony gave rise to prejudice; or, most appropriately, allowing the other party to subject the witness to a ‘full-bore cross-examination’ on the facts of the rule violation.” *Id.* at 258-59 (¶77).

¶28. Here, we find that the circuit court properly treated this matter as a Rule 615 violation. The transcript reflects that the circuit court investigated the matter by interviewing Byrd, Shirley, Manika, and Sherra outside the presence of the jury. After hearing from the witnesses, the circuit court indicated that it found no prejudice and no reason to exclude any witnesses. Nevertheless, the circuit court advised defense counsel that it could cross-examine the witnesses on their alleged improper communication. However, the record shows that defense counsel chose not to exercise this remedy during trial.

¶29. After our review, we find that the circuit court did not abuse its discretion by denying Lane’s motion for a mistrial. We further find that Lane has failed to show how he was prejudiced by the circuit court’s ruling.

II. Sufficiency and Weight of the Evidence

¶30. Lane’s final argument on appeal is that the jury’s verdict is against the overwhelming weight of the evidence. Lane claims that no rational juror could find that the State proved that Lane acted with deliberate design. In addressing Lane’s arguments on this issue, we note that he conflates the sufficiency and weight of the evidence. We apply different standards to these two challenges.

¶31. “In reviewing a challenge to the sufficiency of evidence[,] . . . we view the evidence in the light most favorable to the State and decide if rational jurors could have found the

State proved each element of the crime.” *Follett v. State*, 380 So. 3d 961, 969 (¶28) (Miss. Ct. App. 2024). “In this regard, the issue is not whether we think the State proved the elements. Rather, we must decide whether a reasonable juror could rationally say that the State did.” *Id.* (internal quotation marks omitted).

¶32. A challenge to the weight of the evidence addresses the circuit court’s denial of a motion for a new trial, which we review for an abuse of discretion. *Little v. State*, 233 So. 3d 288, 292 (¶21) (Miss. 2017). Accordingly, “[t]his Court will not grant a new trial unless the verdict is so contrary to the overwhelming weight of the evidence that allowing it to stand would sanction an unconscionable injustice.” *Scates v. State*, 388 So. 3d 564, 579 (¶47) (Miss. Ct. App. 2023). We review the evidence in the light most favorable to the jury’s verdict. *Id.* In so doing, this Court is “particularly mindful that we do not reweigh evidence. We do not assess the witnesses’ credibility. And we do not resolve conflicts between evidence. Those decisions belong solely to the jury.” *Follett*, 380 So. 3d at 973 (¶45) (quoting *Little*, 233 So. 3d at 289 (¶11)).

¶33. Here, the jury convicted Lane of committing first-degree (deliberate-design) murder under section 97-3-19(1)(a), which states in relevant part: “(1) The killing of a human being without the authority of law by any means or in any manner shall be murder in the following cases: (a) When done with deliberate design to effect the death of the person killed, or of any human being[.]” Lane does not dispute that he shot Payno; rather, he argued at trial, and on appeal, that he acted in self-defense. “When self-defense is raised, the State bears the burden of proving beyond a reasonable doubt that the defendant was not acting in necessary

self-defense.” *Allen v. State*, 299 So. 3d 917, 925 (¶26) (Miss. Ct. App. 2020) (quoting *Harris v. State*, 937 So. 2d 474, 481 (¶23) (Miss. Ct. App. 2006)). A killing is justifiable “[w]hen committed in the lawful defense of one’s own person or any other human being, where there shall be reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and there shall be imminent danger of such design being accomplished.” Miss. Code Ann. § 97-3-15(1)(f) (Rev. 2020).

¶34. On appeal, Lane argues that the State failed to present sufficient evidence to show that he acted with deliberate design. The supreme court has clarified that “malice aforethought, premeditated design, and deliberate design all mean the same thing.” *Watts v. State*, 402 So. 3d 744, 749 (¶20) (Miss. 2025). “[D]eliberate’ means ‘a full awareness of what one is doing and generally implies careful and unhurried consideration of the consequences’” and “‘design’ ‘means to calculate, plan or contemplate.’” *Id.* (quoting *Abeyta v. State*, 137 So. 3d 305, 312 (¶15) (Miss. 2014)). “Deliberate design may be formed very quickly, and perhaps only moments before the act of consummating the intent.” *Id.* (quotation marks omitted) (quoting *Holliman v. State*, 178 So. 3d 689, 698 (¶19) (Miss. 2015)).

¶35. After viewing the evidence in the light most favorable to the State, it is clear that rational jurors could conclude the State sufficiently proved that Lane acted with deliberate design—and not in necessary self-defense—when he shot Payno. Christopher testified at trial that Lane approached Payno and pulled out a gun. Payno instructed Lane to get the gun away from him, and the two began to wrestle. Christopher testified that while the two men were wrestling, Lane shot Payno. The evidence presented at trial shows that Lane fired

several shots. Law enforcement recovered four shell casings from the crime scene, and Dr. LeVaughn testified that Payno sustained seven gunshot wounds, including one where “the gun barrel was very close to if not touching the skin” when fired. “It is well-established that . . . deliberate design[] may be inferred from the use of a deadly weapon.” *Holliman*, 178 So. 3d at 698 (¶19).

¶36. Lane asserted that Payno was choking him and that he acted in self-defense when he shot Payno. However, the State presented evidence to show that Payno was unarmed. This Court has held that “[e]ven if a jury could have reasonably found that [a defendant] acted in self-defense when he shot [the victim] the first time, . . . with respect to the [additional gunshots], the jury could reasonably infer that [the victim] was unarmed and that these additional shots were unnecessary and thus negated [the defendant’s] self-defense claim.” *Wayne v. State*, 337 So. 3d 704, 714 (¶37) (Miss. Ct. App. 2022) (citing *Harris*, 937 So. 2d at 482 (¶27) (observing that a jury may reasonably reject a self-defense claim even where the first shot was in necessary self-defense if “continued shooting became unnecessary”)); *see also Allen*, 299 So. 3d at 925-26 (¶28) (finding that “[t]he jury could infer that Allen intended to kill Smith by shooting him six times at close range”).

¶37. To support his argument that the guilty verdict was against the overwhelming weight of the evidence, Lane argues that the jury heard conflicting evidence as to whether Payno was choking Lane at the time of the shooting and how many people were present. However, “[c]onflicting testimony does not evince overwhelming evidence; where the verdict turns on the credibility of conflicting testimony and the credibility of the witness, it is the jury’s duty

to resolve the conflict.” *Williams v. State*, 391 So. 3d 193, 198 (¶23) (Miss. 2024) (quoting *Wilson v. State*, 343 So. 3d 1041, 1051 (¶47) (Miss. 2022)).

¶38. The record reflects that the jury heard all the testimony, and the evidence was presented with both the State’s and Lane’s theory of the case. The jury obviously resolved the conflicts and any credibility issues against Lane. “[W]hen the evidence is conflicting, the jury will be the sole judge of the credibility of witnesses and the weight and worth of their testimony.” *Little*, 233 So. 3d at 292 (¶20). As stated, this Court does not reweigh evidence, assess witness credibility, or resolve conflicts of evidence—these decisions belong solely to the jury. *Follett*, 380 So. 3d at 973 (¶45). After considering the evidence in the light most favorable to the verdict, we do not find the verdict to be “so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.” *Little*, 233 So. 3d at 292 (¶21). Therefore, the circuit court did not abuse its discretion by denying Lane’s post-trial motion for a new trial.

CONCLUSION

¶39. After our review, we find that the circuit court did not abuse its discretion by denying Lane’s motion for a mistrial. We further find that there is sufficient evidence to support Lane’s conviction of first-degree murder and that the jury’s verdict was not contrary to the overwhelming weight of the evidence.

¶40. **AFFIRMED.**

BARNES, C.J., WILSON, P.J., WESTBROOKS, McDONALD, LAWRENCE, McCARTY, EMFINGER, WEDDLE AND LASSITTER ST. PÉ, JJ., CONCUR.