

# ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR11-1048

BOBBY SIMMONS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 22, 2012

APPEAL FROM THE JEFFERSON  
COUNTY CIRCUIT COURT,  
[NO. CR 2010-706-2]

HONORABLE ROBERT H. WYATT,  
JR., JUDGE

AFFIRMED

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**ROBERT J. GLADWIN, Judge**

Appellant Bobby Simmons appeals his conviction on a charge of residential burglary, which followed a bench trial in Jefferson County Circuit Court. Appellant argues that there was insufficient evidence to support the finding that he entered the residence with the intent to commit a crime. We affirm.

On the evening of November 7, 2010, Ms. Lucille Jones, appellant's ex-girlfriend, ran into appellant at a club. Appellant became angry and approached her shouting obscenities but apparently stopped short of striking her. He was, however, evicted from the club premises. When Jones went home later that evening, she showered and lay down. She heard loud pounding on the house and saw through the window that it was appellant. He jarred the sliding door, and the lock broke. She called the police and grabbed a butcher knife for her protection. Ms. Jones then opened the door thinking that the police had arrived; she tried



to push appellant out, but he barged in. She then cut him with the knife. Appellant was running through the house, not saying anything to her, when the police arrived and handcuffed both of them.

Appellant was charged by information on December 7, 2010, in Jefferson County, Arkansas, on a charge of residential burglary. He waived jury trial, was tried by the circuit court on July 14, 2011, and was found guilty and sentenced by the circuit court to a total period of 108 months in the Arkansas Department of Correction pursuant to a judgment and commitment order filed on July 25, 2011. He filed a timely notice of appeal on August 1, 2011.

In reviewing a challenge to the sufficiency of the evidence, an appellate court will determine whether the verdict is supported by substantial evidence. *Williams v. State*, 2011 Ark. App. 675, 386 S.W.3d 609. Substantial evidence can be either direct or circumstantial and is defined as evidence forceful enough to compel a conclusion beyond suspicion or conjecture. *Id.* On appeal, only evidence supporting the verdict will be considered, and the evidence will be viewed in the light most favorable to the verdict. *Id.* Witness credibility is left to the trier of fact, who resolves questions of conflicting testimony and inconsistent evidence. *Id.*

Appellant was charged by information with the felony offense of residential burglary as defined in Arkansas Code Annotated section 5-39-201 (Repl. 2006):

- (a)(1) A person commits residential burglary if he or she enters or remains unlawfully in a residential occupiable structure of another person with the purpose of committing in the residential occupiable structure any offense punishable by imprisonment.



Ark. Code Ann. § 5-39-201(a)(1). The State is required to prove every element of the crime charged beyond a reasonable doubt. *Patterson v. New York*, 432 U.S. 197 (1977). It has been held that evidence of breaking into a house is not evidence of intent to commit a crime therein. *Norton v. State*, 271 Ark. 451, 609 S.W.2d 1 (1980). Appellant states that he had no intention of hitting Ms. Jones and that he only went to her home to see whether there was a man there. Appellant claims that he had no intent to commit an offense in the residence that would be punishable by a term of imprisonment. He argues that, at most, this case was one of criminal trespass, defined in Arkansas Code Annotated section 5-39-203(a) (Repl. 2006), as being committed when a person purposely enters or remains unlawfully in or upon a vehicle or the premises of another person.

A review of the record reveals that appellant failed to preserve his claim for our review. At the close of the State's evidence, appellant moved for a directed verdict, arguing that the State failed to present any evidence that he had attempted to enter Ms. Jones's home with the intent to commit a crime therein. Appellant did not, however, renew that motion at the close of all the evidence. Instead, he did not raise the renewal until his habitual status was being discussed in sentencing, after closing argument, and after a decision had been announced. In a nonjury trial, if a motion for dismissal is to be made, it shall be made at the close of all the evidence. Ark. R. Crim. P. 33.1(b) (2011). *See also Claiborne v. State*, 319 Ark. 602, 892 S.W.2d 511 (1995) (holding that a renewal of a motion for directed verdict made after the jury had been instructed but before closing argument was not sufficient to preserve the claim, despite the trial court considering the motions as if they were timely).



Cite as 2012 Ark. App. 165

Because appellant failed to renew his motion for a directed verdict at the close of all of the evidence, or any time before a decision was announced, he waived his argument regarding the sufficiency of the evidence to support his conviction. *Alexander v. State*, 2011 Ark. App. 525. Accordingly, we affirm.

Affirmed.

PITTMAN and MARTIN, JJ., agree.

*Potts Law Office*, by: *Gary W. Potts*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Valerie Glover Fortner*, Ass't Att'y Gen., for appellee.