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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-18-0377

Alyssa Sue Watson

v.

State of Alabama

Appeal from Tuscaloosa Circuit Court (CC-18-887)

CR-18-0435

Marcus King George

v.

State of Alabama

Appeal from Tuscaloosa Circuit Court
(CC-18-886)

KELLUM, Judge.

Alyssa Sue Watson and Marcus King George were each indicted for felony murder (murder committed during the course of a kidnapping in the first degree), see § 13A-6-2(a)(3), Ala. Code 1975, and for kidnapping in the first degree, see § 13A-6-43(a)(4), Ala. Code 1975, in connection with the kidnapping and subsequent death of Samantha Payne. On motion of the State, the trial court consolidated the cases for trial. After being instructed on the applicable principles of law, a jury found Watson and George guilty of felony murder and first-degree kidnapping as charged in the indictments. The trial court sentenced both Watson and George to 30 years' imprisonment for each conviction, the sentences to run concurrently. Watson and George filed timely notices of appeal. Because Watson and George were tried together and raise the same or similar issues on appeal, we have consolidated the two appeals for purposes of issuing a single opinion.

The evidence adduced at trial indicated the following. On October 30, 2015, Payne told her mother that she was going

to a party with Watson, George, Chylli Bruce, and Mike Belcher. Payne, who lived with her parents, did not return home from the party. After not hearing from her daughter for a few days, Payne's mother, Suzanne, telephoned Belcher and asked if he had seen Payne. Belcher laughed and said he had not seen her. The afternoon of November 9, 2015, Suzanne notified law enforcement that Payne was missing. She provided a description of her daughter as well as identifying characteristics, including that Payne had a tattoo of a butterfly on her lower back. Within hours, law-enforcement officers arrived at Suzanne's home with a photograph of the butterfly tattoo, and informed her that her daughter's body had been found.

A local hunter had found Payne's body in the Talladega National Forest in Tuscaloosa County the morning her mother reported her missing. When Payne was found, her body was largely decomposed and her skull was found approximately 14 feet from her body. Her arms and wrists were bound and had been tied to a tree with a belt, shoestring, and coaxial cable. She was nude, and pieces of what appeared to be women's clothing were found nearby, including a pair of jeans

found next to a nearby road. Steven F. Dunton, a pathologist with the Alabama Department of Forensic Sciences ("DFS"), performed an autopsy on Payne's remains. The majority of her internal organs were missing, and there was little to no tissue left on her legs, skull, and hands. There was evidence of hemorrhaging in the areas where her arms had been bound, thus suggesting that Payne was likely alive when she was tied up, and four of her ribs were fractured. Because of the advanced state of decomposition, Dr. Dunton was unable to determine the cause or manner of Payne's death but he indicated that the circumstances of her discovery were "strongly suggestive of foul play." (State's Exhibit 93.)

Investigators with the Tuscaloosa Police Department and the Tuscaloosa Sheriff's Department quickly learned that, a week before Payne's body had been found, Bruce and Steven George ("Steven")[1] had been arrested in Hale County near the Talladega National Forest.[2] They both had blood on their clothes. A knife was found on the ground nearby, and Steven

[1]The record indicates that George and Steven are not related.

[2]The Talladega National Forest spans multiple counties in Alabama.

had two cellular telephones on his person, one of which Steven later said belonged to Belcher. After investigators spoke with Bruce and Steven, they were able to identify the remains found in the forest as Payne's, and Watson, George, and Belcher became suspects in her death.

As part of plea agreements with the State, Steven and Bruce both testified against Watson and George about the events leading to Payne's death.[3] Steven testified that on November 1, 2015, he, Belcher, and Bruce were "working on bikes and getting high" at Wee Racing, a motorcycle-repair shop owned by Belcher's father. (R. 438.)[4] At some point that evening, Payne arrived at the shop. Watson and George arrived sometime later. When Payne went to the bathroom "to

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[3]For their participation in the offense, Steven and Bruce were both charged with murder made capital because it was committed during the course of a kidnapping. As part of their plea agreements, they both agreed to plead guilty to the lesser-included offense of murder and to testify against Watson and George. We note that, for his participation in the offense, Belcher was also charged with murder made capital because it was committed during the course of a kidnapping. He was convicted after a jury trial and was sentenced to death. His appeal is currently before this Court (case no. CR-18-0740).

[4]Citations are to the record submitted in case no. CR-18-0377.

do her a shot of dope," Steven took the keys to her automobile and asked if George wanted to go for a ride. (R. 440.) As Steven and George drove around, Steven decided he wanted to steal the catalytic convertor and battery from Payne's vehicle. Steven drove George back to Wee Racing and George agreed to meet him at the Harrisburg bridge. Once at the bridge, Steven took the battery out of Payne's vehicle and waited for George to arrive. George arrived with Watson about 30 minutes later; he had brought with him the equipment needed to remove the catalytic convertor. Watson removed clothing from the passenger compartment of Payne's vehicle and Steven removed the catalytic convertor. Steven then punctured the gas tank and set the vehicle on fire.

Steven, Watson, and George drove to Belcher's residence, where Steven changed clothes and put the catalytic convertor and battery inside the house. The three then drove back to Wee Racing. As they pulled up to the shop, Belcher and Bruce were leaving in Belcher's automobile. Steven said that he could see that Bruce was driving and that Belcher was in the backseat but could not see anything else in the vehicle. After a short discussion, Steven, Watson, and George followed

Belcher and Bruce to Belcher's residence. Once at the residence, Belcher dragged Payne out of the backseat of the vehicle and began beating her, "slamming" her on the ground, and kicking her. (R. 457.) As Belcher was beating Payne, "[a] bunch of police went by" and Steven heard someone say they needed to go somewhere else. (R. 459.) Steven did not know who made the statement but he said that it was a male voice. According to Steven, Payne fought Belcher when he tried to force Payne back into his vehicle, and Watson hit Payne on the head with a pistol. Payne went limp, and Belcher was able to get Payne into the vehicle.

Steven testified that he, George, and Watson followed the vehicle carrying Belcher, Bruce, and Payne to property he believed belonged to Watson's family, on which there was a house and a mobile home. Belcher pulled Payne out of his vehicle and again began "kicking her and stomping her." (R. 467.) Belcher then told Steven to get something to restrain Payne. Steven used his knife to cut "cable wire" (R. 468) from the outside of the mobile home and he and George "found some old shoestrings" inside the mobile home. (R. 470.) When he and George returned to the others, Steven said, a fire was

burning in a barrel and Watson was putting in the fire the clothes she had taken from Payne's vehicle. Watson and Bruce also tried to remove Payne's press-on fingernails because, Steven said, they were worried DNA might be under the fingernails. According to Steven, he helped Belcher tie Payne's hands and feet, and, when daylight approached, he and Belcher put Payne in the trunk of Belcher's vehicle. Steven testified that he asked Belcher why he was doing what he was to Payne, and Belcher said it was because Payne had been talking to law enforcement about his selling methamphetamine and "was trying to set him up." (R. 474.)

Steven, George, and Watson again followed the vehicle carrying Belcher, Bruce, and Payne as they left Belcher's residence. During the drive, Payne tried to escape from the trunk of Belcher's vehicle. Belcher stopped and had Steven get in the backseat and hold the backseat so Payne could not get from the trunk into the passenger compartment of the vehicle. After driving further, Belcher stopped a second time near the forest, and George said he knew a place to take Payne. The vehicle carrying Belcher, Bruce, Steven, and Payne then followed George and Watson until Belcher's vehicle ran

out of gas. Bruce, using Belcher's cellular telephone, attempted to telephone George and Watson to let them know Belcher's vehicle had run out of gas and that they were no longer following George and Watson. Steven assisted Belcher in getting Payne out of the trunk and dragging her into the forest. When Payne started "getting loud," Belcher began "stomping her in the face, telling her to shut up" and threatening to kill her. (R. 483.) Belcher told Steven to go back to the vehicle and get something to further restrain Payne and he asked Steven for Steven's knife. Steven gave Belcher his knife and returned to the vehicle. When he left, Steven said, Payne was alive, was bound, and was fully clothed.

When Steven got back to the vehicle, he and Bruce attempted to leave, but made it only about 100 yards before the vehicle died again. Steven and Bruce then began walking to find gasoline. All the doors on the vehicle were closed when they left. Using Belcher's cell phone, Steven eventually telephoned his brother and asked him to bring gasoline. His brother did so. When Steven and Bruce got back to Belcher's vehicle, the back door on the driver's side was open and

Steven's knife was on the ground near the tire. As he and Bruce waited by the vehicle, a deputy with the Hale County Sheriff's Department saw them and approached. Steven testified that he had narcotics on his person and he and Bruce were arrested.

Bruce testified that the night of November 1, 2015, she was at Wee Racing using drugs with Payne, Belcher, Steven, Watson, and George. Eventually, everyone left except her, Belcher, and Payne. Payne noticed that her vehicle was missing and she accused Belcher of stealing it. Belcher and Payne argued and, when Payne tried to walk away, Belcher "slam[med] her against a wall." (R. 677.) Belcher told Bruce to get the keys to his vehicle to drive them to his residence. According to Bruce, Belcher forced Payne into the vehicle and, as they were leaving, Steven, George, and Watson were pulling into the parking lot of Wee Racing. Belcher told them to go to his house. Once at Belcher's residence, Belcher pulled Payne out of the vehicle and began punching her. When they saw people begin to arrive at a nearby business, Bruce said, George suggested going to another location. Belcher then forced Payne back into his vehicle and the group drove to what

Bruce described as an "abandoned trailer." (R. 683.) Again, Belcher pulled Payne out of the vehicle and began beating her. Belcher then told Bruce to find something to tie up Payne and to burn Payne's belongings. Bruce said that she and Watson removed Payne's jewelry and attempted to remove her press-on fingernails and then burned them in a fire on the property. She denied burning any clothing. Belcher then forced Payne into the trunk of his vehicle and he, Bruce, and Steven followed Watson and George to the Talladega National Forest. Bruce said that she did not see Watson hit Payne with a gun.

At one point, Bruce said, Payne escaped from the trunk and they stopped to force her back inside. As they were following Watson and George, Belcher's vehicle ran out of gasoline; Watson and George continued driving and did not stop. Bruce said she walked away from the vehicle in an attempt to find cellular service so she could telephone Watson using Belcher's cell phone; Watson did not answer. When Bruce returned to the vehicle, Belcher and Payne were gone. She and Steven then began walking to find gasoline. Once they were in an area with cellular service, Steven telephoned his brother and asked him to bring them some gasoline, which he did.

According to Bruce, when they returned to Belcher's vehicle with the gasoline, they were stopped by law enforcement and, after finding drugs and drug paraphernalia in Belcher's vehicle and on Steven's person, law enforcement arrested them. Bruce testified that Belcher subsequently told her that he had killed Payne by stabbing her multiple times. Bruce identified at trial the pair of jeans found on the side of the road near where Payne's body was found as the jeans Payne was wearing the night she was killed.

During the execution of various search warrants over the course of several days after Payne's body was found, investigators found bloodstains and hair in both the passenger compartment and the trunk of Belcher's Nissan Altima automobile; a pink belt -- which Bruce identified at trial as having been worn by Payne the night she was killed -- in a duffel bag in a pickup truck that was parked at Belcher's residence; cables and wires in a bag in Belcher's house; and an automobile battery in the clothes dryer in Belcher's house. At the property identified as belonging to Watson's family, investigators found in the crawl space under the house coaxial cable that appeared to have been cut and an area in the yard

that had been burned. Payne's automobile was also found under the Harrisburg Bridge in Bibb County. It had been burned, and the catalytic convertor and battery were missing.

Pursuant to court orders, investigators obtained records from Verizon Wireless for cell phones belonging to Watson, George, and Belcher. The records include call details for each call that was made or received on November 2, 2015, between 1:00 a.m. and 10:00 a.m. on each cell phone. The records indicated that, during those hours, numerous calls were made between Watson, George, and Belcher, including over two dozen calls from Belcher's cell phone to Watson's cell phone between 7:30 a.m. and 8:00 a.m., which went to Watson's voicemail. Allison Duncan, an intelligence analyst with the Alabama Law Enforcement Agency ("ALEA"), analyzed the call details, which included cell-site-location information. Her testimony indicated that many of calls to and from Watson's, George's, and Belcher's cell phones were routed through cellular towers located near Wee Racing, Belcher's residence, the property identified as belonging to Watson's family, and the area where Payne's body was found. Of particular import, many of the calls to and from Watson's, George's, and/or

Belcher's cell phones before approximately 5:00 a.m. were routed through a tower located near Wee Racing and Belcher's residence; many of the calls to and from Watson's and Belcher's cell phones between approximately 5:00 a.m. and 7:30 a.m. were routed through towers located near the property identified as belonging to Watson's family; and the calls made to and from Belcher's cell phone after 7:30 a.m. were routed through towers near and around where Payne's body was found.

I.

Watson and George contend that the trial court erred in denying their motions to suppress their cell phone records on two grounds, each of which we address each in turn, bearing in mind the following.

In reviewing a trial court's ruling on a motion to suppress, we apply the *ore tenus* standard of review to the court's findings of fact based on disputed evidence. "When evidence is presented *ore tenus* to the trial court, the court's findings of fact based on that evidence are presumed to be correct," *Ex parte Perkins*, 646 So. 2d 46, 47 (Ala. 1994); "[w]e indulge a presumption that the trial court properly ruled on the weight and probative force of the

evidence," Bradley v. State, 494 So. 2d 750, 761 (Ala. Crim. App. 1985), aff'd, 494 So. 2d 772 (Ala. 1986); and we make "'all the reasonable inferences and credibility choices supportive of the decision of the trial court.'" Kennedy v. State, 640 So. 2d 22, 26 (Ala. Crim. App. 1993) (quoting Bradley, 494 So. 2d at 761). However, "the ore tenus rule does not extend to cloak a trial judge's conclusions of law, or incorrect application of law to the facts, with a presumption of correctness." Eubanks v. Hale, 752 So. 2d 1113, 1144-45 (Ala. 1999). "Questions of law are reviewed de novo." Alabama Republican Party v. McGinley, 893 So. 2d 337, 342 (Ala. 2004). Likewise, a trial court's application of law to the facts is reviewed de novo, and "when the trial court improperly applies the law to the facts, no presumption of correctness exists as to the court's judgment." Ex parte Agee, 669 So. 2d 102, 104 (Ala. 1995).

A.

Watson and George contend that the trial court erred in denying their motions to suppress on the ground that investigators obtained their cell-phone numbers without first

advising them of their rights under Miranda v. Arizona, 384 U.S. 436 (1966).

The record indicates that Watson and George were brought to the police station for questioning on November 12, 2015. Rob Davis, a sergeant with the Tuscaloosa Police Department, spoke with Watson, and J.C. Bryant, an investigator with the Tuscaloosa Police Department, spoke with George. Before advising Watson and George of their Miranda rights, Sgt. Davis and Inv. Bryant requested biographical and contact information from them, specifically, their names, dates of birth, race, gender, addresses, and phone numbers. Watson and George provided their cell-phone numbers. Sgt. Davis and Inv. Bryant both testified at the suppression hearing that they routinely ask for biographical and contact information from every witness and suspect they interview before advising the person of his or her Miranda rights so they can contact that person in the future if necessary and so they can fill out the Miranda form used by the Tuscaloosa Police Department, which contains space at the top for the interviewer to fill in the biographical and contact information of the person being interviewed. Both Sgt. Davis and Inv. Bryant also testified

that they did not know, at the time they spoke with Watson and George, that Watson's and George's cell-phone numbers would be important to the investigation.

> "The Fifth Amendment provides that 'no person ... shall be compelled in any criminal case to be a witness against himself.' The United States Supreme Court in Miranda v. Arizona established procedures to safeguard a defendant's Fifth Amendment privilege against the inherently coercive effects of custodial interrogation. Miranda requires that before questioning a suspect in custody, law enforcement officials must inform the suspect of certain rights, including [the right to remain silent,] the right to have an attorney present during questioning, and that if the suspect cannot afford an attorney, one will be appointed for him. Id. at 444, 86 S.Ct. 1602. Failure to inform a suspect of his Fifth Amendment rights before questioning renders any pretrial statements elicited from the suspect during custodial interrogation inadmissible at trial. Id. at 492, 86 S.Ct. 1602."

Whitt v. State, 733 So. 2d 463, 476 (Ala. Crim. App. 1998). "[C]ustodial interrogation ... mean[s] questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Miranda, 384 U.S. at 444. "[T]he term 'interrogation' under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to

elicit an incriminating response from the suspect." Rhode Island v. Innis, 446 U.S. 291, 300-01 (1980) (footnotes omitted).

In Pennsylvania v. Muniz, 496 U.S. 582 (1990), the United States Supreme Court recognized "a 'routine booking question' exception which exempts from Miranda's coverage questions to secure '"biographical data necessary to complete booking or pretrial services"'" and questions "'for record-keeping purposes only' ... [that] appear reasonably related to the police's administrative concerns," so long as the questions are not "'designed to elicit incriminating admissions.'" 496 U.S. at 601–02 & n.14 (internal citations omitted). Even before Muniz, this Court recognized a similar exception. In Varner v. State, 418 So. 2d 961 (Ala. Crim. App. 1982), this Court recognized that questioning the defendant about his "name, address, age, race, date of birth, social security number, height, weight, mother's and father's name[s], ... and telephone number ... [were] questions seeking biographical information [that] 'did not relate, even tangentially, to criminal activity.'" 418 So. 2d 962 (quoting United States v. Menichino, 497 F.2d 935, 941 (5th Cir. 1974)). "They were

'non-investigative' questions not designed to investigate crimes or the involvement of the arrested person or others in crimes" and, thus, were not subject to the requirements of Miranda because "'Miranda was only "concerned with protecting the suspect against interrogation of an investigative nature rather than the obtaining of basic identifying data required for booking and arraignment."'" Varner, 418 So. 2d at 962 (quoting United States v. Grant, 549 F.2d 942, 946 (4th Cir. 1977), quoting in turn, United States ex rel. Hines v. LaVallee, 521 F.2d 1109, 1113 (2d Cir. 1975)).

"Examples of questions to which the routine booking question exception will ordinarily extend include the suspect's name, address, telephone number, age, date of birth, and similar such pedigree information." Hughes v. State, 346 Md. 80, 95, 695 A.2d 132, 139 (1997). See also Bobo v. State, 820 N.W.2d 511, 517 (Minn. 2012) ("[A] Miranda warning is not required before police ask routine identification and biographical questions, like name, address, or telephone number."); State v. Crooks, 378 N.W.2d 722, 725 (Iowa 1985) ("Obtaining 'incidental identifying information' such as name, address, and telephone number from a person in custody is not

the type of interrogation which Miranda seeks to avoid."); Bucknor v. State, 965 So. 2d 1200, 1202 (Fla. Dist. Ct. App. 2007) (holding "that the routine request for a contact number ... falls within the 'booking exception'" to Miranda); and United States v. Sims, 719 F.2d 375, 379 (11th Cir. 1983) (holding "that a government agent's eliciting biographical information, such as an address and telephone number, for the non-interrogative purpose of identification" is not subject to Miranda). "Whether the information gathered turns out to be incriminating in some respect does not, by itself, alter the general rule that pedigree questioning does not fall under the strictures of Miranda." Rosa v. McCray, 396 F.3d 210, 221 (2d Cir. 2005). "Only if the government agent should reasonably be aware that the information sought, while merely for basic identification purposes in the usual case, is directly relevant to the substantive offense charged, will the questioning be subject to scrutiny." United States v. Laughlin, 777 F.2d 388, 391-92 (8th Cir. 1985). "Absent evidence that 'the police used the booking questions to elicit incriminating statements from the defendant, routine biographical questions are not ordinarily considered

interrogation.'" United States v. Broadus, 7 F.3d 460, 464 (6th Cir. 1993) (quoting United States v. Clark, 982 F.2d 965, 968 (6th Cir. 1993)).

Sgt. Davis and Inv. Bryant both testified that they routinely ask for contact information, including a telephone number, from every witness or suspect they interview so they can contact the person at a later date if necessary and so they can include that information on the Miranda form. Both Sgt. Davis and Inv. Bryant denied that they had any knowledge, at the time they spoke with Watson and George, that Watson's and George's cell-phone numbers would be important to the investigation, and their testimony indicates that their involvement in the investigation was limited largely to interviews and to assisting with the execution of one or more search warrants. Under the circumstances in this case, we conclude that asking Watson and George for their telephone numbers before they were read their Miranda rights fell within the "booking exception" to Miranda. Therefore, the trial court properly denied Watson's and George's motions to suppress on this ground.

B.

Watson and George also contend that the trial court erred in denying their motions to suppress on the ground that investigators obtained their cell-phone records without a search warrant. Watson and George both concede that investigators obtained court orders for the records in accordance with §§ 13A-8-115 and 15-5-40, Ala. Code 1975, but, relying on Carpenter v. United States, ___ U.S. ___, 138 S.Ct. 2206 (2018), they argue that the court orders were not sufficient and that search warrants were required.

Section 13A-8-115(a), Ala. Code 1975, provides that "[a] law enforcement officer, a prosecuting attorney, or the Attorney General may require the disclosure of stored wire or electronic communications, as well as transactional records and subscriber information pertaining thereto, to the extent and under the procedures and conditions provided for by the laws of the United States." Section 15-5-40(c), Ala. Code 1975, provides:

> "An emergency declared or order issued under the combined authority of the provisions of federal law defined at Chapters 121 and 206 of Title 18, United States Code, Sections 2701-2712 and 3121-3127, may authorize disclosure of call-identifying addressing, routing, or signaling information that may disclose

> the physical location of the subscriber, customer, or user of a wire or electronic communications service."

Both § 13A-8-115 and § 15-5-40 incorporate by reference, directly or indirectly, the Stored Communications Act, 18 U.S.C. § 2701 et seq. ("the SCA"). The SCA permits the government to compel disclosure of certain telecommunications records, including cell-phone records, by warrant or by court order. With respect to court orders, § 2703(d) provides, in relevant part:

> "A court order for disclosure ... may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation."

In Carpenter, investigators obtained court orders pursuant to the SCA for the defendant's cell-phone records for a period spanning four months, during which time a series of robberies had been committed. Information from the records indicated that the defendant's cell phone was near the locations of four of the robberies at the time of those robberies. The defendant moved to suppress the records, and

the trial court denied the motion. The United States Court of Appeals for the Sixth Circuit affirmed the trial court's judgment. However, the United States Supreme Court reversed the judgment of the Sixth Circuit, holding that "an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through" cell-site location information and that, therefore, "the Government must generally obtain a warrant supported by probable cause before acquiring such records." ___ U.S. at ___, ___, 138 S.Ct. at 2217, 2221. The Court explained:

> "The Government acquired the cell-site records pursuant to a court order issued under the Stored Communications Act, which required the Government to show 'reasonable grounds' for believing that the records were 'relevant and material to an ongoing investigation.' 18 U.S.C. § 2703(d). That showing falls well short of the probable cause required for a warrant. The Court usually requires 'some quantum of individualized suspicion' before a search or seizure may take place. United States v. Martinez-Fuerte, 428 U.S. 543, 560-561, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976). Under the standard in the Stored Communications Act, however, law enforcement need only show that the cell-site evidence might be pertinent to an ongoing investigation -- a 'gigantic' departure from the probable cause rule, as the Government explained below. App. 34. Consequently, an order issued under Section 2703(d) of the Act is not a permissible mechanism for accessing historical cell-site records. Before compelling a wireless carrier to turn over a subscriber's [cell-site-

> location information], the Government's obligation is a familiar one -- get a warrant."

___ U.S. at ___, 138 S.Ct. at 2221.

After remand, the Sixth Circuit Court of Appeals again affirmed the trial court's denial of the defendant's motion to suppress under the good-faith exception to the exclusionary rule. The Court explained:

> "Although the Government should have obtained a warrant in this case, we may nevertheless affirm the district court's decision if the Government acquired Carpenter's [cell-site-location information] in good faith reliance on the SCA. 'Though evidence obtained in violation of the Fourth Amendment is generally excluded, the Supreme Court has held that the exclusionary rule "should be modified so as not to bar the admission of evidence seized in reasonable, good faith reliance on a search warrant that is subsequently held to be defective."' United States v. Frazier, 423 F.3d 526, 533 (6th Cir. 2005) (quoting United States v. Leon, 468 U.S. 897, 905, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984)). In Illinois v. Krull, the Court extended Leon's good faith exception to evidence obtained in reasonable reliance on a statute that is later declared unconstitutional, reasoning 'that the greatest deterrent to the enactment of unconstitutional statutes by a legislature is the power of the courts to invalidate such statutes.' 480 U.S. 340, 352, 107 S.Ct. 1160, 94 L.Ed.2d 364 (1987); see also id. at 349, 107 S.Ct. 1160 ('The application of the exclusionary rule to suppress evidence obtained by an officer acting in objectively reasonable reliance on a statute would have as little deterrent effect on the officer's actions as would the exclusion of evidence when an officer acts in objectively reasonable reliance on a warrant.').

> "That Carpenter ... did not invalidate § 2703(d) whole cloth does not meaningfully distinguish this case from Krull. What matters is whether it was objectively reasonable for the officers to rely on the statute at the time of the search. See id. Here, it was not unreasonable for the FBI agents who acquired Carpenter's [cell-site-location information] to rely on § 2703(d). The SCA contemplates the Fourth Amendment's protections by specifying some instances where warrants are necessary, see 18 U.S.C. § 2703(a), (c)(1)(A), so one can understand why the agents might have believed -- wrongly, it turns out -- that a warrant was not required to obtain [cell-site-location information] under § 2703(d). And it was not just these officers who believed that § 2703(d) empowered the Government to acquire [cell-site-location information] without a warrant. Two magistrate judges issued court orders granting the Government's request to compel the production of Carpenter's [cell-site-location information]. At the time these requests were granted, this circuit had already considered reliance on § 2703(d) to be reasonable. See United States v. Warshak, 631 F.3d 266, 288–89 (6th Cir. 2010) (finding that government agents relied on § 2703(d) in good faith when compelling a defendant's internet service provider to produce the defendant's emails). And despite Carpenter's arguments to the contrary, nothing in the record suggests that the FBI agents who obtained his [cell-site-location information] engaged in intentional misconduct."

United States v. Carpenter, 926 F.3d 313, 317-18 (6th Cir. 2019). Other federal circuits have similarly recognized the applicability of the good-faith exception when investigators obtained cell-phone records pursuant to a court order -- and without a search warrant -- before Carpenter. See, e.g.,

United States v. Goldstein, 914 F.3d 200, 203-06 (3d Cir. 2019); United States v. Zodhiates, 901 F.3d 137, 143-44 (2d Cir. 2019); United States v. Curtis, 901 F.3d 846, 847-49 (7th Cir. 2018); United States v. Joyner, 899 F.3d 1199, 1204-05 (11th Cir. 2018); and United States v. Chavez, 894 F.3d 593, 608 (4th Cir. 2018).

Here, investigators obtained the court orders for Watson's and George's cell-phone records in November 2015, almost three years before the United States Supreme Court issued its opinion in Carpenter. We cannot say it was unreasonable for the investigators to rely on the court orders they had obtained in compliance with the SCA.[5] Although the seizure of the records violated the Fourth Amendment under the holding in Carpenter, we agree with the above cases that the good-faith exception to the exclusionary rule is generally applicable to cell-phone records obtained in accordance with the SCA before Carpenter was decided, as in this case.

"'The good faith exception provides that when officers acting in good faith, that is, in objectively reasonable

[5]Watson and George do not argue that the court orders for their cell-phone records did not comply with the SCA.

reliance on a warrant issued by a neutral, detached magistrate, conduct a search and the warrant is found to be invalid, the evidence need not be excluded.'" Bailey v. State, 67 So. 3d 145, 149 (Ala. Crim. App. 2009) (quoting Rivers v. State, 695 So. 2d 260, 262 (Ala. Crim. App. 1997)). There are only four circumstances in which the good-faith exception does not apply:

> "(1) when the magistrate or judge relies on information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard for the truth; (2) when the magistrate wholly abandons his judicial role and fails to act in a neutral and detached manner; (3) when the warrant is based on an affidavit that is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; and (4) when the warrant is so facially deficient that the executing officer cannot reasonably presume it to be valid."

Bailey, 67 So. 3d at 150. None of these circumstances are present here.

Therefore, the trial court properly denied Watson's and George's motions to suppress on this ground.

II.

Watson and George also contend that the trial court erred in allowing Duncan to testify about her analysis of the cell-site-location information in their cell-phone records.

Although their arguments vary slightly, the crux of their argument is that the testimony elicited from Duncan was scientific evidence, that the State failed to lay the proper predicate for its admission under Rule 702(b), Ala. R. Crim. P., and that Duncan was not qualified as an expert.

Before trial, Watson and George requested a hearing to determine the admissibility of Duncan's testimony. At the hearing, the trial court heard testimony from Duncan and from defense witness Manfred Schenk, an expert in radio frequencies and cellular technology. Watson and George argued that Duncan's proposed testimony was scientific and did not meet the requirements for admissibility; the State argued that Duncan's testimony was not scientific but was, at most, technical. The trial court concluded that the testimony the State sought to present from Duncan was not scientific evidence.

At trial, Duncan testified about her qualifications in analyzing cell-phone-call details. Duncan stated that she had bachelor's degrees in political science and homeland security, master's degrees in homeland security and emergency management, and that she had been an intelligence analyst at

the Alabama Law Enforcement Agency ("ALEA") since 2012. Duncan said that she had a wide variety of duties at ALEA, but that she specialized in social-media investigations and analysis of cell-phone-call details. As part of her job, she regularly interacted with cellular providers and, as a result of those interactions and her training, she had learned generally how cellular signals connect to cellular towers when calls are placed on a cellular device. Duncan also testified that she had completed three courses in using the PenLink computer-software program to analyze and map cell-site-location information from cellular records -- a program she said was reasonably relied on in the field of call-detail analysis and that many law-enforcement agencies used -- and that she was certified to use the software.

Duncan testified that when a person places or receives a call using a cellular device, the call is routed through a cellular tower. Cellular towers generally have a range -- a radius of approximately 20 miles -- within which calls can connect to the tower, and towers are generally divided into three sectors, each sector facing a different direction and generally having its own approximately 20-mile radius within

which calls can connect to that sector. Duncan said that calls are generally, but not always, routed through the tower closest to the location of the device. She admitted that she did not know exactly how cellular providers determined which of multiple towers a cellular signal would be routed through,[6] but she said that various factors could prevent the signal from routing through the closest tower, including the number of signals trying to connect to the tower, nearby topography, the strength of the tower, and the radio frequency of the tower. She also said that the signal could switch between towers during a call and that, if the person travels during the call, the call will "be passed off from tower to tower." (R. 847.)

According to Duncan, call details from cellular providers identify the cellular towers and the sectors of the towers the calls were routed through, as well as the latitude and longitude of the cellular towers. Duncan testified that the PenLink software uses the information identifying the cellular

[6]At the pretrial hearing, Duncan indicated that there are so many cellular towers that most areas are within the range of multiple towers at the same time. Her testimony at trial about how signals connect to towers was based on the idea that there are multiple towers to which a signal could connect.

tower and its location and plots on a map the locations of the cellular towers the calls were routed through. Using the information regarding what sector of the tower each call was routed through and based on the assumption that calls are routed through the tower closest to the cellular device, the map includes shaded areas in the shape of pie pieces emanating out from the tower location in the direction from which the signal came, within which the cellular device was "most likely" located at the time of the call. (R. 881.) Duncan said that the Penlink software does not alter the information from the call details but "simply reads the information" to create the map. (R. 843.) Duncan admitted that the shaded areas on the computer-generated map do not represent the range of the towers and that she did not, in fact, know the exact range of any towers, only the approximate range, because the exact range of a tower is proprietary information known only by the cellular provider.[7]

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[7]At the pretrial hearing, Duncan testified that the shaded areas represent a 3- to 5-mile radius, not the approximate 20-mile range of the towers because, she said, with so many towers with overlapping ranges, it is "[m]ost likely" that a cellular signal will switch to another, closer, tower if the device moves more than 3 to 5 miles away from the tower. (R. Supp. 72.) Schenk testified at the pretrial hearing that

Duncan input into the PenLink software the information from the call details of Watson's, George's, and Belcher's cell phones and the software generated two maps,[8] which we have examined. As noted previously in this opinion, the maps generated by the software indicated that numerous calls were placed to or received by Watson's, George's, and Belcher's cell phones between 1:00 a.m. and 10:00 a.m. on November 2, 2015, that were routed through towers located near Wee Racing, Belcher's residence, the property identified as belonging to Watson's family, and the area where Payne's body was found. Duncan admitted that, if the testimony at trial that Steven and Bruce were near the area where Payne's body was found when they used Belcher's cell phone to make calls between 7:30 a.m. and 8:00 a.m., was true, the majority of those calls had not, in fact, been routed through the tower closest to that location but to another nearby tower. She also admitted that

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because the shaded areas did not represent the full range of the towers, the maps were misleading and inaccurate. Schenk did agree, however, that towers have a maximum range of approximately 20 miles.

[8]One map was color-coded to reflect the three different devices. The other was not color-coded but included the locations relevant to the crime -- Wee Racing, Belcher's residence, the property identified as belonging to Watson's family, and the location where Payne's body was found.

she could not testify to the exact location of Watson's, George's, or Belcher's cell phones when any of the calls were made.

Rule 701, Ala. R. Evid., provides:

> "If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue."

Rule 702, Ala. R. Evid., provides, in relevant part:

> "(a) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.
>
> "(b) In addition to the requirements in section (a), expert testimony based on a scientific theory, principle, methodology, or procedure is admissible only if:
>
> "(1) The testimony is based on sufficient facts or data;
>
> "(2) The testimony is the product of reliable principles and methods; and
>
> "(3) The witness has applied the principles and methods reliably to the facts of the case."

To the extent that Duncan testified about the locations of the cellular towers through which the calls were routed and produced computer-generated maps showing those locations, this Court has previously held that such testimony is permissible as lay-witness testimony. In Woodward v. State, 123 So. 3d 989 (Ala. Crim. App. 2011), Pete DeLeon and Jennifer Scheid, the custodians of records for cellular providers, provided similar testimony. Both used cell-phone records to create maps showing the locations of the cellular towers through which various relevant calls had been routed. This Court upheld the admission of the testimony:

> "Although our research has disclosed no Alabama case that addresses this issue, the Tennessee Court of Criminal Appeals addressed a similar issue in dicta when a defendant argued that the trial court had erred in permitting a detective to testify as an expert regarding cell-phone towers. State v. Hayes, (No. M2008-02689-CCA-R3-CD, Dec. 23, 2010) (Tenn. Crim. App. 2010) (not published in S.W.3d). The Tennessee Court of Criminal Appeals rejected the argument, stating:
>
> > "'The detective merely testified that he saw the locations of the cell phone towers listed on the cell phone records and plotted those locations on a map. He inferred that the defendant traveled near those towers. Detective Fitzgerald explicitly stated that he was not an expert in how the cell phone towers worked. We conclude that a layperson could plot the

> locations of the towers on a map and draw the same inference; therefore, his testimony did not require specialized knowledge as contemplated by Tennessee Rule of Evidence 702, which governs expert testimony, and the trial court did not err by allowing the testimony.'
>
> "We agree with the Tennessee court's analysis, and we adopt it here. DeLeon and Scheid testified based on their review of the records of the cell-phone company each worked for as a records custodian and based on their personal knowledge of the manner in which those records are generated and recorded. Neither DeLeon's nor Scheid's testimony required specialized knowledge. The testimony was offered to assist the jury to reach a clear understanding of the witness's testimony or to determine a fact in issue, and was thus properly offered as lay-witness testimony. Furthermore, the State did not offer the witnesses as experts, and the trial court, therefore, did not accept them as experts. Moreover, Woodward cross-examined each witness, and established through his cross-examination that each witness was able to explain to the jury which cell-phone tower a call went through when the call was made but was not able to give the exact location of the caller when the call was made. (R. 1131–33, 1166.)"

123 So. 3d at 1016-17 (footnote omitted). Although in this case Duncan used computer software to generate the maps rather than creating the maps herself, she testified that she could have created the same maps without the software, although it would have been time-consuming. In addition, she testified that the software does not alter any of the information from

the call details but simply reads the information to create the map. Therefore, Duncan's testimony in this regard was properly admitted.

We reach the same conclusion with respect to Duncan's testimony about her knowledge of how cellular signals connect to cellular towers and to the portion of the computer-generated maps that included shaded areas indicating the "most likely" location of the cellular devices based on the assumption that the devices connected to the closest cellular tower. In Perez v. State, 980 So. 2d 1126 (Fla. Dist. Ct. App. 2008), Florida's Court of Appeals for the Third District upheld the admission of similar testimony from a lay witness:

> "At trial, over defense objection, cellular telephone records custodians were permitted to testify from the cell phone records of Miguel Perez [the defendant's brother], [Hector] Laurencio, and [another accomplice] as to the time of calls between the three and also as to the physical location of the cell towers receiving and transmitting each call. The records custodian from Sprint-Nextel testified that persons making and receiving cell calls would physically be not more than three miles from the receiving tower.
>
> "....
>
> "The defendant ... contends that the trial court abused its discretion in allowing cellular telephone records custodians to testify that persons who placed cell phone calls would be within a certain

distance (one to three miles) from the cell towers identified with those calls. ...

"....

"We find that the testimony of Donna Plasmir and Janan Chandler, the records custodians from Sprint-Nextel and Metro PCS, did not constitute expert testimony under section 90.702, Florida Statutes (2007), and therefore was properly admitted. As in Gordon v. State, 863 So. 2d 1215, 1219 (Fla. 2003), the record demonstrates that Plasmir 'simply factually explained the contents of phone records.' As in Gordon, the custodians factually compared the locations on the phone records to locations on the cell site maps. Plasmir testified that a typical cell site covered an area of one to three miles. She then stated that the record for a particular cell phone details the actual cell tower off of which the call bounces. This testimony constituted general background information interpreting the cell phone records which did not require expert testimony. It did not reveal the precise location within that one to three mile radius from which the calls were generated. It only served to explain the concept of a cell site and how it generally related to cellular telephone company records. Moreover, there was no direct evidence presented by the defendant to dispute these generalized facts or question their validity. Compare United States v. Sepulveda, 115 F.3d 882 (11th Cir. 1997) (holding that scientific cell site analysis is necessary to determine liability for unauthorized use of cellular air time). A juror's own knowledge, experience and familiarity with the addresses of the receiving cell towers themselves as shown on the site map coupled with the familiarity of the location of the origin of the calls were sufficient for each juror to determine the location of the tower without the need for expert testimony. See McGough v. State, 302 So. 2d 751 (Fla. 1974). Therefore, the trial court did not abuse its

> discretion in overruling the defendant's objections and denying the defendant's motion for mistrial where the cell phone records and accompanying testimony were properly introduced."

980 So. 2d at 1129-32 (footnote omitted). As the Kansas Court of Appeals has recognized:

> "Interpreting cell phone data and locating calls within a particular geographic area on a map based on the location of the cell towers used in those calls is not complex, but a relatively simple process. It requires little more than understanding that cell phones generally connect to the nearest tower location and then applying that principle to facts supplied by the cell phone provider."

State v. Fleming, 286 P.3d 239 (Kan. Ct. App. 2012) (unpublished disposition). See also State v. DePaula, 170 N.H. 139, 152-55 166 A.3d 1085, 1096-99 (2017).

We agree with the reasoning in Perez and Fleming.[9] Therefore, we find no error in the admission of Duncan's testimony in this regard.

III.

George also contends that the trial court erred in admitting into evidence the cell-phone records relating to

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[9]We recognize that the majority of jurisdictions that have addressed this issue have held otherwise, see, e.g., State v. Johnson, 238 W.Va. 580, 797 S.E.2d 557 (2017), and the cases cited therein, but we are unpersuaded by those cases.

his, Watson's, and Belcher's cell phones because, he says, those records were not properly authenticated through the testimony of a witness with knowledge under Rule 901(b)(1), Ala. R. Evid.[10]

Initially, we point out that, although the State introduced into evidence George's and Belcher's cell-phone records, it did not introduce Watson's. Rather, George introduced Watson's cell-phone records during his cross-examination of Duncan. "'Under the doctrine of invited error, a defendant cannot by his own voluntary conduct invite error and then seek to profit thereby.'" Jackson v. State, 620 So. 2d 147, 148 (Ala. Crim. App. 1993) (quoting Phillips v. State, 527 So. 2d 154, 156 (Ala. 1988)). We recognize, as George argues, that Duncan testified, at least indirectly, about Watson's records, and that the computer-generated maps that were introduced into evidence by the State included cell-site-location information from Watson's records even though those records had not yet been introduced into evidence. However, we disagree with George's belief that those maps "relied heavily on the call detail records of Alyssa Watson" or that

[10]Watson does not raise this issue on appeal.

the location information from Watson's records was particularly important in the case against George. (George's reply brief, p. 6.) Not only were Watson's records largely cumulative to George's and Belcher's records, which, for the reasons explained below, were properly admitted into evidence, they contain only cell-site-location information relating to Watson's cell phone, not George's cell phone. Therefore, even if the invited-error doctrine did not apply here, any error in this regard was harmless with respect to George.

With respect to the records relating to George's and Belcher's cell phones, those records were properly authenticated. Rule 901(a), Ala. R. Evid., provides that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims," and Rule 901(b), Ala. R. Evid., provides a nonexhaustive list of ways to properly authenticate evidence. However, pursuant to Rule 902, Ala. R. Evid., some evidence is considered self-authenticating. Rule 902(11), Ala. R. Evid., provides, in relevant part:

> "Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:
>
> "....
>
> "(11) Certified Domestic Records of Regularly Conducted Activity. The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by an affidavit or sworn testimony of its custodian or other qualified person, certifying that the record:
>
> "(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
>
> "(B) was kept in the course of the regularly conducted activity; and
>
> "(C) was made by the regularly conducted activity as a regular practice."

Rule 803(6), Ala. R. Evid., in turn, provides:

> "The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
>
> "....
>
> "(6) Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all

> as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term 'business' as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit."

Both George's and Belcher's cell-phone records were admissible under Rule 803(6) against a hearsay objection and were accompanied by notarized certificates of authentication, stating:

> "I, Jason Kobran, being duly sworn, depose and say:
>
> "1. I am the custodian of records for Verizon, and in that capacity, I certify that the attached zip packet of records are true and accurate copies of the records created from the information maintained by Verizon in the actual course of business.
>
> "2. It is Verizon's ordinary practice to maintain such records, and that said records were made contemporaneously with the transaction and events stated, therein, or within a reasonable time thereafter."

(State's Exhibits 31 and 92.) Those certificates complied with the requirements in Rule 902(11). Therefore, the trial court properly admitted George's and Belcher's cell-phone records.

IV.

Watson and George contend that the evidence was insufficient to sustain their convictions because, they argue, Steven's and Bruce's testimony was not sufficiently corroborated.

Watson did not properly preserve this issue for review. Although Watson moved for a judgment of acquittal at the close of the State's case and filed a motion for a new trial, in neither motion did she argue that Steven's and Bruce's testimony was not sufficiently corroborated. Rather, Watson argued in her motion for a judgment of acquittal that the State presented no evidence indicating that she had participated in Payne's kidnapping and she argued in her motion for a new trial that the trial court had erred in denying her motion for a judgment of acquittal. Her arguments at trial did not properly preserve the accomplice-corroboration argument she now makes on appeal. See, e.g., Ex parte Weeks, 591 So. 2d 441, 442 (Ala. 1991), and Marks v. State, 20 So. 3d 166, 167-72 (Ala. Crim. App. 2008) (both refusing to consider an argument that a conviction was based on uncorroborated accomplice testimony when that argument had

not been properly and specifically presented to the trial court).

George, however, did preserve this argument for review when he moved for a judgment of acquittal at the close of the State's case on the ground that Steven's and Bruce's testimony had not been sufficiently corroborated. His argument is meritless.

> "Initially, this Court notes that '"[i]n 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 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).

"Further, pursuant to § 12-21-222, Ala. Code 1975, a felony conviction 'cannot be had on the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the commission of the offense, and such corroborative evidence, if it merely shows the commission of the offense or the circumstances thereof, is not sufficient.' '"The test for determining whether there is sufficient corroboration of the testimony of an accomplice consists of eliminating the testimony given by the accomplice and examining the remaining evidence to determine if there is sufficient incriminating evidence tending to connect the defendant with the commission of the offense."' Ex parte Bullock, 770 So. 2d 1062, 1067 (Ala. 2000) (quoting Andrews v. State, 370 So. 2d 320, 321 (Ala. Crim. App. 1979), citing in turn Miller v. State, 290 Ala. 248, 275 So. 2d 675, 677 (1973)).

"'The term "corroborate," when used in this connection, has been said to mean, in its legal significance, to strengthen, not necessarily the proof of any specific fact as to which the accomplice has testified, but the probative, criminating force of his or her testimony.' 23 C.J.S. Criminal Law § 1364 (2006) (footnotes omitted). See also Kuenzel v. State, 577 So. 2d 474, 518 (Ala. Crim. App. 1990) (defining corroborate as 'to strengthen, to make stronger; to strengthen, not the proof of any particular fact to which the witness has testified, but to strengthen the probative, criminating force of his testimony') (citations and quotations omitted). 'While corroborating evidence need not be strong, it "... must be of substantive character, must be inconsistent with the innocence of a defendant and must do more than raise a suspicion of guilt."' Booker v. State, 477 So. 2d 1388, 1390 (Ala. Crim.

App. 1985) (quoting McCoy v. State, 397 So. 2d 577 (Ala. Crim. App. 1981)). See also McGowan v. State, 990 So. 2d 931, 987 (Ala. Crim. App. 2003) (explaining that although evidence corroborating an accomplice's testimony need only be slight, it must tend to connect the defendant to the crime and be inconsistent with innocence). Although the corroboration must tend to connect the defendant to the crime, it 'need not be sufficiently strong by itself to warrant a conviction.' Miles v. State, 476 So. 2d 1228, 1234 (Ala. Crim. App. 1985). See also Gavin v. State, 891 So. 2d 907, 976 (Ala. Crim. App. 2003) (explaining that corroborating evidence by itself need not be sufficient to sustain a conviction). Stated differently, '[c]orroborative evidence need not directly connect the accused with the offense but need only tend to do so.' Pace v. State, 904 So. 2d 331, 347 (Ala. Crim. App. 2003) (quoting Ware v. State, 409 So. 2d 886, 891 (Ala. Crim. App. 1981), quoting in turn State v. Canada, 107 Ariz. 66, 481 P.2d 859 (1971)). See also Miles, 476 So. 2d at 1234 (citing Lambert v. State, 55 Ala. App. 669, 318 So. 2d 364 (1975), and Peoples v. State, 56 Ala. App. 290, 321 So. 2d 257 (1975)) ('The only requirement is that it tend to connect the accused with the offense.'). Indeed, as this Court has repeatedly explained, accomplice '"[c]orroboration need only be slight to suffice,"' Stoinski v. State, 956 So. 2d 1174, 1182 (Ala. Crim. App. 2006) (quoting Ingle v. State, 400 So. 2d 938, 940 (Ala. Crim. App. 1981)), and the plain language of § 12-21-222, Ala. Code 1975, requires only 'other evidence tending to connect the defendant with the commission of the offense....' (emphasis added).

"Additionally, 'it is not necessary that the accomplice should be corroborated with respect to every fact as to which he or she testifies, nor is it necessary that corroboration should establish all the elements of the offense.' 23 C.J.S. Criminal Law § 1369 (2006) (footnotes omitted). See also Arthur v. State, 711 So. 2d 1031, 1059 (Ala. Crim.

> App. 1996) (citations omitted) ('Corroborative evidence need not directly confirm any particular fact nor go to every material fact stated by the accomplice.'); Ferguson v. State, 814 So. 2d 925, 952 (Ala. Crim. App. 2000) (same). 'If the accomplice is corroborated in part, or as to some material fact or facts tending to connect the accused with the crime, or the commission thereof, this is sufficient to authorize an inference by the jury that he or she has testified truly even with respect to matters as to which he or she has not been corroborated, and thus sustain a conviction.' 23 C.J.S. Criminal Law § 1369 (2006) (footnotes omitted). See also Dykes v. State, 30 Ala.App. 129, 133, 1 So. 2d 754, 756–57 (1941) (citations omitted) (explaining that '[i]t has been repeatedly held, and advisedly so, that the corroboration of the testimony of an accomplice need not go to every material fact to which he testifies. If corroborated in some of such facts the jury may believe that he speaks the truth as to all.'). Further, circumstantial evidence may be sufficient to corroborate the testimony of an accomplice. Arthur, 711 So. 2d at 1059 (citing Jackson v. State, 451 So. 2d 435, 437 (Ala. Crim. App. 1984)). See also Steele v. State, 911 So. 2d 21, 28 (Ala. Crim. App. 2004) (explaining that accomplice testimony may be corroborated by circumstantial evidence).
>
> "'Whether such corroborative evidence exists is a question of law to be resolved by the trial court, its probative force and sufficiency being questions for the jury.' Caldwell v. State, 418 So. 2d 168, 170 (Ala. Crim. App. 1981) (citations omitted)."

Green v. State, 61 So. 3d 386, 391-93 (Ala. Crim. App. 2010).

In this case, after thoroughly reviewing the record, we conclude that there was minimally sufficient evidence to corroborate Steven's and Bruce's testimony. Aside from

Steven's and Bruce's testimony, there was evidence indicating that Payne disappeared on October 30, 2015, after going to a party with Watson, George, Bruce, and Belcher. Her body was found 10 days later in Talladega National Forest tied to a tree with, among other things, coaxial cable. On November 2, 2015, three days after Payne disappeared and seven days before she was found, Steven and Bruce were arrested near the area where Payne's body was found; they had blood on their clothes, and Steven had two cell phones on his person. There appeared to be coaxial cable cut from the crawl space under a house on property belonging to Watson's family. Blood and hair were found in Belcher's automobile and a pink belt was found in a vehicle parked at Belcher's residence. An automobile battery was found inside Belcher's residence, and Payne's vehicle, when found, was missing the battery. Cell-phone records indicated that Watson, George, and Belcher were not only in contact with each other repeatedly between 1:00 a.m. and 10:00 a.m. the morning of November 2, 2015, the day Steven and Bruce were arrested, but they were near each other during most of that time, with their calls having been routed through cellular towers located near Belcher's residence, a business

owned by Belcher's father, the property belonging to Watson's family, and the area where Payne's body was found. See, e.g., Mullis v. State, 545 So. 2d 205, 210 (Ala. Crim. App. 1989) ("In certain instances, association with the accomplice tending to show the accused's proximity, chronologically and geographically, to the alleged offense may furnish sufficient corroboration.").

Although this evidence was certainly not sufficient by itself to sustain George's conviction and it did not establish all the elements of the offense, it did tend to connect George to the offense, and that is all that is required. Therefore, the trial court properly denied George's motion for a judgment of acquittal.

V.

Although not argued by Watson or George, we note:

> "It is well settled that an individual may not, consistent with the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States, be convicted of felony murder and of the felony underlying the felony-murder conviction. See Jones v. State, 992 So. 2d 76, 76 (Ala. Crim. App. 2007) (holding that when the same burglary forms the basis for a felony-murder conviction and a burglary conviction, 'convictions for both felony-murder and first-degree burglary violate double jeopardy principles'); Harris v. State, 854 So. 2d 145, 152 (Ala. Crim. App. 2002); Brooks v. State, 952 So. 2d

> 1180, 1184 (Ala. Crim. App. 2006). In such cases, a double-jeopardy violation occurs because the felony underlying the felony-murder conviction is a lesser-included offense of felony murder. See Brooks, 952 So. 2d at 1184. It is also well settled that this type of '"transgression ... implicates the trial court's jurisdiction to render a judgment."' Harris, 854 So. 2d at 152 (quoting Borden v. State, 711 So. 2d 498, 503 (Ala. Crim. App. 1997), citing in turn Rolling v. State, 673 So. 2d 812 (Ala. Crim. App. 1995))."

Washington v. State, 214 So. 3d 1225, 1230 (Ala. Crim. App. 2015). In this case, kidnapping in the first degree is a lesser-included offense of felony murder during a kidnapping in the first degree. Therefore, Watson's and George's convictions for both felony murder during a kidnapping in the first degree and kidnapping in the first degree violate double-jeopardy principles. "The proper remedy when a defendant is convicted of both a greater and a lesser-included offense is to vacate the conviction and the sentence for the lesser-included offense." Williams v. State, 104 So. 3d 254, 265 (Ala. Crim. App. 2012).

Based on the foregoing, we affirm Watson's and George's convictions and sentences for felony murder. We reverse Watson's and George's convictions and sentences for kidnapping in the first degree, and we remand this cause for the trial

court to set aside those convictions and sentences. No return to remand need be filed.

CR-18-0377 -- AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

CR-18-0435 -- AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

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