NEWS RELEASE

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AG ANNOUNCES CONVICTION UPHELD FOR MURDER IN BULLOCK COUNTY

(MONTGOMERY) – Attorney General Luther Strange announced that the Alabama Court of Criminal Appeals upheld the murder conviction of a Union Springs man on Friday. Kwesi Martez Allen, 21, was found guilty by a Bullock County jury in May of 2010 for the murder of Wilfred Heaird.

Evidence presented at trial stated that Allen and his mother were at the Ponderosa Club in Union Springs. According to the court record, Allen's mother got into a fight with another woman, and after the fight was broken up, Allen left the club. Allen came back holding a silver gun and shot and killed the victim Heaird, when he was aiming at someone else.

The case was prosecuted at trial by Bullock County District Attorney Ben Reeves' Office. Allen was convicted and sentenced to life imprisonment, and subsequently sought to have his conviction reversed on appeal.

The Attorney General's Appeals Division handled the case during the appeals process, arguing for the Alabama Court of Criminal Appeals to affirm the conviction. The Court did so in a decision issued on Friday, April 15. Attorney General Strange commended Assistant Attorney General Beth Slate Poe of the Attorney General's Appeals Division for her successful work in this case.

**For additional information regarding this case, a copy is attached of the memorandum opinion of the Alabama Court of Criminal Appeals.*

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Court of Criminal Appeals

State of Alabama
Judicial Building, 300 Dexter Avenue
P. O. Box 301555
Montgomery, AL 36130-1555

SAMUEL HENRY WELCH
Presiding Judge
MARY BECKER WINDOM
J. ELIZABETH KELLUM
LILES C. BURKE
J. MICHAEL JOINER
Judges

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MEMORANDUM

CR-09-1395 Bullock Circuit Court CC-09-67

Kwesi Martez Allen v. State of Alabama

WELCH, Presiding Judge.

Kwesi Martez Allen was convicted of murder, a violation of § 13A-6-2, Ala. Code 1975. The trial court sentenced Allen to serve a term of life imprisonment. The trial court ordered Allen to pay all appropriate assessments, ordered Allen to pay a $2,000 fine, and ordered Allen to pay restitution. Allen filed a motion for a new trial, which was denied. This appeal followed.

Allen does not challenge the sufficiency of the evidence; therefore, a brief recitation of the facts will suffice.

Marquita Dent testified to the following. On November 15, 2008, Dent arrived at the Ponderosa Club in Union Springs at approximately 10:30 p.m. At some point in the evening, Dent saw Erica Harris and Edith Allen, Allen's mother, get into a fight. Eric Harris, Erica Harris's brother, and Allen disbanded the fight. Dent testified that Allen said, "Ain't nobody going to do nothing to my mama." (R. 137.) Dent saw Allen leave the club and come back in holding a silver gun. Allen pointed the gun toward the dance floor. Dent saw Wilfred Heaird standing near Eric Harris, and when Allen fired the gun, Heaird fell to the ground. Dent ran to Heaird, who was her uncle, and reached under him to help him up. Dent testified that she realized that her hands were covered in blood, and she testified that Heaird did not move or say anything.

The State presented evidence that Heaird died as a result of the gunshot wound which he received.

Erica Harris testified that she saw Allen wearing a red shirt on the night of the shooting, but she did not see who shot Heaird. Gregory Robbins testified that he was at the Ponderosa Club on the night of the shooting and that he saw a man with a red shirt with a gun but did not see the shooting itself. Kathy Swanson testified that she was at the Ponderosa Club on the night of the shooting and that she saw a man with a red shirt and "do" rag on his head fire a gun, and she next saw Wilfred Heaird after he fell to the ground.

Lieutenant Louis Murray with the Union Springs Police Department testified that on the night of the shooting, he went to Allen's house because he received information that Allen was a suspect and that Allen might be wearing a red shirt. Lt. Murray testified that when he arrested Allen that he had on "a red shirt, blue jeans with some type of tennis shoe print on the back of the pants. He had a long silver necklace around his neck, and he had on like a white 'do' rag on his head." (R. 65.) Lt. Murray testified that Allen also had a cell phone on his belt when he was arrested.

I.

Allen argues that the State "improperly and intentionally elicited testimony of law enforcement that the defendant

exercised his right to remain silent." (Appellant's brief at 14.) However, Allen failed to object to these statements at trial. (R. 55-56, 64, 68.)

> "'"[T]o preserve an issue for appellate review, it must be presented to the trial court by a timely and specific motion setting out the specific grounds in support thereof. ... An issue raised for the first time on appeal is not correctly before this court." Buice v. State, 574 So. 2d 55, 57 (Ala.Cr.App.1990).' McKinney v. State, 654 So.2d 95, 99 (Ala.Cr.App.1995). 'Even constitutional issues must first be correctly raised in the trial court before they will be considered on appeal.' Adams v. City of Pelham, 651 So.2d 55, 56 (Ala.Cr.App.1994)."

Merchant v. State, 724 So. 2d 65, 66 (Ala. Crim. App. 1998).

Therefore, because Allen presents this argument for the first time on appellate review, it is not properly before this Court and may not be considered. Further, Allen's argument that this error should be reviewed under the plain error standard of review is without merit because this standard of review only applies in cases wherein the death penalty has been imposed. See Rule 45A, Ala. R. App. P.

II.

Allen argues that the trial court erred when it admitted into evidence photographs of images contained in Allen's cellular telephone. In support of this claim Allen argues: the photographs shown to the jury were not fair and accurate depictions of what the testifying police officer actually observed, so the State should have provided additional testimony to ensure the reliability of the evidence under the "silent witness" theory; the police officer's testimony was not qualified or competent with respect to the photographs; the State did not explain "why it took so long for the photographs to be taken of the cell phone images, or if the images captured on the cell phone was an accurate depiction of what was intended by that photographer" (Appellant's brief at p. 25); there was no testimony that the photographic images on the cell phone were accurate depictions of what they were

purported to be; and the probative value of the photographs was outweighed by their prejudice. None of the foregoing arguments was raised at trial; therefore, they have not been preserved for review on appeal.

Lt. Murray testified that he examined photographic images found in Allen's cellular telephone, and the images depicted a silver gun and a black gun, a silver necklace, jewelry, pants, and a red shirt.[1] Lt. Murray testified that someone at the police department took photographs of the images on the cell phone. When the State presented to Lt. Murray one of the photographs for his identification at trial, Allen objected on the grounds that the picture was "double hearsay, a picture of a picture." (R. 74.) The trial court asked the State to have the witness identify the photograph, and Lt. Murray testified that the photograph depicted what he actually saw on Allen's cell phone. Lt. Murray then acknowledged that in the photograph of the cell-phone image the shirt did not appear to be red, but that the shirt appeared to be red in the image contained in the cell phone. When the State offered the photograph into evidence, Allen renewed his objection. The trial court overruled the objection and admitted the photograph. When the State questioned Lt. Murray about another photograph, this one depicting two guns taken from an image in Allen's cell phone, Allen said, "We object again. It's hearsay." (R. 76.) The trial court overruled the objection and admitted the photograph.

Allen's only objection at trial -- that the photograph was "double hearsay," or a photograph of a photograph -- did not preserve for review any of the grounds of objection he now raises on appeal.

> "'We note initially that specific objections are necessary to preserve error. Gibbs v. State, 342 So. 2d 448 (Ala.Cr.App.1977). Specific grounds of objections waive all grounds not specified, and the trial court will not be put in error on grounds not assigned. Hargrove v. State, 344 So. 2d 826

[1]The State argued that Allen was wearing the same necklace and items of clothing on the night of the shooting, and witnesses testified Allen had fired a silver gun.

> (Ala.1977). The trial court must be apprised of the basis for the objection with sufficient particularity to allow an informed decision to be made on the particular legal issues involved. Bland v. State, 395 So. 2d 164, 168 (Ala.Cr.App.1981). A trial court need not cast about for tenable grounds for an objection to evidence. Watkins v. State, 219 Ala. 254, 122 So. 610 (1929).'"

Bethune v. State, 502 So. 2d 386, 389 (Ala. Crim. App. 1986), quoting Wyrick v. State, 409 So. 2d 969, 974 (Ala. Crim. App. 1981). We note that Allen had filed a pretrial motion in limine, seeking exclusion of several photographs. However, Allen raised different grounds pretrial than he does on appeal and, in any case, "[t]he general rule is that an adverse ruling on a motion in limine does not preserve the issue for appellate review unless an objection is made at the time the evidence is introduced." Moody v. State, 888 So. 2d 532, 582 (Ala. Crim. App. 2003).

Therefore, Allen's argument is not properly before this Court for review.

For the reasons set forth above, the judgment of the trial court is due to be affirmed.

AFFIRMED.

Windom, Kellum, Burke, and Joiner, JJ., concur.