UNDRA FURLOW *v.* STATE OF ARKANSAS

5641 475 S.W. 2d 524

Opinion delivered January 17, 1972

[Rehearing denied February 21, 1972.]

1. HOMICIDE—FIRST DEGREE MURDER—SUFFICIENCY OF EVIDENCE.—Evidence *held* sufficient to sustain a conviction of first degree murder where it was not disputed defendant drew a pistol from his pocket, and there was an abundance of proof from which the jury could have found defendant fired the fatal shot.
2. CRIMINAL LAW—CONFESSIONS, VOLUNTARINESS OF—STATUTORY REQUIREMENTS.—The court did not err in not submitting the issue of the voluntariness of defendant's confession to the jury where there was no such request, and the court conducted a Denno hearing in chambers and found, upon sufficient evidence, that the confession was admissible, which is all the statute requires. [Ark. Stat. Ann. § 43-2105 (Supp. 1969).]
3. WITNESSES—HOSTILE WITNESSES, EXAMINATION OF—DISCRETION OF TRIAL COURT.—No abuse of discretion was found in the court's action in permitting the prosecuting attorney to treat defendant's father as a hostile witness, nor any prejudice.
4. CRIMINAL LAW—TRIAL—FAILURE TO INSTRUCT ON SELF-DEFENSE AS PREJUDICIAL.—No error occurred in the court's failure to instruct the jury upon the law of self-defense where no such instruction was asked, and defendant testified positively he did not shoot deceased at all and could not have consistently urged he acted in self-defense.

Appeal from Union Circuit Court, First Division, *Harry Crumpler,* Judge; affirmed.

Bruce Bennett and *Thorp Thomas,* for appellant.

Ray Thornton, Attorney General; *James A. Neal,* Asst. Atty. Gen., for appellee.

GEORGE ROSE SMITH, Justice. The appellant, charged with murder in the second degree, was found guilty and sentenced to imprisonment for fifteen years. He questions the sufficiency of the evidence and several rulings made by the court.

The evidence is amply sufficient to support the verdict. The appellant, Undra Furlow, and the decedent, Curtis Lumsey, had been shooting dice with several other persons in a beer tavern in Union county. A quarrel about money arose between Furlow and Lumsey. There is some dispute about whether Lumsey drew a knife from his pocket, but there is no question about Furlow's having drawn a pistol from his own pocket. In fact, Furlow admitted that fact in his testimony at the trial, though he also insisted that the weapon would not fire and that someone else in the room must have shot Lumsey. While no witness for the State testified that Furlow fired the fatal shot, there was an abundance of proof from which the jury might have so found. Moreover, the State introduced a confession in which he stated that he shot Lumsey. In similar cases we have held the State's proof sufficient to sustain the conviction. *Mumphrey* v. *State,* 251 Ark. 25, 470 S. W. 2d 589 (1971); *Murchison* v. *State,* 249 Ark. 861, 462 S. W. 2d 853 (1971).

With respect to the confession, the appellant argues that the court erred in not submitting the issue of its voluntariness to the jury. There was no such request. The court conducted a Denno hearing in chambers and found, upon sufficient evidence, that the confession was admissible. That is all the statute requires. Ark. Stat. Ann. § 43-2105 (Supp. 1969).

We find no abuse of discretion in the court's action in permitting the prosecuting attorney to treat the defendant's father as a hostile witness, nor any prejudice even if the ruling had been erroneous. See *Taylor* v. *State,* 82 Ark. 540, 102 S. W. 367 (1907). Finally, there was no error in the court's failure to instruct the jury upon the law of self-defense, not only because no such instruction was asked but also because Furlow testified positively that he did not shoot Lumsey at all and so could not have consistently urged that he acted in self-defense.

Affirmed.