REL: September 20, 2019

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-18-0362

Christopher Ammons Kemp

v.

State of Alabama

Appeal from Jefferson Circuit Court
(CC-16-2693; CC-16-2694)

McCOOL, Judge.

Christopher Ammons Kemp appeals his two convictions for felony murder, a violation of § 13A-6-2(a)(3), Ala. Code 1975, and his conviction for first-degree domestic violence, a violation of § 13A-6-130, Ala. Code 1975. The trial court

sentenced Kemp to a single sentence of life imprisonment for the two felony-murder convictions, sentenced Kemp to life imprisonment for the domestic-violence conviction, and ordered that the sentences were to run consecutively.

Facts and Procedural History

The evidence at trial established the following facts. Chris Carroll and Jessica Jackson married in 2013 and divorced in 2014. Before Carroll and Jackson divorced, Jackson had rekindled a relationship with Kemp, whom she had dated in high school. In the summer of 2015, Kemp and his daughter, who is not Jackson's child, moved into Jackson's house, and in August 2015 Jackson discovered that she was pregnant with Kemp's child ("Baby Doe"). However, problems subsequently arose in Jackson and Kemp's relationship, and in January 2016 Jackson "told [Kemp] that he needed to leave." (R. 385.) After Kemp moved out of Jackson's house, Jackson began spending time with Carroll, who had offered to help Jackson "get [her house] ready for the baby." (R. 394.) According to Jackson, Kemp was "stalking [her] every move" (R. 390) during this time and was thus aware that Jackson was spending time with Carroll, which Kemp admitted "upset" him. (R. 833.) Although Jackson

attempted to maintain minimal communication with Kemp because he was the father of Baby Doe, she eventually ceased all communication with Kemp on March 7, 2016, other than through e-mail, and on March 10, 2016, she e-mailed Kemp and informed him that they were "never getting back together." (C. 899; R. 836.)

The following day, while Jackson and Carroll were shopping together, the apartment complex in Vestavia where Carroll lived, Mountain Lodge Apartments ("Mountain Lodge"), burned in a fire that originated in Carroll's apartment. Carroll testified that, as a result of the fire, he moved into his mother's house, and Jackson also began living at Carroll's mother's house the day after the fire because, Jackson testified, she had become concerned for her safety. However, Jackson did not move all of her possessions into Carroll's mother's house and thus would periodically return to her own house to retrieve items she needed.

On March 15, 2016 -- four days after Mountain Lodge burned -- Jackson left work early and "went over to the Vestavia Police Department to speak to the Fire Marshall and the detective." (R. 404.) Jackson testified that, when she

left the police department, she was "absolutely hysterical because of a conversation that [she] had with the [detective]," but Jackson did not testify as to the substance of that conversation or why she was hysterical as a result of it. (R. 405.) After leaving the police department, Jackson drove to her house "to grab a few things" before going to Carroll's mother's house. Id. Jackson testified that, when she arrived at her house, she entered the house through a door in the garage and that, as she was leaving her house and reentering the garage, she saw "this dark figure to the side" who put "a pink pillowcase ... on [her] head" and began choking her. (R. 406.) Jackson testified "without a shadow of a doubt" that Kemp was her attacker (R. 407) and that "the next thing [she] remember[s]" is "coming to [in] a gas station parking lot." (R. 409.)

Carroll testified that, on March 15, 2016, Jackson had informed him "that she was going to work, and then she was going to the meeting with the Fire Marshal. And that, after that, she was going to go home and ... gather clothes to come back to [Carroll's] mom's house." (R. 332.) According to Carroll, he attempted to contact Jackson at approximately 6:00

p.m. that evening to let her know that he was on his way to his mother's house and that she could meet him there, but he was unable to contact her despite multiple attempts. Thus, Carroll began driving to Jackson's house because he "felt like something was wrong." (R. 333.) However, Carroll testified that he never reached Jackson's house:

> "As I made that turn to go up [Jackson's] street, [Jackson] was in the middle of the road. The first thing I noticed was that she was completely naked, outside of her bra.
>
> "Blood had poured down both of her legs. I could tell she had been badly beaten.
>
> "Her left eye was swollen shut. There were bruises all over her. Marks on her neck. She was in really bad shape when I saw her in the middle of the road.
>
> "She was stumbling around. Wasn't sure where she was at. And so I wrapped her up and placed her in my car."

(R. 334.) Carroll testified that he asked Jackson what had happened but that Jackson "was pretty incoherent and she didn't know what was going on." (R. 336-37.) Carroll also testified that, while driving to Jackson's house, he had noticed a police officer, Officer Greg Blackmon, parked at a nearby gas station. Thus, Carroll telephoned 911 and then drove to that gas station "to flag down that police officer

and wait there until the ambulance arrived." (R. 338.) Carroll testified that he explained to Officer Blackmon the circumstances under which he had found Jackson, and that conversation was recorded by Officer Blackmon's body camera, which recording the State admitted into evidence and played for the jury.

Jackson was subsequently transported to St. Vincent's Hospital, where she was informed "that there was no [fetal] heartbeat and that [she] had lost the baby." (R. 410.) Jackson, who was bleeding internally, was then transported to UAB Hospital, where she underwent an emergency cesarean section. Expert testimony established that Baby Doe, who was "an almost near term baby" (R. 628), was delivered stillborn with a fractured skull, a lacerated lung, a lacerated liver, a broken left clavicle, a broken left forearm, a broken left ankle, and multiple broken ribs -- all injuries that resulted from "extensive blunt force trauma." (R. 654.)

Kemp testified that, on March 15, 2016, he "was gonna go to ... [Jackson's house] and try to find a way into the garage and retrieve the items that were left" when he moved out of the house. (R. 776.) According to Kemp, he accessed the

garage through a window at a time when he believed Jackson was not supposed to be at home. Kemp testified that, while looking for the items he intended to retrieve, he heard the garage door begin to open and that he "panicked" (R. 781) and "hid[] in the far corner so [Jackson] wouldn't see [him]." (R. 782.) According to Kemp, Jackson closed the garage door before she entered the house, and he "was panicking trying to think of a way out of the garage" when Jackson returned to the garage. Id. Kemp testified that, when Jackson reentered the garage, she "immediately turned around and saw [him] and screamed." (R. 783.) Kemp admitted that, when Jackson screamed, he "panicked and just attacked her." Id. Specifically, Kemp admitted that he "tried ... choking [Jackson]" (R. 785); that, "once [Jackson] fought back, it became real physical" (R. 783); that he "[p]ushed her down" (R. 856); and that "[t]he next thing [he] remember[ed]" he "was sitting on top of her" and "had [his] left hand on her neck and ... was hitting her with [his] right hand." (R. 784.) Kemp testified:

> "That's when I realized what I was doing and I jumped up off of her. I was just freaking out. I didn't know what I had done.

> "And, so, I ran to the kitchen and looked for something in the fridge to try to give her to drink and all there was, was the carton of juice and I opened it. ...
>
> "I tried to open her mouth and pour some in and she spit it out and started coughing. So I knew she was alive. She was breathing. She was coughing. She was just knocked out, okay?
>
> "So, I knew she was just unconscious at that point.
>
> "I went back into the kitchen and put the juice back. ...
>
> "Grabbed her phone off of the counter. I tried to get into it. I couldn't get into it. It had the fingerprint thing and I couldn't get into it. I just got frustrated and threw it down and left. I just panicked and left."

(R. 784-85.)

Kemp testified that he entered Jackson's garage with the intent only to retrieve items that belonged to him and that he did not have the intent to harm Jackson or Baby Doe. Rather, Kemp testified, he attacked Jackson because he "just panicked" and "had a drug-induced psychotic episode."[1] (R. 794.) However, the State introduced into evidence a recording of a telephone call between Kemp and Kelly Holland, who is the mother of Kemp's daughter and who called Kemp from the Shelby

[1]Kemp testified that he had taken an unknown quantity of Xanax earlier in the day.

County jail approximately two hours after Kemp attacked Jackson. In that recorded telephone call, Kemp stated: "I did what I said I was going to do. I finished it. I'm done." (R. 593.) As to what he meant by that statement, Kemp initially testified:

> "I mean, I told ... [Holland] that I was going to do, referring -- I told her I was going to do something referring to trying to find a way into the garage, and whatnot, you know, and getting the rest of the stuff so I could just, kind of, put distance between me and [Jackson] and, you know, finish the quarreling and stuff like that."

(R. 789.) However, on cross-examination, Kemp testified:

> "Q. Okay. And you get this call from [Holland], who is [your daughter's] mom?
>
> "A. Yes, sir.
>
> "Q. She's incarcerated in the Shelby County Jail?
>
> "A. Yes, sir.
>
> "Q. Okay. She's asking you to come bond her out?
>
> "A. Yes, sir.
>
> "....
>
> "Q. All right. And you tell her you can't do that. The banks are closed.
>
> "And then you tell her I'm probably going away for a while?
>
> "A. Yes, sir.

"Q. All right. Because you tell her, 'I did what I said I was going to do'?

"A. Yes, sir.

"Q. 'I finished it. I'm done'?

"A. Yes, sir.

"Q. Those were your words?

"A. Yes, sir.

"Q. Okay. That was you on that recording?

"A. Yes, sir.

"Q. 'I did what I said I was going to do. I finished it. I'm done'?

"A. Yes, sir.

"Q. And you were referring to what had just happened, right?

"A. Yes, sir."

(R. 866-67.)

The State also introduced into evidence messages on Facebook social-media site exchanged between Kemp and Devin Golden, a friend of Jackson's, the night Kemp attacked Jackson. In those messages, Golden informed Kemp that Baby Doe had died and that doctors did not yet know if Jackson would survive, to which Kemp responded: "I didn't wanna hurt [Jackson]. Just the baby." (C. 468.) However, Kemp

testified that he "meant to type ... that [he] didn't mean to hurt [Jackson] or the baby" but "ended up typing 'just the baby.'" (R. 874.) (Emphasis added.) Kemp testified that he "was sitting next to [his] father" (R. 791) when he received the message from Golden, and, to explain the discrepancy in what he typed and what he intended to type, Kemp testified:

> "[Golden] had just told me, pretty much, that the baby had died and [Jackson] hadn't.
>
> "I'm telling my father with my mouth that just the baby died. Not [Jackson], just the baby. I'm telling [Golden], typing to him, trying to, that I didn't mean to hurt [Jackson] or the baby. I typed 'just the baby,' instead of 'or the baby.'"

(R. 791-92.)

For the alleged attack on Jackson, a Jefferson County grand jury returned an indictment charging Kemp with first-degree domestic violence in violation of § 13A-6-130 (case no. CC-16-2693). For the alleged killing of Baby Doe, the grand jury returned an indictment charging Kemp with two counts of capital murder (case no. CC-16-2694). Count one charged Kemp with murder made capital pursuant to § 13A-5-40(a)(4), Ala. Code 1975, because the killing occurred during the commission of first-degree burglary. Count two charged Kemp with murder made capital pursuant to § 13A-5-40(a)(15), Ala. Code 1975,

because Baby Doe was less than 14 years of age. During the trial court's jury instructions, the trial court instructed the jury with respect to the two capital-murder charges that, if it did not find beyond a reasonable doubt that Kemp had committed capital murder, it could convict him of the lesser-included offense of felony murder. Specifically, the trial court instructed the jury that it could convict Kemp of felony murder in count one because the killing of Baby Doe occurred during the commission of first-degree burglary. The trial court also instructed the jury that "[t]he second lesser included offense would be felony murder involving the crime of domestic violence." (R. 1034.) On July 20, 2018, the jury found Kemp guilty of first-degree domestic violence in case no. CC-16-2693. In count one of case no. CC-16-2694 -- murder made capital because the murder occurred during the commission of first-degree burglary -- the jury found Kemp guilty of the lesser-included offense of felony murder. In count two of case no. CC-16-2694 -- murder made capital because Baby Doe was less than 14 years of age -- the jury also found Kemp guilty of felony murder. On September 27, 2018, the trial court sentenced Kemp to life imprisonment for

the domestic-violence conviction, sentenced Kemp to a single sentence of life imprisonment for the two felony-murder convictions, and ordered the sentences to run consecutively. Kemp filed a motion for a new trial, which the trial court denied, and Kemp subsequently filed a timely notice of appeal.

Analysis

Kemp argues on appeal (1) that the trial court erred by admitting evidence of the fire at Mountain Lodge; (2) that the trial court erred by admitting into evidence the recorded telephone call between Kemp and Holland; (3) that the trial court erred by admitting into evidence the audio portion of the audiovisual recording taken from Officer Blackmon's body camera; (4) that the trial court erred by refusing to give one of Kemp's requested jury instructions; and (5) that the trial court erred by failing to strike three jurors for cause. We address each argument in turn.

I.

Kemp argues that the trial court erred by admitting evidence of the fire at Mountain Lodge because, he says, evidence of the fire constituted "evidence of a prior bad act" (Kemp's brief, at 25) in violation of Rule 404(b), Ala. R.

Evid., which provides, in pertinent part: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive ...."

Before trial, the State filed notice of its intent to introduce evidence of the fire at Mountain Lodge pursuant to Rule 404(b). In support of its intent to introduce that evidence, the State alleged that police and fire-department officials had determined that the fire had been intentionally set, that Kemp was a suspect in that investigation, that evidence of the fire would tend to "show that [Kemp] was angry that ... Jackson reunited with Chris Carroll after terminating her relationship with [Kemp]," and that such evidence was therefore admissible to prove Kemp's motive in attacking Jackson. (C. 272.) Kemp filed a motion in limine seeking to exclude evidence of the fire on, among others, the ground that such evidence was inadmissible under Rule 404(b). Following a pretrial hearing, the trial court ruled that the State could present evidence that the fire occurred but "that it not be stated that [Kemp] is responsible for that." (R. 78.) In

support of its ruling, the trial court stated that evidence of the fire was admissible "like a peripheral res gestae. Supposedly, [Jackson] was being interviewed at the Vestavia Fire Department ... before she came home. So I think that that will be gotten into." (R. 79.)

As noted, Kemp argues that the trial court erred by admitting evidence of the fire at Mountain Lodge because, he says, evidence of the fire constituted evidence of a prior bad act in violation of Rule 404(b). However, we disagree with Kemp's contention that the State introduced Rule 404(b) evidence because, in accord with the trial court's ruling, the State presented no evidence implicating Kemp as a suspect in the fire or otherwise connecting Kemp to the fire. The testimony from Jackson and Carroll merely indicated that Mountain Lodge had burned and that Jackson had met with the Vestavia fire marshal and a detective on the day she was attacked. However, there was no testimony regarding the reason for Jackson's meeting with the fire marshal and the detective or the substance of the conversation that occurred during that meeting. In addition, although the audiovisual recording taken from Officer Blackmon's body camera contained

references to the fact that the fire had occurred, all references to Kemp were, as Kemp concedes, redacted from the recording before the recording was played for the jury.[2] (Kemp's brief, at 23.) Thus, the State's evidence did not implicate Kemp in the fire at Mountain Lodge but, instead, merely provided context for the events that occurred in the days leading up to the day Kemp attacked Jackson. Therefore, in the absence of any evidence implicating Kemp in the fire at Mountain Lodge, the State's evidence indicating merely that the fire had occurred did not constitute evidence of Kemp's prior bad act. Accordingly, Kemp has failed to demonstrate that the trial court erred by admitting such evidence.

Nevertheless, despite the fact that the State did not introduce evidence implicating Kemp in the fire at Mountain Lodge, Kemp essentially argues that the State, in introducing evidence of the fire, implicitly introduced evidence of his prior bad act because, he says, "[t]here is no way the jury could not consider Carroll's apartment burning any way but [as a] fact that Kemp was a suspect and the one who burned the

[2]Kemp argues that the statements in the body-camera recording constituted inadmissible hearsay evidence. We address that argument separately in Part III, infra.

apartment." (Kemp's brief, at 25.) We disagree. During the trial court's charge to the jury, the trial court instructed the jury as follows:

> "[THE COURT]: Ladies and gentlemen, during the course of this trial you have heard evidence that there was a fire at the Mountain Lodge apartment complex where Chris Carroll, Jessica Jackson's ex-husband lived. That evidence was admitted for the limited purpose of showing that Jessica Jackson was interviewed at the Vestavia Hills Fire Department on the afternoon of March 15, 2016, immediately prior to her returning to her house in the Bluff Park area.
>
> "You can consider such evidence only for this limited purpose. You cannot consider the evidence for any other reason. You cannot consider the evidence of the said fire as substantive evidence that the defendant committed any of the acts set forth in either of these indictments in this case.
>
> "In other words, evidence of the fire is not substantive evidence that the defendant committed the crime of domestic violence in the first degree or the crimes of capital murder.
>
> "I caution you that the defendant has not been charged or accused of starting a fire at the Mountain Lodge apartments.
>
> "Now, can each of you give me your assurance that you will not use evidence of that fire as anything other than part of the timeline for Jessica Jackson and her testimony about her whereabouts before she went home that evening? Can each of you assure me?
>
> "THE JURY: Uh-huh.

"THE COURT: Thank you."

(R. 1018-19.) (Emphasis added.) It is well settled that "[j]urors are presumed to follow the court's instructions," Hosch v. State, 155 So. 3d 1048, 1090 (Ala. Crim. App. 2013), and, indeed, the jurors in this case expressly indicated that they would consider evidence that the fire had occurred only as context for Jackson's actions on the day she was attacked. Thus, contrary to Kemp's contention, the jury did not consider evidence indicating that a fire had occurred at Mountain Lodge as evidence that Kemp was a suspect in the fire, i.e., as evidence of a prior bad act. Accordingly, because the State did not introduce evidence of Kemp's prior bad act, he is not entitled to relief on this issue.

II.

Kemp also argues that the trial court erred by admitting into evidence the recording of the telephone call between Holland and Kemp, which occurred approximately two hours after Kemp attacked Jackson and in which the jury "could hear Kemp say he did what he said he was going to do and that he finished it and was done."[3] (Kemp's brief, at 11.) According

[3]Kemp does not identify any other incriminating statements in the recorded telephone call.

to Kemp, the recorded telephone call was inadmissible because, he says, the State "failed to present any witness to establish a proper foundation for the admittance of the recording." (Kemp's brief, at 30.) However, we need not determine whether the State established a proper predicate for the admission of the recording of the telephone call because this Court has held that evidence "'that may be inadmissible may be rendered harmless by prior or subsequent lawful testimony to the same effect or from which the same facts can be inferred.' Travis v. State, 776 So. 2d 819, 861 (Ala. Crim. App. 1997), aff'd, 776 So. 2d 874 (Ala. 2000)." Floyd v. State, [Ms. CR-13-0623, July 7, 2017] ___ So. 3d ___, ___ (Ala. Crim. App. 2017). Here, Kemp testified that Holland telephoned him from the Shelby County jail approximately two hours after he attacked Jackson; that he told Holland that he "did what [he] said [he] was going to do" and that, as a result, he was "probably going away for a while"; and that, in making those statements, he was referring to his attack of Jackson. Thus, even if we assume, which we do not, that the State failed to establish a proper predicate for the admission of the recorded telephone call and that the trial court therefore erred by admitting

that evidence, any error was rendered harmless by Kemp's subsequent testimony "to the same effect or from which the same facts [could] be inferred." Floyd, supra. Accordingly, Kemp is not entitled to relief on this issue.

III.

Kemp argues that the trial court erred by admitting into evidence the audio portion of the audiovisual recording of Officer Blackmon's body-camera recorded at the gas station to which Carroll drove Jackson shortly after Kemp attacked her.[4] According to Kemp, the audio portion of the body-camera recording contained inadmissible hearsay and thus should have been excluded. However, even if we assume, which we do not, that the audio portion of the body-camera recording contained inadmissible hearsay, the admission of inadmissible hearsay does not constitute reversible error unless the defendant is prejudiced by the admission of such evidence. See Ruffin v. State, 582 So. 2d 1159, 1162 (Ala. Crim. App. 1991) ("[E]ven if the testimony was improper hearsay, the error was harmless because there was no prejudice to the appellant." (citing

[4]Kemp concedes that the video portion of the body-camera recording was admissible to show Jackson's injuries. (Kemp's brief, at 32.)

Edwards v. State, 502 So. 2d 846 (Ala. Crim. App. 1986)); and Rule 45, Ala. R. App. P. Here, Kemp makes no attempt whatsoever to demonstrate that he suffered any prejudice from the admission of hearsay statements in the body-camera recording, and it is not the duty of this Court to craft that argument for him. See Certain Underwriters at Lloyd's, London v. Southern Natural Gas Co., 142 So. 3d 436, 464 (Ala. 2013) (noting that "[i]t is not the function of [appellate courts] to create arguments for an appellant"). Thus, Kemp's failure to argue that he was prejudiced by the admission of the allegedly inadmissible hearsay is sufficient in and of itself to deny Kemp relief on this issue. See C.B.D. v. State, 90 So. 3d 227, 239 (Ala. 2011) (citing Rule 28(a)(10), Ala. R. App. P., and noting that this Court is "'not required to consider matters on appeal unless they are presented and argued in brief'" (quoting Zasadil v. City of Montgomery, 594 So. 2d 231, 231 (Ala. Crim. App. 1991))).

Regardless, we conclude that Kemp suffered no prejudice from the admission of the audio portion of the body-camera recording. The only statements from the body-camera recording Kemp challenges on appeal are "references to [Carroll's]

apartment fire" (Kemp's brief, at 32), but, as noted, Kemp concedes that all references to him as a suspect in the fire at Mountain Lodge were redacted from the body-camera recording. Thus, the body-camera recording did not implicate Kemp in the fire but, rather, merely indicated that the fire had occurred, and we have already concluded in Part I, supra, that the jury did not consider such evidence as evidence indicating that Kemp was a suspect in the fire or as evidence indicating that Kemp committed the offenses for which he was on trial. Therefore, Kemp suffered no prejudice from statements in the body-camera recording indicating merely that a fire at Mountain Lodge had occurred, even if we assume, which we do not, that such statements constituted inadmissible hearsay.[5] Furthermore, the evidence against Kemp was overwhelming. In fact, Kemp admitted at trial that he unlawfully entered Jackson's garage and then attacked and beat Jackson when she arrived, and it was undisputed that Baby Doe died as a result of the attack. Thus, there was ample

[5]The State argues that the statements in the body-camera recording were admissible under Rule 803(2), Ala. R. Evid., as excited utterances, and, indeed, the trial court admitted the body-camera recording on that basis. (R. 271.) Because Kemp suffered no prejudice from the admission of the body-camera recording, we need not make that determination.

evidence upon which the jury could have convicted Kemp even if the trial court had excluded the audio portion of the body-camera recording. Therefore, any error in the trial court's admission of that evidence was harmless. See Pierce v. State, 217 So. 3d 64, 67 (Ala. Crim. App. 2016) (holding that, "even if the trial court erred in admitting the evidence in question, such error was harmless beyond a reasonable doubt because the evidence against Pierce was overwhelming"); and Rule 45, Ala. R. App. P. ("No judgment may be reversed or set aside, nor new trial granted in any civil or criminal case on the ground of ... the improper admission or rejection of evidence, ... unless in the opinion of the court to which the appeal is taken or application is made, after an examination of the entire cause, it should appear that the error complained of has probably injuriously affected substantial rights of the parties."). Accordingly, Kemp is not entitled to relief on this issue.

IV.

Kemp argues that the trial court erred by refusing to give the following requested jury instruction:

> "All evidence to any oral admission or other incriminating statements claimed to have been made

> by a defendant outside of court should be considered with caution and weighed with great care. You must first be convinced that there is sufficient evidence that the alleged oral admissions or incriminating statements attributed to Christopher Kemp by the State were made voluntarily and are correct in the State's alleged interpretation of what was actually said. In making this determination, you should consider the context in which the statements were allegedly made, the time and place they were made, the person reporting the statements, the reporting person's interest, bias, and motive in the prosecution's case, and any common sense experience that you as jurors have in your everyday life in judging the credibility of similar statements."

(C. 319.) After stating that it would not give the requested instruction, the trial court gave defense counsel the opportunity to "make a record" (R. 900), to which defense counsel replied: "Judge, I think [the requested jury instructions is] a correct statement of the law." (R. 901.)

It is well settled that "[t]he defendant must object to the failure to issue a requested jury instruction before the jury retires to deliberate in order to preserve that argument for appellate review." Miller v. State, 264 So. 3d 907, 911 (Ala. Crim. App. 2017). See also Rule 21.3, Ala. R. Crim. P. (providing, in relevant part, that "[n]o party may assign as error the court's giving or failing to give a written instruction, or the giving of an erroneous, misleading,

incomplete, or otherwise improper oral charge, unless the party objects thereto before the jury retires to consider its verdict, stating the matter to which he or she objects and the grounds of the objection"). Here, although Kemp's counsel argued that the requested jury instruction was "a correct statement of the law," "[t]his court has repeatedly held that an objection that merely asserts that a refused jury charge is a correct or an accurate statement of law does not preserve the alleged error for appellate review." Jones v. State, 665 So. 2d 982, 984 (Ala. Crim. App. 1995). See also Marshall v. State, 20 So. 3d 830, 836 (Ala. Crim. App. 2008) ("'The ground that a jury instruction is a correct statement of the law is insufficient to preserve an objection to the trial court's refusal to give the instruction.'" (quoting Knight v. State, 710 So. 2d 511, 513 (Ala. Crim. App. 1997))); and Burger v. State, 915 So. 2d 586, 590 (Ala. Crim. App. 2005) ("An objection that merely asserts that refused charges are correct or accurate statements of law does not 'state with particularity' the grounds of the objection."). Thus, Kemp's contention that the refused jury instruction was "a correct

statement of the law" was insufficient to preserve this issue for appellate review.

V.

Finally, Kemp argues that the trial court erred "when it failed to strike for cause three jurors[, J.C., J.M., and Z.J.,] based upon their answers to questions regarding their ability to be fair and impartial in this case." (Kemp's brief, at 37.)

As a threshold matter, we note that, although the trial court refused to remove J.C., J.M., and Z.J. for cause, those prospective jurors were removed by peremptory strikes and did not serve on Kemp's jury. (R. 265-67.) That fact is not necessarily dispositive of this issue, however, if the trial court erred by refusing to remove J.C., J.M., and Z.J. for cause because the Alabama Supreme Court has held that it is reversible error for a trial court to fail to remove multiple prospective jurors that should have been removed for cause, despite the fact that those jurors were ultimately removed from the jury by peremptory strikes, if the jury consists of jurors who likely would have been the subject of peremptory challenge. See Ex parte Colby, 41 So. 3d 1 (Ala. 2009). The

principle expounded in Colby is inapplicable here, however, because the trial court did not err by refusing to remove J.C., J.M., and Z.J. for cause.

> "'The test for determining whether a strike rises to the level of a challenge for cause is "whether a juror can set aside their opinions and try the case fairly and impartially, according to the law and the evidence." Marshall v. State, 598 So. 2d 14, 16 (Ala. Cr. App. 1991). "Broad discretion is vested with the trial court in determining whether or not to sustain challenges for cause." Ex parte Nettles, 435 So. 2d 151, 153 (Ala. 1983). "The decision of the trial court 'on such questions is entitled to great weight and will not be interfered with unless clearly erroneous, equivalent to an abuse of discretion.'" Nettles, 435 So. 2d at 153.'
>
> "Dunning v. State, 659 So. 2d 995, 997 (Ala. Crim. App. 1994).
>
> "'The qualification of a juror is a matter within the discretion of the trial court. Clark v. State, 443 So. 2d 1287, 1288 (Ala. Cr. App. 1983). The trial judge is in the best position to hear a prospective juror and to observe his or her demeanor.' Ex parte Dinkins, 567 So. 2d 1313, 1314 (Ala. 1990). '"[J]urors who give responses that would support a challenge for cause may be rehabilitated by subsequent questioning by the prosecutor or the Court." Johnson v. State, 820 So. 2d 842, 855 (Ala. Crim. App. 2000).' Sharifi v. State, 993 So. 2d 907, 926 (Ala. Crim. App. 2008).
>
> "'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 be have been least influenced by leading.'
>
> "Patton v. Yount, 467 U.S. 1025, 1039, 104 S. Ct. 2885, 81 L. Ed. 2d 847 (1984)."

Thompson, 153 So. 3d 84, 115-16 (Ala. Crim. App. 2012) "'Thus, even though a prospective juror admits to a potential bias, if further voir dire examination reveals that the juror can and will base his decision on the evidence alone, then a trial judge's refusal to grant a motion to strike for cause is not error.'" Osgood v. State, [Ms. CR-13-1416, Oct. 21, 2016] ___ So. 3d ___, ___ (Ala. Crim. App. 2016) (quoting Perryman v. State, 558 So. 2d 972, 977 (Ala. Crim. App. 1989)). "'[I]n order to determine whether the trial judge's exercise of discretion was proper, this Court will look to the questions directed to and answers given by the prospective juror on voir dire. Ex parte Cochran, 500 So. 2d 1179 (Ala. 1985).'"

Killingsworth v. State, 33 So. 3d 632, 637 (Ala. Crim. App. 2009) (quoting Holliday v. State, 751 So. 2d 533, 535 (Ala. Crim. App. 1999)).

In this case, J.C. indicated during voir dire that she had been the victim of domestic violence by a former boyfriend, and, when defense counsel asked J.C. if that would "affect [her] ability to be fair in this case," J.C. initially replied: "Most definitely." (R. 186.) However, during individual voir dire with J.C., the following colloquy occurred:

> "[DEFENSE COUNSEL]: Okay. Can you be fair to Mr. Kemp who's charged with domestic violence? It's a domestic violence situation. You personally have experienced that. You indicated that you don't think you could be fair?
>
> "[J.C.]: I don't think I could. It's, kind of, tainted a lot. It's very sensitive.
>
> "....
>
> "THE COURT: So if you were chosen to sit on this panel, and ... we're not asking you to forget everything that's ever happened in your life, but would you be able to put it aside, listen to the evidence, listen to the law and go back and fully and fairly deliberate this case with your fellow jurors?
>
> "[J.C.]: Yes, in that sense I could listen and could, you know, go by the law. Yes, in that sense I could."

(R. 229-230).

J.M. initially stated that it would be "extremely hard" (R. 253) for him to deliberate fairly the case of a person accused of "attacking a woman like that," id., because he "still believe[s] in chivalry and it's inexcusable to hit a woman for any reason whatsoever." (R. 252.) However, during further questioning by the trial court, the following colloquy occurred:

> "THE COURT: Can you keep an open mind? Can you listen to the evidence and arrive at a fair verdict?
>
> "And when I say that, for a fair juror, we need folks that are going to be open-minded. Sure, everybody comes in here with certain beliefs and philosophies, religious mindsets.
>
> "But what we want of our jurors is -- I'm not asking you to close the door on all of that, certainly.
>
> "Your life experiences, I'm going to tell you, you need to use that.
>
> "But can you come in here with an open mind, listen to the evidence and go back -- you're not supposed to make up your mind on the evidence until 12 of you go back into the jury room and deliberate.
>
> "So you have to -- I have to have your assurance that you will listen to the evidence with an open mind. ...

> "So I need your assurance that you can listen with an open mind to the evidence, go back to the jury room with an open mind, discuss all that you've heard from the witness stand from witnesses under oath, together with the items -- there's going to be some exhibits. Photographs. Tapes. I don't know.
>
> "All of that will be admitted into evidence if it's legal evidence. All of that ... goes back to the jury room for you, if you're selected, and your fellow jurors to discuss this case and arrive at a fair verdict. Can you do that?
>
> "[J.M.]: Well, I can certainly keep an open mind.
>
> "As far as a fair verdict, if it's the decision of the 12, then I guess that would make it fair, right?
>
> "THE COURT: Yes, sir. I want a decision of 12 of you. It's not 1 person rules and it's not the majority rules. It is a unanimous verdict of all 12 of you.
>
> "....
>
> "THE COURT: Can you do that?
>
> "[J.M.]: Yeah, I think I can deliberate with 12 people."

(R. 254-56.)

Z.J. initially stated that she did not think she could fairly deliberate in Kemp's case if she were required to view autopsy photographs of Baby Doe because her cousin had died as

a baby in a shooting. However, Z.J. was questioned further, and she responded as follows:

> "THE COURT: ... Now if you were selected to sit on this panel, could you give us your word that you will listen to the evidence in the guilt phase of the case, listen to the evidence, listen to the law, and then go back with your fellow jurors and fully and fairly deliberate this case for both the State and the defendant?
>
> "[Z.J.]: Yes.
>
> "....
>
> "[THE STATE]: We're not saying you have to study on [the autopsy photographs of Baby Doe] and linger on them, but at least if there's relevant evidence to the charges and the elements that you would look at them and consider them as part of the evidence in the case?
>
> "....
>
> "[Z.J.]: Yeah. Yes.
>
> "....
>
> "[DEFENSE COUNSEL]: Okay. That experience with you having a close family member being killed, would that affect your ability to give Mr. Kemp a fair trial?
>
> "[Z.J.]: No, he'll get a fair trial."

(R. 243-46.)

Although J.C., J.M., and Z.J. each initially expressed some doubt regarding his or her ability to deliberate the case

fairly, those prospective jurors expressed during further voir dire questioning that they could set aside their opinions, listen to the evidence, and fairly and impartially deliberate. The trial court, who was able to listen to J.C., J.M., and Z.J. and to observe their demeanor throughout voir dire, was in a better position than is this Court to determine whether J.C., J.M., and Z.J. were sufficiently rehabilitated by the answers they gave during subsequent voir dire questioning. Thompson, supra. Accordingly, because J.C., J.M., and Z.J. ultimately indicated that they could fairly and impartially deliberate based upon the evidence, the trial court's refusal to strike those prospective jurors for cause was not an abuse of the trial court's broad discretion in making such determinations. Thompson, supra; Osgood, supra. Accordingly, Kemp is not entitled to relief on this issue.

VI.

Although none of the issues Kemp raises on appeal entitle him to relief, we must remand the cause for the trial court to correct a double-jeopardy violation. See Canyon v. State, 218 So. 3d 871, 872 (Ala. Crim. App. 2016) (noting that this Court

can take notice ex mero motu of double-jeopardy violations that implicate a trial court's jurisdiction).

Section 13A-6-2(a)(3) provides:

> "a) A person commits the crime of murder if he or she does any of the following:
>
> "....
>
> "(3) He or she commits or attempts to commit arson in the first degree, burglary in the first or second degree, escape in the first degree, kidnapping in the first degree, rape in the first degree, robbery in any degree, sodomy in the first degree, aggravated child abuse under Section 26-15-3.1, or any other felony clearly dangerous to human life and, in the course of and in furtherance of the crime that he or she is committing or attempting to commit, or in immediate flight therefrom, he or she, or another participant if there be any, causes the death of any person."

Here, Kemp was convicted twice of felony murder because the killing of Baby Doe occurred both during Kemp's commission of first-degree burglary and during Kemp's commission of first-degree domestic violence. However,

> "[i]n Ex parte Rice, 766 So. 2d 143 (Ala. 1999), the Alabama Supreme Court held that § 13A-6-2(a)(3), Ala. Code 1975, creates a single offense, even though it provides alternative methods of proving the offense. The supreme court also held that double jeopardy principles prohibit multiple convictions and multiple sentences for felony-murder

> if the convictions and sentences arise from a single killing."

Carlisle v. State, 963 So. 2d 170, 170 (Ala. Crim. App. 2006). See also Amison v. State, 186 So. 3d 984 (Ala. Crim. App. 2014).

Thus, because Kemp was convicted of a single killing, i.e., the killing of Baby Doe, his two felony-murder convictions cannot stand. The fact that the trial court imposed only one sentence for the two convictions does not change this conclusion. See Meyer v. State, 575 So. 2d 1212, 1217 (Ala. Crim. App. 1990) (holding, in a case where the defendant had been convicted of three counts of intentional murder for the killing a single person but had received only a single sentence, that the single sentence did not render the error in the multiple convictions harmless and remanding the cause for the trial court to set aside two of the convictions). Accordingly, we remand the cause for the trial court to set aside Kemp's felony-murder conviction in count two of case no. CC-16-0294 -- the killing of Baby Doe during Kemp's commission of first-degree domestic violence; Kemp's felony-murder conviction in count one of case no. CC-16-0294

-- the killing of Baby Doe during Kemp's commission of first-degree burglary -- is affirmed.

Conclusion

Based on the foregoing, we affirm Kemp's conviction and sentence for first-degree domestic violence in case no. CC-16-0293 and his conviction and sentence for felony murder in count one of case no. CC-16-0294. However, we remand the cause to the trial court with instructions for that court to vacate Kemp's felony-murder conviction in count two of case no. CC-16-0294 and to enter a new judgment to that effect. The trial court shall take all necessary action to see that the circuit clerk makes due return to this Court within 42 days from the date of this opinion.

AFFIRMED IN PART; REMANDED WITH INSTRUCTIONS.

Windom, P.J., and Cole and Minor, JJ., concur. Kellum, J., concurs in the result.