

Cite as 2009 Ark. 454

SUPREME COURT OF ARKANSAS

No. CR 08-1504

LLOYD CHESTER FOSTER,
APPELLANT;

VS.

STATE OF ARKANSAS,
APPELLEE;**Opinion Delivered** October 1, 2009APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FOURTH DIVISION; NO. CR 2007-
4229; HON. JOHN W. LANGSTON,
JUDGE;AFFIRMED.**DONALD L. CORBIN, Associate Justice**

Appellant Lloyd Chester Foster appeals the order of the Pulaski County Circuit Court convicting him of first-degree murder. The only issue Foster raises on appeal is that there was insufficient evidence supporting his conviction. As he was sentenced to a term of life imprisonment, our jurisdiction is pursuant to Ark. Sup. Ct. R. 1-2(a)(2). We find no merit to Foster's argument and, thus, affirm.

On August 13, 2007, Deron Jackson was shot and killed outside his home at Sixteenth and Allis Streets in Little Rock. Witnesses to the shooting reported seeing Jackson being chased around the home by a man with a gun. Witnesses also reported hearing several gunshots. Zul Mustafa, who was inside the home at the time of the shooting, looked outside and saw Jackson, who was bleeding as he leaned against a car, being held at gunpoint by a man. When Mustafa told the gunman not to shoot Jackson, the gunman turned and fired a shot into the house. Mustafa then went outside to find Jackson lying on the ground. Jackson

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died as a result of the gunshot wounds he suffered. Mustafa later identified Foster as the gunman who shot Jackson.

Kashunda Conyer, the mother of Foster's child, notified authorities that Foster had come to her apartment the evening of the shooting and changed out of clothes that appeared to have blood stains on them. After putting the clothes into a trash bag, Foster disposed of the bag in a trash canister at a nearby gas station. Foster was subsequently arrested and charged with first-degree murder and possession of a firearm by certain persons.¹ He was tried before a jury on August 19–20, 2008, and convicted and sentenced as set forth above. This appeal followed.

As his only point on appeal, Foster argues that there was insufficient evidence supporting his conviction for first-degree murder. Specifically, he contends that there was insufficient proof that he shot Jackson and, if he did, whether he had the purpose to cause Jackson's death. The State counters that Foster failed to preserve this argument for our review by making a specific objection in his directed-verdict motion. Alternatively, the State argues that there was substantial evidence to support Foster's conviction.

Our standard of review for a sufficiency challenge is well settled. In reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *See Jackson v. State*, 2009 Ark. 336, ___ S.W.3d ___. We affirm a conviction if substantial evidence exists to support

¹The charge of possession of a firearm by certain persons was nolle prossed.

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it. *See id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *See id.*

Appellant was charged with first-degree murder pursuant to Ark. Code Ann. § 5-10-102 (Repl. 2006), which states in pertinent part:

(a) A person commits murder in the first degree if:

(1) Acting alone or with one (1) or more other persons:

(A) The person commits or attempts to commit a felony;
and

(B) In the course of and in the furtherance of the felony or in immediate flight from the felony, the person or an accomplice causes the death of any person under circumstances manifesting extreme indifference to the value of human life;

(2) With a purpose of causing the death of another person, the person causes the death of another person[.]

Foster argues on appeal that there was insufficient evidence introduced by the State at trial to prove the requisite intent to sustain a conviction of first-degree murder. The requisite intent for first-degree murder is purposefully. *See* Ark. Code Ann. § 5-10-102(a)(2). We are precluded, however, from reaching the issue of sufficiency of the evidence because it is not preserved for our review.

To preserve a sufficiency-of-the-evidence challenge on appeal, a clear and specific motion for a directed verdict must be made to the trial court. *Elkins v. State*, 374 Ark. 399,

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288 S.W.3d 570 (2008). Arkansas Rule of Criminal Procedure 33.1 establishes the procedure for making the motion and reads in pertinent part:

(a) In a jury trial, if a motion for directed verdict is to be made, it shall be made at the close of the evidence offered by the prosecution and at the close of all of the evidence. A motion for directed verdict shall state the specific grounds therefor.

....

(c) The failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required in subsections (a) and (b) above will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment. A motion for directed verdict or for dismissal based on insufficiency of the evidence must specify the respect in which the evidence is deficient. 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 renewal at the close of all of the evidence of a previous motion for directed verdict or for dismissal preserves the issue of insufficient evidence for appeal. If for any reason a motion or a renewed motion at the close of all of the evidence for directed verdict or for dismissal is not ruled upon, it is deemed denied for purposes of obtaining appellate review on the question of the sufficiency of the evidence.

We have said that the reasoning behind this rule is “that when specific grounds are stated and the absent proof is pinpointed, the circuit court can either grant the motion, or, if justice requires, allow the State to reopen its case and supply the missing proof.” *Elkins*, 374 Ark. at 402, 288 S.W.3d at 572 (quoting *Pinell v. State*, 364 Ark. 353, 357, 219 S.W.3d 168, 171 (2005)). An additional reason for the requirements under Rule 33.1 is that this court may not decide an issue raised for the first time on appeal. *Id.*

At the close of the State’s case, Foster moved for a directed verdict:

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Your Honor, we would move for a directed verdict on this at this time as it relates to the charge of murder in the first degree. We don't believe that the State has met its burden of proof in showing that my client, Lloyd Foster, actively caused the death of Deron Jackson. Because of that, we would ask that this charge be dismissed.

The circuit court denied the motion. Jackson rested without presenting any witnesses. He again moved for a directed verdict, arguing that the State had not met its burden of proof. The motion was again denied, and the case was submitted to the jury.

Arguing that he did not "actively" cause the death of Jackson was improper where the required intent for the charge of first-degree murder was one of purpose. Moreover, it is not enough to simply argue that the State did not meet its burden of proof. A directed-verdict motion must be argued with specificity. This objection was clearly insufficient to give the State notice that Foster was challenging the State's proof on the element of purpose.

We are mindful of the fact that Foster was sentenced to life imprisonment and that this court is required to review all motions made for potential reversible error under Ark. Sup. Ct. R. 4-3(i). Nevertheless, this court has held in the past that failure to make the motions for directed verdict with specificity regarding the sufficiency issue on appeal equates to the motion never having been made. *See Brown v. State*, 374 Ark. 324, 287 S.W.3d 587 (2008). Rule 4-3(i), as a result, does not mandate review of the point regarding requisite intent when the directed-verdict motion was not properly made.² *Id.*

² Rule 4-3(i), formerly known as Rule 4-3(h), now governs review of all cases involving a sentence of death or life imprisonment.

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The record has been reviewed in accordance with Ark. Sup. Ct. R. 4-3(i), and no reversible error has been found.

Affirmed.