

Barry Lynn SIMPSON *v.* STATE of Arkansas

CR 95-967

916 S.W.2d 119

Supreme Court of Arkansas
Opinion delivered March 4, 1996

APPEAL & ERROR — GROUNDS FOR OBJECTION CHANGED ON APPEAL — ARGUMENT WAIVED ON APPEAL. — Where appellant argued on appeal that it was reversible error to have received, at the sentencing phase of his trial, testimony of the members of the victim's family concerning the effect the crime had upon them and their children, the supreme court affirmed the conviction because the issue presented on appeal was not presented to the trial court; appellant's only argument at the sentencing hearing was that the witnesses should not have been allowed to testify because their testimony was cumulative to evidence contained in the presentencing report; if the ground of an objection is changed on appeal, the argument is considered to have been waived.

Appeal from Saline Circuit Court; *John W. Cole*, Judge; affirmed.

Joe Kelly Hardin, for appellant.

Winston Bryant, Att'y Gen., by: *Brad Newman*, Asst. Att'y Gen., for appellee.

DAVID NEWBERN, Justice. Barry Lynn Simpson pleaded guilty to the charge of first-degree murder in connection with the death of his father. In the sentencing phase of his trial, the State presented the testimony of members of the family concerning the effect the crime had upon them and their children. Mr. Simpson argues it was reversible error to have received the testimony because he was not notified that the witnesses would testify. We affirm the conviction because the issue presented on appeal was not presented to the Trial Court.

[1] At the sentencing hearing, Mr. Simpson's only argument was that the witnesses should not have been allowed to testify because their testimony was cumulative to evidence contained in the presentencing report. The point about lack of notice was not presented and is entirely different from the argument made to the Trial Court. If the ground of an objection is changed on appeal, the argument is considered to have been

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waived. *Whitney v. Holland Retirement Ctr.*, 323 Ark. 16, 912 S.W.2d 427 (1996); *Stewart v. State*, 320 Ark. 75, 894 S.W.2d 930 (1995).

Affirmed.
