

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR11-191

KE'ONDRA MONTREL CHESTANG
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered MARCH 28, 2012

APPEAL FROM THE LEE COUNTY
CIRCUIT COURT,
[NO. CR-08-106]

HONORABLE OLLY NEAL, JUDGE

AFFIRMED

CLIFF HOOFFMAN, Judge

Following a jury trial, appellant Ke'Ondra Chestang was convicted of second-degree battery. Chestang argues on appeal that there was insufficient evidence to support his conviction, that the trial court erred in allowing certain testimony by his victim, and that the trial court erred in denying his motion to dismiss the felony information. We affirm.

Chestang was charged with battery in the first degree stemming from an altercation with a security officer while he was incarcerated at the East Arkansas Regional Unit of the Arkansas Department of Correction. At trial, Corporal Renae Mayo testified that on September 15, 2008, she was working with Corporal Eric Pharr escorting inmates between their cells and the shower. The inmates were placed in handcuffs and leg irons while being escorted. After Mayo escorted Chestang back to his cell, she bent down and removed his leg irons. She testified that as she was coming up, he hit her in the head. Mayo said Chestang hit her repeatedly, knocked her to the floor, and straddled her as he continued to beat her in



the head. Mayo was taken to the hospital, where she received eighteen stitches in her forehead on the right side. She said that she was off from work for approximately five-and-one-half weeks; suffered headaches, anxiety, nightmares, and paranoia; and received two months of therapy. She testified that she still had a scar on the right side of her head. On cross-examination, she admitted that a policy requiring two officers to move an inmate was not followed in this instance.

Corporal Eric Pharr testified that from the shower area, he saw Chestang strike Mayo with his fists and with his handcuffs in his hand. Pharr ran to them and called for assistance. When Pharr arrived at the cell, he saw Chestang on top of Mayo punching her. Pharr swung a metal pipe at Chestang, and Chestang got off of her. At the close of the State's case, Chestang moved for a directed verdict, arguing that there was no proof of serious physical injury necessary for first-degree battery. The motion was denied.

Chestang testified that he had been having a continuing problem with Mayo. He said that, when she escorted him back to his cell, she jerked on his shackles in an effort to hurt him. Chestang said that when she jerked on his leg irons while removing them, he dislocated his thumb to slip the handcuffs off and defend himself. He testified that he hit Mayo at least five times, but he denied hitting her with the handcuffs. Chestang also claimed that he threatened to beat Pharr and pushed him against the wall with the metal bar that Pharr had swung at him. Mayo testified that she did not jerk on Chestang's shackles.

At the close of the evidence, Chestang renewed his motion for directed verdict on the ground that there was no serious physical injury as required for first-degree battery, and it was denied. The jury found Chestang guilty of the lesser-included offense of second-degree battery, and he was sentenced to six years' imprisonment. He filed a timely notice of appeal.



Chestang argues that the evidence was insufficient to convict him. He claims that the testimony of both officers supported his testimony that he was escorted by only one officer, in breach of protocol, and that Mayo jerked on his leg irons to injure him. He contends that these facts, in addition to the fact that he was worried due to previous problems with Mayo, entitled him to defend himself. The State argues that Chestang's substantial-evidence argument is not preserved because he did not move for a directed verdict on the lesser-included offense of second-degree battery at the close of the State's case.

Arkansas Rule of Criminal Procedure 33.1(a) states that a motion for directed verdict shall be made at the close of the evidence offered by the prosecution and at the close of all of the evidence, and the motion shall state the specific grounds therefor. Rule 33.1(c) states that the failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required will constitute a waiver of any question pertaining to the sufficiency of the evidence. We have held that to preserve the issue of sufficiency of the evidence to support a conviction of a lesser-included offense, a defendant's motion for directed verdict must address the elements of the lesser-included offense. *Brown v. State*, 347 Ark. 308, 65 S.W.3d 394 (2001). In *Brown*, the defendant moved for directed verdict specifically as to first-degree battery on the theory that the State failed to prove serious physical injury, but he did not argue any aspect of second-degree battery. Accordingly, our supreme court held that Brown waived his opportunity to mount a challenge on appeal to the sufficiency of the evidence supporting his conviction for second-degree battery.

A person commits battery in the second degree if the person intentionally or



knowingly, without legal justification, causes physical injury to a person he knows to be an employee of a correctional facility while the employee is acting in the line of duty. Ark. Code Ann. § 5-13-202(a)(4)(A)(i) (Repl. 2006). Chestang argued at trial that the State had failed to prove serious physical injury. Because he did not argue in his motions for directed verdict that an element of second-degree battery was not proven, Chestang waived a challenge to the sufficiency of the evidence.

We now address Chestang's argument that the trial court erred in allowing Corporal Mayo to testify that he was in maximum security because of a previous assault on a guard. Mayo testified as to the reason Chestang was in maximum security as follows:

PROSECUTION: Why [sic] question would be why is the defendant in the maximum security area?

WITNESS: Something that he's done constantly. I know that he attacked another officer recently, but that's not relevant to my case, so.

DEFENSE: Objection, your Honor, she has no personal knowledge.

THE COURT: Well, let's see what he[r] personal knowledge is. She didn't have to actually observe to have personal knowledge of the attack. She didn't have to be looking at the attack when it occurred. She could have some other knowledge of —

DEFENSE: Personal knowledge, your Honor.

THE COURT: Well, let's see what the question.

PROSECUTION: My question is if she knew why the defendant was in the maximum security area. He was asking her all these rules and regulations about that.

THE COURT: I'm going to allow the question. She has a responsibility in her duties as a security officer to know something about who's where, and that is the kind of information that would be a part of her duties to know as a security officer in that particular area. So I'm going to allow her to answer that, if she knows.

PROSECUTION: Ms. Mayo, this is relevant to your case, do you know why the defendant was in the Maximum Security Area?

WITNESS: From a previous attack on another officer and another inmate.

Chestang argues that allowing this question and answer was error. Rulings on the



admissibility of evidence are matters within a circuit court's discretion, and those rulings are not disturbed on appeal absent a showing of an abuse of that discretion and prejudice. *Heydenrich v. State*, 2010 Ark. App. 615, 379S.W.3d 507.

First, Chestang claims that because the declarant did not have personal knowledge of the information, it was hearsay under Rule 801(c) of the Arkansas Rules of Evidence. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Ark. R. Evid. 801(c) (2011). In order to preserve a hearsay objection, a defendant must make a timely, specific objection, stating that ground. *Stone v. State*, 371 Ark. 78, 263 S.W.3d 553 (2007). A general objection is not sufficient to preserve a specific point. *Id.* Here, Chestang's only objection was that Mayo had no "personal knowledge." He never specifically objected to Mayo's testimony on hearsay grounds; thus, the hearsay argument is not preserved for appeal.

Chestang also claims that by allowing Mayo's testimony, the trial court allowed the State to present evidence of a prior bad act that should have been excluded under Rule 404(b). However, Chestang did not raise this argument below. Arguments not raised at trial will not be addressed for the first time on appeal, and parties cannot change the grounds for an objection on appeal, but are bound by the scope and nature of the objections and arguments presented at trial. *Tryon v. State*, 371 Ark. 25, 263 S.W.3d 475 (2007). Thus, Chestang's arguments cannot be considered.

Finally, we address Chestang's argument that the trial court erred in denying his motion to dismiss the felony information. Prior to trial, Chestang moved to dismiss the



indictment, claiming that the felony information was defective in that it (1) did not indicate the victim's identity or where the alleged offense occurred; (2) was not supported by affidavits; and (3) did not seek leave of court as required by the Arkansas Constitution. He claimed that there was no determination of probable cause by a neutral magistrate. The motion was denied. Chestang now argues that article 7, section 40 of the Arkansas Constitution requires that a neutral magistrate review the factual basis for a felony information and make a finding of probable cause. He claims that this action was not undertaken. Chestang also argues that the felony information is insufficient because it does not name the victim and does not contain the facts upon which it is based. He claims that the missing information was necessary to properly form his defense.

The State correctly notes that article 7, section 40 was repealed effective July 1, 2001. See Ark. Const. amend. 80, § 22(A). Thus, Chestang's argument under the repealed constitutional provision has no merit. He cites no other authority for his arguments. Arguments unsupported by authority or convincing argument will not be considered by this court. *Zachary v. State*, 358 Ark. 174, 188 S.W.3d 917 (2004). We note, however, that an accused is not entitled to a judicial review of the prosecutor's filing an information charging him with an offense. *State v. Brooks*, 360 Ark. 499, 202 S.W.3d 508 (2005). Furthermore, our supreme court has held that an information was not defective where it named the defendant, the offense charged, the statute under which the charge was made, the court, the county where the alleged offense was committed, the principal language of the statute, and the asserted facts constituting the offense. *Beard v. State*, 269 Ark. 16, 598 S.W.2d 72 (1980).



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The supreme court also noted that an information is not defective if it sufficiently apprises the individual of the specific crime with which he is charged to the extent necessary to enable him to prepare his defense. *Id.* Here, the information contained all of the necessary information, and an attached email set forth the facts regarding the incident, including the victim's name and the location of the offense. We affirm.

Affirmed.

PITTMAN and WYNNE, JJ., agree.

Durrett & Coleman, by: *Gerald A. Coleman*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Karen Virginia Wallace*, Ass't Att'y Gen., for appellee.