Rel: October 7, 2022

Alabama Court of Criminal Appeals

OCTOBER TERM, 2022-2023

CR-21-0459

William Earl Latham

v.

State of Alabama

Appeal from Lawrence Circuit Court
(CC-20-323)

WINDOM, Presiding Judge.

William Earl Latham appeals his conviction for first-degree aggravated stalking, a violation of § 13A-6-91, Ala. Code 1975. The circuit court sentenced Latham to 20 years in prison.

Latham met Melanie Blankenship in 1999, and the two were married in 2002. Approximately a decade later, Latham began physically abusing Blankenship. The first time, which Blankenship estimated took place sometime in 2012 or 2013, Latham held Blankenship down in a recliner, put his hands around her neck, and told her he "would choke [her] to death." (R. 121.) From that incident until about 2015, Blankenship said that Latham did not physically abuse her again but that he constantly told her "he was going to kill [her] if [she] ever tried to leave him. [She] would wake up with his hands around [her] neck. Constantly telling [her that she] was … a horrible mother, horrible person, horrible wife." (R. 125.) Latham became physical again in approximately 2015, when the two argued. Blankenship went to her car to leave, but Latham "jerked [her] out of the car by [her] neck and put [her] through the screen on the back porch." (R. 127.) The verbal and physical abuse continued. In January 2020, Blankenship and Latham were taking Blankenship's father to the hospital, and Latham "drew back to hit [her] in the car." (C. 127.) This incident caused Blankenship to leave Latham. Blankenship filed a petition for protection from abuse in February 2020, and an ex parte protection order was issued on February

14, 2020. After a hearing on March 11, 2020, the circuit court issued an order of protection. (C. 109-12.)

Blankenship left their marital home and moved to a mobile home, which was set back from the road approximately 200 feet. One evening, Latham parked at the end of Blankenship's driveway and began walking toward Blankenship's home, violating the order of protection, which prohibited Latham from coming within 500 feet of Blankenship. When Blankenship saw him, she locked her front door and telephoned the police. Latham left after Blankenship shut her door. Latham came back three to four times per week, stopping at the end of her driveway and yelling at her from there.

Additionally, Latham continued to contact Blankenship via telephone calls, text messages, and electronic messages through a messaging application, in violation of the order of protection. Blankenship, however, refused to communicate with Latham.

On another occasion, Blankenship exited a grocery store to find Latham standing by her car in the parking lot. Latham attempted to speak to her. Blankenship was terrified because, although it was warm, Latham was wearing a coat, and he did not remove his hands from his

pockets, causing Blankenship to believe that Latham possessed a firearm. (R. 146.) Blankenship repeatedly told Latham to go away, but he left only after seeing a state-trooper vehicle enter the parking lot.

On June 11, 2021, Blankenship was hired to paint the interior of a friend's house. At approximately 11:00 p.m., Blankenship was cleaning her paintbrushes in the kitchen when Latham pulled into the driveway of the friend's house. Latham then backed out of the driveway and turned toward Blankenship's mobile home. Afraid Latham would burn her home to the ground with her pets inside, Blankenship jumped into her vehicle and headed home. Right before Blankenship arrived at her home, she passed Latham heading in the opposite direction. After Blankenship arrived at home, Latham parked at the end of her driveway and yelled at her from the end of the driveway. Blankenship telephoned the police and filed a report. After the police left her home, Blankenship returned to her friend's home to finish cleaning her brushes. Latham again pulled into the driveway of the friend's home. Blankenship again jumped into her car and headed home. When she neared her home, she saw Latham pulling out of her driveway. She followed him past her house to get a picture of his license plate. About a half mile from

Blankenship's home, Latham stopped in the middle of the road and turned off his lights, causing Blankenship to hit him. Latham immediately left the scene. Blankenship telephoned the police, and Latham was charged with aggravated stalking.

On appeal, Latham argues that the circuit court erred 1) by failing to charge the jury on his requested unanimity instruction, and 2) by permitting the admission of other crimes, wrongs, or acts without the requisite notice prescribed by Rule 404(b), Ala. R. Evid.

I.

Latham first claims that the circuit court erred by failing to charge the jury on his requested unanimity instruction. Specifically, Latham contends that the State presented evidence of three separate instances in which Latham threatened Blankenship, and without a unanimity instruction, the jury may have impermissibly premised its verdict on an insufficient consensus about which events took place.

A jury's verdict – that is, its decision as to whether it finds the defendant guilty – must be unanimous. See Rule 23.1(a), Ala. R. Crim. P.; Ramos v. La., 140 S. Ct. 1390, 1402 (2020) ("the Sixth Amendment protects the right to a unanimous jury verdict [and] the Fourteenth

Amendment extends this right to state-court trials"). A jury must also unanimously agree that the prosecution proved each element of the charged offense. Richardson v. United States, 526 U.S. 813, 817 (1999). The requirement of unanimity does not, however, require the jurors to agree unanimously on individual facts when determining whether the State has satisfied a single element of a crime. See Richardson, 526 U.S. at 817 ("a federal jury need not always decide unanimously which of several possible sets of underlying brute facts make up a particular element, say, which of several possible means the defendant used to commit an element of the crime"); Schad v. Arizona, 501 U.S. 624, 630-31 (1991) (holding that where a crime states a single offense and provides for various means of committing it, jury unanimity as to the way in which the crime was committed is not required for conviction); Harris v. State, 632 So. 2d 503, 515 (Ala. Crim. App. 1992) ("[I]t was constitutionally permissible for the jurors to agree on a unanimous verdict based on any combination of the alternative means to a single offense."); Knotts v. State, 686 So. 2d 431, 461 (Ala. Crim. App. 1995) ("'If a statute describes a single offense which may be committed in more than one factual manner, or by way of different acts, jury unanimity is not necessary as to

the means by which it is committed, where the acts are conceptually similar or not repugnant to each other or may be characterized as continuous, provided substantial evidence has been presented to support each of the alternative means.'" (quoting 23A C.J.S. Criminal Law § 1398 (1989))). However, when the evidence indicates that two or more offenses arose out of a single transaction, the Alabama Supreme Court has adopted the strict-election rule, by which the State must "elect" which specific incidents it will submit to the jury to ensure unanimity. See J.D.S. v. State, 587 So. 2d 1249, 1256 (Ala. Crim. App. 1991) ("The need for election arises where there is but one count charging a single offense, but the proof shows more than one instance of that offense …. [W]hen the State has charged the accused with one offense in one count of the indictment but has presented evidence that the accused committed that offense several times on several different dates, the State, upon proper motion, is required to elect the date of the offense on which it seeks a conviction."); Shouldis v. State, 38 So. 3d 753, 761 (Ala. Crim. App. 2008) (same).

A person commits the crime of aggravated stalking if he "violates the provisions of Section 13A-6-90(a) and ... in doing so also violates any

court order or injunction …." § 13A-6-91, Ala. Code 1975. Section 13A-6-90(a), Ala. Code 1975, provides, "[a] person who intentionally and repeatedly follows or harasses another person and who makes a threat, either express or implied, with the intent to place that person in reasonable fear of death of serious bodily harm is guilty of the crime of stalking in the first degree." (emphasis added). The Alabama Code defines "harasses," as that term is used in §13A-6-90(a), as:

> "Engag[ing] in an intentional course of conduct directed at a specified person which alarms or annoys that person, or interferes with the freedom of movement of that person, and serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress."

§ 13A–6–92(c), Ala. Code 1975 (emphasis added). Likewise, "course of conduct" is defined as "[a] pattern of conduct composed of a series of acts over a period of time which evidences a continuity of purpose." § 13A–6–92(a), Ala. Code 1975.

Although Alabama courts have never examined this particular issue, a majority of other jurisdictions have held that juries need not receive a unanimity instruction regarding the specific acts that make up a course of conduct for the crime of stalking. See, e.g. Baker v. State (No.

01-19-00694-CR, March 2, 2021) (Tex. App. 2021) (not reported in South Western Reporter) ("[M]ultiple instances of prohibited conduct [proved by the State] make up the single offense of stalking, and that the jury need not agree on the method and means of prohibited conduct."); State v. Robinson, 500 P.3d 1227 (Kan. Ct. App. 2021) (noting that because stalking requires a "course of conduct," the statute focuses on aggregate conduct, which would not require a unanimity instruction); United States v. Gonzalez, 905 F.3d 165, 189 (3d Cir. 2018) (holding that a unanimity instruction was not warranted in a cyberstalking trial because a "pattern of conduct" does not require a jury "to agree on which specific acts were part of the stalking campaign"); State v. Miner, 363 S.W.3d 145, 148 (Mo. Ct. App. 2012) (holding that a unanimity instruction was not required where the appellee repeatedly harassed and threatened the victim through a "pattern of conduct composed of two or more acts," and the jury need not agree on which specific threats caused the victim to fear for her safety); State v. Elliot, 987 A. 2d 513, 521 (Me. 2010) (holding that unanimity is not required for each of the events that make up a course of conduct on a stalking charge); People v. Carey, 198 P.3d 1223, 1236 (Colo. Ct. App. 2008) (holding that the instances of harassment proved by the

State constituted a single criminal transaction because stalking required a "course of conduct," and thus a unanimity instruction was not required); People v. Ibarra, 67 Cal. Rptr. 3d 871, 891, 156 Cal. App. 4th 1174, 1198 (Cal. Ct. App. 2007) (holding that a unanimity instruction was not required regarding the specific acts that constituted stalking because the crime required proof of a course of conduct, not particular individual acts); Commonwealth v. Julien, 797 N.E.2d 470, 476 (Mass. Ct. App. 2003) (rejecting the appellee's argument for a unanimity instruction on the separate acts that collectively constitute stalking); Cook v. State, 36 P.3d 710, 720–22 (Alaska Ct. App. 2001) (rejecting the appellant's argument that he was entitled to a unanimity instruction because the actus reus of stalking is defined as a series of acts); Washington v. United States, 760 A.2d 187, 198–99 (D.C. 2000) (holding that a unanimity instruction is required only where the evidence shows there are legally separate incidents, not just factually separate incidents); State v. Hoxie, 963 S.W.2d 737, 742–43 (Tenn. 1998) (holding that the State was not required to elect which incidents it was relying upon to prove a course of conduct); People v. Rand, 683 N.E.2d 1243, 1249 (Ill. App. Ct. 1997) (the trial court's failure to provide a unanimity instruction did not deprive the

defendant of his constitutional right to a unanimous verdict because the incidents proved by the state were not separate incidents of stalking, but rather part of a single course of conduct). But see Shahgodary v. State, 336 So. 3d 8, 10 (Fla. Dist. Ct. App. 2022) (holding that the appellant was entitled to a unanimity instruction in a stalking case in considering a statute that does not require a course of conduct, but rather a single act to constitute stalking).

Like the majority of jurisdictions, Alabama's aggravated-stalking statute requires that the State prove that the defendant repeatedly followed or harassed the victim, and "[t]he harassment envisioned by the stalking statute involves a 'course of conduct,' which is defined as '[a] pattern of conduct composed of a series of acts over a period of time which evidences a continuity of purpose.'" Morton v. State, 651 So. 2d 42, 47 (Ala. Crim. App. 1994). A unanimity instruction is not required if the evidence shows only one criminal act. Because the Alabama Code defines aggravated stalking as a crime requiring repeated following or harassment as a course of conduct over a period of time, no unanimity instruction was required here. The jury in this case was presented with testimony about a series of incidents from which it could find that the

State had satisfied the "repeated" element of aggravated stalking. Thus, the trial court did not err in failing to deliver a unanimity instruction.

II.

Latham next contends that the circuit court erred by permitting the admission of other crimes, wrongs, or acts without the requisite notice prescribed by Rule 404(b), Ala. R. Evid. Specifically, Latham claims that he did not receive notice that the State intended to introduce evidence of "incidents of abuse" that occurred before the entry of the order of protection. (Latham's brief, at 18.)

"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." Ex parte Loggins, 771 So. 2d 1093, 1103 (Ala. 2000). Accord Windsor v. State, 110 So. 3d 876, 880 (Ala. Crim. App. 2012); Taylor v. State, 808 So. 2d 1148, 1191 (Ala. Crim. App. 2000). This is equally true with regard to the admission of collateral-acts evidence. See Davis v. State, 740 So. 2d 1115, 1130 (Ala. Crim. App. 1998).

> "Rule 404(b), Ala. R. Evid., provides, in part, that '[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.' However, other-crimes evidence 'may

> . . . be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.' Rule 404(b), Ala. R. Evid."

Hinkle v. State, 67 So. 3d 161, 164 (Ala. Crim. App. 2010). The purpose of this exclusionary rule "is to protect the defendant's right to a fair trial by preventing convictions based on the jury's belief that the defendant is a 'bad' person or one prone to commit criminal acts." Ex parte Arthur, 472 So. 2d 665, 668 (Ala. 1985). "'The basis for the rule lies in the belief that the prejudicial effect of prior crimes will far outweigh any probative value that might be gained from them. Most agree that such evidence of prior crimes has almost an irreversible impact upon the minds of the jurors.'" Ex parte Cofer, 440 So. 2d 1121, 1123 (Ala. 1983) (quoting C. Gamble, McElroy's Alabama Evidence § 69.01(1) (3d ed. 1977)). See also Chapman v. State, 196 So. 3d 322, 331 (Ala. Crim. App. 2015) ("A trial judge should exclude evidence falling within one of the exceptions only if the probative value is substantially outweighed by the danger of unfair prejudice." (citing Ex parte Register, 680 So. 2d 225, 227 (Ala. Crim. App. 1994))).

Prior to trial, Latham filed a motion for advanced notice of 404(b) evidence. Latham subsequently filed a motion in limine seeking, inter

alia, to exclude evidence of threats and acts of violence between Latham and Blankenship prior to the issuance of Blankenship's order of protection, arguing that the evidence was inadmissible pursuant to Rules 402, 403, 404, 609, and 802, Ala. R. Evid., and was inadmissible as a result of lack of notice as required by Rule 404(b), Ala. R. Evid. At the hearing on Latham's motion in limine, the State argued that the evidence of the incidents that occurred between Latham and Blankenship prior to the issuance of the order of protection was not character evidence of prior crimes, wrongs, or acts under 404(b), but rather direct evidence of aggravated staking.

As discussed above, Alabama's aggravated-stalking statute requires the State to establish, in part, that Latham repeatedly followed or harassed Blankenship. See §§ 13A-6-90 and 13A-6-91, Ala. Code 1975. Some of the acts establishing this course of conduct can occur before the issuance of the court order. In the present case, the testimony that Latham claims was improperly admitted under Rule 404(b) was the victim's testimony regarding Latham's repeated harassment. Those acts of harassment by Latham are not evidence of "other crimes" referred to in Rule 404(b); rather, those acts are evidence of the crime.

Blankenship's testimony about Latham's repeated harassment formed the basis for Latham's indictment for aggravated stalking and was therefore admissible as direct evidence to prove the charged crime. Consequently, the evidence of which Latham complains did not implicate Rule 404(b), so it was unnecessary for the trial court to require the State to follow the notice procedures included within that rule.

To the extent Latham intended to pursue on appeal his claims regarding Rules 402 and 403, Ala. R. Evid., these claims are without merit for the reasons stated herein. Rule 402 prohibits the admission of irrelevant evidence, while Rule 403 prohibits the admission of relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice. Inasmuch as the evidence at issue was evidence of the crime for which Latham was being tried, the evidence was relevant and immensely probative. Thus, its admission did not violate Rule 402 or Rule 403.

Accordingly, the judgment of the circuit court is affirmed.

AFFIRMED.

Kellum and Cole, JJ., concur. Minor, J., concurs specially, with opinion. McCool, J., concurs in part and concurs in the result, with opinion.

MINOR, Judge, concurring specially.

I concur in the Court's decision to affirm William Earl Latham's conviction for first-degree aggravated stalking, see § 13A-6-91, Ala. Code 1975, and his sentence of 20 years' imprisonment. I write separately to address the interplay between § 13A-6-91, Ala. Code 1975, and § 13A-6-90, Ala. Code 1975.

The main opinion explains:

> "A person commits the crime of aggravated stalking if he 'violates the provisions of Section 13A-6-90(a) and ... in doing so also violates any court order or injunction ….' § 13A-6-91, Ala. Code 1975. Section 13A-6-90(a), Ala. Code 1975, provides, '[a] person who intentionally and repeatedly follows or harasses another person and who makes a threat, either express or implied, with the intent to place that person in reasonable fear of death of serious bodily harm is guilty of the crime of stalking in the first degree.' (emphasis added). The Alabama Code defines 'harasses' as that term is used in §13A-6-90(a), as:
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> > "'Engag[ing] in an intentional course of conduct directed at a specified person which alarms or annoys that person, or interferes with the freedom of movement of that person, and serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress.'
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> "§ 13A-6-92(c), Ala. Code 1975 (emphasis added). Likewise, 'course of conduct' is defined as '[a] pattern of conduct composed of a series of acts over a period of time which

> evidences a continuity of purpose.' § 13A-6-92(a), Ala. Code 1975."

Addressing Latham's argument about the trial court's admission of evidence of Latham's threats and violence toward Blankenship before the issuance of the order of protection, the Court also explains: "Alabama's aggravated-stalking statute requires the State to establish, in part, that Latham repeatedly followed or harassed Blankenship. See §§ 13A-6-90 and 13A-6-91, Ala. Code 1975. Some of the acts establishing this course of conduct can occur before the issuance of the court order." (emphasis added). I agree with that statement, but, to be clear, for a defendant to commit aggravated stalking under § 13A-6-91, he or she must commit at least one of the acts comprising the "course of conduct" under § 13A-6-90 after the issuance of a court order or injunction. The State's evidence showed that Latham did that in this case.

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

I concur fully with Part I of the main opinion. However, concerning Part II of the main opinion, I concur in the result only. Although I do not necessarily disagree with the reasoning of the main opinion, I do not believe that this Court should address the merits of the issue presented in Part II of the opinion because the appellant's argument concerning that issue fails to comply with Rule 28(a)(10), Ala. R. App. P., and, thus, that argument is waived.

William Earl Latham was convicted of first-degree aggravated stalking, a violation of § 13A-6-91, Ala. Code 1975, which provides: "A person who violates the provisions of Section 13A-6-90(a) and whose conduct in doing so also violates any court order or injunction is guilty of the crime of aggravated stalking in the first degree." (Emphasis added.) Section 13A-6-90(a), Ala. Code 1975, provides: "A person who intentionally and repeatedly follows or harasses another person and who makes a threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking in the first degree."

On appeal, Latham makes a bare allegation that "the [trial] court erred by allowing evidence of prior bad acts before the marriage without notice to the defendant." Latham's brief, at 18. Latham specifically mentions "evidence … about incidents of abuse between Mrs. Blankenship and the defendant before the entry of the protection order." Id. The State responds that "Latham's [Rule] 404(b)[, Ala. R. Evid.,] notice argument is waived because it does not comply with Rule 28(a)(10)." The State's brief, at 18.

Nevertheless, as a matter of first impression, the main opinion reaches the merits of the issue and construes the language of Alabama's first-degree aggravated-stalking statute, § 13A-6-91, to allow some of the requisite violations of § 13A-6-90(a) to occur before the issuance of a court order or injunction. However, I agree with the State, and I would not decide that issue because it has not been properly briefed.

Rule 28(a)(10), Ala. R. App. P., requires that the brief of the appellant contain "an argument containing the contentions of the appellant 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." This Court has stated:

> "'"'It is not the function of this Court to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument.'"' Ex parte Borden, 60 So. 3d 940, 943 (Ala. 2007) (quoting Butler v. Town of Argo, 871 So. 2d 1, 20 (Ala. 2003), quoting in turn, Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994)).
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> "'Authority supporting only "general propositions of law" does not constitute a sufficient argument for reversal.' Hodges v. State, 926 So. 2d 1060, 1074 (Ala. Crim. App. 2005). We conclude by recognizing that arguments that do not comply with Rule 28(a)(10), Ala. R. App. P., are deemed waived. See Egbuonu v. State, 993 So. 2d 35, 39 (Ala. Crim. App. 2007) ('Therefore, as to this issue Egbuonu has failed to comply with Rule 28(a)(10), and the issue [is] deemed to be waived.')."

Hooks v. State, 141 So. 3d 1119, 1124 (Ala. Crim. App. 2013).

In the present case, concerning issue II, Latham's entire argument consists of the following:

> "Evidence was introduced about incidents of abuse between Mrs. Blankenship and the defendant before the entry of the protection order. Before their divorce, Mrs. Blankenship and the defendant William Latham were married for thirteen (13) years, beginning in 1999, and there were quite a few issues during their marriage. Mrs. Blankenship testified that she and the defendant started having problems around 2013. She testified that it became physical in 2018 when the defendant held her down in a recliner, began to choke her, and told her that he would choke her to death. She testified that she was terrified. Mrs. Blankenship testified that she would wake up with his hands around her neck and him telling her that he would kill her. She believed he would carry out that threat; he was constantly mentally abusive towards her.

There was another incident where he hit her in the face. Another time, Mrs. Blankenship testified, the defendant jerked her out of the car and put her through the screen of a porch, giving her injuries to her neck. She testified that from 2015 until 2017, he continuously threatened to kill her and wouldn't let her sleep. Mrs. Blankenship testified that he drew back to hit her and [that she] told him he would go to jail in Decatur if he hit her. The defense did not receive notice of these incidents until the defendant's Motion in Limine was argued. All these incidents happened before the protection from abuse order was entered. The fourth element of the indictment was that the facts took place while a court order was entered. The defendant did not disclose these acts that predate the marriage until his [Rule] 404(b) motion was argued. The fact that they took place before the marriage, and were not told, is highly prejudicial and violates Rule 402, 403, and 404 of the Alabama Rules of Criminal Procedure. See Rule 402, Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible, states:

> "'All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or that of the State of Alabama, by statute, by these rules, or by other rules applicable in the courts of this State. Evidence which is not relevant is not admissible. (See Ala. R. Evid. Rule 402, 1975).'

"See Rule 403, Exclusion of Relevant Evidence on the grounds of Prejudice, Confusion, or Waste of Time, states:

> "'Although relevant; evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the Jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. (See Ala. R. Evid. Rule 408, 1975).'

"See Rule 404, Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes, Wrongs, or Acts, states:

> "'(a) Character Evidence Generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:
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> "'(1) Character of Accused. In a criminal case, evidence of character offered by an accused, or by the prosecution to rebut the same, or is evidence of a trait of character of the alleged victim, or the crime is offered by an accused and admitted under Rule 404 (a)(2)(A)(i), evidence of the same trait of character of the accused offered by the prosecution:
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> "'(2) Character of Victim
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> "'(A) In Criminal Cases. (i) Evidence of a pertinent trait of character of the victim of the crime offered by an accused or by the prosecution to rebut the same, or (ii) evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor.
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> "'(B) In Civil Cases. Evidence of character for violence of the victim of assaultive conduct offered on the issue of self-defense by a party accused of assaultive behavior or evidence of the victim's character for peacefulness to rebut the same. Whenever evidence of character for the violence of the victim of assaultive conduct, offered by a party accused of such assaultive behavior, is admitted on the issue of self-defense, evidence of character for

> the violence of the party charged may be offered on the subject of self-defense by the victim and proof of the accused party's character for peacefulness may be offered to rebut the same.
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> "'(3) Character of Witness. Evidence of the character of a witness, as provided in Rules 607, 608, 609, and 616.
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> "'(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove a person's character to show action in conformity. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall give reasonable notice in advance of trial, or during the trial if the Court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial. (See Ala. R. Evid. Rule 404, 1975).'
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> "The defense concedes that the Trial Court gave a limiting instruction to the Jury."

Latham's brief, at 18-22.

Therefore, Latham simply sets forth some facts, makes a bare allegation, and then block quotes three rules of evidence followed by a single sentence concerning his concession that the trial court gave a limiting instruction. Latham fails to provide any legal analysis. That

failure makes Latham's argument insufficient under Rule 28(a)(10). Accordingly, the argument is waived, and I would not address it.