IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2017-KA-00741-COA

WALTER BLANDEN **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

DATE OF JUDGMENT:	05/04/2017
TRIAL JUDGE:	HON. JANNIE M. LEWIS
COURT FROM WHICH APPEALED:	HOLMES COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: GEORGE T. HOLMES
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: KAYLYN HAVRILLA MCCLINTON
DISTRICT ATTORNEY:	AKILLIE MALONE OLIVER
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED: 09/18/2018
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE GRIFFIS, P.J., FAIR AND TINDELL, JJ.

GRIFFIS, P.J., FOR THE COURT:

¶1. Walter Blanden was convicted of the first-degree murder of his wife, Remell Blanden. He was sentenced to life imprisonment in the custody of the Mississippi Department of Corrections and ordered to pay assessments of $500 to the Crime Victims Compensation Fund and $500 in attorney's fees. Blanden now appeals and argues: (1) the verdict is against the overwhelming weight of the evidence, (2) the circuit court erroneously gave a pre-arming jury instruction, and (3) the circuit court erred in admitting hearsay testimony of the investigating officer. We find no error and affirm.

FACTS AND PROCEDURAL HISTORY

¶2. Blanden and Remell were married for fourteen years and had two children, Walter and Wendy.[1] Remell also had a son, Jason, from a previous relationship.

¶3. On April 23, 2016, Blanden and Remell were arguing over Jason. According to Walter, Remell was "telling [Blanden] to get out [b]ut [Blanden] kept on trying to argue with her." Remell began to remove some of Blanden's belongings from the house and put them outside under the carport.[2] At that time, Blanden "started looking for a gun." Blanden first checked inside the house under his pillow in the master bedroom, but the gun was not there. As a result, Blanden went outside and retrieved a gun from his truck. Blanden then fired the gun once outside.

¶4. After he fired the gun outside, Blanden went back inside the house and came down the hallway while Remell, Walter, Wendy, and Jason ran down the hallway to the back of the house. Remell ran into the master bedroom and locked the door. Walter, Wendy, and Jason ran into their bedroom, which was located across the hall from Remell's.

¶5. According to both Walter and Wendy, Blanden began to shoot through the door of the master bedroom where Remell was located. Jason called 9-1-1. Blanden then came into the bedroom where Walter, Wendy, and Jason were located and pointed the gun at Jason's face. Jason and Blanden wrestled for the gun, and Jason was able to take the gun from Blanden. Jason, Walter, and Wendy ran out of the room. As Walter ran out of the room, he saw Remell "[l]aying dead on the floor." Both Walter and Wendy testified that Blanden killed

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[1] We substitute fictitious names for the minor children in order to protect their identities.

[2] The testimony shows Remell removed some pictures and Blanden's boots.

their mother.

¶6. When law enforcement arrived on the scene, they found Remell, deceased, lying on the floor of the master bedroom. Blanden was also found lying on the master-bedroom floor, with a cut on his wrist and a razor blade nearby. Blanden was transported to the University of Mississippi Medical Center (UMMC) in Jackson.

¶7. Following his conviction and sentence, Blanden moved for a judgment notwithstanding the verdict or, alternatively, a new trial. The circuit court denied the motion. Blanden timely appealed.

ANALYSIS

I. Weight of the Evidence

¶8. Blanden first argues the overwhelming weight of the evidence does not support his conviction of first-degree murder. "In determining whether a jury verdict is against the overwhelming weight of the evidence, this Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial." *Boone v. State*, 973 So. 2d 237, 243 (¶20) (Miss. 2008). "Only when the verdict is contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." *Id*.

¶9. Blanden claims "the only conviction which could arguably . . . be supported by the evidence is one for [heat-of-passion] manslaughter." We disagree.

¶10. Manslaughter is defined as "[t]he killing of a human being, without malice, in the heat

of passion, but in a cruel or unusual manner, or by the use of a dangerous weapon, without authority of law, and not in necessary self-defense . . . ." Miss. Code Ann. § 97-3-35 (Rev. 2014). "Heat of passion" is described as:

> a state of violent and uncontrollable rage engendered by a blow or certain other provocation given, which will reduce a homicide from the grade of murder to that of manslaughter. Passion or anger suddenly aroused at the time by some immediate and reasonable provocation, by words or acts of one at the time. The term includes an emotional state of mind characterized by anger, rage, hatred, furious resentment or terror.

Westbrook v. State, 29 So. 3d 828, 835 (¶26) (Miss. Ct. App. 2009).

¶11. In *Westbrook*, Danny Allen Westbrook was convicted of the murder of George Wayne Sharpe. *Id*. at 830 (¶1). Westbrook argued the circuit court should have allowed a jury instruction for heat-of-passion manslaughter. *Id*. at 835 (¶26).

¶12. Westbrook, a bouncer at a local bar, had escorted Sharpe out of the establishment after an argument escalated between Sharpe and a female customer. *Id*. at 831 (¶2). Witnesses testified that Westbrook and Sharpe exchanged words as Sharpe was being escorted out, but no physical confrontation occurred. *Id.*

¶13. About twenty minutes later, Westbrook was informed that Sharpe was still outside in the parking lot. *Id*. at (¶3). Westbrook then retrieved a baseball bat that was located behind the bar inside of the establishment and proceeded outside, where he attacked Sharpe with the bat. *Id*. at (¶¶3-4).

¶14. On appeal, we held the circuit court did not err in refusing the proffered jury instruction for heat-of-passion manslaughter. *Id.* at 836 (¶29). We explained that "when a defendant arms himself prior to an encounter with the victim and in preparation for an

encounter with the victim, a heat-of-passion defense will not be supported." *Id*. We found Westbrook "clearly intended to attack Sharpe with the baseball bat when he learned that Sharpe was still outside" and "had sufficient time to contemplate hitting Sharpe, which evidences a deliberate design murder, not heat-of-passion manslaughter." *Id*.

¶15. Here, as in *Westbrook*, an argument occurred prior to the physical confrontation. The testimony shows that on the day of the shooting, Blanden and Remell were arguing, and at some point during the argument, Remell began to remove some of Blanden's belongings from the house. At that time, Blanden started to look for his gun. He first checked his usual hiding spot inside the house[3] but was unable to locate the gun. As a result, he went outside and retrieved a gun from his truck. He then fired one shot outside before going back inside the house. Once inside, he pursued Remell, following her to the master bedroom, wherein he proceeded to shoot multiple times.

¶16. As in *Westbrook*, Blanden armed himself prior to the encounter with Remell and in preparation for the encounter. Blanden clearly intended to shoot Remell when he saw that she had removed some of his belongings from the house. Like Westbrook, Blanden, "had sufficient time to contemplate [shooting] [Remell], which evidences deliberate design murder, not heat-of-passion manslaughter."

¶17. "Manslaughter must be in the heat of passion, i.e. the result of immediate and reasonable provocation, by words or acts of one at the time." *McCune v. State*, 989 So. 2d 310, 319 (¶17) (Miss. 2008) (citation and internal quotation marks omitted). "There must

[3] Wendy testified that Blanden "always put his gun up under his pillow . . . [i]n his bedroom."

be such circumstances as would indicate that a normal mind would be roused to the extent that reason is overthrown and passion usurps the mind destroying judgment." *Id*. at (¶15). Here, no such circumstances exist. Blanden's actions were not the result of immediate and reasonable provocation. Indeed, simply throwing someone's belongings out during an argument does not amount to reasonable "provocation of a degree to evoke an uncontrolled response of anger, rage, hatred, furious resentment or terror." *Id*. at (¶17) (internal quotation mark omitted). Thus, Blanden's heat-of-passion-manslaughter argument fails.

¶18. Having found no evidentiary support for heat-of-passion manslaughter, we must determine whether the evidence supports Blanden's conviction of first-degree murder. First-degree murder is defined as "[t]he killing of a human being without the authority of law by any means or in any manner . . . [w]hen done with deliberate design to effect the death of the person killed, or of any human being . . . ." Miss. Code Ann. § 97-3-19(1)(a) (Rev. 2014). "Although our law has never prescribed any particular ex ante time requirement, the essence of the required intent is that the accused must have had some appreciable time for reflection and consideration before pulling the trigger." *Blanks v. State*, 542 So. 2d 222, 226-27 (Miss. 1989).

¶19. Here, the testimony shows Blanden had "some appreciable time for reflection and consideration before pulling the trigger." Indeed, Blanden had time to search both inside and outside for a gun and even fired one shot outside before pursuing Remell, who was locked inside the master bedroom.

¶20. The jury was presented with evidence from both the State and Blanden. Having

considered the evidence presented, we do not find the jury verdict is contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. Accordingly, the circuit court did not abuse its discretion in denying Blanden's motion for a new trial.

II. Jury Instruction S-7

¶21. Blanden next argues the circuit court erred in giving Jury Instruction S-7. "Jury instructions are within the discretion of the [circuit] court and the settled standard of review is abuse of discretion." *Watkins v. State*, 101 So. 3d 628, 633 (¶16) (Miss. 2012). "The jury instructions are to be read as a whole, with no one instruction to be read alone or taken out of context." *Id*. "When read together, if the jury instructions state the law of the case and create no injustice, then no reversible error will be found." *Id*.

¶22. Jury Instruction S-7 instructed the jury as follows:

> When a defendant arms himself prior to an encounter with the victim and in preparation for an encounter with the victim, a heat-of-passion defense will not be supported.

Blanden claims Jury Instruction S-7 is a "pre-arming instruction" that "peremptorily nullified the manslaughter option for the jury in patent violation of Blanden's fundamental right to have the jury instructed on his theory of defense." However, we find Blanden's argument is misplaced.

¶23. "[A] pre-arming instruction is a peremptory instruction for the prosecution, impairing or precluding the defendant's right to self-defense." *Boston v. State*, 234 So. 3d 1231, 1234 (¶9) (Miss. 2017). The use of pre-arming instructions is strongly condemned as such an

instruction "precludes a defendant from asserting a claim of self-defense" and "cut[s] off the jury's consideration of self-defense." *Id*. at (¶10).

¶24. Here, the record shows Blanden did not assert a claim of self-defense. Instead, Blanden asserted he killed Remell in the heat of passion and presented this theory to the jury. Importantly, unlike the claim of self-defense, heat-of-passion manslaughter is not a defense to murder, but a lesser-included offense of murder. Miss. Code Ann. § 97-3-35; *see also Capital City Ins. Co. v. Hurst*, 632 F.3d 898, 903 (5th Cir. 2011) ("Under Mississippi law, heat-of-passion manslaughter is a lesser-included offense of murder because it lacks malice, not willfulness.").

¶25. The jury was given multiple instructions regarding heat-of-passion manslaughter, including Jury Instruction S-7.[4] The language of Jury Instruction S-7 was cited and approved by this Court in *Westbrook*. *Westbrook*, 29 So. 3d at 836 (¶29). Thus, despite Blanden's assertion, the jury was not precluded from considering heat-of-passion manslaughter. Accordingly, the circuit court did not abuse its discretion in giving Jury Instruction S-7.

¶26. However, even assuming Blanden's assertion is correct and Jury Instruction S-7 precluded the jury's consideration of manslaughter, such preclusion was nonetheless proper because there is no evidentiary support for such a conviction. In other words, even if the circuit court erred in giving Jury Instruction S-7, such error was harmless, as the evidence does not support a conviction of manslaughter.

III. Hearsay Testimony of Investigating Officer

[4] The record shows the jury was further instructed on first-degree murder and second-degree murder.

¶27. Blanden last argues the circuit court erred in admitting the hearsay testimony of Investigator Sam Chambers regarding "what Walter and Wendy told him during his investigation." The admission or exclusion of evidence is reviewed under an abuse-of-discretion standard. *Dunn v. State*, 111 So. 3d 114, 115 (¶6) (Miss. Ct. App. 2013).

¶28. "Hearsay" is "a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." M.R.E. 801(c). On direct examination, Investigator Chambers testified that as a part of his investigation of the shooting, he interviewed Walter, Wendy, and Jason. The State then asked what information he learned as a result of his investigation. At that point, defense counsel objected on the grounds of hearsay. A bench conference was held during which the circuit court explained that Investigator Chambers could state what he learned from his investigation and what he did as a result of it.

¶29. The record shows that following the bench conference, Blanden objected to Investigator Chambers's testimony on the grounds of hearsay four times, two of which were sustained by the circuit court. The two statements[5] that were admitted into evidence over Blanden's objection are as follows:

[State]	Okay. After he shot her in the bedroom, then what happened?
[Chambers]	Well, after he shot her in the bedroom, that's when the oldest boy [Jason], he said he walked in the room and

[5] Although Blanden references other statements that he claims were inadmissible hearsay, the record shows he did not object to those statements during trial. "[T]he failure to object to hearsay operates as a waiver of the issue on appeal." *Rubenstein v. State*, 941 So. 2d 735, 764 (¶113) (Miss. 2006).

pulled the gun on him. He took the gun from him.

[Defense counsel] Your Honor, objection this is direct hearsay.

[Court] Overruled.

[Chambers] Took the gun from him. He went outside with the gun. Well while he was in there, the shooting was going on, he was calling 911 looking for some help. Calling for help.

. . . .

[State] Did you contact UMC in Jackson to find out about his condition?

[Chambers] Yes, I did.

[State] And as part of your investigation, what did you learn?

[Defense counsel] Your, Honor, I object to hearsay . . . .

[Court] Overruled.

[Chambers] When I called to check on him, at University Hospital, they advised me, I mean it really surprised me because what I had heard, they thought he was pretty bad. But when I called Jackson and talked to – I don't know if [it] was a doctor or a nurse or whoever they passed me to, where Mr. Blanden was. They told me the only thing he had was a laceration to the right wrist. And they were planning on dismissing him later on that day.

¶30. Blanden claims the "true purpose" of Investigator Chambers's testimony "was for no other reason tha[n] to identify Blanden as the shooter." He argues Investigator Chambers's testimony was prejudicial because it bolstered the children's testimony. We disagree.

¶31. The statements at issue do not relate to the identification of Blanden as the shooter. Instead, the statements relate to Blanden's actions toward Jason after Remell was shot, and

what Investigator Chambers learned after he contacted the UMMC.

¶32. Additionally, we do not find Investigator Chambers's testimony regarding Remell's death was "improper bolstering." The record shows Investigator Chambers testified prior to Walter and Wendy. Although Walter and Wendy both testified to the events surrounding their mother's death, they were two of the last witnesses to testify, and there was no objection to their testimonies.

¶33. Investigator Chambers's testimony was not offered to bolster the children's testimonies regarding the shooting death of their mother. Rather, Investigator Chambers's testimony was offered to show what he learned from his investigation and what he did as a result of it. Indeed, based on his investigation and his interview of the children, Investigator Chambers arrested Blanden.

¶34. In support of his argument of inadmissible hearsay, Blanden relies on *Murphy v. State*, 453 So. 2d 1290 (Miss. 1984). In *Murphy*, Murphy was convicted of the capital murder of Coralie Staples. *Id*. at 1291. At trial, the State called Isaac Liner to testify about a meeting Liner had with Murphy and Clifford Graham after the killing. *Id*. at 1293. Over Murphy's objection, Liner was allowed to testify to what Graham told him about Murphy and what Graham told him about how the crime occurred. *Id*. Graham never testified. *Id*.

¶35. On appeal, the court found that "[a]llowing Liner's hearsay over defense objection violated Murphy's right to a fair trial and [wa]s reversible error." *Id*. at 1294. The court explained that the "particular hearsay purported to reveal eyewitness testimony of the crime, which testimony in itself would have been enough to convict the accused." *Id*.

¶36. We find Blanden's reliance on *Murphy* is misplaced. In *Murphy*, Liner was allowed to testify to what Graham said about Murphy and the alleged offense, without Graham taking the witness stand. *Id*. at 1293. Here, although Investigator Chambers testified to what he learned about the shooting from his interview with Remell's children, Remell's children, Walter and Wendy, took the witness stand and testified at trial regarding the shooting and death of their mother. Both Walter and Wendy testified that they saw Blanden shoot into the master bedroom where Remell was located and, moreover, that Blanden killed their mother.

¶37. Overall, we do not find Investigator Chambers's statements at issue prejudiced Blanden's defense or violated his right to a fair trial. Given the weight of the evidence against Blanden, any error in the admission of the statements was harmless. *See White v. State*, 48 So. 3d 454, 458 (¶17) (Miss. 2010) (an error is harmless if "the same result would have been reached had [it] not existed.").

CONCLUSION

¶38. We find the issues raised by Blanden lack merit. Consequently, we affirm the judgment of the circuit court.

¶39. **AFFIRMED.**

LEE, C.J., IRVING, P.J., BARNES, CARLTON, FAIR, WILSON, GREENLEE AND TINDELL, JJ., CONCUR. WESTBROOKS, J., NOT PARTICIPATING.