

SUPREME COURT OF ARKANSAS

Breeden v. State

427 S.W.3d 5 (Ark. 2013) · Decided April 11, 2013

SUMMARY

The Arkansas Supreme Court affirmed Jackie M. Breeden Jr.’s conviction for raping his minor daughter and granted appointed counsel’s motion to withdraw under the Anders no-merit procedure. The court held that the sufficiency challenge was preserved only as to the victim’s age, upheld the admission of photographs depicting the victim at ages ten through twelve, and declined to consider unpreserved claims concerning counsel, the confession, due process, and ineffective assistance.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Donald L. Corbin
JURISDICTION	Arkansas
DECIDED	April 11, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct criminal appeal from a rape conviction and life sentence. Appointed appellate counsel filed an Anders no-merit brief and moved to withdraw; the appellant filed a pro se response.
STANDARD OF REVIEW	For sufficiency of the evidence, the court views the evidence in the light most favorable to the State and considers only evidence supporting the verdict, affirming if substantial evidence exists. Admission of photographs is reviewed for abuse of discretion. Arguments raised for the first time on appeal are not addressed, and ineffective-assistance claims generally are not cognizable on direct appeal unless raised below and fully developed.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Arkansas.
PARTIES	Jackie M. Breeden Jr. v. State of Arkansas

TOPICS

- criminal procedure
- appellate procedure
- preservation of error
- evidence
- standard of review

PRACTICE AREAS

criminal law

criminal appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether the directed-verdict motion preserved a challenge to the sufficiency of the evidence beyond proof of the victim's age.
2. Whether substantial evidence supported the finding that Breeden engaged in sexual intercourse or deviate sexual activity with a person under fourteen.
3. Whether the circuit court abused its discretion by admitting photographs of the victim taken at ages ten, eleven, and twelve.
4. Whether the additional issues raised in Breeden's pro se response could be considered for the first time on direct appeal.
5. Whether the record disclosed reversible or prejudicial error under the no-merit appeal review required by Arkansas Supreme Court Rule 4-3(i).

HOLDINGS

1. A directed-verdict motion that generally asserts insufficiency but specifically challenges only the victim's age preserves for appeal only the sufficiency of the evidence proving the victim's age.
2. Substantial evidence supported Breeden's rape conviction because the evidence showed that he engaged in sexual intercourse or deviate sexual activity with A.B. while she was under fourteen.
3. The circuit court did not abuse its discretion by admitting photographs depicting the victim at ages ten, eleven, and twelve because they were relevant to show her age when the alleged rape occurred, and their probative value outweighed their prejudicial impact.
4. The court would not consider claims of denial of counsel, witness credibility, a coerced confession, ineffective assistance, due-process violations, or additional sufficiency arguments that were not properly raised and preserved below, or that were not cognizable on direct appeal.

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.”

“A rape victim’s uncorroborated testimony describing penetration may constitute substantial evidence to sustain a conviction of rape, even when the victim is a child.”

“It is the function of the jury, and not the reviewing court, to evaluate the credibility of witnesses and to resolve any inconsistencies in the evidence.”

FACTUAL BACKGROUND

Breeden was accused of repeatedly engaging in sexual intercourse and oral sex with his biological daughter, A.B., beginning when she was approximately ten or eleven years old and continuing until she was fourteen. A.B.

testified about the abuse, a sexual-assault nurse examiner found hymenal damage consistent with penetration or sexual assault, and an audio recording contained Breeden's admissions to sexual activity with A.B. A Benton County jury convicted Breeden of rape and imposed a life sentence.

PROCEDURAL HISTORY

A Benton County jury found Breeden guilty of raping his minor daughter and sentenced him to life imprisonment. On direct appeal, appointed counsel identified the denial of the directed-verdict motion and admission of photographs as the adverse rulings, filed a no-merit brief, and moved to withdraw. The Arkansas Supreme Court independently reviewed the record under Arkansas Supreme Court Rule 4-3(i), found no reversible or prejudicial error, affirmed the conviction, and granted counsel's motion to withdraw.

DISPOSITION

affirmed

CASES CITED

- *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967)
- *Lacy v. State*, 2010 Ark. 388, 377 S.W.3d 227
- *Bradley v. State*, 2013 Ark. 58, 426 S.W.3d 363
- *Williamson v. State*, 2009 Ark. 568, 350 S.W.3d 787
- *Brown v. State*, 374 Ark. 341, 288 S.W.3d 226 (2008)
- *Kelley v. State*, 375 Ark. 483, 292 S.W.3d 297 (2009)
- *Vance v. State*, 2011 Ark. 392, 384 S.W.3d 515
- *Anderson v. State*, 2011 Ark. 461, 385 S.W.3d 214
- *Gulley v. State*, 2012 Ark. 368, 423 S.W.3d 569
- *James v. State*, 2010 Ark. 486, 372 S.W.3d 800
- *Gilliland v. State*, 2010 Ark. 135, 361 S.W.3d 279
- *Guevara v. State*, 2012 Ark. 351
- *Nance v. State*, 323 Ark. 583, 918 S.W.2d 114 (1996)