

TEXAS COURT OF CRIMINAL APPEALS

Henderson v. State

142 Tex. Crim. 337 (1941) · Decided May 14, 1941

SUMMARY

The Texas Court of Criminal Appeals affirmed Henderson’s murder conviction and two-year penitentiary sentence. The court rejected challenges concerning the special venire, admission of evidence, attorney conduct, hearsay, continuance, and prosecutorial argument, finding no reversible error.

CASE DETAILS

COURT	Texas Court of Criminal Appeals
WRITING FOR THE COURT	Krueger, Judge; Graves; Krueger
JURISDICTION	Texas
DECIDED	May 14, 1941
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellant was convicted of murder and sentenced to two years' confinement in the state penitentiary. He appealed, assigning error through bills of exception concerning jury selection, evidence, counsel conduct, hearsay, continuance, and closing argument.
STANDARD OF REVIEW	The court reviewed the preserved bills of exception for reversible error and assessed whether alleged errors were harmful or prejudicial under the record presented.
PRECEDENTIAL VALUE	Published state appellate opinion; precedential value not otherwise specified in the source.
PARTIES	Henderson v. State

TOPICS

- criminal procedure
- evidence
- preservation of error
- appellate procedure
- self defense

PRACTICE AREAS

- criminal law
- criminal procedure
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether the special venire writ was invalid because the clerk inserted language referring to thirty additional persons even though the court ordered a writ for seventy persons.
2. Whether the State could cross-examine Henderson about the cause of prior difficulties with the deceased, including a football-game bet.
3. Whether the trial court committed reversible error by reprimanding defense counsel in the jury's presence.
4. Whether the exclusion of proposed testimony from witness Grites was reversible error because the testimony was hearsay.
5. Whether rebuttal testimony from the deceased's mother was inadmissible.
6. Whether the denial of Henderson's application for a continuance based on absent witnesses was reversible error.
7. Whether allegedly improper closing arguments by the State prejudicially affected Henderson's rights.

HOLDINGS

1. Any error caused by the clerk's unauthorized insertion of language referring to thirty additional persons was waived when Henderson proceeded with examination and selection of jurors, and the alleged error was harmless because the jury was selected from the seventy named veniremen.
2. Because Henderson introduced testimony about numerous prior altercations and their causes, the State was entitled on cross-examination to explore the entire subject, including whether the ill feeling arose from a football-game bet.
3. The trial court properly rejected the testimony Henderson sought to elicit from Grites because the record showed that it was hearsay.
4. The denial of Henderson's continuance application was not reversible error because the bills of exception failed to establish the required diligence and other statutory or procedural prerequisites for a continuance.
5. The challenged remarks did not constitute reversible error because some were reasonable deductions from the evidence, others were invited by defense counsel, and the arguments were not sufficiently harmful or prejudicial to affect Henderson's rights.

KEY QUOTATIONS

"It occurs to us that if the unauthorized act of the clerk was any error, it was waived by the appellant when he proceeded with the trial of the case in the selection of the jury." (at 340)

"Finding no error in the record, the judgment is affirmed." (at 343)

FACTUAL BACKGROUND

Henderson and the deceased had an earlier altercation at the Bungalow. Henderson left, obtained a pistol, and later encountered the deceased at the Blue Moon, where he fired four shots into the deceased and then an

additional shot after the deceased had fallen. The deceased was unarmed and Henderson claimed self-defense, offering evidence that the deceased was dangerous and quarrelsome.

PROCEDURAL HISTORY

The trial court entered a murder conviction and assessed punishment at two years' confinement. The defendant filed a plea for a suspended sentence and pursued multiple bills of exception and a motion for new trial. The Texas Court of Criminal Appeals approved the Commission of Appeals' opinion and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Houillion v. State, 3 Tex. Cr. App. 537
- Farrar v. State, 70 S.W. 209