IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2025-KA-00683-COA

IVYON KRISTIAN ANDERSON A/K/A IVYON ANDERSON — **APPELLANT**

v.

STATE OF MISSISSIPPI — **APPELLEE**

DATE OF JUDGMENT:	03/05/2025
TRIAL JUDGE:	HON. JEFF WEILL SR.
COURT FROM WHICH APPEALED:	HOLMES COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: AMBER LAUREN STEWART
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART
DISTRICT ATTORNEY:	AKILLIE MALONE OLIVER
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 10/27/2026
MOTION FOR REHEARING FILED:	

BEFORE CARLTON, P.J., McDONALD AND LAWRENCE, JJ.

CARLTON, P.J., FOR THE COURT:

¶1. A jury convicted Ivyon Anderson of first-degree murder following the shooting death of Corey Davis at a nightclub. Anderson appealed his conviction and sentence of life imprisonment, arguing that the jury was improperly instructed as to a co-defendant's testimony and that he received ineffective assistance of counsel at trial. Finding both assignments of error without merit, we affirm Anderson's conviction and sentence.

FACTS AND PROCEDURAL HISTORY

¶2. After a shooting at the Yellow Tree Bar and Grill in Lexington, a Holmes County grand jury indicted Ivyon Anderson for the first-degree murder of Corey Davis. Jarvis

Blanden and Javarious Smith were indicted as accessories after the fact.

¶3. At trial, Sam Chambers, a captain with the Holmes County Sheriff's Department, testified that he received a dispatch call around 2:00 a.m. on April 22, 2023, "stating that there was a gentleman at the hospital that had been shot." Deputies advised Chambers that the victim, Corey Davis, was deceased. Chambers went to Yellow Tree, where the shooting occurred. Chambers obtained surveillance video from outside Yellow Tree, which shows patrons running out of the building after the shooting.

¶4. Dexter Howard, the Holmes County coroner, testified that he also responded to the call regarding Davis. He reported to the hospital around 4:30 a.m. and "talked to the ER nurse[,] and she gave [him] a brief narrative of what was going on." Howard testified that Davis "was shot four times, two in the chest abdominal area[,] [a]nd one in the back and also one in the right leg." Davis was deceased upon Howard's arrival. Howard prepared a death investigation report, concluding that the manner of death was homicide. Howard testified that the autopsy report from the pathologist determined that the cause of death was multiple gunshot wounds to his torso.

¶5. Ashley Williams testified that she was present at Yellow Tree on the night of the shooting. Williams explained that she saw a person in a red and black hoodie pull out a gun. When shown a picture of Anderson from that night, Williams testified, "Yes, that's him." Williams stated that she did not see the face of the individual who pulled out the gun, but she confirmed that she saw what the person was wearing.

¶6. Dwight Adams was also present at Yellow Tree when the shooting occurred. Prior

to the shooting, Adams spoke to Anderson and recalled that he was wearing a red and black hoodie. Adams testified that he could see the individual who shot the gun and identified Anderson as the shooter. When shown a photo of Anderson from that night, Adams identified Anderson and testified that the photo showed what he had seen Anderson wearing at Yellow Tree.

¶7. Jarvis Blanden, Anderson's co-defendant, testified at trial. Blanden explained that on the night of the shooting, he, Anderson, and Smith were in Blanden's black Chevrolet Malibu. Blanden picked up Anderson and Smith, and they went to Yellow Tree. Blanden testified that he went to get a drink from the bar and then heard gunshots. He "[r]an out of the club" and got in his car. Anderson and Smith also got in the car, and they left. The group drove 15 to 20 minutes to a gas station, where they stopped for cigarettes. Blanden testified that during the drive, Anderson "said he shot" "[t]hat boy." However, Blanden stated that Anderson did not say who or why he shot. After Blanden's car was reported as being involved, Blanden gave an interview at the Holmes County Sheriff's Department. Blanden testified that he gave three statements but that he lied in the first two. Blanden maintained that his third statement and his testimony were truthful.

¶8. Timothy Herndon testified that once he arrived at Yellow Tree on the night of the shooting, he spoke to Davis and then walked towards the bar to get a drink. It was then that he "heard the gun fire." After the "fourth and final shot," Herndon saw a man "putting his hand down" "and running towards . . . the door." Herndon testified that the individual was "wearing like a blackish, red like flannel, like sweater" and was pointing the gun "at

[Davis's] direction." When shown a photo of Anderson from that night, Herndon identified the clothing as what he saw the shooter wearing. After the shooting, Herndon approached an unresponsive Davis and "could see the holes in his shirt." As everyone left, Herndon watched Anderson get in a black car that drove away. Herndon followed the car to a gas station and took a photo of the license plate number. Herndon gave the license plate information to Chambers.

¶9. Chambers retrieved surveillance footage from the gas station and ran the car's license plate, which traced back to Blanden. Chambers identified the three men in the black Malibu as Smith, Blanden, and Anderson and testified that Anderson was wearing a red and black hoodie in the videos.

¶10. As part of his investigation, Chambers interviewed Blanden three separate times. During the first interview, Blanden "was lying to protect the guys that were in the car with him." At the second interview, Blanden "gave up [Anderson's] name" and stated that Anderson wore the red and black hoodie. In the third interview, Blanden told Chambers the names of everyone in the vehicle and stated that Anderson shot Davis.

¶11. Chambers then interviewed Anderson. Anderson's interview with Chambers was played for the jury without objection beforehand. During the interview, Anderson told Chambers that he had not shot anyone since 2019. Anderson's counsel objected on the basis of prior bad acts evidence. *See* MRE 404(b)(1). In response, the State indicated

> [Defense counsel] had ample time to object to this statement. We made it

> known that we were going to introduce this statement.[1] And she knew exactly what was contained in the statement. As far as prior bad acts, we already indicated that it would be made known as the 2019 – because the defendant brings it up. And was the only thing that we're going to bring it up. We do not plan on going into details of that, other than what he was referring to and the officer knows what he knows.

Defense counsel then withdrew the objection.

¶12. After presenting its witnesses and other evidence, the State rested. The defense then unsuccessfully moved for a directed verdict. The defense rested without calling any witnesses or presenting evidence.

¶13. The jury ultimately found Anderson guilty of first-degree murder. The trial court sentenced Anderson to life imprisonment in the custody of the Department of Corrections. Anderson filed a motion for judgment notwithstanding the verdict or, in the alternative, a new trial, which the trial court denied. Anderson appealed.

DISCUSSION

I. Jury Instruction

¶14. Anderson argues that Jury Instruction S-4 improperly instructed the jury to make a legal determination about the testimony his co-defendant Blanden gave. Anderson asserts that "the instructions did not accurately inform the jury of its role in weighing the witness's testimony." Jury Instruction S-4 read:

> In this case, the state called as one of its witnesses an alleged accessory

[1] Prior to trial, Anderson's counsel filed a motion in limine to prohibit the introduction of evidence of any prior convictions, alleged crimes, wrongs, or acts of Anderson. The State filed a motion to include prior bad acts, character, and habit history of Anderson, arguing that the circumstances of two prior incidents could "illustrate admissible evidence of motive, intent, absence of mistake, and/or lack of mistake[.]"

> after the fact named as a co-defendant in the indictment.
>
> A co-defendant is not prohibited from testifying. On the contrary, the testimony of such a witness may alone be of sufficient weight to sustain a verdict of guilty. If you find that the alleged co-defendant's testimony is not supported by other evidence in this case, then you should consider his testimony with great care, caution, and suspicion and determine whether it is reasonable, inconsistent, or has been impeached.

¶15. We review the giving or refusal of jury instructions for an abuse of discretion. *Pitts v. State*, 291 So. 3d 751, 755 (¶17) (Miss. 2020). "If the instructions fairly announce the law of the case and create no injustice, no reversible error will be found." *Id.*

¶16. Importantly, Anderson did not object to Instruction S-4 at trial. "The failure to object to a jury instruction at trial waives the issue on appeal, and the issue is barred from review absent plain error." *Brown v. State*, 336 So. 3d 134, 144 (¶26) (Miss. Ct. App. 2020) (internal quotation marks omitted) (quoting *Willie v. State*, 204 So. 3d 1268, 1278 (¶28) (Miss. 2016)). Our supreme court has explained,

> We apply the plain-error rule only if a defendant's substantive or fundamental rights are affected. Applying the plain-error rule, the Court must determine: (1) whether the trial court deviated from a legal rule; (2) whether the error is plain, clear, or obvious; and (3) whether the error prejudiced the outcome of the trial. Only if the error resulted in a manifest miscarriage of justice will reversal occur.

Id. (quoting *Willie*, 204 So. 3d at 1279 (¶29)).

¶17. The supreme court has held that "the jury is to regard the testimony of co-conspirators with great caution and suspicion." *Williams v. State*, 32 So. 3d 486, 490 (¶12) (Miss. 2010) (internal quotation marks omitted) (quoting *Derden v. State*, 522 So. 2d 752, 754 (Miss. 1988)). "When determining whether a defendant is entitled to such a cautionary instruction, the trial judge considers whether the witness was in fact an accomplice and whether the

witness's testimony was corroborated." *Id.* (citing *Brown v. State*, 890 So. 2d 901, 910 (Miss. 2004)). "Although granting a cautionary instruction regarding the testimony of an accomplice is within the trial judge's discretion, such an instruction is required when the accomplice's testimony is the sole basis for the conviction, and the defendant's guilt is not clearly proven." *Id.* (citing *Wheeler v. State*, 560 So. 2d 171, 173 (Miss. 1990)).

¶18. Anderson, Blanden, and Smith were indicted as co-defendants, with Anderson being charged for the murder and Blanden and Smith as accessories after the fact. "A cautionary instruction about accomplice testimony is not required unless there is an accomplice." *Slaughter v. State*, 815 So. 2d 1122, 1135 (¶68) (Miss. 2002) (quoting *Smothers v. State*, 756 So. 2d 779, 787 (¶23) (Miss. Ct. App. 1999)). Blanden was not an accomplice in the murder of Davis, and therefore, the cautionary Jury Instruction S-4 was not required.

¶19. Nonetheless, Jury Instruction S-4 fairly announced the applicable law, and it was not plain error for the trial court to grant the instruction absent an objection. The granting of the instruction was not a "plain, clear, or obvious" error. Moreover, Anderson has failed to show how the giving of the instruction prejudiced the outcome of his trial. Aside from Blanden's testimony, three eyewitnesses—Herndon, Adams, and Williams—all gave testimony either identifying or connecting Anderson as the shooter at Yellow Tree. Even without the testimony of Blanden, overwhelming evidence supported the jury's verdict. We find this assignment of error without merit.

¶20. Jury Instruction S-4 was given without objection, and Anderson has not shown how its inclusion had any effect on the jury's verdict. Therefore, we cannot say that the

instruction affected the outcome of the trial or caused a manifest miscarriage of justice.

II. Ineffective Assistance of Counsel

¶21. Anderson next argues that he "received ineffective assistance of counsel when his trial counsel failed to promptly object to and/or request a limiting instruction for improper character evidence that was presented to the jury." Specifically, Anderson asserts that his counsel was deficient in her "failure to timely object and further failure to request that the record be stricken of the improper character evidence."

¶22. Prior to trial, Anderson's counsel filed a motion in limine to prohibit the introduction of evidence of prior bad acts, and the State filed its own motion to include Anderson's prior bad acts. Then, at trial, the audio recording of Anderson's police interview was played for the jury without objection. In the recording, Anderson states that he had not shot anyone since 2019. While the audio was playing, defense counsel objected on the basis of prior bad acts being used to prove his character. The State indicated that it was not planning to go into further details, and defense counsel withdrew her objection.

¶23. "Whether a defendant has received ineffective assistance of counsel is a question of law reviewed de novo under two prongs: first, the defendant must show that counsel's performance was deficient. Second, the defendant must show that the deficient performance prejudiced the defense." *McLaurin v. State*, 433 So. 3d 696, 710 (¶39) (Miss. Ct. App. 2025) (internal quotation marks omitted) (quoting *Taylor v. State*, 167 So. 3d 1143, 1146 (¶5) (Miss. 2015)). "We examine the totality of the circumstances in assessing both of these factors, bearing in mind that a strong but rebuttable presumption exists that a counsel's

conduct falls within the wide range of reasonable professional assistance." *Id.* (quotation mark omitted) (quoting *Williams v. State*, 228 So. 3d 949, 952 (¶13) (Miss. Ct. App. 2017)).

¶24. "Typically, ineffective-assistance-of-counsel claims should be raised in a motion for post-conviction collateral relief because there is usually insufficient evidence within the record to evaluate the claim." *Id.* at (¶40) (quotation mark omitted) (quoting *Blocton v. State*, 340 So. 3d 384, 393 (¶35) (Miss. Ct. App. 2022)). "We may address such claims on direct appeal only if the issues are based on facts fully apparent from the record." *Id.* (quoting *Blocton*, 340 So. 3d at 393 (¶35)). "Thus, we will not address an ineffective-assistance-of-counsel claim on direct appeal unless the record affirmatively shows ineffectiveness of constitutional dimensions, or the parties stipulate that the record is adequate and the Court determines that findings of fact by a trial judge able to consider the demeanor of witnesses, etc., are not needed." *Id.* (quotation mark omitted) (quoting *Robinson v. State*, 400 So. 3d 527, 531 (¶14) (Miss. Ct. App. 2025)). "We may also resolve ineffective-assistance-of-counsel claims on direct appeal when the record affirmatively shows that the claims are without merit." *Id.* (quoting *Robinson*, 400 So. 3d at 531 (¶14)).

¶25. In its brief, the "State agree[d] that Anderson's ineffective-assistance claim is ripe for resolution on direct appeal and should be decided[.]" After reviewing the record, we will address Anderson's assignment of error.

¶26. In general, "counsel's choice of whether or not to make certain objections falls within the ambit of trial strategy and cannot give rise to an ineffective assistance of counsel claim." *Id.* at (¶42) (quoting *Carr v. State*, 873 So. 2d 991, 1003 (¶27) (Miss. 2004)). "There is a

strong presumption that counsel's actions were consistent with a chosen trial strategy and that these actions were within the wide range of reasonable professional assistance." *Id.* (quoting *Robinson*, 400 So. 3d at 532 (¶18)).

¶27. Anderson opines that his trial counsel did not request a limiting instruction or ask that the jury disregard the statement. Anderson further urges that his statement about a 2019 shooting was "wholly irrelevant" to Davis's death and that his statement "was unfairly prejudicial under MRE 403, intended only to inflame the jury passions and mislead them into viewing Anderson as a violent person."

¶28. We agree with Anderson that the fact that he may have shot someone in 2019 is irrelevant to the case at bar. We also recognize that Mississippi Rule of Evidence 404(b) prohibits the use of prior bad acts "in order to show that on a particular occasion the person acted in accordance with the character." MRE 404(b)(1). However, Anderson's counsel filed a motion in limine prior to trial, objected after the statement was played for the jury, and prevented further questioning on the issue. Additionally, "[c]ounsel's failure to request a limiting instruction rightly can be considered trial strategy. Counsel could well have determined that any such instruction could unduly highlight the [evidence] for the jury and simply chose not to do so." *Barnes v. State*, 348 So. 3d 974, 990 (¶39) (Miss. Ct. App. 2022).

¶29. Even if we considered this deficient performance, which we do not, Anderson still must prove that any deficient performance prejudiced his defense. "Only where it is reasonably probable that, but for the attorney's errors, the outcome would have been

different, will we find that counsel's performance was deficient." *Dartez v. State*, 177 So. 3d 420, 423 (¶19) (Miss. 2015) (citing *Strickland v. Washington*, 466 U.S. 668, 687-96 (1984)). Herndon, Adams, and Williams each gave testimony identifying Anderson as the shooter or connecting him to the shooter's clothing on the night of April 22, 2023. Additionally, Blanden testified that as they were leaving Yellow Tree, Anderson admitted to him that he was the shooter. In light of the evidence presented at trial, we do not find it reasonably probable that the outcome of the trial would have been different if Anderson's statement was not admitted into evidence. We are unpersuaded by Anderson's ineffective-assistance-of-counsel claim.

CONCLUSION

¶30. The jury instructions fairly announced the law, and Anderson failed to demonstrate how the inclusion of a cautionary instruction affected the outcome of the trial or caused a manifest miscarriage of justice. Furthermore, Anderson failed to demonstrate that the outcome of his trial would have been different based on his counsel's failure to object to evidence of his prior bad acts. For these reasons, we affirm Anderson's conviction and sentence.

¶31. **AFFIRMED.**

BARNES, C.J., WESTBROOKS, McDONALD, LAWRENCE, EMFINGER, WEDDLE AND LASSITTER ST. PÉ, JJ., CONCUR. WILSON, P.J., AND McCARTY, J., CONCUR IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION.