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Alabama Court of Criminal Appeals

OCTOBER TERM, 2025-2026

CR-2025-0978

Bruce Lanier Austin

v.

State of Alabama

Appeal from Jefferson Circuit Court
(CC-23-2208, CC-23-2209, and CC-23-2210)

WINDOM, Presiding Judge.

Bruce Lanier Austin appeals his convictions for murder made capital because he committed the murder with the use of a deadly weapon while the victim was inside a vehicle, see § 13A-5-40(a)(17), Ala. Code 1975; for first-degree assault, see § 13A-6-20(a)(1), Ala. Code 1975; and

for discharging a firearm into an occupied vehicle, see § 13A-11-61, Ala. Code 1975. Austin was sentenced to life in prison without the possibility of parole for his capital-murder conviction, to 20 years in prison for his assault conviction, and to 20 years in prison for his discharging-a-firearm-into-an-occupied-vehicle conviction. The sentences were ordered to be served concurrently.

On the morning of November 16, 2022, Wallace Franklin heard several gunshots as he ate breakfast. Franklin, who lived near the intersection of 80th Street and 5th Avenue in Birmingham, moved to a monitor that displayed feeds from various security cameras he had installed around his house. Franklin saw a small, gray vehicle drive by, followed by a red sport-utility vehicle ("SUV"). The red SUV veered off the road and struck a power pole. Finally, Franklin saw a black male, dressed in a red and black jumpsuit and armed with an AK-47 rifle, walking down the street from the direction of a nearby apartment building.

Walter Cook was driving the gray vehicle captured by Franklin's security cameras. Cook was driving down 80th Street that morning when he heard a gunshot coming from the direction of a nearby apartment

building. In the rearview mirror, he saw a red SUV veer off the road, and, from his side mirror, he saw a black male wearing a red jumpsuit and holding a rifle. Cook heard more gunshots and sped away before calling emergency 911.

Edker Finton, who lived on 80th Street, described a scene similar to Franklin and Cook. From his bedroom he heard a gunshot. Finton went to the kitchen window, from which he saw a red SUV crash into a power pole and a black male in a red jacket standing in the street firing a long gun into the air at a 45-degree angle. Finton heard more gunshots as he took cover. Finton saw no other individuals outside during the shooting.

Around that time, Austin called his girlfriend, Valerie Garrison, asking her to pick him up from his mother's apartment, which was located near the scene of the shooting. Garrison, who lived nearby, heard gunshots as she walked out of her house. As Garrison approached the intersection of 80th Street and 5th Avenue in her black Chrysler 200 vehicle, she saw Austin walking toward her. Austin was wearing a red, black, and white jumpsuit. He got into her vehicle, and they left.

Officer Johnathan Robbins of the Birmingham Police Department was the first to respond to the shooting. Off. Robbins saw only one bullet defect to the red SUV -- in the front passenger window -- but the damage inside the SUV was catastrophic. The bullet had struck 14-year-old Moriah Quib-Marquez in the head, killing her instantly, before striking Rosa Quib-Chub, her mother, in the head, leaving her permanently disabled. Off. Robbins was able to open the rear passenger door, allowing Marta Quib-Chub, Rosa's sister-in-law, and several children to escape the crashed SUV.

Justin Blair, a crime-scene technician, observed a bullet strike in the passenger-side window of the red SUV, numerous 7.62x39 mm shell casings along 80th Street, a live 7.62x39 mm round on the sidewalk at 526 80th Street, a 9 mm casing in the roadway, and additional 7.62x39 mm casings and a projectile at 79th Street and 5th Avenue. In total, 23 shell casings were discovered at the scene.

The investigation into the shooting quickly turned to Garrison's home and a search for her vehicle. Around 3:00 p.m. that same day, Austin was found with Garrison's vehicle and detained. A search warrant was executed on Garrison's house, which yielded a 7.62x39 mm

shell casing from the roadway in front of Garrison's house. An unfired 7.62x39 mm round was discovered in Garrison's vehicle on the front passenger floorboard.

Forensic testing showed that all the fired 7.62x39 mm casings had been fired from a single firearm and that the two unfired 7.62x39mm rounds found at the scene, which contained light firing-pin indentations, were also struck by that same firearm's firing pin. Testing further showed that the shell casing found in the roadway in front of Garrison's home had been fired from the same firearm used at the scene of the shooting and that the unfired round collected from the front passenger floorboard of Garrison's vehicle contained firing-pin indentations from that same firearm. A bullet fragment found inside the red SUV was consistent with a 7.62x39 mm bullet jacket.

At trial, Austin testified that he had been in conflict with Torrence Craig because Craig had been selling drugs near the apartment of Austin's mother. Austin confronted Craig, telling him to sell drugs somewhere else. According to Austin, he felt threatened by Craig because Craig, in the days leading up to the shooting, had been driving by his mother's apartment. On the morning of November 16, Austin called

emergency 911 to report that he was being threatened. Austin left his mother's apartment that morning armed with a rifle, which he claimed was for protection. Austin testified that, as he walked down the street, he saw three vehicles approach the area, and then heard gunshots. Austin stated that his rifle was loaded with only one round; Austin admitted to firing that round but stated that he did not fire at the red SUV and that the red SUV had struck the power pole before he fired his rifle. Austin admitted that he was the individual walking down the street in Franklin's surveillance video and that he got into Garrison's vehicle. He testified that he did not realize that anyone had been shot.

On appeal, Austin argues: 1) that the sufficiency and weight of the evidence do not establish that he committed the offenses; 2) that the circuit court erred in admitting highly prejudicial photographs into evidence; 3) that the circuit court erred in denying his motion to suppress his custodial statement; 4) that the circuit court erred in allowing improper victim-impact testimony at trial; and 5) that the cumulative effect of the errors deprived him of a fair trial.

I.

Austin contends that the evidence was insufficient to sustain his convictions. Specifically, Austin argues that the State failed to prove that he had the intent to kill or to cause serious physical injury to the occupants of the red SUV or that he was the individual responsible for shooting into that occupied vehicle. Austin claims that, even if he fired the shot that killed Moriah and injured Rosa, the evidence, at most, shows that he acted recklessly.

Concerning the standards governing this Court's review of the sufficiency of the evidence, this Court has held:

"In deciding whether there is sufficient evidence to support the verdict of the jury and the judgment of the trial court, the evidence must be reviewed in the light most favorable to the prosecution. Cumbo v. State, 368 So. 2d 871 (Ala. Cr. App. 1978), cert. denied, 368 So. 2d 877 (Ala. 1979). Conflicting evidence presents a jury question not subject to review on appeal, provided the state's evidence establishes a prima facie case. Gunn v. State, 387 So. 2d 280 (Ala. Cr. App.), cert. denied, 387 So. 2d 283 (Ala. 1980). The trial court's denial of a motion for a judgment of acquittal must be reviewed by determining whether there existed legal evidence before the jury, at the time the motion was made, from which the jury by fair inference could have found the appellant guilty. Thomas v. State, 363 So. 2d 1020 (Ala. Cr. App. 1978). In applying this standard, the appellate court will determine only if legal evidence was presented from which the jury could have found the defendant guilty beyond a reasonable doubt. Willis v. State, 447 So. 2d 199 (Ala. Cr. App. 1983); Thomas v.

State. When the evidence raises questions of fact for the jury and such evidence, if believed, is sufficient to sustain a conviction, the denial of a motion for a judgment of acquittal by the trial court does not constitute error. Young v. State, 283 Ala. 676, 220 So. 2d 843 (1969); Willis v. State."

Breckenridge v. State, 628 So. 2d 1012, 1018 (Ala. Crim. App. 1993).

Furthermore,

"[c]ircumstantial evidence is not inferior evidence, and it will be given the same weight as direct evidence, if it, along with the other evidence, is susceptible of a reasonable inference pointing unequivocally to the defendant's guilt. Ward v. State, 557 So. 2d 848 (Ala. Cr. App. 1990). In reviewing a conviction based in whole or in part on circumstantial evidence, the test to be applied is whether the jury might reasonably find that the evidence excluded every reasonable hypothesis except that of guilt; not whether such evidence excludes every reasonable hypothesis but guilt, but whether a jury might reasonably so conclude. Cumbo v. State, 368 So. 2d 871 (Ala. Cr. App. 1978), cert. denied, 368 So. 2d 877 (Ala. 1979).'

"Ward [v. State], 610 So.2d [1190,] at 1191-92 [(Ala. Crim. App. 1992)]."

Lockhart v. State, 715 So. 2d 895, 899 (Ala. Crim. App. 1997).

"'"Intent, ... being a state or condition of the mind, is rarely, if ever, susceptible of direct or positive proof, and must usually be inferred from the facts testified to by witnesses and the circumstances as developed by the evidence.'" French v. State, 687 So. 2d 202, 204 (Ala. Cr. App. 1995), rev'd on other grounds, 687 So. 2d 205 (Ala. 1996) (quoting McCord v. State, 501 So. 2d 520, 528 29 (Ala. Cr. App. 1986)).

""The question of intent is hardly ever capable of direct proof. Such questions are normally questions for the jury. McMurphy v. State, 455 So. 2d 924 (Ala. Crim. App. 1984); Craig v. State, 410 So. 2d 449 (Ala. Crim. App. 1981), cert. denied, 410 So. 2d 449 (Ala. 1982)." Loper v. State, 469 So. 2d 707, 710 (Ala. Cr. App. 1985). "Where one assaults another by the use of a deadly weapon, the law will infer from that fact that he designed to accomplish the probable and natural results of his act, in the absence of proof to the contrary." Snipes v. State, 364 So. 2d 424, 426 (Ala. Cr. App. 1978).'

Oryang v. State, 642 So. 2d 989, 994 (Ala. Cr. App. 1994)."

Wilson v. State, 777 So. 2d 856, 932-33 (Ala. Crim. App. 1999).

A person commits the offense of capital murder if he or she commits a murder "by or through the use of a deadly weapon while the victim is in a vehicle." § 13A-5-40(a)(17). A person commits murder when he or she intends to cause the death of another person and causes the death of that person or another person. § 13A-5-40(b). A person commits first-degree assault if he or she "[w]ith intent to cause serious physical injury to another person, he or she causes serious physical injury to any person by means of a deadly weapon or a dangerous instrument." § 13A-6-20(a)(1). Finally, § 13A-11-61(a) provides: "No person shall shoot or discharge a firearm ... into any occupied ... automobile ... in this state."

Here, the State presented evidence indicating that Austin was walking down 80th Street with a rifle at the time of the shooting. Austin admitted to firing his rifle but claimed that he shot only once and that he did not shoot at the red SUV. However, a shell casing discovered in front of Garrison's house was determined to have been fired from the same firearm that fired the shots resulting in the numerous shell casings found at the scene, and an unfired round discovered in Garrison's vehicle contained firing-pin indentations that matched the firearm used at the scene. The evidence established that Austin discharged a firearm in the red SUV's direction and that no other individuals were seen around the red SUV at the time of the shooting. Austin's intent to kill and intent to cause serious physical injury could have been reasonably inferred by the jury from his use of a deadly weapon, see Ex parte Burgess, 827 So. 2d 193, 199-200 (Ala. 2000), and, under Alabama law, Austin's intent to kill or harm could be transferred to his actual victims. See, e.g., Ex parte Phillips, 287 So. 3d 1179, 1193 (Ala. 2018). Thus, there was sufficient evidence before the jury to sustain Austin's convictions.

With respect to Austin's attack on the weight of the evidence, this claim is unpreserved for appellate review. In order to preserve a

challenge to the weight of the evidence, Austin was required to have filed a motion for a new trial in which he raised the issue. Austin did not file a motion for a new trial and, thus, did not preserve this issue for appellate review. Zumbado v. State, 615 So. 2d 1223, 1241 (Ala. Crim. App. 1993) ("The issue of the weight of the evidence is preserved by a motion for a new trial, stating 'that the verdict is contrary to law or the weight of the evidence.' See A.R.Cr.P. 24.1(c)(1)."). See also Underwood v. State, 834 So. 2d 819, 822 (Ala. Crim. App. 2001) ("Underwood did not file a motion for a new trial in which he raised [the issue of the weight of the evidence]; therefore, he has not preserved this issue for appellate review.").

Moreover, even if this argument had been preserved for appeal, it is without merit. Once a prima facie case has been submitted to the jury, the credibility of the witnesses and any conflicts in the evidence are for the jury to judge and determine. This Court will not disturb the verdict "except in extreme situations in which it is clear from the record that the evidence against the accused was so lacking as to make the verdict wrong and unjust." May v. State, 710 So. 2d 1362, 1372 (Ala. Crim. App. 1997) (citing Deutch v. State, 610 So. 2d 212, 1234-35 (Ala. Crim. App. 1992)). This case does not present one of the "extreme situations in which it is

clear from the record that the evidence against the accused was so lacking as to make the verdict wrong and unjust." Id. Therefore, Austin is not entitled to relief on this claim.

II.

Austin argues that the circuit court erred in admitting two photographs, State's Exhibits 25 and 76, into evidence because, he says, they were unnecessary and unduly prejudicial.

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

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

gruesome.' Williams v. State, 506 So. 2d 368, 371 (Ala. Crim. App. 1986)(citations omitted). '[P]hotographic evidence, if relevant, is admissible even if it has a tendency to inflame the minds of the jurors.' Ex parte Siebert, 555 So. 2d 780, 784 (Ala. 1989). 'The fact that a photograph is gruesome and ghastly is no reason to exclude it from the evidence, so long as the photograph has some relevancy to the proceedings, even if the photograph may tend to inflame the jury.' Bankhead, 585 So. 2d at 109-10.

"'This court has held that autopsy photographs, although gruesome, are admissible to show the extent of a victim's injuries.' Ferguson v. State, 814 So. 2d 925, 944 (Ala. Crim. App. 2000), *aff'd*, 814 So. 2d 970 (Ala. 2001). "'[A]utopsy photographs depicting the character and location of wounds on a victim's body are admissible even if they are gruesome, cumulative, or relate to an undisputed matter.'" Jackson v. State, 791 So. 2d 979, 1016 (Ala. Crim. App. 2000), quoting Perkins v. State, 808 So. 2d 1041 (Ala. Crim. App. 1999), *aff'd*, 808 So. 2d 1143 (Ala. 2001), judgment vacated on other grounds, 536 U.S. 953,(2002), on remand to, 851 So. 2d 453 (Ala. 2002). '[A]utopsy photographs depicting the internal views of wounds are likewise admissible.' Broadnax v. State, 825 So. 2d 134, 159 (Ala. Crim. App. 2000), *aff'd*, 825 So. 2d 233 (Ala. 2001). See also Dabbs v. State, 518 So. 2d 825 (Ala. Crim. App. 1987); Hamilton v. State, 492 So.2d 331 (Ala. Crim. App. 1986); Fike v. State, 447 So. 2d 850 (Ala. Crim. App. 1983); and McKee v. State, 33 Ala. App. 171, 31 So.2d 656 (1947) (all holding that photographs of internal injuries were properly admitted although they were gruesome)."

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

In this case, the photographs at issue were State's Exhibit 25, which showed Moriah deceased inside the red SUV, and State's Exhibit 76, which showed part of Moriah's hair and scalp on the vehicle's floorboard. Those photographs were discussed before trial when the circuit court addressed Austin's motion in limine to exclude the photographs from trial. The circuit court denied Austin's motion and ruled that the photographs were admissible. During trial, the State moved to admit the photographs into evidence through the crime-scene technician. Austin objected "to 25 once again, for the record." (R. 435.) The circuit court overruled the objection.

Initially, this Court notes that Austin did not object at trial to the admission of State's Exhibit 76. "The general rule is that an adverse ruling on a motion in limine does not preserve the issue for appellate review unless an objection is made at the time the evidence is introduced." Moody v. State, 888 So. 2d 532, 582 (Ala. Crim. App. 2003). "[U]nless the trial court's ruling on the motion in limine is absolute or unconditional, the ruling does not preserve the issue on appeal." Perry v. Brakefield, 534 So. 2d 602, 606 (Ala. 1988). As noted, Austin did not object in any way to State's Exhibit 76 when the State offered it into

evidence at trial. Additionally, the record does not indicate that the circuit court's ruling on the motion in limine was absolute or unconditional. Accordingly, Austin's argument on appeal as to that exhibit is not preserved for appellate review.

In any event, after reviewing the photographs and the testimony at trial, this Court finds that the photographs were relevant and probative. They aided the jury in understanding what had occurred and in showing that a victim had sustained a terminal blow to the head via a "high-velocity rifle bullet." (R. 518.) By showing the severity of the injuries, the photographs aided the jury in determining the shooter's intent. Although unpleasant, the photographs were not repetitive or unduly gruesome and did not appear to be offered to overwhelm the jury or to incite the jury's passions. Therefore, we conclude that the circuit court did not abuse its discretion when it admitted the photographs into evidence.

III.

Austin argues that the circuit court erred by denying his motion to suppress his custodial statement because, he says, "the State failed to establish a knowing, voluntary, and intelligent waiver of his Miranda [v. Arizona, 384 U.S. 436 (1966),] rights." (Austin's brief, at 27.) Austin

claims that ambiguity existed regarding whether he initially invoked his right to remain silent and that his "mumbling" indicated that he was not clearly reading or demonstrating an understanding of his rights.

At a hearing on the motion to suppress, Detective Nicholas Clark testified that he began the interview by providing Austin with a form containing his Miranda rights. Initially, Austin stated that he had done nothing and had nothing to say. Detective John Finke then informed Austin that he was going to be charged with capital murder and "went to put the handcuffs back on so [Austin] could be transported to the jail on a 48-hour hold." (R. 47.) Austin reversed course and informed the detectives that he did want to make a statement. Austin was again presented with his Miranda rights and asked to read the admonition that stated that he understood his rights and was giving a voluntary statement. When Austin was reading aloud, "he was kind of mumbling and mostly reading to himself." (R. 48.) To make sure that Austin understood his rights, the admonition was read to Austin. Austin signed a form indicating that he understood his rights and that he wished to waive those rights and provide a voluntary statement. The interview was

recorded and reviewed by the circuit court. Austin did not present any evidence during the suppression hearing.

The circuit court issued a written order denying Austin's motion to suppress. In its order, the circuit court summarized the events contained on the recording of the interview:

"Detective Nicholas Clark and Detective John Finke entered the interview room. Det. Clark stated that they wanted to talk to the Defendant about an incident that occurred that morning. The Defendant stated that he didn't know anything about an incident. Det. Clark verified the Defendant's name, date of birth, address and phone number. Det. Finke removed the Defendant's handcuffs.

"Detective Clark read the Defendant State's Exhibit #1. The Defendant again stated that he didn't know about an incident and didn't know what happened. The Defendant then stated that he didn't want to make a statement. Det. Clark ended the interview at 6:25 pm.

"Det. Finke told the Defendant that he was being charged with Capital Murder, that the incident was caught on video and that they knew that it was the Defendant. Det. Finke began to handcuff the Defendant. The Defendant then stated, 'let me tell yall', 'never mind I'll tell yall', 'I changed my mind' and 'I'll talk'. Det. Finke stated that the Defendant had said that he didn't want to talk, they put the handcuffs on the Defendant, and then the Defendant stated that he wanted to talk. Det. Finke told the Defendant they needed to make sure that the Defendant was giving a statement of his own free will.

"Det. Finke then asked the Defendant to listen to Det. Clark about the Miranda waiver. Det. Clark asked the

Defendant to read the bottom portion of State's Exhibit #1 out loud. The Defendant began to read, then asked for the Defendant's (bottom) portion to be read to him aloud. Det. Finke then read the bottom portion out loud. Det. Clark asked the Defendant if he understood his rights; the Defendant stated yes. Det. Clark asked the Defendant if he wanted to talk; the Defendant stated yes. The Defendant then signed and dated the Miranda waiver form at 6:29 p.m.

"The Defendant then gave a statement to the detectives. The Defendant admitted to being in the area of the homicide, and being in possession of a rifle. The Defendant stated that he had been followed for weeks and that people were shooting near his home. The Defendant stated that those people surrounded him at a house near the homicide, fired shots at him and the Defendant fired the rifle in the air. The Defendant stated that he didn't shoot into a car. The Defendant stated he got into a black car and drove to a location where he threw the rifle out of the car. The interview was concluded at 7:03 p.m.

"At the suppression hearing, Det. Clark testified that no threats were made to the Defendant prior to the Defendant giving his statement. Det. Clark testified that he was not aware of any interviews other than his and Det. Finke's. The State of Alabama stated they were not seeking to introduce any other statements made by the Defendant; the statement given to Detectives Clark and Finke were the only statements they were aware of."

(C. 35-37.)

For a confession to be properly admitted, the State must prove that the defendant was informed of his Miranda rights and that he or she knowingly and voluntarily waived those rights. Maxwell v. State, 828

So. 3d 347, 354 (Ala. Crim. App. 2000). In determining whether a confession is voluntary, the circuit court's finding of voluntariness need be supported only by a preponderance of the evidence. Robitaille v. State, 971 So. 2d 43, 55 (Ala. Crim. App. 2005). The circuit court's decision will not be disturbed on appeal unless it is manifestly contrary to the great weight of the evidence. Hodges v. State, 926 So. 2d 1060, 1073 (Ala. Crim. App. 2005). In reviewing the correctness of the circuit court's ruling on a motion to suppress, this Court makes all reasonable inferences and credibility choices in support of the decision of the circuit court. Ex parte Bridgett, 1 So. 3d 1057, 1065 (Ala. 2008).

Here, the circuit court plainly concluded, based on its review of the testimony and its own personal observations of Austin in the recorded interview, that Austin's Miranda waiver was knowing and voluntary. After initially refusing to speak with detectives, Austin changed his mind, stating that he was willing to talk to the detectives. Austin was advised of his rights and signed a waiver before making a statement. The record contains sufficient evidence that Austin's statement was voluntarily given.¹ Because the record does not show that the circuit

¹This Court has reviewed the recorded interview.

court's denial of the motion was ""manifestly contrary to the great weight of the evidence,"" Austin is not entitled to any relief on this claim. Richardson v. State, 819 So. 2d 91, 98 (Ala. Crim. App. 2001) (citations omitted).

IV.

Austin argues that the circuit court erred by allowing what he contends was improper victim-impact testimony during the trial. Specifically, Austin refers to testimony given by Rosa's husband, Ruben Quib-Chub, in which he relayed the lasting effects of her head injury.² Ruben testified:

"She doesn't speak. She doesn't think. She doesn't do anything. She does not drive. She can't even hug my children anymore. I don't know if she doesn't think about the kids or can't think about the kids. The way I see it is she's like a baby that's two or three years old that I have to do -- and help do everything with around the house."

(R. 316.)

During trial, Austin objected to Ruben's testimony on the ground that he was not a doctor and could not give his opinion as a lay person

²Due to her condition, Rosa was unable to testify at trial, but she was present in the courtroom.

about serious physical injury.³ This objection is not sufficient to preserve the specific challenge on appeal -- that the testimony was improper victim-impact testimony. Therefore, Austin's's argument is not preserved for appeal. See Pate v. State, 601 So. 2d 210, 213 (Ala. Crim. App. 1992) ("An issue raised for the first time on appeal is not subject to appellate review because it has not been properly preserved and presented."); Culp v. State, 710 So. 2d 1357, 1359 (Ala. Crim. App. 1996) ("The statement of specific grounds of objection waives all grounds not specified, and the trial court will not be put in error on grounds not assigned at trial." (citation omitted)); Bell v. State, 435 So. 2d 772 (Ala. Crim. App. 1983) (holding that a defendant is bound by the grounds of objection stated at trial and may not expand those grounds on appeal).

Moreover, even if this issue had been preserved, the testimony did not constitute improper victim-impact testimony. The testimony offered by Ruben regarding the nature of Rosa's injuries was relevant given that

³This Court notes that this objection has no merit. A lay witness can testify to establish the element of serious physical injury. Expert medical testimony is not a prerequisite to establishing serious physical injury. See Hopson v. State, 292 So. 3d 407 (Ala. Crim. App. 2019). Further, Ruben did not testify to matters requiring the expertise of a medical professional.

Austin was charged with first-degree assault. Ruben's testimony spoke directly to an element of a crime with which Austin was charged, namely, whether Austin caused serious physical injury with a deadly weapon. Thus, the testimony given by Ruben about Rosa's injuries was not victim-impact testimony. See Gissendanner v. State, 949 So. 2d 956, 965 (Ala. Crim. App. 2006).

V.

Austin claims that he is entitled to a new trial based on what he contends was the cumulative effect of errors by the circuit court. Austin did not raise this argument in a motion for a new trial. Thus, this issue is not preserved for appellate review. Fortner v. State, 582 So. 2d 581, 587 (Ala. Crim. App. 1990) (holding that the issue of cumulative error was not preserved when defendant failed to object in the trial court or make a motion for a new trial); Taylor v. State, 600 So. 2d 1080, 1081 (Ala. Crim. App. 1992) ("It is for the trial court ... to consider and correct, in the first instance, any error which may have been committed or any deficiency in the proceedings." (quoting Willis v. State, 500 So. 2d 1324, 1324 (Ala. Crim. App. 1986))).

Moreover, as discussed above, the circuit court did not err as Austin has argued. None of the arguments Austin has raised individually require reversal. "'Because we find no error in the specific instances alleged by the appellant, we find no cumulative error.'" Chandler v. State, 615 So. 2d 100, 110 (Ala. Crim. App. 1992) (quoting Fisher v. State, 587 So. 2d 1027, 1039 (Ala. Crim. App. 1992)). Therefore, Austin is not entitled to relief on this claim.

VI.

This Court is obligated to take notice that, although the issue not argued by Austin on appeal or mentioned by the State in its brief, Austin's convictions for both murder made capital because Austin murdered Moriah while she was in a vehicle and for discharging a firearm into an occupied vehicle violate principles of double jeopardy.

Austin was charged with capital murder as follows:

"The Grand Jury of said county charge that, before the finding of this indictment, BRUCE LANIER AUSTIN, whose name is to the Grand Jury otherwise unknown, did intentionally cause the death of MORIAH QUIB-MARQUEZ, to-wit: by shooting her with a firearm, while said MORIAH QUIB-MARQUEZ was in a vehicle, in violation of Section 13A-5-40(a)(17), of the Code of Alabama against the peace and dignity of the State of Alabama. "

(C. 175 (capitalization in original).)

Austin was charged with discharging a firearm into an occupied vehicle as follows:

"The Grand Jury of said county charge that, before the finding of this indictment, BRUCE LANIER AUSTIN, whose name is to the Grand Jury otherwise unknown, did, intentionally, knowingly, recklessly, or with criminal negligence, shoot or discharge a firearm into an automobile while the said automobile was occupied by ROSA MARQUEZ SANCHEZ and/or MORIAH QUIB-MARQUEZ, in violation of Section 13A-11-61, of the Code of Alabama, against the peace and dignity of the State of Alabama."

(C. 177 (capitalization in original).)

"It is well settled that '[a] defendant cannot be convicted of both a capital offense and a lesser offense that is included in the capital charge.' Adams v. State, 955 So. 2d 1037, 1098 (Ala. Crim. App. 2003). See also Turner v. State, 924 So. 2d 737 (Ala. Crim. App. 2002). Section 13A-1-8(b), Ala. Code 1975, provides, in pertinent part:

"'(b) When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

"'(1) One offense is included in the other, as defined in Section 13A-1-9[, Ala. Code 1975].'

"Such a double-jeopardy transgression implicates the jurisdiction of the trial court and must be noticed by this Court regardless of whether it was raised. See, e.g., Straughn v. State, 876 So. 2d 492 (Ala. Crim. App. 2003) (opinion on return to remand and on application for rehearing); Borden v.

State, 711 So. 2d 498 (Ala. Crim. App. 1997), *aff'd*, 711 So. 2d 506 (Ala. 1998); and Rolling v. State, 673 So. 2d 812 (Ala. Crim. App. 1995)."

Buford v. State, 891 So. 2d 423, 435-36 (Ala. Crim. App. 2004). See also Heard v. State, 999 So. 2d 992 (Ala. 2007).

Based on the indictments, as well as our review of the record, it is clear that Austin's conviction for discharging a firearm into an occupied vehicle was a lesser-included offense of murder made capital by discharging a weapon into an occupied vehicle. The single act of discharging a firearm into an occupied vehicle underlying the indictment for capital murder was the same act that formed the basis for the separate indictment charging Austin with discharging a firearm into an occupied vehicle.⁴ Therefore, Austin's convictions for both capital murder and the lesser-included offense of discharging a firearm into an occupied vehicle violated double-jeopardy principles, and the circuit court lacked jurisdiction to adjudge him guilty of both offenses. See Brooks v. State, 973 So. 2d 380 (Ala. Crim. App. 2007) (holding that convictions for both

⁴If there had been evidence indicating that more than one bullet struck the red SUV, the additional strike would constitute a separate act, and a separate conviction for discharging a firearm into an occupied vehicle would not necessarily run afoul of principles of double jeopardy.

murder made capital because it was committing during the course of burglary and for burglary violated double-jeopardy principles); Carruth v. State, 927 So. 2d 866 (Ala. Crim. App. 2005) (holding that convictions for both capital murder and the lesser-included offenses of robbery and burglary violated principles of double jeopardy); and McElyea v. State, 892 So. 2d 993 (Ala. Crim. App. 2004) (holding that conviction for capital murder during a robbery and conviction for robbery violated principles of double jeopardy).

For the reasons stated above, this Court affirms Austin's capital-murder and first-degree-assault convictions, as well as the sentences imposed for those convictions. However, we remand this case for the circuit court to vacate Austin's conviction and sentence for discharging a firearm into an occupied vehicle. Due return shall be made to this Court within 42 days of the date of this opinion.

AFFIRMED IN PART; REMANDED WITH INSTRUCTIONS.

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