REL: April 23, 2021

Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-19-0721

Earnie May

v.

State of Alabama

Appeal from Russell Circuit Court
(CC-19-524)

KELLUM, Judge.

The appellant, Earnie May,[1] was convicted of murdering Lorenzo Freeman, Sr., see § 13A-6-2(a)(1), Ala. Code 1975. He was sentenced to life imprisonment and was fined $10,000. In addition to the firearm-enhancement statute, May's sentence was enhanced pursuant to §13A-5-13(c)(1)(a.), Ala. Code 1975, Alabama's hate-crime statute, because the jury found beyond a reasonable doubt that the murder had been racially motivated.

The State's evidence tended to show that on January 11, 2018, police were dispatched to the parking lot of the Dollar General store off Highway 165 in Russell County in response to a 911 emergency call indicating that shots had been fired. Deputy Gary Graham of the Russell County Sheriff's Office testified that he arrived within minutes and found the body of Lorenzo Freeman, Sr., lying face down on the pavement. Dr. Edward Reedy, senior medical examiner with the Alabama Department of Forensic Sciences, testified that Freeman died from a shotgun wound

[1]In various portions of the record and in documents filed with this Court, May is referred to as "Earnie Lynn May"; however, the indictment states the defendant's name as "Earnie May." In this opinion, this Court uses the name as it appears in the indictment.

that exited his right chest and that there were four entrance wounds on his back. (R. 329-31.) The shotgun projectiles, he said, entered Freeman's right kidney and his liver.

Lorenzo Freeman, Jr., the victim's son, testified that he was in Columbus, Georgia, on January 11, 2018, and that his friend Kevin Delcid was with him in his vehicle when he stopped at a traffic light near the civic center in Columbus; a silver vehicle driven by Justin Davidson[2] was in front of his vehicle. He said that he did not know Davidson and that he was not carrying a weapon. When the light turned green and traffic proceeded, Davidson's vehicle was moving slowly and erratically so he passed Davidson's vehicle. Davidson caught up with him at another traffic light. Lorenzo said that he was in the left lane and that Davidson's vehicle was in the right lane. Lorenzo testified that Davidson was "staring at us" and that, when the light turned green, Davidson accelerated and threw a drink cup on his windshield and got in front of

[2]Justin Davidson was also indicted and tried jointly with May for Freeman's murder. Davidson was convicted. His appeal is currently before this Court. See Davidson v. State, (CR-19-0815).

Lorenzo's vehicle. (R. 136.) Lorenzo said that he tried to catch up with Davidson's vehicle so that he could get the license-plate number and that Davidson kept applying his brakes. Lorenzo got into the other lane, and the female in Davidson's car, later identified as Davidson's wife, yelled at Lorenzo and threw her drink cup at his front windshield. Lorenzo said that he telephoned his father and told him that someone was following him. His father told him to meet him at "Big Cat" or Sunoco gas station across the street from the Dollar General store and near their house so that the people following them would not know where he lived. (R. 138.) When Lorenzo arrived, Freeman was already there and was standing by his vehicle holding a shotgun at his side while Lorenzo's mother remained in the vehicle. Lorenzo said that he and Delcid got out of the car and went to talk to his parents. Davidson was right behind him when he got to Big Cat. Lorenzo said Davidson and his wife were "calling us niggers, calling us niggers. Hey, niggers, we're going to get you. Hey, niggers, we're going to get you this, niggers that, niggers this." (R. 143.) Freeman told Lorenzo to get back in his car and to drive to their house, which was across the street. As he pulled into the driveway, he heard "at least six

or eight gunshots." (R. 147.) Shortly thereafter, his mother pulled into the driveway. Lorenzo testified: "She told me they just killed my dad, and I told her to go to the house. I ... ran to a neighbor's house and told him to grab his gun. He's a military retired ... But after that, I ran back to my car and went back up to Dollar General and that's when I seen my dad on the ground. ..." (R. 148.) Police arrived shortly after he reached his father's body.

Kevin Delcid testified that he was in Lorenzo's vehicle during the events that transpired on January 11, 2018. His description of the events was consistent with Lorenzo's testimony. Delcid also testified that Davidson and his wife were yelling and mouthing "racial slurs" while they were driving beside Lorenzo's vehicle. (R. 181.)

Shannon Freeman testified that on the evening of January 11, 2018, her husband received a telephone call from their son that some white people were chasing him and trying to run him off the road. (R. 428.) Her husband grabbed his shotgun and they got in their vehicle, a burgundy Dodge Durango sport-utility vehicle, and drove to the Big Cat station. While they waited Shannon telephoned Lorenzo to find out where he was,

and he told her that they were on their way and that "[t]hey're still trying to run me off the road." (R. 431.) After Lorenzo arrived and his parents spoke to him, Lorenzo left to go home and Shannon and Freeman got into their vehicle and started to drive to their house. Shannon said they thought that the other vehicle had passed them but Davidson's car turned around. Davidson rolled down the window and yelled "f--- niggers, meet us at the store. We're going to get y'all." (R. 437.) Davidson fired at their vehicle. Shannon testified:

> "After he shot at us, after he shot at us, I told my husband hurry up and get us home, but my husband told me no. He stopped my truck in the road down by the Dollar General and my husband got out and he said, [Shannon], go home. My husband opened up the back door and grabbed his shotgun and he walked down like -- it's like a little ditch. I call it a little ditch. I don't know if it is a little ditch, and my husband had his shotgun down. He never point[ed] it at him. He just had it down walking, and he just asked him what's wrong, what's the problem. ...
>
> "He did not walk towards them. He was walking like he was going to the Dollar General store. When he says that to him, that's when that man gunned my husband down. Then my husband stumbled back. He stumbled back and his shotgun dropped. That's what happened. His shogun dropped and he fell. But I will say when I got back up there, my husband was not in the same spot; that's how I knew he was trying to get

> back home. But before he dropped, he told me, he said go, and I took off."

(R. 440-42.) When Davidson shot her husband, Shannon said, Freeman was walking toward the Dollar General store and had just asked Davidson: "What's wrong, what's going on?" (R. 442.) "When [her husband] said that to him, that's when [Davidson] gunned my husband down." (R. 442.)

Manuel Maldonado[3] testified that he was in the parking lot of the Dollar General store at the time of the shooting. As soon as he got into his vehicle and started to back up he heard "an explosion or a gunshot." (R. 92.) A burgundy sport-utility vehicle pulled in front of him as he was at the parking-lot exit, and a black man, identified as Freeman, got out of that car with a rifle in his hands. Another vehicle, a dark pickup, pulled up behind the sport-utility vehicle and a white man, identified as May, got out of that vehicle carrying a rifle and pointed the gun at Freeman and loaded the gun in front of Freeman. He said that a white man with a

[3]This witness is identified as Manuel Maldonado-Garcia in the record. However, he testified that his surname is Maldonado. (R. 88.)

shotgun and a flashlight, Davidson, moved toward Freeman. Davidson yelled for everyone to get on the ground, Maldonado said, and he heard a gunshot and saw Davidson fall to the ground. He walked up to Davidson and saw that he had been shot in the left leg. (R. 100.) When he was talking to Davidson another white man, identified as May, came over to talk to Davidson. After they finished talking, Maldonado saw that Freeman had a lot of blood on the left side of his chest and was on his knees. Maldonado said that he did not see a weapon in Freeman's hands at this time. May walked over to Freeman and Maldonado heard a shot. When May came back he had a "lot of holes in his shirt" and he told Davidson that he "killed the m—f—." (R. 104.)

Izzac Steinruck testified that he was with May on January 11, 2018, and that Davidson spoke to May and sent him a text message with what he thought was the license-plate number of a vehicle. (R. 398.) After he received that message, May asked if Steinruck wanted to go for a ride with him. They left in May's black Dodge pickup to meet Davidson. May had a gun in the vehicle, and Steinruck had his rifle. May was also armed with his .357 handgun, which he carried on his hip. When they pulled up

to Big Cat, Davidson jumped out of his vehicle and ran toward May's truck. May tossed a 12-gauge shotgun to Davidson from the window of the truck and Davidson ran toward the road and fired a shot. A red Durango sport-utility vehicle was on the street at this time. (R. 405.) In his vehicle, May followed Davidson across the street to the front of the Dollar General store. Steinruck testified that the black man got out of the Durango and pulled a shotgun out and started shooting at Davidson "because [Davidson] started shooting." (R. 407.) Steinruck testified that he thought Davidson fired the first shot because the shot came from behind him, which was where Davidson was located, that many shots were fired, that the black man fired his gun, and that May yelled that he had been shot. (R. 408.) After more shots were fired, Davidson yelled that he had been shot. A short time later, he heard one more shot. After that shot May said, "I just shot that f'ing nigger." (R. 410.)

The medical examiner testified that Freeman had been killed by shotgun projectiles that entered his back, one of which exited through his chest, and that none of Freeman's wounds matched a bullet fired from a

.357 handgun.[4] Davidson was carrying the shotgun. In Davidson's statement to police, he said that he shot Freeman. Davidson also told police that Lorenzo had tried to run him off the road and that Lorenzo had been acting crazy. Surveillance video from the Big Cat gasoline station across the street from the shooting was admitted into evidence and played to the jury. This video shows that May met Davidson in the Big Cat parking lot, that May threw a shotgun to Davidson, and that May followed Davidson in his truck as Davidson walked across Highway 165 toward Freeman, who was in the area of the Dollar General store.

The record indicates that the State moved that May and his codefendant, Justin Davidson, be joined for trial. (C. 28.) The circuit court granted that motion. (C. 33.) May was tried jointly with Davidson, and both were represented by different attorneys. May and

[4]Forensic evidence established that part of a bullet was discovered in the Dollar General store. Although it could not be matched to a specific weapon, the forensic scientist testified that it was too thick to be from a shotgun. The only guns involved were two shotguns and May's .357 handgun.

Davidson were both convicted of murder and have appealed their convictions (see note 2, supra).

Initially, we note that Alabama law provides that in a multiple-defendant trial when an objection is made by one defendant's attorney the error is not automatically preserved for his codefendant. As this Court stated in T.R.D. v. State, 673 So. 2d 838 (Ala. Crim. App. 1995):

> "Without some indication in the record that the judge accepted the objection made by one attorney as an objection for all three defendants, this court will not find that the judge did so. This court holds that each appellant was responsible for making his own objections. Because the appellant's counsel failed to object separately to the admission of L.C.M.'s statement, the issue of that statement's admission is not preserved for review."

673 So. 2d at 844. See also Dailey v. State, 828 So. 2d 344, 346 (Ala. Crim. App. 2002) ("The record indicates that appellant's counsel subsequently joined the objection of her codefendant's counsel and therefore preserved the issue for appellate review.").

I.

May first argues that his right to have a jury drawn from a fair cross-section of his community was violated because, he says, the venire and his jury had a lower percentage of white jurors than that which is

actually contained in the general population in Russell County. May cites Duren v. Missouri, 439 U.S. 357 (1979), to support his argument. May and Davidson are white.

The record shows that before the jury was struck Davidson's attorney made an oral motion and argued:

> "At this time we make a motion to strike the entire jury venire based on the fact that it does not represent a fair cross-section of the community for my client, and I would suggest also as for Earnie May. Both the Defendants are Caucasian males, Judge, and here we have 63 jurors, by my count. Thirty-six of those jurors are African American, twenty-five are Caucasian, and two are other races. In terms of African American jurors, there's 57.1 percent on this panel. In terms of Caucasians, there's 39 percent on this panel. Judge, I reviewed here in court from the Census.gov in terms of their census numbers as of 2018. Russell County had an African American population of 45.7 percent and a Caucasian population of 50 percent. Again, the Caucasian population on this jury panel is 39 percent and the African American on this jury panel is 57.1 percent. Again, Judge, basically, there is a 10 to 11 percent difference reverse in terms of what the actual population representation is of Russell County and, therefore, my client, under the Constitution of the United States and its counterparts and the Constitution of the State of Alabama cannot receive a fair and impartial trial based on the fact that he does not have a fair cross-section of the community on this panel. And, Judge, I'm requesting so the record is clear if this motion is denied, I'm asking that this be an ongoing objection as to after specific voir dire by counsel and the parties and based on the petit jury that's impaneled."

(R. 11-12.) May's attorney specifically noted for the record that he was joining Davidson's motion. The State responded:

> "This panel was impaneled by a method approved by the Alabama Supreme Court. It's completely random, without bias or prejudice, and has been used here for more than 25 years, to my knowledge. This panel would be representative of almost every panel that we see in this courtroom. It is typical of the panels that are called here that the African American representation is somewhat larger than the white representation. "

(R. 13.) This motion was denied. (R. 13.) A similar motion was made again after the jurors were struck and May's jury had been chosen. (R. 28-29.)

In Duren v. Missouri, the United States Supreme Court held that to prove a fair cross-section argument, the appellant must satisfy the following three-prong test:

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

439 U.S. at 364.

"The third Duren ... element -- that there has been a systematic exclusion of a distinctive group -- constrains a defendant to establish that 'the cause of the underrepresentation was ... inherent in the particular jury-selection process utilized.' Duren, 439 U.S. at 366, 99 S.Ct. at 669." Sistrunk v. State, 630 So. 2d 147, 149 (Ala. Crim. App. 1993).

> "[I]t is the source from which the venire is selected that must be fairly representative of the community, rather than the jury actually chosen. ' "The United States Constitution does not require an exact proportion between the percentage of blacks in the population and those on the jury list. What is required is that no qualified person can be excluded from jury service." Jackson v. State, 549 So. 2d 616, 619 (Ala. Crim. App. 1989).' Pierce v. State, 576 So. 2d 236, 242–43 (Ala. Cr. App. 1990), cert. denied, 576 So. 2d 258 (Ala. 1991). See also, Holland v. Illinois, 493 U.S. 474, 110 S.Ct. 803, 107 L.Ed.2d 905 (1990)."

Travis v. State, 776 So. 2d 819, 838 (Ala. Crim. App. 1997).

In its response to May's motion for a new trial, the State concedes that May satisfied the first prong of the Duren test because, it says, whites are a "distinctive group." (C. 82.) In regard to the third prong, the only evidence concerning Russell County's method of selecting its jurors is contained in the State's response to May's motion for a new trial. (C. 75-84.) In its response, the State asserted:

> "The Russell County Circuit Clerk produces the list of members of the venire from the driver's license list comprising Russell County residents. The Circuit Clerk inputs a recommended number of persons to serve on the venire into the system provided by [the Administrative Office of Courts], which randomly and automatically submits a list, derived from a master list of county resident driver's license holders. Like the driver's license source for jury venire selection which was upheld in Stanton [v. State], 648 So. 2d [638] at 641 [(Ala. Crim. App. 1994)], and Acklin [v. State], 790 So. 2d [975] at 975 [(Ala. Crim. App. 2000)], the source of venire members used here in Russell County is a random process."

(C. 81-82.) " 'Random selection from a list of licensed drivers has been held to be an acceptable manner in which to select a jury.' " Acklin v. State, 790 So. 2d 975, 985 (Ala. Crim. App. 2000), quoting Stanton v. State, 648 So. 2d 638, 640 (Ala. Crim. App. 1994).

Here, "there was absolutely no showing either that random computerized selection of licensed drivers inherently results in underrepresentation of [whites] on jury venires" in Russell County. See Travis, 776 So. 2d at 838. "In the absence of a showing of systematic exclusion, the showing of a disparity between the percentage of [a given race] in the population of the county in which venue is situated and the percentage of [that race] on the venire does not establish a violation of the

fair cross-section requirement." Stewart v. State, 623 So. 2d 413, 415 (Ala. Crim. App. 1993). Clearly, May failed to meet his burden of establishing a fair-cross-section violation. Accordingly, the circuit court did not err in denying May's motion, and May is due no relief on this claim.

II.

May next argues that there was not sufficient evidence to support his conviction for murder under § 13A-6-2, Ala. Code 1975, and that the circuit court should have granted his motion for a judgment of acquittal at the close of the State's case. This argument appears to be a general argument concerning sufficiency of the evidence. May makes arguments concerning self-defense in another section of his brief to this Court.

The record shows that at the close of the State's case, counsel moved for a judgment of acquittal. Specifically, May argued that "he had just been shot trying to save his life, and we say that that is not murder, that is self-defense, and there was no hate crime involved in it." (R. 464.) The State asserted that it was relying on the accomplice-liability doctrine and that there was sufficient evidence to show that May aided and abetted

Davidson in the murder. The circuit court denied the motion. (R. 465.) In his motion for a new trial, May again argued that the evidence did not show that the crime rose to the level of a hate crime. (C. 72.)

Section 13A-6-2 provides:

> "(a) A person commits the crime of murder if he or she does any of the following:
>
> > "(1) With intent to cause the death of another person, he or she causes the death of that person or of another person.
> >
> > "(2) Under circumstances manifesting extreme indifference to human life, he or she recklessly engages in conduct which creates a grave risk of death to a person other than himself or herself, and thereby causes the death of another person."

When reviewing a circuit court's ruling on a motion for a judgment of acquittal, the Alabama Supreme Court has stated:

> "'"Appellate courts are limited in reviewing a trial court's denial of a motion for judgment of acquittal grounded on insufficiency." "The standard of review in determining sufficiency of evidence is whether evidence existed at the time [the defendant's] motion for acquittal was made, from which the jury could by fair inference find the [defendant] guilty." In determining the sufficiency of the evidence, we view the evidence in the light most favorable to the State.' Ex parte Burton, 783 So. 2d 887, 890–91 (Ala. 2000) (citations omitted).

> In order to find a defendant guilty, the jury must find that the State proved each and every element of the offense charged beyond a reasonable doubt. See, e.g., Ex parte Brown, 74 So. 3d 1039, 1052 (Ala. 2011); Goodwin v. State, 728 So. 2d 662, 671 (Ala. Crim. App. 1998) (' "It is fundamental that in a criminal prosecution the burden is on the state to prove beyond a reasonable doubt each and every element of the offense charged." ' (quoting Hull v. State, 607 So. 2d 369, 373 (Ala. Crim. App. 1992)))."

Ex parte Ware, 181 So. 3d 409, 417 (Ala. 2014).

> "It is not the function of this Court to decide whether the evidence is believable beyond a reasonable doubt, Pennington v. State, 421 So. 2d 1361 (Ala. Crim. App. 1982); rather, the function of this Court is to determine whether there is legal evidence from which a rational finder of fact could have, by fair inference, found the defendant guilty beyond a reasonable doubt. Davis v. State, 598 So. 2d 1054 (Ala. Crim. App. 1992). Thus, '[t]he role of appellate courts is not to say what the facts are. [Their 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) (emphasis original)."

Ex parte Woodall, 730 So.2d 652, 658 (Ala. 1998).

> Section 13A-2-23, Ala. Code 1975, provides:
>
> "A person is legally accountable for the behavior of another constituting a criminal offense if, with intent to promote or assist the commission of the offense:
>
> "(1) He procures, induces or causes such other person to commit the offense;

> "(2) He aids or abets such other person in committing the offense ...."

This Court in Gwin v. State, 456 So. 2d 845 (Ala. Crim. App. 1984), stated:

> " 'Aid and abet "comprehend all assistance rendered by acts or words of encouragement or support or presence, actual or constructive, to render assistance should it become necessary." ' Jones v. State, 174 Ala. 53, 57, 57 So. 31 (1911), quoted in Radke v. State, 292 Ala. 290, 292, 293 So. 2d 314 (1974). If the jury is convinced beyond a reasonable doubt that the defendant was present with a view to render aid should it become necessary, the fact that the defendant is an aider and abettor is established. Jones, supra; Raiford v. State, 59 Ala. 106, 108 (1877). 'The culpable participation of the accomplice need not be proved by positive testimony, and indeed rarely is so proved. Fuller v. State, 43 Ala. App. 632, 198 So. 2d 625 [(1966)]. Rather, the jury must examine the conduct of the parties and the testimony as to the surrounding circumstances to determine its existence.' Miller v. State, 405 So. 2d 41, 46 (Ala. Cr. App. 1981); Watkins v. State, 357 So.2d 156, 159 (Ala. Cr. App. 1977), cert. denied, 357 So. 2d 161 (Ala. 1978)."

456 So. 2d at 851.

> "While the mere presence of a person at the time and place of a crime does not make him a party to the crime, we recognize that '[c]ommunity of purpose may be formed in a flash, and participation and community of purpose may be shown by circumstantial evidence or inferred from the conduct of the participants.' Sanders v. State, 423 So. 2d 348, 351 (Ala. Crim. App. 1982)."

Brown v. State, 171 So. 3d 102, 108 (Ala. Crim. App. 2014).

The State's evidence was sufficient to show that May willingly participated as an accomplice. In fact, the evidence, both by witness testimony and videotape, showed that May furnished Davidson the weapon he used to shoot Freeman and that, after he gave Davidson the weapon, he followed Davidson in his vehicle as Davidson walked toward Freeman. The jury could have reasonably believed that May followed Davidson in order to aid and support Davidson's actions. Indeed, that is what the evidence showed. Accordingly, the circuit court did not err in denying May's motion for a judgment of acquittal, and May is due no relief on this claim.

III.

May next argues that there was no evidence to show that the crime was motivated by race and that, therefore, § 13A-5-13, Ala. Code 1975, was unlawfully applied.[5] Specifically, he argues "there is no evidence

[5]The part of May's brief addressing this issue fails to comply with the briefing requirements of Rule 28, Ala. R. App. P. that, among other things, mandate parties to file briefs that contain citation to legal authority to support the argument. No cases are cited in this section of May's brief.

that May targeted or was motivated to kill Freeman, Senior because of his race." (May's brief at p. 25.) He asserts that mere words were not enough to invoke this enhancement statute.

Section 13A-5-13, Ala. Code 1975, provides, in pertinent part:

> "(c) A person who has been found guilty of a crime, the commission of which was shown beyond a reasonable doubt to have been motivated by the victim's actual or perceived race, color, religion, national origin, ethnicity, or physical or mental disability, shall be punished as follows:
>
> "(1) Felonies:
>
> "a. On conviction of a Class A felony that was found to have been motivated by the victim's actual or perceived race, color, religion, national origin, ethnicity, or physical or mental disability, the sentence shall not be less than 15 years."

The record shows that the State filed notice of its intent to seek the application of § 13A-5-13(c)(1), Ala. Code 1975. (C. 56.) Consistent with this statute, the State moved that a special verdict form be submitted to the jury so that the jury could make a finding beyond a reasonable doubt of whether the murder had been motivated by race. (C. 40.) The jury returned with the following verdict: "We the jury, find that the defendant, Earnie May, was motivated by the victim, Lorenzo Freeman Sr's, actual

or perceived race, color, or ethnicity in committing the offense of murder." (C. 50.)

The State relies on an opinion of the Oregon Supreme Court in State v. Hendrix, 314 Or. 170, 174, 838 P. 2d 566, 568 (1992), to support its argument that there was sufficient evidence to present the issue of racial motivation to the jury. The Oregon Court stated:

> "[T]here is no evidence that defendant himself made any statement about race or national origin or about his specific intent in causing physical injury to these victims. However, defendant arrived at the store with his codefendants who had weapons, observed that one of the victims spoke little English, heard his codefendants' loud and repeated statements concerning the codefendants' and the victims' respective races and national origins, continued to beat the victims while hearing and after hearing those statements, and left with the codefendants after the beating. From that conduct, the trier of fact reasonably could find beyond a reasonable doubt that defendant acted because of his perception of the victims' race or national origin."

Hendrix, 314 Or. at 174, 838 P. 2d at 568. See also State v. Costella, 166 N.H. 705, 103 A.3d 1155 (2014) (holding that sufficient evidence to support hate-crime enhancement existed when defendant told the victim that "[a] good Jew is a dead Jew," that his gun was "a Jew killing machine," and that he was going to get his gun to kill the Jew);

Commonwealth v. Barnette, 45 Mass. App. Ct. 486, 699 N.E.2d 1230 (1998)(holding that sufficient evidence existed to support hate-crime enhancement when defendant repeatedly said "Damn Mexicans" and said "Get the hell out of the country"); People v. Stevens, 230 Mich. App. 502, 506, 584 N.W.2d 369, 371 (1998) ("Defendant's use of the word 'nigger,' his reference to the complainant as a 'black bitch,' and his remark that 'you people shouldn't be allowed in here' explained his otherwise inexplicable actions. Taken in the light most favorable to the prosecution, this evidence was sufficient to allow the jury to conclude that defendant was guilty beyond a reasonable doubt."); Sterry v. State, 959 S.W.2d 249, 255 (Tex. App. 1997) ("Although there is no direct evidence that appellant selected McCarty as a victim because of McCarty's race, the record indicates that appellant (1) initiated the confrontation, (2) used racial slurs before, during, and after the assault, and (3) called people who came to McCarty's aid 'nigger lovers.' Viewing the evidence in the light most favorable to the finding, we conclude that a rational factfinder could have found that appellant selected McCarty as a victim primarily because of his bias or prejudice against McCarty's race.").

"[I]n resolving questions of sufficiency of the evidence, this court must view the evidence in the light most favorable to the state." A.A.G. v. State, 668 So. 2d 122, 124 (Ala. Crim. App. 1995). Shannon Freeman testified that immediately before the shooting Davidson yelled "f--- niggers, meet us at the store. We're going to get y'all." (R. 437) (emphasis added).[6] May was nearby when those words were shouted by Davidson. Izzac Steinruck testified that May approached Freeman, fired a shot, returned and said: "I just shot that f---ing nigger." (R. 410.) The question whether May was motivated by Freeman's race was an issue that was properly presented to the jury for its consideration. There was sufficient evidence to support the jury's finding and to support application of the sentence enhancement. Therefore, May is due no relief on this claim.

May's sentence was also enhanced because a firearm was used. The minimum sentence he faced upon conviction of a Class A felony with the use of a firearm was 20 years, a greater sentence than the 15-year

[6]The video shows that after Davidson got the shotgun, Davidson's wife ran to their vehicle and drove off.

sentence for the hate-crime enhancement. See § 13A-5-6(a)(5), Ala. Code 1975.[7]

IV.

May next argues that the evidence presented by the State was insufficient to show that the murder was not justified as self-defense. Specifically, he argues that all the evidence showed that May was defending himself at the time of the shooting.

Section 13A-3-23, Ala. Code 1975, provides:

> "(a) A person is justified in using physical force upon another person in order to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he or she may use a degree of force which he or she reasonably believes to be necessary for the purpose. A person may use deadly physical force, and is legally presumed to be justified in using deadly physical force in self-defense or the defense of another person pursuant to subdivision (5), if the person reasonably believes that another person is:
>
> "(1) Using or about to use unlawful deadly physical force.
>
> "....

[7]This section states: "For a Class A felony in which a firearm or deadly weapon was used or attempted to be used in the commission of the felony ... not less than 20 years."

"(b) A person who is justified under subsection (a) in using physical force, including deadly physical force, and who is not engaged in an unlawful activity and is in any place where he or she has the right to be has no duty to retreat and has the right to stand his or her ground.

"(c) Notwithstanding the provisions of subsection (a), a person is not justified in using physical force if:

> "(1) With intent to cause physical injury or death to another person, he or she provoked the use of unlawful physical force by such other person.
>
> "(2) He or she was the initial aggressor, except that his or her use of physical force upon another person under the circumstances is justifiable if he or she withdraws from the encounter and effectively communicates to the other person his or her intent to do so, but the latter person nevertheless continues or threatens the use of unlawful physical force.
>
> "(3) The physical force involved was the product of a combat by agreement not specifically authorized by law.

"(d)(1) A person who uses force, including deadly physical force, as justified and permitted in this section is immune from criminal prosecution and civil action for the use of such force, unless the force was determined to be unlawful.

"(2) Prior to the commencement of a trial in a case in which a defense is claimed under this section, the court having jurisdiction over the case, upon motion of the defendant, shall

> conduct a pretrial hearing to determine whether force, including deadly force, used by the defendant was justified or whether it was unlawful under this section. During any pretrial hearing to determine immunity, the defendant must show by a preponderance of the evidence that he or she is immune from criminal prosecution."

The record indicates that the circuit court conducted an immunity hearing, but a transcript of that hearing is not in the record. It further appears that it was not May who moved for an immunity hearing, but Davidson. May, however, relied on self-defense at trial, and the jury was instructed on self-defense.

> "When a defendant raises a claim of self-defense, the burden is on the State to prove beyond a reasonable doubt that the defendant did not act in self-defense. See Wilson v. State, 484 So. 2d 562, 563-64 (Ala. Crim. App. 1986). This Court has repeatedly held that the claim of self-defense is an issue to be decided by the jury. See Chestang v. State, 837 So. 2d 867, 871 (Ala. Crim. App. 2001)(' " 'Where ... the killing was admitted, the question of whether or not it was justified under the theory of self-defense was a question for the jury.' " ' (quoting Quinlivan v. State, 627 So. 2d 1082, 1087 (Ala. Crim. App. 1992), quoting in turn Townsend v. State, 402 So. 2d 1097, 1098 (Ala. Crim. App. 1981))); see also Worthington v. State, 652 So. 2d 790, 794 (Ala. Crim. App. 1994) (' "The issue of self-defense invariably presents a question for the jury whose verdict will not be disturbed on appeal. '[E]ven if the evidence of self-defense is undisputed, the credibility of the defendant with respect to the evidence of self-defense is for the jury, and [it] may, in [its] discretion, accept it as true or reject it.' " '

> (quoting Brooks v. State, 630 So. 2d 160, 162 (Ala. Crim. App. 1993), quoting from other cases))."

Smith v. State, 279 So. 3d 1199, 1205 (Ala. Crim. App. 2018).

> "The issue of self-defense is to be decided by the jury. See Chestang v. State, 837 So. 2d 867, 871 (Ala. Crim. App. 2001) (' "Where, as here, the killing was admitted, the question of whether or not it was justified under the theory of self-defense was a question for the jury.' " (quoting Quinlivan v. State, 627 So. 2d 1082, 1087 (Ala. Crim. App. 1992), quoting in turn Townsend v. State, 402 So. 2d 1097, 1098 (Ala. Crim. App. 1981))."

Dumas v. State, 307 So. 3d 613, 616 (Ala. Crim. App. 2020).

May asserts that the State failed to meet its burden of showing that the murder was not justified based on self-defense because, he says, there was no evidence indicating that he fired the fatal shot and a witness testified that, when May returned after approaching Freeman, he had holes in his shirt. May also asserts that Steinruck testified that Freeman fired the first shot.

May's arguments concern his interpretation of the evidence that was presented. One prosecution witness testified that Davidson fired the first shot. Another witness said that Freeman did not raise his gun before he was shot. Moreover, Steinruck testified that Freeman started shooting

"because [Davidson] started shooting." (R. 407.) At trial, Steinruck testified:

> "[Prosecutor]: What happened then?
>
> "[Steinruck]: The black man got a -- he opened the back driver's side door, pulled a shotgun out.
>
> "[Prosecutor]: And what did he do then?
>
> "[Steinruck]: He walks toward the truck and then started shooting.
>
> "[Prosecutor]: Starts shooting where? To who? At what?
>
> "[Steinruck]: At [Davidson] because [Davidson] started shooting.
>
> "....
>
> "[Prosecutor]: And do you know who shot first, [Davidson] or the black man?
>
> "[Steinruck]: Justin [Davidson] shot first."

(R. 407-08.) The medical examiner also testified that Freeman's fatal wound entered his body from his back and exited through his chest.

> " 'The issue of self-defense invariably presents a question for the jury, whose verdict will not be disturbed on appeal.' Quinlivan v. State, 627 So. 2d 1082, 1087 (Ala. Crim. App. 1992). ' "The weight and credence given the testimony of the accused as to the issue of self-defense is a question for the

> jury." ' Hilliard v. State, 610 So. 2d 1204, 1205 (Ala. Crim. App. 1992) (quoting Garraway v. State, 337 So. 2d 1349, 1353 (Ala. Crim. App. 1976)). ' "[E]ven if the evidence of self-defense is undisputed, the credibility of the defendant with respect to the evidence of self-defense is for the jury, and [it] may, in [its] discretion, accept it as true or reject it." ' Malphurs v. State, 615 So. 2d 1310, 1312 (Ala. Crim. App. 1993) (quoting Mack v. State, 348 So. 2d 524, 529 (Ala. Crim. App. 1997)). 'Where, as here, the [shooting] was admitted, the question of whether or not it was justified under the theory of self defense was ... for the jury.' Page v. State, 487 So. 2d 999, 1007 (Ala. Crim. App. 1986). 'Self defense evidence, like all other conflicting evidence, is a matter for the jury to decide, and it is within the province of the jury to decide how much weight and credibility to give such evidence.' Finchum v. State, 461 So. 2d 37, 39 (Ala. Crim. App. 1984)."

Alexander v. State, 304 So. 3d 1207, 1213 (Ala. Crim. App. 2019).

The issue whether the murder was committed in self-defense was properly presented to the jury for its determination. May has cited no legal authority that warrants action by this Court to overturn the jury's verdict in this case. Therefore, May is due no relief on this claim.

For the foregoing reasons, we affirm May's conviction for murder and his sentence of life imprisonment.

AFFIRMED.

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