

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-00479 COA**

DAVID BALLANSAW A/K/A DAVID BALLANSHAW **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	06/09/94
TRIAL JUDGE:	HON. WILLIAM COLEMAN
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	THOMAS FORTNER ROBERT RYAN
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART
DISTRICT ATTORNEY:	CYNTHIA SPEETJENS
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	MURDER; LIFE SENTENCE
DISPOSITION:	AFFIRMED - 10/21/97
MOTION FOR REHEARING FILED:	
11/14/1997	
CERTIORARI FILED:	
MANDATE ISSUED:	2/23/98

BEFORE THOMAS, P.J., DIAZ, AND KING, JJ.

DIAZ, J., FOR THE COURT:

David Ballansaw was convicted of murder and sentenced to life imprisonment. He asserts the following arguments on appeal: (1) that the trial judge unfairly singled out and highlighted the offense of murder by granting two "murder" jury instructions and (2) that the trial judge erred in granting "self-defense" jury instructions which contained incorrect statements of the law and were repetitive, confusing, and misleading. Finding these arguments without merit, we affirm.

FACTS

On July 13, 1993, Fred Buchanan was sitting in the front room of his house, looking out the

window, when he saw the appellant, David Ballansaw, and the victim, Richard Christian, engaged in an argument outside Forte's Shop-a-rette. Buchannan saw Ballansaw armed with a gun, and he observed Christian with his hands in the air pleading with Ballansaw to "just forget about it." He then saw Christian turn to walk away. At that moment, Buchannan heard a knock at his door. As he stood up to answer the door, he heard a gunshot. He then ran to his door, opened it, and saw his friend James Champion standing on his porch. Champion had also just observed the argument between Ballansaw and Christian and reported seeing Ballansaw shoot Christian. Realizing he had just been shot, Christian began running toward Buchannan's porch with Ballansaw chasing behind him. Christian then collapsed and died on Buchannan's porch. Ballansaw fled from the scene.

DISCUSSION

I. DID THE TRIAL JUDGE UNFAIRLY SINGLE OUT AND HIGHLIGHT THE OFFENSE OF MURDER BY GRANTING TWO "MURDER" JURY INSTRUCTIONS?

Ballansaw argues that the trial judge erred when he granted jury instructions 9 and 10. Ballansaw maintains that since both instructions contained the elements of murder, the trial judge was essentially commenting upon the evidence in granting both instructions. In his brief, Ballansaw argues that the trial court committed reversible error in giving the duplicative jury instructions, yet Ballansaw himself offered instruction 10, and when the State submitted instruction 9, Ballansaw announced that he did not object to its introduction. Furthermore, Ballansaw acknowledges that both instructions correctly charged the jury on the law. Ballansaw had ample opportunity to object to the introduction of instruction 9. Ballansaw also could have withdrawn or amended instruction 10. Yet, he failed to do so and is now inappropriately raising this issue on appeal. The supreme court has repeatedly held that "[t]he failure to make a contemporaneous objection waives the right to raise [an] issue on appeal." *Ballenger v. State*, 667 So. 2d 1242, 1258-59 (Miss. 1995) (citations omitted). Accordingly, we find that Ballansaw is procedurally barred from successfully asserting that the trial court was in error for granting the two "murder" jury instructions.

II. DID THE TRIAL JUDGE ERR IN GRANTING REPETITIVE, CONFUSING AND INACCURATE "SELF-DEFENSE" JURY INSTRUCTIONS?

Ballansaw is arguing on appeal, for the first time, that instructions 6, 7, and 8 all "self-defense" jury instructions were repetitive, confusing, and inaccurate. At trial, Ballansaw objected only to the last line in instruction 7. The trial court deleted the last sentence, thereby curing any potential error. Ballansaw then objected to instruction 6, complaining that it duplicated instruction 8. He now claims that additional error existed. The supreme court has stated that "objection on one ground at trial waives all other grounds for objection on appeal." *Lester v. State*, 692 So. 2d 755, 772 (Miss. 1997). An objection cannot be enlarged in this Court to remedy an objection the appellant failed to raise at trial. *Conner v. State*, 632 So. 2d 1239, 1255 (Miss. 1993) (citing *McGarrh v. State*, 249 Miss. 247, 276, 148 So. 2d 494, 506 (Miss. 1963)). Furthermore, Ballansaw argued at trial that he was not present at the scene where Christian was shot and killed. He claimed that he had an alibi for his whereabouts on the day in question. If that was the case, then whether or not the jury received proper self-defense instructions was of no consequence to Ballansaw's defense. Accordingly, we find that not only is Ballansaw precluded from successfully arguing this issue on appeal due to his failure to make proper objections at trial, but also that the trial judge was not in error in granting the three "self-

defense" jury instructions.

THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT OF CONVICTION OF MURDER AND SENTENCE TO LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO HINDS COUNTY.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.