

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-590

JAMES ROBERT LOWE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 2, 2011

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. CR-2009-252(A)]

HONORABLE STEPHEN TABOR,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

James Robert Lowe appeals from his conviction of possession of drug paraphernalia with intent to manufacture methamphetamine, for which he was sentenced as a habitual offender to thirty years in the Arkansas Department of Correction and fined \$15,000. He contends that the evidence was insufficient to support the conviction. Specifically, he argues that the trial court should have directed a verdict of acquittal because he was entrapped into committing the offense. Because this issue was not preserved for appeal, we affirm without addressing the question on the merits.

In order to preserve for appeal any issue pertaining to the sufficiency of the evidence at a jury trial, the defendant must move for a directed verdict both at the close of the evidence offered by the prosecution and at the close of all of the evidence. Ark. R. Crim. P. 33.1(a).

The motion must state the specific grounds therefor. *Id.* A defendant cannot change the grounds for an objection on appeal but is bound by the nature and scope of the objection made at trial. *Tester v. State*, 342 Ark. 549, 30 S.W.3d 99 (2000). A defendant's failure to make the motion at the appropriate times and to apprise the trial court of the specific alleged defect in the proof will constitute a waiver of any sufficiency issue. Ark. R. Crim. P. 33.1(c); *Grady v. State*, 350 Ark. 160, 85 S.W.3d 531 (2002). These rules apply with equal force to a sufficiency argument that is based on the ground that the proof at trial established an affirmative defense as a matter of law. See *Marcyniuk v. State*, 2010 Ark. 257, 373 S.W.3d 243; *Grady v. State, supra*; *Tester v. State, supra*.

Here, appellant moved for a directed verdict at the close of the State's case on the ground that there was insufficient proof that Arkansas had territorial jurisdiction over the crime alleged in the information. He renewed the motion at the close of the evidence. He has abandoned that contention on appeal, however, by failing to argue it. *Jordan v. State*, 356 Ark. 248, 147 S.W.3d 691 (2004); *King v. State*, 323 Ark. 671, 916 S.W.2d 732 (1996). His present argument, that a directed verdict should have been granted because the proof plainly established the affirmative defense of entrapment, is raised for the first time on appeal and cannot be addressed.

Affirmed.

HART and MARTIN, JJ., agree.