

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR11-45

NEHEMIAH ARMSTRONG
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered September 14, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FOURTH DIVISION [CR-2010-1288]

HONORABLE HERBERT T.
WRIGHT, JR., JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

A Pulaski County jury found appellant Nehemiah Armstrong guilty of two Class Y felony terroristic acts, four Class B felony terroristic acts, and two counts of battery in the first degree. He was sentenced to fifty-six years' imprisonment in the Arkansas Department of Correction. On appeal, Armstrong argues that the trial court erred in denying his motions for directed verdict. We affirm.

At trial, the victims, Marie and Rodney Dozier, testified that at about 9:20 p.m. on January 4, 2010, bullets were fired through their patio door. Marie was shot in the arm and leg; Rodney was shot in his lower right leg and hip. Both were hospitalized for approximately one week. Neither of them knew Armstrong prior to the shooting incident.

Dominique Givens testified that on January 4, he and Donnell White picked up Armstrong at Armstrong's house, where he saw Armstrong put a nine-millimeter gun in his backpack to take with them. They then picked up Corinthian Parker. According to



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Givens, they were looking for a house to rob. Givens testified that it was understood among them that Armstrong's gun would be taken to the robbery, but only to be used if necessary. His further testimony was that the group selected the Doziers' house to rob. White dropped off the other three and parked the car down the street. Givens testified that Armstrong and Parker scaled the Doziers' fence in the backyard and then let him into the backyard through the gate. Givens said that Armstrong complained that his hands were frozen; said he did not want to carry the gun; and gave the gun to Givens, but that Parker took it from Givens. Although Givens stated that they did not intend to use the gun, he said all of a sudden Parker fired the gun seven or eight times, emptying it, after which they ran out of the yard. According to Givens, Parker asked Armstrong for another clip, which he gave to Parker from his bag, and they returned to the backyard, whereupon Parker loaded the clip and tried to fire it, but the gun was jammed. Givens ended his testimony stating that White picked the three of them up and took everyone home. He reiterated that he went to the Doziers' home only for the purpose of robbery but that Parker fired the gun.

Jacksonville Police Department Detective Jerry Keefer testified that eight shell casings were recovered at the Doziers' home. He assisted the Sherwood Police Department in a search of Armstrong's apartment, where they recovered a Ruger nine-millimeter handgun in an air-conditioning vent with the magazine lying beside it, exactly where Armstrong told them it could be found. Det. Keefer testified that Armstrong said he had purchased the gun in November or December, that he knew that it looked bad that



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the gun was found in his home and that, while admitting that he had been present at the Doziers' home on January 4, Armstrong said that he was not the shooter. Sherwood Police Department Detective Frank Spence testified that he executed a search warrant for Armstrong's apartment. Det. Spence testified that Armstrong asked why they were there and what they were expecting to find. When Armstrong was advised that they were looking for the gun, he eventually voluntarily showed the police the air-conditioner vent in which the gun and the fully loaded magazine were located.

Rebecca Mullin, a forensic firearm-and-tool-mark analyst, testified that she compared the eight shell casings found at the Doziers' home with the gun taken from Armstrong's apartment and that it was determined that each of the eight shell casings were fired from the gun found in his apartment. Mullin also attempted to compare the bullets found at the scene with the gun found at Armstrong's apartment, but the results were inconclusive due to damage. Mullin admitted that she was not capable of determining who fired the gun or when it was fired.

At the close of the State's case, Armstrong moved for directed verdicts on each charge. These motions were denied by the trial court. Armstrong did not call any witnesses. He was convicted of six terroristic acts and two counts of battery in the first degree, and he now appeals, arguing that the trial court erred in denying his motions for directed verdict.

A person commits a terroristic act if, while not in the commission of a lawful act, the person shoots at an occupiable structure with the purpose to cause injury to a person



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or damage to property. Ark. Code Ann. § 5-13-310(a)(2) (Supp. 2011). This is a Class B felony unless the person who committed the terroristic act had the purpose of causing physical injury to another person and caused serious physical injury or death to any person, at which time it becomes a Class Y felony. Ark. Code Ann. § 5-13-310(b). A person commits battery in the first degree if, with the purpose of causing serious physical injury to another person, the person causes serious physical injury to any person by means of a deadly weapon. Ark. Code Ann. § 5-13-201(a)(1) (Supp. 2011).

We affirm because Armstrong's argument is not preserved for appeal. At trial, after the State rested, his counsel moved for directed verdicts on all counts, arguing that the State failed to prove that he committed the offenses. Specifically, with regard to the two Class Y felony terroristic-act counts, his counsel argued that the State had failed to prove that Armstrong, while not in the commission of a lawful act and with the purpose of causing physical injury to Rodney and Marie Dozier, did in fact shoot at an occupiable structure with the purpose of causing serious physical injury. With respect to the four Class B felony terroristic-act counts, his counsel argued that the State failed to prove that Armstrong, while not in the commission of a lawful act, and with the purpose of shooting into an occupiable structure or with the purpose of causing injury to any other persons, did in fact shoot, project an object or shoot into an occupiable structure owned by the Doziers. With respect to the two counts of battery in the first degree, his counsel argued that the State did not make a prima facie case that Armstrong, with the purpose of causing serious physical injury to the Doziers, caused serious physical injury to the Doziers with a



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handgun or any type of deadly weapon. However, on appeal, Armstrong argues that there was not substantial evidence presented at his trial to show that he acted as an accomplice to the crimes for which he was convicted—a different argument on appeal than was made to the trial court.

In *Bryant v. State*, 2011 Ark. App. 348, 384 S.W.3d 46, this court held that failing to raise an accomplice-corroboration argument in directed-verdict motions to the trial court precludes review of that argument on appeal. That is the situation we have here. At trial, Armstrong’s counsel failed to make any argument regarding accomplice liability; therefore, we cannot now address that argument on appeal. A party is bound by the scope of the arguments made at trial and may not enlarge or change those grounds on appeal. *Robinson v. State*, 2010 Ark. App. 772. Furthermore, Rule 33.1(a) of the Arkansas Rules of Criminal Procedure requires a motion for directed verdict to “state the specific grounds therefor,” and this requirement extends to any challenge to the sufficiency of the evidence corroborating an accomplice’s testimony; failure to challenge the sufficiency of accomplice-corroboration evidence in a directed-verdict motion precludes appellate review on that ground. *Williams v. State*, 375 Ark. 132, 289 S.W.3d 97 (2008).

Affirmed.

VAUGHT, C.J., and HART, J., agree.

Butler & Green, P.A., by: *Chad M. Green*, for appellant.

Dustin McDaniel, Att’y Gen., by: *LeaAnn J. Irvin*, Ass’t Att’y Gen., and *Jose M. Alfaro*, Law Student Admitted to Practice Pursuant to Rule XV of the Rules Governing Admission to the Bar of the Supreme Court under the Supervision of *Darnisa Johnson*, Deputy Att’y Gen., for appellee.