

Rel: August 21, 2026

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is published in Southern Reporter.

Alabama Court of Criminal Appeals

OCTOBER TERM, 2025-2026

CR-2024-0040

LaJeromeny Latez Brown

v.

State of Alabama

Appeal from Madison Circuit Court
(CC-21-2762)

MINOR, Judge.

LaJeromeny Latez Brown went to a vacant house in Huntsville in December 2019 planning to sell 100 pounds of marijuana for \$65,000. Unknown to Brown, the sale was a set up—law-enforcement officers had surrounded the house, and officers were waiting inside to arrest Brown.

Brown knocked on the door and, hearing a voice telling him to come in, opened it. Huntsville Police Department Agent Billy Clardy III, whose weapon was holstered and who was wearing a vest with "POLICE" on the front and back, began moving from a room adjacent to the room into which the front door opened. Brown, armed with a Glock pistol equipped with a switch making it fully automatic, shot a burst of gunfire immediately upon seeing Agent Clardy, gunning him down and killing him. Law-enforcement officers pursued Brown and caught him.

A jury convicted Brown of capital murder for killing Agent Clardy. That same jury, by a vote of 10 to 2, sentenced Brown to death. After careful review, and with the benefit of oral argument,¹ we affirm.

Facts and Procedural History

In Fall 2019, Fred Alexander, a confidential informant, contacted Agent Blake Dean with the Huntsville Police Department and told him that a man he knew as "Tennessee" was bringing large amounts of marijuana from either Chattanooga or Knoxville and selling it in Huntsville. (R. 1419-20.) Alexander told Agent Dean that they could first

¹This Court held oral argument on December 9, 2025.

buy 3 pounds of marijuana from Tennessee and later buy 100 pounds of marijuana from him. (R. 1419-21.) Agent Dean, who was also a member of the North Alabama Drug Task Force,² and Alexander set up a controlled buy with Tennessee for November 20, 2019. (R. 1421.)

On November 20, Agent Dean met with Alexander at the drug-task-force office to discuss the controlled buy. Alexander told Agent Dean that "it was going to be \$1,900 for the three pounds of marijuana." (R. 1421.) They called Tennessee, and he agreed to meet Alexander at the Parkway Place Mall in Huntsville. (R. 1421.) Because the deal Alexander had set up with Tennessee included a third party, Agent Thomas Morris agreed to pose as the third party. (R. 1422.) Agent Dean gave Agent Morris \$1,900 to buy the marijuana from Tennessee and outfitted him with a recording device. (R. 1422.) Agent Morris and Alexander then drove separately to the Parkway Place Mall.

Agent Dean and the drug-task-force team followed them to the mall

²The North Alabama Drug Task Force is "a multi-jurisdictional drug task force with the goal of disrupting and dismantling drug trafficking organizations." (R. 1416.) The task force consists of "mostly Huntsville Police Officers" but also includes members from the Madison County Sheriff's Department and the Madison City Police Department and partners with the Federal Bureau of Investigation and the Drug Enforcement Administration. (R. 1416.)

"and kept surveillance the whole time." (R. 1422.) At the mall, Agent Morris and Alexander "parked on the parking deck in front of the food court at the mall towards the back of the parking lot." (R. 1422.) Once parked, Agent Morris got out of his car and got into Alexander's car as they waited for Tennessee. (R. 1422-23.) After about half an hour, Tennessee called Alexander and told him that he was at the mall, and Alexander told him where he and Agent Morris were parked. Soon after, "a gray Chevy Malibu with a Tennessee tag back[ed] in next to where Agent Morris [and Alexander were] parked." (R. 1423.) Alexander and Agent Morris then got into Tennessee's car. In Tennessee's car, Agent Morris gave Tennessee the \$1,900, and, in return, Tennessee gave Agent Morris "three Ziploc bags, each containing about a pound of marijuana." (R. 1423.) They then went their separate ways, leaving the Parkway Place Mall. (R. 1423.)

When Tennessee left, Agent Dean "followed him long enough to get the tag [number] off the vehicle." (R. 1423.) Later, Agent Dean ran Tennessee's tag number, "and it came back to Alma Applebet of Chattanooga." (R. 1423-24.) Another drug-task-force agent found a connection between Applebet and LaJeromeny Brown. (R. 1424.) Agent

Dean found a picture of Brown and showed it to Agent Morris, who "identified LaJeromeny Brown as the person he had just bought the marijuana from at Parkway Place." (R. 1424.) Agent Dean also showed Brown's picture to Alexander, who "confirmed that LaJeromeny Brown was the same subject he knew as Tennessee." (R. 1425.)

On December 4, 2019, Alexander called Agent Dean and told him that Brown had told him that he would be in Huntsville two days later "to bring the hundred pounds of marijuana and that it would be \$60,000." (R. 1425.) Brown told Alexander that they needed to meet at a house to do the transaction. (R. 1425.) Agent Billy Clardy, whose wife worked in real estate, found a vacant house on Levert Street "that [they] could use for the deal." (R. 1426.)

Two days later, Alexander met with the drug-task-force team at the drug-task-force office around 2:00 p.m. (R. 1426.) Alexander told the team that Brown had said that he would get to Huntsville between 7 p.m. and 9 p.m. that night. Alexander then called Brown, and Brown told him that he was already in Huntsville and "that he was ready," but the price for the marijuana had increased to \$65,000. (R. 1426.) Alexander told Brown that "he would ask the third party if the \$5,000 increase was something

he could do or not." (R. 1427.) After letting a little time pass, Alexander "made a recorded phone call to Mr. Brown ... to let him know that the deal was still good; that we would still pay the \$65,000. And also that we would send him a—text him an address of where we wanted to meet at." (R. 1427.)

Because Brown was already in Huntsville and ready to meet with Alexander and Agent Morris, the drug-task-force team had "to move quicker." (R. 1428.) Agent Clardy "left the office to go get the [house] key and to go to make sure the house was—was okay," and Agent Dean sent Alexander to wait in a nearby department-store parking lot while the rest of the drug-task-force team met to discuss the operation. (R. 1428-29.) The transaction with Brown was not a controlled buy; the drug-task-force team was instead "going to conduct a takedown and recover the drugs." (R. 1429.) The team then planned the takedown operation.

Because, in their experience, it was common for anyone with a lot of drugs to run from law enforcement and because they were meeting Brown between 4:00 p.m. and 5:00 p.m. during "work hour traffic," the team planned to wait until Brown got out of his car to take him down.

"The plan [was Brown was] going to pull up and [the drug-task-force team was] going to let him get as far away from

that truck—get out of the truck and as far away from it as possible so he [couldn't] jump back into it and run from [them].

"[Agent Dean], [Agent Clardy], and Agent Morris were going to be in the house. And [Agent Dean] and [Agent Clardy] were kind of just cover for Agent Morris in case Agent Morris had to make contact with Mr. Brown. But the plan was to let him get away from that truck, up on the porch, and then attempt to take him down."

(R. 1430-31.) The plan for the "takedown team" was to stay "on the perimeter." (R. 1432.) Once Agent Dean signaled for them to "move," the takedown team would take Brown into custody before he entered the house.

After the plan was approved, Agents Dean, Clardy, and Morris drove to a nearby department store. There, the agents got into a "surveillance vehicle[]," which did not "look like a police vehicle," and drove to the house on Levert Street to prepare it for Brown's arrival. (R. 1432.) Agents Dean and Clardy, like the agents stationed outside the house, wore "vests that were clearly marked on the front and back" with the word "POLICE." (R. 1433.) But because Agent Morris was working undercover as the third party, he did not wear a vest.

While Agents Dean, Clardy, and Morris were preparing the house, Agent Bradley Snipes, who was working on the perimeter as part of the

takedown team, radioed that a "tan Dodge Ram" had turned down Levert Street. (R. 1434.) Agent Clardy, who was looking out of the living-room window toward Levert Street, told Agent Dean that the truck was "occupied by one black male." (R. 1434.) The truck first parked in front of the house, but the person inside it did not get out. After a few minutes, the truck pulled into an open field across the street from the house and parked. The person continued to sit inside the truck. Agent Dean then called Alexander and told him to call Brown. Alexander did so. Alexander told Agent Dean that Brown was at the house and to have Agent Morris come out of the house "just to wave at him to let him know that he is there." (R. 1435.)

Before Agent Morris went outside to wave at Brown, Agents Dean and Clardy moved to a front bedroom, which was near the front door, that had a window "facing out towards the road." (R. 1435.) From that window, Agent Dean could see Brown in the truck. (R. 1435.) Agent Morris then went outside, waved at Brown, and came back inside and closed the front door. Brown still did not get out of the truck.

Instead, Brown "move[d] his truck almost up into the kind of front yard sideways where his passenger door is facing the front door of the

house." (R. 1435-36.) Although Agent Dean was supposed to tell the takedown team to apprehend Brown as soon as he got out of the truck, Agent Dean "went from having a good eye to being able to see him 'til [Brown] pull[ed] in front of the house and [he could] see the truck but [he couldn't] see [Brown] anymore." (R. 1436.) Agent Dean did not know that Brown "was out of the truck until [Brown] knocked on the front door." (R. 1436.) As soon as Brown knocked on the door, Agent Dean told the takedown team to move.

But after Brown knocked, Agent Morris told him to "come on in." (R. 1437.) As soon as Brown opened the front door, Agent Clardy, whose weapon was holstered, started to move out of the front bedroom to apprehend Brown. Before he left the threshold of the front bedroom, he was hit by a burst of automatic gunfire. Agent Clardy "immediately [went] down," and Brown fled on foot. Agent Dean and Sergeant Doug Pennington, who was stationed nearby, began attending to Agent Clardy. (R. 1439.) Within minutes, drug-task-force agents loaded Agent Clardy into the back of Agent Snipes's truck and drove him to the hospital, where

he was later pronounced dead.³

While some agents attended to Agent Clardy, other agents pursued Brown. Agent John Daly was about "thirty yards" away from Brown when Brown fled from the house. (R. 1509.) Agent Daly could see that Brown "had a pistol in his hand," and, as Agent Snipes drove up, Brown turned back and "[p]ointed the weapon at Agent Snipes's vehicle." (R. 1509-10.) Brown threw his firearm—a 9-millimeter Glock model 17 Gen 5 with an aftermarket "select fire sear" that converts a semiautomatic

³An autopsy performed by Dr. Valerie Green showed that Agent Clardy suffered three gunshot wounds. (R. 1612.) One gunshot wound was "an abrasion down on the area of the abdomen." (R. 1612.) The second gunshot wound

"went through the third intercostal muscle, which is a muscle between the second and third ribs. The upper lobe of the right lung, the right atrium, atrial septum, and left atrium of the heart. The inferior lobe of the left lung, the diaphragm, which is the muscle that separates the chest from the abdomen and aids in respiration. It then hit the spleen, the diaphragm once again, and then exited the left posterior intercostal muscle basically meaning that muscle after the left rib in the back of the body."

(R. 1613.) The third gunshot wound was "located in the upper right back" and "went through soft tissues of the trapezius area of the torso and soft tissues of the interior right chest wall." (R. 1614-15.) The second gunshot wound was fatal.

firearm into a fully automatic firearm⁴ (R. 1633-36)—and Agent Daly pursued Brown on foot. (R. 1510.) Soon after, Brown was taken into custody. While the agents were trying to handcuff Brown, they asked each other if Brown had shot someone; Brown offered that he "didn't see nobody." (State's Ex. 971; 17:14:37-39.)⁵ After Brown was in custody, Agent Daly returned to where he saw Brown throw his firearm and "called on the radio for a patrol unit to come stand guard over it." (R. 1511.)

Later that night, Investigator Christopher Hines with the Huntsville Police Department interviewed Brown. Investigator Hines

⁴Brandon Best, a forensic scientist with the Firearm and Tool Marks Section of the Alabama Department of Forensic Sciences, testified that the aftermarket sear on the Glock pistol meant that "once you pull the trigger it will continue to fire until you either encounter a misfire, run out of ammunition, or you let go of that trigger." (R. 1636.)

⁵At Brown's trial, the State offered into evidence the body-camera footage from Agent Dean (State's Ex. 969), Agent Snipes (State's Ex. 970), Agent Daly (State's Ex. 971), and Sergeant Pennington (State's Ex. 972). The body-camera footage, which this Court has watched, shows in real-time Brown's shooting Agent Clardy, the agents' pursuit of Brown and taking him into custody, and the agents' tending to Agent Clardy. The State also admitted as State's Exhibit 974 the video of Brown's interview with Investigator Christopher Hines. Any references to these exhibits are noted by the exhibit number and the time stamp on the video.

read Brown his Miranda⁶ warnings, which Brown waived, and Brown agreed to speak with Investigator Hines. During that interview, Brown told Investigator Hines that he was on Levert Street because he was looking "at some houses over there for sale." (State's Ex. 974; 19:54:15-25.) Brown said that, when he got to the house, he was "not sure what happened." (State's Ex. 974; 19:54:40-46.) Later, Brown said that there were three people in the house, but he really did not know what happened. (State's Ex. 974; 20:01:30-50.) When Investigator Hines asked Brown why he ran from the house, Brown told him that he was "running from gunshots." (State's Ex. 974; 20:02:00-12.) Brown claimed that he did not shoot at anyone. (State's Ex. 974; 20:02:30-39.) Brown also claimed that he did not have a gun. (State's Ex. 974; 20:01:00 – 20:03:40.)

When Investigator Hines asked Brown if he ever owned a gun, Brown told him "no." (State's Ex. 974; 20:07:10-15.) When Brown asked Investigator Hines what he could be charged with, Investigator Hines told him either murder or capital murder because the person Brown shot is dead. (State's Ex. 974; 20:08:00-30.) Brown responded that he murdered no one. (Id.) When Brown asked Hines who was murdered,

⁶Miranda v. Arizona, 384 U.S. 436 (1966).

Hines told him that it was a Huntsville Police Officer. Brown responded that that was "terrible" and that he was "heartbroke to know that an officer lost his life." (State's Ex. 974; 20:13:25-35.) Investigator Hines then left the interview room.

When he came back nearly an hour later, Investigator Hines asked Brown about the things that the agents took off him when he was taken into custody, including a gun holster. (State's Ex. 974; 21:03.) Brown denied that it was his holster. (Id.) Investigator Hines then told Brown that he was being charged with capital murder, and Brown asked him why he was being charged with capital murder when he killed no one. (State's Ex. 974; 21:04.)

A grand jury indicted Brown in August 2021 for capital murder for killing Agent Clardy while Agent Clardy was on duty. See § 13A-5-40(a)(5), Ala. Code 1975. (C. 14-15.) In November 2021, the State notified Brown that it would seek the death penalty. (C. 26.)

Brown's trial began on October 16, 2023, in the Madison Circuit Court. (R. 142.) The jury found Brown guilty of capital murder as charged in his indictment. (C. 99; R. 1859.) At the penalty phase of his trial, the jury did not find that the State had proven beyond a reasonable doubt

the aggravating circumstances that Brown had knowingly created a great risk of death to many persons, see § 13A-5-49(3), Ala. Code 1975; that the capital offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody, see § 13A-5-49(5); or that the capital offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws, see § 13A-5-49(7). (C. 100-02; R. 2110.) But by its guilt-phase verdict, the jury unanimously found the aggravating circumstance to exist that the victim of the capital offense was an on-duty police officer, see § 13A-5-40(a)(5) and § 13A-5-49(13). The jury, by a vote of 10 to 2, sentenced Brown to death. (C. 103; R. 2109.) Based on the jury's binding decision, the trial court sentenced Brown to death. (C. 104, 113.) This appeal follows.

Standard of Review

Many of the issues Brown raises on appeal seek plain-error review under Rule 45A, Ala. R. App. P.

In 2023, the Alabama Supreme Court amended Rule 45A, making plain-error review in death-penalty cases discretionary. See Henderson v. State, [Ms. CR-21-0044, May 3, 2024] __ So. 3d __, __ (Ala. Crim.

App. 2024) (explaining that Rule 45A now provides that plain-error review is discretionary in all cases in which the death penalty has been imposed (citing Iervolino v. State, 402 So. 3d 845, 861-62 (Ala. Crim. App. 2023)), cert. denied (No. SC-2024-0555, June 20, 2025). Although this Court "continue[s] to review the entire record for plain error" in death-penalty cases, it does not "address in its opinions every issue that is subject only to plain-error review and, even if [this Court] choose[s] to address those issues, [it is] not required to engage in the type of in-depth analyses as [it has] in the past." Iervolino, 402 So. 3d at 862. This Court also has exercised its discretion not to engage in plain-error review of Batson⁷ claims "when those claims are raised for the first time on appeal." Henderson, ____ So. 3d at ____.

"The standard this Court employs in conducting plain-error review is well settled:

""The standard of review in reviewing a claim under the plain-error doctrine is stricter than the standard used in reviewing an issue that was properly raised in the trial court or on appeal.' Hall v. State, 820 So. 2d 113, 121 (Ala. Crim. App. 1999), aff'd, 820 So. 2d 152 (Ala. 2001). Plain error is 'error that is so obvious that the failure to notice it would seriously affect the fairness or integrity of the judicial proceedings.' Ex parte Trawick, 698

⁷Batson v. Kentucky, 476 U.S. 79 (1986).

So. 2d 162, 167 (Ala. 1997), modified on other grounds, Ex parte Wood, 715 So. 2d 819 (Ala. 1998). 'To rise to the level of plain error, the claimed error must not only seriously affect a defendant's "substantial rights," but it must also have an unfair prejudicial impact on the jury's deliberations.' Hyde v. State, 778 So. 2d 199, 209 (Ala. Crim. App. 1998), *aff'd*, 778 So. 2d 237 (Ala. 2000). 'The plain error standard applies only where a particularly egregious error occurred at trial and that error has or probably has substantially prejudiced the defendant.' Ex parte Trawick, 698 So. 2d at 167. '[P]lain error must be obvious on the face of the record. A silent record, that is a record that on its face contains no evidence to support the alleged error, does not establish an obvious error.' Ex parte Walker, 972 So. 2d 737, 753 (Ala. 2007). Thus, '[u]nder the plain-error standard, the appellant must establish that an obvious, indisputable error occurred, and he must establish that the error adversely affected the outcome of the trial.' Wilson v. State, 142 So. 3d 732, 751 (Ala. Crim. App. 2010). '[T]he plain error exception to the contemporaneous-objection rule is to be "used sparingly, solely in those circumstances in which a miscarriage of justice would otherwise result."' United States v. Young, 470 U.S. 1, 15, 105 S. Ct. 1038, 84 L. Ed. 2d 1 (1985) (quoting United States v. Frady, 456 U.S. 152, 163 n.14, 102 S. Ct. 1584, 71 L. Ed. 2d 816 (1982))."

"Iervolino, 402 So. 3d at 861-63 (quoting DeBlase v. State, 294 So. 3d 154, 182-83 (Ala. Crim. App. 2018))."

Henderson, ____ So. 3d at ____.

Analysis

I. Brown is due no relief based on the trial court's jury instructions about capital murder and heat-of-passion manslaughter.

Brown argues that the trial court "failed to properly charge the jury regarding capital murder and heat-of-passion provocation." (Brown's brief, p. 26.) Specifically, Brown argues that, "although the trial court agreed to instruct the jury on provocation manslaughter, the court did so improperly, failing to instruct the jury that lack of provocation was an element of the capital charge against Mr. Brown." (Brown's brief, pp. 26-27.)

During the guilt-phase charge conference, the trial court and the parties discussed whether Brown had a right to instructions on any lesser-included offenses. Brown's counsel argued that Brown should get a jury instruction on heat-of-passion manslaughter, asserting that Brown had met his burden "of injecting heat of passion" because he had testified that he was "faced with an imminent assault." (R. 1739.) The State, in response, argued that there was no evidentiary basis for a jury instruction on heat-of-passion manslaughter and questioned what the jury could "find as evidence" to support finding him guilty of heat-of-passion manslaughter. (R. 1740.) Brown answered that the jury "could

find that he had the mere appearance of an imminent assault, and that was enough to arouse the heat of passion," which would be based on his testimony that "he's being approached by a silhouette, and he perceives a gun coming at him." (R. 1741.) Although the State maintained that this "doesn't seem like a heat of passion case," it told the trial court that it did not "want to try it twice. No objections." (R. 1741.)

During the guilt-phase instructions, the trial court instructed the jury on capital murder as follows:

"Ladies and gentlemen, the defendant is currently charged with one Count of capital murder as well as the lesser included offenses of felony murder and manslaughter. This is admittedly a lot to organize within one's thoughts. To help you do that, there are different ways to approach it, but I'm going to organize it by the—initially by the charge in the indictment and then I'll move down through the lesser included charges. I'll remind you, although I've organized my charge similar to this—or in this fashion, that the fact that there's an indictment against the defendant is not to be considered as evidence of his guilt. This is simply the way that I've organized the charge in an attempt to explain them clearly to you.

"Count 1 of the indictment charges the defendant with intentional murder of an on-duty police officer. The defendant is charged with capital murder. The law states that an intentional murder of any police officer or any other state or federal peace officer of any kind, while the officer's on duty, regardless of whether the defendant knew or should have known the victim was an officer on duty, or because of some official or job related act or performance of the officer.

"A person commits an intentional murder if he causes the death of another person, and in performing the act or acts that caused the death of that person, he intends to kill that person.

"To convict the State must prove beyond a reasonable doubt each of the following elements of an intentional murder of an on-duty police officer. And there's four elements, and so I'll go slow for each one of those.

"Element one, that Billy Clardy III is dead.

"Second, that the defendant caused the death of Billy Clardy by shooting him.

"Third, that in committing the acts that cause the death of Billy Clardy, the defendant intended to kill the deceased or another person.

"And, fourth, that at the time of his shooting, Billy Clardy was a police officer and was on duty."

(R. 1808-10.) The trial court then instructed the jury: "If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of intentional murder of an on-duty police officer, then you cannot find the defendant guilty of capital murder." (R. 1812.) The trial court then began instructing the jury on the lesser-included offenses of felony murder and heat-of-passion manslaughter. As to heat-of-passion manslaughter, the trial court explained:

"Again, you only consider the lesser included offense of

manslaughter if you find the defendant not guilty of capital murder and not guilty of felony murder.

"A person commits the crime of manslaughter if he causes the death of another person under circumstances that would constitute murder except that he causes the death due to a sudden heat of passion caused by provocation recognized by law and before a reasonable time for the passion to cool and for reason to reassert itself.

"To convict the State must provide beyond a reasonable doubt each of the following elements.

"Number one, a person, Billy Clardy, is dead.

"Number two, the defendant caused the death of Billy Clardy by shooting him.

"Three. The defendant did so intentionally.

"And, lastly, the defendant caused the death due to a sudden heat of passion caused by provocation recognized by law and before a reasonable time for the passion to cool and for reason to reassert itself.

"A person acts intentionally when it is his purpose to cause the death of another person. A person acts intentionally when it is his purpose to cause the death of a specific person regardless of whether the deceased person is actually the person whose death the defendant allegedly wished to cause.

"The burden of injecting the issue of killing under legal provocation is on the defendant, but this does not shift the burden of proof. Once the defendant has injected the issue, the State must prove beyond a reasonable doubt that the defendant was not lawfully provoked to do the act which caused death by a sudden heat of passion. Legal provocation does not apply to a prosecution for or preclude a conviction of

manslaughter or other crime.

"The provocation can in no case be less than an assault, either actually committed or menaced. The assault must be of such a nature as to reasonably convince the mind that the defendant had cause for believing and did believe that he would be presently assaulted and that he struck not in consequence of a previously formed design, general or specific, but in consequence of the passion suddenly aroused by the blow given or apparently about to be given."

(R. 1814-16.)

Brown argues that the trial court erred when it failed to include in its capital-murder instructions the negative element that the State had to prove beyond a reasonable doubt "[t]hat the defendant was not lawfully provoked to do the act which caused the death of the deceased by a sudden heat of passion," Ex parte McGriff, 908 So. 2d 1024, 1033 (Ala. 2004) (quoting Alabama Pattern Jury Instructions—Criminal, pp. 6-8 (3d ed. 1994)) (emphasis omitted), and when it "told the jury that it could only consider provocation after first deciding to acquit Mr. Brown of capital murder." (Brown's brief, p. 27.) Because Brown did not object to the trial court's instructions (R. 1826-27), we review Brown's argument only for plain error. See Rule 45A, Ala. R. App. P.

In Riggs v. State, this Court explained the interplay between a jury instruction on capital murder and a defendant's injecting the issue of

heat of passion in a capital-murder case:

"" "[T]he Due Process Clause requires the prosecution to prove beyond a reasonable doubt all of the elements included in the definition of the offense of which the defendant is charged."" Ex parte McGriff, 908 So. 2d [1024,] 1035 [(Ala. 2004)] (quoting McMillan v. Pennsylvania, 477 U.S. 79, 85, 106 S. Ct. 2411, 91 L. Ed. 2d 67 (1986), quoting in turn Patterson v. New York, 432 U.S. 197, 210, 97 S. Ct. 2319, 53 L. Ed. 2d 281 (1977) (emphasis omitted)). Consequently, "it is the mandatory duty of a trial judge to instruct the jury orally on the different and distinguishing elements of the offense charged and that in the absence of such instructions from the court, the jury could not intelligently comply with their duty as jurors. Miller v. State, Ala. Cr. App., 405 So. 2d 41, 48 (1981)."" Ex parte McGriff, 908 So. 2d at 1035 (quoting Ainsworth v. State, 465 So. 2d 467, 471 (Ala. Crim. App. 1984)). Further, "[i]t is a basic tenet of Alabama law that 'a party is entitled to have his theory of the case, made by the pleadings and issues, presented to the jury by proper instruction, ... and the [trial] court's failure to give those instructions is reversible error.'" Winner Int'l Corp. v. Common Sense, Inc., 863 So. 2d 1088, 1091 (Ala. 2003) (quoting Volkswagen of America, Inc. v. Marinelli, 628 So. 2d 378, 384-85 (Ala. 1993), quoting in turn Alabama Farm Bureau Mut. Ins. Serv., Inc. v. Jericho Plantation, Inc., 481 So. 2d 343, 344 (Ala.1985)).

"Under the law in this State:

"A person does not commit murder ... [and by extension capital murder] if he was moved to act by a sudden heat of passion caused by a provocation recognized by law, and before there had been a reasonable time for the passion to cool and for reason to reassert itself. The burden of injecting the issue of killing under legal provocation is on the defendant, but this does not

shift the burden of proof. This subsection does not apply to a prosecution for, or preclude a conviction of, manslaughter or other crime.'

"Section 13A-6-2(b), Ala. Code 1975. In Ex parte McGriff, 908 So. 2d at 1033-34, the Alabama Supreme Court explained that once a defendant on trial for capital murder has 'injected the issue of provoked heat of passion,' the circuit court must instruct the jury that '"[t]o convict, the state must prove beyond a reasonable doubt [that] the defendant was not lawfully provoked to do the act which caused the death of the deceased by a sudden heat of passion."' (quoting Alabama Pattern Jury Instructions—Criminal, pp. 6-8, emphasis omitted).

"Further, it is well settled that '"[a] killing in sudden passion excited by sufficient provocation, without malice, is manslaughter.'" Roberson v. State, 217 Ala. 696, 699, 117 So. 412, 415 (1928) (quoting Vaughan v. State, 201 Ala. 472, 474, 78 So. 378, 380 (1918)). Specifically, § 13A-6-3(a)(2), Ala. Code 1975, provides that a person commits the crime of manslaughter if

"'[h]e causes the death of another person under circumstances that would constitute [intentional murder]; except, that he causes the death due to a sudden heat of passion caused by provocation recognized by law, and before a reasonable time for the passion to cool and for reason to assert itself.'

"Although courts have reached different conclusions as to what constitutes adequate legal provocation, in Rogers v. State, 819 So. 2d 643, 662 (Ala. Crim. App. 2001), this Court recognized the following three situations in which murder may be reduced to manslaughter on the basis that there existed legal provocation: '(1) when the accused witnesses his or her spouse in the act of adultery; (2) when the accused is assaulted or faced with an imminent assault on himself; and

(3) when the accused witnesses an assault on a family member or close relative.' See also Cox v. State, 500 So. 2d 1296, 1298 (Ala. Crim. App. 1986) (holding that 'the mere appearance of imminent assault may be sufficient to arouse heat of passion'). Thus, once a defendant has injected into the trial the issue of provocation related to one or more of those three situations, the defendant is entitled to have the circuit court instruct the jury that the State bears the burden of disproving that the defendant acted out of the heat of passion brought about by adequate provocation. McGriff, 908 So. 2d at 1033-34."

Riggs v. State, 138 So. 3d 1014, 1023-24 (Ala. Crim. App. 2013).

In Riggs, this Court found plain error when the trial court failed to give the "negative element" instruction in its jury instructions on capital murder. 138 So. 3d at 1024-25. And, to be sure, the trial court's jury instructions on capital murder in this case, just like the instructions in Riggs, did not include the negative element that the State must disprove beyond a reasonable doubt "'[t]hat the defendant was not lawfully provoked to do the act which caused the death of the deceased by a sudden heat of passion.'" Ex parte McGriff, 908 So. 2d at 1033 (quoting Alabama Pattern Jury Instructions—Criminal, pp. 6-8 (3d ed. 1994)) (emphasis omitted). But the trial court's failure to include the "negative element" instruction in this case does not amount to plain error because, unlike the defendant in Riggs, Brown had no right to a jury instruction

on heat-of-passion manslaughter.

As discussed above, a defendant bears the burden of injecting the issue of having killed someone in response to an adequate legal provocation that would reduce an intentional murder to manslaughter. See Varnado v. State, 352 So. 3d 777, 781 (Ala. Crim. App. 2021) (citing Ex parte McGriff, 908 So. 2d at 1033-34). Alabama recognizes only three types of legal provocation: "(1) when the accused witnesses his or her spouse in the act of adultery; (2) when the accused is assaulted or faced with an imminent assault on himself; and (3) when the accused witnesses an assault on a family member or close relative." Rogers v. State, 819 So. 2d 643, 662 (Ala. Crim. App. 2001).

Here, Brown argued that he was entitled to a jury instruction on heat-of-passion manslaughter based on the second type of adequate legal provocation—i.e., "that he had the mere appearance of an imminent assault, and that was enough to arouse the heat of passion"—based solely on his trial testimony. (R. 1741.)

At trial, Brown testified on his own behalf, elaborating on and in many respects changing the story he had told Investigator Hines. In his testimony, Brown admitted that he had agreed to meet Alexander and

Agent Morris—who he identified as "Moe"—on December 6, 2019, at a house in Huntsville. Brown said that when he "got on the street, it was more deserted; like all the houses was abandoned." (R. 1677.) Brown said that he walked up to the house with the marijuana and with his gun holstered on his right side. (R. 1682.) When he knocked on the door, Brown said, someone yelled for him to "come in." (R. 1683.) Brown claimed that, at that point, he switched the luggage containing the marijuana to his left hand, opened the door, and walked into the house with the "[t]he luggage ... in [his] hand."⁸ (R. 1684, 1718.) Brown testified that the house was "silhouette dark" with "trash everywhere" and his "senses [became] very heightened." (R. 1684.) Brown then claimed that, as he was "looking through the home," "there was a silhouette in the crease of the door" and "he comes around the back of the door with a weapon that's in his hand." (R. 1685.) Brown made it clear that it was the person in front—i.e., Agent Billy Clardy—who "led with a weapon." (R. 1712.) Although he claimed to see a weapon, Brown said that he could neither see the person's face nor see Agent Clardy's vest with the word

⁸Videos show that the bags containing marijuana were placed outside and to the left of the front door of the house. See State's Ex. 970, 16:40; State's Ex. 972, 16:37.

"POLICE" on it. (R. 1686.) And Brown said that "no one ever gave [him] any indication" that they were police officers. (R. 1687.) He said that there were "no markings on any automobiles outside that said that someone was in the house like that that would have been law enforcement," and, he said, no one said the word "police" either "before the shooting, while the shooting, or after the shooting." (R. 1687.)

Brown explained:

"It startled me. It really startled me. Because not only did I see the firearm, he was moving, I mean, really fast and aggressive, as we seen on the video.

"So once I seen it, it's like, Oh, shit. You know what I mean? So I automatically back up. And I'm trying to back up and catch my composure. But then he breaks the—breaks the other plane of the threshold and still a silhouette. And at that particular time, that's when I reacted."

(R. 1686-87.) Brown said that he thought "they was about to kill [him] and rob [him] for the cannabis." (R. 1688.)

Brown argues that this trial testimony was enough to inject the issue of adequate legal provocation into his case and thus warrant a jury instruction on heat-of-passion manslaughter. We disagree.

To start, even if we credit Brown's self-serving trial testimony, Brown did not articulate any adequate legal provocation that would

justify his shooting Agent Clardy. To be sure, this Court has recognized that "the mere appearance of imminent assault may be sufficient to arouse heat of passion." Cox v. State, 500 So. 2d 1296, 1298 (Ala. Crim. App. 1986). Although Brown testified that he thought an armed "silhouette" was approaching him, Brown did not face an imminent assault by any ordinary citizen. See, e.g., Riggs, supra (holding that Riggs was entitled to provocation-manslaughter instruction where Riggs believed that his girlfriend was about to stab him with a knife that was actually a fork before he reached for the gun and began shooting); and Varnado v. State, 352 So. 3d 777, 781-82 (Ala. Crim. App. 2021) ("Varnado testified that Legarian's 'homeboy Shaq' started the fight by punching him in the face. Varnado also testified that he fired the gunshots because he feared for his brother's life, who was lying unconscious on the ground, getting 'stomped' and 'kicked.' (R. 476.) For those reasons, Varnado said he grabbed a gun and fired gunshots 'to get them off my brother.'"). Rather, it is undisputed that what Brown alleges was adequate legal provocation was a law-enforcement officer's attempting to exercise his lawful duty to arrest Brown for trafficking 100 pounds of marijuana.

The general rule and the view held by nearly every American jurisdiction that has addressed the question is that "[a] lawful arrest or detention in a lawful manner by an officer ... will not constitute an adequate provocation for heat of passion reducing the grade of the homicide to manslaughter, and the same is true of other lawful acts of officers while in the discharge of their duties." 40 C.J.S. Homicide § 120 (2025) (footnotes omitted). See, e.g., State v. Madden, 61 N.J. 377, 398, 294 A.2d 609, 620 (1972) (upholding the trial court's refusal to instruct the jury on heat-of-passion manslaughter because "neither a lawful arrest nor the use of necessary force to accomplish the arrest can constitute provocation justifying a finding of manslaughter"); State v. Martinez, 97 N.M. 540, 541, 641 P.2d 1087, 1088 (Ct. App. 1982) (holding that "because Gomez was a police officer, his actions 'exercising his duties in a lawful manner cannot rise to the level of sufficient provocation'" (quoting State v. Manus, 93 N.M. 95, 597 P.2d 280 (1979))); State v. Linder, 276 S.C. 304, 307-08, 278 S.E.2d 335, 337 (1981) (setting out the general rule, but concluding that a manslaughter instruction is warranted if the jury could conclude that the officer used unnecessary force under the circumstances); Gutierrez v. State, 681 S.W.2d 698, 705

(Tex. App. 1984) ("Officer McGuire attempted to make a routine DWI arrest, after which the suspect made several attempts to flee. It is ludicrous to suggest that any type of physical force by a lone police officer at this point constituted adequate cause to retaliate with a violent, unrestrained attack and murder. Appellants were not entitled to an instruction on voluntary manslaughter"). This is because the second type of adequate provocation to reduce murder to manslaughter requires that the deceased either engaged in unlawful behavior or was imminently about to act unlawfully, and "[t]he exercise of a legal right, no matter how offensive to another, is never in law deemed a provocation sufficient to justify or mitigate an act of violence." State v. Ivey, 325 S.C. 137, 142, 481 S.E.2d 125, 127 (1997) (citing State v. Norris, 253 S.C. 31, 168 S.E.2d 564 (1969)). Because, here, it is undisputed that Brown shot and killed Agent Clardy when Agent Clardy was carrying out his lawful duties as a police officer, there was no wrong or unlawful behavior that could be attributed to Agent Clardy to justify Brown's shooting him. In short, even crediting Brown's trial testimony, Brown cannot establish that there was

an adequate legal provocation here to reduce murder to manslaughter.⁹

Even so, Brown also was not entitled to an instruction on heat-of-passion manslaughter because the objective evidence presented at his trial refuted Brown's self-serving trial testimony. Although this Court had held that "[a]n accused has the right to have the jury charged on 'any material hypothesis which the evidence in his favor tends to establish,'" Clark v. State, 896 So. 2d 584, 641 (Ala. Crim. App. 2000) (quoting Ex parte Stork, 475 So. 2d 623, 624 (Ala. 1985)), this Court and

⁹This view is buttressed by the fact that the legislature has elevated the killing of an on-duty law-enforcement officer to capital murder. To find Brown guilty of capital murder, the jury had to conclude that Agent Clardy was on-duty when he was killed. This statutory protection of on-duty law-enforcement officers would be nullified if every assaultive confrontation between an officer and a defendant could reduce the defendant's killing the officer during that confrontation from capital murder to manslaughter. See State v. Madden, 61 N.J. 377, 398, 294 A.2d 609, 620 (1972) ("As already noted, the trial court charged the State had to prove the officer was killed in the execution of his duty as an element of murder. In this connection the jury was told the deceased was not in the execution of his duty if he did not have probable cause to arrest Williams or if he employed excessive force to accomplish an arrest. But the charge barred a verdict of voluntary manslaughter if the jury found the officer was in the execution of his duty when he was killed. Otherwise stated, the trial court ruled that neither a lawful arrest nor the use of necessary force to accomplish the arrest can constitute provocation justifying a finding of manslaughter. This was undoubtedly correct; the protection intended an officer who is thus in the execution of his duty would be nullified if the lawful execution of his duty were held to be an affront competent to reduce the crime to manslaughter.").

the Alabama Supreme Court have also held that "an accused's self-serving statement may not be sufficient, by itself, to warrant an instruction on a lesser-included offense." Clark, 896 So. 2d at 641 (citing Ex parte McWhorter, 781 So. 2d 330 (Ala. 2000)). "This is especially true in a case in which the objective evidence is contradictory to the defendant's self-serving statements." Johnson v. State, [Ms. CR-2023-0911, Dec. 19, 2025] ___ So. 3d ___, ___ (Ala. Crim. App. 2025). See also Clark, 896 So. 2d at 642 ("Clark's self-serving statement to the police ... was directly refuted by undisputed physical evidence from the crime scene.").

Here, as the State correctly argues in its brief on appeal, "the evidence disproved [Brown's] version of events." (State's brief, p. 28 (emphasis in original).) As explained above, Brown's argument for the lesser-included offense of heat-of-passion manslaughter was based on two aspects of his trial testimony: (1) that, when he entered the house, "he [was] being approached by a silhouette" and (2) his "perceiv[ing] a gun coming at him." (R. 1741.)

As discussed above, Brown testified that, when he entered the house, it was "silhouette dark" and that, as he was "looking through the

home," "there was a silhouette in the crease of the door" and "he comes around the back of the door with a weapon that's in his hand." (R. 1685.) Brown made it clear that it was the person in front—i.e., Agent Billy Clardy—who "led with a weapon." (R. 1712.) Yet the State presented objective evidence that refuted Brown's version of what happened when he shot Agent Clardy.

Indeed, Agent Dean's body-camera footage, which this Court has viewed, shows that, at the time Brown entered the house, it was light outside and that the house was well lit. In fact, in watching Agent Dean's body-camera footage, one can see that the house was lit well enough to see Agent Clardy, what he was wearing (his tactical vest with the word "POLICE" emblazoned across the chest and back), and that Agent Clardy's weapon was holstered throughout the entire interaction.¹⁰

¹⁰During cross-examination of Brown, this exchange occurred:

"Q. Did you know that Agent Clardy wasn't holding a gun?

"A. It looked like a weapon to me.

"Q. Do you want to watch the video again? You can see both of his hands.

"A. Well, we can watch it.

Simply put, as the State correctly notes, "Brown's story was incredible, especially when considered in conjunction with the videos and physical evidence."¹¹ (State's brief, p. 29.)

Because Brown was not entitled to a jury instruction on heat-of-passion manslaughter, the trial court did not commit any error, plain or otherwise, when it failed to include in its capital-murder instructions the negative element that the State had to disprove beyond a reasonable doubt that Brown was lawfully provoked to do the act that caused the

"Q. Did you know, in fact, Investigator Hines had to recover his gun from his holster on his back at the hospital where it was the entire time?

"....

"A. No. I didn't know that Mr. Hines had said he recovered a weapon from behind him or in his holster. From what I seen, he had it in his hand. Or someone in there had it in his hand, whoever was with him."

(R. 1717-18.)

¹¹The objective and physical evidence presented at Brown's trial refuted other details in Brown's version of events. But because Brown's request for a jury instruction on heat-of-passion manslaughter turned on only two assertions by Brown—that it was "silhouette dark" and that Agent Clardy was armed—it is unnecessary to recount each time the objective and physical evidence refuted Brown's version of events.

death of Agent Clardy by a sudden heat of passion.

II. The trial court's refusal to instruct the jury on self-defense gives Brown no right to relief.

Brown argues that the trial court erred when it refused to instruct the jury on self-defense. (Brown's brief, p. 38.) Brown is due no relief on this claim.

To start, Brown invited any error in the trial court's failing to instruct the jury on self-defense. ""Under the doctrine of invited error, a defendant cannot by his own voluntary conduct invite error and then seek to profit thereby."" Johnson v. State, [Ms. CR-2023-0911, Dec. 19, 2025] ___ So. 3d ___, ___ (Ala. Crim. App. 2025) (quoting Sharifi v. State, 993 So. 2d 907, 936 (Ala. Crim. App. 2008), quoting in turn Robitaille v. State, 971 So. 2d 43, 59 (Ala. Crim. App. 2005), quoting in turn Phillips v. State, 527 So. 2d 154, 156 (Ala. 1988)). Here, during the jury-charge conference, the parties discussed whether the trial court should instruct the jury on self-defense. (R. 1752-53.) During that discussion, Brown's counsel told the trial court that, "in all candor, I don't want to—I muddy up my cocounsel here. But as I understand it, if you're doing an underlying illegal act, you don't get self-defense." (R. 1753.) Brown's counsel continued: "I shot ourselves in the foot. Right? But it's the law."

(R. 1753.) The trial court told Brown's counsel that the court agreed with him and that, regardless, it "wouldn't give it anyway." (R. 1753.)

On appeal, Brown makes much of the fact that his counsel and the trial court misinterpreted the law on self-defense. (Brown's brief, pp. 42-47.) But still, Brown's counsel agreed with the court's assertion that Brown had no right to an instruction on self-defense. Thus, any error was invited by Brown. And invited error "'operates to waive any error unless the error rises to the level of plain error.'" Robitaille, 971 So. 2d at 59 (quoting Snyder v. State, 893 So. 2d 488, 518 (Ala. Crim. App. 2003)). There is no plain error here.

This Court has explained:

"It has long been the law in Alabama that '[a] trial court has broad discretion when formulating its jury instructions.' Williams v. State, 795 So. 2d 753, 780 (Ala. Crim. App. 1999) (citing Williams v. State, 611 So. 2d 1119, 1123 (Ala. Crim. App. 1992)). That discretion, however, is not unlimited.

"'"The general rule is that "every accused is entitled to have charges given, which would not be misleading, which correctly state the law of his case, and which are supported by any evidence, however weak, insufficient, or doubtful in credibility." Chavers v. State, 361 So. 2d 1106, 1107 (Ala. 1978). If there is "any evidence, however slight, tending to support" that the defendant acted in self-defense, the issue should be submitted to the jury. King v. State, 71 Ala. 1, 4

(1881). In most cases, the issue of self-defense is one of ultimate fact solely for determination by the jury, Domingus v. State, 94 Ala. 9, 11 So. 190 (1892), however "unsatisfactory and inconclusive to the judicial mind" the evidence of self-defense may appear. Burns v. State, 229 Ala. 68, 70, 155 So. 561, 562 (1934).

""'However, the court should not instruct on the law of self-defense where there is no evidence to sustain the plea. Raines v. State, 455 So. 2d 967, 974 (Ala. Cr. App. 1984); Tarver v. State, 137 Ala. 29, 34 So. 627 (1903); C. Gamble, McElroy's Alabama Evidence, 457.02(5) (3d ed. 1977). "[I]n the absence of all evidence having a tendency to show that at the time of the killing the accused was in imminent peril of life, or grievous bodily harm, or of the existence of circumstances creating in his mind a reasonable belief of such peril, ... these instructions [are] abstract." King, 71 Ala. at 4-5. A trial judge may properly refuse to charge the jury on self-defense where he determines that "the defendant could not set up self-defense under the facts." Consford v. State, 15 Ala. App. 627, 634, 74 So. 740, 743, cert. denied, 200 Ala. 23, 75 So. 335 (1917).'"

"Diggs v. State, 168 So. 3d 156, 160-61 (Ala. Crim. App. 2014) (quoting King v. State, 478 So. 2d 318, 319 (Ala. Crim. App. 1985) (emphasis added in King))."

Thornton v. State, 375 So. 3d 1282, 1283-84 (Ala. Crim. App. 2022).

In Alabama,

"[a] person is justified in using physical force upon another person in order to defend himself ... from what he ... reasonably believes to be the use or imminent use of unlawful

physical force by that other person, and he ... may use a degree of force which he ... reasonably believes to be necessary for the purpose. A person may use deadly physical force ... if the person reasonably believes that another person is:

"(1) Using or about to use unlawful deadly physical force."

§ 13A-3-23(a)(1), Ala. Code 1975. And because Brown was admittedly engaged in unlawful activity at the time he shot Agent Clardy, he also had to establish that he satisfied the common-law duty to retreat. See Malone v. State, 221 So. 3d 1153, 1156 (Ala. Crim. App. 2016) (holding that "an accused who claims to have been justified in using deadly force under § 13A-3-23 must have complied with the common-law rules regarding the duty to retreat unless he or she meets the requirements of § 13A-3-23(b)").

Here, the trial court could have properly refused a jury instruction on self-defense for two reasons. First, the evidence that Brown claims supports his self-defense theory is the same evidence that he based his request for a jury instruction on heat-of-passion manslaughter. As explained above, Brown's evidence is based on his self-serving testimony at trial that contradicts the objective evidence presented at trial. Second, Brown presented no evidence showing that he satisfied his duty to retreat

either by retreating or showing that there was not "'a reasonably safe mode'" of retreat. See Ex parte Johnson, 393 So. 3d 479, 486 (Ala. 2023) (quoting Oldacre v. State, 196 Ala. 690, 693, 72 So. 303, 304 (1916)). The trial court did not commit any error, plain or otherwise, when it did not instruct the jury on self-defense.

III. The body-camera footage was not victim-impact evidence, and the trial court properly admitted it.

Brown argues that the trial court erred during the guilt phase of his trial when it allowed the State to present "nearly eighteen minutes of inflammatory video footage—consisting of body-camera footage from several law-enforcement witnesses—which had no relevance to any of the charges against [him]." (Brown's brief, p. 49.) According to Brown, the body-camera evidence "served only to inflame the jury and garner sympathy for Officer Clardy and his colleagues by showing the immediate impact of Officer Clardy's shooting on law enforcement officers and other first responders." (Brown's brief, pp. 49-50.) Brown theorizes that the video footage was "clear victim-impact evidence." (Brown's brief, p. 48.) Because Brown raises this argument for the first time on appeal, we review it only for plain error. See Rule 45A, Ala. R. App. P.

"It is well settled that victim-impact

statements "'are admissible during the guilt phase of a criminal trial only if the statements are relevant to a material issue of the guilt phase. Testimony that has no probative value on any material question of fact or inquiry is inadmissible.'" Ex parte Crymes, 630 So. 2d 125, 126 (Ala. 1993) (emphasis in original).'

"McCray v. State, 88 So. 3d 1, 37 (Ala. Crim. App. 2010)."

"....

"'[T]o be victim-impact evidence, the evidence must "'typically 'describe the effect of the crime on the victim and his family.'"" Russell v. State, 272 So. 3d 1134, 1162 (Ala. Crim. App. 2017) (quoting Townes v. State, 253 So. 3d 447, 474 (Ala. Crim. App. 2015) (opinion on return to remand), quoting in turn Turner v. State, 924 So. 2d 737, 770 (Ala. Crim. App. 2002), quoting in turn Payne v. Tennessee, 501 U.S. 808, 821, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991)) (emphasis added). If it does not describe the effect of the crime on the victim or the victim's family, then it is not victim-impact evidence.'

"Brooks v. State, 340 So. 3d 410, 463 (Ala. Crim. App. 2020)."

Perez v. State, [Ms. CR-2024-0206, May 1, 2026] ___ So. 3d ___, ___ (Ala. Crim. App. 2026).

As the State correctly argues in its brief on appeal, none of the body-camera footage admitted into evidence during Brown's trial is victim-impact evidence. Neither the video footage nor the statements the officers

made in the videos "describe the effect that Agent Clardy's death had on them."¹² (State's brief, p. 40 (emphasis omitted).) Although the videos certainly capture the emotions that the law-enforcement officers experienced before, during, and immediately after Brown shot Agent Clardy, none of those emotions describe the effect that Clardy's death had on them. In fact, during the "eighteen minutes" of footage, none of the law-enforcement officers knew that Agent Clardy had died. Rather than describing the effect that Agent Clardy's death had on the officers, the videos show the shooting and the real-time responses and efforts of law-enforcement officers to that shooting.

The trial court did not commit any error, plain or otherwise, when it admitted the body-camera footage from Agent Dean, Agent Snipes, Agent Daly, and Sergeant Pennington.

IV. Under Duren,¹³ the jury venire represented a fair cross-section of the community.

Next, Brown contends that "the jury venire did not represent a fair cross-section of the community in violation of state and federal law."

¹²This Court has reviewed the body-camera footage admitted during Brown's trial.

¹³Duren v. Missouri, 439 U.S. 357 (1979).

(Brown's brief, p. 55.) Brown's argument lacks merit.

On September 18, 2023, both Brown and the State received a jury-strike list consisting of 600 potential jurors. (C. 47.) Then, on October 2, 2023, Brown filed a "Motion Challenging the Composition of the Venire Due to Systematic Underrepresentation of Cognizable Groups." (C. 57-60.) In his motion, Brown argued that the jury-strike list he received "and from which [his] petit jury will be chosen is unconstitutionally composed because it systematically underrepresents African Americans, Asians, Hispanics, and other constitutionally cognizable groups that make up Madison County." (C. 57.) Brown noted that the "most recent Census of Madison County shows that the percentage of Black or African Americans alone is 25.2%, the percent of Asians alone is 2.7%, and the percentage of Hispanic or Latino is 5.6%."¹⁴ (C. 57.)

Brown also argued that "[t]he percentage of the jury pool made up

¹⁴Brown attached to his motion as "Exhibit A" statistics from the United States Census Bureau that show that the total "Black or African American" population of Madison County is 25.2%. (C. 61.) Although Brown's argument also included references to the underrepresentation of Asians and Hispanics or Latinos on the venire, Brown does not argue on appeal that those groups were underrepresented on the jury venire. Thus, he has abandoned that argument, and this Court will not consider it.

of these groups after juries were being selected after the pandemic has overwhelmingly been white, including juries that are entirely white." (C. 57-58.) To support his claim that, in the wake of the COVID-19 pandemic, juries have become "overwhelmingly" white, Brown attached, as an exhibit, an affidavit from John A. Brinkley, Jr., "a licensed attorney in the State of Alabama since September 30, 2005," who claimed that, "[s]ince the pandemic, the racial composition of jury members is significantly out of proportion from the composition of Madison County as a whole." (C. 62.)

Eight days later, the trial court held a hearing on Brown's motion. (R. 119.) At the hearing, Kimberly McKoy, the Court Administrator for the Madison County Courts, testified. (R. 121.) McKoy explained that, as part of her duties as Court Administrator, she is required to supervise the process of jurors coming to serve on juries in Madison County. McKoy said that she initiates the jury-summons process by requesting "a certain number of jurors for a certain term" from the Administrative Office of Courts ("AOC") in Montgomery and that AOC randomly selects those potential jurors "from the voter's registration list." (R. 122.) McKoy further explained that, to her knowledge, there is nothing that

systematically excludes people from jury service based on race. (R. 128.)

McKoy admitted that not everyone who is summoned for jury service reports for jury service. (R. 124.) According to McKoy, "about 35 percent" of the potential jurors who are summoned for jury service report. (R. 124.) But, McKoy said, the response rate for jury service after the COVID-19 pandemic is higher than it was before the pandemic, and she has noticed no changes in certain demographic groups responding to a juror summons after the pandemic. (R. 125.) McKoy conceded that "African Americans respond to juror summons at a lower rate than other groups." (R. 126.)

Speaking about the potential jurors summoned for Brown's trial term, McKoy did not disagree with Brown's counsel that 131 of the 600 potential jurors who were summoned are black. (R. 123.) In other words, blacks composed 21.83% of the potential jurors summoned for Brown's trial term. McKoy explained that, based on a response rate of about 35%, they "anticipate somewhere north of 200 people to respond," and that, out of the number of potential jurors who respond, 135 potential jurors would be used in Brown's case. (R. 124.) McKoy said that those 135 potential jurors would be randomly selected by "the SJIS Juror Program through"

AOC. (R. 125.) And, McKoy said, there was no "way you could use this AOC software to pull a racially proportionate juror grouping out of those people that respond to [a] juror summons." (R. 126.) McKoy made it clear that there is no "process either by human or computer, that systematically excludes people from a certain race" for jury service. (R. 128.) In fact, McKoy explained, "[s]ex and race do[] not go into play in selecting jurors." (R. 127.)

At the close of the hearing, Brown's counsel argued that Brown had met his

"prima facie burden in this case ... through the affidavit that we presented and the testimony we've elicited that we have a distinctive group in the community. That representation of that group is not fair or reasonable percentage-wise. And that underrepresentation is due to systematic mechanical procedures that we're relying upon that are incapable of producing a jury that looks like this county. And, under the Sixth Amendment, Judge, that's not something that can be rebutted by a lack of discriminatory intent.

"So it's our position that we have met our burden traveling under both Alabama law and the Sixth Amendment. We also believe that we've met our burden under the Fourteenth Amendment. That we have met our prima facie showing of a group that's a cognizable—excuse me, class. We have significant underrepresentation, it's over a period of time, and that the selection procedure is subject to abuse or is not class neutral.

"We believe we've met our burden, Judge. We have a

venire list that is less than the county in question. And we have a substantial possibility that the jurors summoned will be even less representative. We would ask that you leave this motion open to see who we get for our 135."

(R. 131-32.) In response, the State argued that Brown had not satisfied his three-part burden under Duren v. Missouri, 439 U.S. 357 (1979). (R. 132-34.) The trial court denied Brown's motion. (R. 135.)

Section 12-16-55, Ala. Code 1975, establishes the State's policy "that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity ... to be considered for jury service in this state." And § 12-16-56, Ala. Code 1975, provides that "[a] citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin or economic status."

"The Sixth Amendment requires that petit juries "be drawn from a source fairly representative of the community." Taylor v. Louisiana, 419 U.S. 522, 538, 95 S. Ct. 692, 702, 42 L. Ed. 2d 690 (1975). When raising a claim under this requirement, a defendant "has the burden of establishing a prima facie case of a 'fair cross section' violation. Rayburn v. State, 495 So. 2d 733 (Ala. Crim. App. 1986)." Pierce v. State, 576 So. 2d 236, 241 (Ala. Cr. App. 1990), cert. denied, 576 So. 2d 258 (Ala. 1991). In Duren v. Missouri, 439 U.S. 357, 99 S. Ct. 664, 58 L. Ed. 2d 579 (1979), the United States Supreme Court held that a

defendant seeking to establish a prima facie case of a violation of the fair cross-section requirement must demonstrate the following three elements:

""(1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process."

"'439 U.S. at 364, 99 S. Ct. at 668.'

"Sistrunk v. State, 630 So. 2d 147, 149 (Ala. Crim. App. 1993).
See also Young v. State, 375 So. 3d 813, 831 (Ala. Crim. App. 2021)."

Perez, ___ So. 3d at ___. See also Berghuis v. Smith, 559 U.S. 314, 327 (2010) ("To establish a prima facie violation of the fair-cross-section requirement, this Court's pathmarking decision in Duren instructs, a defendant must prove that: (1) a group qualifying as 'distinctive' (2) is not fairly and reasonably represented in jury venires, and (3) 'systematic exclusion' in the jury-selection process accounts for the underrepresentation.").

Here, Brown satisfied the first Duren element—that the group alleged to have been excluded is a distinctive group in the community.

But Brown did not show that the underrepresentation of this distinctive group was due to systematic exclusion in the jury-selection process—the third Duren element. Indeed, as McKoy testified, the 600 potential jurors who were summoned for Brown's jury-trial term were chosen at random by AOC from a voter-registration list. This Court has consistently held that "this method of selection does not violate the fair-cross-section requirement of Duren." Knight v. State, 300 So. 3d 76, 125 (Ala. Crim. App. 2018) (citing Wesley v. State, 424 So. 2d 648, 649 (Ala. Crim. App. 1982)).

To the extent that Brown argued in the trial court (and maintains on appeal) that, under Duren, the State not only has an obligation not to exclude anyone from jury service on the basis of race but also must develop a venire-selection process that singles people out for jury service based on race to ensure a particular racial makeup of the venire, that argument lacks merit. This Court has held that Duren's "fair cross-section requirement 'ensures only a venire of randomness, one free of systematic exclusion. It does not ensure any particular venire.'" Sistrunk v. State, 630 So. 2d 147, 149 (Ala. Crim. App. 1993) (quoting Note, United States v. Gelb: The Second Circuit's Disappointing Treatment of the Fair

Cross-Section Guarantee, 57 Brook. L. Rev. 341, 343 n.7 (1991)).

Brown also failed to satisfy the second Duren element—that the representation of blacks in his venire was not fair and reasonable in relation to the number of such persons in the community. The United States Court of Appeals for the Eleventh Circuit has explained: "'To analyze whether African Americans were fairly and reasonably represented in the jury pool, we compare the difference between the percentage of African Americans in the population eligible for jury service and the percentage of African Americans in the pool.'" United States v. Davis, 854 F.3d 1276, 1295 (11th Cir. 2017) (quoting United States v. Carmichael, 560 F.3d 1270, 1280 (11th Cir. 2009)). "'[I]f the absolute disparity between these two percentages is ten percent or less, the second [Duren] element is not satisfied.'" Id. (quoting Carmichael, 560 F.3d at 1280, quoting in turn United States v. Grisham, 63 F.3d 1074, 1078-79 (11th Cir. 1995)). Here, the absolute disparity is far below 10%.

Again, to support his fair-cross-section argument, Brown attached to his motion census data showing that the percentage of the total black population of Madison County is 25.2%. (C. 61.) At the hearing on his motion, McKoy acknowledged that 131 (or 21.83%) of the 600 potential

jurors summoned for jury service for Brown's trial term are black. (R. 123.) In other words, there was an absolute disparity of 3.37%. Because the absolute disparity between the percentage of all blacks in Madison County and the percent of blacks summoned for Brown's jury term is less than 10%, Brown failed to establish the second Duren element.¹⁵

Because Brown failed to satisfy the Duren test, he is due no relief on this claim.

V. The trial court did not abuse its discretion in denying Brown's motions to remove five prospective jurors for cause.

Brown argues that the trial court erred when it did not remove for cause prospective jurors S.A. (no. 4), T.D. (no. 24), P.L. (no. 53), S.S. (no. 81), and J.R. (no. 124). According to Brown, those potential jurors gave

¹⁵To be clear, to overcome the absolute-disparity test, Brown had to establish that the disparity between the percentage of blacks who are eligible for jury service and the percentage of blacks summoned for jury service exceeded 10%. He failed to do so.

Here, Brown's census data showed the percentage of the population of all blacks in Madison County, not the percentage of the population who are eligible for jury service. Although the absolute-disparity test relies on the percentage of the black population who are eligible for jury service, that number, logically, cannot exceed the total population percentage. And because Brown could not satisfy the absolute-disparity test based on the total population percentage of blacks in Madison County, he cannot satisfy the second Duren element.

"biased answers" both during voir dire and in their juror questionnaires. (Brown's brief, p. 63.) Brown used peremptory strikes to remove all five prospective jurors.¹⁶ He argues: "In denying these challenges, the trial court forced [him] to utilize crucial peremptory strikes—strikes [he] would have otherwise used to strike problematic individuals who ended up on [his] jury—to remove them." (Brown's brief, p. 63.) Brown's arguments lack merit.

"To justify a challenge for cause, there must be a proper statutory ground or "'some matter which imports absolute bias or favor, and leaves nothing to the discretion of the trial court.'" Clark v. State, 621 So. 2d 309, 321 (Ala. Cr. App. 1992) (quoting Nettles v. State, 435 So. 2d 146, 149 (Ala.

¹⁶Although we hold that the trial court did not abuse its discretion in denying Brown's motions to remove those potential jurors for cause, we also note that

"'any error in failing to remove these jurors for cause was harmless beyond a reasonable doubt. "[T]he Alabama Supreme Court has held that the failure to remove a juror for cause is harmless when that juror is removed by the use of a peremptory strike. Bethea v. Springhill Mem'l Hosp., 833 So. 2d 1 (Ala. 2002)." Pace v. State, 904 So. 2d 331, 341 (Ala. Crim. App. 2003). Cf. Ex parte Colby, 41 So. 3d 1 (Ala. 2009) (may not be harmless when multiple challenges for cause are involved).'"

Abernathy v. State, [Ms. CR-21-0275, June 27, 2025] ___ So. 3d ___, ___ n.6 (quoting Thompson v. State, 153 So. 3d 84, 115 (Ala. Crim. App. 2012)).

Cr. App. 1983)). This Court has held that "once a juror indicates initially that he or she is biased or prejudiced or has deep-seated impressions" about a case, the juror should be removed for cause. Knop v. McCain, 561 So. 2d 229, 234 (Ala. 1989). The test to be applied in determining whether a juror should be removed for cause is whether the juror can eliminate the influence of his previous feelings and render a verdict according to the evidence and the law. Ex parte Taylor, 666 So. 2d 73, 82 (Ala. 1995). A juror "need not be excused merely because [the juror] knows something of the case to be tried or because [the juror] has formed some opinions regarding it." Kinder v. State, 515 So. 2d 55, 61 (Ala. Cr. App. 1986). Even in cases where a potential juror has expressed some preconceived opinion as to the guilt of the accused, the juror is sufficiently impartial if he or she can set aside that opinion and render a verdict based upon the evidence in the case. Kinder, [515 So. 2d] at 60-61. In order to justify disqualification, a juror "'must have more than a bias, or fixed opinion, as to the guilt or innocence of the accused'; '[s]uch opinion must be so fixed ... that it would bias the verdict a juror would be required to render.'" Oryang v. State, 642 So. 2d 979, 987 (Ala. Cr. App. 1993) (quoting Siebert v. State, 562 So. 2d 586, 595 (Ala. Cr. App. 1989)).'

"Ex parte Davis, 718 So. 2d 1166, 1171-72 (Ala. 1998). Further,

"'[t]he qualification of prospective jurors rests within the sound discretion of the trial judge." Morrison v. State, 601 So. 2d 165, 168 (Ala. Crim. App. 1992); Ex parte Cochran, 500 So. 2d 1179, 1183 (Ala. 1985). This Court will not disturb the trial court's decision "unless there is a clear

showing of an abuse of discretion." Ex parte Rutledge, 523 So. 2d 1118, 1120 (Ala. 1988). "This court must look to the questions propounded to, and the answers given by, the prospective juror to see if this discretion was properly exercised." Knop [v. McCain], 561 So. 2d [229] at 232 [(Ala. 1989)]. We must consider the entire voir dire examination of the juror "in full context and as a whole." Ex parte Beam, 512 So. 2d 723, 724 (Ala. 1987); Ex parte Rutledge, 523 So. 2d at 1120.'

"Ex parte Burgess, 827 So. 2d 193, 198 (Ala. 2000)."

Mulkey v. State, [Ms. CR-2023-0304, May 2, 2025] ____ So. 3d ____, ____ (Ala. Crim. App. 2025). Also,

"'[a] trial judge's finding on whether or not a particular juror is biased "is based upon determinations of demeanor and credibility that are peculiarly within a trial judge's province." [Wainwright v.] Witt, 469 U.S. [412] at 429, 105 S. Ct. [844] at 855, 83 L. Ed. 2d 841 [(1985)]. That finding must be accorded proper deference on appeal. Id. "A trial court's rulings on challenges for cause based on bias [are] entitled to great weight and will not be disturbed on appeal unless clearly shown to be an abuse of discretion." Nobis v. State, 401 So. 2d 191, 198 (Ala. Cr. App.), cert. denied, Ex parte Nobis, 401 So. 2d 204 (Ala. 1981).'

"Martin v. State, 548 So. 2d 488, 490-91 (Ala. Crim. App. 1988).

"Furthermore, the Alabama Supreme Court has held that a circuit court's failure to remove a prospective juror for cause may be harmless error. See Bethea v. Springhill Memorial Hospital, 833 So. 2d 1 (Ala. 2002).

"[T]his Court has returned to the "harmless-error" analysis articulated in the Ross v. Oklahoma, 487 U.S. 81, 108 S. Ct. 2273, 101 L. Ed. 2d 80 (1988), and United States v. Martinez-Salazar, 528 U.S. 304, 120 S. Ct. 774, 145 L. Ed. 2d 792 (2000), decisions. Because a defendant has no right to a perfect jury or a jury of his or her choice, but rather only to an "impartial" jury, see Ala. Const. 1901 § 6, we find the harmless-error analysis to be the proper method of assuring the recognition of that right.

"In this instance, even if the Betheas could demonstrate that the trial court erred in not granting their request that L.A.C. be removed from the venire for cause (an issue we do not reach), they would need to show that its ruling somehow injured them by leaving them with a less-than-impartial jury. The Betheas do not proffer any evidence indicating that the jury that was eventually impaneled to hear this action was biased or partial. Therefore, the Betheas are not entitled to a new trial on this basis."

"Bethea, 833 So. 2d at 7."

Thomas v. State, 399 So. 3d 1073, 1077-78 (Ala. Crim. App. 2023). To be sure,

"[a]fter Bethea, the Alabama Supreme Court in Ex parte Colby, 41 So. 3d 1 (Ala. 2009), held that the failure to remove three jurors for cause was not harmless error. In discussing Colby, this Court has stated:

"In Ex parte Colby, 41 So. 3d 1 (Ala. 2009), the defendant argued that the trial court erred in

denying her challenges for cause as to several jurors, forcing her to use 9 of her 17 peremptory strikes to remove those jurors from the venire. 41 So. 3d at 4. The Alabama Supreme Court reversed the judgment after finding that, under its precedent in General Motors v. Jernigan, 883 So. 2d 646 (Ala. 2003), multiple errors by the trial court in denying Colby's challenges for cause were not harmless. 41 So. 3d at 5. Specifically, the Alabama Supreme Court found that the jury in that case included "'jurors who would likely have been the subject of peremptory challenge[s] had such challenges been available'" to Colby. Id.'

"Petersen v. State, 326 So. 3d 535, 559 (Ala. Crim. App. 2019).

"'A trial court's refusal to excuse a prospective juror for cause is not an abuse of discretion, notwithstanding that the juror has voiced a seemingly biased opinion, when after further examination and instruction, the juror demonstrates a willingness and ability to decide the case impartially according to the law and evidence.'

"State v. Juniors, 915 So. 2d 291, 309-310 (La. 2005).

"'It is well to remember that the lay persons on the panel may never have been subjected to the type of leading questions and cross-examination techniques that frequently are employed ... [during voir dire].... Also, unlike witnesses, prospective jurors have had no briefing by lawyers prior to taking the stand. Jurors thus cannot be expected invariably to express themselves carefully or even consistently. Every trial judge understands this, and under our system it is that judge who is best situated to determine competency to serve

impartially. The trial judge may properly choose to believe those statements that were the most fully articulated or that appeared to have been least influenced by leading.'

"Patton v. Yount, 467 U.S. 1025, 1039, 104 S. Ct. 2885, 81 L. Ed. 2d 847 (1984)."

Thomas, 399 So. 3d at 1078-79. With these principles in mind, we turn to Brown's arguments on appeal.

Prospective Juror S.A. (No. 4)

Brown argues that prospective juror S.A. should have been removed for cause because, in her juror questionnaire, S.A. indicated "strong agreement" with the statement that "'[a] criminal defendant should be required to produce evidence to prove that he or she is not guilty'" and stated that, "'if I could rewrite the law, I think that a defendant should have to testify and give their side of the story.'" (Brown's brief, pp. 63-64.) According to Brown, S.A.'s responses "made clear that [she] would hold the defense to a higher standard of proof than required or permitted under law, and would improperly consider Mr. Brown's right to remain silent as evidence of guilt." (Brown's brief, p. 66.) Brown also argues that S.A. said that she "'support[s] the death penalty' because '[i]f someone takes another person's life, unless it was in self-defense why should they

be allowed to live.'" (Brown's brief, pp. 66-67 (quoting R. 492-93).)

During voir dire, the following exchange occurred with S.A.:

"[Prosecutor]: All right. We mentioned this earlier, just a couple of principles of law that we were talking about. Specifically about the burden of proof. And the judge will tell you that we have the burden of proof. We have to prove it. He doesn't have to prove that he's innocent. He doesn't have to testify in his defense, anything like that.

"A couple of your answers here said that you think that he should have to prove his innocence, or he should have responsibility to prove something. Do you understand that's not the law?

"[S.A.]: I do understand that.

"[Prosecutor]: Okay. And people are allowed to disagree about what the law should be. But understanding what the law is, when the judge tells you that, and he tells you that he doesn't have to prove it, he doesn't have to testify and you cannot hold any of that against him, are you capable of following the law when the judge tells you that?

"[S.A.]: Yes, I am.

"[Prosecutor]: It's not going to be sitting in the back of your mind, Well, I know the judge said that, but I am kind of holding it against him a little bit?

"[S.A.]: No."

(R. 489-90.) Brown's counsel then questioned S.A.:

"[Brown's counsel]: There was a section of your questionnaire ... where you were asked whether you strongly agreed or strongly disagreed. And it was on a 1 to 10 scale. Do

you recall that series of questions?

"[S.A.]: I do.

"[Brown's counsel]: Well, you wrote the following statement: A criminal defendant should be required to produce evidence to prove that he or she is not guilty. And you said, I strongly agree with that. Is that your position?

"[S.A.]: Yes.

"[Brown's counsel]: So if Mr. Brown presents no evidence at all in his defense, you would say he's guilty?

"[S.A.]: No.

"[Brown's counsel]: Explain the difference.

"[S.A.]: I would have to base my decision on what has been presented.

"....

"[Brown's counsel]: Well, I'm just trying to understand why you gave a 10 there.

"[S.A.]: It was asking my opinion, though. Like, if I could rewrite the law, I think that a defendant should have to testify and give their side of the story.

"[Brown's counsel]: I see. And a defendant who does not do that is what?

"[S.A.]: Innocent until proven guilty."

(R. 491-92.) Brown's counsel also asked S.A. about her views on the death penalty:

"[Brown's counsel]: Okay. Now there was another question on here regarding the death penalty. It was Question Number 47. I'll read it to you.

"....

"Well, 46 leads into it. It says, What are your views on the death penalty? And you said, I support the death penalty. Is that okay?

"[S.A.]: Correct.

"[Brown's counsel]: And then 47 is, Why do you feel the way that you do? And your answer was, If someone takes another person's life, unless it was in self-defense, why should they be allowed to live?

"[S.A.]: Correct.

"....

"[Brown's counsel]: So the only way, in your view, you can get—take someone's life is in self-defense, and everything else to you is murder and death, correct?

"[S.A.]: Correct."

(R. 492-94.)

The State then explained to S.A. the process of weighing aggravating and mitigating circumstances and that "you're not allowed to say automatically no death or automatically all death. You have to look at them and you have to weigh them and decide whether or not he really deserves death or not." (R. 494.) The State then asked S.A.: "Is that you?

Or are you able to follow what the judge says and actually weigh things? And there's no wrong answer." (R. 495.) S.A. responded: "That is difficult to answer, to be honest. Because I haven't heard the evidence." (R. 495.) S.A. then assured the parties that she "believe[d] that [she] would be able to listen to what the judge says and weigh and consider all the, you know, evidence presented." (R. 495.)

To clarify, the State asked S.A.: "And, cards on the table, is it possible that you could weigh that and find somebody that had committed a capital murder did not deserve death?" (R. 495.) S.A. answered: "If the other option was life in prison without parole. ... I mean, to me, it would have to be those two options." (R. 495-96.) S.A. again told the parties that she believed that she could find someone guilty of capital murder but not deserving of a death sentence. (R. 496.) After that, Brown moved to have S.A. removed for cause. The trial court denied Brown's motion.

Although S.A. told the parties that she strongly supported the death penalty and that, if she was writing on a blank slate, she would require a defendant to testify at trial, she also told the parties that she could impose a sentence less than death and that she understood that, under the law, a person does not have to testify in his defense and is

innocent until proven guilty. As the trial court found: "I can understand why you wouldn't want her on the panel. But at this point she's been rehabilitated." (R. 498.)

The trial court did not abuse its discretion when it denied Brown's motion to remove S.A. for cause. See Largin v. State, 233 So. 3d 374, 409 (Ala. Crim. App. 2015) ("A trial judge is in a decidedly better position than an appellate court to assess the credibility of the jurors during voir dire questioning. See Ford v. State, 628 So. 2d 1068 (Ala. Crim. App. 1993). For that reason, we give great deference to a trial judge's ruling on challenges for cause. Baker v. State, 906 So. 2d 210 (Ala. Crim. App. 2001).' Turner v. State, 924 So. 2d 737, 754 (Ala. Crim. App. 2002).").

Prospective Juror T.D. (No. 24)

Brown argues that the trial court abused its discretion when it denied his motion to remove prospective juror T.D. for cause because, in his juror questionnaire, T.D. expressed strong agreement with the idea that a defendant should have to testify in his own defense. Brown also argues that T.D.

"responded on his questionnaire that he was 'for the death penalty when there is a conviction bad enough to warrant it,' and explained his views were based on his belief that '[i]t costs too much to house a prisoner for a life sentence if a death

penalty is an option and deserving.'"

(Brown's brief, pp.67-68.) According to Brown, T.D.'s biases warranted his removal for cause. Brown's arguments lack merit.

During voir dire, Brown's counsel pressed T.D. on his responses in his juror questionnaire:

"[Brown's counsel]: Question Number 46, What are your views on the death penalty? And you answered, I am for the death penalty when there is a conviction bad enough to warrant it. Do you recall that?

"[T.D.]: Yeah.

"[Brown's counsel]: Okay. Is there something you want to clarify about that answer?

"[T.D.]: Well, it don't sound to clear. But I'm talking about when the evidence presents and it warrants the conviction, then I can vote for the death penalty.

"[Brown's counsel]: All right. And the follow-up to that was Question 47 is, Why do you feel the way that you do? And your response was, It costs too much to house a prisoner for a life sentence if the death penalty is an option and deserving.

"Do you stand by that answer?

"[T.D.]: I think what I was thinking of then was it usually takes 20, 30 years for the death penalty to be carried out. And it costs the taxpayers a lot of money.

"....

"[Brown's counsel]: It appears to be a very important

factor, the cost to you, in arriving at the decision as to whether or not you would vote—assuming a conviction has been obtained, a huge factor for you would be that it costs too much to house a prisoner for life.

"[T.D.]: Well, in this case I either got—I would be determining whether it was a life sentence or—

"[Brown's counsel]: Or death.

"[T.D.]: Yes. So, you know, the costs are there."

(R. 586-89.) The trial court then explained to T.D. how death-penalty cases are tried and explained to him the process of weighing aggravating and mitigating circumstances. (R. 589-90.) The trial court asked T.D. if he would "be able to go through that weighing process in an honest and impartial way." (R. 590.) T.D. stated: "I think so." (R. 590.)

The trial court then asked T.D. about his views on whether a defendant should be required to testify:

"The Court: Lastly, [on] one of your questions you indicated that you felt that the defendant should be required to prove their innocence or something to that effect. Do you recall that?

"[T.D.]: I don't recall it. But I would say that, yes.

"The Court: Okay. So let me just tell you? Under the Fifth Amendment we've all got the constitutional right to avoid giving self-incriminating testimony. And in cases of any criminal nature, we can't be compelled to potentially testify and ultimately give evidence against ourselves.

"You understand that it's also a provision of law that jurors are not allowed to question that or to hold that against a defendant in considering their guilt. You understand that?

"[T.D.]: Yes, sir.

"The Court: And I'll instruct you in a lot more flowery language if you ultimately end up on this panel as to that right. But would you follow that instruction?

"[T.D.]: I would follow the Court's instruction, and I would like to serve."

(R. 593-94.)

Brown moved to have T.D. removed for cause. (R. 595.) The trial court denied Brown's motion, finding that T.D. had been rehabilitated. This Court cannot conclude that the trial court abused its discretion in so doing. See Largin, 233 So. 3d at 409.

Prospective Juror P.L. (No. 53)

Brown contends that prospective juror P.L. "was due to be struck for cause due to her stated prejudice against the defense and in favor of the State and law enforcement witnesses." (Brown's brief, p. 69.) Brown's argument lacks merit.

During voir dire, the State asked P.L. about the statement on her questionnaire that she would give more weight to the testimony of a law-

enforcement officer because "[t]hey usually witnessed it firsthand." (R. 809.) The State explained to P.L. that the trial court would "tell [her] that [she is] not allowed to give law enforcement more—under the law, more credibility than anyone else" and asked her if she had "any problem following [the trial court's] instruction on that?" (R. 809.) P.L. responded: "Absolutely not." (R. 809.)

Brown's counsel then asked P.L. about her rating criminal-defense attorneys a "3" on her questionnaire, and she explained: "Well, just some experiences I've had. I've just realized that, you know, they will say what they need to win their case." (R. 810.) When Brown's counsel asked her if that was also true "of the other side," P.L. responded: "That probably is, but I'm not as familiar with the other side. I've never been arrested." (R. 810.) Brown's counsel pressed P.L.: "What experience have you had that has led you to give me a three?" P.L. explained that it was "nothing personal to y'all, I promise—that I just—I just know how they work as just people." (R. 810.) P.L. then said that Brown's counsel could "certainly change" her opinion of criminal-defense counsel. (R. 810.)

Brown's counsel also asked P.L. about whether she had ever posted "support or a message of support for police" on social media. (R. 810.) P.L.

admitted that she had "put, Support The Blue," but "[t]hat would be as much as it is." (R. 810-11.) She explained that she posted it "probably a couple of years" ago when she "felt like—that was when the police were getting a bad [r]ap in society in general." (R. 811.) P.L. said that she has "friends that are police that risk their lives every day. And I just don't like the fact that we don't support them." (R. 811.) P.L. clarified that she did not have friends who were police officers in Huntsville—they "live out of town, like, Anniston," and there is "a friend of [her] son's that is a Madison police. So that is local, but it's not Madison County." (R. 811-12.)

The trial court then followed up with P.L.:

"The Court: Are you going to be able to give both sides a fair opportunity in this case?

"[P.L.]: I would take that very, very seriously and do that; yes, sir."

(R. 812.)

Brown's counsel then confronted P.L. with a social-media post that showed "the badge of the police officer, Huntsville." (R. 813.) According to P.L., there were lines across the badge, but she could not remember "what the lines are for. I think I just shared it from somebody else's." (R. 813-14.) Brown's counsel asked her: "Was that post made in response to

the most recent killing of a police officer?" (R. 815.) P.L. answered: "I honestly don't remember ever making that post. It appears to me that—that some incidents happened—some incident happened that was sad to me. And I was just, you know, posting an opinion on it." (R. 815-16.)

After that, Brown's counsel moved to remove P.L. for cause, arguing that "she has nothing but contempt for defense lawyers and my side of the room based on her rating. And I think she's hedging about that most recent post what was posted this year in—March 29th." (R. 816.) The State responded:

"Your Honor, I think her response was that she didn't have anything personal against that group of lawyers, but she knew defense attorneys that had—and had experience—negative experience with defense attorneys. And that's what the question asked. It's not necessarily those defense lawyers.

"And, even so, Your Honor, that's not for cause. And supporting the police is not for cause either. She can—she can post on her Facebook that she supports police officers all day as long as she can be fair. And you asked her directly, Can you be fair? And she said she could."

(R. 817.) The trial court then denied Brown's motion.

Although Brown correctly argues that P.L. indicated that she trusted and supported law-enforcement officers and held a negative view of certain defense counsel, P.L. also told the trial court that she could

follow the trial court's instructions and give both sides a fair opportunity. The trial court did not abuse its discretion when it concluded that P.L.'s responses did not warrant her removal for cause. See Largin, 233 So. 3d at 409.

Prospective Juror S.S. (No. 81)

Brown argues that prospective juror S.S. should have been removed for cause because he stated "strong agreement" with the statement that "[a] criminal defendant should be required to produce evidence to prove that he or she is not guilty.'" (Brown's brief, p. 63.) Brown also contends that S.S. should have been removed for cause because he "indicated his belief that if he was on trial and not guilty, he would testify, and confirmed that, should he make the jury and should Mr. Brown decide not to testify, he might consider that silence in deciding Mr. Brown's guilt." (Brown's brief, p. 65.)

During voir dire, in response to a question from Brown's counsel, S.S. indicated that he had noted on his juror questionnaire that he agreed with the "fundamental legal principle" that "[a] defendant has the absolute right not to testify and his silence may not be used against that person" and explained in his questionnaire that "[h]e or she has the right

to not self-incriminate themselves but withholding evidence can alter the jurors' decision." (R. 1019.) Brown's counsel asked S.S. what that statement meant:

"[S.S.]: If they know to say—to give an answer that would give credence to their innocence or guiltiness and they withhold it.

"[Brown's counsel]: All right. Well, it sounds like you kind of believe in his right to remain silent and kind of don't.

"[S.S.]: Yeah.

"[Brown's counsel]: Because if you're sitting on that jury—let's say he doesn't testify. You're going to be sitting there going, Is this where the withholding evidence can alter the jurors' decision?

"[S.S.]: I don't know.

"[Brown's counsel]: Okay. Could it? In you—to you, not to anyone else.

"[S.S.]: Yeah. If a person doesn't give any indication then, you know, that's something he's going to have to live with. If I'm not guilty—I feel like I'm on—

"[Brown's counsel]: You are.

"[S.S.]: I know. (Laughter)

"Yeah. I'm not sure.

"[Brown's counsel]: Okay. So I would thoroughly expect at some point during [the trial court's] instructions, assuming the defendant didn't testify, that he would tell you that's a fact

that you not—cannot consider. But it seems like you might consider it. It's okay. We just need to know.

"[S.S.]: Right."

(R. 1019-20.)

The State then asked S.S. whether, if the trial court "orders you, as [it] will every juror out here, you cannot consider this, you feel like you would still consider it and maybe hold it against him?" (R. 1021.) S.S. clearly stated that he would not hold Brown's silence against him. (R. 1021.) Brown's counsel then asked S.S. about his conflicting positions on the question of Brown's right to remain silent and asked him if it "would be on your mind if you're in that box," and S.S. indicated that it would. (R. 1022.) The trial court then asked S.S. to clarify his responses:

"The Court: So which is it, sir? (Laughter.)

"[S.S.]: Just the fact that whatever you say is what I need to follow and I will follow.

"The Court: And they both told you accurately what I charge my juries every time I have a criminal defendant who chooses not to testify.

"[S.S.]: Right.

"The Court: Which is you are not allowed to consider that in any form or fashion as evidence of the defendant's guilt. Period.

"[S.S.]: Uh-huh. (Affirmative.)

The Court: If I give that to you—

"[S.S.]: Right.

"The Court: —are you going to follow it?

"[S.S.]: If he has a right to not self-incriminate himself, he has a right to it—that's what I'm saying that, yes, he has a right to do that.

"The Court: Yes, sir. My question is that—because—and I think it's a natural human feeling to want, you know, have everybody who knows anything about any—but that's not the way trials work, right? And so the—but the question is: Can you take that personal feeling that potentially conflicts with the law as I give it to you—

"[S.S.]: Right.

"The Court: —can you set that personal feeling aside and follow the law as I give it to you?

"[S.S.]: And that—that's the answer I say, Yes."

(R. 1023-24.)

Based on what counsel described as S.S.'s "conflicting answers about one of the most fundamental constitutional principles in our system of justice," Brown's counsel moved to have S.S. removed for cause.

(R. 1025.) The State argued that S.S. "agreed that he will do as [the trial court] ordered." (R. 1025.) The trial court denied Brown's motion to

remove S.S. for cause because, "based on his responses, I find that he's been rehabilitated." (R. 1025.)

Although S.S. stated that he held the opinion that a person should "give an answer that would give credence to their innocence" (R. 1019), S.S. also explained that he could set aside his personal feelings and follow the law as the trial court instructed him (R. 1024).

Because S.S.'s responses to the voir dire questioning did not indicate that he had a fixed bias, and because he "never indicated that he would hold it against [Brown] if he presented no evidence to clear his name," Thomas, 399 So. 3d at 1083, the trial court did not abuse its discretion when it found that S.S. had been rehabilitated and denied Brown's motion to remove S.S. for cause. See Largin, 233 So. 3d at 409.

Prospective Juror J.R. (No. 124)

Brown argues that prospective juror J.R. should have been removed for cause because, he says, J.R. showed his bias "with respect to how [he] would determine the appropriate sentence should Mr. Brown be found guilty" because, among other things, he stated that he "'would want the facts that [were] presented by the prosecutors to take the most weight' in determining the appropriate sentence." (Brown's brief, pp. 66, 68

(quoting R. 1335).) Brown's argument lacks merit.

During voir dire, J.R. told the parties that he was in favor of the death penalty (he rated himself "as a 6 out of 10 in favor of the death penalty"), and he explained in his questionnaire that he "hold[s] to a biblical world view that supports our legal system's right to serve justice in the country." (R. 1333.) Brown's counsel then asked J.R.:

"[Brown's counsel]: If you have already found my client guilty of murdering a police officer on duty beyond a reasonable doubt, are you going to consider things like his childhood? Or are you just going to vote for death?

"[J.R.]: That's a really good question. I would start by saying I would take it very serious, the matter, right? I wouldn't take it lightly, whenever someone's life weighs in the balance. I want to consider all the facts and his past history. However, I would want the facts that was presented by the prosecutors to take the most weight.

"So I'm not saying that someone's childhood could not affect the decision that they make. My childhood wasn't the best. So I definitely would consider that. But the facts that was presented clearly in the case would be what I would be looking at more than anything.

"[Brown's counsel]: Let me ask the question this way: If you sit through the first phase of the case and you hear all the State's evidence and you're convinced that he's guilty beyond a reasonable doubt of killing a police officer on duty, in the second phase of the case are you ever going to put your name on the life without box or are you always to put your name on the death box?

"[J.R.]: It's tough. Especially when you're put on the spot and asked that question right here. I would want to deliberate—deliberate that with the other jurors and want to, prayerfully consider that before I just put a check in either box.

"....

"[Brown's counsel]: If you sit through all the evidence and you're convinced beyond a reasonable doubt that he killed a police officer on duty, are you ever going to put your name in the life without box?

"The Court: Well, would he contemplate that? And, look, sometimes jurors feel like they're—that the attorneys are trying to get some sort of promise that you're going to do so. And that's not the case and [Brown's counsel is] not trying to do that. He's just asking—he's asking you—and I don't want to step on his toes here. This is his right to ask these questions. But I just want to make sure that you know he's not asking you to promise that you're going to do—going to impose some specific sentence in this case. But just whether you could, okay.

"And I'm sorry, [Brown's counsel]. Let me let you rephrase that since I just muddied the water more. And I apologize.

"....

"[Brown's counsel]: ... Are you ever going to consider things like childhood? Or are you always going to vote for death if you found that he murdered a police officer on duty beyond a reasonable doubt?

"[J.R.]: If I'm looking at you now and would tell you, like, 100 percent?

"[Brown's counsel]: Yes, sir.

"[J.R.]: If I've considered all the facts, he's came back as guilty, my vote would be death.

"[Brown's counsel]: And that's every time if it's a police officer on duty?

"[J.R.]: Yes, sir."

(R. 1334-37.)

After that, the State explained to J.R. that the trial court would instruct him that he would have to consider both aggravating and mitigating circumstances and that "we're looking for ... someone who can consider both sides before making a decision. ... Somebody that can look at their side and weigh it and look at our side and weigh it and go through that process of weighing before making a decision on which way you're going to go." (R. 1338.) The State then asked J.R. if he was willing to do that, and J.R. responded: "I think that's what I just said, a hundred percent. But if I was put on the spot right now to make the decision? Yes, I would be in favor of the death penalty if y'all presented all the facts and they came back as guilty." (R. 1338.) The State then clarified that the trial court would tell the jurors that they must "weigh both sides" and then decide, and it asked J.R.: "Could you follow that under those

circumstances." (R. 1339.) J.R. said that he could "100 percent." (R. 1339.)

Because J.R. had been "pulled both ways," the trial court had the following exchange with him:

"The Court: ... In order for a juror to be able to serve on this case—and, again, the only way we get to where a juror's even contemplating the death penalty is if the defendant's found guilty of capital murder.

"[J.R.]: Right.

"The Court: But a juror at that point has to be able to—once we move into the penalty phase, assess and weigh any aggravating factors that the State puts on, which they argue supports the death penalty, against any mitigating evidence that the Defense puts on that they argue supports a nondeath sentence, okay.

"[J.R.]: Uh-huh. (Affirmative.)

"The Court: And, basically, what that juror's going to have do is weigh all that and figure out do the aggravating factors outweigh the mitigating or vice versa?

"[J.R.]: Uh-huh. (Affirmative.)

"The Court: And if you can't go through that weighing process in an honest and impartial way and give both sides a fair shake—

"[J.R.]: Yeah.

"The Court: —they've both got a fair shake of you either imposing a death sentence or of you imposing a life without sentence, then this may not be the jury for you to sit on, sir. So my question is: Can you go through that weighing process

or not?

"[J.R.]: Yes, sir. Yes."

(R. 1339-40.)

Brown then moved to have J.R. removed for cause because he "indicated that he would always vote for death with these specific facts." (R. 1341.) The State opposed Brown's motion, arguing that J.R. "may have been a little bit confused with the way the question was asked" and that, when he was asked if he could consider both sides, "he said he absolutely would consider both sides and go through the weighing process." (R. 1341.) The Court agreed with the State, finding:

"I interpreted it he was—and that's why I kind of jumped in. Because the way you phrased the question, [Brown's counsel], I thought it could be construed by him and it was construed by him as you almost asking him to prejudge the thing. Which I know you're not asking him to do, but I think that's what he interpreted it as. And that's why I drilled down the way I did with him.

"I'm satisfied that he's rehabilitated at this point. I'm going to deny the Defense's motion as to 124."

(R. 1342.)

Although J.R. initially told Brown's counsel that he would vote for death in a case in which the jury found the defendant guilty beyond a reasonable doubt, the trial court attributed J.R.'s response to being

confused by Brown's counsel's question. As shown above, when the trial court clarified the process of weighing the aggravating and mitigating circumstances and explained that jurors must consider both sides, J.R. assured the trial court that he could consider both sides during the weighing process.

Because the trial court is in a far better position than this Court to assess the credibility of J.R.'s responses during voir dire, we give great deference to the trial court's findings. See Largin, 233 So. 3d at 409. In so doing, we cannot conclude that the trial court abused its discretion when it found that J.R. had been rehabilitated and denied Brown's motion to remove him for cause.

VI. Brown abandoned his Batson¹⁷ claim in the trial court, and this Court will not review it.

Brown argues that the State exercised its peremptory strikes in a racially discriminatory manner in violation of Batson v. Kentucky, 476 U.S. 79 (1986). But Brown abandoned his Batson claim in the trial court.

After the parties struck the jury, Brown's counsel told the trial court that "[t]here were 13 qualified African Americans on this panel"

¹⁷Batson v. Kentucky, 476 U.S. 79 (1986).

and that the State "had used 11 of their peremptory challenges to remove African Americans." (R. 1383.) Brown's counsel claimed that the State's strikes "fit[] a pattern ... of purposeful discrimination" and that the State could "either come forward with race neutral reasons or I'm going to ask for additional time to cross-reference similarly situated jurors." (R. 1383.)

The following exchange then occurred:

"The Court: So I can't—I mean, I know y'all know—well, let me let the State respond and then I'll see where we land. Go ahead.

"[Prosecutor]: Respond to giving him more time? That's entirely your purview, Your Honor, how much time you want to give or not give.

"The Court: I mean, here's my deal. It's pushing 4:00. We want to notify these folks as soon as we can.

"Thirty minutes. Y'all okay with that?

"[Prosecutor]: We're at the Court's pleasure.

"The Court: All right. I'll give you 30 minutes. And let's be prepared because I need to notify these jurors ASAP, okay.

"[Brown's counsel]: All right."

(R. 1383-84.) When the parties returned to the courtroom, Brown's counsel told the trial court that he was "unable to articulate a prima facie Batson challenge"; instead, Brown's counsel said that "we would renew

our previously lodged objection to the composition of the jury based on Alabama law Section 12-16-55 et al and the Sixth Amendment to the U.S. Constitution." (R. 1384.)

This Court will not

"attribute error to the trial court when the defendant did not seek to address this particular claim for the same reasons the preservation rules exist and for the same reasons that we no longer engage in plain-error review of Batson claims. As Justice Murdock explained, 'the most fundamental ... reason for the proposition that plain-error review not be available to initiate a Batson inquiry on appeal[] is the fact that the failure of the trial court to initiate a Batson inquiry simply is not an "error," plain or otherwise, by the trial court.' Ex parte Floyd, 190 So. 3d 972, 982 (Ala. 2012) (Murdock, J., concurring in the result) (emphasis omitted). In short,

"[t]he decision whether to take advantage of the right to generate evidence for consideration by the trial court pursuant to the Batson procedure is a decision for the defendant, not for the trial court. It is a voluntary decision as to whether to invoke a procedural device that has been made available to defendants in the trial context. ... Not requesting it may be a strategic mistake by defense counsel, but counsel's mistake is not the trial court's "error.""

"Id. at 983 (some emphasis added; some emphasis omitted). See also 24 C.J.S. Criminal Procedure and Rights of Accused § 2549 (2016) ('The purpose of the [preservation] rule[s], as variously stated, is to give the trial court the opportunity to correct any alleged error or defect called to its attention before submission of the case to the jury, to prevent unlimited litigation through the device of propounding new questions at

each stage of an appeal, and to insure fairness for all the parties to cases and to promote the orderly administration of the law.')."

Hardy v. State, [Ms. CR-2022-1044, Feb. 6, 2026] ___ So. 3d ___, ___ (Ala. Crim. App. 2026).

Because Brown abandoned his Batson claim in the trial court, and because this Court "no longer review[s] Batson claims under our plain-error standard when those claims are raised for the first time on appeal," Henderson, ___ So. 3d at ___, we do not address Brown's Batson argument on appeal.

VII. Because Brown injected the issue of his character during the penalty phase, the trial court did not err in allowing evidence about Brown's 2018 arrest in Tennessee.

Brown argues that the trial court erred during the penalty phase of his trial when it allowed the State to introduce "highly prejudicial evidence of [his] 2018 arrest in Hamilton County, Tennessee, for charges that included aggravated carjacking, kidnapping, aggravated assault, and aggravated burglary." (Brown's brief, p. 83.) Brown's argument lacks merit.

During the penalty phase of his trial, Brown called several witnesses, including Lauren Spacek and Angela Hayes.

Spacek, Brown's mitigation specialist, testified that she met with Brown and Brown's family and reviewed "a lot of records" about Brown. (R. 1910.) Spacek detailed Brown's early life in the foster-care system and when he was restored to the custody of his biological mother. (R. 1911-14). Spacek told the jury that Brown's younger brother, Patrick, viewed Brown "more like a dad" who was "kind, but he'll push you to do better and to be better." (R. 1917.) Spacek said that Brown "started getting into trouble" when he was younger "just by people he was hanging out with." (R. 1918.) But, she said, when he became a young father at 16 years old, Brown made "noticeable improvements in his life." (R. 1919.) Yet, she said, Brown pleaded guilty to federal drug charges in 2013 and served time in federal prison. (R. 1920.) Spacek testified that, after Brown got out of federal prison, he went to Chattanooga State and got his commercial truck-driving license. (R. 1921.)

After Spacek testified on direct examination, the State argued that Brown had opened the door to "the [Rule] 404[, Ala. R. Evid.,] stuff at this point when their witness testified that she investigated his entire life history Specifically, when she said that after he had his kid, he started really trying to get in line right before he got arrested for a number of

other prior convictions." (R. 1925.) Brown's counsel argued that the "2018 stuff is extremely prejudicial. Whatever probative value it had would be substantially outweighed by this immense prejudicial effect." (R. 1926.) The State countered that, because Brown injected his good character into the penalty phase as mitigation, the "burden is now on [the State] to disprove their mitigator." (R. 1926.) The trial court concluded that the door had not yet been opened as to Brown's 2018 offenses. (R. 1927.)

Hayes testified that she met Brown when they were in middle school in Chattanooga, Tennessee, and that they became friends. (R. 1934-35.) Their friendship drifted, however, when Brown had a child when he was in high school. (R. 1935-36.) Hayes said that she left Chattanooga and moved to California, and she stayed in California for 15 years. (R. 1936.) Hayes said that she returned to Chattanooga in November 2017 after she had gone "through a bad divorce." (R. 1936.) Upon returning to Chattanooga, Hayes ran into Brown, who "made [her] feel better." (R. 1936-37.) Hayes described Brown as a "gentleman," and they soon started a romantic relationship. (R. 1937.) Hayes said that Brown "opened the car doors" and that he "was pleasant" and always polite. (R. 1938-39.) Hayes explained to the jury how Brown's time in jail

had affected her and Brown's family, and she told the jury that Brown "is not a horrible person" and to "reconsider his life." (R. 1942.)

After Hayes testified on direct examination, the State asked the trial court for a sidebar and argued that, because Hayes had testified that Brown is "not a horrible person and just consider his life, now she's a character witness. And the law is clear ... that his priors can come in. We can ask her if she knows about those." (R. 1943.) The State explained that, during the penalty phase of a capital case, "[u]nder Jackson v. State you can inquire from cross-examination ... [of a] character witness whether they are aware of not only prior crimes but prior suspensions, prior bad acts, and other arrests." (R. 1944.) Brown argued that asking Hayes whether she knows about Brown's prior arrests is "so prejudicial" and has "extremely limited probative value." (R. 1945.) Brown argued that Hayes "might not even know the vast majority of this. And what [the prosecutor is] going to do is say, Did you know he was arrested for this, this? He will essentially testify to things she has no personal knowledge about and it's extremely prejudicial in a death penalty case at this juncture." (R. 1945.) The trial court agreed with the State that Hayes's testimony had opened the door to ask about her knowledge of Brown's

bad character, but it cautioned the State not to "overplay[] the hand." (R. 1945.)

On cross-examination, the State asked Hayes:

"[Prosecutor]: I just got a couple of questions. You talked about the kind of person that Mr. Brown was. Did you know that in 1998 he was convicted for theft of property, two counts of sale of cocaine, and possession of cocaine for distribution?

"[Hayes]: No, sir.

"[Prosecutor]: Did you know that in 2018 when he committed this offense, he was on bond for, among other things, four counts of aggravated kidnapping, three counts of aggravated robbery, carjacking, two counts of home invasion, a number of firearm charges, and aggravated assault on a police officer?

"[Hayes]: No, sir."

(R. 1946-47.)

After Brown rested his penalty-phase presentation, the following exchange occurred outside the presence of the jury:

"[Prosecutor]: Your Honor, we plan to recall Investigator Hines and just have him testify during his investigation if he discovered [Brown] had any priors, list them, and discover if he was out on bond for any charges and list those. And that basically covers what we covered on cross-examination.

"[Brown's counsel]: Judge, I understand the priors that are convictions, What we have here, they're trying to elicit evidence of an arrest that he hasn't been convicted of. We would strenuously object to that. It is extremely prejudicial.

We're not talking about convictions that have been had in a court of law. These are incredibly prejudicial statements in a case like this that would—would serve no valid purpose at this point. The probative value is extremely limited. The prejudicial effect is extremely high.

"[Prosecutor]: Your Honor, he was out on bond for those charges when he committed this crime. We have heard over and over from the Defense what a good man he was, how he has changed his life, how he's turned it around. They're relevant to this proceeding. His prior bad actions are more than just convictions.

"[Brown's counsel]: Judge, we're talking about cases that have been dismissed.

"The Court: All right. So here's—I'm going to kind of split the baby here after considering kind of the totality here. And really the argument from the Defense is centered on the cases that he was charged with but was out on bond for.

"Addressing those, let's limit it to the fact that he was out on bond. Don't go into the specifics of what those charges are; just that he was out on bond at the time and not the underlying offenses. All right?

"....

"[Brown's counsel]: With respect to the 2018 nonconvictions, we have this litany of cases that have been dismissed that he was arrested for, and now we're in a juncture where the State is going to offer testimony to bring that into evidence. We are objecting to that strenuously and requesting a ruling that it's extremely prejudicial. It's of limited probative value. And we would request a ruling at this juncture.

"The Court: Which charges are those?

"[Prosecutor]: I think these are the ones we just talked about. We're not going to talk specifics. We're just going to talk that he was out on bond.

"The Court: Yeah. Just that he's out on bond. I'm not going to—he's not going to offer testimony—

"....

"I think it's fair to go into the fact that he was out on bond at the time, but I do agree that the prejudicial effect of what those underlying charges were, which have since been dismissed, outweigh any probative value; so

"[Brown's other counsel]: So it will only be testimony that he was out on bond?

"The Court: Correct.

"[Brown's counsel]: That's the way I understood it.

"The Court: Correct.

"[Brown's other counsel]: I understand now, Judge.

"[Brown's counsel]: And that's good."

(R. 1989-92.)

Investigator Hines then testified that, during his investigation, he learned that Brown had several prior criminal convictions, including:

"On September 22, 2015, there was a conviction for a conspiracy to distribute five kilograms or more of mixtures and substances containing a detectable amount of cocaine and 280 grams or more of cocaine base, in parentheses meaning

crack.

"On July the 14th of 1998, there was a conviction for theft of property.

"On October the 6th, 1998, there was a conviction for sale of cocaine.

"On October the 6th, 1998, there was a second conviction for sale of cocaine.

"And on October the 6th, 1998, there was a[n] additional conviction for possession of cocaine for resale."

(R. 2003.) Investigator Hines also testified that he learned that Brown "was out on bond during the time this event occurred." (R. 2003.)

Brown argues on appeal that the trial court erred when it allowed the State to introduce evidence of his "2018 arrest in Hamilton County, Tennessee, for charges that included aggravated carjacking, kidnapping, aggravated assault, and aggravated burglary." (Brown's brief, p. 83.) Brown's argument lacks merit.

Section 13A-5-45(c), Ala. Code 1975, provides: "At the sentence hearing evidence may be presented as to any matter that the court deems relevant to sentence and shall include any matters relating to the aggravating and mitigating circumstances referred to in Sections 13A-5-49, 13A-5-51, and 13A-5-54[, Ala. Code 1975]." And § 13A-5-45(g), Ala.

Code 1975, instructs that "[t]he defendant shall be allowed to offer any mitigating circumstance defined in Sections 13A-5-51 and 13A-5-52[, Ala. Code 1975,]" and that, "[w]hen the factual existence of an offered mitigating circumstance is in dispute, the defendant shall have the burden of interjecting the issue, but once it is interjected the state shall have the burden of disproving the factual existence of that circumstance by a preponderance of the evidence."

Here, Brown's mitigation case included putting on evidence of his good character for the jury to consider as a mitigating circumstance under § 13A-5-52, Ala. Code 1975. Once Brown injected his good character into the penalty phase as mitigation, the State had the burden of disproving it by a preponderance of the evidence, which allowed the State not only to introduce evidence about Brown's prior convictions, but also to introduce evidence about Brown's other prior bad acts, including his 2018 arrests in Tennessee.

This Court has upheld the use of similar prior-bad-act evidence in other death-penalty cases.

"In Jackson v. State, 791 So. 2d 979 (Ala. Crim. App. 2000), the appellant objected to the prosecutor's cross-examination of Jackson's character witnesses, claiming that the evidence was improper because it introduced evidence of

his prior bad conduct. We rejected that argument, stating:

"To rebut Jackson's claim of good character, the State cross-examined one of Jackson's character witnesses regarding Jackson's prior misdemeanor assault conviction and his suspension from school for carrying a gun. This cross-examination was proper both to test the witness's credibility as to his knowledge of Jackson's character and to rebut the mitigating evidence offered by Jackson.'

"791 So. 2d at 1026.

"We have also held that an appellant's disciplinary problems in jail were admissible to rebut mitigation evidence he offered regarding his good behavior in jail. In Clark v. State, 896 So. 2d 584, 597 (Ala. Crim. App. 2000) (on return to remand and on application for rehearing), we stated:

"Evidence of Clark's prison disciplinary problems was clearly offered to rebut the evidence he had offered in mitigation that he was a "model inmate." (R. 1547.) The evidence was relevant and probative to sentencing and was, thus, properly admitted. See, e.g., Jackson v. State, 791 So. 2d 979 (Ala. Crim. App.), cert. denied, 791 So. 2d 1043 (Ala. 2000), cert. denied, 532 U.S. 934 (2001) (evidence of the defendant's prior misdemeanor conviction and his suspension from high school was properly admitted to rebut the defendant's mitigation evidence); and Hallford v. State, 548 So. 2d 526 (Ala. Crim. App. 1988), aff'd, 548 So. 2d 547 (Ala.), cert. denied, 493 U.S. 945 (1989) (evidence that the defendant was having an incestuous relationship with his daughter was properly admitted to rebut the defendant's mitigation evidence regarding his good character).'"

Deardorff v. State, 6 So. 3d 1205, 1230 (Ala. Crim. App. 2004). See also Revis v. State, 101 So. 3d 247, 298 (Ala. Crim. App. 2011) (holding that "the State could properly disprove evidence offered by Revis as mitigation at the penalty phase by offering evidence of Revis's reputation as a violent prisoner and evidence of the other cited bad acts"); and Whatley v. State, 146 So. 3d 437, 482 (Ala. Crim. App. 2010) (finding that "Whatley's conduct in jail and the statements he made concerning harming other inmates were relevant to rebut evidence that Whatley presented in mitigation").

Here, when the State asked Hayes whether she knew that Brown had been arrested in 2018 for several serious crimes, that evidence was relevant both to an issue in sentencing—i.e., rebutting Hayes's claim of Brown's good character—and, importantly, to test her credibility as to her knowledge of Brown's character. Thus, the trial court did not err when it allowed the State to ask Hayes about her knowledge of Brown's 2018 arrests.

Brown also argues that the trial court erred when it "fail[ed] to give the jury any instruction regarding its consideration of the arrests." (Brown's brief, p. 86.) Because Brown raises this argument for the first

time on appeal, we review it only for plain error. See Rule 45A, Ala. R. App. P.

At the end of the penalty phase, the trial court told the parties that it did not

"give any sort of limiting instruction at the time that the— during the penalty phase as far as the testimony about the prior convictions. I'm going to give them a limiting instruction that that is not an aggravator to be considered and that it can only be considered for purposes of impeachment and for their consideration of the character witness testimony."

(R. 2063.) Both parties agreed that the trial court's plan was appropriate.

(R. 2063.)

Then, during the penalty-phase instructions, the trial court instructed the jury, in part:

"During the penalty phase there was limited evidence presented of prior convictions of the defendant. You shall not consider that evidence as aggravating evidence in this phase of the trial. That evidence is solely to be considered for purposes of weighing the evidence, credibility, and knowledge presented by character testimony of the defendant's good character."

(R. 2067.) Neither party objected to the trial court's instructions. (R. 2079.)

On appeal, Brown takes issue with the trial court's instructions because it addressed only Brown's prior convictions, not his prior arrests,

which were the subject of the State's cross-examination of Hayes and the evidence used to rebut Brown's good character. (Brown's brief, p. 87.)

Although Brown correctly notes that there is a difference between a conviction and an arrest, nothing in the record suggests that the jury drew such a distinction when it was told to consider the State's impeachment evidence, which included both his prior convictions and prior arrests, as evidence going to credibility. "[A] mere verbal inaccuracy in a charge, which results from a palpable slip of the tongue, and clearly could not have misled or confused the jury is not reversible error." Johnson v. State, [Ms. CR-2023-0911, Dec. 19, 2025] __ So. 3d __, __ (Ala. Crim. App. 2025) (quoting Lindsay v. State, 326 So. 3d 1, 47 (Ala. Crim. App. 2019), quoting in turn Graham v. State, 242 Ga. App. 361, 362, 529 S.E.2d 641, 644 (2000), quoting in turn Fruhling v. State, 233 Ga. App. 544, 545, 505 S.E.2d 47, 49 (1998)). Because nothing suggests that the jury was misled by the court's instruction, there is no error here, plain or otherwise.

VIII. Brown did not show actual or presumed prejudice, and the trial court thus did not abuse its discretion in denying Brown's motion to continue.

Brown argues that the trial court erred when it denied his pretrial

motion to continue his trial, which he filed after "Huntsville police officer Garrett Crumby was killed, and a second officer was critically injured in the line of duty." (Brown's brief, p. 88.) Brown's argument lacks merit.

"'[A] motion for a continuance is addressed to the sound discretion of the trial court and ..., absent a showing of abuse of that discretion, the trial court's decision on the matter will not be overturned on appeal.' Smith v. State, 698 So. 2d 189, 205 (Ala. Crim. App. 1996). See also Busby v. State, 412 So. 2d 837 (Ala. Crim. App. 1982). 'A defendant appealing the denial of a continuance must demonstrate a clear abuse of the trial judge's discretion and make a specific showing of prejudice.' Tucker v. State, 429 So. 2d 1165, 1169 (Ala. Crim. App. 1983). See also Dolvin v. State, 391 So. 2d 666, 674 (Ala. Crim. App. 1979) ('actual jury prejudice' must be shown to warrant a continuance)."

Kirksey v. State, 191 So. 3d 810, 824-25 (Ala. Crim. App. 2014).¹⁸

About four months before his trial was set to begin, Brown moved to continue his trial. (2d Supp. C. 25-26.) In his motion, Brown alleged that, almost three months earlier, another Huntsville Police Officer, Garrett Crumby, "was killed in the line of duty, and Officer [Albert]

¹⁸In June 2016, the United States Supreme Court granted Kirksey's petition for a writ of certiorari, vacated this Court's judgment, and remanded Kirksey's case to this Court "for further consideration in light of Hurst v. Florida, 577 U.S. 92, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016)." Kirksey v. Alabama, 578 U.S. 1020 (2016). On remand, this Court again affirmed Kirksey's capital-murder conviction and death sentence. See Kirksey v. State, 243 So. 3d 849, 854 (Ala. Crim. App. 2016).

Morin was critically injured," and that that "case has received, and is likely to continue to receive extensive publicity at each stage of criminal proceedings." (2d Supp. C. 25.) According to Brown, "[b]ecause of the similarities between the two cases ... and in light of the extensive media coverage and the prejudicial atmosphere it has created, it is essential to grant a motion to continue Mr. Brown's trial proceedings." (2d Supp. C. 25.) Brown argued that granting his motion would "allow the media frenzy to subside and provide ample time for the defendant's legal team to prepare an effective defense" and "will enable the court to select a jury that has not been unduly influenced by media coverage and ensure a fair trial for the defendant." (2d Supp. C. 25.)

The trial court held a status hearing in Brown's case in June 2023, at which the parties discussed the motion to continue Brown had just filed. (R. 50.) During that hearing, the State briefly offered its position on continuing Brown's trial based on the case involving the murder of Officer Crumby:

"I think we're honestly in an untenable spot in the sense there was some media coverage in large of the fact that Officer Crumby was killed. Who knows what the media landscape will be like in October. He's not going to be indicted by then. If we push it back another six months, a year, well, probably the indictment will come out, and there will be a whole new

mess of news about Officer Crumby's killer being indicted. At some point we can poll the jury, we can ask them about pretrial publicity, the fact that another officer was killed six or eight months before this trial. That will continue it forever. There are appropriate safeguards built into place checking for pretrial publicity and bias, and we can do all of those."

(R. 51-52.)

The trial court explained that, if it needed to, it "could even draw from a bigger pool," and, the trial court stated, "it's not like it was in the old days when you counted on folks to read their newspapers every day. There is a lot of our population that is just unplugged from media coverage." (R. 52.)

Brown's counsel then argued that "they are plugged into ... social media" and that his "understanding of this new case is there is some video that went around social media that is very inflammatory." (R. 52.) Brown's counsel continued: "It's our position that it is impossible to obtain a fair trial in this current media landscape, whereas we would be looking at something totally different in, say, May of next year, especially if the new case has not been indicted at that point." (R. 53.) The trial court then asked the State when it "anticipated presentation of that other case to the Madison County Grand Jury." (R. 53.) The State told the trial court that it would, on average, take one year from the date Officer

Crumby was killed—"[i]t may be shorter, it may be a little longer, but that's generally just the way it runs." (R. 53.) The trial court concluded that "we're going to be right back in the same spot because you would anticipate there being some—some coverage upon returning of an indictment," and it told the parties it would reset the hearing on Brown's motion "to give [the State] sometime to maybe drill down on the status of that other case in terms of an anticipated timeline." (R. 54.) The State agreed to "take a look at it" but argued that there would "always ... be something like this floating in the news. If it's not here, it will be somebody in Oregon that gets killed and now that is nationwide news, maybe somebody in Dallas that got ambushed. We can't wait until we have a perfect time to try this." (R. 55.)

One month later, the trial court reconvened the parties to address Brown's motion to continue his trial. (R. 65.) At that hearing, Brown's counsel reminded the trial court that, "[w]hen we were here last, we spoke about the recent—most recent incident in which a police officer was killed," and he explained that it was "still [Brown's] view that that is fresh in the minds of the people who might ultimately sit as jurors in this case, so we still assert the immediacy of that." (R. 65.) The State

responded:

"Your Honor, I would just address the issue of Officer Crumby's murder. Your Honor, if we get in a habit of continuing cases because of factors that don't relate to those particular cases—that was a random event. This could happen tomorrow, it could happen the day before trial is set and, really and truly, it has nothing to do with the facts that we're dealing with. I think we have enough jurors coming that we could sort that out. If it's going to be an issue, that's something we can deal with in voir dire instead of perpetually continuing this case until we're sure nothing else bad is going to happen to a law enforcement officer."

(R. 68.)

After these arguments from counsel, the trial court denied Brown's motion, finding as follows:

"Look, I appreciate the sentiment of the motion, but I can't be held hostage by what else is occurring out there in the ether. We've got, I know—a pool of 130 [jurors] is our plan here. That is going to be more than enough to drill down and—look, I trust that [defense counsel] can—and the State can do an adequate, better—I don't want to undersell you guys—more than an adequate job of jury selection there and drilling down on those issues, and we're going to have a big enough panel to where I don't perceive there being any issues there. If there is, then I'll continue it then, and we'll get a bigger pool if that is an issue. But I don't foresee that happening."

(R. 68-69.)

Although Brown argues that "the trial court ignored compelling reasons to grant [his] motion for a continuance" based on media coverage

of the unrelated murder of Huntsville Police Officer Garrett Crumby, (Brown's brief, p. 90), "[n]ewspaper or other publicity does not, per se, constitute grounds for a continuance," Kirksey, 191 So. 3d at 825 (quoting Busby v. State, 412 So. 2d 837, 842 (Ala. Crim. App. 1982)). Rather, "[t]he granting or refusal of a continuance because of pretrial publicity is a matter within the sound discretion of the trial court," Johnson v. State, 355 So. 2d 1160, 1164 (Ala. Crim. App. 1978) (citing Nickerson v. State, 217 So. 2d 536, 539 (Ala. 1969), and Bosarge v. State, 139 So. 2d 302, 305 (Ala. 1961)), that will not be disturbed on appeal "[a]bsent a showing of actual or presumed prejudice," Kirksey, 191 So. 3d at 825. Because Brown failed to show either actual or presumed prejudice from the media coverage of the murder of Officer Garrett Crumby, the trial court did not abuse its discretion when it denied Brown's motion to continue his trial. See Kirksey, 191 So. 3d at 825 ("As set forth above, Kirksey did not establish prejudice, actual or presumed, based on pretrial publicity regarding his or other trials. Absent a showing of actual or presumed prejudice, we conclude that the trial court did not abuse its discretion in denying Kirksey's motion for a continuance.").

IX. Brown waived his Miranda rights and never invoked his right to remain silent.

Brown, relying primarily on Doyle v. Ohio, 426 U.S. 610 (1976), argues that the State "violated [his] due process rights when it ... introduced his silence as evidence against him at his capital trial." (Brown's brief, p. 96.) Brown claims that, after he waived his Miranda rights and spoke with Investigator Hines, the State, at trial, "attempted to cast blame on Mr. Brown for his choice not to provide a comprehensive recounting of the events of the crime to Investigator Hines when interrogated." (Brown's brief, p. 98.) According to Brown, the State "berat[ed]" him on cross-examination about his evasive answers to Investigator Hines's questions and emphasized it during its closing argument. (Brown's brief, p. 98.) Because Brown did not first make this argument in the trial court, we review it only for plain error. See Rule 45A, Ala. R. App. P.

"The receipt into evidence of testimony concerning an accused's post-Miranda exercise of the constitutional right to remain silent is itself a violation of the accused's constitutional right to remain silent.' Harris v. State, 611 So. 2d 1159, 1160-61 (Ala. Crim. App. 1992) (citing Doyle [v. Ohio], 426 U.S. 610 (1976)). However, 'Doyle only prohibits the prosecutor's making the defendant's silence the subject of comment. "[A] defendant who voluntarily speaks after receiving Miranda warnings has not been induced to remain silent.'" Kidd v. State, 649 So. 2d 1304, 1307 (Ala. Crim. App. 1994) (quoting Anderson v. Charles, 447 U.S. 404, 408, 100 S.

Ct. 2180, 65 L. Ed. 2d 222 (1980)).

"This Court in Pettibone v. State, 91 So. 3d 94 (Ala. Crim. App. 2011), addressed the holding in Doyle and stated:

""In Greer v. Miller, 483 U.S. 756, 107 S. Ct. 3102, 97 L. Ed. 2d 618 (1987), the United States Supreme Court 'clarified that "the holding of [Doyle v. Ohio, 426 U.S. 610, 96 S. Ct. 2240, 49 L. Ed. 2d 91 (1976),] is that the Due Process Clause bars 'the use for impeachment purposes' of a defendant's post-arrest silence.'" United States v. Stubbs, 944 F.2d 828, 834 (11th Cir. 1991), quoting Greer, 483 U.S. at 763, 107 S. Ct. at 3108, in turn quoting Doyle, 426 U.S. at 619, 96 S. Ct. at 2245. Furthermore, '[w]hile a single comment alone may sometimes constitute a Doyle violation, the Supreme Court's opinion in Greer makes clear that a single mention does not automatically suffice to violate defendant's rights when the government does not specifically and expressly attempt to use—as was attempted in Doyle and Greer—the improper comment to impeach the defendant. See Lindgren v. Lane, 925 F.2d 198, 201 (7th Cir. 1991).' Stubbs, 944 F.2d at 835. (Emphasis in original.)"

"91 So. 3d at 114-15 (quoting Wilkerson v. State, 686 So. 2d 1266, 1272 (Ala. Crim. App. 1996))."

Jackson v. State, 305 So. 3d 440, 469-70 (Ala. Crim. App. 2019).

Here, "[t]here is no indication in the record that [Brown] ever invoked his right to remain silent during questioning by law enforcement officers." Wilson v. State, 777 So. 2d 856, 890 (Ala. Crim. App. 1999)

(citing Hardy v. State, 804 So. 2d 247, 267-68 (Ala. Crim. App. 1999)).

Rather, the evidence at trial showed that Brown waived his rights under Miranda and agreed to speak with Investigator Hines (R. 1656), and nothing in the record shows that Brown clearly and unequivocally invoked his right to remain silent.

Although Brown correctly points out in his brief on appeal that, after he waived his Miranda rights, he answered some of Investigator Hines's questions with evasive responses, including: "I don't want to talk about that right now," "I don't want to talk about it," and "[C]ertain things, I don't want to speak on them." And, although Brown correctly points out that the State asked Brown about those statements on cross-examination, the State's questions to Brown on cross-examination were not references to Brown's post-Miranda silence. Rather, they were "references to his waiver of his right to remain silent and the statements he made after that waiver." Wilson, 777 So. 2d at 890. Accordingly, we find no error here, plain or otherwise.

X. The evidence, viewed in a light most favorable to the State, was sufficient to show Brown's "particularized intent" to kill.

Brown argues that the State's evidence was insufficient to support his capital-murder conviction because, he says, "the State presented no

direct evidence that [he] had a particularized intent to kill Officer Clardy or anyone else" and that "the circumstances of the shooting show the opposite of intent to kill." (Brown's brief, p. 102.) Brown's argument lacks merit.¹⁹

"'In determining the sufficiency of the evidence to sustain a conviction, a reviewing court must accept as true all evidence introduced by the State, accord the State all legitimate inferences therefrom, and consider all evidence in a light most favorable to the prosecution.'" Ballenger v. State, 720 So. 2d 1033, 1034 (Ala. Crim. App. 1998), quoting Faircloth v. State, 471 So. 2d 485, 488 (Ala. Crim. App. 1984), *aff'd*, 471 So. 2d 493 (Ala. 1985). "The test used in determining the sufficiency of evidence to sustain a conviction is whether, viewing the evidence in the light most favorable to the prosecution, a rational finder of fact could have found the defendant guilty beyond a reasonable doubt.'" Nunn v. State, 697 So. 2d 497, 498 (Ala. Crim. App. 1997), quoting O'Neal v. State, 602 So. 2d 462, 464 (Ala. Crim. App. 1992). "When there is legal evidence from which the jury could, by fair inference, find the defendant guilty, the trial court should submit [the case] to the jury, and, in such a case, this court will not disturb the trial court's decision.'" Farrior v. State, 728 So. 2d 691, 696 (Ala. Crim. App. 1998), quoting Ward v. State, 557 So. 2d 848, 850 (Ala. Crim. App. 1990). "The role of appellate courts is not to say what the

¹⁹Brown preserved this argument for appellate review when, after the State rested its case-in-chief, Brown moved for a judgment of acquittal arguing that the State had failed to show that Brown had a "particularized intent" to kill. (R. 1661-62.)

facts are. Our role ... is to judge whether the evidence is legally sufficient to allow submission of an issue for decision [by] the jury." Ex parte Bankston, 358 So. 2d 1040, 1042 (Ala. 1978).'

"Gavin v. State, 891 So. 2d 907, 974 (Ala. Crim. App. 2003).

""[T]he element of intent, being a state of mind or mental purpose, is usually incapable of direct proof, [and] it may be inferred from the character of the assault, the use of a deadly weapon and other attendant circumstances." Johnson v. State, 390 So. 2d 1160, 1167 (Ala. Cr. App.), cert. denied, 390 So. 2d 1168 (Ala. 1980). Accord Fears v. State, 451 So. 2d 385, 387 (Ala. Cr. App. 1984); Young v. State, 428 So. 2d 155, 158 (Ala. Cr. App. 1982).'

"Jones v. State, 591 So. 2d 569, 574 (Ala. Crim. App. 1991).
Moreover:

""[C]ircumstantial evidence alone may be sufficient in conjunction with other facts and circumstances which tend to connect the accused with the commission of the crime to sustain a conviction. Dolvin v. State, 391 So. 2d 133 (Ala. 1980) and cases there; Cumbo v. State, 368 So. 2d 871 (Ala. Crim. App. 1979), cert. denied, 368 So. 2d 877 (Ala. 1979).'

"Scanland v. State, 473 So. 2d 1182, 1185 (Ala. Crim. App. 1985)."

Iervolino, 402 So. 3d at 881.

The evidence presented at trial, when viewed in a light most favorable to the State, was sufficient to establish that Brown had a

"particularized intent" to kill Agent Clardy. Indeed, as set out above, the State's evidence showed that the drug-task-force team led by Agent Dean conducted a takedown operation at a house on Levert Street in Huntsville and that Brown showed up to the takedown house with approximately 100 pounds of marijuana and armed with a Glock handgun equipped with an aftermarket device that converted it into an automatic weapon. When Brown entered the house, he immediately shot two bursts of automatic gunfire at Agent Clardy, who was moving toward Brown to arrest him, hitting him three times and killing him. Brown's shooting an automatic weapon at Agent Clardy "was in and of itself sufficient evidence of [his] intent to kill." Crayton v. State, 392 So. 3d 104, 112-13 (Ala. Crim. App. 2023) (citing Barnes v. State, 571 So. 2d 372, 375 (Ala. Crim. App. 1990); Crews v. State, 616 So. 2d 392, 394 (Ala. Crim. App. 1993); Hinkle v. State, 67 So. 3d 161, 164 (Ala. Crim. App. 2010); Horton v. State, 217 So. 3d 27, 52 (Ala. Crim. App. 2016); and Towles v. State, 263 So. 3d 1076, 1086 (Ala. Crim. App. 2018)). Thus, the evidence of his "particularized intent" was sufficient to support Brown's capital-murder conviction.

Brown also argues in passing that the State impermissibly shifted the burden to him to disprove intent by arguing to the jury that his

"intent could be inferred from the act of shooting his weapon itself."
(Brown's brief, p. 103.) Brown did not make this argument in the trial court. Thus, it is reviewed for plain error. See Rule 45A, Ala. R. App. P.

During its closing argument, the State told the jury that the

"Judge is going to tell you that he's been charged with capital murder. Capital murder is an intentional crime. It's not an accident. And you have to be intending to kill somebody. But [J]udge is going to tell you, like we talked about during jury selection with most of y'all, that intent can be formed in an instant. He doesn't have to wake up that morning going, I'm going to kill me a police officer today. In fact, I don't think he did. I hope he woke up that morning going, Man, I can sell these drugs and nobody's going to be the wiser and we'll be done.

"But the moment he realized the gig was up, the moment he takes that gun, fires first towards [Agent Morris] and then turns it toward the human being next to him and pulls a second pull on that fully automatic trigger, he has formed the intent. He is sending lead at that man. He is ending a life.

"I didn't mean to. I didn't want to hurt nobody. The judge is going to tell you you do not have to believe him. He's going to tell you that you can infer intent from the nature of the assault, from the character of the assault, from the way he carried himself, from the way he pulled the trigger."

(R. 1768-69.) The State's argument reflects Alabama law and did not impermissibly shift its burden of proof. See, e.g., Townes v. State, 253 So. 3d 447, 460 (Ala. Crim. App. 2015) (upholding the trial court's permissive instruction that specific intent "'may be inferred from the character of an

assault, the use of a deadly weapon, or other attendant circumstances'" (emphasis omitted)); and Whatley v. State, 146 So. 3d 437, 475 (Ala. Crim. App. 2010) (noting that this Court has "'upheld a court's jury instructions in a capital case when the court instructed the jury that intent may be formed in the 'spur of the moment'" (quoting Gobble v. State, 104 So. 3d 920, 975 (Ala. Crim. App. 2010))). Thus, we find no error, plain or otherwise, in the State's comments to the jury about Brown's intent.

XI. There was no error, plain or otherwise, with the trial court's jury instructions on reasonable doubt.

Brown argues that the trial court erred in its jury instruction about reasonable doubt because, Brown says, it "lessened the State's burden of proof in [his] capital trial." (Brown's brief, p. 105.) Brown takes issue with the trial court's instruction "that reasonable doubt is 'neither a forced doubt nor a capricious doubt,' and 'not a mere fanciful, vague, conjectural, or speculative doubt.'" (Brown's brief, p. 104 (quoting R. 1804).) Because Brown did not object to the trial court's reasonable-doubt instruction, this issue was not preserved for appellate review and is reviewed only for plain error. See Iervolino, 402 So. 3d at 890-91. We find no error, plain or otherwise, with the trial court's reasonable-doubt instruction. See, e.g.,

Phillips v. State, 287 So. 3d 1063, 1132 (Ala. Crim. App. 2015) (upholding a similar reasonable-doubt instruction because it was virtually identical to the Alabama Pattern Jury Instruction on "Burden of Proof").

XII. Brown's one-sentence argument as to the trial court's death-qualifying the jury is waived under Rule 28(a)(10), Ala. R. App. P.

In one sentence, Brown, while acknowledging that "the United States Supreme Court approved the death-qualifying procedure in Baze v. Rees, 553 U.S. 35, 84 (2008)," argues that "death qualification in this case violated [his] rights to an impartial jury drawn from a fair cross section of the community, due process, a fair trial, and a reliable conviction and sentence, as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law." (Brown's brief, pp. 105-06.) Brown's claim does not satisfy Rule 28(a)(10), Ala. R. App. P.; thus, it is deemed waived and we will not consider it. See Gaston v. State, [Ms. CR-2022-1383, Aug. 22, 2025] ___ So. 3d ___, ___ (Ala. Crim. App. 2025) (applying Rule 28(a)(10) to a prosecutorial-misconduct claim on direct appeal in a death-penalty case and concluding that it is not this Court's "'duty ... to search the record for evidence to support an appellant's contention of error'" (quoting Certain Underwriters at Lloyd's, London v. Southern Nat. Gas. Co., 142 So. 3d

436, 453 (Ala. 2013))).

XIII. There is no constitutional or statutory prohibition on "double counting" Brown's capital-murder conviction as an aggravating circumstance.

Brown argues that "the trial court's reliance on the jury's culpability phase verdict both to render his conviction capital per Alabama Code 13A-5-40(a)(5) and to provide aggravating circumstances on which his death sentence was premised ... rendered [his] sentence unconstitutional." (Brown's brief, p. 106.) Both this Court and the Alabama Supreme Court have consistently rejected this argument. See, e.g., Hicks v. State, 378 So. 3d 1071, 1127 (Ala. Crim. App. 2019) (recognizing that there is no constitutional or statutory prohibition on "'double counting' circumstances both as an element of the offense and as an aggravating circumstance"). Brown is thus not entitled to any relief on this claim.

XIV. Brown waived his argument challenging the trial court's penalty-phase instructions on sympathy.

Brown argues that the "trial court reversibly erred by instructing the jury it could not consider sympathy in the penalty phase." (Brown's brief, p. 107.) The totality of Brown's argument on appeal is as follows:

"During its penalty phase instructions, the trial court

improperly instructed the jury it could not consider sympathy in rendering its sentencing verdict (R. 2106), in violation of state and federal law, see Lockett v. Ohio, 438 U.S. 586, 605 (1978); Stallworth v. State, 868 So. 2d 1128, 1167 (Ala. Crim. App. 2001), and Mr. Brown's rights to due process, a fair trial, and a reliable sentencing determination as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law."

(Brown's brief, pp. 107-08.) Brown's one-sentence argument does not satisfy Rule 28(a)(10), Ala. R. App. P.; thus, it is deemed waived, and we will not address it. See Gaston, ___ So. 3d at ___.

XV. Brown's death sentence is not disproportionate to the sentence imposed on defendants committing similar offenses.

Brown argues that his "death sentence violates state and federal law because it is grossly disproportionate." (Brown's brief, p. 108.) Brown's argument lacks merit.

Brown was convicted of capital murder for intentionally killing Agent Clardy, a police officer, while Agent Clardy was on duty, see § 13A-5-40(a)(5), Ala. Code 1975. Brown cites two cases—Wilkes v. State (No. CR-2023-0736, Dec. 12, 2025), ___ So. 3d ___ (Ala. Crim. App. 2025) (table), and Webster v. State, [Ms. CR-2023-0721, Mar. 28, 2025] ___ So. 3d ___ (Ala. Crim. App. 2025)—that, he says, show that his death sentence is "disproportionate in comparison to recent similar, or even

more aggravated, cases involving murder of a law enforcement officer." (Brown's brief, p. 108.) As the State points out in its brief on appeal, however, neither case Brown cites is like his. For instance, Webster, unlike Brown, was not even charged with capital murder for killing a law-enforcement officer while that officer was on duty. See Webster, ___ So. 3d at ___ (noting that Webster was charged with two counts of capital murder—one count "for killing Tanisha Pughsley while a valid protective order was in place, in violation of § 13A-5-40(a)(19)," and one count "for killing Pughsley during a first-degree burglary, a violation of § 13A-5-40(a)(4)").

Crimes bearing far more resemblance to Brown's, however, have been punished capitally in Alabama. See, e.g., Perez v. State, [Ms. CR-2024-0206, May 1, 2026] ___ So. 3d ___, ___ (Ala. Crim. App. 2026); Woodward v. State, 123 So. 3d 989, 1059 (Ala. Crim. App. 2011); Centobie v. State, 861 So. 2d 1111, 1144 (Ala. Crim. App. 2001); and Johnson v. State, 823 So. 2d 1, 56-57 (Ala. Crim. App. 2001) (collecting cases). Thus, Brown's death sentence in this case is not disproportionate to the sentence imposed on defendants committing similar offenses.

XVI. Brown's death sentence does not violate Ramos.²⁰

Brown, relying on Ramos v. Louisiana, 590 U.S. 83 (2020), argues that sentencing him "to death based on a non-unanimous jury verdict violates state and federal law." (Brown's brief, p. 109.) According to Brown, "Alabama's death penalty statute, which allows for non-unanimous death verdicts, Ala. Code § 13A-5-46(f) (2002), can no longer stand in light of Ramos." (Brown's brief, pp. 109-10.) Brown's argument lacks merit.²¹

"The United States Supreme Court in Ramos v. Louisiana considered a Louisiana law that allowed for a verdict of guilt without a unanimous finding. Ramos had been convicted of second-degree murder based on a verdict where two jurors had voted not guilty. The Court held that, under the Sixth Amendment to the United States Constitution, '[a] jury must reach a unanimous verdict in order to convict.' 590 U.S. at 90, 140 S. Ct. at 1395. The Court further held:

"There can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal criminal trials equally. This Court has long explained that the Sixth Amendment right to a jury trial is "fundamental to the American scheme of justice" and incorporated

²⁰Ramos v. Louisiana, 590 U.S. 83 (2020).

²¹After the penalty phase of his trial, Brown filed a "Motion to Prohibit Death Penalty in Absence of Unanimous Jury Verdict," in which Brown raised the claim he now raises on appeal. (C. 106.) Thus, Brown's argument is preserved for appellate review.

against the States under the Fourteenth Amendment. This Court has long explained, too, that incorporated provisions of the Bill of Rights bear the same content when asserted against States as they do when asserted against the federal government. So if the Sixth Amendment's right to a jury trial requires a unanimous verdict to support a conviction in federal court, it requires no less in state court.'

"Ramos, 590 U.S. at 93, 140 S. Ct. at 1397 (footnotes omitted). The issue in Ramos was whether a jury could convict a defendant of a crime with a nonunanimous verdict, not whether a jury could sentence a defendant with a nonunanimous verdict. Indeed, the Court recognized in Ramos that 'only two States are potentially affected by our judgment,' specifically Louisiana and Oregon, because those were the only two states that permitted a conviction with a nonunanimous jury verdict. 590 U.S. at 108, 140 S. Ct. at 1406.

"As the United States Court of Appeals for the Fifth Circuit has noted:

"'The Supreme Court recently held "the Sixth Amendment's unanimity requirement applies to state and federal criminal trials equally." Ramos v. Louisiana, 590 U.S. 83, 140 S. Ct. 1390, 1397, 206 L. Ed. 2d 583 (2020). But "the Sixth Amendment's right to a jury trial requires a unanimous verdict to support a conviction," not a sentence. Id. (emphasis added). In other words, a jury must be unanimous on the factfinding underlying a sentence, but not on the sentence actually imposed. See Ring v. Arizona, 536 U.S. 584, 609, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002) (finding a jury vote required for the "factfinding necessary" for a sentence but not the sentence

itself). Here, Ruiz's jury was unanimous on the factfinding underlying his conviction and sentence, including the special fact issues at the sentencing phase. Because Ruiz's conviction meets the Sixth Amendment's unanimity requirement, Ramos is of no moment.'

"Ruiz v. Davis, 819 F. App'x 238, 246 n.9 (5th Cir. 2020) (not selected for publication in the Federal Reporter). Alabama's capital statute requires the jury to unanimously find the existence of an aggravating circumstance before a capital defendant is eligible for the death penalty. In other words, jury unanimity on the factfinding underlying a death sentence is required, which complies with Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002), and its progeny. Jury unanimity as to the sentence actually imposed is not required."

Iervolino, 402 So. 3d at 894-95.

Here, Brown's jury unanimously found him guilty of capital murder for killing a law-enforcement officer and thus unanimously found an aggravating circumstance to exist beyond a reasonable doubt, which complies with Ring v. Arizona, 536 U.S. 584 (2002), and its progeny. The jury's 10-to-2 verdict sentencing Brown to death after unanimously finding an aggravating circumstance to exist beyond a reasonable doubt does not violate Ramos.

XVII. The jury never asked the trial court a question about a hung jury, and thus the trial court did not fail to respond to a jury question.

Brown contends that the trial court failed to address "the jury's

inquiry regarding a hung jury" and, instead, "simply sent the jurors home for the day." (Brown's brief, p. 113.) Specifically, Brown asserts that

"the jury indicated that 'it may have a question as it relates to a hung jury.' (R. 1854.) That inquiry was relayed to the trial court. (Id.) Instead of conducting any inquiry or providing the jury with any instructions regarding a hung jury or continued deliberations, the trial court simply sent the jurors home for the day. (R. 1854-56.) The jury's inquiry regarding a hung jury was never addressed."

(Brown's brief, p. 113.) Brown's argument misrepresents what occurred during his trial.

During the guilt-phase jury deliberations, the following occurred:

"The Court: All right. It's a little bit before 4:00 p.m. Today's date, Monday, October the 30th. Our jury started deliberating—and let me make sure. Let's get our alternates out of the courtroom, please.

"(Whereupon the alternates exited the courtroom after which the following occurred.)

"The Court: We may need to bring them in, depending on where we go here but

"All right. Our jury's been deliberating. They showed up here at 10:00, deliberated until 11:30, 11:45, broke for lunch, came back, and have been deliberating since 1:00.

"They just notified my law clerk that they want to break for the day, and this was about 15, 20 minutes ago. And said that they may have a question as it relates to a hung jury. But that—[my law clerk] told them to reduce that to writing, if that was a question of theirs. And when they hit the chime

again they basically just said that they wanted to break for the day. Okay.

"And so I wanted to—because of the nature of the case, how long this has been going on, I thought it was a good time to get the lawyers involved here, touch base with y'all, feel you out, see where—what your thoughts, suggestions are, where we go from here. Of course I haven't given an Allen charge at this time. But, of course, that's on the radar.

"But let me hear from the State first.

"[Prosecutor]: Your Honor, the State is of the opinion as long as they are working we're happy to let them keep working.

"[Brown's counsel]: Judge, are you asking me about the break for the day or?

"The Court: Well, just because we had the question about—even though it wasn't reduced to writing, it may be on the radar, a concern of a hung jury, whether y'all wanted me to drill down further on that to feel them out if there is movement still—still ongoing, you know, discussions, deliberations, or how entrenched it was. Or, if you want to just let it ride, then I'm okay with that. I just—I just wanted to check y'all's pulse before I did anything.

"[Brown's counsel]: Judge, I just see it as them being conscientious and doing what you've asked them to do. They set their own schedule. If they want to break, I imagine they think that may help them in some way. It's okay with us.

"The Court: Okay.

"State in agreement?

"[Prosecutor]: Yes, Judge.

"The Court: All right. Y'all feel like there's anything I need to say to them at this point or just have a good—

"[Brown's counsel]: Not at this point, Your Honor, no.

"[Prosecutor]: Same here, Judge.

"The Court: Well, tell them to enjoy their evening and let's go ahead and vacate.

"Thank you.

"[Prosecutor]: Thank you, Your Honor.

"(Adjourned at 4:00 p.m.)"

(R. 1854-56.) The next morning, the jury returned to continue its deliberations and, at 9:37 a.m., rendered a unanimous guilty verdict. (R. 1858.)

Although the jury may have had a question about a hung jury, it was told to reduce any question it had to writing. But the jury never did so. Instead, the jury asked the trial court to break for the day. It then returned the following morning and quickly rendered a verdict.

In short, the record on appeal shows that the jury never asked the trial court a question about a hung jury. Thus, contrary to Brown's argument on appeal, the trial court did not fail to address a question about a hung jury.

Even so, assuming that the jury did have a question about a hung jury that the trial court failed to address, error, if any, was invited by Brown because he agreed with the trial court's assessment of how to proceed with the jury after it suggested that it "may" have a question about a hung jury.

""Under the doctrine of invited error, a defendant cannot by his own voluntary conduct invite error and then seek to profit thereby." Phillips v. State, 527 So. 2d 154, 156 (Ala. 1988). "The doctrine of invited error applies to death-penalty cases and operates to waive any error unless the error rises to the level of plain error." Snyder v. State, 893 So. 2d 488, 518 (Ala. Crim. App. 2003).'

"Robitaille v. State, 971 So. 2d 43, 59 (Ala. Crim. App. 2005). "It would be a sad commentary upon the vitality of the judicial process if an accused could render it impotent by his own choice." Murrell v. State, 377 So. 2d 1102, 1105 (Ala. Crim. App. 1979), quoting Aldridge v. State, 278 Ala. 470, 474, 179 So. 2d 51, 54 (1965)."

Gobble v. State, 104 So. 3d 920, 969 (Ala. Crim. App. 2010). Here, we cannot say that any error, much less plain error, occurred.

XVIII. Under § 13A-5-53, Ala. Code 1975, Brown's capital-murder conviction and death sentence were proper.

Under § 13A-5-53, Ala. Code 1975, this Court must address the propriety of Brown's capital-murder conviction and death sentence by

determining (1) "whether any error adversely affecting the rights of the defendant was made in the sentence proceedings"; (2) "whether the trial court's findings concerning the aggravating and mitigating circumstances were supported by the evidence"; and (3) "whether death was the proper sentence in the case."

To start, we have reviewed the record and find that there was no error that adversely affected Brown's rights during the penalty phase of his trial.

Next, although § 13A-5-53(a) requires this Court to determine "whether the trial court's findings concerning the aggravating and mitigating circumstances were supported by the evidence," this Court explained in Iervolino that,

"[w]hen the legislature removed the final sentencing decision from the trial court and placed it in the hands of the jury by Act No. 2017-131, Ala. Acts 2017, it amended § 13A-5-47, Ala. Code 1975, to remove subsection (d), which required the trial court to make specific findings of fact regarding the existence or nonexistence of each aggravating circumstance in § 13A-5-49, Ala. Code 1975, each mitigating circumstance in § 13A-5-51, Ala. Code 1975, and any additional mitigating circumstances offered by the defendant pursuant to § 13A-5-52, Ala. Code 1975. Now, § 13A-5-47(b), Ala. Code 1975, requires the trial court to make specific findings of fact regarding the existence or nonexistence of aggravating circumstances and mitigating circumstances only in cases in which jury sentencing is waived. Because jury sentencing was

not waived in this case, the trial court was not required to make specific findings of fact regarding aggravating circumstances and mitigating circumstances. In addition, Alabama's capital-sentencing statutes do not require the jury to render verdicts on the mitigating circumstances it found to exist Because we do not know which mitigating circumstances, if any, the jury found to exist, this Court cannot determine whether those circumstances were supported by the evidence."

402 So. 3d at 896.

Here, Brown did not waive jury sentencing. The trial court thus was not required to make specific findings of fact regarding aggravating circumstances and mitigating circumstances. And because the jury was not required to render verdicts on the mitigating circumstances it found to exist, this Court cannot determine whether those circumstances were supported by the evidence. The jury did, however, find one statutory aggravating circumstance to exist during the guilt phase of Brown's trial, see § 13A-5-49(13), Ala. Code 1975, and that aggravating circumstance is supported by the evidence.

Finally, this Court must determine "whether death was the proper sentence" in this case, § 13A-5-53(a), "and § 13A-5-53(b) sets out three questions this Court must answer to make that determination." Iervolino, 402 So. 3d at 897.

First, § 13A-5-53(b)(1) requires this Court to determine "[w]hether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor." After careful review of the record, we find that Brown's sentence was not imposed under the influence of passion, prejudice, or any other arbitrary factor.

Second, § 13A-5-53(b)(2) requires this Court to determine "[w]hether an independent weighing of the aggravating and mitigating circumstances at the appellate level indicates that death was the proper sentence." But "[t]his section has been interpreted as requiring this Court to 'reweigh the aggravating and mitigating circumstances as found by the trial court.'" Iervolino, 402 So. 3d at 897 (quoting Ex parte Lewis, 24 So. 3d 540, 546 (Ala. 2009), quoting in turn Roberts v. State, 735 So. 2d 1244, 1269 (Ala. Crim. App. 1997)) (emphasis added in Iervolino). Because the trial court was not required to make specific findings of fact as to the existence or nonexistence of aggravating and mitigating circumstances here, and because Alabama's capital-sentencing statutes do not require the jury to render verdicts concerning mitigating circumstances, this Court cannot determine which mitigating circumstances, if any, were found to exist in this case. "Without knowing

which mitigating circumstances were found by the jury to exist, it is impossible for this Court to perform this part of our mandatory review of the death sentence in this case." Iervolino, 402 So. 3d at 897.

Third, § 13A-5-53(b)(3) requires this Court to determine "[w]hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." It is not. As explained above, Brown was convicted of capital murder for intentionally killing Agent Clardy, a police officer, while Agent Clardy was on duty, see § 13A-5-40(a)(5), Ala. Code 1975. Similar crimes have been punished capitally in Alabama. See Perez, ___ So. 3d at ___; Woodward, 123 So. 3d at 1059; Centobie, 861 So. 2d at 1144; and Johnson, 823 So. 2d at 56-57.

After thoroughly reviewing the record, we conclude that death was the proper sentence in this case.

Finally, although we are no longer required to do so by Rule 45A, Ala. R. App. P., we have reviewed the record and have found no plain error that may have adversely affected Brown's substantial rights.

CONCLUSION

The trial court's judgment is affirmed.

AFFIRMED.

Kellum, J., concurs. Cole, J., concurs in part and concurs in the result, with opinion. Anderson, J., concurs in part and concurs in the result, with opinion. Windom, P.J., concurs in the result.

COLE, Judge, concurring in part and concurring in the result.

I concur in all parts of the main opinion, except for Parts I, II, and V. As to Parts I, II, and V of the main opinion, I concur in the result.

ANDERSON, Judge, concurring in part and concurring in the result.

I concur in all parts of the Court's opinion, except for Parts I and III; as to Parts I and III, I concur in the result.