

SUPREME COURT OF ARKANSAS

Albert Kieth Smith v. State of Arkansas, 367 Ark. 274

239 S.W.3d 494 (2006) · No. CR 06-77 · Decided September 21, 2006

SUMMARY

The Arkansas Supreme Court affirmed Albert Kieth Smith’s convictions for kidnapping and capital murder. The court held that Smith failed to preserve his sufficiency-of-the-evidence challenge because his directed-verdict motion was nonspecific, and it rejected his jurisdiction, burden-of-proof, jury-instruction, and prior-bad-acts arguments. The opinion found no prejudicial error under Arkansas Supreme Court Rule 4-3(h).

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Betty C. Dickey
JURISDICTION	Arkansas
DECIDED	September 21, 2006
DOCKET	CR 06-77
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions for kidnapping and capital murder following a jury trial in the Benton County Circuit Court.
STANDARD OF REVIEW	A directed-verdict motion is treated as a challenge to the sufficiency of the evidence. Sufficiency is reviewed by viewing the evidence in the light most favorable to the State and considering only evidence supporting the verdict; a conviction is affirmed if supported by substantial evidence. Evidentiary rulings, including admission under Arkansas Rule of Evidence 404(b), are reviewed for abuse of discretion, with reversal only for a manifest abuse of discretion.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Albert Kieth Smith v. State of Arkansas

TOPICS

- criminal procedure
- appellate procedure
- preservation of error
- burden of proof
- evidence

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

evidence

QUESTIONS PRESENTED

1. Whether the circuit court lacked jurisdiction because Howard's body was found in Oklahoma or whether jurisdiction had to be submitted to the jury.
2. Whether Smith preserved a challenge to the sufficiency of the evidence by making a proper directed-verdict motion.
3. Whether admission of Smith's custodial statements impermissibly shifted the burden of proof to him.
4. Whether the circuit court erred by failing to give a final jury instruction concerning evidence admitted for purposes other than the truth of the matter asserted.
5. Whether evidence concerning Smith's contacts with another man, travel to Florida, and possession of a rope, knife, and map was inadmissible prior-bad-acts evidence under Arkansas Rule of Evidence 404(b).

HOLDINGS

1. A directed-verdict motion that merely states that the evidence is insufficient, without identifying how the evidence is deficient, does not preserve a sufficiency challenge for appeal.
2. The circuit court had jurisdiction because the record contained no positive evidence that the offenses occurred outside Arkansas and contained substantial evidence that essential elements occurred in Arkansas.
3. Admission of Smith's custodial statements did not impermissibly shift the burden of proof to the defendant.
4. The circuit court did not err by failing to repeat at the close of evidence an admonishment that had already been given when the exhibits were introduced.
5. The circuit court did not abuse its discretion by admitting evidence that Smith contacted another internet contact of his estranged wife, traveled to Florida, and possessed a rope and knife with a map, because the evidence was relevant to intent, motive, or planning rather than merely to show character.

KEY QUOTATIONS

"We treat a motion for directed verdict as a challenge to the sufficiency of the evidence." (501)

"The motion must specifically advise the trial court as to how the evidence was deficient." (502)

"This court has held that, when the purpose of evidence is to show motive, anything and everything that might have influenced the commission of the act may, as a rule, be shown." (504)

FACTUAL BACKGROUND

David Douglas Howard, who had met Smith's estranged wife through the internet, disappeared after arranging to meet a purported recruiter named Billy Martin near Bella Vista. The evidence showed that Smith monitored his wife's communications, contacted men with whom she communicated, purchased or possessed items including a

.22 rifle, rope, knife, and binoculars, made calls connected to Howard, traveled in a white van, and researched silencers and poisons. Howard's body was found in Oklahoma with two .22-caliber bullets, and the evidence tied Smith to the events preceding Howard's disappearance and death.

PROCEDURAL HISTORY

Smith was arrested in 2004 and charged in Benton County, Arkansas, with capital murder and kidnapping by deception. After a jury convicted him, the circuit court imposed a forty-year sentence for kidnapping and life without parole for capital murder. Smith appealed, asserting jurisdictional error, insufficiency of the evidence, burden-shifting, jury-instruction, and prior-bad-acts errors. The Supreme Court of Arkansas rejected each argument and affirmed.

DISPOSITION

affirmed

CASES CITED

- Cluck v. State, 365 Ark. 166, 226 S.W.3d 780 (2006)
- Johnson v. State, 366 Ark. 8, 233 S.W.3d 123 (2006)
- Standridge v. State, 357 Ark. 105, 161 S.W.3d 815 (2004)
- Grillot v. State, 353 Ark. 294, 107 S.W.3d 136 (2003)
- Ridling v. State, 360 Ark. 424, 203 S.W.3d 63 (2005)
- Findley v. State, 307 Ark. 53, 818 S.W.2d 242 (1991)
- Nelson v. State, 365 Ark. 314, 229 S.W.3d 35 (2006)
- Pyle v. State, 340 Ark. 53, 8 S.W.3d 491 (2000)
- Webb v. State, 327 Ark. 51, 938 S.W.2d 806 (1997)
- Davis v. State, 330 Ark. 501, 956 S.W.2d 163 (1997)
- Flowers v. State, 362 Ark. 193, 208 S.W.3d 113 (2005)
- Hathcock v. State, 357 Ark. 563, 182 S.W.3d 152 (2004)
- Kelly v. State, 350 Ark. 238, 85 S.W.3d 893 (2002)
- Armstrong v. State, 366 Ark. 105, 233 S.W.3d 627 (2006)
- Barrett v. State, 354 Ark. 187, 119 S.W.3d 485 (2003)
- Morgan v. State, 359 Ark. 168, 195 S.W.3d 889 (2004)

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