

Summary of SC94324, *State of Missouri v. Michael E. Amick*

Appeal from the Oregon County circuit court, Judge J. Max Price

Argued and submitted January 13, 2015; opinion issued June 16, 2015

Attorneys: Amick was represented by Samuel E. Buffaloe of the public defender's office in Columbia, (573) 777-9977; and the state was represented by Gregory L. Barnes of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals his murder and arson convictions and sentences on the ground that, after the jury had been deliberating, the trial court replaced a juror with an alternate juror who had been excused from duty and sent home before deliberations began. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. The applicable statute forecloses not only the option of a substitution after the jury begins to deliberate but also the possibility of a substitution. Once the jury begins to deliberate, alternate jurors are discharged and are no longer part of the jury.

Facts: The state charged Michael Amick with first-degree murder and second-degree arson for killing a woman and setting fire to her house. After the evidence was presented, but before the jury began deliberating, the trial court excused Juror 14, who was an alternate juror. Juror 14 returned home, and the jury began deliberating. After more than five and a half hours of deliberation, the court excused Juror 12 from service due to health concerns and instructed Juror 14 to return to the courthouse. It then substituted – over defense counsel's objection and motion for a mistrial – Juror 14 for Juror 12. Less than an hour later, the jury found Amick guilty of the arson charge and guilty of the lesser-included murder charge of second-degree murder. The court then sentenced Amick to concurrent sentences (to run at the same time) of life in prison for the murder conviction and seven years in prison for the arson conviction. Amick appeals.

REVERSED AND REMANDED.

Court en banc holds: (1) Defense counsel objected with sufficient specificity to preserve for appeal the issue of the propriety of substituting alternate Juror 14 for Juror 12 after the jury had commenced deliberations.

(2) The trial court erred in overruling defense counsel's objection and request for a mistrial relating to the replacement of a juror after deliberations had begun. Under section 494.485, RSMo, an alternate juror can replace another juror "prior to the time the jury retires to consider its verdict." Once the jury begins to deliberate, a trial court cannot substitute one juror for another. Under the statute, alternate jurors who are not needed for the jury are "discharged." This means that, once the jury retires for deliberation, the alternate juror no longer is part of the jury. Taken together, these two directives demonstrate that section 494.485 forecloses not only the option of a substitution after the jury begins to deliberate but also the possibility of a substitution. The trial court's violation of section 494.485 constitutes reversible error. The right to a jury trial is a fundamental constitutional right. The violation deprived Amick of his right to have the same 12 jurors deliberate and decide his case.