

SUPREME COURT OF ARKANSAS

Perry v. State

2014 Ark. 535 (2014) · No. CR-14-518 · Decided December 18, 2014

SUMMARY

The Arkansas Supreme Court affirmed Kiywuan Perry’s convictions for capital murder and aggravated robbery. The court held that Perry failed to preserve his sufficiency-of-the-evidence arguments because his directed-verdict motion was nonspecific, and it declined to consider his challenge to the refusal to submit a nonmodel accomplice-liability verdict form because the argument lacked supporting authority or cogent argument.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Jim Hannah, Chief Justice; Baker, Justice; Hart, Justice
JURISDICTION	Arkansas
DECIDED	December 18, 2014
DOCKET	CR-14-518
DISPOSITION	affirmed
PROCEDURAL POSTURE	Perry appealed his Pulaski County Circuit Court convictions for capital murder and aggravated robbery, challenging the sufficiency of the evidence and the denial of a proffered interrogatory verdict form concerning accomplice liability.
STANDARD OF REVIEW	A sufficiency challenge is reviewed only when preserved by a specific directed-verdict motion. A circuit court's decision to give or reject a nonmodel jury instruction or verdict form is reviewed for abuse of discretion; unsupported appellate arguments are not considered.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kiywuan Perry v. State of Arkansas

TOPICS

- criminal procedure
- appellate procedure
- preservation of error
- jury instructions
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Perry's challenges to the sufficiency and credibility of the evidence were preserved for appellate review when his directed-verdict motion merely asserted that the State had presented insufficient evidence.
2. Whether the circuit court abused its discretion by refusing to submit Perry's proffered interrogatory verdict form asking the jury to determine whether witness Kenya Smith was an accomplice.

HOLDINGS

1. A defendant waives a sufficiency challenge on appeal by failing to make a specific directed-verdict motion at the close of the State's evidence and at the close of all the evidence identifying the alleged deficiencies in the State's proof.
2. The court would not consider Perry's challenge to the refusal to submit an interrogatory verdict form because the argument was unsupported by convincing argument or relevant authority.

KEY QUOTATIONS

"A motion merely stating that the evidence is insufficient does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense." (at 2)

"When an appellant fails to make a specific motion for directed verdict indicating the particular deficiencies in the State's proof, it is as if he failed to object" (at 4)

"It is well settled that assignments of error unsupported by convincing argument or apposite authority will not be considered on appeal." (at 7)

FACTUAL BACKGROUND

On April 15, 2012, Perry and his brother entered an El Chico restaurant carrying guns and wearing hoodies, sunglasses, and bandanas. They forced the customers and employees, except waiter Jesus Herrera, into a walk-in cooler. Gunshots were heard from inside the cooler, and Herrera was found fatally shot after the occupants exited. An undetermined amount of money was taken from the restaurant manager's office.

PROCEDURAL HISTORY

A Pulaski County jury convicted Perry of capital murder and aggravated robbery. The circuit court imposed consecutive sentences of life imprisonment without parole and forty years' imprisonment. The Arkansas Supreme Court affirmed, concluding that Perry's sufficiency challenges were not preserved and declining to consider his verdict-form argument because it lacked cogent argument and relevant authority.

DISPOSITION

affirmed

CASES CITED

- Maxwell v. State, 373 Ark. 553, 285 S.W.3d 195 (2008)
- Pinell v. State, 364 Ark. 353, 219 S.W.3d 168 (2005)
- Rounsaville v. State, 2009 Ark. 479, 346 S.W.3d 289 (2011)
- Eastin v. State, 370 Ark. 10, 257 S.W.3d 58 (2007)
- Travis v. State, 328 Ark. 442, 944 S.W.2d 96 (1997)
- Binemy v. State, 374 Ark. 232, 287 S.W.3d 551 (2008)
- Webb v. State, 327 Ark. 51, 938 S.W.2d 806 (1997)
- Love v. State, 281 Ark. 379, 664 S.W.2d 457 (1984)
- Bond v. State, 374 Ark. 332, 288 S.W.3d 206 (2008)
- Clark v. State, 374 Ark. 292, 287 S.W.3d 567 (2008)
- Hale v. State, 343 Ark. 62, 31 S.W.3d 850 (2000)
- Perry v. State, 2014 Ark. 406