

COURT OF CRIMINAL APPEALS OF ALABAMA

Armstead v. State

329 So. 2d 150 (Ala. Crim. App. 1976) · No. 6 Div. 30 · Decided March 16, 1976

SUMMARY

The Alabama Court of Criminal Appeals affirmed Marvin Alphonso Armstead’s conviction for second-degree murder and thirty-year sentence. The court rejected claims concerning jury separation, the swearing and empaneling of an alternate juror, and limitations on testimony regarding the deceased’s apparent movements and the appellant’s perception of them. The court held that the issues were either not preserved for appellate review or involved properly excluded conclusions.

CASE DETAILS

COURT	Court of Criminal Appeals of Alabama
WRITING FOR THE COURT	Tyson, Judge; Tyson; Harris; DeCarlo; Bookout
JURISDICTION	Alabama
DECIDED	March 16, 1976
DOCKET	6 Div. 30
DISPOSITION	affirmed
PROCEDURAL POSTURE	Armstead appealed his conviction for murder in the second degree and thirty-year sentence after a jury trial.
STANDARD OF REVIEW	The appellate court reviewed preserved claims of trial error and examined the record for error; unpreserved claims were not considered for the first time on appeal.
PRECEDENTIAL VALUE	Published Alabama Court of Criminal Appeals opinion
PARTIES	Marvin Alphonso Armstead v. State

TOPICS

- criminal procedure
- preservation of error
- jury selection
- evidence
- self defense

PRACTICE AREAS

- criminal law
- criminal procedure
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether the alleged separation of the jury could be raised for the first time on appeal when no objection, mistrial motion, or new-trial ground addressed the issue.
2. Whether the record established that the alternate juror was not properly sworn and empaneled under Title 30, Section 58, Code of Alabama 1940, despite the absence of a trial-court challenge or ruling.
3. Whether the trial court improperly excluded Armstead's testimony concerning what he believed the deceased was about to do.

HOLDINGS

1. The alleged jury separation was not reviewable because Armstead made no objection at trial, moved for no mistrial, and did not raise the issue in his motion for a new trial.
2. The record was presumed correct as to the alternate juror's empanelment and oath because Armstead made no challenge or obtained no ruling in the trial court or on motion for a new trial.
3. The trial court correctly sustained the State's objections to testimony expressing what the deceased appeared or intended to do because such testimony was a conclusion rather than a statement of fact.

KEY QUOTATIONS

"It is clear that the trial court's ruling is correct as a witness cannot testify as to what another person saw, or what another person seemed to be doing, as such is a mere conclusion, and not a statement of fact." (152)

"We have carefully examined this record and find same to be free from error." (152)

FACTUAL BACKGROUND

Armstead and Jerry Nathan argued and fought outside a house in Bessemer, Alabama. After Nathan fled, Armstead pursued him, later located him from a car, and fired two shots from a .38-caliber derringer, one of which struck Nathan in the heart and caused his death. Armstead admitted the shooting but claimed self-defense, asserting that Nathan made a sudden hand movement suggesting he had a weapon; the record contained no evidence that Nathan possessed a weapon.

PROCEDURAL HISTORY

Armstead was indicted for first-degree murder after shooting Jerry Nathan. The jury convicted him of second-degree murder and fixed punishment at thirty years' imprisonment, and the trial court entered judgment accordingly. The trial court overruled his motion for a new trial, and Armstead appealed, raising issues concerning jury separation, empanelment of an alternate juror, and evidentiary rulings during his testimony.

DISPOSITION

affirmed

CASES CITED

- Turner v. State, 54 Ala. App. 467, 309 So. 2d 503

- Fowler v. State, 261 Ala. 262, 74 So. 2d 512
- Gardner v. State, 48 Ala. 263
- Vaughn v. State, 236 Ala. 442, 183 So. 428
- Starr v. Starr, 293 Ala. 204, 301 So. 2d 78
- Williams v. State, 51 Ala. App. 1, 282 So. 2d 349, cert. denied, 291 Ala. 803, 282 So. 2d 355
- Montgomery-Moore Manufacturing Company v. Leeth, 2 Ala. App. 324, 56 So. 770