

SUPREME COURT OF ARKANSAS

Justin Anderson v. State of Arkansas, 367 Ark. 536

242 S.W.3d 229 (2006) · No. CR 06-29 · Decided November 2, 2006

SUMMARY

The Supreme Court of Arkansas affirmed Justin Anderson’s death sentence on remand for capital murder. The court held that allowing the jury to take and potentially replay an admitted audiotape during deliberations did not violate Arkansas Code section 16-89-125(e) and did not constitute a critical stage requiring Anderson’s presence with counsel. The court also rejected challenges to the admission and consideration of victim-impact evidence, while two justices dissented.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Jim Hannah, Chief Justice; Corbin, Justice; Imber, Justice
JURISDICTION	Arkansas
DECIDED	November 2, 2006
DOCKET	CR 06-29
DISPOSITION	affirmed
PROCEDURAL POSTURE	Anderson appealed the death sentence imposed after resentencing on remand following a prior appeal in which his capital-murder conviction was affirmed but his death sentence was reversed and remanded.
STANDARD OF REVIEW	The court reviewed the alleged sentencing and evidentiary errors and conducted the required review for prejudicial error under Arkansas Supreme Court Rule 4-3(h), Arkansas Rule of Appellate Procedure–Criminal 10(b), and Arkansas Code Annotated section 16-91-113.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Justin Anderson v. State of Arkansas

TOPICS

- sentencing
- criminal procedure
- evidence
- right to counsel
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether sending an admitted audiotape of Anderson's recorded statement and a tape player into the jury room during deliberations violated Arkansas Code Annotated section 16-89-125(e).
2. Whether allowing the jury to replay the admitted audiotape during deliberations outside the presence of Anderson, counsel, and the court constituted a critical stage requiring Anderson's presence and representation by counsel.
3. Whether victim-impact evidence improperly functioned as an aggravating circumstance or was otherwise irrelevant or inadmissible in the capital-sentencing proceeding.
4. Whether Arkansas Code Annotated section 5-4-602(4) conflicted with other Arkansas capital-sentencing statutes and the Arkansas Rules of Evidence, invaded the judiciary's relevance-determination function, violated the Fifth, Sixth, Eighth, and Fourteenth Amendments and Article II of the Arkansas Constitution, or was void for vagueness.

HOLDINGS

1. Providing the deliberating jury with an admitted exhibit that had already been presented at trial, without evidence that the jury received or considered additional material, did not violate section 16-89-125(e).
2. The jury's replaying during deliberations of an audiotape of an out-of-court statement that had been admitted and played at trial was not a critical stage of the criminal proceeding requiring Anderson's presence with counsel.
3. Victim-impact evidence is relevant and admissible in capital sentencing to assist the jury in determining punishment based on the injury caused by the crime; it does not itself constitute a statutory aggravating circumstance.
4. The statutory-conflict, judicial-prerogative, and vagueness challenges failed; the constitutional challenge was not developed sufficiently for consideration.

KEY QUOTATIONS

"We hold that there was no violation of Ark. Code Ann. § 16-89-125(e) in this case because the jury received an admitted exhibit where there was no danger of additional evidence being introduced by giving the exhibit to the jury during deliberations." (242 S.W.3d at 233)

"We hold that the jury's replaying during deliberations audiotapes of an out-of-court statement admitted into evidence and made an exhibit at trial is not a critical stage in criminal proceedings." (242 S.W.3d at 235)

"The victim-impact evidence was relevant, admissible, and properly submitted to the jury to be weighed against evidence regarding punishment." (242 S.W.3d at 236)

FACTUAL BACKGROUND

Anderson confessed to shooting Roger Solvey during an attempted killing and to shooting eighty-five-year-old Clara Creech, who died. His recorded statement was admitted into evidence and played for the jury at trial. During sentencing deliberations on remand, the circuit court sent all admitted exhibits, including the audiotape and a tape player, to the jury after the jury requested a psychological report. The sentencing jury also received victim-impact evidence and imposed death.

PROCEDURAL HISTORY

Anderson was convicted of capital murder and sentenced to death in 2002. The Arkansas Supreme Court affirmed the conviction but reversed and remanded the death sentence in *Anderson v. State*, 357 Ark. 180, 163 S.W.3d 333 (2004). On remand, the sentencing hearing was transferred from Lafayette County to Miller County, a death sentence was again entered, and Anderson appealed. The Supreme Court of Arkansas affirmed.

DISPOSITION

affirmed

CASES CITED

- *Anderson v. State*, 357 Ark. 180, 163 S.W.3d 333 (2004)
- *Goff v. State*, 341 Ark. 567, 19 S.W.3d 579 (2000)
- *Davlin v. State*, 313 Ark. 218, 853 S.W.2d 882 (1993)
- *Aydelotte v. State*, 177 Ark. 595, 281 S.W. 369 (1926)
- *Golf v. State*, 261 Ark. 885, 552 S.W.2d 236 (1977)
- *Boone v. State*, 230 Ark. 821, 327 S.W.2d 87 (1959)
- *Sanders v. State*, 317 Ark. 328, 878 S.W.2d 391 (1994)
- *McKinney v. State*, 303 Ark. 257, 797 S.W.2d 415 (1990)
- *Rollie v. State*, 236 Ark. 853, 370 S.W.2d 188 (1963)
- *Goff v. State*, 329 Ark. 513, 953 S.W.2d 38 (1997)
- *Williams v. State*, 264 Ark. 77, 568 S.W.2d 30 (1978)
- *Tarry v. State*, 289 Ark. 193, 710 S.W.2d 202 (1986)
- *Smith v. State*, 343 Ark. 552, 39 S.W.3d 739 (2001)
- *Hammett v. Texas*, 448 U.S. 725 (1980)
- *Kentucky v. Stincer*, 482 U.S. 730 (1987)
- *Roe v. Flores-Ortega*, 528 U.S. 470 (2000)
- *Mempa v. Rhay*, 389 U.S. 128 (1967)
- *Commonwealth v. Johnson*, 574 Pa. 5, 828 A.2d 1009 (2003)
- *Perry v. Leeke*, 488 U.S. 272 (1989)
- *Johnson v. State*, 356 Ark. 534, 157 S.W.3d 151 (2004)
- *Noel v. State*, 331 Ark. 79, 960 S.W.2d 439 (1998)
- *Payne v. Tennessee*, 501 U.S. 808 (1991)

- McGehee v. State, 348 Ark. 395, 72 S.W.3d 867 (2002)
- Ashley v. State, 358 Ark. 414, 191 S.W.3d 520 (2004)
- Atkinson v. State, 347 Ark. 336, 64 S.W.3d 259 (2002)
- Estate of Hull v. Union Pacific R.R. Co., 355 Ark. 547, 141 S.W.3d 356 (2004)
- Morris v. McLemore, 313 Ark. 53, 852 S.W.2d 135 (1993)
- Zinger v. Terrell, 336 Ark. 423, 985 S.W.2d 737 (1999)
- McGhee v. State, 334 Ark. 543, 975 S.W.2d 834 (1989)
- Parish v. Pitts, 244 Ark. 1239, 429 S.W.2d 45 (1968)
- Sanders v. County of Sebastian, 324 Ark. 433, 922 S.W.2d 334 (1996)

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