

SUPREME COURT OF ARKANSAS

Price v. State, 347 Ark. 708

66 S.W.3d 653 (2002) · No. CR 01-703 · Decided February 21, 2002

SUMMARY

The Supreme Court of Arkansas affirmed Leslie Price’s convictions for second-degree murder and being a felon in possession of a firearm. The court held that substantial evidence supported the murder conviction and rejected claims that trial counsel had a conflict of interest or provided ineffective assistance, including by withdrawing a motion to sever the charges and advising Price regarding his testimony. The excerpt also addresses challenges concerning the racial composition of the jury venire, but ends before that discussion is completed.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Robert L. Brown
JURISDICTION	Arkansas
DECIDED	February 21, 2002
DOCKET	CR 01-703
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from judgments of conviction for second-degree murder and felon in possession of a firearm. The appellant challenged the sufficiency of the evidence and the denial of a motion for a new trial based on alleged conflict of interest, ineffective assistance of counsel, and racial underrepresentation in the venire.
STANDARD OF REVIEW	A directed-verdict motion is treated as a challenge to the sufficiency of the evidence. The court views the evidence in the light most favorable to the State, considers only evidence supporting the verdict, does not second-guess the factfinder's credibility determinations, and affirms if substantial evidence supports the conviction. Ineffective-assistance claims are reviewed under Strickland v. Washington, with a strong presumption that counsel's performance was reasonable and requiring proof of deficient performance and prejudice. A claim of conflict-based presumptive prejudice requires proof that counsel actively represented conflicting interests and that the conflict adversely affected the representation.

PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Leslie Price v. State of Arkansas

TOPICS

criminal procedure ineffective assistance right to counsel jury selection

PRACTICE AREAS

criminal law criminal procedure appellate practice

QUESTIONS PRESENTED

1. Whether substantial evidence supported Price's conviction for second-degree murder, including proof that he knowingly caused Sykes's death under circumstances manifesting extreme indifference to the value of human life.
2. Whether trial counsel's status as a prosecutor-elect created an actual conflict of interest requiring a new trial.
3. Whether counsel was ineffective for withdrawing or failing to pursue severance of the second-degree-murder and felon-firearm charges.
4. Whether counsel was ineffective for advising or allowing Price to testify at trial.
5. Whether the racial composition of the venire violated Price's due-process rights or established systematic exclusion of African Americans.
6. Whether counsel was ineffective for failing to pursue the venire-composition challenge before voir dire.

HOLDINGS

1. Substantial evidence supported Price's second-degree-murder conviction because the jury could infer that he knowingly caused Sykes's death from testimony that he pointed a loaded gun at Sykes's head and fired it.
2. Price was not entitled to a new trial because he failed to show that counsel actively represented conflicting interests, and, in any event, Price knowingly waived any conflict arising from counsel's status as a political candidate and prosecutor-elect.
3. Counsel was not ineffective for withdrawing the motion to sever the murder and felon-firearm charges because the decision was a strategic choice made after discussing the advantages and disadvantages with Price.
4. Counsel was not ineffective for Price's decision to testify because the decision whether to testify belongs to the defendant, while counsel may only advise the defendant.
5. Price failed to establish a due-process violation or ineffective assistance because he presented no statistical or other evidence showing systematic exclusion of African Americans from the venire.

KEY QUOTATIONS

“Prejudice will be presumed from a counsel's conflict of interest only when the defendant demonstrates that counsel actively represented conflicting interests.” (66 S.W.3d at 661)

“We hold that an actual conflict of interest was not shown by Price, but even if it had been, that he waived it.” (66 S.W.3d at 662)

“This falls within the category of a tactical decision, and we do not reverse on grounds of ineffective counsel when the decision was based on strategy.” (66 S.W.3d at 664)

“In order to establish a prima facie case of deliberate or systematic exclusion, a defendant must prove that: (1) the group alleged to be excluded is a "distinctive" group in the community; (2) the representation of this group in venires from which the juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) this underrepresentation is due to systematic exclusion of the group in the jury-selection process.” (66 S.W.3d at 665)

FACTUAL BACKGROUND

During an altercation outside the Onyx Club in Hot Springs, Leslie Price, the club manager, shot Fred Sykes in the head and chest with a firearm. The witnesses gave conflicting accounts: one testified that Price approached Sykes with a gun, grabbed his collar, pointed the gun at his face, and shot him, while Price testified that the gun discharged accidentally during a struggle. Sykes died from the gunshot wound, and the firearm was never recovered. Price's trial attorney, Steve Oliver, had been elected Garland County prosecuting attorney during the course of the representation and continued representing Price through trial after discussing the circumstances with him.

PROCEDURAL HISTORY

Price was charged with second-degree murder, felon in possession of a firearm, and habitual-offender enhancement. A jury convicted him of second-degree murder and felon-firearm, and the circuit court imposed concurrent sentences of thirty and twenty-five years. After trial counsel withdrew, substitute counsel filed a timely motion for a new trial, which the circuit court denied. The Supreme Court of Arkansas affirmed.

DISPOSITION

affirmed

CASES CITED

- Haynes v. State, 346 Ark. 388, 58 S.W.3d 336 (2001)
- Cox v. State, 345 Ark. 391, 47 S.W.3d 244 (2001)
- Birmingham v. State, 342 Ark. 95, 27 S.W.3d 351 (2000)
- Johnson v. State, 326 Ark. 3, 929 S.W.2d 707 (1996)
- Penn v. State, 319 Ark. 739, 894 S.W.2d 597 (1995)
- Williams v. State, 346 Ark. 304, 57 S.W.3d 706 (2001)
- Wilson v. State, 332 Ark. 7, 962 S.W.2d 805 (1998)

- Carmichael v. State, 340 Ark. 598, 12 S.W.3d 225 (2000)
- Willett v. State, 335 Ark. 427, 983 S.W.2d 409 (1998)
- Thomas v. State, 312 Ark. 158, 847 S.W.2d 695 (1993)
- Hale v. State, 343 Ark. 62, 31 S.W.3d 850 (2000)
- Pyle v. State, 340 Ark. 53, 8 S.W.3d 491 (2000)
- McCoy v. State, 325 Ark. 155, 925 S.W.2d 391 (1996)
- Green v. State, 330 Ark. 458, 956 S.W.2d 849 (1997)
- Whitfield v. State, 346 Ark. 43, 56 S.W.3d 357 (2001)
- Engram v. State, 341 Ark. 196, 15 S.W.3d 678 (2000)
- Bangs v. State, 338 Ark. 515, 998 S.W.2d 738 (1999)
- Leaks v. State, 345 Ark. 182, 45 S.W.3d 363 (2001)
- Harmon v. State, 340 Ark. 18, 8 S.W.3d 472 (2000)
- Chapman v. State, 343 Ark. 643, 38 S.W.3d 305 (2001)
- Bell v. State, 334 Ark. 285, 973 S.W.2d 806 (1998)
- Isbell v. State, 326 Ark. 17, 931 S.W.2d 74 (1996)
- Cuyler v. Sullivan, 446 U.S. 335, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980)
- Johnson v. State, 321 Ark. 117, 900 S.W.2d 940 (1995)
- Holloway v. Arkansas, 435 U.S. 475, 98 S. Ct. 1173, 55 L. Ed. 2d 426 (1978)
- Glasser v. United States, 315 U.S. 60, 62 S. Ct. 457, 86 L. Ed. 680 (1942)
- McCuen v. State, 328 Ark. 46, 941 S.W.2d 397 (1997)
- Simmons v. Lockhart, 915 F.2d 372 (8th Cir. 1990)
- Salam v. Lockhart, 874 F.2d 525 (8th Cir. 1989)
- Dumond v. State, 294 Ark. 379, 743 S.W.2d 779 (1988)
- Lee v. State, 343 Ark. 702, 38 S.W.3d 334 (2001)
- Myers v. State, 333 Ark. 706, 972 S.W.2d 227 (1998)
- Murray v. State, 280 Ark. 531, 659 S.W.2d 944 (1983)
- United States v. James, 505 F.2d 898 (5th Cir. 1975)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Hill v. State, 347 Ark. 441, 65 S.W.3d 408 (2002)
- Williams v. State, 347 Ark. 371, 64 S.W.3d 709 (2002)
- Sanford v. State, 342 Ark. 22, 25 S.W.3d 414 (2000)
- Peebles v. State, 331 Ark. 188, 958 S.W.2d 533 (1998)
- Wainwright v. State, 307 Ark. 569, 823 S.W.2d 449 (1992)
- Thomas v. State, 322 Ark. 670, 911 S.W.2d 259 (1995)
- Missildine v. State, 314 Ark. 500, 863 S.W.2d 813 (1993)
- Elliott v. State, 335 Ark. 387, 984 S.W.2d 362 (1998)
- Sutton v. State, 311 Ark. 435, 844 S.W.2d 350 (1993)

- Dunham v. State, 315 Ark. 580, 868 S.W.2d 496 (1994)
- Dansby v. State, 347 Ark. 674, 66 S.W.3d 585 (2002)
- Robinson v. State, 295 Ark. 693, 751 S.W.2d 335 (1988)
- Watson v. State, 282 Ark. 246, 667 S.W.2d 953 (1984)
- Isom v. State, 284 Ark. 426, 682 S.W.2d 755 (1985)
- Danzie v. State, 326 Ark. 34, 930 S.W.2d 310 (1996)
- Davis v. State, 325 Ark. 194, 925 S.W.2d 402 (1996)
- Sanders v. State, 300 Ark. 25, 776 S.W.2d 334 (1989)
- Duren v. Missouri, 439 U.S. 357, 99 S. Ct. 664, 58 L. Ed. 2d 579 (1979)
- Lee v. State, 327 Ark. 692, 942 S.W.2d 231 (1997)
- Mitchell v. State, 299 Ark. 566, 776 S.W.2d 332 (1989)
- MacKintrush v. State, 334 Ark. 390, 978 S.W.2d 293 (1998)