Cite as 2010 Ark. App. 734

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 10-226

	Opinion Delivered November 3, 2010
ARCHIE LORENZO ROSS JR. APPELLANT	APPEAL FROM THE CRITTENDEN COUNTY CIRCUIT COURT [NO. CR-2009-753]
V.	HONORABLE RALPH WILSON JR., JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

M. MICHAEL KINARD, Judge

Archie Lorenzo Ross Jr., was charged with three counts of attempted capital murder and, following a jury trial, was found guilty of the lesser-included offenses of one count of attempted second-degree murder and one count of attempted manslaughter. He now appeals, challenging the sufficiency of the evidence supporting the convictions. Because appellant failed to preserve his challenge to the sufficiency of the evidence, we affirm.

The charges of attempted capital murder resulted from a head-on collision that occurred during the early morning hours of June 16, 2009. The events leading up to the collision began the night of June 15 and were described for the jury by both Mrs. Brooke Ross and her sister, Brenae Fletcher. Mrs. Ross testified that appellant had picked up her, the Rosses' two children, Ms. Fletcher, and Ms. Fletcher's child from Mrs. Ross's mother's home. Mrs. Ross and her two children rode in the back seat, while Ms. Fletcher and her child rode

in the front passenger seat. Mrs. Ross and Ms. Fletcher testified that, although they thought appellant would take them straight home—which was about five houses down the street from their mother's home—appellant instead drove them around town for approximately forty-five minutes to an hour.

Ms. Fletcher testified that, during the drive, appellant was angry and accused Mrs. Ross of trying to "set him up." Neither Ms. Fletcher nor Mrs. Ross knew what appellant was talking about. At some point, appellant stopped at a gas station and went inside, but he resumed driving around when he returned. Ms. Fletcher stated that appellant became more and more agitated and said if he was "going out," they were all "going out" together. Ms. Fletcher was frightened for her sister's safety. Eventually, appellant pulled over to the side of the road to let out Ms. Fletcher and her child. Ms. Fletcher was able to get the Rosses' youngest child out of the car, as well, but was unable to get the Rosses' six-year-old son out of the car before appellant sped off.

After Ms. Fletcher and two of the children were dropped off, Mrs. Ross and her son remained in the back seat directly behind appellant while appellant drove the car to Missouri Street. By this point, Mrs. Ross was hysterical because of her husband's unexplained behavior, and she buckled the seatbelt around herself and her son. Suddenly, appellant steered the car into an oncoming tractor-trailer, hitting it head on.

The driver of the tractor-trailer, John Evans, testified that he saw appellant's car swerve into his lane in a matter of seconds and that he swerved to the left but could not avoid being

hit by appellant. After the impact, Mr. Evans saw appellant running away from the scene. Mr. Evans testified that Mrs. Ross was panicked and screamed, "He's trying to kill us." Neither she nor her son were seriously injured.

Officers who responded to the scene testified that appellant attempted to hide in some nearby bushes but was located not far from the crash site. Appellant threatened officers and resisted arrest but was eventually subdued and strapped to a gurney for medical evaluation. Another witness, an off-duty officer who had come upon the scene shortly after the crash, testified that he overheard Mrs. Ross say that appellant had stated they were "all going out together."

At the conclusion of the State's case, appellant moved for directed verdict. He made the following argument:

> [T]he State's fail [sic] to prove their case even in the light most favorable to them to prove—in order to convict somebody on criminal attempt you've got to show that they—that the person purposely engaged in conduct that was a substantial step. All the evidence today presented second day of trial has nothing to do with any events that took place prior to the accident. The witnesses yesterday said that the actions of the defendant were not purposeful. That everybody was distraught, upset, that seems to be more of a negligent or reckless behavior, not that of purpose. Without meeting that prong then, the State's motion should, I mean my motion, be granted and the State's case dismissed.

The motion was denied. Appellant rested without presenting any testimony and renewed his motion on the same grounds, which was again denied. The jury found appellant guilty of the lesser-included offenses of one count of attempted second-degree murder and one count of

attempted manslaughter. The judgment and commitment order was entered on November 18, 2009, and appellant filed his notice of appeal on December 7, 2009.

For his sole point on appeal, appellant argues that the trial court erred by not granting his motion for directed verdict. In response, the State argues that appellant failed to preserve this point for appellate review because appellant did not specifically move for directed verdict on any of the lesser-included offenses of attempted capital murder. We agree with the State. In order to preserve a challenge to the sufficiency of the evidence supporting a conviction for lesser-included offenses, a defendant must make a motion for directed verdict in which he addresses the lesser-included offenses, either by name or by apprising the trial court of the elements of the lesser-included offenses questioned by the motion. *Davis v. State*, 362 Ark. 34, 38, 207 S.W.3d 474, 478 (2005).

In this case, appellant did not specifically name "attempted second-degree murder" or "attempted manslaughter" or make any reference to those offenses when making his motion for directed verdict. Instead, he addressed only whether appellant's actions were generally purposeful. When causing a particular result—such as death—is an element of a target offense, a person commits the offense of criminal attempt if, acting with the required culpable mental state of the target offense, he purposely engages in conduct that constitutes a substantial step in a course of conduct intended or known to cause the particular result. Ark. Code Ann. § 5-3-201(b) (Repl. 2006). A person commits second-degree murder if he knowingly causes the death of another person under circumstances manifesting extreme indifference to the value

of human life, *id.* § 5-10-103(a)(1), while a person commits manslaughter if he recklessly causes the death of another person, *id.* § 5-10-104(a)(3). In making his directed-verdict motion, appellant failed to apply the criminal-attempt statute to any of the specific elements of either second-degree murder or manslaughter. As a result, the trial court could not have known whether appellant intended for his motion to address attempted capital murder or its lesser-included offenses. Therefore, we hold that the issue of the sufficiency of the evidence supporting the convictions was not preserved for appeal, and we affirm.

Affirmed.

PITTMAN and GLADWIN, JJ., agree.