

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2025-KA-00392-COA

**JONTIESE LEGREGORY FORTUNE A/K/A
JONTIESE FORTUNE**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	06/19/2024
TRIAL JUDGE:	HON. MARK SHELDON DUNCAN
COURT FROM WHICH APPEALED:	LEAKE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: AMBER LAUREN STEWART
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: INDIA MARIAH SPRINKLE
DISTRICT ATTORNEY:	STEVEN SIMEON KILGORE
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 10/20/2026
MOTION FOR REHEARING FILED:	

BEFORE CARLTON, P.J., WESTBROOKS AND EMFINGER, JJ.

WESTBROOKS, J., FOR THE COURT:

¶1. Jontiese Fortune was indicted and tried for first-degree murder in the shooting death of Sylvester Burkes. The jury convicted Fortune of manslaughter, and Fortune was sentenced to serve twenty years in custody. On direct appeal, Fortune raises the sole argument that the jury's verdict was against the overwhelming weight of the evidence. We affirm the conviction and sentence.

FACTS

¶2. On December 3, 2021, Leake County Constable Steve Goodman responded to reports

of a shooting in front of a residence on Atkins Road in Lena. When Goodman arrived at the property, Sylvester Burkes was lying face down, deceased, behind a tan Yukon near the house's carport. Fortune was present and told Goodman that Burkes had been shot in a drive-by shooting. According to Fortune, the shooter was in a small black car, possibly a Honda, with dark, tinted windows. Fortune said that the shooter "sprayed" bullets. Fortune said that after the car drove away, he dragged Burkes to behind the tan Yukon to have cover in case the car came back. Goodman looked for spent shell casings in the road but did not find any. A spot in the yard had been "ruffled up," and blood from the yard led to Burkes' body. Investigators eventually discovered two shell casings in the yard close to the disturbed patch of yard and blood.

¶3. Two witnesses were present when the shooting occurred. Both testified at trial. Peru Jett was a friend of both Fortune and Burkes and was visiting with Fortune at Fortune's grandfather's house on Atkins Road on the afternoon of the shooting. Jett testified that it was a normal day until Fortune got a phone call from a woman. After the phone call, "everything went downhill," and Fortune "got very upset." When Burkes arrived at the Atkins Street residence ten or fifteen minutes later, Fortune had a firearm in his hand. According to Jett, Burkes did not have a firearm, and he did not seem confrontational until he saw that Fortune was holding a gun.

¶4. Jett further testified that when Burkes got out of his vehicle, Burkes and Fortune began to curse at each other and push each other back and forth for several minutes. They were pushing each other, not punching each other. Jett said that Burkes "pushed Jontiese one

more time and turned around and walked off, and [Fortune] pulled a gun and shot him in the back.” After this initial shot, Burkes turned around and rushed at Fortune. The two wrestled, and Jett heard two additional shots go off. Burkes let Fortune go, walked around to the side of the tan truck, and fell to the ground. Jett ran to a neighbor’s house and called 911.

¶5. Witness Fred Mitchell was a neighbor who was at the residence to visit Fortune’s grandfather. Mitchell was standing in the yard with Fortune and Jett when Fortune received a phone call from a woman. The woman told Fortune that somebody in an Impala had pulled into her yard. Fortune said to the woman on the phone, “[D]on’t let nobody in my yard. Don’t let people in my yard when I’m not there,” and then hung up. Burkes arrived ten to fifteen minutes later. Mitchell said that Burkes drove up at a normal, slow speed and described Burkes’ initial demeanor as “happy” and that in general “he’s not that hard to get along with.” But when Burkes got out of his vehicle, Fortune and Burkes began to “tussle.” Mitchell said, “As [Burkes] walked away, the next thing you know, I heard three gunshots.” Mitchell did not see the gun. At some point after Burkes had been shot, Mitchell saw him get up and wrestle Fortune one more time. Mitchell said that Fortune told him to say the shooting was a drive-by.

¶6. Fortune was taken into custody on the day of the shooting on a charge of public intoxication. Law enforcement administered a gunshot residue test later that day at the jail.¹ At trial, the State’s forensic expert testified that Fortune’s left hand did not test positive for

¹ Two of the responding officers testified that their first contact with Fortune at the scene was inside Fortune’s grandfather’s house, that they observed him coming out of the bathroom immediately prior to their initial conversation, and that they heard the sink taps running while he was inside.

any gunshot residue. The back of Fortune's right hand and his right palm had trace "indicative particles" of gunshot residue.² The medical examiner testified that Burkes died from a single gunshot wound to his back. The entry wound did not have soot or stippling that would indicate a close-range shot.

¶7. The day after the shooting, Fortune signed a *Miranda*³ waiver form and spoke with two investigators. After an approximately twenty-minute conversation, Fortune then prepared a written statement. According to the trial testimony of both investigators, Fortune explained orally that his girlfriend had called him and told him that Burkes was at the girlfriend's house. This made Fortune angry. Fortune's girlfriend said that Burkes was coming to where Fortune was. When Burkes arrived, he and Fortune had a physical altercation. Fortune admitted to shooting Burkes. He stated that he panicked and did not remember what he did with the gun. However, in his subsequent handwritten statement, Fortune wrote that Jett had been the one who shot Burkes.⁴

¶8. Fortune was indicted and tried for first-degree murder. The jury returned a verdict finding him guilty of manslaughter. Fortune was sentenced to serve twenty years in the custody of the Mississippi Department of Corrections. He now appeals after the circuit court denied his motion for a new trial.

² "Indicative particles" are consistent with the particles present in gunshot residue but lack sufficient characteristics to be identified as gunshot residue to the exclusion of all other environmental sources, such as brake dust particles or certain fireworks particles.

³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁴ Fortune was not interviewed on the day of the shooting due to his intoxication. His interview with the two officers was not recorded.

DISCUSSION

¶9. The sole argument Fortune raises on appeal is that the jury’s verdict was against the overwhelming weight of the evidence. Challenges to the weight of the evidence are reviewed under an abuse-of-discretion standard. *Simmons v. State*, 387 So. 3d 1036, 1043 (¶24) (Miss. Ct. App. 2024) (citing *Bowman v. State*, 360 So. 3d 977, 996 (¶69) (Miss. Ct. App. 2022)). On appellate review, we “view the evidence in the light most favorable to the verdict and disturb the verdict only 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 *Eaton v. State*, 359 So. 3d 1081, 1086-87 (¶22) (Miss. 2023)).

¶10. Fortune argues that the evidence contained contradictions concerning who was the initial aggressor sufficient to reverse his conviction. He directs our attention to *Clemons v. State*, 473 So. 2d 943 (Miss. 1985). In *Clemons*, the testimony of the parties created conflicting evidence as to who had been the initial aggressor in a series of three confrontations that ended with the defendant stabbing the victim once in the chest, resulting in the victim’s death. *Id.* at 944. The jury convicted Clemons of murder. *Id.* However, the Mississippi Supreme Court determined “[i]n this case there is such contradictory testimony that it is virtually impossible to reconstruct what actually happened.” *Id.* Holding that the conflicting evidence did not support a murder conviction, but that the evidence did support the lesser-included conviction of manslaughter beyond a reasonable doubt, the Court remanded the case for Clemons to be resentenced for manslaughter. *Id.* at 945; *see also Wells v. State*, 305 So. 2d 333, 337-38 (Miss. 1974); *Biles v. State*, 338 So. 2d 1004, 1004-05

(Miss. 1976).

¶11. Here, both eyewitnesses testified that Fortune became agitated following a phone call. They also both testified that Burkes did not appear agitated or aggressive upon his initial arrival at Atkins Road. Jett and Mitchell both testified that Fortune and Burkes had a physical altercation that consisted of pushing and tussling, and both heard three gunshots. Jett testified that Fortune had a gun in his hand when Burkes arrived, that Burkes did not have a gun, and that Fortune shot Burkes in the back while Burkes was trying to walk away from the fight and back to his car. This statement was consistent with the medical examiner's testimony that Burkes died from a single gunshot wound to the back. Mitchell testified that Burkes was "walking away" before the gunshots started. While Mitchell only heard the gunshots and did not see the gun, he did not give any statements that contradicted Jett's testimony. Mitchell testified that Fortune asked him to tell the authorities that it had been a drive-by shooting. Fortune gave three inconsistent statements to law enforcement, first stating that it had been a drive-by shooting, then confessing to committing the shooting, and then providing a written statement that Jett had committed the shooting.

¶12. The two eyewitnesses' accounts largely corroborate each other and do not contradict each other in any significant material way. Importantly, to the extent that conflicting evidence, if any, does weigh against a conviction of murder, the jury here made that determination in Fortune's favor by returning a verdict of manslaughter. This reflects the parallel outcome to *Clemons*, in which the appellate court reversed the murder conviction and remanded for resentencing for manslaughter in light of the heavily conflicting evidence as

to who had been the initial aggressor. *See Clemons*, 473 So. 2d at 944-45; *see also Fraser v. State*, 435 So. 3d 464, 480-81 (¶40) (Miss. Ct. App. 2026); *McCarty v. State*, 247 So. 3d 260, 269 (¶28) (Miss. Ct. App. 2017).

CONCLUSION

¶13. The jury's verdict finding Fortune guilty of manslaughter was not against the overwhelming weight of the evidence. The record does not support his argument that the eyewitness testimony conflicted to the extent that it was impossible for the jury to make a credibility determination supporting the verdict. We therefore affirm Fortune's conviction and sentence.

¶14. **AFFIRMED.**

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