

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR 10-1014

BRIAN KEITH JORDAN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 9, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SEVENTH DIVISION
[NO. CR-2009-4116]

HONORABLE BARRY SIMS, JUDGE

AFFIRMED

ROBIN F. WYNNE, Judge

Appellant Brian Jordan appeals following his conviction for third-degree battery. Specifically, he argues that the conviction was not supported by sufficient evidence. We affirm because appellant failed to properly preserve his argument for appellate review.

The State initially charged appellant with two counts of second-degree battery based on an incident that occurred on October 22, 2009, in the city's environmental court. The information alleged that appellant had intentionally or knowingly caused physical injury to two court bailiffs, John Fink and Marcella Wilson, whom appellant knew to be law-enforcement officers. At the jury trial held on June 2, 2010, Bailiff John Fink testified that he was acting in his official capacity as a city-court bailiff on the date in question when appellant, who was in court for violating a city ordinance, became disruptive. The judge asked Bailiff Fink to take appellant into custody. Bailiff Fink asked appellant to leave any

personal property on the bench while he was taken into a holding cell, but appellant protested. Appellant jerked away from Bailiff Fink, then grabbed him around the neck, inflicting red marks and scratches on the bailiff's neck. Bailiff Marcella Wilson also testified that appellant resisted when Bailiff Fink attempted to take him to the holding cell and that appellant grabbed Bailiff Fink. Bailiff Wilson attempted to assist Bailiff Fink, and the three scuffled, somehow causing a cut to Bailiff Wilson's finger.

At the close of the State's case, appellant's counsel moved for directed verdict. In making his motion, appellant argued that two of the required elements for second-degree battery had not been met: that the bailiffs involved were certified law-enforcement officers and that appellant had acted intentionally or knowingly. The motion was denied, and appellant rested without presenting any witnesses or other evidence. Appellant then renewed his motion based on the same arguments as stated above. The renewed motion was likewise denied, and the jury found appellant guilty of third-degree battery as to Bailiff John Fink. Appellant was found not guilty of battery in any degree as to Bailiff Marcella Wilson. The judgment and commitment order was entered on June 15, 2010, and appellant filed a timely notice of appeal on July 7, 2010.

Appellant's sole argument on appeal is that the State failed to prove that appellant caused physical injury to Bailiff John Fink. A motion for directed verdict is considered a challenge to the sufficiency of the evidence. *Ross v. State*, 346 Ark. 225, 230, 57 S.W.3d 152, 156 (2001). In order to preserve such a challenge for appeal, the motion for directed verdict

must specify the respect in which the evidence is deficient. Ark. R. Crim. P. 33.1(c) (2010). A party cannot change the grounds for a motion on appeal but is bound by the scope and nature of the arguments he made below. *Mayes v. State*, 351 Ark. 26, 29, 89 S.W.3d 926, 928 (2002). Likewise, in order to preserve a challenge to the sufficiency of the evidence supporting a conviction for a lesser-included offense, a defendant must address the lesser-included offense either by name or by apprising the trial court of the specific elements questioned by their motion for directed verdict. *Davis v. State*, 362 Ark. 34, 38, 207 S.W.3d 474, 478 (2005).

A person commits second-degree battery when the person knowingly, without legal justification, causes physical injury to a person he knows to be a law-enforcement officer while the officer is acting in the line of duty. Ark. Code Ann. § 5-13-202(a)(4)(A)(i) (Supp. 2009). A person commits third-degree battery if (1) with the purpose of causing physical injury to another person, the person causes physical injury to any person; (2) the person recklessly causes physical injury to another person; (3) the person negligently causes physical injury to another person by means of a deadly weapon; or (4) the person purposely causes stupor, unconsciousness, or physical or mental impairment or injury to another person by administering to the other person, without the other person's consent, any drug or other substance. Ark. Code Ann. § 5-13-203(a) (Repl. 2006).

In this case, appellant's motion for directed verdict was based on two elements of second-degree battery only: whether the bailiffs were law-enforcement officers and whether

Cite as 2011 Ark. App. 192

appellant had acted knowingly. Appellant made no argument below as to the element of physical injury, nor did he argue as to any specific element of the lesser-included offense of third-degree battery, of which he was later found guilty. Because he cannot change the grounds for his argument on appeal, appellant has not preserved his challenge to the sufficiency of the evidence regarding physical injury. Therefore, we must affirm the conviction.

Affirmed.

HART and BROWN, JJ., agree.