



Administrative Office of the Courts

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NM Supreme Court affirms Albuquerque man's convictions for killing a police officer

SANTA FE – The state Supreme Court today affirmed the convictions of Davon Lymon for the fatal shooting of Albuquerque Police Department Officer Daniel Webster during a traffic stop in 2015.

In a unanimous opinion, the Court rejected the defendant's arguments on appeal challenging his convictions of first-degree murder, evidence tampering, forgery, receiving or transferring a stolen vehicle, and resisting, evading or obstructing an officer.

Lymon was sentenced in 2019 to life in prison without possibility of parole for the murder plus 11½ years for the other charges. The sentence in the state case is to be served after Lymon finishes a 38-year sentence imposed in a separate federal prosecution on charges of being a felon in possession of a firearm.

Officer Webster was shot as he tried to handcuff Lymon, who was stopped while driving a motorcycle that police dispatchers reported was stolen. The officer drew his weapon as he exited his police car but holstered it before handcuffing Lymon's left wrist. Lymon used his right hand to pull out a pistol and fired multiple shots.

In his appeal, Lymon argued that the trial court judge improperly asked the jury to clarify its preliminary verdict forms concerning the first-degree murder charge, wrongly denied a request for a new trial based upon possible juror misconduct and should have instructed the jury about self-defense. Lymon contended that he feared for his life and shot Officer Webster to protect himself. Additionally, the defense maintained the judge erred in several evidentiary decisions during the trial.

The Court explained that the judge had a duty to clarify the jury's intent but the justices "would have preferred that the trial court had polled the jury" rather than sending notes to the jury about its verdict.

"However, we conclude that the trial court did not abuse its discretion and did not coerce the jury when it issued the two notes to the jury," the Court wrote in an opinion by Justice C. Shannon Bacon.

The justices found that the trial court properly refused a jury instruction for self-defense because evidence failed to show that Officer Webster used excessive force in attempting to arrest him.

It was "reasonable and necessary for Officer Webster to exit his vehicle with his weapon raised because stopping and approaching the motorcycle posed an immediate threat to his safety as a police officer," the Court wrote. "Furthermore, the fact that APD considers drawing a weapon a use of force does not render such an action *excessive* force. Most importantly, Officer Webster deescalated the amount of force he used after the encounter because he holstered his weapon."

The Court concluded that the trial court did not abuse its discretion in denying a new trial or an additional evidentiary hearing because an alternate juror received information from her husband who watched a livestream of the trial. The information concerned a discussion by attorneys during a break whether the female passenger on the motorcycle would wear jail-issued clothing when she testified. The alternate juror did not participate in the jury deliberations and testified at a hearing that she did not share with other jurors the information from her husband.

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To read the decision in *State v. Lymon*, No. S-1-SC-37729, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/497582/index.do>