IN THE SUPREME COURT OF ALABAMA

September 11, 2020

1190897

Ex parte Rodarius Grimes. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Rodarius Grimes v. State of Alabama) (Jefferson Circuit Court: CC-17-462.00; Criminal Appeals : CR-18-1079).

CERTIFICATE OF JUDGMENT

WHEREAS, the petition for writ of certiorari in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on September 11, 2020:

Writ Denied. No Opinion. Bolin, J. - Parker, C.J., and Wise, Sellers, and Stewart, JJ., concur.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 11th day of September, 2020.

Julia Jordan Weller

Clerk, Supreme Court of Alabama

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA

D. Scott Mitchell
Clerk
Gerri Robinson
Assistant Clerk

P. O. Box 301555
Montgomery, AL 36130-1555
(334) 229-0751
Fax (334) 229-0521

July 24, 2020

CR-18-1079

Rodarius Grimes v. State of Alabama (Appeal from Jefferson Circuit Court: CC17-462.00)

NOTICE

You are hereby notified that on July 24, 2020, the following action was taken in the above referenced cause by the Court of Criminal Appeals:

Application for Rehearing Overruled.

D. Scott Mitchell

D. Scott Mitchell, Clerk
Court of Criminal Appeals

cc: Hon. Tracie A. Todd, Circuit Judge
Hon. Jacqueline Anderson Smith, Circuit Clerk
Katherine Pritchett Bounds, Attorney
Alisha McKay, Attorney
Laura I. Cuthbert, Asst. Attorney General

Court of Criminal Appeals

State of Alabama
Heflin-Torbert Judicial Building
300 Dexter Avenue
Montgomery, Alabama 36104

MARY B. WINDOM
Presiding Judge
J. ELIZABETH KELLUM
J. CHRIS McCOOL
J. WILLIAM COLE
RICHARD J. MINOR
Judges

D. Scott Mitchell
Clerk
Gerri Robinson
Assistant Clerk
(334) 229-0751
Fax (334) 229-0521

MEMORANDUM

CR-18-1079 Jefferson Circuit Court CC-17-462

Rodarius Grimes v. State of Alabama

McCOOL, Judge.

Rodarius Grimes appeals his conviction for capital murder and his resulting sentence of life imprisonment without the possibility of parole. The murder was made capital because it was "committed by or through the use of a deadly weapon while the victim is in a vehicle." § 13A-5-40(a)(17), Ala. Code 1975.

Facts and Procedural History

The evidence presented at trial tended to establish the following facts. Grimes testified that, while driving his

truck in Birmingham on March 5, 2016, "a car cut in front of [him], and [he] hit the back of it." (R. 1039.) Cortez Leman Rhynes was driving the car that Grimes's truck hit, and Grimes testified that, after the accident occurred, Rhynes "walked over to [Grimes's] truck, screaming, saying [Grimes] hit his fucking car" and that Rhynes "started beating on the window, saying 'Get the fuck out the car.'" (R. 1041.) Grimes also testified that Rhynes "reached in his right hip and he pulled ... a gun out, but he kept it down. He never lifted it up." (R. 1042.) According to Grimes, however, the confrontation de-escalated once he agreed that, at a later date, he would pay Rhynes $500 for the damage to Rhynes's car, and Grimes and Rhynes exchanged telephone numbers instead of telephoning the police because Grimes "had warrants for traffic tickets." (R. 1042.)

The following day, Grimes and his son attended a church service, and, after leaving the service, Grimes took his son to Grimes's aunt's house. Grimes testified that, on the drive to his aunt's house, he and Rhynes spoke on the telephone and that he told Rhynes he had only $350 to give Rhynes at that time, not the $500 to which they had agreed. According to Grimes, Rhynes "was saying that [Grimes was] playing with [Rhynes's] money and people get killed by playing with people['s] money." (R. 1049.) Grimes testified that, because Rhynes had just threatened him and had brandished a gun after the accident the previous day, he continued to his aunt's house, where he retrieved a .40 caliber handgun he owned. After retrieving the gun, Grimes drove to his grandmother's house, and, according to Grimes, as he pulled his truck into his grandmother's driveway, Rhynes arrived in his car and parked his car against the curb in front of Grimes's grandmother's house. (R. 1052.) Evidence established that Rhynes's car was parked just past the entrance to the driveway such that the rear of the car was nearest the driveway and was parked against the curb such that the passenger's side of the car faced Grimes's grandmother's house -- i.e., faced in the general direction of Grimes, who was in his truck in the driveway -- and the driver's side of the car faced the street.[1] (C. 736.)

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[1]It was unclear how Rhynes knew he could find Grimes at Grimes's grandmother's house. Grimes testified that he

Grimes testified that he exited his truck after Rhynes arrived and that he began "taking [his] money out" as he was approaching the passenger's side of Rhynes's car. (R. 1055.) According to Grimes, however, Rhynes said "'Bro, I don't want this shit'" and "reached up under his seat [with his right hand (R. 1056)] and at the door handle [with his left hand (R. 1056)]." (R. 1055.) Grimes testified that he did not see Rhynes in possession of a gun at that time (R. 1122) but that, because Rhynes had brandished a gun at the scene of the car accident the previous day, when he saw Rhynes reach under the seat, he "dropped the money" (R. 1056), "pulled [his] gun" (R. 1056), and "blanked out" and "started running, firing." (R. 1057.) According to Grimes, as he was shooting he ran toward the rear of Rhynes's car, i.e., in the direction of the driveway, until he reached his truck parked in the driveway, at which point he left the scene. Grimes testified that he never approached the driver's side of Rhynes's car (R. 1061) and that he never saw Rhynes exit the car. (R. 1109.)

Roxann Murry, a crime scene technician, responded to the scene of the murder and observed Rhynes's body lying "on the street near a vehicle with the driver door open." (R. 808.) Photographs of the murder scene demonstrate that Rhynes was lying on his back underneath the driver's door, which was open, with his feet very near or underneath the car and his body extending away from the car into the street. (C. 476, 478, 480, 482, 490, 492, 496.) Murry testified that, once Rhynes's body was moved, she discovered "bullet hole defect[s]" (R. 816) in the street where Rhynes's body had been lying and that she also discovered such defects in the passenger's cab of Rhynes's car. Murry also testified that she collected multiple bullet casings and bullet fragments from the area near the passenger's side of the car, where Grimes had been standing when he began shooting; from the area near Rhynes's body on the driver's side of the car; and from the passenger's cab of Rhynes's car -- all of which, Murry testified, were fired from a .40 caliber handgun. On cross-examination, Murry testified that she did not find any blood in the passenger's cab of Rhynes's car or any blood on the

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"didn't give [Rhynes] no location to come" and that he "guess[ed] [Rhynes] was riding around following [him]." (R. 1095.)

bullet fragments collected from the passenger's cab of Rhynes's car, at which point defense counsel asked Murry: "Based on the lack of any blood inside of the car, can you say from an evidentiary standpoint that this decedent was shot inside the car? Does any evidence suggest that to you?" (R. 889.) The State objected to defense counsel's question on the ground that the question "call[ed] for a mental conclusion" on "an issue for the jury to decide." (R. 889.) Defense counsel argued, however, that Murry was "an evidence tech of 19 years" who could "testify as to what the evidence speaks to from her opinion," but the trial court sustained the State's objection. (R. 890.)

Dr. Daniel Dye, the associate coroner for Jefferson County, performed an autopsy of Rhynes's body and testified that Rhynes had suffered 27 gunshot wounds. Specifically, Dr. Dye testified that, in addition to other gunshot wounds, Rhynes had been shot three times in the back and once in the forehead. According to Dr. Dye, two of the bullets that entered Rhynes's back struck his right lung and the third struck his spinal column, splintered, and then struck Rhynes's aorta, left lung, and spleen. Dr. Dye testified that each of the wounds to Rhynes's back would have been fatal but that none of them would have been immediately fatal. Rather, Dr. Dye testified, a person suffering such injuries would have had "a matter of seconds, maybe a minute that [he] or she can function" and continue to move. (R. 947.) On the other hand, Dr. Dye testified that the gunshot wound to Rhynes's forehead was "an instantly fatal wound." (R. 942.) Dr. Dye testified that he could not determine in which order the fatal wounds occurred but that "the injury to the head was not the first gunshot wound" (R. 974) because

> "after that wound is sustained, everything stops working. Your heart stops beating. You've got no more blood going through vessels.
>
> "So if your heart's not beating, ... we wouldn't have observed hemorrhage around the other wounds, blood in the chest cavities from the shots that hit in the back, things of that nature if the decedent was deceased and then sustained multiple other gunshot wounds."

(R. 973-74.) Dr. Dye also testified that Rhynes "most likely was not in the driver's seat when he sustained" the gunshot wound to his forehead (R. 976) because, according to Dr. Dye, that wound "is instantly fatal. Your body is going to respond to gravity, and you're going to fall wherever you are. If the decedent sustained this wound when he was sitting in a seat, he would have come to rest in the seat." (R. 976-77.) Regarding the gunshot wounds to Rhynes's back, Dr. Dye testified that "the bullets are going in different directions," which, according to Dr. Dye, indicated that "th[o]se three wounds were most likely sustained while the decedent is trying to move in some direction." (R. 982.)

Detective Jeff Steele of the Birmingham Police Department responded to the scene of the shooting and spoke with Grimes's mother, Latoya Grimes ("Latoya"), who, according to Det. Steele, "stated that [Grimes] is the shooter and that he did it because his wife[, Brionna Grimes ("Brionna"),] had been having an affair." (R. 700.) At trial, Latoya testified that she told Det. Steele at the scene of the murder that she believed Grimes was involved in Rhynes's murder, but she repeatedly denied telling Det. Steele that "this was about [Rhynes] being in some kind of relationship with [Grimes's] wife." (R. 673.) In addition, Latoya testified on cross-examination that she had no knowledge of an extramarital affair between Rhynes and Brionna and that she had "never seen anything inappropriate between Brionna and Rhynes." (R. 681.) Rather, Latoya testified that the single interaction she had observed between Rhynes and Brionna occurred at Latoya's house, where Grimes and Brionna were living at the time, when Latoya saw Rhynes "outside [her] door fixing on [Brionna's] car" approximately three or four months before Rhynes was murdered. (R. 674.) However, Latoya also testified as follows:

> "Q. And was there another time that you believed that you saw [Rhynes] over at your house?
>
> "A. Well, a guy ran out the back door at three in the morning when I got in, but I didn't get a chance to see the face or anything.
>
> "...

"Q. Okay. But at that time, did you believe that to be Rhynes?

"....

"A. I assumed, but not for sure."

(R. 675-76.) Latoya testified that she never informed Grimes that Rhynes had come to her house to repair Brionna's car or that she thought she saw Rhynes running from her house at 3:00 a.m. one morning. (R. 687-88.) According to Latoya, she did not inform Grimes of those events because she would "rather not let him know these things to keep, you know, from confusions." (R. 688.)

Given Latoya's statements at the scene of the murder, Det. Steele sought to speak with Grimes, who voluntarily agreed to speak with Det. Steele. According to Det. Steele, Grimes's statement regarding the circumstances giving rise to Rhynes's murder was largely consistent with Grimes's testimony at trial. Specifically, Det. Steele testified that Grimes admitted that he began shooting at Rhynes when Rhynes reached underneath the driver's seat of the car. In addition, Det. Steele testified that he asked Grimes if Grimes had any knowledge of an extramarital affair between Rhynes and Brionna, but, according to Det. Steele, Grimes denied any such knowledge (R. 735) and indicated that he had "no clue about any involvement between [Rhynes and Brionna]." (R. 752.) Thus, Det. Steele testified, there was "no indication that [Grimes] knew prior to [Rhynes's murder] about any sort of relationship or affair" between Rhynes and Brionna.[2] (R. 798.)

At the close of the State's case and again at the close of evidence, Grimes moved for a judgment of acquittal, arguing that the State had failed to prove a prima facie case of capital murder because, he said, the State "failed to prove that ... Rhynes was shot while inside of the vehicle." (R.

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[2]Brionna did not testify because she apparently invoked the husband-wife privilege, which allows a person to refuse to testify to confidential communications between spouses. (R. 1252.) See Rule 504, Ala. R. Evid.

1010.) The trial court denied Grimes's motion and submitted the case to the jury. On November 3, 2017, the jury found Grimes guilty of capital murder, and on February 20, 2018, the trial court sentenced Grimes to life imprisonment without the possibility of parole.[3] Grimes did not file a timely notice of appeal but petitioned the trial court for permission to file an out-of-time appeal pursuant to Rule 32.1(f), Ala. R. Crim. P. The State did not object to Grimes's petition (C. 451), and the trial court granted the petition on July 19, 2019. This appeal followed.

Analysis

On appeal, Grimes raises multiple claims that, he says, require the reversal of his conviction. We address each claim in turn.

I.

Grimes argues that the trial court erred by denying his motion for a judgment of acquittal because, he says, the State failed to present evidence sufficient to sustain his capital-murder conviction for "murder committed by or through the use of a deadly weapon while the victim is in a vehicle." § 13A-5-40(a)(17). Specifically, Grimes argues that the State failed to prove that Rhynes was in a vehicle when he was murdered.

> "'"In determining the sufficiency of the evidence to sustain a conviction, a reviewing court must accept as true all evidence introduced by the State, accord the State all legitimate inferences therefrom, and consider all evidence in a light most favorable to the prosecution."' Ballenger v. State, 720 So. 2d 1033, 1034 (Ala. Crim. App. 1998), quoting Faircloth v. State, 471 So. 2d 485, 488 (Ala. Crim. App. 1984), aff'd, 471 So. 2d 493 (Ala. 1985). '"The test used in determining the

[3]The State did not seek the death penalty; thus, the trial court was required to impose a life-without-parole sentence for Grimes's capital-murder conviction. See § 13A-5-45, Ala. Code 1975.

> 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.' Bankston v. State, 358 So. 2d 1040, 1042 (Ala. 1978)."

Zann v. State, 17 So. 3d 1222, 1223 (Ala. Crim. App. 2009).

In McMillan v. State, 139 So. 3d 184 (Ala. Crim. App. 2010), this Court addressed the same claim Grimes raises here, i.e., whether there was sufficient evidence that the murder victim was in a vehicle, in considering whether there was sufficient evidence to sustain Calvin McMillan's capital-murder conviction for killing James Bryan Martin in the parking lot of a Wal-Mart discount store. In concluding that there was sufficient evidence to sustain McMillan's conviction, the Court stated:

> "McMillan argues that the State failed to meet its burden of proving that Martin was in the truck when he was shot. He argues that the State's witnesses testified that they had heard the shots when they saw Martin confronted by the perpetrator while he was outside the truck. Therefore, he contends, the State failed to show that the victim was shot while he was inside the truck. McMillan also argues as proof of the lack of evidence that no casings or ballistic evidence was found in the truck, and the medical examiner testified that all the bullets exited the victim so that such evidence

should have been found in the truck. Moreover, no blood was found in the truck.

"However, although there was testimony that all four shots occurred while the victim was outside the truck, the State also presented evidence including that the victim was inside the truck at the time of the first shot. Rondarrell Williams testified that when he began walking toward his girlfriend's vehicle after leaving the Wal-Mart store, he heard a gunshot. He looked in the direction of the shot and saw McMillan 'with his hand up raised like that ([i]ndicating) and a truck, a burgundy truck, with the door open.' He testified that he then heard two more shots and saw McMillan pull the victim out of the truck. The DVD surveillance evidence of the offense verifies Williams's testimony -- it displays the brake lights of the truck turning on and going off after the shooter appeared to fire his gun into the truck. It further shows that Martin was drug out of the vehicle and collapsed on the pavement where he was shot again.

"Thus, although the evidence was conflicting, there was sufficient evidence presented by the State to support the jury's verdict. See McElyea v. State, 892 So. 2d 993, 996 (Ala. Crim. App. 2004) ('Because this argument concerns an apparent conflict in the evidence, it relates to the weight of the evidence, rather than to the sufficiency of the evidence.'). Compare Ex parte Jackson, 614 So. 2d 405, 406 (Ala. 1993) (holding that because it was undisputed that the victim was not, 'at any relevant time, the occupant of a motor vehicle' the capital offense pursuant to § 13A-5-40(a)(17), Ala. Code 1975, was not proven, although Jackson had intended to shoot the occupant of the vehicle).

> "'"'The weight of the evidence, the credibility of the witnesses, and inferences to be drawn from the evidence, where susceptible of more than one rational conclusion, are for the

> jury alone. Willcutt v. State, 284 Ala. 547, 226 So. 2d 328 (1969).' Walker v. State, 416 So. 2d 1083, 1089 (Ala. Cr. App. 1982). 'It was within the province of the jury to give the evidence in the case whatever weight and emphasis they thought proper in reaching their verdict.' Linson v. State, 394 So. 2d 85, 92 (Ala. Cr. App. 1981). 'Where, as in this case, there is conflicting evidence presented by the prosecution and the defense, it is for the jury to resolve the conflict and determine the defendant's guilt or innocence. ... In making its determination, the jury may believe or disbelieve all or any part of the testimony presented by either side.' Terry v. State, 424 So. 2d 652, 655 (Ala. Cr. App. 1982).
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> "'"'Conflicting evidence always presents a question for the jury unless the evidence fails to establish a prima facie case. Starling v. State, 398 So. 2d 337 (Ala. Cr. App.), cert. denied, Ex parte Starling, 398 So. 2d 342 (Ala. 1981).' Gardner v. State, 440 So. 2d 1136, 1137 (Ala. Cr. App. 1983)."

"'Mosley v. State, 461 So. 2d 34, 36 (Ala. Crim. App. 1984).'

"Dotch v. State, 67 So. 3d 936, 964 (Ala. Crim. App. 2010).

"'Providing the State presents a prima facie case, any inconsistencies and discrepancies in the

> evidence go to the credibility of the witnesses and present a question for the jury. Such inconsistencies affect the weight rather than the sufficiency of the evidence.' Macon v. State, 652 So. 2d 331, 334 (Ala. Crim. App. 1994), cert. denied, 652 So. 2d 334 (Ala. 1994) (citation omitted).
>
> "Viewing the evidence in the light most favorable to the State as we are required to do, we conclude that the evidence was sufficient to support the jury's finding. Further, the weight to be accorded the evidence was properly determined by the jury."

McMillan, 139 So. 3d at 262-63 (emphasis added; citations to record and footnote omitted).

On appeal, Grimes acknowledges McMillan but argues that McMillan is not controlling here. We disagree. It was undisputed that Grimes began shooting at Rhynes while Rhynes was still inside his car; indeed, Grimes testified to that fact himself. Grimes argues, however, that there was evidence indicating that Rhynes was shot after he exited the car. Specifically, Grimes notes that there were bullet casings and bullet fragments underneath or near Grimes's body, which was in the street, and "bullet hole defect[s]" in the street underneath Grimes's body. However, as was the case in McMillan, the fact that Rhynes might have been shot after he exited the car did not preclude a finding that Rhynes had also been shot before he exited the car, and, as noted, Grimes's own statements to Det. Steele provided a basis for finding "that [Rhynes] was inside the [car] at the time of the first shot[s]." McMillan, 139 So. 3d at 262.

Nevertheless, Grimes argues that, although he began shooting at Rhynes while Rhynes was still inside his car, there was no evidence indicating that Rhynes was "actually hit ... in the split second it took Rhynes to exit his vehicle." (Grimes's brief, at 25.) Construing the evidence in a light most favorable to the State and affording the State all legitimate inferences therefrom, Zann, supra, we disagree. As Grimes notes, Dr. Dye testified that the head wound Rhynes suffered was immediately fatal and that, as a result, once

Rhynes suffered that wound, his body would have "respond[ed] to gravity" and would have "fall[en] wherever [Grimes was]." Thus, the fact that Rhynes's body came to rest in the street immediately next to the car and underneath the open driver's door supports a finding that Rhynes suffered the head wound as he was exiting the car or immediately upon exiting the car. That fact is significant because Dr. Dye also testified that the head wound had to have occurred after the wounds to Rhynes's back occurred. Thus, if Rhynes's head wound occurred as he was exiting the car or immediately upon exiting the car, as the evidence indicates it did, then the evidence supports a finding that Rhynes was shot in the back while he was inside the car. That finding is strengthened by the fact that Dr. Dye testified that the wounds to Rhynes's back most likely occurred while Rhynes was "trying to move in some direction," which, because Grimes was shooting at Rhynes from the passenger's side of the car while Rhynes was reaching for the door handle, is consistent with Rhynes being shot in the back during the "split second it took Rhynes to exit his vehicle." Although Grimes notes that there was no blood found inside Rhynes's car or on the bullet fragments collected from inside the car, that fact was not fatal to the State's prima facie case. Rather, the undisputed fact that Grimes began shooting at Rhynes while Rhynes was inside his car and the lack of blood inside the car constituted conflicting evidence that created a question of fact for the jury. Put differently, the lack of blood in Rhynes's car went, as it did in McMillan, to the weight of the State's evidence, not its sufficiency.

Given our holding in McMillan and the principle of law requiring us to accept as true all the State's evidence, accord the State all legitimate inferences therefrom, and consider the evidence in a light most favorable to the State, Zann, supra, we conclude that the State presented sufficient evidence to sustain Grimes's capital-murder conviction based on a killing that occurred while the victim was in a vehicle. Accordingly, this claim does not entitle Grimes to relief.

II.

Grimes argues that the trial court erred by admitting certain aspects of various witnesses' testimony. "Alabama courts have often stated that a trial court has substantial discretion in determining whether evidence is admissible and

that a trial court's decision will not be reversed unless its determination constitutes a clear abuse of discretion." Hosch v. State, 155 So. 3d 1048, 1081 (Ala. Crim. App. 2013).

A.

Grimes argues that the trial court erred by allowing the State to elicit certain aspects of Latoya's testimony. On direct examination, Latoya testified as follows:

"Q. Okay. And when you were at the scene, did you talk to the police?

"A. Yes, sir.

"Q. And did you tell them who you thought was involved?

"A. No. I told them what I heard, that I got a call.

"Q. Okay. But did you tell the officers that you believed your son was involved?

"A. Yes.

"[DEFENSE COUNSEL]: Your Honor, I'm going to object if she doesn't have any personal knowledge and she's deriving -- her testimony from hearsay is improper.

"THE COURT: Well, the question was, did she tell the police. So to that objection, overruled.

"Q. Did you tell the police that you thought your son was involved?

"A. I didn't say I thought. I told them I just heard his name, yes, sir.

"....

"Q. Okay. And did you tell [Det. Steele] at the

scene that you felt this was about your son's wife?

"A. No, sir.

"[DEFENSE COUNSEL]: Judge, I'm going to object again. She was not --

"THE COURT: Wait just a minute, ma'am.

"[DEFENSE COUNSEL]: She was not present at the scene. She would have no -- no indication as to what it was about. It would have come from hearsay.

"THE COURT: Overruled.

"Q. Did you tell Det. Steele that you that this was about your son's wife?

"A. I don't recall.

"...

"Q. And at the Birmingham headquarters, did you speak with Det. Steele?

"A. Yes, sir.

"Q. And in your conversation with Det. Steele, did you tell him that this was about the victim being in some kind of a relationship with your son's wife?

"A. No, sir.

"Q. You deny that you told him that?

"A. I don't recall telling him that I think it's over -- about the wife, no.

"Q. Okay.

"A. I don't recall.

"Q. And so it's your testimony today that this had nothing to do with your son's wife?

"A. I mean, it probably started out like that, but it did not end like that. No, sir.

"Q. And when you say, 'It started out like that,' why would you say that?

"A. I guess just by him seeing them, I mean, but it did not end like that.

"....

"Q. Do you remember in your conversations with Det. Steele that you told Det. Steele -- did you ever tell Det. Steele that [Rhynes and Brionna] were having a relationship?

"A. No, sir.

"Q. You never told him that?

"A. No, sir.

"Q. Okay. And so you deny that you ever told him that?

"A. Yes, sir. Because I don't recall telling him that at all.

"Q. Okay. And did you ever tell him that they were having an affair?

"A. No, sir. I don't recall."

(R. 670-78.)

Grimes argues that the trial court erred by allowing the State to elicit Latoya's testimony that she told Det. Steele at the scene of the murder that Grimes was involved in the shooting because, Grimes says, Latoya's out-of-court statement constituted inadmissible hearsay. However, Grimes failed to preserve this claim for appellate review because defense

counsel did not raise an objection until after Latoya answered the allegedly improper question and did not move to exclude or strike Latoya's answer. See McCray v. State, 88 So. 3d 1, 67 (Ala. Crim. App. 2010) ("An objection to a question, made after an answer is given, is not timely and will not preserve the issue for review." (citation omitted)); and Woodward v. State, 123 So. 3d 989, 1022-23 (Ala. Crim. App. 2011) ("The general rule is, that, after a question is asked, and a responsive answer given, an objection comes too late, and the trial court will not be put in error in the absence of a motion to exclude or strike, and also an adverse ruling on the motion." (citation omitted)).

Moreover, it is well settled that

> "[n]o judgment may be reversed or set aside ... on the ground of ... the improper admission or rejection of evidence ... unless in the opinion of the court to which the appeal is taken or application is made, after an examination of the entire cause, it should appear that the error complained of has probably injuriously affected substantial rights of the parties."

Rule 45, Ala. R. App. P. "The standard for determining whether error is prejudicial or harmless is whether the evidence in error was 'harmless beyond a reasonable doubt.'" Pierce v. State, 217 So. 3d 64, 67 (Ala. Crim. App. 2016).

Here, even if it was error to admit Latoya's out-of-court statement that Grimes was involved in the shooting, there was no dispute at trial as to whether Grimes was involved in the shooting. Indeed, as we have already noted, Grimes testified to that fact himself. Thus, we conclude beyond a reasonable doubt that any error in the admission of Latoya's out-of-court statement to Det. Steele that Grimes was involved in the shooting was harmless and therefore does not entitle Grimes to relief. See Whatley v. State, 146 So. 3d 437, 464 (Ala. Crim. App. 2010) ("The admission of cumulative evidence constitutes harmless error.").

Grimes also argues that the trial court erred by allowing the State to elicit inadmissible hearsay from Latoya because, Grimes says, the State elicited testimony from Latoya

regarding "what [she] said out of court to Det. Steele for the purpose of proving that Rhynes and [Brionna] were in fact having an affair, which created a motive for Grimes to kill Rhynes." (Grimes's brief, at 31.) Initially, we note that it appears Grimes also failed to preserve this claim for appellate review because defense counsel's objection does not appear in the transcript until after Latoya answered the allegedly improper question and because defense counsel did not move to exclude or strike Latoya's answer. McCray, supra; Woodward, supra. However, it also appears from the trial court's instruction to Latoya to "[w]ait just a minute" that defense counsel might have objected before Latoya answered the question but that Latoya answered the question without awaiting a ruling from the trial court. Regardless, as evidenced by that part of Latoya's testimony quoted above, although the State attempted to elicit testimony from Latoya that she told Det. Steele the murder occurred because of an extramarital affair between Rhynes and Brionna, Latoya repeatedly either denied making such a statement or testified that she did not recall making such a statement. Thus, because the State did not elicit an out-of-court statement from Latoya regarding the alleged affair, this claim, even if preserved for appellate review, does not entitle Grimes to relief.

B.

In a related claim, Grimes argues that the trial court erred by allowing Det. Steele to testify that Latoya told him at the scene of the murder and at the Birmingham Police Department later that day "that [Grimes] [was] the shooter and that he did it because [Brionna] had been having an affair." (R. 700.) Once again, Grimes argues that Latoya's out-of-court statement to Det. Steele should have been excluded as inadmissible hearsay.

As to Latoya's out-of-court statement to Det. Steele that Grimes was the person who shot Rhynes, we have already concluded in Part II.A, supra, that any error in the admission of such testimony was harmless because Grimes himself testified that he was the person who shot Rhynes. As to Latoya's out-of-court statement to Det. Steele that Grimes shot Rhynes because Rhynes and Brionna were having an extramarital affair, the State argued at trial that it was

offering Det. Steele's testimony to impeach Latoya's testimony that she had not made that statement. Thus, the State argued, Det. Steele's testimony was admissible under Rule 613(b), Ala. R. Evid., which provides:

> "Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness has been confronted with the circumstances of the statement with sufficient particularity to enable the witness to identify the statement and is afforded an opportunity to admit or to deny having made it."

In Brown v. State, 74 So. 3d 984 (Ala. Crim. App. 2010), this Court addressed the admissibility, under Rule 613(b), of extrinsic evidence of a witness's prior inconsistent statement. In that case, Wakilii Brown was convicted of three counts of capital murder for the killing of two women. At trial, the State called Betty Washington, Brown's aunt, as a witness and asked Washington if Brown had told her that he "had done something bad, very bad." Brown, 74 So. 3d at 997. Washington, however, denied that Brown had made such a statement to her, and the State did not question Washington further. After Washington testified, the State called Investigator Jeff Mobbs as a witness and elicited testimony from Mobbs that Washington "had told him that 'she had been told by [Brown] that he had done something wrong to them girls up there, he had hurt them girls, and that we needed to go in that house and check and see what's going on.'" Id. at 998. On appeal, Brown argued that the trial court erred by allowing Inv. Mobbs to testify regarding Washington's out-of-court statement because, Brown said, the State failed to lay a proper foundation for the admission of Inv. Mobbs's testimony under Rule 613(b). In concluding that Inv. Mobbs's testimony was not admissible, this Court stated:

> "During its cross-examination of Washington, the State asked Washington if Brown had told her he had done something very bad, and Washington said he had not. The State did not ask Washington any more questions. At no time did the State confront Washington with the statement she had made to Mobbs or give Washington an opportunity to admit or deny having made the statement. Therefore, the trial

court erroneously allowed the State to present extrinsic evidence about Washington's statement to Mobbs. See Rule 613(b), Ala. R. Evid."

Id. at 1002 (emphasis added).

Brown, however, is distinguishable from this case. In Brown, the State never confronted Washington with the out-of-court statement she made to Inv. Dobbs and therefore failed to lay the predicate required by Rule 613 for the admission of Inv. Dobbs's testimony regarding that statement. Here, on the other hand, as evidenced by that part of Latoya's testimony quoted in Part II.A, supra, Latoya testified that she did not believe Rhynes's murder occurred because of an alleged extramarital affair between Rhynes and Brionna, and when the State asked Latoya eight separate times if she told Det. Steele either at the scene of the murder or at the Birmingham Police Department later that day that the murder did occur because of the alleged affair, Latoya denied making such a statement. Thus, unlike the circumstances in Brown, the State confronted Latoya with her out-of-court statement to Det. Steele that was inconsistent with her testimony at trial and gave her an opportunity to admit the statement, which she refused to do.

Grimes argues, however, that Det. Steele's testimony was nevertheless inadmissible under Rule 613(b) because, Grimes says, "the State never confronted [Latoya] during her testimony with the specific content of the statement that it alleged she had made." (Grimes's brief, at 35-36.) However, Rule 613(b) does not require that the witness to be impeached be confronted with the "specific content" of her prior statement, only that the witness be confronted with "the circumstances of the statement with sufficient particularity to enable the witness to identify the statement." Rule 613(b) (emphasis added). Here, the State asked Latoya if she told Det. Steele either at the scene of the murder or at the Birmingham Police Department later that day that Grimes shot Rhynes because Rhynes and Brionna "were having an affair" and, in doing so, provided Latoya with sufficiently particular circumstances of her out-of-court statement to enable her to identify the statement; that is all Rule 613(b) requires.

In short, Latoya testified at trial that she did not

believe Rhynes's murder occurred because of an alleged extramarital affair between Rhynes and Brionna, and the State confronted Latoya with the circumstances of her out-of-court statement to Det. Steele that was inconsistent with that testimony and did so with sufficient particularity to enable Latoya to identify the statement. The State also gave Latoya an opportunity to admit making the out-of-court statement, which she refused to do multiple times. Thus, Det. Steele's testimony regarding Latoya's out-of-court statement was admissible under Rule 613(b) to impeach Latoya's testimony that she had not made the statement. Accordingly, we find no abuse of discretion in the trial court's admission of such testimony.[4] Hosch, supra.

C.

Grimes argues that the trial court erred by allowing the State to elicit testimony from Latoya regarding the paternity of Brionna's youngest child. Specifically, the State questioned Latoya as follows:

"Q. How many children does [Grimes] have?

"A. He has three.

"Q. And what are their names?

"A. Rodarius, Jr., Angel, and Sodarius (phonetic).

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[4]Grimes notes that "the jury was never instructed that it should consider [Det. Steele's] testimony for impeachment purposes" (Grimes's brief, at 35 n.3), but there is nothing in the record indicating that Grimes requested such an instruction; thus, Grimes failed to preserve for appellate review any claim that the trial court should have instructed the jury that Det. Steele's testimony regarding Latoya's out-of-court statement could be used as impeachment evidence only. See Shouldis v. State, 953 So. 2d 1275, 1282 (Ala. Crim. App. 2006) ("The record does not contain any request for a unanimity instruction. Thus, to the extent that Shouldis also challenges the failure to give a unanimity instruction, because he did not request such an instruction, that claim was not preserved for appellate review.").

"Q. Okay. Does your son not have another child by the name of ... Rhyne?

"A. I'm not for sure if it's my grandson.

"Q. Okay. And then if it's not your grandson, do you know who[se] it is?

"[DEFENSE COUNSEL]: Judge, I'm going to object.

"A. No, sir. I don't have no idea.

"THE COURT: Wait a minute. The objection is overruled.

"Q. I'm sorry. You have no idea?

"A. No.

"Q. And do you know of Rhyne?

"A. Yes, sir.

"Q. Okay. And who is the mother of Rhyne?

"A. Brionna.

"[DEFENSE COUNSEL]: Judge, I'm going to object to relevance.

"THE COURT: Overruled.

"Q. I'm sorry. Who is the mother of Rhyne?

"A. Brionna Grooms."[5]

(R. 679-80.)

On appeal, Grimes contends that the State elicited that

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[5]At trial, Brionna was identified as both Brionna Grooms and Brionna Grimes.

part of Latoya's testimony "to suggest that Rhynes was the father of [Rhyne]" (hereinafter referred to as "the child") in an effort to establish the State's theory of the case, i.e., that Grimes murdered Rhynes because Rhynes and Brionna were having an extramarital affair.[6] (Grimes's brief, at 39.) According to Grimes, however, testimony regarding the paternity of the child was irrelevant and therefore should have been excluded pursuant to Rule 402, Ala. R. Evid., which provides that "[e]vidence which is not relevant is not admissible."

As a threshold matter, we note that Grimes failed to preserve this claim for appellate review. As evidenced by the testimony quoted above, defense counsel raised two objections during that part of Latoya's testimony. However, as to the first objection, defense counsel merely stated: "Judge, I'm going to object." It is well settled that

> "[a]n appellant must provide specific grounds for his general objections at trial if he intends to appeal that issue. 'A general objection that does not specify grounds preserves nothing for review.' Landreth v. State, 600 So. 2d 440, 447 (Ala. Cr. App. 1992), Thompson v. State, 575 So. 2d 1238 (Ala. Cr. App. 1991). 'A defendant is bound on appeal of a criminal prosecution by the grounds stated for the objection at trial,' Lyde v. State, 605 So. 2d 1255, 1258 (Ala. Cr. App. 1992). Thus, 'an objection without specifying a single ground is not sufficient to place the trial court in error for overruling such objection.' Reeves v. State, 456 So. 2d 1156, 1160 (Ala. Cr. App. 1984)."

Capps v. State, 630 So. 2d 486, 489-90 (Ala. Crim. App. 1993). See also Ex parte Parks, 923 So. 2d 330, 333 (Ala. 2005) ("'"An objection without specifying a single ground, such as 'I object,' 'objection,' or 'we object' is not sufficient to place the trial court in error for overruling the objection."'" (quoting Lawrence v. State, 409 So. 2d 987, 989 (Ala. Crim. App. 1982) (citation omitted))). Thus, because

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[6]Latoya testified that, at the time of trial in October 2017, the child was approximately 11 months of age.

defense counsel provided no grounds for his first objection, Grimes failed to preserve a challenge to the trial court's adverse ruling on that objection. As to the second objection, defense counsel did not object until after Latoya answered the allegedly improper question and did not move to exclude or strike Latoya's answer. Thus, Grimes also failed to preserve a challenge to the trial court's adverse ruling on that objection. McCray, supra; Woodward, supra.[7]

Regardless, we conclude that this claim does not entitle Grimes to relief. As Grimes notes, the State elicited that part of Latoya's testimony quoted above in an attempt to prove that Rhynes and Brionna had engaged in or were engaged in an extramarital affair and that the affair provided Grimes with a motive to murder Rhynes. It is well settled that evidence of motive is always admissible in a criminal trial, E.L.Y. v. State, 266 So. 3d 1125, 1137 (Ala. Crim. App. 2018), and evidence of an extramarital affair between a defendant's spouse and the defendant's victim certainly provides the defendant with a motive to murder the victim if the defendant is aware of the affair. See Saxer v. State, 115 S.W.3d 765, 776 (Tex. Crim. App. 2003) ("[E]vidence of a wife's extramarital relationship is admissible to show motive to kill only if it is also established that the husband-defendant knew of the relationship."). Thus, if Grimes was aware, before Rhynes was murdered, of an extramarital affair between Rhynes and Brionna, then evidence of the affair was admissible as relevant evidence of Grimes's motive to murder Rhynes. E.L.Y., supra.

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[7]We recognize that Grimes filed a pretrial motion in limine seeking to exclude any evidence of an extramarital affair between Rhynes and Brionna. However, because the trial court's ruling on Grimes's motion in limine was not absolute or unconditional, the ruling did not relieve Grimes of the burden of properly objecting to evidence of the alleged affair when such evidence was proffered at trial. Baney v. State, 42 So. 3d 170, 175 (Ala. Crim. App. 2009). Furthermore, we note that the sole ground Grimes asserted in support of his motion in limine was that "the only evidence that there may be [an affair] would be hearsay" (R. 301), which is not the ground Grimes asserts on appeal.

Here, Latoya testified that she did not inform Grimes of her suspicion of the alleged extramarital affair between Rhynes and Brionna -- testimony that Grimes corroborated (R. 1038) -- and Det. Steele testified that he asked Grimes if Grimes was aware Rhynes "had been involved with" Brionna and that Grimes denied any such knowledge. (R. 735.) Thus, there was certainly evidence from which the jury could have found that Grimes was not aware of the alleged affair. However, there was also evidence from which the jury could have found that Grimes was aware of the alleged affair. After asking Latoya if she believed Rhynes's murder "had [any]thing to do with [Grimes's] wife," Latoya testified that "it probably started out like that." The State then asked Latoya what she meant by that statement, and Latoya testified: "I guess just by him seeing them." Taken in context, the reasonable inference from Latoya's testimony is that Grimes had seen Rhynes and Brionna together and was aware of the alleged affair before Rhynes was murdered. See Horace v. Waters, 615 So. 2d 74, 75 (Ala. 1993) (noting that a jury "is authorized to draw all reasonable inferences from the evidence"). Thus, because there was evidence from which the jury could have found that Grimes was aware of the alleged affair, evidence of the alleged affair was relevant evidence of Grimes's motive to murder Rhynes, E.L.Y., supra, and Latoya's testimony regarding the child provided circumstantial evidence of the alleged affair. See Chambers v. State, 181 So. 3d 429, 434 (Ala. Crim. App. 2015) ("Circumstantial evidence is in nowise considered inferior evidence and is entitled to the same weight as direct evidence provided it points to the guilt of the accused." (citations omitted)). Accordingly, even if Grimes preserved this claim for appellate review, we find no abuse of discretion in the trial court's admission of Latoya's testimony regarding the child.[8] Hosch, supra.

III.

Grimes argues that the trial court erred by preventing Murry, the evidence technician, from testifying whether, in

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[8]As noted, there was also evidence indicating that Grimes was not aware of the alleged affair. However, the issue before us is the admissibility of evidence of the alleged affair, not the weight of the evidence.

her opinion, the lack of blood inside Rhynes's car indicated that Rhynes had not been shot while inside his car. In support of that claim, Grimes contends that Murry's opinion was admissible as a lay-witness opinion under Rule 701, Ala. R. Evid., which provides that a lay witness may testify to "opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue."

However, Rule 704, Ala. R. Evid., provides: "Testimony in the form of an opinion or inference otherwise admissible is to be excluded if it embraces an ultimate issue to be decided by the trier of fact." "'An ultimate issue has been defined as the last question that must be determined by the jury. See Black's Law Dictionary [1522 (6th ed. 1990)].' Tims v. State, 711 So. 2d 1118, 1125 (Ala. Crim. App. 1997)." Whatley v. State, 146 So. 3d 437, 464 (Ala. Crim. App. 2010). Thus, in a capital-murder trial where the State is required to prove, as it was here, that the murder was committed "by or through the use of a deadly weapon while the victim is in a vehicle," § 13A-5-40(a)(17), the ultimate issues are whether the murder was accomplished with a deadly weapon and whether the victim was inside a vehicle. See Knight v. State, [Ms. CR-16-0182, August 10, 2018] ___ So. 3d ___ (Ala. Crim. App. 2018) (holding, in a case where the defendant was convicted of murder through the use of a deadly weapon while the victim was in a vehicle, that "the ultimate issues were ... whether the killing ... was accomplished through the use of a deadly weapon while Daffin was in a vehicle"). In fact, Grimes concedes as much in his initial brief on appeal. See Grimes's brief, at 52-53 ("Whether or not Rhynes was shot inside of his vehicle was a central issue at trial. The State was required to prove that Rhynes was shot while still inside of his vehicle to obtain a guilty verdict for capital murder." (internal citation omitted)). Therefore, because Murry's opinion as to whether Rhynes had been shot while inside his car would have embraced an ultimate issue in the trial, the trial court properly excluded such testimony under Rule 704. Accordingly, this claim does not entitle Grimes to relief.[9]

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[9]In his reply brief, Grimes contends that Murry's opinion as to whether Rhynes had been shot while inside his car would

IV.

Grimes argues that the trial court erred by allowing the State to introduce evidence of prior collateral charges against Grimes in violation of Rule 404(b), Ala. R. Evid., which provides, in pertinent part: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith."

On direct examination, defense counsel questioned Grimes as follows:

> "Q. Now, ... when you were driving around after you left church did you have a gun on you that day?
>
> "A. No.
>
> "Q. Do you typically carry a gun?
>
> "A. No.
>
> "Q. Did you get a gun after ... having that conversation with [Rhynes]?
>
> "A. Yes.
>
> "Q. And why did you get a gun at that time?
>
> "A. Because I was afraid and he made the threat saying that people get killed by playing with people['s] money. And the day before he had a

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not have embraced an ultimate issue because, Grimes says, such testimony would not have incriminated Grimes. This argument is without merit, however, given that the evidence indisputably established that Grimes was the person who shot Rhynes. Compare Ex parte Sharp, 151 So. 3d 329, 339 (Ala. 2009) (holding, in appeal from conviction of capital murder-rape, that witness's testimony that victim had been raped was not an opinion on ultimate issue because opinion did not implicate defendant in the rape).

On appeal, Grimes argues that the trial court erred by concluding that defense counsel had opened the door to evidence of Grimes's prior charges for illegally carrying a pistol. However, defense counsel twice asked Grimes on direct examination if he typically carried a gun -- which Grimes denied doing -- and, sandwiched between those questions, defense counsel asked Grimes if he had prior convictions. Read in context, such questioning provided the trial court with a reasonable basis for concluding that defense counsel had opened the door for the State to question Grimes regarding his prior charges for illegally carrying a pistol. See State v. Henderson, 382 N.W.2d 275, 279 (Minn. Ct. App. 1986) (defendant, by "claiming on direct examination that he does not carry knives," opened the door to questions on cross-examination regarding his prior convictions that involved the use of knives). Thus, we cannot say that the trial court abused its discretion by allowing the State to elicit such testimony from Grimes. Hosch, supra.

Moreover, even if defense counsel did not open the door to such evidence, its admission does not require reversal because such error, if in fact it was error, was harmless. Rule 45, Ala. R. App. P.

> "'The purpose of the harmless error rule is to avoid setting aside a conviction or sentence for small errors or defects that have little, if any, likelihood of changing the result of the trial or sentencing.' Davis [v. State], 718 So. 2d [1148,] 1164 [(Ala. Crim. App. 1995)].
>
> > "'"Whether the improper admission of evidence of collateral bad acts amounts to prejudicial error or harmless error must be decided on the facts of the particular case." R.D.H. v. State, 775 So. 2d 248, 254 (Ala. Crim. App. 1997); Hobbs v. State, 669 So. 2d 1030 (Ala. Crim. App. 1995). The standard for determining whether error is harmless is whether the evidence in error was "harmless beyond a reasonable doubt." Schaut v. State, 551 So. 2d 1135, 1137 (Ala. Crim. App. 1989), citing Chapman v. California, 386 U.S. 18, 87 S. Ct. 824,

17 L. Ed. 2d 705 (1967).

> "Hunter v. State, 802 So. 2d 265, 270 (Ala. Crim. App. 2000). '[T]he harmless error rule excuses the error of admitting inadmissible evidence only [when] the evidence was so innocuous or cumulative that it could not have contributed substantially to the adverse verdict.' Ex parte Baker, 906 So. 2d 277, 284 (Ala. 2004)."

Horton v. State, 217 So. 3d 27, 59 (Ala. Crim. App. 2016).

In this case, it was undisputed that Grimes retrieved a gun from his aunt's house, that he used that gun later that day to shoot at Rhynes while Rhynes was inside a vehicle, and that Rhynes was fatally wounded during the shooting. Indeed, Grimes conceded those facts during his own testimony at trial. Thus, the jury had ample, undisputed evidence upon which to convict Grimes, and it is highly unlikely that the jury's verdict turned on the jurors' knowledge that Grimes had previously been charged with illegally possessing a pistol. Put differently, given the undisputed evidence against Grimes, there is little, if any, likelihood that the result of Grimes's trial would have been different in the absence of evidence that Grimes had previously been charged with illegally possessing a pistol. See Horton, 217 So. 3d at 59 (noting that the purpose of the harmless-error rule is to avoid setting aside convictions for errors that had little likelihood of changing the outcome of the trial). Thus, given the specific facts of this case, we conclude beyond a reasonable doubt that the admission of evidence of Grimes's prior charges for illegally carrying a pistol, even if error, was harmless and therefore does not entitle Grimes to relief. Rule 45, Ala. R. App. P. Compare Horton, 217 So. 3d at 59 (holding that the erroneous admission of evidence of defendant's collateral acts was not harmless where the State's evidence "was not ironclad, or even overwhelming," and where the State "produced no witnesses or direct evidence placing [defendant] at [the scene of] the crime" but, instead, produced only "circumstantial evidence [that] was minimally sufficient to warrant sending the case to the jury").

Conclusion

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

AFFIRMED.

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