IN THE SUPREME COURT OF MISSISSIPPI

NO. 2017-KA-01081-SCT

WILLIE BERNARD a/k/a WILLIE BERNARD, JR.
a/k/a WILLIE HUEY BERNARD, JR.

v.

STATE OF MISSISSIPPI

DATE OF JUDGMENT:	01/27/2016
TRIAL JUDGE:	HON. WINSTON L. KIDD
TRIAL COURT ATTORNEYS:	ALICE THERESA STAMPS MICHAEL ERIC BROWN GRETA D. MACK HARRIS IVON JOHNSON
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JANE E. TUCKER
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: ALICIA MARIE AINSWORTH
DISTRICT ATTORNEY:	ROBERT SHULER SMITH
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 12/05/2019
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE KING, P.J., MAXWELL AND GRIFFIS, JJ.

MAXWELL, JUSTICE, FOR THE COURT:

¶1. Willie Bernard appeals from his second murder trial for shooting Larry Johnson to death after a traffic dispute in an apartment-complex parking lot. The first trial resulted in a jury finding Bernard guilty of murder and an accompanying firearm enhancement. But the trial judge found he had wrongly denied Bernard's request to instruct the jury on the Castle Doctrine. So the judge granted Bernard's posttrial motion for a new trial and set aside that

jury's guilty verdict.

¶2. The State tried Bernard again. And this time, the trial judge granted Bernard a Castle Doctrine instruction. He also instructed the jury on self-defense. Once again, a jury found Bernard guilty of murder and the related firearm enhancement. He was sentenced to life in prison. Bernard now appeals this murder conviction.

¶3. After review, we find sufficient evidence supports the jury's guilty verdict and the enhancement for using a firearm during a felony. The convictions are also supported by the weight of the evidence. Bernard is barred from challenging the judge for granting the specific Castle Doctrine instruction he requested. And his remaining appellate challenges—over the record, other jury instructions, the effectiveness of his counsel, jury selection, and improper witness bolstering—are either wholly speculative, not preserved, outside the record, or lack merit.

¶4. We therefore affirm Bernard's convictions for murder and for using a firearm during a felony. His challenge to the effectiveness of his trial counsel may be brought in a post-conviction relief petition, if he so desires.

Background Facts and Procedural History

¶5. On March 16, 2011, Brittany Wells was driving her tan Saturn sedan, in which Bernard was a passenger. As Wells pulled into the entrance to their apartment complex, a white Mustang, heading the wrong way, drove toward them from the complex parking lot and tried to exit the lot. Wells yelled, "asshole, you're going the wrong way." And she continued driving toward the parking lot.

¶6. The Mustang stopped, reversed, and backed up toward Wells's car. The driver, Larry Johnson, got out of the Mustang. He waved his arms around and yelled, "bitch, I go wherever I want to go, whenever I want to go, how I want to go." An argument between Johnson and Wells followed. During the exchange, Bernard got out of Wells's car, pulled out a .357 magnum revolver, and shot Johnson twice, killing him. Wells and Bernard got back in Wells's car and drove to their apartment.

¶7. Soon after, Bernard tried to leave the complex in his truck. A police officer arrived and saw people pointing at Bernard's truck. Bernard was stopped and taken into custody. Bernard admitted to police that he shot Johnson. But he claimed he did so in defense of himself and his children, who he claimed were in the car.

¶8. A grand jury indicted Bernard for Johnson's murder and for using a firearm in the commission of a felony. This appeal is from his second trial. Bernard was initially tried and found guilty by a jury in May 2013. But the judge granted him a new trial. The judge found that a requested Castle Doctrine instruction was incorrectly refused. In Bernard's second trial, which occurred in January 2016, three eyewitnesses testified about the shooting. And three Jackson Police Department officers described Bernard's arrest, the crime scene, and the murder investigation. A State Medical Examiner testified that the autopsy he performed showed Johnson was shot twice and died from the gunshots.

¶9. According to eyewitness testimony, when Johnson got out of his Mustang, he gesticulated with his arms, which were visible. He argued with Wells but did not appear aggressive. During this exchange, Bernard grabbed a .357 magnum revolver from under the

passenger seat, stepped out of Wells's car, and shot Johnson twice. Each eyewitness the State called claimed there was no physical altercation. And no weapon was recovered from Johnson. Two of the eyewitnesses testified that Bernard and Johnson were not even standing close to one another when Bernard shot him. All three saw Bernard shoot Johnson. One of the eyewitnesses tried to resuscitate Johnson in the parking lot but was unsuccessful.

¶10. Wells and Bernard both testified in Bernard's defense. Both claimed Johnson acted aggressively and approached their car, toward the back door on the driver's side, with a hand under his shirt like he had a weapon. Bernard testified that to protect himself, Wells, and their kids—who he and Wells claimed were in the backseat—he shot Johnson once. Bernard testified that Johnson did not stop after the first shot, so he shot him again. None of the other eyewitnesses saw Johnson reach under his shirt. And none of the other eyewitnesses saw children in Wells's vehicle.

¶11. Each side rested, and the judge denied Bernard's motion for a directed verdict. Both sides lodged objections to several of the other's jury instructions. The trial transcript shows the chief complaints during the jury-instruction conference dealt with the State's murder instruction and Bernard's proposed Castle Doctrine and self-defense instructions. The judge granted Bernard's request to remove language from the murder instruction that addressed depraved-heart murder. The judge also granted the State's request to remove the title "Mr." from Bernard's name in the Castle Doctrine instruction. And at Bernard's request, the judge modified a justifiable-homicide instruction—that Bernard's trial lawyer called a Castle Doctrine instruction—to reflect his defense of himself and others.

¶12. At the end of the conference, the trial judge asked if either side had any questions about the proposed revisions. Both the State and the defense said no. The noted revisions were made by court staff. And the judge read the instructions to the jury, which reflected the trial judge's rulings from the jury-instruction conference. At trial, neither side objected or made any claim that the jury instructions, as read to the jury, were incorrect.

¶13. After deliberating, the jury found Bernard guilty of murder and guilty of using a firearm during the killing. The judge sentenced Bernard to life in prison. Bernard filed a posttrial motion and an amended motion for a new trial. Both were denied. Bernard now appeals to this Court.

Discussion

¶14. On appeal, Bernard argues: (1) the evidence was insufficient to support his murder conviction and gun enhancement; (2) the jury's verdict was against the overwhelming weight of the evidence; (3) the record is deficient on the jury instructions and there are numerous errors with the instructions; (4) the State improperly bolstered witness testimony; and (5) the trial court erred by granting the State's challenge for cause against a juror.

I. Sufficiency of the Evidence

¶15. Bernard argues the State's evidence was insufficient to prove his murder conviction and firearm enhancement. When reviewing the sufficiency of the evidence, this Court views the evidence in the light most favorable to the State and determines if any rational juror could have found the elements of the charged crimes beyond a reasonable doubt. ***Martin v. State***, 214 So. 3d 217, 222 (Miss. 2017).

¶16. Bernard was charged with deliberate-design murder. The State had to prove Bernard killed Johnson without authority of law and did so with the deliberate design to effect Johnson's death. ***Scott v. State***, 220 So. 3d 957, 962 (Miss. 2017); Miss. Code Ann. § 97-3-19(1)(a) (Rev. 2006).[1] The firearm enhancement required the State to prove Bernard used or displayed a firearm during the commission of a felony. Miss. Code Ann. § 97-37-37(1) (Supp. 2008).[2]

¶17. Viewing the evidence in the State's favor, there was testimony that Johnson was arguing with, but not physically threatening, Wells and Bernard. And there was testimony that Bernard got out of Wells's car and shot Johnson twice with a .357 magnum, killing him. According to the medical examiner, Johnson died from the gunshots. While the parking-lot episode escalated rapidly from mere road rage to a killing, this Court has held "'[d]eliberate design to kill a person may be formed very quickly, and perhaps only moments before the act of consummating the intent.'" ***Brown v. State***, 965 So. 2d 1023, 1030 (Miss. 2007) (quoting ***Gossett v. State***, 660 So. 2d 1285, 1293 (Miss. 1995)). Because a rational fact-finder could find Bernard killed Johnson with deliberate design, there is sufficient evidence of murder. This same evidence is also sufficient to prove Bernard used or displayed a firearm during the commission of a felony.

II. Weight of the Evidence

¶18. Bernard also suggests the jury's guilty verdict was against the weight of the evidence,

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[1] Miss. Code Ann. § 97-3-19(1)(a) (Supp. 2019) is the current statute.

[2] Miss. Code Ann. § 97-37-37(1) (Rev. 2014) is the current statute.

entitling him to a new trial. He specifically calls into question the eyewitnesses' reliability and insists the only conclusion is that he acted in self-defense.[3]

¶19. This Court does not reweigh evidence or determine a witness's credibility. ***Little v. State***, 233 So. 3d 288, 292 (Miss. 2017). When evidence or testimony conflicts, the jury is the sole judge of witness credibility and the weight and worth of their testimony. ***Id.*** What this Court does is review the judge's denial of a new trial for abuse of discretion. ***Id.*** We will only find an abuse of discretion and disturb a verdict when, viewing the evidence in the light most favorable to the verdict, it is so contrary to the overwhelming weight of the evidence it sanctions an unconscionable injustice. ***Id.***

¶20. Three eyewitnesses testified that while Johnson was agitated and waving his arms, there was no physical altercation. Two eyewitnesses testified Bernard and Johnson were not even close to one another when Bernard shot him. And none of these eyewitnesses saw the children in Wells's vehicle, whom Bernard claimed to be defending.

¶21. There is no doubt Bernard intended to shoot Johnson. He admitted as much. But he claimed he did so to defend himself and others. To the extent Bernard claims the State failed to rebut his self-defense theory, that was a question for the jury, not this Court. *See* ***Newell v. State***, 175 So. 3d 1260, 1268 (Miss. 2015). And here, faced with conflicting evidence, the jury rejected Bernard's version. Viewed in the light most favorable to the verdict, we see no

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[3] Citing ***Robinson v. State***, Bernard alternatively argues that he committed manslaughter. *See* ***Robinson v. State***, 773 So. 2d 943, 946 (Miss. Ct. App. 2000) (when two people are willingly in mutual combat and one forms the intent during the struggle to kill the other, and succeeds, it is not homicide but manslaughter). The jury was instructed on manslaughter yet still found Bernard guilty of murder—a finding supported by the sufficiency and weight of the evidence.

abuse of discretion in the trial judge denying Bernard's weight-of-the-evidence challenge.

III. Jury Instructions

¶22. Bernard also takes issue with the jury instructions. His claims are twofold. First, he argues the record is deficient, hampering his right to appeal. Second, he claims several jury instructions misstated the law and two necessary instructions were not given.

A. The Instructions Discussed by the Parties and Ruled on by the Trial Judge were Read to the Jury

¶23. The jury-instruction conference is preserved in the record. So are the parties' objections to instructions, discussions with the court about withdrawing and modifying instructions, and the court's resolution of these objections. Indeed, the trial transcript contains, word for word, the court's final instructions that were read to the jury. And neither side objected to these final instructions when read.

¶24. What Bernard takes issue with are the clerk's papers, pointing to the omission of a written copy of the jury instructions the trial court read to the jury. From this, he speculates that wrong instructions were *possibly* submitted to the jury.[4] While Bernard admits he cannot

[4] Bernard's appellate counsel points to instructions in the clerk's papers, some of which say given, some refused, some withdrawn, and others contain no indication. It is obvious from the jury-instruction conference that these instructions were not the ones Bernard or the State discussed with the court at his second trial. Bernard seizes on an undated portion of the clerk's papers marked "Instructions read to the jury," which, other than the court's usual jury instructions, contain several instructions that also differ from instructions discussed by the parties during this trial and from those ultimately given and read to the jury by the court. After review, it appears these undated instructions marked "Instructions read to the jury" are the instructions the trial judge gave during Bernard's first trial. This batch of instructions does not contain a Castle Doctrine instruction—which the court granted in the second trial. And they include a murder instruction with language about depraved-heart murder—language the judge in Bernard's second trial excluded at Bernard's attorney's request, over the State's objection that this same language had been included in

prove the jury was given the wrong instructions, he argues these record omissions violated his due-process rights.

¶25. In support, Bernard mainly points to cases dealing with a defendant's right to have a complete transcript of the proceedings—something he unquestionably has here.[5] The one Mississippi case Bernard cites that deals with competing record and transcript instructions, ***Reynolds v. Allied Emergency Services, PC***, differs from his scenario. In ***Reynolds***, the trial court read the correct jury instructions, but the jury was only given a copy of the defense's written, proposed instructions, which included instructions that had been withdrawn or outright refused. ***Reynolds v. Allied Emergency Servs., PC***, 193 So. 3d 625, 631-32 (Miss. 2016). When the trial court collected the written instructions to place them in the record, it realized the error and pointed it out to the parties. On appeal, this Court found the admitted error was so prejudicial that it warranted reversal and a new trial. ***Id.*** Though there is no admitted error here, Bernard seeks the same relief.

¶26. Unlike ***Reynolds***, Bernard admits that he cannot prove the jury in his second trial received a written set of instructions that differed from those read by the court. His

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the murder instruction in the first trial. Bernard's appellate counsel represented him after his first trial. She filed a successful posttrial motion after his first trial based on the trial judge's exclusion of a Castle Doctrine instruction. Because the refusal of a jury instruction formed the basis of her posttrial motion, she would have likely known which instructions the judge gave and denied during Bernard's first trial.

[5] With regard to his right to a transcript, Bernard points to ***Gibson v. State***, 580 So. 2d 739, 741 (Miss. 1991) ("the court reporter should preserve every spoken word . . . and have that available for transcription") and ***Sterkaj v. Gonzales***, 439 F.3d 273, 279 (6th Cir. 2006) ("Due process demands a reasonably accurate and complete transcript to allow for meaningful appellate review . . . .").

unsupported allegation that there *might* be some variance between the instructions we *know* the judge read to the jury and what the jury *may* have received is wholly speculative and does not warrant reversal.[6]

¶27. Further, despite Bernard's assertion, Mississippi Rule of Criminal Procedure 22, which describes current jury-instruction practice, was not in effect during this trial. Uniform Rule of Circuit and County Court Practice 3.07 was the law. It mandated, as does Rule 22 now, that each party file all of their requested instructions. URCCC 3.07. And here, the record shows Bernard's counsel emailed proposed jury instructions for the second trial to the trial judge's staff. But there is no indication Bernard's lawyer filed them with the court. Our review is limited to what we can glean from the transcript and record.

B. Specific Instructions

1. Murder

¶28. Bernard first challenges the murder instruction read to the jury. He argues it was a peremptory instruction requiring that, if the jury found he acted with deliberate design, it must find him guilty of murder. He insists this negated a possible finding of manslaughter, self-defense, or that he was not guilty.

¶29. But what the transcript shows is that the jury *was* instructed on the elements of both murder and manslaughter, and it had the option to find Bernard not guilty.[7] The given

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[6] Perhaps this claim is better suited for a post-conviction relief petition.

[7] The instruction read to the jury stated,

> The Court instructs the jury that if you believe from all of the evidence beyond a reasonable doubt that the defendant, Willie Bernard, did on about

murder instruction tracked the language of Section 97-3-19(1)(a) with the sole exception being the use of the word "must" instead of "shall"—an immaterial distinction, since both connote a mandatory directive.

¶30. The jury was also instructed on justifiable homicide and the Castle Doctrine—at Bernard's request. When the instructions are read together, the jury was adequately instructed on all issues—from murder to manslaughter to self-defense to acquittal. And Bernard was not denied an opportunity to make his defense. *See* ***Alexander v. State***, 250 So. 2d 629, 632 (Miss. 1971) (considering the jury instructions, not in isolation, but rather as a whole to determine the jury was adequately instructed on the law and issues).

> the 16th day of March 2011 in the First Judicial District of Hinds of [sic] County, Mississippi did kill Larry Johnson, a human being, without authority of law, with deliberate design to affect the death of Larry Johnson or any human being by shooting the said Larry Johnson with a firearm, then in that event you must find the defendant, Willie Bernard, guilty of murder.
>
> If the prosecution has failed to prove any one or more of the above listed elements of murder, then you shall proceed in your deliberations to consider the lesser offense of manslaughter. If you find from the evidence in the case that Willie Bernard is not guilty of the crime of murder, then you should continue with your deliberations to consider the lesser crime of manslaughter.
>
> If you find from the evidence in the case beyond a reasonable doubt that Willie Bernard on about the 16th day of March 2011 in the First Judicial District of Hinds County, Mississippi did kill Larry Johnson without malice in the heat of passion by shooting him with a handgun without authority of law and not in necessary self-defense, then you shall find Willie Bernard guilty of manslaughter.
>
> If the prosecution has failed [to prove] any one or more of the above listed elements beyond a reasonable doubt, then you shall find Willie Bernard not guilty of manslaughter.

2. Self-Defense

¶31. Bernard next claims the self-defense instruction given to the jury improperly placed the burden of proof on him. He argues this entitles him to a new trial. The instruction Bernard complains of states:

> The Court instructs the jury that homicide is justified when committed in the lawful defense of ones 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 should be eminent danger of such design being accomplished.
>
> The Court further instructs the jury that if you find Willie Bernard acted in self-defense or in defense of any other human being, then you shall find Willie Bernard not guilty of murder since the act was a justifiable homicide.

But it was Bernard who offered this instruction at trial. And he raised no concerns about supposed burden shifting. The first paragraph of the instruction tracks the precise language of Mississippi Code Section 97-3-15(1)(f) (Rev. 2006).[8] And the second paragraph does not place any burden of proof on Bernard. Nor does it somehow shift the burden from the State.

¶32. Furthermore, the murder and manslaughter instructions clearly required the State to prove beyond a reasonable doubt that Bernard killed Johnson "without authority of law." And the manslaughter instruction mandated that the State prove the killing was "not in necessary self-defense." These instructions are much more substantial than those given in ***Harris v. State***, 861 So. 2d 1003, 1012 (Miss. 2003). In ***Harris***, this Court affirmed a murder conviction over a defendant's self-defense claim when the State's jury instructions did not even instruct that the State had to prove the killing was "without authority of law" and "not

[8] Miss. Code Ann. § 97-3-15 (Supp. 2019) is the current statute.

in necessary self-defense." ***Id.*** at 1013-15. The ***Harris*** court reasoned, "[t]he ultimate question . . . is whether the jury knew from the collective instructions given to them that the Harris brothers could be acquitted if they were acting in necessary self-defense. ***Id.*** at 1014.

¶33. Jury instructions are not read in isolation. ***Alexander***, 250 So. 2d at 632. And here, four instructions explained that the burden of proof fell squarely on the State.[9] Thus, Bernard's burden-shifting allegation is baseless.

3. Castle Doctrine

¶34. This is Bernard's second trial for Johnson's murder. He was granted this trial because a Castle Doctrine instruction was refused in the first trial. This time, the trial judge instructed the jury on the Castle Doctrine. After being convicted again, Bernard takes issue with the instruction's language. He argues the given instruction excluded two presumptions under Mississippi Code Section 97-3-15(3).[10] Again, it was Bernard who submitted the instruction he now attacks. And the transcript makes clear that his submitted instructions did not include the presumptions he now seeks. Instead, the judge gave him the Castle Doctrine instruction he asked for.

¶35. On appeal, Bernard challenges the instruction his attorney submitted. But this Court

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[9] For example, the instructions on murder, manslaughter, the use of a firearm during a felony, and the presumption of innocence each state the burden of proof, beyond a reasonable doubt, is borne solely by the State.

[10] The applicable Castle Doctrine here was codified in Mississippi Code Sections 97-3-15(3) and (4) (Rev. 2006). Subsection (4) concerns whether there is a duty to retreat, while subsection (3) enumerates specific circumstances when the defendant is entitled to a presumption of reasonable fear. *Id.*; *see* ***Newell v. State***, 49 So. 3d 66, 74 (Miss. 2010) (addressing the Castle Doctrine's two prong application).

recently reiterated that "'a defendant cannot complain on appeal of alleged errors invited or induced by himself.'" ***Thomas v. State***, 249 So. 3d 331, 347 (Miss. 2018) (quoting ***Galloway v. State***, 122 So. 3d 614, 645 (Miss. 2013); ***O'Connor v. State***, 120 So. 3d 390, 397 (Miss. 2013); ***Singleton v. State***, 518 So. 2d 653, 655 (Miss. 1988)). Nor can a defendant "complain of an instruction which he, not the state, requested." ***Id.*** (internal quotation mark omitted) (quoting ***Harris***, 861 So. 2d at 1015; ***Buford v. State***, 372 So. 2d 254, 256 (Miss. 1979)). So the issue is barred and this Court cannot consider it.

¶36. At trial, when questioned about instruction D-4, Bernard's lawyer responded, "[y]our Honor, it's [sic] states language of 97-3-15 section 4. We're not withdrawing this one." And his attorney was correct. Mississippi Code Section 97-3-15(4) is part of the Castle Doctrine. It provides:

> A person who is not the initial aggressor and is not engaged in unlawful activity shall have no duty to retreat before using deadly force under subsection (1)(e) or (f) of this section if the person is in a place where the person has a right to be, and no finder of fact shall be permitted to consider the person's failure to retreat as evidence that the person's use of force was unnecessary, excessive or unreasonable.

Miss. Code Ann. § 97-3-15(4) (Rev. 2006).

¶37. The trial judge gave this instruction:

> The Court instructs the jury that if you find from the evidence the testimony presented that Willie Bernard was not the initial aggressor, was not engaged in unlawful activity, and was in a place where he had a right to be, then Willie Bernard had no duty to retreat before using deadly force, and you're not permitted to consider Willie Bernard's failure to retreat as evidence of Willie Bernard's use of force in self-defense was a necessary excess or unreasonable.

The State requested that the judge remove mention of the title "Mr." immediately before

Bernard's name in the instruction. And that was the court's only revision. The trial judge also granted Bernard's instruction D-9—an instruction Bernard's counsel described as a Castle Doctrine instruction but also addressed justifiable homicide.[11] After discussions with both sides, the only revisions the trial judge made were to the justifiable-homicide portion

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[11] Bernard did not make D-9 part of the record. And while he emailed it to the Court's assistant, there is no indication he filed it with the trial court. From the jury instruction conference, it is obvious the instruction he now complains about was read to the jury by the trial judge as follows:

> The Court instructs you that the killing of another human being shall be justified when committed by any person and resisting any attempt unlawfully to kill such person or to commit any felony upon him or in any occupied vehicle in which such person shall be. A person [who] uses defensive force shall be presumed to have reasonably feared eminent death or great bodily harm if the person against whom the defensive force was used was in the process of unlawfully committing a felony against such person.
>
> The Court instructs the jury that homicide is justified when 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 should be eminent danger of such design being accomplished.
>
> The Court further instructs the jury that if you find that Willie Bernard acted in self-defense or in defense of ***any other human being***, then you shall find Willie Bernard not guilty of murder since the act was a justifiable homicide.
>
> The Court instructs the jury that if you find from the evidence the testimony presented that Willie Bernard was not the initial aggressor, was not engaged in unlawful activity, and was in a place where he had a right to be, then Willie Bernard had no duty to retreat before using deadly force, and you're not permitted to consider Willie Bernard's failure to retreat as evidence of Willie Bernard's use of force in self-defense was a necessary excess or unreasonable.

(Emphasis added to show judge's revisions.)

of the instruction. At Bernard's request, the judge ensured the instruction tracked Bernard's defense that he was not only defending himself but was also defending others. Or as both the statute and judge described it, "any other human being." Bernard's lawyer told the trial judge, "[t]hank you," after the judge described the revision. The transcript shows there were no other objections or revisions. And when the judge read the instruction to the jury, neither side objected.

¶38. The Castle Doctrine curtails the duty to retreat and creates a presumption the defendant reasonably feared imminent death, great bodily harm, or the commission of a felony upon him from someone who had unlawfully and forcibly entered the immediate premises of an enumerated place—in this case a vehicle Bernard was occupying. ***Newell v. State***, 49 So. 3d 66, 74-75 (Miss. 2010) (citing Miss. Code Ann. § 97-3-15 (Rev. 2006)). The Castle Doctrine includes two prongs:

> First, under subsection (4), if the defendant is in a place where he had a right to be, is not the immediate provoker and aggressor, and is not engaged in unlawful activity, he has no duty to retreat before using defensive force. Miss. Code Ann. § 97-3-15(4) (Rev. 2006). And second, if the jury finds that any of the circumstances in subsection (3) are satisfied, the defendant who uses such defensive force is presumed to have reasonably feared imminent death or great bodily harm or the commission of a felony upon him. Miss. Code Ann. § 97-3-15(3) (Rev. 2006).

Id. at 74. "The circumstances in subsection (3) are that the person against whom the defensive force was used (1) had unlawfully and forcibly entered 'a dwelling, occupied vehicle, business, place of employment or the immediate premises thereof' or (2) had unlawfully removed another person 'against the other person's will from that dwelling, occupied vehicle, business, place of employment or the immediate premises thereof'—or he

or she was in the process of doing one of the enumerated things." ***Woods v. State***, 242 So. 3d 47, 60 (Miss. 2018) (quoting ***Flynt v. State***, 183 So. 3d 1, 13 (Miss. 2015).

¶39. Bernard now argues the instruction should have included presumptions that Bernard reasonably feared (1) the commission of a felony against a vehicle he was occupying and (2) the unlawful removal or attempted removal of another from his occupied vehicle. Miss. Code Ann. § 97-3-15(3). But Bernard did not ask for these presumptions at trial. The judge instructed the jury on the Castle Doctrine and justifiable homicide in the manner Bernard requested. He did not tamper with the substantive language Bernard submitted other than to broaden his justifiable homicide instruction to also cover the defense of others. Bernard's instructions included a presumption of reasonable fear of imminent death or great bodily harm or the commission of a felony upon him. *See* Miss. Code Ann. § 97-3-15(3) (Rev. 2006). Again, Bernard got the instructions he asked for.

¶40. Even so, the Castle Doctrine instruction he now seeks is unsupported by the evidence. So the trial judge would have been authorized to revise or refuse it.[12] Whether a defendant is entitled to a presumption of reasonable fear depends not on whether the defendant shows a reasonable fear, but whether one of the circumstances in subsection (3) is met. ***Matthews v. City of Madison***, 143 So. 3d 571, 574 (Miss. 2014). Bernard's own testimony shows that Johnson never reached for the back door where the children allegedly were. Nor did he reach for Wells. There was no evidence supporting a felony against his vehicle or evidence

[12] This Court has long held that jury instructions without any basis in the evidence may properly be refused by the trial court. ***Hye v. State***, 162 So. 3d 750, 753 (Miss. 2015); ***White v. State***, 127 So. 3d 170, 176 (Miss. 2013); ***Utz v. Running & Rolling Trucking, Inc.***, 32 So. 3d 450, 474 (Miss. 2010).

supporting a removal or attempted removal of another from his vehicle. So this claim is not only barred, it also lacks merit.

4. Heat of Passion

¶41. Although the trial judge instructed the jury on manslaughter, Bernard argues he erred by not defining heat of passion. Bernard did not request a definitional instruction. And trial courts are not required to give sua sponte instructions or instructions supplementing those requested by the parties. ***Harris***, 861 So. 2d at 1017. Bernard points to no Mississippi authority requiring a judge to sua sponte define heat of passion when no definitional instruction is requested by the defendant. Nor does he point to Mississippi authority that the specific failure to define heat of passion is reversible error. Thus, the trial court cannot be held in error.

¶42. Alternatively, Bernard argues that because his lawyer did not seek an instruction defining heat of passion, he received ineffective assistance of counsel. *See* ***Strickland v. Washington***, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). As support, Bernard cites a case involving a federal appellate court's review of a state criminal trial. In ***Lee v. Clarke***, the Fourth Circuit found a federal habeas petitioner was prejudiced by his counsel's failure to request that a state trial judge define heat of passion in connection with a manslaughter instruction—something that is required under Virginia law. ***Lee v. Clarke***, 781 F.3d 114, 123-24 (4th Cir. 2015). The Fourth Circuit noted that under *Virginia law*, a manslaughter instruction is "ineffective" without an accompanying heat-of-passion instruction. ***Id.*** (citing ***Belton v. Commonwealth***, 104 S.E.2d 1, 4 (Va. 1958) (trial court

erred by refusing instruction on the distinction between malice and passion)). But we have found no Mississippi law requiring an accompanying definitional instruction.

¶43. Regardless, an ineffective-assistance-of-counsel claim is "'more appropriately brought during post-conviction proceedings.'" ***Lofton v. State***, 248 So. 3d 798, 808 (Miss. 2018) (quoting ***Archer v. State***, 986 So. 2d 951, 955 (Miss. 2008)). And at this stage, Bernard has not shown his counsel was deficient in this regard, much less that he was deprived of a fair trial. ***Woods***, 242 So. 3d at 55. We therefore deny relief but preserve Bernard's right to raise this claim in a post-conviction relief petition. *See* ***Archer***, 986 So. 2d at 955.

5. Imperfect Self-Defense

¶44. Bernard also argues his lawyer was ineffective for not requesting an imperfect self-defense instruction. Again, Bernard must prove his counsel's conduct was deficient and prejudicial. ***Woods***, 242 So. 3d at 55.

¶45. "Unlike true self-defense, imperfect self-defense is not a defense to a criminal act." ***Ronk v. State***, 172 So. 3d 1112, 1126 (Miss. 2015). "Rather, under the theory of imperfect self-defense, 'an intentional killing may be considered manslaughter if done without malice but under a bona fide (but unfounded) belief that it was necessary to prevent death or great bodily harm.'" ***Id.*** (quoting ***Wade v. State***, 748 So. 2d 771, 775 (Miss. 1999)). So it carries with it criminal culpability and differs from the objective reasonableness of an actor engaged in true self-defense constituting a justifiable homicide. ***Brown v. State***, 222 So. 3d 302, 307 (Miss. 2017). Based on these punitive and evidentiary distinctions, Bernard's trial lawyer may have very well opted to forego an imperfect self-defense instruction. It is obvious from

the record that he pursued a pure self-defense theory and Castle Doctrine defense. And nothing in the record shows his counsel's performance was deficient or prejudicial in choosing that tactic. Again, we deny relief at this time. *See* ***Archer***, 986 So. 2d at 955.

IV. Improper Bolstering

¶46. Bernard also argues the State improperly bolstered eyewitness Cassandra Lockheart's testimony during redirect by questioning her about matters not addressed during cross-examination.

¶47. "'The scope of re-direct examination, while largely within the discretion of the trial court, is limited to matters brought out during cross-examination.'" ***Conley v. State***, 790 So. 2d 773, 786 (Miss. 2001) (quoting ***Blue v. State***, 674 So. 2d 1184, 1212 (Miss. 1996), *overruled on other grounds by* ***King v. State***, 784 So. 2d 884 (Miss. 2001)). Generally, if a witness's credibility on a matter is questioned during cross-examination, opposing counsel may address that same matter on redirect. ***Bell v. State***, 725 So. 2d 836, 849-50 (Miss. 1998); ***White v. State***, 976 So. 2d 415, 417-19 (Miss. Ct. App. 2008). After she testified on direct examination, Bernard's attorney cross-examined Lockheart about perceived inconsistencies with her earlier statements to detectives and her earlier inability to identify the shooter. On redirect, the State inquired if Lockheart had talked to the police and made anything up and if her testimony on direct examination had accurately described what she saw on the date of the shooting. Bernard did not object to preserve this issue. Regardless, the questioning is not bolstering—it is proper redirect.

V. Juror Struck for Cause

¶48. Bernard's final attack is on the judge's striking a juror for cause. After voir dire, the State challenged potential juror Tiffany Magee for cause. The basis was that she had not been forthcoming about knowing Bernard. She had also watched television coverage of the case and talked to others about it. The defense countered that Magee claimed not to have had contact with Bernard for approximately two years and had insisted she could be fair and impartial. The judge granted the State's challenge for cause.

¶49. Trial courts have wide discretion to excuse potential jurors for cause. ***Moffett v. State***, 49 So. 3d 1073, 1094 (Miss. 2010). Unless that discretion is abused, this Court defers to the trial court's decisions. ***Id.*** After review, we find the judge did not abuse his discretion by removing for cause a potential juror who knew the defendant and had seen news coverage about the case on television.

Conclusion

¶50. Bernard's murder conviction and sentence enhancement are supported by the sufficiency and weight of the evidence and should be affirmed. His remaining challenges are either barred, outside the record, speculative, meritless, or are best left for a post-conviction relief petition.

¶51. **AFFIRMED.**

RANDOLPH, C.J., KITCHENS AND KING, P.JJ., COLEMAN, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR.