REL: December 16, 2020

Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-18-1190

Danny Dewayne Adams, Jr.

v.

State of Alabama

Appeal from Jefferson Circuit Court
(CC-17-3094)

McCOOL, Judge.

Danny Dewayne Adams, Jr., appeals his conviction for murder, see § 13A-6-2(a)(1), Ala. Code 1975, and his resulting sentence of life

imprisonment. He was also ordered to complete "SAP, GED, trade and behavioral management courses," and to pay court costs and attorney fees. (C. 84.)

Facts and Procedural History

On September 22, 2017, a Jefferson County grand jury indicted Adams for the murder of Ledarius Marquis Belser.

The following evidence was presented at trial. Fredreco Williams testified that on the night of January 28, 2017, Belser picked him up from Williams's grandmother's house in Belser's black Tahoe vehicle. Shawn Smith was also in the Tahoe. Belser, Williams, and Smith went to a nightclub called "Handsome Brute," (hereinafter referred to as "the club"). (R. 441.) The men arrived at the club at approximately 12:30 A.M. and went to the bar and got a drink. The men then went outside to the patio, where they stayed for approximately 45 minutes before returning to the inside of the club. Williams stated that as he was walking toward the dance floor, he accidentally "bumped" shoulders with Adams because the club was crowded. (R. 450.) According to Williams, Belser began "standing up for [Williams]" and Belser "got into it" with another man with Adams,

who was "standing up for [Adams.]" (R. 452.) The other man had "dreads" and brown skin. (R. 452.) Williams testified that the security guards then escorted Adams out of the club, and Belser and the other male who had been with Adams continued to argue. Williams stated that the argument ended and the club closed shortly thereafter and everyone went outside. As Belser, Smith, and Williams were headed back to Belser's Tahoe in the parking lot, Williams saw Adams heading toward them. Williams then saw Adams lift up his shirt and pull out a gun. Williams claimed that Adams then pointed his gun toward Williams and Belser and started shooting. Belser and Williams began running toward Belser's Tahoe. According to Williams, as Belser was trying to get in his Tahoe, Adams shot Belser eight or nine times. Williams stated that the man who had been arguing with Belser inside the club and a third man who had been with Adams were also nearby. According to Williams, the third man "look[ed] like he was directing everything"; however, Williams never saw either of the other men shoot a gun. (R. 465.) Adams and the other men fled the scene. Williams got Belser in the Tahoe and drove him to

Princeton Hospital. Video surveillance tapes taken during the night of the incident from the club and from the parking lot were played for the jury.

Shawn Smith testified that he went with Belser and Williams to the club on the night of the incident. Smith saw Williams and Adams bump each other and look at each other "kind of crazy," so Smith stepped in and told them that it was not "that deep" and that they were just trying to "have a good time." (R. 611.) Smith testified that Adams subsequently got thrown out of the club. According to Smith, when the club closed and everyone began leaving the club, Williams and Belser were walking in front of Smith and Nakita, a girl that Smith had met up with at the club. Smith stated that Williams and Belser were walking toward Belser's Tahoe and, after Smith parted ways with Nakita, Smith began walking toward Belser's Tahoe. Smith testified that as Williams and Belser were walking toward Belser's Tahoe, he saw Adams walk up behind Belser and Williams. Smith testified that he then saw Adams walk up to Belser, "pull a gun off his hip," and shoot toward Belser. (R. 619.) Smith stated that when he heard the first gunshot, he began running. Smith testified that he ran toward the police and told them that Adams was shooting Smith's

friend. According to Smith, "when he looked back, [Adams] was standing over [Belser]." (R. 618.)

Detective Monica Law with the Birmingham Police Department testified that on the night of January 28, 2017, although she was employed by the Birmingham Police Department, she was working an off-duty job at the club as a security officer. Detective Law was standing near the elevated DJ booth, which was near the dance floor, when she saw some men who appeared to be having an argument. Detective Law stated that she recalled a man getting escorted out of the club that night. Detective Law remembered that, later in the evening when the club closed, she was still inside the club when a woman who had just exited the club ran back inside and informed the officers that "people were shooting outside." (R. 718.) Detective Law and the other officers went outside to investigate; however, she never heard any gunshots.

Officer Michael Stinson and Officer Ronald Bush, Jr., both with the Birmingham Police Department, testified that they were also working as security officers at the club on the night of January 28, 2017. Officer Bush recalled that two people began arguing in the club that night and that,

because the argument "was probably going to lead to a fight," the officers separated everyone and made one person leave the club. Officer Bush testified that, shortly thereafter, the club closed. The officers testified that, later in the evening, a woman came inside the club and said "they're shooting outside." (R. 766.) When Officer Stinson went outside, he heard gunshots. As Officer Stinson was making his way across the street, he saw a vehicle that was later determined to be Belser's Tahoe coming toward him and drive away from the club. Officer Stinson called the vehicle tag into the police department. Officer Stinson and Officer Bush went back across the street where the shooting occurred. The officers discovered a black hat, cigarettes, and shell casings on the ground. Officer Stinson also saw blood on the ground. Officer Stinson testified that when he watched the video recording from the scene of the incident, he saw a man with "dreads" standing in the nearby intersection and he identified that individual as "Toke," who was identified during trial as Teraoasis Johnson. (R. 784.)

Several other officers who were working for the Birmingham Police Department responded to the scene and collected evidence, including

Officer James Logan. Officer Logan testified that the evidence located at the scene included a few fired shell casings, a couple of ball caps, a red stain on the ground that appeared to be blood, unfired cartridges, a billfold, and a pack of cigarettes. Officer Logan explained that most of the fired shell casings that he found were .45-caliber bullets, and that one of them was a .40-caliber bullet. He also testified that a black hat located at the scene was located near where the Belser's Tahoe had been parked.

Officer Adam Smith and Officer Justin Blair with the Birmingham Police Department also testified that, while on patrol on the night of the incident, they each received information over the radio about a Tahoe that had left the scene of the shooting. Officer Blair testified that shortly after he heard officers over the radio provide "a description of a dark [SUV] with possible suspects inside and a possible victim," (R. 917), he saw a black Tahoe coming up the street from the opposite direction "with its flashers on." (R. 917.) Officer Blair initiated his traffic lights and sirens and began pursuit of the Tahoe; however, Officer Blair stated, the driver of the Tahoe refused to stop. Officer Blair followed the Tahoe to Princeton Hospital, and Officer Smith responded to Princeton Hospital as well. The

officers testified that Belser was helped inside the hospital, and that the driver of the vehicle, who was later determined to be Williams, was detained until officers determined that he was not responsible for the incident.

Detective Ivor Sanders, a homicide investigator with the Birmingham Police Department at the time of the incident, responded to Princeton Hospital to try to talk to Belser and Williams. Det. Sanders spoke with Williams and determined that Williams was not a suspect in the shooting. Det. Sanders also interviewed Smith during his investigation. Det. Sanders collected the surveillance video from the club and from a drugstore that shared the parking lot of the club. According to Det. Sanders, he was able to determine that Johnson was a possible suspect, and he showed Smith and Williams a photograph of Johnson. Smith and Williams informed Det. Sanders that Johnson was present at the scene, but that Johnson was not the shooter. During Det. Sanders's investigation, an individual informed Det. Sanders that he "need[ed] to look into Danny Adams" as possibly being the shooter. (R. 1092.) Det. Sanders then met with Williams and Smith. According to Det. Sanders,

Williams identified Adams as being the shooter from a photographic lineup, and Smith identified Adams as having a gun at the scene on the night of the incident. Det. Sanders testified that he interviewed Johnson about the incident, and Johnson admitted that he was present when the shooting occurred; however, Johnson told Det. Sanders that Adams was the shooter.

The parties stipulated to the following facts, as read into the record by the court:

> "On February 6, 2017, Teraoasis Johnson was arrested by the Oxford Police Department in Oxford, Alabama. At that time, Mr. Teraoasis Johnson was found in possession of a Glock [brand] 27 pistol, Serial No., ... [#] WKY 744...
>
> "The pistol was kept in an evidence locker at the Oxford Police Department. ATF Agent Eric Hoxter then took possession of the pistol. ATF Agent Eric Hoxter transported test-fired cartridge casings from the Glock 27 pistol, Serial No., [#] WKY 744 to Samara Hunter of the Birmingham Police Department."

(R. 994-95.)

Samara Hunter, a forensic scientist with the firearm and toolmark unit of the Birmingham Police Department, testified as an expert in forensic firearm and toolmark examination. Hunter explained that her

testing revealed that most of the unfired cartridges and the fired cartridge cases that were collected at the scene had been fired from a .45- caliber pistol, and all the .45-caliber cartridges and casings were fired from the same gun. Hunter also testified that she was able to determine that the .40-caliber bullet and .40-caliber fired cartridge casing that was collected at the scene of the incident had been fired from the same Glock brand 27 pistol that was in Johnson's possession when he was arrested on February 6, 2017. Hunter also testified that the bullet that was removed from Belser's body during the autopsy was fired from a .45-caliber pistol.

Dr. Gregory George Davis, the chief coroner medical examiner for Jefferson County, testified as an expert in the field of forensic pathology. Dr. Davis testified that he performed the autopsy of Belser, which revealed that Belser had sustained multiple gunshot wounds to his body. He stated that Belser "died as a result of ... multiple organ system failure caused by sepsis that, in turn, was caused by injury to his colon and small bowel that came about because of a gunshot wound to his abdomen." (R. 575.)

The State rested its case. Defense counsel moved for a judgment of acquittal, arguing that the State had failed to make a prima facie case for murder. The defense motion for a judgment of acquittal was denied.

Adams testified in his own behalf. Adams claimed that he had never been to the club and that he was not involved in the shooting of Belser on the night of the incident. The defense rested and renewed its motion for judgment of acquittal, which was again denied. The jury convicted Adams of murder, and he was sentenced to life imprisonment.

Discussion[1]

I.

Adams argues on appeal that the circuit court erred by failing to declare a mistrial after jurors expressed that they "felt intimidated and nervous about [Adams]." (Adams's brief, at 6.) He also claimed that the circuit court erred by failing to replace Juror H.H.[2] with an alternate juror.

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[1]We address Adams's claims in a different order than presented in his brief on appeal.

[2]We refer to the jurors using initials to protect their anonymity.

After the parties presented their closing arguments and the court instructed the jury on the appropriate charges, the jury began deliberations. The record indicates that, during deliberations, the jury took a break and went outside for a cigarette break. When the jurors returned inside after their cigarette break, the jurors told the court bailiff that Adams "was out there pointing and saying, 'That's a juror, that's a juror, and that's a juror,' " and the jurors indicated to the bailiff that Adams's actions made them feel "kind of uncomfortable about that." (R. 1260.) Defense counsel explained to the court that, when he saw the jurors going outside for a break, he texted Adams, who was also outside smoking a cigarette, and informed Adams that he needed to be sure that he was not speaking around the jurors or cutting up and laughing around them. Adams explained to the court that he had been outside when the jurors came outside and that he was telling his brother and his cousin to not speak about case or anything because the jurors were outside. Defense counsel requested that the court poll the jurors to determine whether the jurors could possibly have been impacted or felt intimidated by the interaction between them and Adams.

The jury foreperson identified for the court the four jurors who had been outside during the interaction, and the court interviewed three of those jurors individually. A fourth juror, Juror H.H., did not want to come speak to the court individually; however, she later explained to the court that she did not want to come speak to the court because she had not seen Adams or the events outside because she had her back toward Adams. Juror H.H. told the court that she did not feel intimidated, she just did not believe there was any reason to speak with the court about anything because she did not see anything.

The court explained to the jurors involved individually, and again explained to the entire panel that "Mr. Adams was identifying the people on the jury so that his friends or whoever he was out there with would not say anything to influence –- improperly influence because I had given the instruction, no talking, no interaction or anything. And so he just wanted to make sure that the folks he was with knew who you were so that they would not do that." (R. 1277.) The court then polled the jury to "make sure that there's no one on the jury who would [have] any reason to have their decision changed or swayed in any way because of this event." (R. 1277.)

Defense counsel then asked the court to replace Juror H.H. with the alternate juror out of an abundance of caution because Juror H.H. had expressed such concern with addressing the court on the topic. The court denied defense counsel's motion to replace Juror H.H.

Adams's claim on appeal that the court should have granted a mistrial is not preserved for appellate review. " 'Review on appeal is restricted to questions and issues properly and timely raised at trial .... [T]o preserve an issue for appellate review, it must be presented to the trial court by a timely and specific motion setting out the specific grounds in support thereof.' " Ex parte Coulliette, 857 So. 2d 793, 794 (Ala. 2003)(citations omitted). It is well settled that " '[t]o be timely, a motion for a mistrial must be made "immediately after the question or questions are asked that are the grounds made the basis of the motion for the mistrial." ' " Allen v. State, 659 So. 2d 135, 144 (Ala. Crim. App. 1994) (quoting Powell v. State, 631 So. 2d 289, 292 n. 2 (Ala. Crim. App. 1993), quoting in turn Ex parte Marek, 556 So. 2d 375, 379 (Ala. 1989)). Here, Adams never moved for a mistrial on this matter. Accordingly, this claim is not preserved for appellate review.

Additionally, to the extent that Adams contends that the court erred by failing to replace Juror H.H. with an alternate juror, this claim also fails. This Court has explained:

> "[Section 12-16-100(c), Ala. Code 1975,] allows the trial court, at its election, to use the alternate 'if it becomes necessary for an alternate to replace a principal juror.' § 12–16–100(c), Ala. Code 1975. When analyzing a circuit court's decision to replace a principal juror with an alternate, this Court has stated:
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> > " ' "Whether it is necessary for an alternate juror to replace a principal juror under § 12–6–100(c), as amended, Code of Alabama 1975, is a decision within the sound discretion of the trial judge, subject only to review for an abuse of discretion." Rocker v. State, 443 So.2d 1316, 1320 (Ala. Cr. App. 1983) (citations omitted).
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> > > " ' "As for the judge's decision that the circumstances are such that a juror must be excused and replaced by an alternate or additional juror, the judge has considerable discretion here as well. Despite the fact that there are circumstances in which the defendant has a 'right to have his trial completed by a particular tribunal,' the judge's action in excusing a juror will be upheld 'if the record shows some legitimate basis for his decision.' This is because the defendant has still been tried by 12 persons selected by him, with even those originally designated as

> alternates being selected in the same fashion as the other jurors."
>
> "3 W. LaFave & J. Israel, Criminal Procedure § 21.3(e), p. 742 (1984) (footnotes omitted)."

Gaston v. State, 265 So. 3d 387, 435-36 (Ala. Crim. App. 2018)(quoting Thomas v. State, 615 So. 2d 141, 143 (Ala. Crim. App. 1992)).

In the present case, when questioned about the situation involving the encounter between Adams and the jurors outside the courthouse, Juror H.H. explained that she did not see Adams's gestures or what he was saying and that she did not feel intimidated in any way. She also explained that her reason for not wanting to speak with the court about the incident was because she did not witness any of the interaction and that she did not feel there was anything to say on the matter. Thus, Adams has failed to demonstrate how the circuit court's decision to allow Juror H.H. to remain on the jury constituted an abuse of the court's considerable discretion. Consequently, Adams is not entitled to relief on this claim.

II.

Adams contends that he was denied the right to a fair trial because, he says, the State violated the circuit court's order granting his motion in limine concerning evidence indicating that Adams either was in possession of a pistol at the time of his arrest or had discarded a pistol at the time of his arrest. Before trial, Adams filed several motions in limine, including a motion in limine asking the circuit court to prohibit "both the prosecution and the defense from mentioning the location and circumstances surrounding the arrest of [Adams] including but not limited to his alleged possession of any firearm and/or the discard of any firearm at or near the time of his arrest." (C. 227.) When discussing the matter before trial, the circuit court addressed this specific motion stating that it was granted, with the condition that, if Adams took the stand, the prosecutor may be entitled to go into that if Adams opens the door; however, the court informed the prosecutor that the court would like to be informed before the prosecutor went into the discussion of those topics. See (R. 106.)

During trial, Adams took the stand to testify in his own behalf. During the prosecutor's cross-examination of Adams, the following occurred:

> "[Prosecutor:] Have you ever owned a gun before, Mr. Adams?
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> "[Adams:] No, ma'am. I haven't.
>
> "[Prosecutor:] You've never owned a gun before?
>
> "[Adams:] No, ma'am.
>
> "[Prosecutor:] Have you ever possessed a gun?
>
> "[Adams:] No, ma'am.
>
> "[Prosecutor:] Have you ever fired a gun?
>
> "[Adams:] No, ma'am.
>
> "[Prosecutor:] At this time, Your Honor, I think it's important for us to approach the bench."

(R. 1142-43.) A side-bar conference was held. The prosecutor argued that, because Adams had now denied possession of a gun, the court should reconsider whether the information that Adams was in possession of a gun at the time of his arrest should be admissible. The prosecutor maintained that Adams was being charged with firing a pistol and causing the death

of the victim in this case and, thus, it was relevant to the case whether Adams "had a gun or has a gun or knows how to fire a gun to show both his opportunity and knowledge regarding the pistol." (R. 1148.) Defense counsel objected, claiming that it was prosecutorial misconduct for the State to try to bait Adams into discussing the gun that he possessed when he was arrested and that the State should not be allowed to discuss the evidence indicating that Adams was in possession of a gun at the time of the arrest because, he argued, the evidence was more prejudicial than probative. Defense counsel also explained that he may have caused confusion for Adams by informing Adams not to answer questions about the gun that he had in his possession when arrested, which counsel believed resulted in Adams's answer denying that he had ever possessed a gun. Ultimately, the court upheld its ruling that the State could not discuss the gun that had been found near Adams when he was arrested. The Court then allowed the prosecutor to clarify Adams's answer about whether he had ever possessed a gun. The following occurred:

"[Prosecutor:] Mr. Adams, have you ever possessed a gun?

"[Adams:] Yes, ma'am."

(R. 1159.)

This section of Adams's brief is convoluted and confusing. Adams appears to raise several different claims within one section of his brief. To the extent that Adams suggests that the State's series of questions entitled him to a mistrial, this claim was not preserved for appellate review because Adams did not move for a mistrial on this matter. See Allen, 659 So. 2d at 144. To the extent Adams contends that the circuit court improperly allowed the introduction of evidence concerning whether Adams had ever possessed a gun, this claim is not preserved for appellate review. "In order for this Court to review an alleged erroneous admission of evidence, a timely objection must be made to the introduction of the evidence, specific grounds for the objection should be stated and a ruling on the objection must be made by the trial court." Goodson v. State, 540 So. 2d 789, 791 (Ala. Crim. App. 1988), abrogated on other grounds recognized by Craig v. State, 719 So. 2d 274 (Ala. Crim. App. 1998). "When a timely objection at the time of the admission of the evidence is not made, the issue is not preserved for this Court's review." Ziglar v. State, 629 So. 2d 43, 47 (Ala. Crim. App. 1993). Here, Adams did not

object to the prosecutor's questions concerning whether Adams had ever possessed a gun. Adams merely objected to allowing the prosecutor to continue further questioning specifically addressing the firearm that was found when Adams was arrested, and this objection was not made until the prosecutor asked to approach the bench and sought guidance from the circuit court on whether the court would allow such testimony. Therefore, this specific claim was not preserved for appellate review.

To the extent that Adams contends that his trial counsel was ineffective for failing to object to the prosecutor's questions regarding Adams's possession of a gun, this portion of Adams's brief fails to comply with the requirements of Rule 28(a)(10), Ala. R. App. P. Rule 28(a)(10) requires that an argument include "the contentions of the appellant/petitioner with respect to the issues presented, and the reasons therefor, with citations to the cases, statutes, other authorities, and parts of the record relied on." See, e.g., C.B.D. v. State, 90 So. 3d 227, 239 (Ala. Crim. App. 2011)("Failure to comply with Rule 28(a)(10) has been deemed a waiver of the issue presented."); Zasadil v. City of Montgomery, 594 So. 2d 231, 231 (Ala. Crim. App. 1991)("[W]e are not required to consider

matters on appeal unless they are presented and argued in brief with citations to relevant legal authority."). In this portion of Adams's brief, Adams merely cited general caselaw concerning mistrials and the law concerning the admissibility of certain evidence. Adams failed to cite any legal authority supporting his claim that his counsel was ineffective. Thus, this claim is not properly before this Court for review.

Lastly, inasmuch as Adams claims on appeal that the State circumvented the circuit court's ruling granting the motion in limine and, thereby, committed prosecutorial misconduct, this claim is meritless.

> "'"In reviewing allegedly improper prosecutorial argument, we must first determine if the argument was, in fact, improper. If we determine that the argument was improper, the test for review is not whether the comments influenced the jury, but whether they might have influenced the jury in arriving at its verdict." Smith v. State, 698 So. 2d 189, 202–03 (Ala. Crim. App. 1996), aff'd, 698 So. 2d 219 (Ala. 1997), cert. denied, 522 U.S. 957, 118 S.Ct. 385, 139 L.Ed.2d 300 (1997) (citations omitted); Bush v. State, 695 So. 2d 70, 131 (Ala. Cr. App. 1995), aff'd, 695 So. 2d 138 (Ala. 1997), cert. denied, 522 U.S. 969, 118 S.Ct. 418, 139 L.Ed.2d 320 (1997)(citations omitted). "The relevant question is whether the prosecutor's comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.' " Darden v. Wainwright, 477 U.S. 168, 181, 106 S.Ct. 2464, 2471, 91 L.Ed.2d 144 (1986), quoting Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868, 40 L.Ed.2d 431

> (1974). Comments made by the prosecutor must be evaluated in the context of the whole trial. Duren v. State, 590 So.2d 360, 364 (Ala. Cr. App. 1990), aff'd, 590 So. 2d 369 (Ala. 1991), cert. denied, 503 U.S. 974, 112 S.Ct. 1594, 118 L.Ed.2d 310 (1992).' "

Thompson v. State, 153 So. 3d 84, 157 (Ala. Crim. App. 2012)(quoting Simmons v. State, 797 So. 2d 1134, 1161–62 (Ala. Crim. App. 1999)(opinion on return to remand)). In this particular case, the circuit court granted Adams's motion in limine to prohibit any discussion about the gun that was discovered when Adams was arrested; however, the motion in limine did not cover the general topic of whether Adams had ever possessed a gun. The prosecutor in this case addressed the court outside the presence of the jury before moving forward with questioning concerning the topic covered by the motion in limine. Therefore, Adams's claim alleging prosecutorial misconduct is meritless.

III.

Next, Adams contends that his conviction was based on perjured testimony and is, thus, due to be reversed. Specifically, Adams claims in his brief on appeal that Williams's and Smith's in-court identification of Adams as the shooter was perjured testimony that the State knew to be

false because the State knew that Williams and Smith had identified Adams as the shooter only after law enforcement had pointed to Adams's picture in a pretrial photographic lineup.

During pretrial discussions, defense counsel moved to prohibit the identification of Adams as the shooter by Williams. The State informed the Court of the following:

> "[Prosecutor:] ... During a witness meeting, I met with one of our witnesses in the case who indicated to me that he had difficulty identifying the defendant in a photo lineup. And then the detective left the room and came back and pointed to a picture and said, [t]his is who Shawn Smith, the other witness, identified."

(R. 161.) The circuit court ordered that evidence of the pretrial photographic lineup in which Williams participated be prohibited from admission into evidence at trial. Defense counsel argued that Williams should also be prohibited from identifying Adams in an in-court identification because "the tainted lineup" could not be separated from any testimony given in court. (R. 164.) The court denied the defense motion in regard to Williams being allowed to identify Adams in court, and the court

told defense counsel that he could question Williams on cross-examination on that matter.

Initially, we note that the instant claim is essentially a challenge to the weight of the evidence, challenging the jury's resolution of the credibility of the witnesses who he contends presented perjured testimony against him at trial. "Matters of the credibility of witnesses and any apparent conflicts in the evidence go to the weight of the evidence and not to the sufficiency. Brown v. State, 588 So. 2d 551, 559 (Ala. Crim. App. 1991). See also Carter v. State, 420 So. 2d 292, 294 (Ala. Crim. App. 1982)." Pettway v. State, 624 So. 2d 696, 698 (Ala. Crim. App. 1993). That claim is not preserved because it is raised for the first time on appeal. See Zumbado v. State, 615 So. 2d 1223, 1241 (Ala. Crim. App. 1993)("The issue of the weight of the evidence is preserved by a motion for a new trial, stating 'that the verdict is contrary to law or the weight of the evidence.' See A.R.Cr.P. 24(c)(1)."). Although Adams purported to challenge the weight of the evidence in his motion for a new trial, his claim in his motion for a new trial was actually a challenge to the sufficiency of the evidence, wherein Adams stated, "[t]he evidence shows that Mr. Adams

was likely intoxicated at the time of the incident and it is not possible for the State to show that his actions were the kind that he was aware of and intentionally taken with the knowledge of the outcome of those actions." (C. 309.)

Moreover, even if Adams had properly preserved this issue for review, his argument is without merit. With respect to the weight of the evidence, it is well settled:

> "[T]his Court will not upset the jury's verdict except in extreme situations in which it is clear from the record that the evidence against the accused was so lacking as to make the verdict wrong and unjust. Deutcsh v. State, 610 So. 2d 1212, 1234-35 (Ala. Cr. App. 1992). This Court will not substitute itself for the jury in determining the weight and probative force of the evidence. Benton v. State, 536 So. 2d 162, 165 (Ala. Cr. App. 1988)."

May v. State, 710 So. 2d 1362, 1372 (Ala. Crim. App. 1997). See also Williams v. State, 10 So. 3d 1083, 1087 (Ala. Crim. App. 2008). Furthermore, "[t]he weight and probative value to be given to the evidence, the credibility of the witnesses, the resolution of conflicting testimony, and inferences to be drawn from the evidence are for the jury." Smith v. State, 698 So. 2d 189, 214 (Ala. Crim. App. 1996), aff'd, 698 So.

2d 219 (Ala. 1997). Here, Williams and Smith were both cross-examined on the circumstances and nature of their pretrial identifications of Adams. The determination concerning the credibility of Williams's and Smiths's in-court testimony identifying Adams as the man who shot Belser was a question for the jury to decide.

Further, even if we consider the merits of this claim as a claim challenging the State's use of perjured testimony to obtain a conviction, Adams is not entitled to relief. This Court has held:

> " 'In order to obtain a new trial on the basis of the use of perjured testimony by the State, a defendant must allege and prove (1) that the testimony was perjured; (2) that the perjured testimony was on a matter of such importance that the truth would have prevented a conviction. Ex parte Reliford, 37 Ala. App. 697, 75 So. 2d 90 (1954); (3) that the prosecution had knowledge that the testimony was perjured; and (4) that the defendant was not negligent in discovering the falsehood and in raising the issue ....' "

Goodman v. State, 412 So. 2d 1264, 1265 (Ala. Crim. App. 1982)(quoting Summers v. State, 366 So. 2d 336, 343 (Ala. Crim. App. 1978)). In the present case, Adams has failed to prove that the testimony that he is challenging –- Williams's and Smith's in-court identification of Adams as the man who shot Belser –- was perjured testimony, or that the State

knew said testimony was perjured. The fact that Williams's pretrial identification of Adams may have been suggestive and found to be inadmissible by the trial court does not automatically render a subsequent in-court identification inadmissible. This Court stated:

> " 'Whether an in-court identification has been so tainted by an extrajudicial identification as to vitiate the in-court identification is not to be determined solely by the circumstances of the extrajudicial identification, but all of the circumstances relative to the identification of defendant by the witness are to be taken into consideration, and if it is determinable therefrom that an in-court identification was independent of the extrajudicial identification, evidence of the in-court identification is admissible.' (Citations omitted)."

Matthews v. State, 401 So. 2d 241, 246 (Ala. Crim. App. 1981)(citing Matthews v. State, 361 So. 2d 1195, 1198 (Ala. Crim. App. 1978)). During Williams's testimony at trial, Williams was adamant that Adams was the man he saw shoot Belser on the night of the incident. Williams stated that, on the night of the incident, he looked Adams straight in the face as he approached him and Belser in the parking lot and that he was sure that it was Adams who had shot Belser. During cross-examination, Williams admitted that he initially could not identify the shooter in a photographic lineup and that he only identified Adams in the

photographic lineup after a detective pointed him out as the man Smith had identified. However, Williams maintained that he identified Adams in the lineup after he came back, looked at Adams's photograph, and verified that it was Adams who shot Belser. In view of the totality of the circumstances, the evidence in the instant case indicates that Williams based the identification of Adams on his recollection of the events of the murder; thus, we do not find that the in-court identification of Adams was tainted by the nature of Williams's pretrial identification of Adams.

Likewise, Adams's contention as it relates to Smith's in-court identification fails because, although defense counsel questioned Smith on cross-examination regarding the pretrial photographic lineup in which Smith identified Adams as the shooter, there was never any discussion on the record indicating that the State admitted that his pretrial identification was suggestive or any determination by the court of such. Smith also adamantly maintained at trial that Adams was the man who he saw shoot Belser on the night of the incident. Thus, Adams has failed to show that Smith's testimony was perjured or that the State knew that

Smith's testimony was perjured. Therefore, Adams is not entitled to relief on this claim.

IV.

Adams also argues that "the trial court erred in admitting the out-of-court hearsay allegations of Teraoasis Johnson." (Adams's brief, at 20.) Adams stated that, although Johnson did not testify at trial, there were multiple references to his accusations that Adams shot Belser. Adams cites three separate instances of Johnson's out-of-court accusations being admitted into evidence. First, Adams complains that during defense counsel's cross-examination of Smith, defense counsel questioned Smith about whether someone had told him that Johnson had identified Adams as the shooter. See (R. 646.) Second, Adams cites a stipulation that was read to the jury after being agreed upon by both parties, which stated that Johnson had been arrested in possession of a gun, which law enforcement then took possession of and transported to the Birmingham Police Department for testing. (R. 994.) Finally, Adams objects to the admission of Detective Sanders's testimony that Johnson had told Detective Sanders that, although Johnson was present during the shooting, he was not

involved in the shooting and that Johnson identified Adams as the shooter.

No objection was made to the introduction of this testimony during trial. Thus, these claims are not preserved for appellate review. See Ziglar, 629 So. 2d at 47. Further, no error will be found in the introduction of the evidence admitted during Smith's testimony during the defense's cross-examination of Smith or the evidence admitted as part of the factual stipulation that was agreed to by the parties because, even assuming there was error in the admission of such testimony, any error was invited by the defendant. See Phillips v. State, 527 So. 2d 154, 156 (Ala. 1988)("Under the doctrine of invited error ... a defendant cannot predicate error upon admission of testimony that is elicited by defense counsel and is responsive to defense questions."); Bolden v. State, 568 So. 2d 841, 848 (Ala. Crim. App. 1989) ("Where the defendant voluntarily introduces the same evidence to the admission of which he had previously objected, he waives his objection."). Consequently, Adams is not entitled to relief on this claim.

V.

Next, Adams alleges that the trial court erred in admitting autopsy photographs into evidence because, he says, the photographs were not necessary or relevant. Adams objected before trial to the introduction of the photographs, arguing that the pictures were "not representative of the way [Belser] appeared" at the time of the shooting and that the photographs were "graphic" and "prejudicial." (R. 178-79.)

" 'The question of admissibility of evidence is generally left to the discretion of the trial court, and the trial court's determination on that question will not be reversed except upon a clear showing of abuse of discretion.' " Kennedy v. State, 929 So. 2d 515, 519 (Ala. Crim. App. 2005), quoting Ex parte Loggins, 771 So. 2d 1093, 1103 (Ala. 2000).

> " 'Generally photographs are admissible into evidence in a criminal prosecution "if they tend to prove or disprove some disputed or material issue, to illustrate or elucidate some other relevant fact or evidence, or to corroborate or disprove some other evidence offered or to be offered, and their admission is within the sound discretion of the trial judge." ' Bankhead v. State, 585 So. 2d 97, 109 (Ala. Crim. App. 1989), remanded on other grounds, 585 So. 2d 112 (Ala. 1991), aff'd on return to remand, 625 So. 2d 1141 (Ala. Crim. App. 1992), rev'd, 625 So. 2d 1146 (Ala. 1993), quoting Magwood v. State, 494 So. 2d 124, 141 (Ala. Crim. App. 1985), aff'd, 494 So. 2d 154 (Ala. 1986), cert. denied, 479 U.S. 995 (1986). ' Photographic exhibits are admissible even though they may be cumulative,

> demonstrative of undisputed facts, or gruesome.' Williams v. State, 506 So. 2d 368, 371 (Ala. Crim. App. 1986)(citations omitted). '[P]hotographic evidence, if relevant, is admissible even if it has a tendency to inflame the minds of the jurors.' Ex parte Siebert, 555 So. 2d 780, 784 (Ala. 1989). ' "The fact that a photograph is gruesome and ghastly is no reason to exclude it from the evidence, so long as the photograph has some relevancy to the proceedings, even if the photograph may tend to inflame the jury.' Bankhead, 585 So. 2d at 109-10.
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> "'This court has held that autopsy photographs, although gruesome, are admissible to show the extent of a victim's injuries.' Ferguson v. State, 814 So. 2d 925, 944 (Ala. Crim. App. 2000), aff'd, 814 So. 2d 970 (Ala. 2001).' " [A]utopsy photographs depicting the character and location of wounds on a victim's body are admissible even if they are gruesome, cumulative, or relate to an undisputed matter." ' Jackson v. State, 791 So. 2d 979, 1016 (Ala. Crim. App. 2000), quoting Perkins v. State, 808 So. 2d 1041 (Ala. Crim. App. 1999), aff'd, 808 So. 2d 1143 (Ala. 2001), judgment vacated on other grounds, 536 U.S. 953,(2002), on remand to, 851 So. 2d 453 (Ala. 2002). ' [A]utopsy photographs depicting the internal views of wounds are likewise admissible.' Broadnax v. State, 825 So. 2d 134, 159 (Ala. Crim. App. 2000), aff'd, 825 So. 2d 233 (Ala. 2001). See also Dabbs v. State, 518 So. 2d 825 (Ala. Crim. App. 1987); Hamilton v. State, 492 So.2d 331 (Ala. Crim. App. 1986); Fike v. State, 447 So. 2d 850 (Ala. Crim. App. 1983); and McKee v. State, 33 Ala. App. 171, 31 So.2d 656 (1947) (all holding that photographs of internal injuries were properly admitted although they were gruesome)."

Eggers v. State, 914 So. 2d 883, 914-15 (Ala. Crim. App. 2004).

In this case, the autopsy photographs were admitted into evidence and were shown to the jury during Dr. Davis's testimony. We have reviewed the photographs and Dr. Davis's testimony. Dr. Davis explained the photographs to the jury and the significance of the injuries that were depicted in the photographs. The pictures aided the jury in understanding the nature and severity of the injuries and were relevant and probative. The photographs were not repetitive or unduly gruesome and did not appear to be offered to overwhelm the jury or to incite the jury's passions. Therefore, we conclude that the trial court did not abuse its discretion when it admitted the photographs into evidence.

VI.

Adams further alleges that the trial court erred in admitting testimony regarding the out-of-court identification by Williams that the circuit court had previously ruled was excluded. As previously discussed in Part III of this opinion, before trial, defense counsel moved to prohibit the introduction of evidence of a photographic lineup, in which Williams identified Adams as the man who shot Belser. The circuit court granted defense counsel's motion. During Detective Sanders's testimony, Detective

Sanders stated that he had shown Williams and Smith a photographic lineup, and that both Williams and Smith identified Adams as the man who shot Belser.

Although Adams received an adverse ruling on his motion in limine seeking to exclude evidence of Williams's out-of-court identification of Adams, there is no indication in the record that the trial court's ruling was absolute or unconditional, and Adams did not object when the evidence was admitted at trial. Thus, Adams failed to preserve this claim for appellate review. See Lane v. State,[Ms. CR-15-1087, May 29, 2020] ___ So. 3d ___ (Ala. Crim. App. 2020)(holding that a challenge to the admission of evidence that was previously ruled as excluded was not preserved for appellate review where defendant failed to object to the admission of the evidence during the trial). See also Saunders v. State, 10 So. 3d 53 (Ala. Crim. App. 2007); Buford v. State, 891 So. 2d 423, 434 (Ala. Crim. App. 2004).

VII.

Adams claims that the State failed to present sufficient evidence to support his conviction for murder.

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

> "'The trial court's denial of a motion for judgment of acquittal must be reviewed by determining whether there was legal evidence before the jury at the time the motion was made from which the jury by fair inference could find the defendant guilty. Thomas v. State, 363 So. 2d 1020 (Ala. Cr. App. 1978). In applying this standard, this court will determine only if legal evidence was presented from which the jury could have found the defendant guilty beyond a reasonable doubt. Willis

> v. State, 447 So. 2d 199 (Ala. Cr. App. 1983). When the evidence raises questions of fact for the jury and such evidence, if believed, is sufficient to sustain a conviction, the denial of a motion for judgment of acquittal does not constitute error. McConnell v. State, 429 So. 2d 662 (Ala. Cr. App. 1983).' "

Gavin v. State, 891 So. 2d 907, 974 (Ala. Crim. App. 2003), cert. denied, 891 So. 2d 998 (Ala. 2004)(quoting Ward v. State, 610 So. 2d 1190, 1191 (Ala. Crim. App. 1992)).

Adams was convicted of first-degree murder. Section 13A-6-2(a)(1), Ala. Code 1975, states that "[a] person commits the crime of murder if he or she ... with intent to cause the death of a another person, he or she causes the death of that person or of another person." In the present case, Williams and Smith both testified that, after a previous altercation in the club that resulted in Adams being thrown out of the club, Adams approached Belser and Williams as they were walking toward their vehicle in the parking lot and that Adams shot Belser multiple times. Testimony was presented that Belser died as a result of the gunshot wounds he sustained. Accordingly, there was legal evidence from which the jury could reasonably infer that Adams was guilty of murder.

VIII.

Lastly, Adams claims that the circuit court erred in denying his motion for a new trial without holding an evidentiary hearing. However, this portion of Adams's brief fails to comply with the provisions of Rule 28(a)(10). Adams cites to two cases in support of his assertion that he was entitled to an evidentiary hearing before the dismissal of his motion for a new trial was dismissed; however, these cases concern whether a Rule 32 petitioner was entitled to an evidentiary hearing after properly pleading their postconviction petitions and, thus, are not relevant to the instant case. Because Adams failed to cite to relevant legal authority to support his contentions, this claim is deemed waived. See, C.B.D., 90 So. 3d at 239.

Conclusion

Based on the foregoing, the judgment of the circuit court is affirmed.

AFFIRMED.

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