Cite as 2012 Ark. App. 79

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR11-298

DEMETRIS JORDAN APPELLANT	**Opinion Delivered** January 25, 2012 APPEAL FROM THE MILLER COUNTY CIRCUIT COURT [NO. CR-2010-66-3]
V.	HONORABLE KIRK JOHNSON, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant was charged with committing first-degree murder in the course of a felony or, in the alternative, by purposely causing the death of the victim. After a jury trial, he was found guilty of second-degree murder and sentenced to fifty years' imprisonment in the Arkansas Department of Correction. On appeal, he argues that the trial court erred in denying his motion for a directed verdict and in refusing to submit to the jury his proffered instructions on the offense of manslaughter. We affirm.

We do not reach the merits of appellant's argument concerning the sufficiency of the evidence because he failed to preserve the issue for appellate review. Appellant's directed-verdict motion was deficient because he failed to specify what element of proof was lacking. A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Walker v. State*, 318 Ark. 107, 883 S.W.2d 831 (1994). To preserve a sufficiency challenge, a clear and specific motion for a directed verdict must be made to the trial court. *Elkins v. State*, 374 Ark.

399, 288 S.W.3d 570 (2008). Failure to do so constitutes a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment. *Id.* A motion for directed verdict or for dismissal based on insufficiency of the evidence must specify the respect in which the evidence is deficient. Ark. R. Crim. P. 33.1(c). Here, appellant's trial attorney merely stated as grounds for his directed-verdict motion that "I don't think the State has met the elements of murder in the first degree."

Appellant next argues that the trial court erred in refusing to instruct the jury on manslaughter. It is reversible error to refuse to give an instruction on a lesser-included offense when the instruction is supported by even the slightest evidence. *MacKool v. State*, 363 Ark. 295, 213 S.W.3d 618 (2005). Appellant was charged with committing the offense of first-degree murder by causing the death of the victim in the course or furtherance of a felony or, alternatively, by purposely causing the death of the victim while acting alone or as an accomplice to another person.

Appellant requested that the jury be instructed on both felony manslaughter under Ark. Code Ann. § 5-10-104(a)(4) (Supp. 2011) and reckless manslaughter under Ark. Code Ann. § 5-10-104(a)(3) (Supp. 2011). In refusing to give a manslaughter instruction, the trial court correctly noted that felony manslaughter is not a lesser-included offense of felony first-degree murder, *Perry v. State*, 371 Ark. 170, 264 S.W.3d 498 (2007), and that there was no rational basis to give an instruction on reckless manslaughter. By his own admission, appellant intentionally set upon the non-offensive victim after the victim asked to be left alone, struck the victim without provocation, pursued the victim as he fled, held the victim on the floor

when he slipped and fell, and repeatedly hit the victim in the head with his fist. Appellant also stated that he then asked his accomplice for a knife, and his accomplice, having no knife, killed the victim by repeatedly kicking the victim in the face and by bashing the victim's head six or seven times with a two-by-four. Under these facts, there is no rational basis for a finding that the conduct was negligent or reckless: the victim was intentionally pursued, beaten, and killed. This case is distinguished from *Williams v. State*, 17 Ark. App. 53, 702 S.W.2d 825 (1986), where there was evidence that Williams was first struck by the victim and was acting in self-defense. Here, there can be no argument that appellant recklessly used too much force in justified self-defense because there was no evidence that he was acting in self-defense at all.

Finally, appellant argues that he should not have been charged with first-degree murder premised upon the independent felony of second-degree battery because a charge of felony murder will not lie when the felony on which it is premised is done in furtherance of the murder itself. *See Craig v. State*, 70 Ark. App. 71, 14 S.W.3d 893 (2000). Because no objection was made on this ground at trial, the argument is not properly before us, and we do not address it.

Affirmed.

ROBBINS and GLOVER, JJ., agree.