IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

EDDIE LEE SAUNDERS — APPELLANT

VS. — NO. 2010-KA-0031

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE APPELLANT'S MOTION FOR MISTRIAL AS THE TESTIMONY IN QUESTION DID NOT CAUSE SUBSTANTIAL AND IRREPARABLE PREJUDICE TO THE APPELLANT'S CASE AND AS THE TRIAL COURT PROPERLY ADMONISHED THE JURY TO DISREGARD THE TESTIMONY.

II. THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

STATEMENT OF THE FACTS

On May 26, 2008, Charles Harris went to the Handy Panty in Hattiesburg, Mississippi to buy charcoal. (Transcript p. 116). While paying for his charcoal, he laid his cell phone on the counter and forgot to pick it back up. (Transcript p. 151). Alex Anderson noticed Mr. Harris leave the phone on the counter and watched him leave the store. (Transcript p. 83). After Mr. Harris left the store, Mr. Anderson picked up the cell phone and took it with him. (Transcript p. 83).

Mr. Harris noticed the phone was missing and told his uncle, the Appellant, Eddie Lee Saunders about the missing phone. (Transcript p. 118). In an effort to find his missing phone, Mr. Harris went back to the places where he had been earlier in the day but could not find the phone. (Transcript p. 117). Later, Mr. Anderson received a call on the cell phone in issue wanting to know where the phone was located. (Transcript p. 83). Mr. Anderson agreed to return the phone in exchange for $50; however, he told the person calling that his name was "Duke." (Transcript p. 83 - 84). "Duke" was not Mr. Anderson's name. In fact, "Duke" was actually the nickname of a seventeen-year-old from the area named Charles Moore. (Transcript p. 102).

After Mr. Anderson failed to show up at the arranged meeting place to return the phone, Mr. Harris and the Appellant began looking for the phone and for "Duke." (Transcript p. 120 - 124). The two eventually learned where the real Duke's mother lived and went to her house looking for "Duke" in an attempt to retrieve the phone. (Transcript p. 124 - 125).

After numerous failed attempts to find "Duke" and the missing phone, the two men, traveling in a borrowed red Mercury Cougar, decided to go back to the Appellant's house. (Transcript p. 121 and 125). Mr. Harris was driving the car and the Appellant was riding in the passenger seat. (Transcript p. 125 and 196). When they got near the Appellant's home, the Appellant instructed Mr. Harris to stop at the mailbox. (Transcript p. 125). He did and the Appellant exited the vehicle. (Transcript p. 125). At that same time, a white vehicle approached the area driven by the real "Duke," Charles Moore. (Transcript p. 103 and 126). The Appellant fired a gun several times and killed Mr. Moore. (Transcript p. 106 - 107). He jumped back into the vehicle with the gun, pointed the gun at Mr. Harris , and told him to drive. (Transcript p. 127). After several stops, Mr. Harris dropped the Appellant off at Willie Brown's Detail Shop. (Transcript p. 128 - 130).

Shortly thereafter, the Appellant showed up the home of Richard McBride and told Mr.

McBride and his grandmother that he had shot someone. (Transcript p. 171). He later left their home and threw the gun he used to kill Mr. Moore into a backyard nearby while police were watching for him nearby. (Transcript p. 206 - 208). Police arrested him as he ran back toward Mr. McBride's house after discarding the gun. (Transcript p. 208).

The Appellant was tried and convicted of deliberate design murder. He was sentenced as a habitual offender pursuant to Miss. Code Ann. §99-19-83 to serve a life sentence in the custody of the Mississippi Department of Corrections with no possibility of parole or early release.

SUMMARY OF THE ARGUMENT

This Court should affirm the Appellant's conviction and sentence as the Appellant did not establish that there were any reversible errors committed during his trial. The trial court properly denied the Appellant's motion for mistrial after a witness mentioned the Appellant being in jail for several reasons. First, the testimony at issue was given in response to defense counsel's question, and was therefore, invited. Second, no substantial or irreparable prejudice resulted from the testimony. Finally, the trial court admonished the jury to disregard the testimony and it is well-established Mississippi law that the jury is presumed to follow the instructions of the court. Furthermore, the verdict was not against the overwhelming weight of the evidence.

ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE APPELLANT'S MOTION FOR MISTRIAL AS THE TESTIMONY IN QUESTION DID NOT CAUSE SUBSTANTIAL AND IRREPARABLE PREJUDICE TO THE APPELLANT'S CASE AND AS THE TRIAL COURT PROPERLY ADMONISHED THE JURY TO DISREGARD THE TESTIMONY.

The Appellant first argues that he "was irreparably and unfairly prejudiced when character evidence of previous incarceration, other wrongs, acts, or other unrelated crimes were referenced by the prosecution in the presence of the jury." (Appellant's Brief p. 5). He further argues that the trial

court committed error in not granting the Appellant's motion for mistrial. (Appellant's Brief p. 10). The testimony at issue occurred during the Appellant's cross-examination of the Appellant's ex-girlfriend, Marva Whitlock:

DEFENSE COUNSEL:	And during the that time y'all split up and got back together, split up and got back together several times; didn't you?
MS. WHITLOCK:	This is true. The only time that we really split up was when he went back to jail.
DEFENSE COUNSEL:	I object, Your Honor. I move that be stricken.
THE COURT:	The jury is to disregard that last remark.
DEFENSE COUNSEL:	Defense would also move for a mistrial, Your Honor.
THE COURT:	Overruled. Move along.

(Transcript p. 164 - 165).

The standard of review for denial of a motion for mistrial is abuse of discretion. *Rollins v. State*, 970 So.2d 716, 720 (Miss. 2007). This Mississippi Supreme Court has previously held the following with regard to the trial court's discretion in declaring a mistrial:

> The trial court must declare a mistrial when there is an error in the proceedings resulting in substantial and irreparable prejudice to the defendant's case. Miss.Unif.Crim.R.Cir.Ct.Prac. 5.15. The trial judge is permitted considerable discretion in determining whether a mistrial is warranted since the judge is best positioned for measuring the prejudicial effect. *Roundtree v. State*, 568 So.2d 1173, 1178 (Miss.1990). When the trial judge determines that the error does not reach the level of prejudice warranting a mistrial, the judge should admonish the jury to disregard the impropriety in order to cure its prejudicial effect. *Perkins v. State*, 600 So.2d 938, 941 (Miss.1992); *Estes v. State*, 533 So.2d 437, 439 (Miss.1988).

Gossett v. State, 660 So.2d 1285, 1290-91 (Miss. 1995) (*emphasis added*). The trial court's response to the Appellant's motion for mistrial was not an abuse of discretion.

First, it is well-settled Mississippi law that "[g]enerally, an appellant cannot complain of damaging testimony if the testimony is in response to his questions." *Triggs v. State,* 803 So.2d

1229, 1234 (Miss. Ct. App. 2002) (citing *Hoops v. State*, 681 So.2d 521, 528 (Miss.1996)). The testimony at issue here was clearly in response to a question asked during the Appellant's cross-examination of the witness. Thus, the Appellant cannot complain.

Second, the testimony did not result in substantial and irreparable prejudice to the Appellant's case. This brief mention of the Appellant being in jail in no way prejudiced the Appellant's case. The testimony did not indicate that the incarceration was the result of a different crime. The jury could have inferred that the incarceration the witness was speaking of was a result of this crime. Furthermore, in light of the overwhelming evidence of the Appellant's guilt, set forth in this brief below, the testimony did not affect the outcome of the case. Thus, the trial court did not find that the comment caused substantial and irreparable damage and the Supreme Court has previously noted that a trial judge is in the best position to determine prejudice. *Weeks v. State*, 804 So.2d 980, 992 (Miss.2001)

Finally, once the judge determined that the comment did not reach the level of prejudice which would require a mistrial, he admonished the jury to disregard the comment. "The better remedy for an improper comment or question that has been put before the jury is for the court to admonish the jury not to consider the improper statement." *Hughes v. State,* 735 So.2d 238, 256 (Miss. 1999)(citing *Criddle v. State*, 633 So.2d 1047, 1048 (Miss.1994)). It is well-settled Mississippi law that it is "presumed that the jury will follow the court's instruction to disregard any inadvertent comments or evidence and to decide the case solely based on the evidence presented" and that "to presume otherwise would be to render the jury system inoperable." *Lofton v. State*, 818 So.2d 1229, 1233 (Miss. Ct. App. 2002) (quoting *King v. State*, 772 So.2d 1076, 1078 (Miss. Ct. App. 2000)) (*emphasis added*).

Accordingly, the trial court did not abuse its discretion in denying the Appellant's motion for

mistrial. This is issue has no merit.

II. THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

The Appellant next argues that "the verdict was against the overwhelming weight of the evidence that [he] committed murder." (Appellant's Brief p. 10). When reviewing claims that a verdict is against the overwhelming weight of the evidence, appellate courts "will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Vaughn v. State*, 926 So.2d 269, 271(Miss. Ct. App. 2006) (quoting *Bush v. State*, 895 So.2d 836, 844 (Miss. 2005)). Granting a new trial based on a verdict being against the overwhelming weight of the evidence should only occur "in exceptional *cases* in which the evidence preponderates heavily against the verdict." *Id.* The Appellant's case is not one of those exceptional cases where the evidence preponderates heavily against the verdict.

In support of his argument, the Appellant claims that "the evidence is not present that shows Saunders was the person that killed Charles Moore." (Appellant's Brief p. 10). He refers to various testimony of Charles Harris about his search for his cell phone noting that Mr. Harris was the main person looking for the phone, perhaps implicating that Mr. Harris was the shooter. However, there was ample evidence that the Appellant was the person who killed the victim:

a. Charles Harris testified as follows about the incident in question:

> At the time [the Appellant] told me to pull over to the mailbox so he could check the mail or whatever. And as I pulled in I guess I was going too fast because he dropped his beer and as he got out of the car, I reached down to get the beer and that's when I hear all of a sudden, Get down. Get down. Get down." (Transcript p. 125).
>
> All of a sudden [the Appellant] jumped in and he grabbed me by my chest and he went to patting me down. And he told me to drive. That's when I first noticed [the Appellant] had a gun

and he pointed it at me and told me to drive. (Transcript p. 127).

b. Mr. Harris saw no one but the Appellant with a gun. (Transcript p. 127 and 141).

c. The Appellant was in the passenger seat of the car at the time of the shooting. (Transcript p. 125 and 196).

d. Tanakia Coleman saw the person in the passenger seat of the red Cougar get out of the vehicle and start shooting. (Transcript p. 106 - 107).

e. Benjamin Dean, the clerk at the Handy Pantry, testified that during one of the times the Appellant and Mr. Harris came back to the store to look for the phone, the Appellant had a gun and tried to give it to Mr. Harris. Mr. Harris refused to take the gun and the Appellant told him that he would help get the phone back. (Transcript p. 156).

f. The Appellant's ex-girlfriend, Marva Whitlock, testified that the Appellant admitted to killing the victim during a telephone call with her. (Transcript p. 163).

g. Richard McBride testified that the Appellant told him and his grandmother that he had shot someone. (Transcript p. 171).

h. Mr. McBride also testified that the Appellant had a gun with him when he showed up at his house on the day of the shooting. (Transcript p. 175).

i. Sherun Lindsey testified that the Appellant told her hours before the shooting, "I'm just probably going to have to kill me a mother fucker, you know." (Transcript p. 182).

j. It was determined that the projectile removed from the victim's body was fired from the gun retrieved from the yard where the Appellant threw the gun. (Transcript p. 322).

Nonetheless, the Appellant argues that no one, including Charles Harris, saw the Appellant shoot the victim. (Appellant's Brief p. 11). This same argument was made in *Bridges v. State*, and this Court held that "[i]t should be noted that an actual eyewitness is not mandatory for conviction." 841 So.2d 1189, 1191 (Miss. Ct. App. 2003) (citing *Freeman v. State*, 228 Miss. 687, 697, 89 So.2d 716, 720 (1956)).

The Appellant also argues that even though Mr. Harris testified that the Appellant had a gun, his previous statements to police indicated that the Appellant did not have a gun. (Appellant's Brief p. 11). Testimony regarding these previous statements was before the jury. (Transcript p.). "The issue of weight and credibility accorded to evidence is a matter to be resolved by the jury, whose province is not invaded by this Court." *Alonso v. State*, 838 So.2d 309, 314 (Miss. Ct. App. 2002) (citing *Clay v. State*, 811 So.2d 477 (Miss. 2002)).

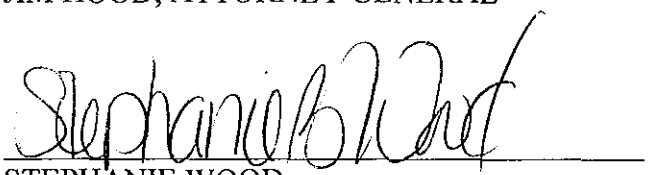
Clearly, the verdict was not against the overwhelming weight of the evidence. As such, this issue is also without merit.

CONCLUSION

For the foregoing reasons, the State of Mississippi respectfully requests that this Honorable Court affirm the Appellant's conviction and sentence.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

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CERTIFICATE OF SERVICE

I, Stephanie Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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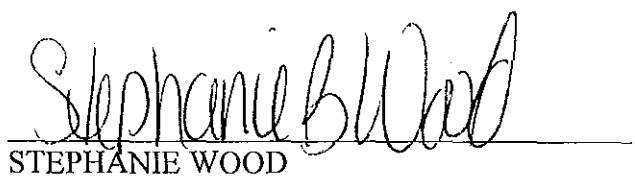

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