IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2025-KA-00758-COA

JAMES BANKS, JR. **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

DATE OF JUDGMENT:	04/10/2025
TRIAL JUDGE:	HON. BARRY W. FORD
COURT FROM WHICH APPEALED:	YAZOO COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: HUNTER NOLAN AIKENS
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: ABBIE EASON KOONCE
DISTRICT ATTORNEY:	AKILLIE MALONE OLIVER
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	REVERSED AND REMANDED - 10/27/2026
MOTION FOR REHEARING FILED:	

BEFORE WILSON, P.J., WESTBROOKS AND McCARTY, JJ.

WILSON, P.J., FOR THE COURT:

¶1. Following a jury trial, both James Banks Jr. and a co-defendant were convicted of first-degree murder and attempted murder. On appeal, Banks argues that the trial court abused its discretion by admitting hearsay testimony that the deceased victim and another unidentified witness identified Banks as one of the shooters. Banks also argues that the trial court abused its discretion under Mississippi Rule of Evidence 403 by admitting evidence that Banks had been indicted for and acquitted of another homicide. We conclude that the trial court abused its discretion by overruling Banks's hearsay objections and that those errors substantially prejudiced Banks's defense. Therefore, we reverse Banks's convictions and

remand the case for a new trial.

FACTS AND PROCEDURAL HISTORY

¶2. Around 7 p.m. on February 3, 2023, deputies from the Yazoo County Sheriff's Office responded to a shooting at a home on Shady Drive in Yazoo City. Sixteen-year-old Jaylen Littleton and fifteen-year-old De'Vontrez Nelson had each suffered seven gunshot wounds. Law enforcement began canvassing the area for evidence and witnesses. Seven 9mm bullet casings and ten .223-caliber bullet casings were recovered at the scene. The casings had been fired from two different firearms, neither of which was recovered.

¶3. Deputy Deontae Willen testified that Littleton and Nelson were able to speak and provide their own names at the scene, but both victims "said they didn't know" who had shot them. Willen also testified that he "made contact" with an unidentified "male subject" at the crime scene. Over a hearsay objection, Willen testified that the unidentified man stated that the shooting was related to an argument that started on "Facebook Live" and that the shooters were "James Banks and Little Kenny." Willen apparently did not obtain the unidentified man's name.

¶4. Nelson was airlifted to the University of Mississippi Medical Center (UMMC) in Jackson for treatment and survived. Unfortunately, Littleton died from his injuries before he could be transported to UMMC.

¶5. Two days after the shooting, Mississippi Bureau of Investigations (MBI) Agent Willie Holifield Jr. went to Shady Drive to interview witnesses. According to Holifield, Kadarius Mills, who may have been related to one of the victims, stated that he was inside the house

where the shooting occurred at the time of the shooting. Over a hearsay objection, Holifield testified that Mills stated that he walked outside after hearing gunshots and that Littleton "said Little James shot him." Holifield testified that Mills said that Littleton made this statement "before he either passed away or left" in an ambulance. Holifield also testified that Mills said that Nelson said "that someone named Carlos shot him."

¶6. Holifield then traveled to UMMC to interview Nelson. During the interview, Nelson stated "multiple times" that he did not know and could not identify the shooters. Indeed, Nelson said he "couldn't tell [Holifield] what [he] didn't know" and that Holifield could not "force [him] to know something he didn't know." Holifield testified that Nelson eventually stated "that it was in his mind that Little James and Carlos is the one that did it, but only because that's what he was told really."[1]

¶7. Law enforcement requested the assistance of Yazoo County Youth Court intake officer Dustin Watford, who had a good relationship with Nelson and his family. Nelson's mother told Watford that Nelson had been unwilling to provide information to Holifield because he was scared.

¶8. On February 7, 2023, Watford interviewed Nelson at UMMC. Over a hearsay objection, Watford testified that Nelson identified the shooters as James Banks and Kendrick Myers. According to Watford, Nelson stated that Banks used a handgun and that Myers used an AR-15 rifle.

¶9. Over objection, Watford also testified at trial that Nelson was a witness to the prior

[1] At trial, Nelson testified that he "never said" that "Carlos" shot him.

murder of Nelson's cousin, thirteen-year-old D'montae "Runaway" Lee. At the time Nelson and Littleton were shot, Banks was under indictment and awaiting trial for Lee's murder. After Nelson was shot, Nelson did not testify at Banks's trial for Lee's murder, and Banks was acquitted of Lee's murder. Watford testified that although Banks was acquitted of Lee's murder, Banks had previously admitted to shooting and killing Lee.

¶10. Banks and Myers were indicted and tried for the first-degree murder of Littleton (Count I) and the attempted murder of Nelson (Count II). Nelson was the State's final witness at trial. Nelson testified that Banks and Myers shot him and Littleton. Nelson testified that he did not tell the officers at the scene or Agent Holifield who had shot him because he was scared. He explained that he was scared because he had previously witnessed Banks kill Lee. Nelson stated that he did not testify at Banks's trial for Lee's murder only because he "got shot and . . . was hurt."[2]

¶11. Two alibi witnesses—Banks's cousins Shalonda and Shania Jones—testified in Banks's case-in-chief. Both testified that they lived at the same house as Banks and that Banks was at home and never left on the evening of the shooting.

¶12. The jury found Banks and Myers guilty of both counts. The court sentenced both men to concurrent terms of life imprisonment for Count I and forty years to serve in the custody of the Department of Corrections for Count II. Banks filed a motion for judgment

[2] In her closing argument, the prosecutor asserted that Nelson "did not testify" at Banks's trial for Lee's murder because "he was scared" and "not because he couldn't." However, Nelson testified that he did not testify at Banks's trial for Lee's murder "just because [he] was shot" and for no "other reason."

notwithstanding the verdict or a new trial, which was denied, and a notice of appeal.[3]

ANALYSIS

¶13. On appeal, Banks argues that the trial court abused its discretion by admitting hearsay testimony from Deputy Willen that an unidentified witness identified Banks as one of the shooters, hearsay testimony from Agent Holifield that Mills stated that Littleton identified Banks as one of the shooters, and hearsay testimony from Holifield that Nelson said that others had identified Banks as the shooter. Banks also argues that the trial court abused its discretion by allowing testimony that Banks killed Lee and was indicted for Lee's murder. Finally, Banks argues that he is entitled to a new trial based on cumulative error. We conclude that the trial court abused its discretion by overruling Banks's hearsay objections and that those errors require a new trial.[4] Therefore, it is unnecessary for us to address Banks's arguments regarding evidence of Lee's murder.

¶14. "When reviewing a hearsay challenge, this Court applies the abuse-of-discretion standard." *Gibson v. Stat*, 435 So. 3d 387, 400 (¶44) (Miss. 2026) (quoting *Augustine v.*

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[3] Myers also appealed. The Mississippi Supreme Court retained Myers's appeal (No. 2025-KA-00791-SCT).

[4] On appeal, Banks also argues that the admission of hearsay violated his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution, but Banks concedes that he did not raise this objection at trial. This Court has held that "a general hearsay objection is insufficient to preserve an alleged Confrontation Clause violation for appellate review." *Daniels v. State*, 242 So. 3d 878, 883 (¶14) (Miss. Ct. App. 2017) (quoting *Anthony v. State*, 23 So. 3d 611, 620 (¶41) (Miss. Ct. App. 2009)). Therefore, this issue is procedurally barred. Banks nonetheless argues that we may consider the Confrontation Clause issue for "plain error." However, it is unnecessary to address this constitutional issue because the erroneous admission of hearsay requires a new trial, and Banks preserved his hearsay objections.

State, 337 So. 3d 646, 649 (¶9) (Miss. 2022)). "[T]he trial court's discretion must be exercised within the scope of the Mississippi Rules of Evidence . . . ." *McIntosh v. State*, 917 So. 2d 78, 82 (¶8) (Miss. 2005) (quoting *Price v. State*, 898 So. 2d 641, 653 (¶29) (Miss. 2005)).

¶15. "Hearsay" is an out-of-court statement that is offered "to prove the truth of the matter asserted." MRE 801(c). "Thus, to determine whether [an out-of-court] statement is hearsay, we must first determine the purpose for which it was offered and admitted." *Edwards v. State*, 379 So. 3d 906, 911 (¶23) (Miss. Ct. App. 2024). An out-of-court statement is not considered hearsay if it is offered and relevant for a purpose other than proving the truth of the matter asserted. *Fullilove v. State*, 101 So. 3d 669, 675 (¶18) (Miss. Ct. App. 2012).

¶16. As relevant here, if a law enforcement "officer's testimony is being used to explain why he did what he did in the course of his investigation, not to prove the truth of the matter asserted, then the testimony is not hearsay and is therefore admissible." *Gibson*, 435 So. 3d at 401 (¶46) (quoting *Dukes v. State*, 369 So. 3d 553, 562-63 (¶35) (Miss. 2023)). Stated differently, "[s]tatements do not constitute hearsay when admitted to explain an officer's course of investigation or motivation for the next investigatory step by that officer." *Eubanks v. State*, 291 So. 3d 309, 322-23 (¶51) (Miss. 2020) (quoting *Smith v. State*, 258 So. 3d 292, 309 (¶52) (Miss. Ct. App. 2018)). "It is elemental that a police officer may show that he has received a complaint, and what he did about the complaint *without going into the details of it*." *Gibson*, 435 So. 3d at 401 (¶46) (quoting *Swindle v. State*, 502 So. 2d 652, 658 (Miss. 1987)). But this concept "does *not* allow investigators free rein to testify about anything that

their investigation revealed." *Broome v. State*, 402 So. 3d 152, 156 (¶16) (Miss. 2025) (emphasis added). "Primarily, hearsay testimony obtained by an officer in conducting an investigation is inadmissible." *Swinney v. State*, 241 So. 3d 599, 609 (¶38) (Miss. 2018) (quoting *Bridgeforth v. State*, 498 So. 2d 796, 800 (Miss. 1986)). "Investigators cannot be permitted to relate to the jury hearsay which is incriminating in its effect as to a defendant on trial for a crime." *Gibson*, 435 So. 3d at 405 (¶56) (quoting *Bridgeforth*, 498 So. 2d at 800).

¶17. As discussed above, over Banks's hearsay objections, Deputy Willen testified that a "male subject" at the crime scene stated that the shooting stemmed from an argument on "Facebook Live" and identified "James Banks and Little Kenny" as the shooters. Willen did not know the witness's name. On appeal, the State argues that Willen's testimony was not hearsay because it was not offered to prove the truth of the matter asserted. Specifically, the State maintains that Willen's testimony "was the result of [him] explaining to the jury what he did while at the scene of the shooting and how law enforcement developed suspects." The State also notes that "Willen relayed that information to investigators."

¶18. In addition, over Banks's hearsay objections, Agent Holifield testified that Mills stated that before Littleton died or was transported from the crime scene, Littleton said that "Little James" (i.e., Banks) "shot him." Mills did not testify at trial.[5] The State argues that

[5] Because Mills did not testify at trial, the circumstances under which Littleton allegedly made the statement to Mills are unclear. It is possible that Littleton's statement to Mills could have fit the "dying declarations" exception to the hearsay rule. *See* MRE 804(b)(2). However, no exception to the hearsay rule applies to Mills's statement to Holifield. *See* MRE 805 ("Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.").

Holifield's testimony was not hearsay because it was not offered for the truth of the matter asserted. Specifically, the State contends that Mills's out-of-court statement about Littleton's out-of-court statement was offered to "explain[] to the jury what [Holifield] did as the investigation progressed." The State says that "the priority was to identify the shooter(s)," and Holifield "later tried to verify that information with Nelson at the hospital."

¶19. The Mississippi Supreme Court recently emphasized in *Gibson* that "[t]he 'long-standing principle' that officers may explain the course of the investigation 'does *not* allow investigators free rein to testify about anything that their investigation revealed.'" *Gibson*, 435 So. 3d at 405 (¶56) (emphasis added) (quoting *Broome*, 402 So. 3d at 156 (¶16)). In *Gibson*, two law enforcement officers "were allowed to testify ad nauseam and over objection about interviews they had conducted with [the defendant's two testifying co-defendants, who had each accepted plea bargains,] and with people who did not testify at trial and whose statements were not admitted into evidence." *Id.* at 401 (¶46). The two officers testified at length about their interviews with the defendant's two accomplices, both of whom identified the defendant as the shooter, and other non-testifying witnesses who saw the defendants together on the night of the shooting or who heard and recalled the specific time of the gunshots. *See id.* at 401-04 (¶¶47-53). The Supreme Court stated that the statements by the out-of-court declarants "were clearly hearsay statements that went beyond explaining the course of the[] investigation." *Id.* at 404 (¶53).

¶20. Although the hearsay testimony in this case was not as extensive as in *Gibson*, it was similarly improper and hearsay because it was not offered to "explain the course of the

investigation." *Gibson*, 435 So. 3d at 405 (¶56). On appeal, the State argues that the out-of-court statements by Mills and an unidentified witness were necessary and offered to explain the next step in the investigation—i.e., to explain why Holifield went to the hospital to talk to Nelson. This argument does not withstand scrutiny. Holifield did not go to the hospital to interview Nelson because of what Mills or the unidentified witness had said. Nelson was the *sole surviving victim of the shooting*—indeed, Nelson appears to have been the *sole surviving witness to the shooting*. Holifield *obviously* was going to interview Nelson in "the course of the investigation." No out-of-court statements from non-testifying declarants were needed or useful to explain why Holifield went to the hospital to interview Nelson. Rather, the two out-of-court statements identifying Banks as one of the shooters were logically relevant only to prove the truth of the matter asserted—that Banks was one of the shooters.

¶21. As the Supreme Court held in *Gibson*, a law enforcement officer does not have "free rein" to testify about all things told to him or about all information he receives in the "course of the investigation." *Id.* Rather, an out-of-court statement is admissible on this theory only when it is offered and logically relevant *to explain subsequent steps* in the investigation. The out-of-court statements by Mills and the unidentified witness were not offered or logically relevant for that purpose. Rather, they were relevant only because they incriminated Banks. As such, they were hearsay, and the trial court abused its discretion by overruling Banks's hearsay objections.

¶22. The State also argues, in the alternative, that any erroneously admitted hearsay was "harmless" because the evidence against Banks was "overwhelming." The State maintains

that the hearsay was merely "cumulative and weaker evidence" as compared to Nelson's in-court testimony identifying Banks as one of the shooters. We cannot agree.

¶23. "[The Mississippi Supreme] Court has narrowly defined harmless error, stating that an error is harmless only when it is apparent on the face of the record that a fair minded jury could have arrived at no verdict other than that of guilty." *Gilmore v. State*, 119 So. 3d 278, 290 (¶32) (Miss. 2013) (brackets and quotation marks omitted). In addition, under the "cumulative error doctrine," we must consider "the cumulative effect of all errors" committed during the trial. *Ross v. State*, 954 So. 2d 968, 1018 (¶138) (Miss. 2007). "As when considering whether individual errors are harmless or prejudicial, relevant factors to consider in evaluating a claim of cumulative error include whether the issue of innocence or guilt is close, the quantity and character of the error, and the gravity of the crime charged." *Id.* "That is, where there is not overwhelming evidence against a defendant, we are more inclined to view cumulative errors as prejudicial." *Id.*

¶24. Here, the State's case against Banks rested largely on Nelson's testimony, which was impeached by Nelson's multiple prior statements that he did not know who shot him and could not identify the shooters. Specifically, Nelson told officers at the crime scene that he could not identify the shooters, and two days later, Nelson told Agent Holifield that he did not know who shot him, stating that he "couldn't tell [Holifield] what [he] didn't know" and that Holifield could not "force [him] to know something he didn't know." Moreover, in his defense, Banks presented two alibi witnesses who testified that Banks was at home at the time of the shooting. Under these circumstances, the out-of-court statements by Mills and

the unidentified witness were not simply "cumulative and weaker evidence." To the contrary, this improper hearsay testimony substantially bolstered Nelson's testimony and the State's case by effectively providing *two additional witnesses—Littleton and the unidentified man—who both identified Banks as one of the shooters*. Nelson's identification testimony is sufficient to "sustain a conviction," but "the question before us is not sufficiency." *James v. State*, 124 So. 3d 693, 699-700 (¶19) (Miss. Ct. App. 2013). Rather, as stated above, errors in the trial may be deemed "harmless only when it is apparent on the face of the record that a fair minded jury could have arrived at no verdict other than that of guilty." *Gilmore*, 119 So. 3d at 290 (¶32).

¶25. To determine whether these errors were reversible or harmless, we must consider "whether the issue of innocence or guilt is close, the quantity and character of the error[s], and the gravity of the crime charged." *Ross*, 954 So. 2d at 1018 (¶138). Here, the evidence at trial was in conflict, and the proof of Banks's guilt was not "overwhelming." *Id.* Moreover, the erroneously admitted hearsay substantially bolstered the State's case with statements from two witnesses identifying Banks as one of the shooters. Neither of these non-testifying witnesses could be cross-examined. Finally, the charged crimes of first-degree murder and attempted murder could hardly be more serious. Weighing these factors, we cannot say with confidence that the improper hearsay testimony did not influence the jury's verdict or affect the outcome of the trial. Therefore, we cannot deem these errors harmless. As in *Gibson*, because inadmissible hearsay testimony was used to prove that Banks was one of the shooters and significantly prejudiced his defense, we are required to reverse Banks's

convictions and remand the case for a new trial. *Gibson*, 435 So. 3d at 407 (¶61).[6]

CONCLUSION

¶26. A new trial is required because the trial court abused its discretion by admitting hearsay testimony that two non-testifying witnesses directly incriminated Banks. Accordingly, we reverse the judgment and Banks's convictions and remand the case for a new trial. Since we remand the case for a new trial, we need not address Banks's remaining issue on appeal.

¶27. **REVERSED AND REMANDED.**

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

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[6] On appeal, Banks also challenges Holifield's testimony that Nelson stated "that it was in his mind that Little James and Carlos" were the shooters, "but only because that's what he [(i.e., Nelson)] was told really." Although this testimony was also hearsay, it is not clear that Banks preserved his objection to it. Banks objected when Holifield began to testify about what Nelson said others "told" him, and the trial court sustained the objection. However, the prosecutor then cautioned Holifield not to "go into" what "someone else told" Nelson, and Holifield rephrased his answer. Banks did not object to Holifield's rephrased answer or ask the trial court to strike that answer. *See Simmons v. State*, 411 So. 3d 185, 192-93 (¶20) & n.4 (Miss. Ct. App. 2024) (holding that defendant waived his objection by failing to object to the prosecutor's rephrased question or the witness's answer). In any event, unlike Mills and the unidentified male witness, Nelson was subject to cross-examination at trial, and Nelson's testimony at trial actually conflicted with his alleged hearsay statement to Holifield. At trial, Nelson testified that he "never said" that "Carlos shot [him]." Because we conclude that a new trial is required based on other improperly admitted hearsay testimony from Holifield and Willen, we need not address this specific issue further.