Court of Criminal Appeals

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MEMORANDUM

CR-15-0494 Lauderdale Circuit Court CC-14-698

Jeremy Leshun Williams v. State of Alabama

KELLUM, Judge.

The appellant, Jeremy Leshun Williams, was indicted by a Lauderdale County grand jury for murder made capital because it was committed during the course of a robbery, a violation of § 13A-5-40(a)(17), Code of Alabama 1975. Following a jury trial, Williams was convicted of the lesser-included offense of murder, a violation of § 13A-6-2, Ala. Code 1975. The circuit court sentenced Williams to life in prison and ordered Williams to pay $50 to the crime victims compensation fund and court costs.

The evidence presented at trial established the following pertinent facts. In the fall of 2013, Brioni "Bree" Rutland lived in Tuscumbia with his girlfriend Morgan Presley, and shared custody of his six-year-old son. Rutland coached various sports at Deshler High School and was a student at the University of North Alabama ("UNA"). Presley testified that Rutland typically took Jaylon to school, attended school, coached basketball and, on Tuesdays, would "do his errands." (R. 958.)

In addition to his work as a coach and student, Rutland also "took [gambling] bets." (R. 977.) Presley testified that Rutland had two cellular telephones, one of which was used to handle his gambling contacts. Among those contacts were Paul Phelps, Brandon Ogletree, and Kenny Henry. According to Phelps, Ogletree, and Henry, Rutland placed bets on college and professional football games on a casual basis for a large group of mutual friends. Those wishing to bet would text Rutland. The bets were "normally" settled on Tuesday after the games were played. (R. 1141.) Rutland never made threats, bets were sometimes carried over into the following week before being settled, and payment was based on the money someone had or needed at the time. Phelps testified that he paid Rutland $500 the Sunday before Thanksgiving, but that was only a partial payment. On November 26, 2013, Ogletree sent Rutland a text message to tell Rutland that he was leaving $3,000 he owed him in his garage, but never heard back from him. That same day, Rutland stopped by Henry's work at approximately 10:00 a.m. and paid Henry about $600 he owed. According to Henry, he and Rutland laughed and talked and "joked around" as usual. (R. 1143.)

On the Tuesday before Thanksgiving in 2013, Rutland telephoned Presley around 9:50 a.m. and told her that he might need her "to meet him and get Jaylon to take [Jaylon] to practice." (R. 959.) When Presley did not hear back from Rutland by telephone or text message during the day and evening hours, Presley went to the Tuscumbia Police Department ("TPD") and filed a missing-person report. Presley also downloaded the "find my I-phone app" to locate Rutland's cellular telephone. (R. 962.) The app identified the location of Rutland's I-phone as an apartment complex on Mattielou Street in Florence, just down the road from UNA. Presley met police officers with the Florence Police Department ("FPD") at

Mattielou Street and found Rutland's cellular telephones and wallet in a storm drain. Presley subsequently "logged into [the] AT&T call log where [she] could look at [Rutland's] latest [call], who he had been talking to" and telephoned the last number on the call log. (R. 965.) Presley testified that Williams answered the telephone when she called the number.

At about 11:30 p.m. on November 26, 2013, Sergeant Brad Holmes with the FPD drove down an alley connecting his house with Hawthorne Street. When Sgt. Holmes got to the end of the alley, the headlights of his vehicle "hit a dark colored SUV." (R. 1171.) Sgt. Holmes noticed a person sitting in the driver's seat of the vehicle who looked away from him. Sgt. Holmes considered this action suspicious and drove around the block with the intent to drive around and get the license number to the SUV. As he turned right, Sgt. Holmes noticed the tailgate of the SUV was up and two black garbage bags inside the SUV along with a light-colored sheet. While driving around, Sgt. Holmes also observed a door to an apartment at 117 Hawthorne Street open and a similar garbage bag to those he saw in the SUV sitting in the doorway of the apartment. After circling the block, the SUV was gone and Sgt. Holmes was unable to get the license number of the SUV.

In the early-morning hours of November 27, 2013, Captain Mal Goodloe with the Sheffield Police Department ("SPD") patrolled the "old railroad bridge" in Sheffield. Captain Goodloe explained that the bridge was a tourist attraction that the SPD toured regularly because of frequent vandalism, drug use, and sex at the bridge. According to Captain Goodloe, the bridge was closed from 10:00 p.m. to 6:00 a.m. daily; however, on November 27 Captain Goodloe saw a light-skinned black male on the bridge around 2:00 a.m. Captain Goodloe testified that the man was sweating although it was approximately 20 degrees outside. The man had been wearing a "Fisherman's hat with flaps on the side, black rim glasses," dark pants, and a dark-colored shirt with a Norfolk Southern logo on the left side. (R. 1320.) Captain Goodloe observed sheets in the back of the dark-colored SUV and "assumed that someone may have had sex back there as usual." (R. 1319-20.) When Captain Goodloe informed the man that the bridge was closed and asked him why he was there, the man replied "I have been out of town for a little while and my friend Bree...took me out here on the bridge, showed me around, how the Railroad

Bridge looked." (R. 1321.) Captain Goodloe testified that he did not see anyone else so he told the man to leave and the man got in his SUV and drove away.

On November 28, 2013, at approximately 3:00 p.m. Charles Pilgrim walked with his wife and grandson to the Railroad Bridge in Sheffield following Thanksgiving lunch. When Pilgrim started to walk on the bridge he saw what he thought was a big puddle of paint on the wood railings on the ground. Pilgrim and his family continued to walk down the bridge. When they turned around and passed the puddle again, however, Pilgrim saw blood "and it looked like something had been scrubbed." (R. 1012.) Pilgrim telephoned the SPD, who arrived within 30 minutes. Dive teams located and recovered a male body from the river. The body was attached by the feet to a chain running through cinder blocks when it was found in the river. Officers collected evidence and observed a "large pool of blood on the walkway" and "blood on the railings." (R. 1700.) DNA testing of the blood found on the bridge contained traits that matched Rutland's genetic traits.

Around 6 p.m. on November 29, 2013, Sgt. Holmes went to 117 Hawthorne Street. Sgt. Holmes was advised at that time that Rutland's body had been recovered from the river. Sgt. Holmes knew the owner of the apartment complex at 117 Hawthorne Street -- Dr. Lee Nichols. Sgt. Holmes testified that he telephoned Dr. Nichols who gave him permission to be on the curtilage of the property. Sgt. Holmes asked Dr. Nichols who was living in "apartment one" and Dr. Nichols told him that Jeremy Williams was living in that apartment. (R. 1177.) Sgt. Holmes testified that "apartment one" was the same apartment he saw with the door open and a garbage bag in front on November 26, 2013.

With Dr. Nichols's permission, Sgt. Holmes and other FPD officers approached the sidewalk and observed dried blood on one of the steps leading to the front porch of Williams' apartment. The officers followed the "blood trail" along the sidewalk, leaves, and monkey grass. (R. 1178.) Sgt. Holmes then observed a "possible blood smear on the door frame of the [front] door." (R. 1178.) According to Sgt. Holmes, the blood found indicated that "whatever was dropping that blood was in motion and was consistent with something coming from inside the apartment, outside of the apartment and then to the curb

of that roadway." (R. 1179.)

Upon realizing that Williams was potentially involved or had information surrounding a homicide, Holmes returned to the FPD, drafted an affidavit and application for a search warrant, and obtained a search warrant authorizing him to search Williams' apartment. Sgt. Holmes entered the apartment through the back door and immediately noticed that the inside of the apartment was "extremely hot" despite cold outside temperatures. (R. 1206.) Sgt. Holmes could smell "a strong scent of a cleaning agent." (R. 1206.) Sgt. Holmes saw a space heater set on "high"; two mops in a bucket with a "dried brown substance" on the bottom; blood droplets and smears throughout the apartment; and suspicious dust patterns and scratch marks. (R. 1216, 1225.) Blood samples taken from different areas of the apartment matched DNA profiles of Williams, Rutland, or possibly a mixture of both.

After checking the crime scene at 117 Hawthorne Street, FPD Chief Ron Tyler located a navy blue Chevrolet Trail Blazer SUV at Mars Hill Manor Apartments that matched Sgt. Holmes's description of the SUV he had seen a couple of days earlier. After the SUV was impounded and transported to the scene, Sgt. Holmes walked around the SUV and observed a dried hand print that appeared to be smeared in blood on the driver's side of the SUV and apparent blood droplets on the back bumper and "towing package" of the SUV. (R. 1279.) In the rear storage compartment of the SUV, Sgt. Holmes found several bags of clothes and personal items. Underneath those bags, Sgt. Holmes observed what appeared to be dried blood on the carpet as well as some discoloration. Sgt. Holmes testified that he could smell the faint odor of a disinfectant or cleaner.

Detective Kevin Jackson, an investigator with the FPD, arrived at 117 Hawthorne Street after the search warrant had been signed and entered the apartment with Sgt. Holmes. While the evidence was being processed, Jackson returned to the FPD to interview Williams. Williams was provided an attorney and was given time to confer with his attorney. After he was read his Miranda[1] rights, Williams along with his attorney signed the waiver-of-rights form. Jackson did not threaten Williams

[1]Miranda v. Arizona, 384 U.S. 436 (1966).

or make him any promises in exchange for his statement.

In his statement to police, Williams told Jackson that he received a text message from Rutland indicating that he owed Rutland $1,034. When Williams asked Rutland if he was coming to Florence, Rutland told Williams that he was already there and came by Williams' apartment to collect the debt. According to Williams, when he told Rutland that he did not have the money, Rutland "got serious with him" and "grabbed him by the throat, started choking him and somehow got around behind him and got him in a choke hold from the back and choked him out to where he was unconscious." (R. 1332.) Williams stated that, when he awoke, Rutland had his knee on his chest and "had a knife out trying to cut his pinkie off," apparently carrying out a prior threat "that if he didn't pay he was going to cut a finger off every time he saw him." (R. 1332-33.) Williams told Jackson that he was able to "roll [Rutland] off of him and they struggled for the knife." (R. 1333.) Williams eventually gained control over the knife and stabbed Rutland as many times as he could. When Williams stood up, the knife was on the floor and Rutland chased Williams into his bedroom. Williams stated that he was able to grab a gun off of the shelf in the closet. When Williams turned around, Rutland was "right there on him" and Williams fired one round at Rutland. (R. 1333.) Williams stated that Rutland fell to the ground and did not move.

After he shot Rutland, Williams panicked and began to clean up. Williams drug Rutland's body from the living room into his son's bedroom and tried to bleach the floors and the walls. Williams told his girlfriend, Allison Taylor, that he was not home and to pick up her car that he had been using because he did not want her to come inside the house. Williams then drove Rutland's car to Sheffield where he dropped it off at the Village Landings apartments. Williams then sent Taylor a text message asking her to pick him up. During the interview, Jackson noticed that Williams had a "good gash" on the pinkie of his right hand and superficial wounds on the other fingers on that same hand. (R. 1335.)

Williams told Jackson that he drove Taylor's car to Wal-Mart later that night and bought chains, a lock, and a big garbage can. A security video from Wal-Mart showed Williams entering Wal-Mart at 8:48 p.m. on November 26, 2013, and

leaving Wal-Mart at 9:33 p.m. that same day. Williams purchased, among other things, two garbage cans, two packages of chain, and a double pack of Master padlocks. When Williams returned to the apartment, he realized that he needed a larger car to move Rutland's body. Williams asked Jessica Jordan, the mother of his child, if he could use her blue Chevrolet Trailblazer SUV to move some furniture. Williams put Rutland's body, along with the cleaning materials he had used, in a garbage can. Williams then took the remaining items and put them in a garbage bag that he loaded in the SUV along with the garbage can. Williams drove around the block and threw Rutland's cellular telephones and wallet in a sewer. As he drove over the O'Neal Bridge into Sheffield, Williams threw the gun out of the passenger window into the river.

Once Williams got to the Railroad Bridge, he parked as close as he could to the wooded walk area. Williams first took cinder blocks down to the bridge before he returned to get the garbage bag and garbage can with Rutland's body. Williams chained Rutland's body to the cinder blocks and pushed it over into the river before throwing the garbage can over into the river. When Williams returned to the SUV, an SPD officer was already there. Williams told Jackson that he told the officer that he was "cheating on his girlfriend" and left when the officer told him that the bridge was closed. (C. 661.)

Taylor, who had met Williams on a dating website, testified that Williams told her that he had been "out winning money" and asked Taylor to come and pick him up. (R. 1532.) Taylor ultimately picked Williams up around 5:30 p.m. while Williams was walking on the side of the road. When Taylor picked Williams up, she went to the Dollar General to purchase some bandages for Williams who had cut his hand. Williams told Taylor that he cut his hand when "he got mad and hit a window." (R. 1534.) When Taylor returned to the car after purchasing the first-aid supplies, Taylor saw Williams "straightening out" and counting a "wad of cash." (R. 1535.) Taylor estimated that Williams had at least $500 in cash. Williams gave Taylor $200, which she assumed was for her paying his rent and utilities. Williams put the rest of the money in his pocket.

When Taylor and Williams returned to her apartment, Williams took a shower and Taylor washed his laundry. After

his shower, Williams put on a jacket that belonged to Taylor and "had a Norfolk and Southern on the breast pocket area." (R. 1544-55.) Williams then left alone and went to Wal-Mart, telling Taylor that "he needed to run to Wal-Mart to buy some things for his mother." (R. 1540.) Williams returned several hours later wearing the same jacket and took another shower. Taylor testified that Williams's hand had "busted open again." (R. 1544.)

The day following the murder, Williams purchased seven bottles of Awesome cleaner, two "Orange cleaners", an "Awesome floor cleaner", two bottles of ammonia, and four bars of soap from the Dollar Tree store where he worked. (R. 1491.) William paid for these items with $20 in cash. April McGee rang up Williams's purchases at the Dollar Tree and noted that the $20 bill Williams used to purchase the items had "a bunch of blood on it." (R. 1508.) DNA testing of blood found on the $20 bill showed DNA containing a "major component" that matched Williams's DNA profile. (R. 1789.)

Before November 26, 2013, Williams had 82 cents in his Wells Fargo bank account. On November 27, 2013, Williams made a deposit in the amount of $530 in that account. Williams had $3.36 in an account with Bancorp Bank until he received a direct deposit from Dollar Tree in the amount of $144.96 on November 29, 2013.

Dr. Kathleen Enstice, a medical examiner with the Alabama Department of Forensic Sciences, performed an autopsy of Rutland's body. Rutland tested negative for both Ethanol and drugs. Dr. Enstice testified that Rutland received a gunshot entrance wound to his left eye which she determined was shot from the "intermediate range" from within six inches away. (R. 1886.) Dr. Enstice based this determination on gunpowder stippling around the wound. The bullet ruptured Rutland's left eye and entered the inferior base of his skull. Dr. Enstice recovered two lead bullet fragments that were embedded in a "bony bridge" of the left hand side of the base of Rutland's skull. Dr. Enstice testified that the fragments did not enter Rutland's brain but that the gunshot bruised Rutland's brain. According to Dr. Enstice, the bullet would have caused Rutland to lose vision in his left eye and "impair his movements" but it would not have killed or paralyzed him. (R. 1907.)

Dr. Enstice testified that Rutland received at least 68 stab wounds as well as numerous "blunt force injuries, bruises, scrapes, [and] lacerations...." (R. 1969.) Dr. Enstice determined that the deeper wounds striking the vital organs and resulting in hemorrhage were inflicted before Rutland's death. Because there was swelling related to a bruise on Rutland's upper lip, Dr. Enstice determined that Rutland was alive when that injury was inflicted.

During the autopsy, Dr. Enstice found that Rutland's spinal cord was "surrounded by hemorrhage." (R. 1922.) The third cervical vertebrae at the base of his skull and the fifth cervical vertebrae at his neck had been "nearly transected...with only a small portion of the spinal cord intact." (R. 1922.) Dr. Enstice concluded that the injury to Rutland's third cervical vertebrae "obliterated" all of Rutland's motor ability and that he would not be able to move below that injury or be able to breathe without a ventilator. (R. 1924.)

Dr. Enstice testified that none of Rutland's wounds were defensive wounds. Dr. Enstice explained that defensive wounds resulted from an effort to "grab the blade or just keep the blade at bay to defend...against further stabbing." (R. 1979.) According to Dr. Enstice, the wounds on Rutland's hand were "consistent with holding a knife and slipping along the sharp edge of a blade." (R. 1982.) Based on her determination that the gunshot wound "would not stop [Rutland] completely" and that the stab injuries nearly severed his spinal cord, Dr. Enstice concluded that Rutland had been shot before he was stabbed. (R. 1986.)

After both sides rested and the circuit court instructed the jury on the applicable principles of law, the jury found Williams guilty of murder. Williams filed a motion for a new trial which the circuit court denied. This appeal followed.

I.

Williams contends that the circuit court erred when it denied his motion to suppress his second statement to Officer Jackson because, he argues, it was obtained in violation of his Fifth Amendments rights.

The evidence presented at the suppression hearing established the following pertinent facts. On the morning of November 27, 2013, Morgan Presley went to the TPD to report her boyfriend, Brioni "Bree" Rutland was missing. Wes Holland, an investigator with the TPD, spoke with Presley. Presley had not spoken to Rutland since November 26, 2013, when she last saw him at approximately 11 a.m. Presley informed Officer Holland that Rutland had failed to pick up his son at school at 3 p.m. on November 26, which was out of character for Rutland. Using a "Locate My I-phone" app, members of the FPD and coaches from Deshler High School located Rutland's cellular telephone in Florence. FPD subsequently notified Officer Holland that they had found Rutland's cellular telephone.

During his investigation into Rutland's disappearance, Officer Holland spoke with Billy Fuqua who lived in a house next door to Rutland and who also served as a confidential informant to the TPD. Fuqua told Officer Holland that Rutland was "into gambling" and that Rutland had been "collecting debts." (R. 81.) Officer Holland also learned that the last person who saw Rutland was Williams. Officer Holland testified that he received a telephone call from Dee Liner, a friend of Rutland, who stated that Rutland told him over the telephone that "he was stopping by Jeremy Williams' house to collect some money, and he would holler back at him later." (R. 84.)

After learning this information, Officer Holland telephoned Williams and informed Williams that Rutland was missing and that Williams was the last person to see Rutland. Williams informed Officer Holland that Rutland had sent him a text around 10:57 a.m. telling Williams how much money he owed Rutland. Williams sent a text message back to Rutland and asked if Rutland was coming to Florence. When Rutland said that he was, Williams responded "I am here now." (R. 87.) Williams told Officer Holland that when Rutland arrived at his residence Rutland was "smiling." (R. 87.) Williams told Rutland that he only had $500, although he really had $750. Williams stated that he later telephoned Rutland and told him that he had $200 more, but Rutland indicated that he would not be back on that day.

On November 28, 2013, Officer Holland spoke with Williams by telephone a second time. During this conversation, Officer

Holland learned that Williams lived on Hawthorne Street in Florence -- approximately two blocks from where police had located two cellular telephones belonging to Rutland and Rutland's empty wallet. Officer Holland asked Williams to take a polygraph test and answer some additional questions at the police station. Williams agreed to the polygraph test and said that he would come in at 7:00 p.m. to answer additional questions.

Williams arrived at the TPD at 9:07 p.m. to speak with Officer Holland; however, neither Officer Holland nor any other officer who could speak with Williams were present because they were at the Railroad Bridge between Tuscumbia and Sheffield investigating a report of "a large amount of blood" on the bridge. (R. 97.) Officer Holland testified that he and other officers spent three or four hours processing the evidence at the Railroad Bridge and went home around midnight.

When Williams arrived at the TPD to speak with Officer Holland, Williams was met by Sergeant Jeremy Cain. Sergeant Cain learned that Williams was there to speak to one of the investigators and took Williams back to the booking area, observing that there was no one there to speak to Williams. Sergeant Cain asked Williams to empty his pockets and hand over his property. Sergeant Cain explained that he asked for Williams's property because jail procedure required the removal of all personal property of anyone placed in a cell. Williams asked Sgt. Cain if he was under arrest and Sgt. Cain told Williams that he was not under arrest. Williams was not handcuffed, fingerprinted, or put in a jail uniform. On cross-examination, Sgt. Cain testified that Williams was "free to leave" but was placed in a jail cell because there was no other place to put him. (R. 149.) However, upon further examination Sgt. Cain acknowledged that Williams was placed in a locked jail cell after arriving at the police department and was not free to leave.

On November 27, 2013, at approximately 2:00 a.m., Captain Mal Goodloe with the SPD was patrolling the Railroad Bridge when he observed Williams parked on the bridge in violation of a curfew that mandated the closure of the bridge from 10:00 p.m. to 6:00 a.m. Captain Goodloe pulled up halfway in front of Williams's SUV and observed Williams lower the trunk of the vehicle. Williams was wearing a winter hat, black lens "geek"

glasses, dark pants, and a dark shirt or jersey with "Northfolk Southern" on the left side. (R. 180.) When Captain Goodloe asked Williams what he was doing on the Railroad Bridge, Williams said that his friend "Bree" had dropped him off to see the Railroad Bridge since Williams had been out of town for a while. Captain Goodloe informed Williams that the bridge was closed at that time and asked Williams to leave. Thereafter, both Captain Goodloe and Williams left the bridge.

When Captain Goodloe drove back home from Huntsville on November 29, 2013, he heard on the news that there was a missing person and that numerous officers had responded to investigate at the Railroad Bridge. Captain Goodloe contacted Captain Randy Butler of the SPD who told him to report to the TPD. At the TPD, Captain Goodloe identified Williams as the person he saw on the Railroad Bridge. Williams was still wearing the same jacket with "Northfolk Southern" written on it.

Stuart Setliff, an investigator with the TPD, testified that no one interrogated Williams on the evening Williams came to the TPD to speak to investigators. According to Officer Setliff, investigators processed evidence on November 28, 2013, at the Railroad Bridge until about 8:30 p.m. when they went back to the department. At 9:22 p.m. investigators received a telephone call indicating that Rutland's car had been found at the Village Landing Apartments and immediately left to "go process the victim's car." (R. 200.) Officer Setliff testified that they did not keep Williams in a cell overnight to "soften him up," but testified that they went home after processing all of the evidence because they were "mentally exhausted." (R. 205.)

On November 29, 2013, the investigators returned to the Railroad Bridge where they saw scratch marks on the wooden railing which they determined were caused by cinder blocks. After a discussion with Captain Butler, the Colbert County Emergency Management Agency was called to "get boats in the water that morning." (R. 208.) At approximately 11:30 a.m., a body was discovered in the water through the use of a pole camera. Around 2:30 p.m., the body was recovered and identified to be that of Rutland. Officer Setliff observed stab wounds on Rutland's body and concluded that he was "dealing with a homicide." (R. 211.)

At 4:30 p.m. on November 29, the officers returned to the TPD where they began interrogating Williams. Officer Setliff testified that Williams was taken from the jail cell where he had been waiting and was brought to an office where he was advised of his Miranda rights. Williams signed the Miranda form, indicating that he understood that he had a right to remain silent and to request an attorney.

In his statement to TPD police, Williams acknowledged that he saw Rutland on the day that he disappeared but denied any involvement in Rutland's disappearance. While questioning Williams, investigators asked Williams for consent to search his apartment. Officer Setliff testified that Williams expressed concern about 10 pounds of marijuana in his apartment that he did not want the police to discover. The investigators assured Williams that the marijuana and gambling were "the least of [their] concerns." (R. 224.) According to Officer Setliff, the primary concern was finding evidence and a missing person. During the interrogation, Williams invoked his right to counsel on several occasions. It is undisputed that investigators continued to question Williams after he invoked his right to counsel. The interrogation ended when Williams consented to the search of his apartment. Williams consented to the search of his apartment only after officers promised that he could be present during the search. While transporting Williams to Florence to search his apartment, Brad Holmes with the FPD telephoned the officers and told them to "hold up with him" because FPD was going to obtain a search warrant. (R. 225.) Williams was then transported back to the TPD.

Sergeant Brad Holmes with the FPD testified that, through news coverage and briefings from another FPD officer, he was aware on November 29, 2013, that a body believed to be Rutland's had been discovered in the river. Sergeant Holmes was also aware that cellular telephones and a wallet had been found in a drain about a block away from 117 Hawthorne Street in Florence. Although Sgt. Holmes was aware that the TPD had a "person of interest," he was not "privy to any information of anything that was going on in Tuscumbia." (R. 273.)

When Sgt. Holmes responded to 117 Hawthorne Street in Florence, two FPD detectives were already at the scene "standing by for an Investigator from Colbert County to

conduct a consent search of the residence." (R. 266.) Sergeant Holmes lived around the corner from the residence at 117 Hawthorne Street and had to drive through an alley running to Hawthorne Street to access his own residence. Sergeant Holmes knew the owner of 117 Hawthorne and that the house was a rental property. Dr. Lee Nichols, the owner of the property, had given Sgt. Holmes permission to enter the curtilage of the property. Sergeant Holmes testified that Dr. Nichols frequently asked Holmes to check on the property when there seemed to be an issue.

Sergeant Holmes testified that he observed something suspicious when he was leaving his residence on November 26, 2013, at approximately 11:30 p.m. Sergeant Holmes testified that while driving down the alley he observed a dark colored SUV with a male sitting in the driver's side of the vehicle. When Sgt. Holmes's headlights hit the vehicle, the male turned his head as if to conceal his face. Sergeant Holmes turned right and noticed that the tailgate of the SUV was open and that garbage bags were in the back of the SUV. Sergeant Holmes circled the block, but when he came back around the SUV was gone. Sergeant Holmes testified that he noticed that the front door to the apartment on the front right of the building was left open and saw what looked like a garbage bag inside the doorway.

Sergeant Holmes told the other detectives present about the November 26, 2013, incident and telephoned Dr. Nichols. When Sergeant Holmes approached the sidewalk and reached the edge of the curb he noticed what appeared to be blood on the edge of the curb. Sergeant Holmes followed a trail of blood up stairs off of the sidewalk and followed the trail of blood to the same doorway he noticed had been left open a few nights earlier. Shining his flashlight, Sgt. Holmes observed drops of blood on the monkey grass and leaves leading to the front door of the apartment. Sergeant Holmes then observed blood smears on the front door of the apartment. Based on his belief that a crime had been committed on the property, Sgt. Holmes secured the scene and applied for a search warrant. Sergeant Holmes then telephoned the TPD investigators and informed them that they should not proceed with a consent-based search. Sergeant Holmes subsequently secured a search warrant for the apartment. On cross-examination, Sgt. Holmes testified that he put a paragraph about Williams's interrogation by the TPD

investigators in his affidavit supporting his search warrant. Sergeant Holmes explained that he did so to be thorough and include all information known to him at the time he applied for the search warrant. According to Sgt. Holmes, the information about the TPD interrogation was not used as the "operative paragraph" to determine probable cause. (R. 284.)

On November 29, 2013, at 11:23 p.m. Williams was transported to the FPD. FPD detective Kevin Jackson was the lead detective on the case and questioned Williams upon his arrival to the FPD. Before questioning Williams, Detective Jackson went to the scene at Hawthorne Street and was briefed on the discovery of Rutland's cellular telephones and wallet, Sgt. Holmes' observation of the SUV and garbage bags at the apartment, and Captain Goodloe's observations on the Railroad Bridge. Detective Jackson was aware that Williams was the last person to see Rutland alive and that Rutland's body had been discovered in the river. Detective Jackson testified that he knew that Williams had been in the custody of the TPD and that the TPD may have talked to Williams but, Detective Jackson stated, he had "no idea" that Williams had been held in custody for "upwards of 20 hours" and was not privy to the substance of the lengthy Tuscumbia interrogation. (R. 295.)

Before questioning Williams about Rutland's murder, Detective Jackson advised Williams of his Miranda rights. Williams signed the Miranda form at 11:35 p.m. Shortly after the interview started, Williams requested an attorney. Detective Jackson stopped the interview and an attorney, Dane Perry, was provided with the assistance of the Assistant District Attorney. Perry arrived at the FPD at 12:15 a.m., was briefed by detectives, and was given time to speak with Williams outside the presence of law enforcement. With Perry present, Detective Jackson read Williams his Miranda rights a second time. Williams executed a second Miranda form and agreed to talk to Detective Jackson "with [his] lawyer present." (C. 623.) Thereafter, Williams described the events leading to Rutland's death and the disposal of Rutland's body in the river. The FPD interview of Williams was recorded on video and played for the judge during the suppression hearing.

At the conclusion of the suppression hearing and after considering the legal arguments of the parties, the circuit court entered a thorough order in which it set forth detailed

findings of fact and ruled as follows:

> "Based on the foregoing facts and evidence presented during the suppression hearing it is the ruling of the court that any and all statements made by the defendant to any member of Colbert County law enforcement is SUPPRESSED as being obtained in violation of the defendant's rights under both the 4th and the 5th amendments to the U.S. Constitution. Any evidence or testimony that the defendant stared at or paid any special attention to the old railroad bridge while being transported across the Tennessee River is SUPPRESSED. Any consent the defendant may have given to a search of his apartment is held to be ineffective as being the product of coercion and/or promises of leniency. The first statement given to Officer Jackson before the repeated request for an attorney was honored is SUPPRESSED.
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> "As to the statement given by this defendant to investigator Jackson with attorney Dane Perry present, the motion to suppress is DENIED. The court finds two intervening circumstances sufficiently attenuated the taint of the unlawful arrest and subsequent violations of the defendant's rights. Wong Sun v. United States, 371 U.S. 471 (1963), Brown v. Illinois, 422 U.S. 590 (1975). First, Mr. Williams was finally provided an attorney with whom he was allowed to consult. Secondly, after the victim's body was recovered, after Mr. Rutland's phones were found close to this defendant's residence, after Officer Holmes saw the suspicious activity at the defendant's apartment and after blood was found on defendant's premises, probable cause existed for a warrantless arrest of Mr. Williams. These two factors taken together purged the taint of the illegal arrest. New York v. Harris, 495 U.S. 14 (1990).
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> "Defendant cites Missouri v. Seibert, 542 U.S. 600 (2004), and Harney v. U.S., 407 F.2d 586 (5th Cir. 1969), for the proposition that a subsequent Mirandized statement is still tainted and due to be suppressed after a first unMirandized confession.

> The facts at bar are easily distinguished from Seibert and Harney. Unlike the defendant in those cases, Mr. Williams steadfastly denied involvement in the death of Mr. Rutland until after he had spoken privately with an attorney. His changed story thereafter convinces the court that the last statement was freely and voluntarily given and not the product of the earlier police misconduct."

(R. 345-46.)(Footnotes omitted.)

> "'In reviewing a trial court's ruling on a motion to suppress, this Court reviews the trial court's findings of fact under an abuse-of-discretion standard of review. "When evidence is presented ore tenus to the trial court, the court's findings of fact based on that evidence are presumed to be correct," Ex parte Perkins, 646 So. 2d 46, 47 (Ala. 1994); "[w]e indulge a presumption that the trial court properly ruled on the weight and probative force of the evidence," Bradley v. State, 494 So. 2d 750, 761 (Ala. Crim. App. 1985), aff'd, 494 So. 2d 772 (Ala. 1986); and we make "'all the reasonable inferences and credibility choices supportive of the decision of the trial court.'" Kennedy v. State, 640 So. 2d 22, 26 (Ala. Crim. App. 1993), quoting Bradley, 494 So. 2d at 761. "[A]ny conflicts in the testimony or credibility of witnesses during a suppression hearing is a matter for resolution by the trial court.... Absent a gross abuse of discretion, a trial court's resolution of [such] conflict[s] should not be reversed on appeal." Sheely v. State, 629 So. 2d 23, 29 (Ala. Crim. App. 1993).'"

Ware v. State, 949 So. 2d 169, 180 (Ala. Crim. App. 2006)(quoting State v. Hargett, 935 So. 2d 1200, 1203 (Ala. Crim. App. 2005)).

In challenging the admission of his second statement to Detective Jackson into evidence, Williams raises several specific arguments. We will address each argument in turn.

A.

Williams first contends that his second statement to Detective Jackson should have been suppressed because the presence of his attorney Dane Perry did not attenuate the violation to his rights under the Fifth Amendment. Specifically, Williams contends that "[t]he temporal proximity between the violations of the Fifth Amendment and the challenged evidence was not sufficient to attenuate the unconstitutional acts", "[t]he presence of attorney Perry was not an intervening circumstance that attenuated [any constitutional violations] because [of] the manner in which the attorney was provided", and "[t]he unconstitutional acts of the State were deliberate and for the purpose of getting [Williams] to make a statement and consent to the search of his apartment." (Williams's brief, pp. 18, 20, 27.)

"Confessions and inculpatory statements are inadmissible unless the State proves that the defendant was informed of his Miranda rights and that he or she waived them, and that the confession was voluntarily given. E.g., Maxwell v. State, 828 So. 2d 347, 354 (Ala. Crim. App. 2000)." Beckworth v. State, 946 So. 2d 490, 515 (Ala. Crim. App. 2005).

> "The general rule is that a confession or other inculpatory statement is prima facie involuntary and inadmissible and the burden is on the State to prove by a preponderance of the evidence that such a confession or statement is voluntary and admissible. See, e.g., Ex parte Price, 725 So. 2d 1063 (Ala. 1998). To prove voluntariness, the State must establish that the defendant 'made an independent and informed choice of his own free will, that he possessed the capability to do so, and that his will was not overborne by pressures and circumstances swirling around him.' Lewis v. State, 535 So. 2d 228, 235 (Ala. Crim. App. 1988). If the confession or inculpatory statement is the result of custodial interrogation, the State must also prove that the defendant was properly advised of, and that he voluntarily waived, his Miranda rights. See Ex parte Johnson, 620 So. 2d 709 (Ala. 1993), and Waldrop v. State, 859 So. 2d 1138 (Ala. Crim. App. 2000), aff'd, 859 So. 2d 1181 (Ala. 2002)."

Eggers v. State, 914 So. 2d 883, 898-99 (Ala. Crim. App. 2004). "The trial court's finding that a statement was voluntary need only be supported by a preponderance of the evidence." Ex parte Jackson, 836 So. 2d 979, 982 (Ala. 2002).

In Oregon v. Elstad, 470 U.S. 298 (1985), the United States Supreme Court considered whether the Fifth Amendment required "the suppression of a confession, made after proper Miranda warnings and a valid waiver of rights, solely because the police had obtained an earlier voluntary but unwarned admission from the defendant." 470 U.S. at 303. The Court recognized settled law that

> "'a confession obtained through custodial interrogation after an illegal arrest should be excluded unless intervening events break the causal connection between the illegal arrest and the confession so that the confession is 'sufficiently an act of free will to purge the primary taint."' Taylor v. Alabama, 457 U.S. 687, 690, 102 S.Ct. 2664, 2667, 73 L.Ed.2d 314 (1982)(quoting Brown v. Illinois, 422 U.S. 590, 602, 95 S.Ct. 2254, 2261, 45 L.Ed.2d 416 (1975))."

470 U.S. at 306. Recognizing that the Miranda presumption does not require that inherently tainted statements be discarded, the Court stated:

> "If errors are made by law enforcement officers in administering the prophylactic Miranda procedures, they should not breed the same irremedial consequences as police infringement of the Fifth Amendment itself. It is an unwarranted extension of Miranda to hold that a simple failure to administer the warnings, unaccompanied by any actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his free will so taints the investigatory process that a subsequent voluntary and informed waiver is ineffective for some indeterminate period. Though Miranda requires that the unwarned admission must be suppressed, the admissibility of any subsequent statement should turn in these circumstances solely on whether it is

knowingly and voluntarily made.

"....

"...In these circumstances, a careful and thorough administration of Miranda warnings serves to cure the condition that rendered the unwarned statement inadmissible. The warning conveys the relevant information and thereafter the suspect's choice whether to exercise his privilege to remain silent should ordinarily be viewed as an 'act of free will.' Wong Sun v. United States, 371 U.S. [471,] 486, 83 S.Ct. [407,] 416 [9 L.Ed.2d 441 (1963)].

"....

"We must conclude that, absent deliberately coercive or improper tactics in obtaining the initial statement, the mere fact that a suspect has made an unwarned admission does not warrant a presumption of compulsion. A subsequent administration of Miranda warnings to a suspect who has given a voluntary but unwarned statement ordinarily should suffice to remove the conditions that precluded admission of the earlier statement. In such circumstances, the finder of fact may reasonably conclude that the suspect made a rational and intelligent choice whether to waive or invoke his rights.

"....

"We hold today that a suspect who has once responded to unwarned yet uncoercive questioning is not thereby disabled from waiving his rights and confessing after he has been given the requisite Miranda warnings."

Oregon v. Elstad, 470 U.S. at 309-318.

In the instant case, Williams was transported to the FPD for questioning after he made statements to TPD officers in violation of his constitutional rights. In his statement to TPD officers, Williams denied any involvement in Rutland's disappearance. Detective Jackson, who questioned Williams upon

his arrival at the FPD, testified that he was not aware of what had occurred at the TPD or the substance of Williams's previous interrogation. Detective Jackson advised Williams of his Miranda rights and Williams signed the Miranda form at 11:35 p.m. Shortly after questioning began, Williams requested an attorney and Detective Jackson immediately stopped the interview. Approximately 40 minutes later, an attorney arrived at the FPD and spoke with Williams outside the presence of law enforcement. With his attorney present, Detective Jackson read Williams his Miranda rights a second time and Williams executed a waiver of those rights in the presence of his attorney. Thereafter, Williams confessed to the murder of Rutland.

Detective Jackson read Williams his Miranda rights twice before Williams gave his second statement to police. Williams clearly understood his rights and requested an attorney. Once he was given an opportunity to consult with his attorney, Detective Jackson reread Williams his Miranda rights and Williams confessed in the presence of his counsel. Given the totality of the circumstances, the violation of Williams's Fifth Amendment rights when making his first statement in the custody of the TPD did not warrant the suppression of Williams's second statement to Detective Jackson.

B.

Williams next contends that his second statement to Detective Jackson should have been suppressed because the statement was not made voluntarily, knowingly, and intelligently. In support of his contention, Williams relies on Missouri v. Seibert, 542 U.S. 600 (2004). The United States Supreme Court's holding in Seibert, however, created a narrow exception to the general rule in Elstad, supra, that is not applicable in this case.

In White v. State, 179 So. 2d 170, 191 (Ala. Crim. App. 2013), this Court explained:

> "'The Elstad general rule is subject to the Seibert exception, which is aimed at putting a stop to the deliberate use of a particular police tactic employed for the specific purpose of undermining the Miranda rule. 542 U.S. at 618, 124 S.Ct. at 2614

(Kennedy, J., concurring). The tactic in question is one where the police are instructed, as a matter of policy, to purposefully withhold Miranda warnings while interrogating a suspect in custody in order to obtain a full confession first and then provide him with full warnings and get him to re-confess. Id. at 605-06, 124 S.Ct. 2601. The process is known as the "two-step" or "question first" tactic, and it did not find favor in the Supreme Court.

"'Because Seibert is a plurality decision and Justice Kennedy concurred in the result on the narrowest grounds, it is his concurring opinion that provides the controlling law. United States v. Gonzalez-Lauzan, 437 F.3d 1128, 1136 n. 6 (11th Cir. 2006); see also Romano v. Oklahoma, 512 U.S. 1, 9, 114 S.Ct. 2004, 2010, 129 L.Ed.2d 1 (1994); Marks v. United States, 430 U.S. 188, 193, 97 S.Ct. 990, 993, 51 L.Ed.2d 260 (1977). As Justice Kennedy explained, suppression of a post-warning confession is required if "the two-step interrogation technique [is] used in a calculated way to undermine the Miranda warning." Seibert, 542 U.S. at 622, 124 S.Ct. at 2616. That means that if an officer employs a strategy of deliberately questioning an in-custody suspect without any Miranda warnings in order to get a confession, planning to later warn the suspect and get him to repeat his confession, the post-warning confession is inadmissible unless the officer took specific curative steps to ensure that the mid-interrogation warnings achieved the purpose the Miranda decision intended. Id. at 621, 124 S.Ct. at 2615-16. The curative measures required are a "substantial break in time and circumstance between the prewarning statement and the Miranda warning" or "an additional warning that explains the likely inadmissibility of the prewarning custodial statement." Id. at 622, 124 S.Ct. at 2616. Curative measures are necessary only where the [deliberate] "question first" tactic has been used. Otherwise, the Elstad general rule that post-warning statements are admissible, even where they follow pre-warning statements that are not, governs.'"

179 So. 3d at 191-92 (quoting United States v. Street, 472 F.3d 1298, 1312-14 (11th Cir. 2006)).

Unlike in Seibert, there is no evidence in this case that indicates that Detective Jackson used a "two step" or "question first" tactic to obtain Williams's confession. Williams did not confess to Rutland's murder when he was first questioned by TPD. Further, Detective Jackson was not aware of the details of the TPD interrogation before he questioned Williams and there was no evidence presented at the suppression hearing that Detective Jackson conspired with TPD officers to use a Miranda violation to obtain a subsequent Mirandized statement. Therefore, Williams is not entitled to relief on this issue.

C.

Williams further contends that his second statement to Detective Jackson should have been suppressed because it was obtained in violation of the Fourth Amendment. Specifically, Williams contends that his statement was "fruit of the poisonous tree" because it was "obtained as a result of an illegal search and seizure." (Williams's brief, p. 34.)

In Kabat v. State, 867 So. 2d 1153 (Ala. Crim. App. 2003), this Court stated:

> "'"The exclusionary rule requires that evidence obtained directly or indirectly through government violations of the Fourth, Fifth, or Sixth Amendments may not be introduced by the prosecution at trial, at least for the purpose of providing direct proof of the defendant's guilt. When a court improperly admits evidence in violation of the exclusionary rule, reversal is required unless the error was harmless beyond a reasonable doubt."
>
> "'Miles Clark, Project, Thirty-first Annual Review of Criminal Procedure, The

Exclusionary Rule, 90 Geo. L.J. 1087, 1264 (2002) (footnotes omitted).

> "'"As an adjunct of the exclusionary rule, the 'fruit of the poisonous tree' doctrine holds that the use of derivative evidence can be barred if the evidence is discovered by the exploitation of a prior police illegality, if the primary taint has not been purged by some intervening act or event."

"'1 John Wesley Hall, Jr., Search and Seizure § 7.1 (3d ed. 2000).

> "'"The roots of the doctrine requiring courts to suppress evidence as the tainted 'fruit' of unlawful governmental conduct can be traced to Silverthorne Lumber Co. v. United States, 251 U.S. 385 ... (1920). In that case, the Supreme Court extended the exclusionary rule to apply not only to evidence obtained as a result of illegal conduct, but also to other incriminating evidence derived from the primary evidence. See id. at 392 ... ('The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all.') (emphasis added). The Court recast this holding in its more enduring form, the 'fruit of the poisonous tree' doctrine, in Wong Sun v. United States, 371 U.S. 471 ... (1963). There, the Court explained that

> when examining the admissibility of evidence obtained subsequent to illegal government conduct, courts must examine 'whether, granting establishment of the primary illegality' (i.e., the 'poisonous tree'), the evidence has been discovered 'by exploitation of that illegality' (i.e., the 'fruit' of the tree), or instead 'by means sufficiently distinguishable to be purged of the primary taint.' Id. at 488 ... (citation omitted). If evidence is found to be the 'fruit of the poisonous tree' it must be suppressed. See id."
>
> "'United States v. Orso, 266 F.3d 1030, 1034 n. 2 (9th Cir. 2001), cert. denied, 537 U.S. 828, 123 S.Ct. 125 (2002)."
>
> "....
>
> "Foldi v. State, 861 So. 2d 414, 419-20 (Ala. Crim. App. 2002).'"

Kabat, 867 So. 2d at 1155-56.

> "[A] confession obtained through custodial interrogation after an illegal arrest should be excluded unless intervening events break the causal connection between the illegal arrest and the confession so that the confession 'is sufficiently an act of free will to purge the primary taint.' Brown v. Illinois, [422 U.S. 590,] 602 [95 S.Ct. 2254, 2261, 45 L.Ed.2d 416 (1975)] (quoting Wong Sun v. United States, 371 U.S. 471, 486 [83 S.Ct. 407, 416-17, 9 L.Ed.2d 441] (1963))."

Taylor v. Alabama, 457 U.S. 687, 690, 102 S.Ct. 2664, 2667, 73 L.Ed.2d 314 (1982).

In Brown v. Illinois, 422 U.S. 590 (1975), the United

States Supreme Court stated that the Miranda warnings are only one factor but an important one to be considered in determining whether a confession has been purged of the taint of the illegal arrest. The other factors to be considered are:

> "'[T]he temporal proximity of the arrest and the confession, the presence of intervening circumstances, ... and, particularly, the purpose and flagrancy of the official misconduct.' Brown v. Illinois, 422 U.S., at 603-604, 95 S.Ct., at 2261 (citations omitted); Dunaway v. New York, 442 U.S., at 218, 99 S.Ct., at 2259."

Taylor v. Alabama, supra.

The evidence presented at the suppression hearing indicates that at the time Williams was transported to FPD for questioning, Detective Jackson knew that Rutland's body had been found near the Railroad Bridge, that Williams was the last person to see Rutland, that Rutland's telephone and wallet had been discovered one block north of Williams's apartment, that Detective Holmes had observed a suspicious man in an SUV and garbage bags at Williams's residence the night of Rutland's disappearance, that on the same night Captain Goodloe observed a suspicious man on the Railroad Bridge, and that a trail of blood was discovered at Williams's residence. With this knowledge, Detective Jackson questioned Williams. Based on the information police had before Detective Jackson questioned Williams, probable cause existed to detain Williams and arrest him for Rutland's murder.

Regardless, the connection between the illegal detention of Williams by the TPD officers and the subsequent interrogation by Detective Jackson of the FPD "'had become so attenuated as to dissipate the taint.'" Wong Sun, 371 U.S. at 48 (quoting Nardone v. United States, 308 U.S. 338 (1939)). At the time Detective Jackson questioned Williams, Detective Jackson knew no details about what had transpired while Williams was detained by TPD. The information Detective Jackson knew was independent of any statements made by Williams to the TPD. Further, Williams was provided an attorney once he invoked his Miranda rights and Williams was allowed to consult with that attorney before answering any further questions by Detective Jackson. The evidence presented

at the suppression hearing indicated that Detective Jackson did not intentionally exploit the violation of Williams's rights that had occurred earlier at the TPD. Accordingly, there were sufficient intervening events to purge the confession of any illegal taint. Therefore, the circuit court did not abuse its discretion in denying Williams's motion to suppress his second statement made to Detective Jackson.

II.

Williams also contends that the circuit court erred by denying his motion to suppress search warrants for his apartment and vehicle because, he argues, the search warrants were obtained in violation of his rights under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution. Specifically, Williams contends that the search warrants were "tainted due to the State's violation of his constitutional rights" and that "if all of the information obtained from his illegal arrest and refusal to comply with his request for an attorney is removed from the affidavits for the search warrants then the affidavits would not have supported the granting of a night time search warrant." (Williams's brief, pp. 41-44.)

In denying Williams's motion to suppress the search warrants, the circuit court held as follows:

> "[T]he search warrants obtained for the search of the defendant's apartment and vehicle were based on affidavits which relied in part on information from the defendant after he was unlawfully detained. The court finds the following portion of the affidavits is information from defendant after his illegal arrest: 'Mr. Williams was located and interviewed by detectives with Sheffield and Tuscumbia. Prior to questioning, Mr. Williams was advised of his constitutional protections. Mr. Williams denied involvement in Mr. Rutland's murder but stated that be had ten (10) pounds of marihuana in his apartment located at 117 East Hawthorne Street, Florence, AL. Mr. Williams stated to detectives that he gave his consent to search his apartment,' 'Capt. Goodloe positively identified the male as Jeremy Leshun Williams.' In addition the

following portion of the affidavits **may** have been information from the defendant after his illegal arrest: 'Mr. Williams agreed to speak with officers and stated that he did in fact speak with Mr. Rutland on November 26, 2013, Mr. Williams stated that Mr. Rutland had come to his apartment, located at 117 East Hawthorne Street, Apt. 1, Florence, AL, on November 26, 2013, to attempt to collect a debt in the amount of $1,034.00. Mr. Williams stated, and then showed detectives on his (Williams) cell phone, that he had had a conversation with Mr. Rutland about the debt. Mr. Williams stated that Mr. Rutland arrived at his house at or about 2330 hours on November 26, 2013. Mr. Williams stated that this was the last time that he saw Mr. Rutland.'

"The court has read the affidavit[] excluding the above quoted portions and finds that sufficient probable cause was still adequately expressed in the affidavit[] to support the search warrants for the apartment and vehicle. The results of the searches will not be suppressed on that basis."

(R. 346-47.)(Emphasis in original; footnotes omitted.)

The affidavit -- excluding those portions removed by the circuit court -- that was presented in support of the request for a nighttime search warrant stated as follows:

"My name is Brad Holmes. I am an investigator for the Florence Police Department, Florence, Alabama. I have been in law enforcement for ten (10) years.

"On November 26, 2013, family members of Brioni Jamaal Rutland, 02-04-86 (27 yoa), reported him as a missing person to the Tuscumbia Police Department. The 'BOLO' report from Mr. Rutland's disappearance was received by our agency November 26, 2013. On November 28, 2013, officers with the Florence Police Department were dispatched to the area of Wood Ave and Mattielou Street in reference to Mr. Rutland. At this time it was believed that Mr. Rutland's cellular telephone was in the area. Mr. Rutland was

the owner of two (2) Apple iPhones. One of these phones was turned on. Using the locator function on the iPhone it was determined that the cell phone was located in or near the 100 block of East Mattielou Street, Florence, AL. Officer Guy Lambert arrived and began searching the area. He located a drainage cover in the 100 block of East Mattielou Street and looked into the drain. Inside the drain he located two (2) Apple iPhones and a wallet. Ofc. Lambert opened the wallet and located an Alabama Identification inside. The identification listed Mr. Brioni Jamaal Rutland as the owner. It was also confirmed that the cellular telephone that was powered on at the time was in fact the telephone that belonged to Mr. Rutland and the telephone who's locator function led officers to the 100 block of East Mattielou. This information was relayed to police detectives in Tuscumbia and the cell phones and wallet were logged to evidence at the Florence Police Department.

"On November 27, 2013, detective Stuart Setliff received information from a confidential and reliable informant that a male named Jeremy Lashun Williams was the last person to see Mr. Rutland prior to him being reported as a missing person. Det. Wes Holland contacted Mr. Williams via telephone and asked him about Mr. Rutland. It should be noted that Mr. Rutland's cell phone and wallet were located on November 28, 2013, less than one block from Mr. Williams residence. More specifically, there is an alley way leading from Hawthorne Street to Mattielou Street which bisects the 100 blocks of Mattielou and Hawthorne Streets.

"At or about 2330 hours on November 27, 2013, I, Det. Holmes, left my residence off duty and traveled east on Mattielou Street from Wood Ave. As I passed 117 E. Hawthorne Street I observed a dark colored four door SUV parked in front of 117 E. Hawthorne Street. Inside the vehicle I observed a black male with a hooded style outer garment sitting in the driver's seat. I also noticed the rear hatch to the vehicle open and observed a light colored blanket or

sheet covering the rear of the vehicle. I observed what appeared to be black garbage style bags in the rear of the vehicle. I also noticed the front door to apartment 1 was open and a similar styled bag sitting in the doorway. As I passed the vehicle the driver turned his head away from me. I then circled the block in an attempt to determine the tag number of the vehicle. As I circled the block the SUV left the area and I was unable to obtain a tag number.

"On November 28, 2013, officers responded to the are a of the historic Railroad Bridge in Sheffield to a report of blood or paint on the deck of the bridge. Upon their arrival, officers determined that there was a significant amount of blood on the bridge and requested that the Alabama Bureau of Investigations respond to assist in processing the scene. Based upon the evidence at that scene it appeared that unknown person(s) had thrown a bloody object, believed to be a person, over the rail of the bridge and into the Tennessee River. While at the scene Captain Mal Goodloe, Sheffield Police Department, came to the scene and told Capt. Randy Butler, Sheffield Police Department, that on the previous night (November 27) he observed a dark colored SUV with a Lauderdale County License Plate backup up to the gate at the entrance of the railroad bridge. He stated that he looked in the vehicle and noticed a white sheet in the rear of the vehicle. Capt. Butler stated that the vehicle was unoccupied at this time and that he noted the time to be after 2300 hours but prior to 0000 hours. Capt. Goodloe then stated that he arrived back at the bridge at or about 0200 on November 28, 2013. Capt. Goodloe stated that the vehicle was still present but noted that the lights were on and a tall, light skinned black male was sitting in the vehicle.

"Additionally, the vehicle that Mr. Rutland was last seen in was located in 'The Village' of Sheffield. Investigators then began processing the vehicle. As investigators began searching the vehicle they noticed blood in the car and the strong

smell of a cleaning agent. Capt. Butler stated to me that it appears that the blood in the vehicle appeared to have been tracked into the vehicle rather than a crime occurring inside the vehicle.

"On November 29, 2013, Capt. Butler returned to the scene at the Railroad Bridge and noticed scuff marks that appeared to be from a large heavy item being thrown over the bridge. Florence Police Divers were called to the scene and began searching the water. Upon searching the water below the bridge they located Mr. Rutland's body. His body was missing his shirt and he was secured by the ankles with chain and a master lock. Mr. Rutland's body was removed, and taken to Morison Funeral Home for investigation by Sheffield and Tuscumbia Detectives. Upon their observation it was found that Mr. Rutland was stabbed multiple times about his body and head. He was additionally cut from his abdomen to just above his nipple and his neck was cut.

"I am familiar with the apartments located at 117 East Hawthorne Street and know that Dr. Lee Nichols owns the apartments. I contacted Dr. Nichols and he stated to me that Mr. Jeremy Williams was the tenant of record in apartment 1. Dr. Nichols also stated to me that I, Det. Holmes, had his permission to search the curtilage of his property.

"I then traveled to 117 East Hawthorne Street to await the arrival of detectives from Sheffield and Tuscumbia. As I arrived, I shined my flashlight on the walk way leading to apartment 1. I immediately located blood splatter on the concrete. I followed the blood trail to the front door of Apartment 1. I then began looking at the pattern left by the blood splatter. Based on my experience and training, I believe that the blood was tracked from inside the apartment to the roadway in front of the apartment. This positive knowledge leads me to believe, and I do believe, that evidence from the murder of Brioni Jamaal Rutland is currently contained within the apartment located at 117 East Hawthorne Street, Apartment 1, Florence, Alabama, and there request

> the court to determine that exigent circumstances exist for the application and issuance of a search of the property located, at 117 East Hawthorne Street, Apartment 1, Florence, AL. I also know that DNA evidence which is exposed to cleaning agents deteriorates at a significantly higher rate than DNA evidence in natural settings."

(C. 599-602.)

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures, and it provides that search warrants shall be issued only upon a finding of probable cause. In Ex parte Green, 15 So. 3d 489 (Ala. 2008), the Alabama Supreme Court explained:

> "Thus, '[a] search warrant may only be issued upon a showing of probable cause that evidence or instrumentalities of a crime or contraband will be found in the place to be searched.' United States v. Gettel, 474 F.3d 1081, 1086 (8th Cir. 2007). Moreover, '"[s]ufficient evidence must be stated in the affidavit to support a finding of probable cause for issuing the search warrant," and "[t]he affidavit must state specific facts or circumstances which support a finding of probable cause[;] otherwise the affidavit is faulty and the warrant may not issue."' Ex parte Parker, 858 So. 2d 941, 945 (Ala. 2003) (quoting Alford v. State, 381 So. 2d 203, 205 (Ala. Crim. App. 1979)).
>
> "'A probable cause determination is made after considering the totality of the circumstances.' Gettel, 474 F.3d at 1086. To pass constitutional muster, 'the facts must be sufficient to justify a conclusion that the property which is the object of the search is probably on the premises to be searched at the time the warrant is issued.' United States v. Greany, 929 F.2d 523, 524-25 (9th Cir. 1991) (emphasis added)."

15 So. 3d at 492.

In this case, the circuit court did not consider the

tainted evidence contained in the affidavit when it decided whether probable cause existed to issue the search warrant. Instead, the circuit court considered evidence based on information received independent of Williams's illegal detention at the TPD. Specifically, the circuit court based its probable-cause determination on Sgt. Holmes's knowledge that Rutland's body had been discovered, that Rutland's cellular telephones and wallet had been discovered in a drain approximately one block away from Williams's apartment, that he personally witnessed a suspicious incident involving a male sitting in an SUV with garbage bags in the SUV and the doorway to Williams's apartment, that Captain Goodloe had observed a suspicious male on the Railroad Bridge that same evening, and that, with the permission of the apartment owner, Sgt. Holmes had observed blood splatter surrounding Williams's apartment.

Regarding evidence of blood splatter at the apartment, Williams contends on appeal that the blood splatter evidence should have been excluded from the affidavit because Sgt. Holmes was led to the property by the TPD officers following Williams's illegal detention. However, the evidence presented at the suppression hearing indicates that the blood splatter found outside Williams's apartment would have been inevitably discovered by police regardless of TPD's illegal detention of Williams. See Nix v. Williams, 467 U.S. 431, 444 (1984)(holding that evidence concerning the location and condition of a murder victim's body was admissible even though the police obtained this information in violation of the defendant's Sixth Amendment right to counsel because a comprehensive search was already under way at the time of the police illegality which would have inevitably resulted in the discovery of the body).

Moreover, Williams's contention regarding the legality of the nighttime search warrant is without merit. Section 15-5-8, Code of Alabama 1975, provides, in pertinent part, that "a search warrant must be executed in the daytime unless the affidavits state positively that the property is on the person or in the place to be searched, in which case it may be executed at any time of the day or night." In this case, Sgt. Holmes stated in his affidavit that he observed a blood trail to the front door of Apartment 1 and that blood splatter indicated that blood was tracked from inside the apartment to the roadway in front of the apartment. The affidavit

sufficiently stated that the blood was immediately outside the apartment and tracked from inside the apartment to justify a nighttime search warrant. Accordingly, Williams is not entitled to relief on this issue.

III.

Williams next contends that the circuit court erred by allowing Dr. Kathleen Enstice, a State medical examiner, to testify as to her opinion regarding whether the victim was shot first or stabbed first. Specifically, Williams contends that Dr. Enstice invaded the province of the jury by improperly "testifying as to the position of the parties when the shooting occurred and where the stabbings occurred." (Williams's brief, p. 49.) Williams contends that Dr. Enstice's testimony was unnecessary where the jury "had been presented with sufficient enough testimony that they could form there [sic] own opinion as to which occurred first the shooting or the stabbing without expert testimony." (Williams, p. 50.)

During direct examination of Dr. Enstice by the prosecutor, the following occurred:

> "Q. Now, Doctor, I want to refer you back to your report of autopsy, State's 436. Let me ask you this question. Can you tell this jury, to a reasonable degree of medical certainty, whether, in your opinion, this person was shot first or stabbed first?
>
> "A. In my opinion, given --
>
> "[DEFENSE COUNSEL]: Objection, Judge, she can't testify to that.
>
> "THE COURT: Only she can say whether she can or not. Objection is overruled.
>
> "A. In my opinion, based on the numerous cases I have performed in regard to multiple different injuries, stab wounds, gunshot wounds, blunt force injury, it's my opinion that Mr. Rutland was shot prior to being stabbed.

"Q. Now, Doctor, assume, if you will, someone explained these events by saying they stabbed him, stabbed him, stabbed him, stabbed him and then subsequent to the stabbing, he was still coming after him and had to shoot him. In your opinion, is that medically possible?

"[DEFENSE COUNSEL]: Object on grounds of testimony to the ultimate issue.

"THE COURT: Overruled.

"A. If the stab wounds allegedly all occurred prior to the shooting and that included the stab wounds that nearly severed the spinal cord of Mr. Rutland in two separate places, he would not be able to move and there would be no need to shoot him at the very end. And, again, the gunshot wound would be -- it would cause incapacitation for him, but it would not stop him completely."

(R. 1985-86.)

At the outset, we question whether this issue was properly preserved for review on appeal. Although Williams objected when the prosecutor first questioned whether Rutland had been shot before he was stabbed, the objection was not based on his contention on appeal, namely, that Dr. Enstice's opinion invaded the province of the jury. Instead, Williams made a general objection that Dr. Enstice could not "testify to that" which, the record indicates, the circuit court considered an objection based on Dr. Enstice's lack of expertise to answer the question. Dr. Enstice then testified, without objection, that, in her opinion, Rutland was shot before he was stabbed. Therefore, any objection made after Dr. Enstice's testimony on the order of injury was untimely. See Ex parte Crymes, 630 So. 2d 125, 127 (Ala. 1993)(holding that "[a] proper objection must be made after the question calling for objectionable testimony is asked and before the witness answers"); see also Tariq-Madyun v. State, 59 So. 3d 744, 758 (Ala. Crim. App. 2010)(holding that "[a]n objection to testimony that is made after the testimony is given is untimely.")

When the prosecutor then asked Dr. Enstice if it was medically possible for Rutland to have continued pursuing Williams after having been repeatedly stabbed, defense counsel objected on the grounds that the testimony went to the ultimate issue. At no time did Williams argue that Dr. Enstice's testimony invaded the province of the jury by improperly testifying regarding the order of injuries and the positions of the parties at the time of the murder. "'Review on appeal is restricted to questions and issues properly and timely raised at trial.'" Ex parte Coulliette, 857 So. 2d 793, 794 (Ala. 2003), citing Newsome v. State, 570 So. 2d 703, 717 (Ala. Crim. App. 1989). "'An issue raised for the first time on appeal is not subject to appellate review because it has not been properly preserved and presented.'" Id. at 794, citing Pate v. State, 601 So. 2d 210, 213 (Ala. Crim. App. 1992). "The purpose of requiring a specific objection to preserve an issue for appellate review is to put the trial judge on notice of the alleged error, giving an opportunity to correct it before the case is submitted to the jury." Ex parte Coulliette, 857 So. 2d at 794-95, quoting Ex parte Works, 640 So. 2d 1056, 1058 (Ala. 1994). Because Williams's objection was untimely and not based on the argument he now presents to this Court on appeal, the issue is not preserved.

In any event, even if the issue had been preserved Williams is not entitled to relief on his claim. The record indicates that Dr. Enstice's testimony regarding the order of the wounds was used to impeach Williams's statement to police wherein he represented to investigators that he first stabbed Rutland and only shot Rutland because Rutland continued to pursue him after being stabbed. Contrary to Williams's contention on appeal, Dr. Enstice's testimony did not invade the province of the jury because Dr. Enstice's testimony focused on the effects of Rutland's wounds and not the relative positions of the parties when Rutland was stabbed and shot. Accordingly, the circuit court did not abuse its discretion by allowing Dr. Enstice's testimony at trial.

IV.

Williams next contends that the circuit court erred by

denying his Batson[2] motion because, he argues, the State failed to articulate race-neutral reasons for exercising peremptory strikes against African-American venire members. Specifically, Williams argues that the State struck three African-Americans on the jury venire and that the State's reasons for its strikes were not race-neutral.

The record indicates that eight African Americans were on the jury venire before voir dire began. Three of those jurors were struck for cause leaving five African-American jurors on the venire. Of the five remaining African-American jurors, the State used peremptory strikes to remove three jurors and defense counsel struck one juror, leaving one African American on the jury. Williams made a timely Batson motion regarding the State's use of peremptory strikes. The circuit court found that Williams made a prima facia case of discrimination and asked that the State explain its three strikes. The State provided its reasons for striking each of the three jurors and the circuit court agreed that the reasons were race-neutral.

This Court will reverse the circuit court's ruling on a Batson motion only if it is clearly erroneous. Cooper v. State, 611 So. 2d 460 (Ala. Crim. App. 1992), citing Jackson v. State, 549 So. 2d 616 (Ala. Crim. App. 1989). The trial court's Batson ruling is entitled to great deference. Talley v. State, 687 So. 2d 1261 (Ala. Crim. App. 1996).

> "'The party alleging racially discriminatory use of peremptory challenges bears the burden of establishing a prima facie case of discrimination. Ex parte Branch, 526 So. 2d 609, 622 (Ala. 1987). Once a prima facie case has been established, a presumption is created that the peremptory challenges were used to discriminate against black jurors. Id. at 623. Where the prosecutor is required to explain his peremptory strikes, he or she must offer "'a clear, specific, and legitimate reason for the challenge which relates to the particular case to be tried,

[2]Batson v. Kentucky, 476 U.S. 79 (1986).

> and which is nondiscriminatory. However, this showing need not rise to the level of a challenge for cause.'" McLeod v. State, 581 So. 2d 1144, 1155 (Ala. Crim. App. 1990), quoting Ex parte Branch, 526 So. 2d at 623. (Emphasis in Branch; citation omitted.) Once the responding party has articulated a race-neutral reason or explanation for eliminating the challenged jurors, the moving party can offer evidence showing that the reason or explanation is merely a sham or pretext. Ex parte Branch, 526 So. 2d at 624. When the trial court has followed this procedure, its determination will be overturned only if that determination is " clearly erroneous." Id. at 625.'
>
> "Burgess v. State, 811 So. 2d 557, 572-73 (Ala. Crim. App. 1998), aff'd in pertinent part, rev'd on other grounds, 811 So. 2d 617 (Ala. 2000)."

Rogers v. State, 819 So. 2d 643, 648-49 (Ala. Crim. App. 2001).

In this case, the first step of the process has been satisfied because the circuit court found that Williams had established a prima facia case of discrimination. As to the second step of the process, "[a]fter a prima face case is established, there is a presumption that the peremptory challenges were used to discriminate against black jurors [and t]he state then has the burden of articulating a clear, specific, and legitimate reason for the challenge which relates to the particular case to be tried, and which is nondiscriminatory." Ex parte Branch, 526 So. 2d 609, 623 (Ala. 1987).

> "Within the context of Batson, a 'race-neutral' explanation 'means an explanation based on something other than the race of the juror. At this step of the inquiry, the issue is the facial validity of the prosecutor's explanation. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race-neutral.'

> Hernandez v. New York, 500 U.S. 352, 360, 111 S. Ct. 1859, 1866, 114 L.Ed.2d 395 (1991). 'In evaluating the race-neutrality of an attorney's explanation, a court must determine whether, assuming the proffered reasons for the peremptory challenges are true, the challenges violate the Equal Protection Clause as a matter of law.' Id."

Allen v. State, 659 So. 2d 135, 147 (Ala. Crim. App. 1994).

In the instant case, the State provided facially race-neutral explanations for each of its three strikes against African-Americans. The prosecutor stated that he struck Juror F.B.A. because Juror F.B.A. had been arrested for endangering the welfare of a three-year-old child. See Brown v. State, 982 So. 2d 565, 584-85 (Ala. Crim. App. 2006)(holding a peremptory strike based on criminal record of prospective juror does not violate Batson). The record indicates that, when given an opportunity to do so, defense counsel declined to question Juror F.B.A. individually regarding the specific charge against her. With regard to Juror M.B., the prosecutor stated that he struck Juror M.B. because she had a "rather hostile exchange [during voir dire] regarding what she believed was a bad experience with the police. She further articulated that she had a bad experience with the police in individual voir dire." (R. 905.) According to Juror M.B., a man who was living behind her daughter's apartment and was selling drugs tried to get into her daughter's apartment. When Juror M.B. telephoned the police, the police did nothing. See Ex parte Crews, 797 So. 2d 1119, 1121 (Ala. 2000)("Hostility toward law enforcement can be a race-neutral reason for striking a prospective juror, Stephens v. State, 580 So. 2d 11, 19 (Ala. Crim. App. 1990)." Finally, the prosecutor stated that he struck Juror J.P. because he stated in open court that "he could not impose the death penalty under any set of circumstances" and Juror J.P. knew the victim. (R. 905.) When questioned further during individual voir dire, Juror J.P. reiterated several times his opposition to the death penalty and that he would never impose the death penalty. See Dallas v. State, 711 So. 2d 1101 (Ala. Crim. App. 1997)(holding that a juror's reservations about the death penalty may constitute a reasonable explanation for a peremptory strike).

Because the prosecutor provided valid, race-neutral

reasons for striking Jurors F.B.A, M.B. and J.P., the burden shifted to Williams to establish that the State's reasons were a sham or pretextual. See Riley v. State, 875 So. 2d 353, 356 (Ala. Crim. App. 2003). Williams, however, failed to meet this burden -- either by showing that the State failed to strike similarly-situated white jurors or by establishing additional information regarding Jurors F.B.A., M.B. and J.P. that evidenced the State's reasons were a sham or pretextual. Accordingly, we cannot say the trial court abused its discretion in denying Williams's Batson motion.

V.

Finally, Williams contends that the State presented insufficient evidence to sustain his conviction for murder because, he argues, the State did not present evidence that Williams intended to kill the victim and the evidence "did not establish beyond a reasonable doubt that [Williams] was unjustified in killing the victim." (Williams's brief, p. 58.) Williams contends that a "reasonable jury could not have concluded that [he] did not act in self defense." (Williams's brief, p. 58.)

To the extent that Williams challenges the weight of the evidence, we note that it is not the role of this Court to reweigh the evidence on appeal. The weight of the evidence refers to whether the State's evidence is palpably less persuasive than the defense's evidence. Living v. State, 796 So. 2d 1121, 1141 (Ala. Crim. App. 2000). "The issue of the weight to be afforded the evidence is a question for the jury and this Court will not invade the province of the jury by reweighing the evidence." Living v. State, 796 So. 2d at 1141, citing Pearson v. State, 601 So. 2d 1119, 1124 (Ala. Crim. App. 1992).

Regarding Williams's challenge to the sufficiency of the State's evidence, the role of this Court is well-settled:

> "'"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, 471 485, 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)."

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).

A person commits murder if "[w]ith intent to cause the death of another person, he causes the death of that person." § 13A-6-2(a)(1), Ala. Code 1975.

The evidence, when viewed in a light most favorable to the State, was sufficient to sustain Williams's conviction for murder. The State presented evidence that Williams shot Rutland in the head and stabbed Rutland multiple times. Williams then disposed of Rutland's body in the river. Although Williams points to conflicts in the evidence as a basis for reversal on appeal, it is not this Court's function to reweigh the evidence in light of those conflicts. "'[T]he credibility of witnesses and the weight or probative force of testimony is for the jury to judge and determine,'" Brooks v. State, 76 So. 3d 275, 284 (Ala. Crim. App. 2011), quoting Harris v. State, 513 So. 2d 79, 81 (Ala. Crim. App. 1987), and

verdicts rendered on conflicting evidence are conclusive on appeal. Also, "[t]he disputed material facts of self-defense arising out of testimony must be resolved by the jury. The jury is the judge of the facts, the demeanor of the witnesses, and their testimony." Finch v. State, 445 So. 2d 964, 966 (Ala. Crim. App. 1983)(holding that the testimony was sufficient for jury to believe that assault in the third degree occurred and was perpetrated without reasonable subjective belief that defendant's actions were for self-defense reasons). Any conflicts in the evidence were resolved against Williams. The jury determined that Williams did not act in self defense when it convicted him of murder. Given the evidence presented at trial and the standard by which this Court reviews that evidence, we cannot say that the evidence was insufficient to support Williams's conviction for murder.

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

AFFIRMED.

Welch, Burke, and Joiner, JJ., concur. Windom, P.J., concurs in the result.