

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR12-332

DEREK VAN MULLINS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 27, 2013

APPEAL FROM THE GRANT  
COUNTY CIRCUIT COURT  
[No. CR-2011-56-1]

HONORABLE CHRIS E WILLIAMS,  
JUDGE

AFFIRMED

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## LARRY D. VAUGHT, Judge

Appellant Derek Van Mullins was convicted by a Grant County jury of theft of property and breaking or entering. He was sentenced to fifteen years' imprisonment in the Arkansas Department of Correction. His sole argument on appeal is that the trial court abused its discretion by refusing to instruct the jury to consider criminal trespass as a lesser-included offense of breaking or entering. However, because there was no rational basis for the instruction, we affirm the decision of the trial court.

A trial court's ruling on whether to submit jury instructions will not be reversed absent an abuse of discretion. *Goldsberry v. State*, 2012 Ark. App. 319, at 5. Further, we will affirm a trial court's decision to exclude an instruction on a lesser-included offense if there is no rational basis for giving the instruction. *Id.* Specifically, where the defendant relies on the defense of complete denial, there is no rational basis for giving instructions on lesser-included offenses, and the trial court is correct to refuse such instructions. *Id.*



Cite as 2013 Ark. App. 207

Here, Mullins's defense at trial was to deny that he was the man who had broken into Kimberly Riggan's car and had taken her jewelry and credit card (and passenger VH's purse). At trial he challenged the State's witnesses' identification of the perpetrator as having tattoos covering both arms. In response, he displayed to the jury that he had tattoos only on his right arm. He also introduced the testimony of an alibi witness who claimed that Mullins was working a construction job on the day of the theft. Additionally, in an attempt to rebut the testimony of State's witnesses who had actually seen Mullins with Riggan's jewelry, Mullins introduced the testimony of his mother, who claimed she had given her son the jewelry before the date that Riggan observed Mullins in her car.

As such, because Mullins completely denied breaking into the car, the trial court did not abuse its discretion by refusing to instruct the jury to consider criminal trespass as a lesser-included offense, and we affirm the convictions.

Affirmed.

GRUBER and HIXSON, JJ., agree.

*David R. Cannon*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Lauren Elizabeth Heil*, Ass't Att'y Gen., for appellee.