

ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-18-149

BRYAN PORRAS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: December 5, 2018

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. 66FCR-16-65]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

Appellant Bryan Porras was convicted by a Sebastian County Circuit Court jury of one count of murder in the first degree and seven counts of committing a terroristic act. He was sentenced to a total of seventy-three years in the Arkansas Department of Correction (ADC), with his sentences being enhanced for using a firearm in the commission of the crimes and for being a habitual offender. Porras makes two arguments on appeal—(1) the State failed to present sufficient evidence to support the convictions, and (2) the circuit court denied him the right to confront witnesses against him when it ruled defense counsel had opened the door to a line of questioning. We affirm.

Porras’s charges arose from a gang-related shooting in Fort Smith, Arkansas, on January 14, 2017. Porras and his codefendants—Alberto Chavez, Ryan Oxford, and Jorge Chirinos—were members of a gang known as Slangez 96. The victim, Justin Lopez, was a

member of a rival gang, Clout Boyz. Lopez and another Clout Boyz member, Trey Miller, were shot by assault rifles while in a camper trailer; Lopez was killed when a bullet entered the back of his skull and fragmented.

Codefendant Jorge Chirinos testified against Porras at trial. His testimony placed Porras at the scene of the crimes, and he identified Porras as one of the shooters. However, Chirinos's testimony at trial differed from previous statements he had given, and it was contrary to some testimony from other witnesses. At the close of the State's evidence, defense counsel moved for a directed verdict, which was denied; this motion was renewed at the close of all the evidence and was denied again.

Porras first argues the State failed to present sufficient evidence to support his convictions. A motion for directed verdict is a challenge to the sufficiency of the evidence. *Vaughan v. State*, 2018 Ark. App. 439, 555 S.W.3d 922. The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, either direct or circumstantial; evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Bullock v. State*, 2018 Ark. App. 118, 544 S.W.3d 566. On appeal, the evidence is viewed in the light most favorable to the State, and only that evidence supporting the verdict is considered. *Id.* Weighing the evidence, reconciling conflicts in testimony, and assessing credibility are matters exclusively for the finder of fact; a jury may accept or reject any part of a witness's testimony, and its conclusion regarding credibility is binding on the appellate court. *Vaughan, supra.*

Porras argues there was no corroboration of Chirinos's testimony, who had also been criminally charged for the same incident, and there must be evidence independent of an accomplice's testimony to show the crime occurred and tend to connect the accused to the crime. Porras contends Chirinos admitted he had lied in previous statements he gave to police, his testimony at trial was different from his previous statements and contradicted the testimony of other witnesses, and Chirinos had a reason to lie about his involvement in the shooting.

Porras is correct. Arkansas law provides that a conviction cannot be had in any case of felony on the testimony of an accomplice unless it is corroborated by other evidence tending to connect the defendant with the commission of the offense. *Bullock, supra*. However, to make these challenges on appeal, an appellant must strictly comply with Arkansas Rule of Criminal Procedure 33.1 (2017), which requires a defendant to make specific challenges to the State's proof. Porras's directed verdict was as follows:

There has been no credible evidence presented that shows that my client was at the scene of the crime, other than Mr. Chirinos who we know has lied at least 2 different occasions prior to coming in here to testify today. I think it is believable that he lied again today when he said that he was under the influence of drugs and alcohol. You saw the videos where there was a lot of drug use going on. I don't believe his testimony is truthful or believable. I don't think it even rises to the level of a fact question for the jury. What we have got here is primarily speculation as to my client's involvement and that is not sufficient to justify this case going to the jury trial, Your Honor, it is just not there. I am going to ask the Court to grant my motion for a directed verdict.

An appellant is bound by the scope and nature of the arguments made at trial. *Bullock, supra*. An appellate court will not address an argument made for the first time on appeal; a defendant cannot change the grounds for an objection or motion on appeal but is bound by the scope and nature of the arguments made at trial. *Davis v. State*, 2018 Ark. App. 450,

558 S.W.3d 897. Porras never made a corroboration argument to the circuit court; therefore, that argument is not preserved for our review. To the extent Porras made the argument in his directed-verdict motion that Chirinos's testimony lacked credibility, this argument is of no moment, as witness credibility is a matter for the finder of fact, and a jury's determination regarding credibility is binding on the appellate courts. *Vaughan, supra*.

Porras's second argument on appeal is the circuit court denied him his right to confront witnesses against him during the testimony of Detective Anthony Parkinson, who investigated Lopez's murder. When Parkinson testified, the following colloquy occurred:

DEFENSE COUNSEL: Officer, as part of the investigation did you direct other officers to go out and do things?

PARKINSON: Yes.

DEFENSE COUNSEL: Did you direct that Officer Scamardo go take soil samples at the scene of the crime?

PARKINSON: Scarborough.

DEFENSE COUNSEL: Scarborough?

DEFENSE COUNSEL: Yes.

DEFENSE COUNSEL: Okay. That was done and did you direct that Bryan Porras' car be, I don't want to say tossed, but to be inspected?

PARKINSON: We obtained a search warrant.

DEFENSE COUNSEL: So, you all did have access to the car and did Officer Scarborough?

PARKINSON: Detective Scarborough, yes.

DEFENSE COUNSEL: He sought soil samples and things like that?

PARKINSON: Yes.

DEFENSE COUNSEL: He ran pads and looked at things and looked for evidence out of the car, correct?

PARKINSON: Correct.

DEFENSE COUNSEL: Did you all obtain any shoe prints at the scene of the crime?

PARKINSON: No.

DEFENSE COUNSEL: Now, did Chirinos or some of the people tell you they were still wearing the same clothes that they had been wearing the night before?

PARKINSON: Yes.

DEFENSE COUNSEL: Did you observe if they had mud on them?

PARKINSON: I did not observe any mud on their clothing.

DEFENSE COUNSEL: Did you all seize the shoes from the individuals?

PARKINSON: We did seize shoes.

DEFENSE COUNSEL: But you have nothing to show us that they were there, to connect their shoes to the scene?

PARKINSON: We did not connect any shoe impressions at the scene in the mud with shoes.

PROSECUTOR: Your Honor, may we approach?

CIRCUIT COURT: Sure.

(Conference at the bench.)

PROSECUTOR: I think he had just opened the door that I can now ask the other individuals if they told him that they were present at that location and that's why they didn't follow-up on the shoe prints and the mud impressions and those sorts of things.

CIRCUIT COURT: You mean you would ask him why he didn't?

PROSECUTOR: Yes, and his answer is going to be because he told him that they were there.

DEFENSE COUNSEL: You can't bring out that they said that Bryan was there because I don't have the opportunity to cross examine him.

PROSECUTOR: You asked the question and you opened the door.

DEFENSE COUNSEL: I did not open that door. I asked him if he had evidence and what it shows.

CIRCUIT COURT: Well, you asked if any of the shoe impressions were made.

PROSECUTOR: And then he said nobody was there. You don't have any indication that any of these people were there, which is the indication that Mr. Porras was there by the statements of the other people.

CIRCUIT COURT: Yes, I think I am going to let you do it. I think he has opened the door.

PROSECUTOR: I believe you were questioned about the shoe samples and the soil samples and things like that. The question was, was there any indication that any of these 4 individuals were there?

PARKINSON: Correct, I was asked that question.

PROSECUTOR: What indication do you have that any of these 4 individuals were present at 2315 North 9th Street?

DEFENSE COUNSEL: You Honor, I object.

CIRCUIT COURT: That is overruled.

PARKINSON: I received—after speaking with Alberto Chavez he confessed that he was there.

PROSECUTOR: Did anyone else tell you they were there?

PARKINSON: Yes, Ryan Oxford said he was there.

PROSECUTOR: Anyone else tell you they were there?

PARKINSON: Jorge Chirinos said he was there.

PROSECUTOR: Did any of those say that—I will leave it at that, thank you.

CIRCUIT COURT: Anything further?

DEFENSE COUNSEL: No other questions at this time.

During closing arguments, the prosecutor stated, “We know that Oxford told the police that he was there, and Chavez told the police that he was there.” Defense counsel objected, renewed the objection he made when the circuit court ruled he had opened the door, and asked that it be struck. The circuit court sustained the objection and told the jury to disregard the argument made as it related to what Oxford and Chavez had said.

Porras argues defense counsel did not open the door and was thus denied his right to confront witnesses against him. Though it is correct the circuit court overruled Porras’s first objection and allowed Detective Parkinson to testify that Chavez, Oxford, and Chirinos told him that they were at the scene of the crime, it is important to look at Porras’s counsel’s objection. Porras objected on the basis that Detective Parkinson could not testify that the three codefendants said he (Porras) was there because he did not have the opportunity to cross-examine the three codefendants.¹ After that objection was overruled, Porras’s counsel made no further request for relief, including no motion for an admonition. The testimony reveals Detective Parkinson did not in fact testify that any of the three codefendants told

¹At Porras’s trial, Chirinos testified after Detective Parkinson, but he was not asked anything in regard to this line of questioning.

him Porras was present at the crime scene; Detective Parkinson only testified that the other three codefendants were present at the crime scene. Therefore, even though Porras's objection was overruled by the circuit court, he in fact got what he asked for in his objection. Porras received the exact relief he requested; when an appellant receives the only relief he requested, he cannot appeal the issue. *Guevara v. State*, 2012 Ark. 351.

Affirmed.

HARRISON and KLAPPENBACH, JJ., agree.

David L. Dunagin, for appellant.

Leslie Rutledge, Att'y Gen., by: *Kent G. Holt*, Ass't Att'y Gen., for appellee.