Rel: August 18, 2023

Alabama Court of Criminal Appeals

OCTOBER TERM, 2022-2023

CR-21-0423

Eric Lamont Harrison

v.

State of Alabama

Appeal from Jefferson Circuit Court
(CC-19-471)

McCOOL, Judge.

Eric Lamont Harrison appeals his conviction for capital murder, see § 13A-5-40, Ala. Code 1975, for which he was sentenced to life imprisonment without the possibility of parole.

Facts and Procedural History

In February 2019, a Jefferson County grand jury returned an indictment charging Harrison with two counts of capital murder. The first count alleged that Harrison had intentionally caused the death of Brandon Lewis by shooting him with a pistol from within a vehicle, a violation of § 13A-5-40(a)(18), Ala. Code 1975. The second count alleged that Harrison had intentionally caused Brandon's death by shooting him with a pistol while Brandon was in a vehicle, a violation of § 13A-5-40(a)(17), Ala. Code 1975. Harrison was brought to trial in February 2020, but the trial court declared a mistrial after the jury informed the court that it would not be able to reach a unanimous verdict. Harrison was brought to trial again in January 2022, and the evidence presented at that trial tended to establish the following facts.

Around 10:00 p.m. on August 3, 2018, Brandon was at an apartment complex in Birmingham. Brandon's brother, Brayon Lewis, and their cousin, Devin Patterson, were also at the apartment complex, but Brandon was not with Brayon and Patterson. Instead, Brayon and Patterson were sitting on the steps outside one of the apartments, and Brandon was sitting in his car, which was parked in the street in front of the apartment complex. While Brayon and Patterson were sitting on the

steps, a person identified at trial only as "Dray" walked up to them and "exchanged words with [Patterson]" (R. 304) and then "[w]alked away … [t]o the top of [a] hill." (R. 280.) Approximately 30 to 45 seconds later, Brayon saw Harrison driving a car in the street in front of the apartment complex, and a female identified at trial only as "Nicole" or "Nee Nee" was in the car with Harrison. (R. 285.) According to Brayon, Harrison's car "bumped the car that [Brandon] was in" and then "pulled off … [u]p the hill." (R. 284-85.) Brandon then got out of his car, and, approximately 30 to 45 seconds later, Harrison "return[ed] back downhill [in his car] and stop[ped] next to [Brandon] as [Brandon was] standing at the driver's door of the car." (R. 287.) By that time, Dray was also in the car with Harrison and Nicole. According to Brayon, after stopping next to Brandon's car, within "two feet maybe" of Brandon (R. 288), Harrison said to Brandon, "We didn't mean to hit your car," and "then shots started firing." (R. 290.) Specifically, Brayon testified that Harrison was the first person to shoot and that, after Harrison began shooting, Patterson and another person identified at trial only as "Mike" began shooting back at Harrison. (R. 314.) After a brief exchange of gunfire that lasted "7 or 8 seconds, 10 seconds at the most" (R. 291), Harrison "sped away" from

the scene. (R. 292.) Brandon later died at a nearby hospital from gunshot wounds he sustained during the shooting.

The State also presented, over Harrison's objection, two videos from Facebook, a social-media platform – specifically, two videos that Brayon found on Harrison's personal Facebook page at some point after Brandon was murdered. Brayon testified that the first video had been posted on Harrison's Facebook page on August 3, 2018 – the day Brandon was murdered – and that video shows Harrison, Dray, and Nicole socializing together on a porch at some point before Brandon was murdered later that night. According to Brayon, that video contained audio when he viewed it on Harrison's Facebook page, but the audio was apparently "removed" before the State played the video at trial.[1] (R. 303.) Brayon testified that the second video had been posted on Harrison's Facebook page on September 1, 2018 – approximately one month after Brandon was murdered – and that video, which was filmed from inside a moving car, shows Harrison driving for almost eight minutes and Nicole riding

[1]The copy of the August 3, 2018, video provided to this Court contains audio, which, as Harrison notes, reflects nothing more than Harrison, Dray, and Nicole discussing "mundane" things. (Harrison's brief, p. 46.)

in the front passenger's seat. At one point during the video, however, Harrison pans the camera toward the outside of the car as he slowly drives past some apartments, and Brayon testified that the video at that point shows "[t]he scene where [Brandon] was killed." (R. 309.) Except for brief moments where only music can be heard, that video contains no audio. Brayon testified that both videos were "Facebook live" videos (R. 307), which, according to Brayon, meant that the videos had been posted on Harrison's Facebook page as they were being filmed, i.e., that the videos had been filmed on August 3, 2018, and on September 1, 2018.

During the charge conference, defense counsel requested a jury instruction on reckless manslaughter as a lesser-included offense of capital murder. In support of that request, defense counsel argued:

> "[A] reasonable factfinder could believe that Brayon is telling the truth in part and not telling the truth in part. They could believe that Harrison was in a fire fight with a gun but didn't shoot first or acted recklessly [rather] than intentionally. And if they believe that, then I think, especially when you have evidence of a potential shootout, a reasonable factfinder could conclude that Harrison recklessly fired a gun and caused the death of Brandon."

(R. 515.) The trial court refused to give that instruction because the court concluded that, "if the jury rationalizes that [Patterson and Mike] were out there shooting and they started the gunfight, they're going to find

[Harrison] not guilty" as opposed to guilty of reckless manslaughter. (R. 516.) The trial court did, however, instruct the jury on intentional murder and felony murder as lesser-included offenses of capital murder.

The jury found Harrison guilty of the first capital-murder charge – intentionally causing Brandon's death by shooting him with a pistol from within a vehicle – and acquitted Harrison of the second capital-murder charge – intentionally causing Brandon's death by shooting him with a pistol while Brandon was inside a vehicle. The State sought the death penalty at the sentencing hearing, but the jury unanimously concluded that Harrison should be sentenced to life imprisonment without the possibility of parole, and the trial court imposed that sentence.

Discussion

Harrison raises four issues on appeal that, he says, require this Court to overturn his conviction. We address each claim in turn.

I.

Harrison argues that the trial court erred by refusing to instruct the jury on reckless manslaughter as a lesser-included offense of capital murder. In addressing whether the trial court should have given that instruction, we are guided by the following well-settled principles:

> "'A defendant has the right to request a jury charge based upon any material hypothesis that the evidence tends to establish, and where there is a reasonable theory to support a requested charge as a lesser-included offense, a trial court's refusal to give the charge is reversible error. See Ex parte Chavers, 361 So. 2d 1106 (Ala. 1978); Miller v. State, 675 So. 2d 534 (Ala. Crim. App. 1996). A court may, however, properly refuse to charge on a lesser-included offense "(1) when it is clear to the judicial mind that there is no evidence tending to bring the offense within the definition of the lesser offense, or (2) when the requested charge would have a tendency to mislead or confuse the jury." Chavers, 361 So. 2d at 1107 …. Furthermore, § 13A-1-9(b), Ala. Code 1975, states that "[t]he court shall not charge the jury with respect to an included offense unless there is a rational basis for a verdict convicting the defendant of the included offense."'

"Ryan v. State, 865 So. 2d 1239, 1244 (Ala. Crim. App. 2003)."

Culver v. State, 22 So. 3d 499, 525-26 (Ala. Crim. App. 2008) (emphasis omitted).

Section 13A-6-3(a)(1), Ala. Code 1975, provides that "[a] person commits the crime of manslaughter if … [h]e recklessly causes the death of another person." Section 13A-2-2(3), Ala. Code 1975, provides, in pertinent part, that

> "[a] person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial

> and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation."

Harrison first argues that a reckless-manslaughter instruction was required because, he says, Brayon was not a credible witness, given that Brayon admitted on cross-examination that he had lied to law enforcement officers about various aspects of the shooting. Thus, Harrison argues that the jury could have found that Brayon was lying when he testified that Harrison was the first person to shoot and, as a result, could have found that Harrison "only returned fire in a reckless manner while taking fire from at least two others." (Harrison's brief, p. 24.) However, as the trial court correctly concluded at the charge conference, "'[i]t is … settled that if [a person] was acting in self-defense and accidentally killed another he would be guilty of no crime.'" Peterson v. State, [Ms. CR-2022-0642, Mar. 24, 2023] ___ So. 3d ___, ___ (Ala. Crim. App. 2023) (quoting Gettings v. State, 32 Ala. App. 644, 647, 29 So. 2d 677, 680 (1947)). In other words, Harrison's argument that he killed Brandon while returning gunfire from Patterson and Mike would have been better served in support of a self-defense instruction, which

Harrison did not request, rather than a reckless-manslaughter instruction.[2]

Harrison also argues that the evidence supported a reckless-manslaughter instruction because, he says, there was evidence indicating that he "did not take specific aim at Brandon." (Harrison's brief, p. 24.) In support of that argument, Harrison cites Thomas v. State, 681 So. 2d 265 (Ala. Crim. App. 1996), in which the defendant was convicted of murder after he shot into a parked car and killed one of the three occupants. On appeal, this Court held that the trial court should have instructed the jury on reckless manslaughter as a lesser-included offense of murder because the evidence supported a reasonable theory that the defendant had recklessly shot into the car without the intent to kill anyone. However, in that case the defendant testified that he had "panicked" when his companion, who was one of the three occupants of the car, began wrestling with one of the other occupants and that he had "just shot so [he] could run" and "[d]id [not] aim at anybody." Id. at 266-

[2]It appears that Harrison did request a self-defense instruction in his first trial (C. 285), but there is no indication in the record that he requested a self-defense instruction in his second trial, nor did he object to the lack of a self-defense instruction.

67. No such evidence was presented in this case. Instead, Brayon's testimony indicated that Harrison pulled his car within two feet of where Brandon was standing, that Harrison briefly spoke directly to Brandon, and that Harrison then began shooting before anyone else began shooting – facts that tend to demonstrate an intentional shooting and not the "panicked" shooting that occurred in Thomas. Id. at 266. Also, unlike Thomas, there was no evidence indicating that anyone other than Brandon was in or near his car at the time Harrison began shooting. And, as we have already explained, if the jury believed that Harrison shot only in response to Patterson and Mike shooting at him, then Harrison would have been guilty of no crime at all, not guilty of reckless manslaughter.

Harrison has not demonstrated that the evidence supported a reckless-manslaughter instruction, and, thus, the trial court did not err by refusing to give that instruction. Moreover,

> "even assuming that the trial court's refusal to instruct the jury on reckless manslaughter was error (which we do not find to be the case), it was harmless error. Because the trial court instructed the jury on capital murder, intentional murder, and felony murder, and the jury convicted [Harrison] of the higher offense of capital murder, any error in the trial court's refusal to charge on reckless manslaughter was harmless."

Carroll v. State, 852 So. 2d 801, 815 (Ala. Crim. App. 1999).

II.

Harrison argues that the trial court's "denial of [his] request to receive the jury summons list one day prior to trial conflicts with Alabama law and requires a new trial." (Harrison's brief, p. 30.) In support of that argument, Harrison cites Rule 18.2(a), Ala. R. Crim. P., which provides, in pertinent part: "Prior to the voir dire examination, each party, upon request, shall be furnished with a list of the names and addresses of the prospective jurors called for the venire, together with such biographical information as to each prospective juror as the court may have obtained." Rule 18.2(a) does not provide any specific deadline for furnishing the venire list, other than "[p]rior to the voir dire examination," but the Committee Comments to the rule "suggest[ ] that … the list be provided at least twenty-four (24) hours in advance of trial."

Before his first trial, Harrison filed a motion requesting that the trial court "make available to [his] counsel a copy of the full venire list at least one full working day prior to the venire being assembled." (C. 243.) The trial court denied that motion, stating that it would "continue its usual practice of making [the] venire list available to both parties at the time the court receives list." (C. 43.) However, there is no indication in

the record that Harrison requested an advance copy of the venire list before his second trial, and it is possible that the trial court would have reconsidered its ruling if asked to do so before the second trial. As the California Supreme Court has explained:

> "While it may not be necessary to renew an objection already overruled in the same trial, absent a ruling or stipulation that objections and rulings will be deemed renewed and made in a later trial, the failure to object bars consideration of the issue on appeal. The reason for the rule is manifest. Not only might a party elect different trial tactics at a second trial, but the trial court being more fully informed must be given the opportunity to reconsider the prior ruling."

People v. Clark, 50 Cal. 3d 583, 623-24, 789 P.2d 127, 154, 268 Cal. Rptr. 399, 426 (1990) (emphasis added; internal citations and footnote omitted). Thus, because Harrison did not request an advance copy of the venire list before his second trial, we conclude that this claim was not preserved for appellate review. See Horvat v. State, [Ms. CR-18-1118, Sept. 11, 2020] ___ So. 3d ___, ___ (Ala. Crim. App. 2020) ("'The trial court will not be put in error on grounds not assigned at trial.'" (quoting Parker v. State, 777 So. 2d 937, 939 (Ala. Crim. App. 2000))).

III.

Harrison argues that the trial court erred by admitting the two videos from his Facebook page because, he says, the State did not

authenticate the videos, the videos were not relevant, and any relevancy they did have was substantially outweighed by the danger of unfair prejudice. In reviewing these arguments, we are mindful of the fact that "'[t]he question of admissibility of evidence is generally left to the discretion of the trial court, and the trial court's determination on that question will not be reversed except upon a clear showing of abuse of discretion.'" Windsor v. State, 110 So. 3d 876, 880 (Ala. Crim. App. 2012) (quoting Ex parte Loggins, 771 So. 2d 1093, 1103 (Ala. 2000)).

A. Authentication

Rule 901(a), Ala. R. Evid., provides that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." The authentication requirement is a relatively low threshold to meet. "[A]ll that is required under Rule 901" is that the proponent of the evidence make "a prima facie showing that the [evidence] … is likely authentic"; the proof of authenticity "does not [have to] establish beyond a shadow of a doubt the authenticity of the [evidence]" and "'does not have to be conclusive or overwhelming.'" Royal Ins. Co. of America v. Crowne Inv., Inc., 903 So. 2d 802, 809 (Ala. 2004)

(quoting the Advisory Committee's Notes to Rule 901). See also United States v. McDaniel, 433 F. App'x 701, 704 (10th Cir. 2011) ("We have repeatedly instructed that Rule 901[, Fed. R. Evid.,] sets a low bar for admissibility.").[3]

With respect to the authentication of videos, the Alabama Supreme Court has explained that "[t]here are two theories upon which photographs, motion pictures, videotapes, sound recordings, and the like are analyzed for admission into evidence: the 'pictorial communication' or 'pictorial testimony' theory and the 'silent witness' theory." Ex parte Fuller, 620 So. 2d 675, 678 (Ala. 1993). These theories are "mutually exclusive," and which theory is applicable "depends upon the particular circumstances." Id.

The pictorial-communication theory applies "when a qualified and competent witness can testify that the … recording … accurately and reliably represents what the witness sensed at the time in question." Ex parte Fuller, 620 So. 2d at 678. In other words, the pictorial-

[3]"'Alabama courts, in interpreting the Alabama Rules of Evidence patterned after the Federal Rules of Evidence, will look to federal court decisions as persuasive authority.'" Ex parte Byner, 270 So. 3d 1162, 1168 (Ala. 2018) (quoting C. Gamble, McElroy's Alabama Evidence § 1.03 at 2 (6th ed. 2009) (emphasis omitted)).

communication theory applies when a witness who observed what is depicted on the video is available to testify at trial and can testify that the video accurately reflects what the witness observed. See Capote v. State, 323 So. 3d 104, 133 (Ala. Crim. App. 2020) (holding that the pictorial-communication theory was inapplicable because none of the witnesses who testified at trial "were present at the site while the cameras recorded [the defendant's] activities" (citation omitted)).

The silent-witness theory, on the other hand, applies when "there is no qualified and competent witness who can testify that the [video] accurately and reliably represents what he or she sensed at the time in question." Ex parte Fuller, 620 So. 2d at 678 (emphasis omitted). In such cases, the silent-witness theory provides that a video

> "is admissible, even in the absence of an observing or sensing witness, because the process or mechanism by which the [video] is made ensures reliability and trustworthiness. In essence, the process or mechanism substitutes for the witness's senses, and because the process or mechanism is explained before the [video] is admitted, the trust placed in its truthfulness comes from the proposition that, had a witness been there, the witness would have sensed what the [video] records."

Id. Thus,

> "[w]hen the 'silent witness' theory is used, the party seeking to have the [video] admitted into evidence must meet the

> seven-prong Voudrie [v. State, 387 So. 2d 248 (Ala. Crim. App. 1980),] test. Rewritten to have more general application, the Voudrie standard requires:
>
> > "(1) a showing that the device or process or mechanism that produced the item being offered as evidence was capable of recording what a witness would have seen or heard had a witness been present at the scene or event recorded,
> >
> > "(2) a showing that the operator of the device or process or mechanism was competent,
> >
> > "(3) establishment of the authenticity and correctness of the resulting recording, photograph, videotape, etc.,
> >
> > "(4) a showing that no changes, additions, or deletions have been made,
> >
> > "(5) a showing of the manner in which the recording, photograph, videotape, etc., was preserved,
> >
> > "(6) identification of the speakers, or persons pictured, and
> >
> > "(7) for criminal cases only, a showing that any statement made in the recording, tape, etc., was voluntarily made without any kind of coercion or improper inducement."

Ex parte Fuller, 620 So. 2d at 678.

In this case, Harrison argues that the State could not authenticate the Facebook videos without satisfying the Voudrie test, i.e., the silent-

witness theory, because the State did not present "any witness who perceived the events captured on the video recordings." (Harrison's brief, p. 42.) We agree that the pictorial-communication theory was not applicable in this case because the only people who were present when the Facebook videos were recorded were Harrison, Dray, and Nicole, none of whom testified at trial. We do not agree, though, that the State was required to satisfy the Voudrie test in order to authenticate the Facebook videos.[4]

Since Ex parte Fuller, supra, was decided, Alabama cases discussing the authentication of videos under the Voudrie test have dealt almost exclusively with surveillance-camera videos. See Young v. State, [Ms. CR-17-0595, Aug. 6, 2021] ___ So. 3d ___ (Ala. Crim. App. 2021); Capote, supra; Petersen v. State, 326 So. 3d 535 (Ala. Crim. App. 2019); Horton v. State, 217 So. 3d 27 (Ala. Crim. App. 2016); Bohannon v. State, 222 So. 3d 457 (Ala. Crim. App. 2015); Spradley v. State, 128 So. 3d 774 (Ala. Crim. App. 2011); Woodward v. State, 123 So. 3d 989 (Ala. Crim.

[4]At trial, Harrison did not expressly reference the Voudrie test in any of his challenges to the Facebook videos, but he did argue that the State was required to authenticate the videos under the silent-witness theory, which employs the Voudrie test.

App. 2011) (dashboard camera from a police officer's patrol car); Straughn v. State, 876 So. 2d 492 (Ala. Crim. App. 2003); Lee v. State, 898 So. 2d 790 (Ala. Crim. App. 2001); Pressley v. State, 770 So. 2d 115 (Ala. Crim. App. 1999); and Ex parte Rieber, 663 So. 2d 999 (Ala. 1995).

There is one case, however, since Ex parte Fuller was decided that addressed the authentication of a video that was not a surveillance-camera video. In Ex parte Weddington, 843 So. 2d 750 (Ala. 2002), the Alabama Supreme Court considered whether the State had properly authenticated a video that the defendant had recorded on his personal camcorder. The defendant argued on appeal that the State had not properly authenticated the video because, he said, the State had not satisfied the Voudrie test. Ultimately, the Court held that there was sufficient evidence to authenticate the video under the pictorial-communication theory and, therefore, did not have to address whether there was sufficient evidence to authenticate the video under the silent-witness theory, i.e., the Voudrie test.

The Court did, however, make a point of noting the "difficulty in applying" the Voudrie test in that case and implied that there might be cases in the future in which all of Voudrie's "foundational requirements"

might not control. Ex parte Weddington, 843 So. 2d at 757. In fact, the Court explicitly left open the very issue we face in this case: "Whether the foundational requirements necessary to proceed under the silent-witness theory should be relaxed when the defendant is charged as the maker of the videotape and there is insufficient evidence to satisfy the foundational requirements of the pictorial-communication theory." Id. That is the question we must answer in this case. More specifically, we must determine, as a matter of first impression, whether the Voudrie test must be satisfied in order to authenticate a video that the defendant is charged with making and posting on a social-media platform. Because the Alabama Supreme Court has indicated that the Voudrie test is not necessarily an inflexible, hard-and-fast standard that automatically applies to every video, and given the unique and ubiquitous nature of social-media videos, we hold that the failure to satisfy each and every element of the Voudrie test does not prevent the State from introducing such evidence.

We begin our analysis by noting that, if each element of the Voudrie test must be satisfied in order to authenticate a video from a social-media platform, then most, if not all, such videos will be excluded from evidence

in every case. This is so because the Voudrie test requires, among other requirements, that the proponent of a video show "that the device or process or mechanism that produced the [video] was capable of recording what a witness would have seen or heard had a witness been present at the scene or event recorded" and "that the operator of the device or process or mechanism was competent." Ex parte Fuller, 620 So. 2d at 678. However, videos posted on social-media platforms are typically created with mobile electronics such as cellular telephones, which permeate our society and do not need "experts" to operate, and anyone with such a device and the information needed to "log in" to a social-media account can post content to the account from almost anywhere in the world, regardless of his or her understanding of the mechanical functioning of the device. In fact, in many cases, the party seeking the admission of a video from a social-media platform might not even be able to determine exactly what kind of device was used or who recorded the video, much less be able to establish the reliability of the recording device and the competency of its operator.

The United States Court of Appeals for the Eleventh Circuit made this same point in United States v. Broomfield, 591 F. App'x 847 (11th

Cir. 2014) (not selected for publication in the Federal Reporter). In that case, the trial court admitted a video from YouTube, another social-media platform, in which the defendant could be seen shooting a firearm, and the defendant was subsequently convicted of being a felon in possession of a firearm. In seeking to authenticate the video, the government presented evidence that "identified the individual in the video as [the defendant], established where and approximately when the video was recorded, and … identified the specific rifle and ammunition depicted in the video." Id. at 851. The defendant argued on appeal that more was required to authenticate the video – specifically, evidence "establishing that the recording equipment was reliable." Id. at 852. The Court held, however, that the government had presented "ample evidence" to "ma[k]e out a prima facie case that th[e] YouTube video [was] what the government purport[ed] it to be – a video of [the defendant] in possession of a firearm." Id. at 851. As to the defendant's argument, the Court explained that Rule 901, Fed. R. Evid., did not require the government to present evidence establishing "the competence of the … recording operator" and "the fidelity of the recording equipment" because, if the government was required to present such evidence, then it "could seldom,

if ever, authenticate a video that it did not create." Broomfield, 591 F. App'x at 852 (citation omitted).

Other courts have also held that a video from a social-media platform was properly authenticated by evidence that likely would not be sufficient under Alabama's Voudrie test.

In Lamb v. State, 246 So. 3d 400 (Fla. Dist. Ct. App. 2018), the defendant argued that the State had not properly authenticated a Facebook video that showed him sitting in a stolen vehicle. In seeking to authenticate the Facebook video, the State presented a witness who testified that he had visited a codefendant's Facebook page, that he had found a "Facebook live" video that showed the defendant and his codefendants driving the stolen vehicle, and that he had downloaded the video, and the witness confirmed at trial that the video the State proffered at trial was the same video he had downloaded. Id. at 408-09. After noting that authentication is a "relatively low threshold," id. at 408, the Florida District Court of Appeals held that such evidence was sufficient to authenticate the Facebook video, and the Court rejected any requirement that the State "call the creator of the video[ ]" or "search the device which was used to create the video[ ]." Id. at 409. Requiring such

evidence, the Court explained, would "set[ ] the authentication burden too high." Id.

In Jordan v. State, 212 So. 3d 836 (Miss. Ct. App. 2015), the defendant argued that the State had not properly authenticated a YouTube video that showed him with his codefendant and tended to demonstrate that he had sought to intimidate a witness. In seeking to authenticate the YouTube video, the State presented a law enforcement officer's testimony that he "went to YouTube and found the video," that he recognized the defendant in the video, that he "participated in the process of downloading a copy of the video onto a compact disc," and that the disc the State proffered at trial contained the same video that he had seen on YouTube. Id. at 845. The Mississippi Court of Appeals held that such evidence was sufficient to authenticate the YouTube video, and the Court rejected the defendant's argument that the State had not properly authenticated the video because the testifying officer "did not know when the video was made, who produced it, or when it was published on the [I]nternet," holding that such issues went to weight to be afforded the video, not its admissibility. Id. That Court recently reinforced Jordan in Carruthers v. State, 348 So. 3d 1042 (Miss. Ct. App. 2022), holding that

the State had properly authenticated a Facebook video through a law enforcement officer's testimony that he had viewed the video on the defendant's Facebook page and that the video the State proffered at trial was the same video he had viewed.

In State v. Spivey, (No. M2018-00263-CCA-R3-CD, Feb. 7, 2020) (Tenn. Crim. App. 2020) (unpublished decision), the Tennessee Court of Criminal Appeals considered whether the State had properly authenticated a YouTube video.[5] In that case, a law enforcement officer testified that he had found the YouTube video while searching the Internet, and he identified the video at trial. However, the officer testified that he did not know "when the video was posted to YouTube," did not know "who filmed or posted the video," did not know "if the video had been altered prior to posting," and did not know "anything about the video other than it is something that [he] found on the [I]nternet." The Court nevertheless held that the officer's testimony that he had found the YouTube video and that the police had downloaded a copy of the video was sufficient to authenticate the video, and the Court explained that the

[5]Unpublished decisions of Tennessee's appellate courts are considered persuasive authority in that state. See Rule 4(G), Tenn. S. Ct. Rules.

defendant's argument regarding "when or how the [video] was created … [went] to the weight the jury attributed to the [video], not [its] authenticity."

In State v. Groves, 323 So. 3d 957 (La. Ct. App. 2021), the Louisiana Court of Appeals considered whether the State had properly authenticated videos from Instagram, another social-media platform. In that case, the State presented testimony from an agent with the Federal Bureau of Investigation, who testified that she had found the videos on Instagram while monitoring the defendants' social-media activity, provided the dates the videos had been posted and her method of obtaining the videos, and identified the defendants in the videos. That evidence, the Court explained, provided "sufficient facts from which a reasonable juror could find that the evidence [was] what [the State] claim[ed] [it was]." Id. at 977.

In United States v. Washington, (No. 16-cr-477) (N.D. Ill., Aug. 24, 2017) (not reported in Federal Supplement), the United States District Court for the Northern District of Illinois stated in a pretrial ruling that the government could authenticate a YouTube video through testimony from a law enforcement officer who would testify that he saw the video

on YouTube. The Court rejected the defendant's argument that the government could not authenticate the video because the officer could not "testify about the circumstances under which it was filmed, such as where or when it was record," and "lack[ed] personal knowledge about who operated the camera to film the video, what camera he or she used, or whether the video was altered after filming." According to the Court, "[w]hile a witness with such knowledge could authenticate th[e] video, Rule 901[, Fed. R. Evid.,] does not require it."

We find these cases persuasive and hold that "the foundational requirements necessary to proceed under the silent-witness theory should be relaxed" when the State seeks to authenticate a video that "the defendant is charged [with] mak[ing]" and posting to a social-media platform. Ex parte Weddington, 843 So. 2d at 757. In other words, such videos are not subject to the full Voudrie test, which would, in many cases, present an insurmountable obstacle to their admission if the pictorial-communication theory is not applicable. Instead, in accordance with Rule 901 and its low threshold for authentication, the State need only present evidence "sufficient to support a finding that the matter in question is what its proponent claims." Rule 901(a). Generally, if the

pictorial-communication theory is not applicable, this requirement can be satisfied through the testimony of a witness who viewed the video on the social-media platform and can testify that the video proffered at trial is the same video. Issues such as the ownership of the social-media account, the reliability of the recording device, the competency of the operator of that device, and any editing that occurred before the video was posted on the social-media platform are issues that go to the weight to be afforded the video, not its admissibility. This Court has previously reached the same conclusion with respect to photographs from a social-media platform, and we see no reason to require a different standard for a video from a social-media platform. See Knight v. State, 300 So. 3d 76 (Ala. Crim. App. 2018) (holding that the trial court did not exceed its discretion by finding that Facebook photographs were properly authenticated by a detective's testimony that he had found the photographs on what he believed to be the defendant's Facebook page and that the photographs proffered at trial had not been altered).

In this case, Brayon testified that, after Brandon was murdered, he searched the Internet for Harrison's Facebook page, where he found the two Facebook videos, and there is no dispute as to the identities of the

people who appear on the videos. There can also be no serious dispute as to who filmed the videos because it is obvious that Harrison filmed them with a cellular telephone or other mobile electronic device.[6] Brayon also testified that one of the videos had been posted on Harrison's Facebook page on August 3, 2018; that the other video had been posted on September 1, 2018; and that the videos were "Facebook live" videos, which, according to Brayon, meant that the videos had been posted on Harrison's Facebook page as they were being filmed, i.e., that the videos were filmed on those dates. In addition, Brayon testified that he had viewed the videos on the discs the State proffered at trial and that the videos on those discs were "a fair and accurate" depiction of the videos he saw on Harrison's Facebook page. (R. 301, 306.) The only difference Brayon noted in the videos was that the August 3, 2018, video included audio when he viewed it on Harrison's Facebook page and that the sound had been "removed" from the video the State played at trial, but the State

[6]At one point in the August 3, 2018, video, Harrison leaves the porch to go to a store and leaves the recording device with Dray and Nicole, who continue filming. However, during the time that Harrison appears on the video, it is obvious that he is the one filming.

proffered the videos for what they showed, not for what could be heard on the videos.

We hold that Brayon's testimony was sufficient to support a finding that the Facebook videos were "what [the State] claim[ed]" they were, Rule 901(a), i.e., videos that Brayon had viewed on Harrison's Facebook page, and that the State therefore satisfied the low threshold for authentication. Indeed, as one judge on the Mississippi Court of Appeals has aptly noted, "short of [Harrison] getting on the stand and admitting to the authenticity of the [Facebook] video[s] …, [this Court is] not sure what else the State could have done to authenticate them." Greene v. State, 282 So. 3d 645, 655 (Miss. Ct. App. 2019) (Wilson, J., concurring in the result). The ultimate determination of the authenticity of the Facebook videos was a question for the jury, Johnson v. State, 120 So. 3d 1130, 1201 (Ala. Crim. App. 2009), and issues regarding the reliability of the devices used to create the videos, the competency of the operators of those devices, any editing of the videos that might have occurred before they were posted on Harrison's Facebook page, and Brayon's knowledge of the "Facebook live" process were issues that went to the weight to be afforded the videos, not their admissibility. Accordingly, we cannot say

that the trial court exceeded its considerable discretion by finding that the State properly authenticated the two Facebook videos.

B. Relevancy

"'Alabama recognizes a liberal test of relevancy,'" Gavin v. State, 891 So. 2d 907, 963 (Ala. Crim. App. 2003) (quoting Hayes v. State, 717 So. 2d 30, 36 (Ala. Crim. App. 1997)), which provides that evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, Ala. R. Evid. Under that liberal standard, evidence is "'admissible against a relevancy challenge if it has any probative value, however[ ] slight, upon a matter in the case.'" Gavin, 891 So. 2d at 964 (quoting Knotts v. State, 686 So. 2d 431, 468 (Ala. Crim. App. 1995) (emphasis added)). See Young, ___ So. 3d at ___ ("If evidence is even slightly probative of a matter at issue, it is relevant." (emphasis added)). Stated differently:

> "'"Where the proffered evidence has a tendency, even though slight, to enlighten the jury as to the culpability of the defendant, then it is relevant and properly admissible." Waters v. State, 357 So. 2d 368, 371 (Ala. Cr. App.), cert. denied, Ex parte Waters, 357 So. 2d 373 (Ala. 1978). "The test of probative value or relevancy of a fact is whether it has any tendency to throw light upon the matter in issue even though such light may be weak and fall short of its intended

> demonstration." Tate v. State, 346 So. 2d 515, 520 (Ala. Cr. App. 1977).'"

Floyd v. State, 289 So. 3d 337, 409 (Ala. Crim. App. 2017) (quoting Barrow v. State, 494 So. 2d 834, 835 (Ala. Crim. App. 1986)). See also Bielunas v. F/V Misty Dawn, Inc., 621 F.3d 72, 76 (1st Cir. 2010) (noting that "[t]he definition of relevance is quite expansive" and that, "[t]o be relevant, the evidence need not definitively resolve a key issue in the case – it need only move the inquiry forward to some degree" (internal citations omitted)). Thus, this Court has described relevancy as a "'"'loose evidentiary requirement,'"'" Dotch v. State, 67 So. 3d 936, 997 (Ala. Crim. App. 2010) (quoting Taylor v. State, 666 So. 2d 36, 52 (Ala. Crim. App. 1994), quoting Clisby v. State, 456 So. 2d 99, 101 (Ala. Crim. App. 1983), quoting Stanley v. Zant, 697 F.2d 955, 960 (11th Cir. 1983)), and federal circuit courts have similarly explained that Rule 401, Fed. R. Evid., which is substantively identical to our own Rule 401, "'sets a very low bar for relevance'" and that "[t]hat low threshold makes 'a relevancy-based argument … a rather tough sell.'" Gonpo v. Sonam's Stonewalls & Art, LLC, 41 F.4th 1, 14 (1st Cir. 2022) (quoting, respectively, United States v. Rodriguez-Soler, 773 F.3d 189, 293 (1st Cir. 2014), and Franchino v. City of Providence, 881 F.3d 32, 49 (1st Cir. 2018)). See

United States v. Wells, 38 F.4th 1246, 1260 (10th Cir. 2022); United States v. Sumlin, 956 F.3d 879, 889 (6th Cir. 2020); and United States v. Litvak, 808 F.3d 160, 180 (2d Cir. 2015) (all noting that relevancy is a "very low" threshold). With these principles in mind, we consider whether the two Facebook videos were relevant.

1. Relevancy of the August 3, 2018, Video

The August 3, 2018, video shows Harrison, Dray, and Nicole socializing together at a house at some point before Brandon was murdered later that night, although it is not clear how much time elapsed between the video and the murder. According to Harrison, the mere fact that he was with Dray and Nicole on the day Brandon was murdered, at some point before the murder occurred, does not tend to shed any light on his guilt. However, Brayon testified that Harrison, Dray, and Nicole were together in a car when Harrison shot Brandon, and Brayon's testimony was strengthened to some extent by the facts that there was a friendly relationship among Harrison, Dray, and Nicole and that the three were together earlier in the day. As this Court has previously stated: "'Photographs [or videos] that tend to shed light on, to strengthen, or to illustrate other testimony presented may be admitted into

evidence.'" Lindsay v. State, 326 So. 3d 1, 34 (Ala. Crim. App. 2019) (quoting Ex parte Siebert, 555 So. 2d 780, 783 (Ala. 1989) (emphasis added)). It was also important for the State to strengthen Brayon's testimony because his testimony was the only evidence that tended to implicate Harrison, and Brayon admitted that he had lied to the police several times during the investigation of Brandon's murder. Indeed, defense counsel went to great lengths in attempting to cast doubt on Brayon's credibility. Thus, given the low threshold for relevancy, we cannot say that the trial court exceeded its considerable discretion by determining that the August 3, 2018, video was relevant. See People v. James, 176 A.D.3d 1492, 1495, 113 N.Y.S.3d 355, 359 (2019) (holding that a video of the defendant recorded several weeks before a shooting was relevant for several reasons, including that it "fleshed out his connection to" another individual who was involved in the shooting); and Cole v. State, 36 So. 3d 597, 604-05 (Fla. 2010) (holding that photographs of the defendant and his codefendants "partying" together before they committed multiple murders were relevant in that the photographs "enabled the jury to see the relationship that [the defendant] had with her codefendants").

Our conclusion that the August 3, 2018, video was relevant does not end our inquiry. Rule 403, Ala. R. Evid., provides, in pertinent part, that even relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." The question under Rule 403 is not simply whether Harrison was prejudiced by the admission of that video; indeed, "all evidence against a defendant … [is] prejudicial." Wilson v. State, 142 So. 3d 732, 812 (Ala. Crim. App. 2010). Rather, the question is whether there was a danger that unfair prejudice could result from the admission of the video and whether that danger was substantially outweighed by the video's probative value. See Ex parte Vincent, 770 So. 2d 92, 95 (Ala. 1999) ("Mere prejudice is not a basis for exclusion under Rule 403, because evidence can be harmful, yet not unfairly prejudicial."). As to what constitutes unfair prejudice, the Alabama Supreme Court has explained:

> "'Unfair prejudice' under Rule 403 has been defined as something more than simple damage to an opponent's case. Dealto v. State, 677 So. 2d 1236 (Ala. Crim. App. 1995). A litigant's case is always damaged by evidence that is contrary to his or her contention, but damage caused in that manner does not rise to the level of 'unfair prejudice' and cannot alone be cause for exclusion. Jackson v. State, 674 So. 2d 1318 (Ala. Crim. App. 1993), reversed in part on other grounds, 674 So. 2d 1365 (Ala. 1994). 'Prejudice is "unfair" if [it] has "an undue tendency to suggest decision on an improper basis."' Gipson

> v. Younes, 724 So. 2d 530, 532 (Ala. Civ. App. 1998), quoting Fed. R. Evid. 403 (Advisory Committee Notes 1972). See, also, Rule 403, Ala. R. Evid."

Ex parte Vincent, 770 So. 2d at 96.

Harrison argues that, for two reasons, the probative value of the August 3, 2018, video was substantially outweighed by the danger of unfair prejudice, although his arguments are somewhat cursory. First, Harrison argues that the video "allowed the jury to engage in conjecture by improperly suggesting that, if [he] was with Dray and [Nicole] at some earlier point, [then] Brayon was credible when he identified the three together at the scene" of Brandon's murder. (Harrison's brief, p. 46.) However, we have already concluded that the video was relevant, i.e., proper, evidence for the jury to consider in making its credibility determinations. In other words, although the video was harmful to Harrison in that it tended to strengthen the State's case, it was not unfairly prejudicial because it did not have "an undue tendency to suggest decision [by the jury] on an improper basis." Ex parte Vincent, 770 So. 2d at 96 (emphasis added; citations omitted). Second, Harrison argues that the video shows him "drinking something and then appearing possibly intoxicated." (Harrison's brief, pp. 46-47.) However, whatever

Harrison is briefly drinking at the beginning of the video is in a plain blue plastic cup, and nothing in the video tends to indicate that Harrison was drinking alcohol or that he was intoxicated, especially given that the State apparently did not play the audio for the jury. Thus, we conclude that the probative value of the August 3, 2018, video was not substantially outweighed by the danger of unfair prejudice.

2. Relevancy of the September 1, 2018, Video

The September 1, 2018, video was filmed from inside a moving car approximately one month after Brandon's murder, and, according to Brayon's testimony, that video shows Harrison driving by the murder scene. Harrison argues that the video lacked any relevance because, he says, "[d]riving by an area does not in and of itself tend to indicate anything." (Harrison's brief, p. 47.) We agree that the mere fact that Harrison drove by the murder scene approximately one month after the murder does not, in and of itself, tend to shed light on any material issue at trial. However, the September 1, 2018, video is more telling than that. During most of the video, which lasts almost eight minutes, the camera is focused on either Harrison or Nicole, but, when Harrison drives slowly past the murder scene, he turns the camera from the interior of the car

and focuses it on the murder scene. Harrison's decision to film the murder scene was certainly suspicious and not likely happenstance, and it thus provided a basis upon which the jury could have inferred his consciousness of guilt. See State v. Reed, 676 A.2d 479, 481 (Me. 1996) (affirming the trial court's finding that the defendant's "suspicious behavior in returning to the scene of the crime" was "relevant evidence"). Indeed, the relevancy of the video is demonstrated by the prosecutor's closing argument, in which he argued that the odds would be "astronomical" that Brayon "made up this whole story" and then, approximately one month later, Harrison drove by the murder scene and "turn[ed] his camera to the scene where he murdered Brandon." (R. 598-99.) Thus, given the low threshold for relevancy, we cannot say that the trial court exceeded its considerable discretion by determining that the September 1, 2018, video was relevant.

As to whether the probative value of that video was substantially outweighed by the danger of unfair prejudice, the only argument Harrison makes is that the video "repeatedly shows [him] … smoking something that the jury could have viewed as drug use." (Harrison's brief, p. 47.) However, it is not clear that Harrison was smoking an illegal

substance in the video, nor did the State ever suggest that he was. Thus, any danger of unfair prejudice was slight if it existed at all, and, for that reason, we cannot say that the probative value of the September 1, 2018, video was substantially outweighed by the danger of unfair prejudice.

C. Evidentiary Conclusions

The State properly authenticated the two Facebook videos admitted at trial. Also, both videos were relevant under Alabama's liberal relevancy standard, and the probative value of the videos was not substantially outweighed by the danger of unfair prejudice. Thus, the trial court did not exceed its considerable discretion by admitting the two Facebook videos.

IV.

Harrison argues that the trial court erred by overruling the three objections he raised during the prosecutor's closing argument. In reviewing these arguments, we are guided by the following well-settled principles:

> "'Wide discretion is allowed the trial court in regulating the arguments of counsel. Racine v. State, 290 Ala. 225, 275 So.2d 655 (1973). "In evaluating allegedly prejudicial remarks by the prosecutor in closing argument, ... each case must be judged on its own merits," Hooks v. State, 534

> So. 2d 329, 354 (Ala. Crim. App. 1987), aff'd, 534 So. 2d 371 (Ala. 1988) (citations omitted) (quoting Barnett v. State, 52 Ala. App. 260, 264, 291 So. 2d 353, 357 (1974)), and the remarks must be evaluated in the context of the whole trial, Duren v. State, 590 So. 2d 360 (Ala. Crim. App. 1990), aff'd, 590 So. 2d 369 (Ala. 1991). "In order to constitute reversible error, improper argument must be pertinent to the issues at trial or its natural tendency must be to influence the finding of the jury." Mitchell v. State, 480 So. 2d 1254, 1257-58 (Ala. Crim. App. 1985) (citations omitted). "To justify reversal because of an attorney's argument to the jury, this court must conclude that substantial prejudice has resulted." Twilley v. State, 472 So. 2d 1130, 1139 (Ala. Crim. App. 1985) (citations omitted).'

"Coral v. State, 628 So. 2d 954, 985 (Ala. Crim. App. 1992)."

Creque v. State, 272 So. 3d 659, 701 (Ala. Crim. App. 2018).

A. The First Objection

During the prosecutor's initial closing argument, the following colloquy occurred:

> "[THE PROSECUTOR]: Now, earlier in this process, we talked about the State does have the burden. And we talked about the standard which is beyond a reasonable doubt. It wasn't a shadow of a doubt. It's not beyond all doubt. It's not to a scientific or mathematical certainty but beyond a reasonable doubt. And the judge will explain that to you. But, again, … a reasonable doubt is just a doubt for which you can assign a sound and sensible reason. Which is not what the defendant has already explained, that he wasn't there.

> "[DEFENSE COUNSEL]: Judge, I'll object. The defendant has not testified, and she's misstating the evidence.
>
> "THE COURT: Overruled. Go ahead."

(R. 552-53 (emphasis added).)

Citing that part of the prosecutor's argument that we have emphasized, Harrison contends that the prosecutor misstated the evidence because, he says, her statement "suggested to the jury that [he] had testified, which he had not," and "also suggested that the defense ha[d] presented some other evidence." (Harrison's brief, p. 53.) However, it is evident that the prosecutor was merely arguing that the evidence did not support defense counsel's theory, asserted in opening statement, that Harrison "wasn't there that night" (R. 216), which was a proper argument for the prosecutor to make. See Connell v. State, 7 So. 3d 1068, 1096 (Ala. Crim. App. 2008) (holding that there was no impropriety in the prosecutor's argument because "the prosecutor was obviously commenting … on the fact that the evidence did not support the representations defense counsel made in his opening argument"); and Dossey v. State, 489 So. 2d 662, 665 (Ala. Crim. App. 1986) (noting that "[c]ounsel should be afforded wide latitude in responding to assertions made by opposing counsel in previous argument" and holding that "[t]he

prosecutor's remarks were not improper because they were occasioned by and in reply to" defense counsel's opening statement). Furthermore, the jury clearly knew that Harrison had not testified and that the defense had not presented any evidence, and it is inconceivable that the jury's verdict would have been affected by any misstatement to that effect. Thus, even if the prosecutor's argument was improper (which it was not), Harrison is not entitled to relief on this claim. See Creque, 272 So. 3d at 701 ("To justify reversal because of an attorney's argument to the jury, this court must conclude that substantial prejudice has resulted." (citations omitted)).

B. The Second Objection

During the prosecutor's rebuttal closing argument, the following colloquy occurred:

> "[THE PROSECUTOR]: … [This case is] about Brandon Lewis, who's dead. And you will not hear from him this week because he ain't going to be here, because Eric Harrison killed him, and you will not hear his story.
>
> "[DEFENSE COUNSEL]: Your Honor, I object.
>
> "THE COURT: Overruled. Folks, you all –
>
> "[DEFENSE COUNSEL]: Judge –

> "THE COURT: Overruled, overruled. Folks, it's up to the jury to recall the facts and the evidence that have come from the witness stand and the items admitted into evidence. What the attorneys say is not evidence. The attorneys have a right to sum up what they conclude the evidence was from the witness stand and the items admitted into evidence, okay.
>
> "[DEFENSE COUNSEL]: Judge, my objection is burden shifting.
>
> "THE COURT: Again, the burden is on the State of Alabama. I've explained that's why they get to go first and they get to go last."

(R. 591-92.)

According to Harrison, this part of the prosecutor's argument "place[d] the onus on Harrison to at least tell his side of the story," which "suggests burden shifting." (Harrison's brief, p. 55.) However, nothing in the prosecutor's argument even remotely suggests that Harrison had any burden whatsoever, and the prosecutor had already conceded that the State had the burden of proving Harrison's guilt. Instead, the prosecutor was clearly arguing that Harrison was guilty of Brandon's murder and that, as a result, the jury would not hear Brandon's story. There was nothing improper about that argument. See Minor v. State, 914 So. 2d 372, 420 (Ala. Crim. App. 2004) ("[I]t is not improper for a prosecutor to argue to the jury that a defendant is guilty or to urge the

jury to find the defendant guilty of the crime charged so long as that argument is based on the evidence; in fact, that is exactly what a prosecutor is supposed to do during closing argument."). Furthermore, even if the prosecutor's argument could somehow be interpreted as an attempt to shift the burden of proof to Harrison, the trial court immediately reminded the jury that it was the State alone who had the burden of proof, and we presume the jury followed the court's instructions. Lockhart v. State, 163 So. 3d 1088, 1163 (Ala. Crim. App. 2013). Thus, Harrison is not entitled to relief on this claim.[7] See S.A.J. v. State, 195 So. 3d 327, 341 (Ala. Crim. App. 2015) (holding that the defendant was not entitled to relief based on the prosecutor's alleged burden-shifting argument because the argument was not an attempt to shift the burden of proof and, moreover, because the trial court had

[7]Harrison also argues that this part of the prosecutor's argument "suggested to the jury that [he] had killed Brandon to prevent him from testifying." (Harrison's brief, p. 55.) However, Harrison's only objection at trial was that the prosecutor had attempted to shift the burden of proof, and, thus, Harrison waived all other grounds for that objection. See Ex parte Coulliette, 857 So. 2d 793, 794 (Ala. 2003) ("The statement of specific grounds of objection waives all grounds not specified, and the trial court will not be put in error on grounds not assigned at trial." (citation omitted)). Furthermore, we agree with the State's contention that Harrison's interpretation of the prosecutor's argument "is, to put it mildly, a stretch." (State's brief, p. 37.)

subsequently instructed the jury as to the State's burden of proof, and the jury was presumed to have followed the court's instructions).

C. The Third Objection

During the prosecutor's rebuttal closing argument, the following colloquy occurred:

> "[THE PROSECUTOR]: [Defense counsel] said something during the trial, said Brayon was in the best position to tell us what happened. Well, I agree with him. I agree with him. And he has – again, you know, some of you may not understand how someone could not tell on their cousin and brother's friend [(Mike)]. You may not understand how someone would not tell police about something. Some of you may totally understand that. And that's why we have all of you to go back and deliberate together. I'm not saying it was right. But I ask you to think about that. And, again, we're here to determine whether Eric Harrison did this.
>
> "[DEFENSE COUNSEL[: Your Honor, that's not the legal standard. And I object to that.
>
> "THE COURT: Overruled."

(R. 600-01.)

Harrison argues that, by stating that the jury was "here to determine whether [he] did this," the prosecutor "oversimplifi[ed]" … the jury's role." (Harrison's brief, p. 56.) More specifically, Harrison argues:

> "[T]he role of the jury was not to determine the sole issue of whether Harrison killed Brandon Lewis. Rather, it was to determine, if the State had proven, beyond a reasonable

> doubt, each and every element of the two capital murder charges that Harrison faced. This of course included whether Harrison had the required intent. As a result, the State's argument to the jury misrepresented the legal standards applicable to this case."

(Id.)

We disagree with Harrison's argument that the prosecutor "oversimplifi[ed]" … the jury's role," and we are confident that the jury understood what was required of it. During its jury instructions, the trial court explained the elements of both capital-murder charges, including the intent to kill, and explained that the jury could not convict Harrison of either charge unless it found that the State had proven each element beyond a reasonable doubt. (R. 619-24.) But that is not the only time the jury heard those legal principles. The prosecutor also explained the elements of the capital-murder charges, including the intent to kill, and explained that the State was required to prove each of those elements beyond a reasonable doubt. (R. 555-57.) Thus, when the prosecutor argued that the jury's role was to "determine whether [Harrison] did this," the jury would have clearly understood that its determination had to be based upon whether the State had proven the elements of the

capital-murder charges beyond a reasonable doubt. Therefore, we find no impropriety in this part of the prosecutor's argument.

Conclusion

Harrison has not demonstrated that any reversible error occurred during his trial. Accordingly, the judgment of the trial court is affirmed.

AFFIRMED.

Windom, P.J., and Kellum, Cole, and Minor, JJ., concur.