

Cite as 2024 Ark. App. 367
ARKANSAS COURT OF APPEALS
DIVISION IV
No. CR-23-191

GENE JACKSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 5, 2024

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. 04CR-21-2470]

HONORABLE BRAD KARREN, JUDGE
AFFIRMED

BART F. VIRDEN, Judge

A Benton County jury convicted appellant Gene Jackson of possession of methamphetamine with purpose to deliver—plus an enhancement for committing the offense within 1,000 feet of a church—simultaneous possession of drugs and firearms, kidnapping, second-degree battery, and first-degree terroristic threatening.¹ Jackson was sentenced to an aggregate term of seventy-four years’ imprisonment. On appeal, he argues that there was insufficient evidence to support his convictions. We affirm.

I. Standard of Review

A motion for directed verdict is a challenge to the sufficiency of the evidence. *Lema v. State*, 2024 Ark. App. 140, 684 S.W.3d 929. When the sufficiency of the evidence is

¹The trial court directed a verdict as to an aggravated-assault charge, and the jury acquitted Jackson of possession of marijuana with purpose to deliver.

challenged on appeal, we consider only the evidence that supports the verdict and affirm if substantial evidence supports it. *Id.* Substantial evidence is evidence of such sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other without resort to speculation or conjecture. *Id.* Circumstantial evidence may provide a basis to support a conviction if it is consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Id.* Whether the evidence excludes every other hypothesis is left to the jury to decide, and credibility of witnesses is an issue for the jury. *Id.*

A general motion for directed verdict is insufficient to preserve a defendant's argument that the elements of a crime were not proved. *Reed v. State*, 2012 Ark. App. 225. Our rules of criminal procedure require the movant to apprise the trial court of the specific basis on which the motion is made. Ark. R. Crim. P. 33.1. Failure to challenge the sufficiency of the evidence in the manner required by the rule constitutes a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment. Ark. R. Crim. P. 33.1(c).

II. *Trial Testimony*

Considering only the evidence that supports the verdict, the trial testimony showed that the following occurred in the fall of 2021 on West Bonnie Lane in Rogers. Danielle Tuck, who was homeless, had been living with Jackson and his fiancée, Cynthia Griffith, for a few months. Tuck said that she had been sleeping on a mattress in Jackson's garage. She admitted that she is addicted to methamphetamine and testified that she and Jackson often smoked methamphetamine together in his garage. According to Tuck, Jackson would have

as many as ten to fifteen people over to his garage where they would use methamphetamine and would sometimes buy it from Jackson. Several witnesses testified that they bought drugs from Jackson and used drugs in his garage.

On the night of October 21, Jackson accused Tuck of stealing his methamphetamine. Tuck testified that she was offended and “smarted off a little bit.” She said that Jackson then took a gun from behind his back and began pistol-whipping her, causing lacerations on her head. Jackson yelled for Griffith to help him. Griffith pulled Tuck by her hair into the bathroom, and Jackson instructed her to keep Tuck there and try to get her into the bathtub. Tuck testified that she thought he wanted her in the tub because it “was going to be easier to shoot [her] in there” and because it would be “way easier to dispose of [her] without making a mess.” Griffith testified that she thought Jackson wanted to do a body-cavity search for his missing methamphetamine.

While in the bathroom, Jackson told Tuck that if she was able to escape, she “wouldn’t live for two hours.” Despite Jackson’s warning, Tuck overpowered Griffith and tried to escape. She ran from the bathroom to a sliding glass door but could not get it open. Jackson saw Tuck and fired an air pistol twice at her, causing the glass door to shatter. Jackson then grabbed Tuck by her hair and dragged her back to the bathroom where he beat her with a metal flashlight.

Soon after, Tuck saw that Jackson was no longer in the bathroom with her and that Griffith was occupied scrubbing blood off the bathroom wall, so Tuck ran from the bathroom again and was able to get outside through the front door. Tuck’s friend just

happened to be pulling up to the house to check on her, and she ran to his car. He then drove her to a convenience store in Lowell where someone called 911.

Police officers then began to surveil Jackson's house from the parking lot of a nearby church. Police officers testified that the parking lot joined the curtilage of Jackson's home and was separated from his property by a chain-link fence. Police officers could see the entire residence, including the back door. It was later determined that Jackson's garage was 240 feet from the church. Police soon obtained a search warrant, and a SWAT team arrived to execute the search.

As law enforcement officers approached the home, Jackson rushed outside through the back door. The officers announced themselves and told Jackson to show his hands and get on the ground. Instead, Jackson began removing items from his pockets. One of the items Jackson removed was an eyeglass case that contained two baggies of methamphetamine wrapped in a larger bag and a glass pipe for smoking methamphetamine. It was later determined that the methamphetamine weighed 10.1578 grams. Jackson also had a flashlight in his pocket.

When searching the home, police found a .22 pistol in a dresser drawer in the master bedroom. It was later determined that Tuck's blood was on the pistol's barrel. Police officers also found two other firearms and magazines for those guns in a different dresser drawer in the master bedroom. An air pistol was located above the fireplace mantel in the living room, and officers found a spent pellet from the air pistol among the pieces of shattered glass from the sliding door.

Inside the garage, which was described as a “man cave,” there was a seating area, a television, and computer monitors showing surveillance footage from the home’s security system. In a closet in the garage, police found a large marijuana plant and several smaller marijuana plants. Another 3.3 grams of methamphetamine was found in the garage. Police also found drug paraphernalia and a digital scale containing methamphetamine and marijuana residue.

The jury convicted Jackson of possession of methamphetamine with purpose to deliver (plus a proximity enhancement), simultaneous possession of drugs and firearms, kidnapping, second-degree battering, and first-degree terroristic threatening.

III. *Discussion*

A. Possession of Methamphetamine with Purpose to Deliver

Jackson was convicted of violating Ark. Code Ann. § 5-64-420(b)(3) (Repl. 2016) for possessing more than ten grams but less than two hundred grams of methamphetamine with purpose to deliver. Jackson argues that the State failed to prove that he constructively possessed the methamphetamine and failed to show additional factors linking him to the methamphetamine, given that the home was jointly occupied.

In his directed-verdict motion, counsel said, “I think there has been some evidence of methamphetamine, but I’ll just make kind of a standard sufficiency of the evidence [motion] to that.” Because Jackson raised only a general motion below, we will not address his arguments. In any event, Jackson was in actual physical possession of the methamphetamine such that a constructive-possession and joint-occupancy analysis is

unnecessary. See, e.g., *McDaniel v. State*, 2019 Ark. App. 66, 571 S.W.3d 43; *Thomas v. State*, 2014 Ark. App. 721.

Jackson also argues for the first time on appeal that the circumstantial evidence was insufficient because there were reasonable conclusions other than Jackson's guilt—specifically, the drugs could have belonged to Tuck or even to Griffith. Plus, Jackson argues that the State did not submit any forensic proof that he ever touched any of the drugs or other contraband. Again, Jackson failed to raise these arguments below, so we will not address them on appeal. Although Jackson challenged below the purpose-to-deliver aspect of the offense and referred to several of the factors listed in section 5-64-420(a), he does not raise any argument on appeal that the methamphetamine was for his personal use. We thus affirm Jackson's conviction for possession of methamphetamine with purpose to deliver.

Furthermore, a person is subject to an enhanced sentence of an additional term of imprisonment of ten years if the person possesses a controlled substance with the purpose to deliver, and the offense is committed on or within 1,000 feet of the real property of a church. Ark. Code Ann. § 5-64-411(a)(1)(B) & (2)(H) (Repl. 2016). Jackson argues that there was no proof that he recklessly committed a drug offense in close proximity to a church. He asserts that there was no proof that he was aware or should have been aware of the church's presence and that mere proximity is not sufficient for application of the enhancement. Counsel argued below only that there was no proof that the building was actually a church. Nothing was said about Jackson's mental state. Our law is clear that a party is bound by the scope and nature of his directed-verdict motion and cannot change the grounds on appeal.

Still v. State, 2022 Ark. App. 156, 643 S.W.3d 830. We thus affirm the proximity enhancement to Jackson's conviction.

B. Simultaneous Possession of Drugs and Firearms

Jackson argues that there was insufficient evidence that he simultaneously possessed drugs and firearms, so he cannot be in violation of Ark. Code Ann. § 5-74-106(a)(1) (Repl. 2016). As noted above, Jackson did not preserve his argument related to his possession of methamphetamine. On appeal, Jackson contends that, pursuant to section 5-74-106(d), it is a defense that he was in his home and the firearm was not readily accessible for use. Ark. Code Ann. § 5-74-106(d). Jackson, however, did not request a jury instruction on this affirmative defense, and in any event, he would not have been entitled to it, given that he was outside of his home when the firearms were discovered. *House v. State*, 2020 Ark. App. 240, 600 S.W.3d 106. Jackson further argues that, while he may have possessed the air pistol, he did not possess the other two firearms found in the master bedroom. He asserts that there was no proof that he had knowledge of, or access to, them. According to Jackson, those firearms belonged to Griffith's sister, who had dropped off the weapons the day prior for "safekeeping." Moreover, Jackson asserts that there was no proof that the firearms were operable; that the drugs and firearms were not found in close proximity to each other; and that there was no forensic proof that he had ever touched the firearms.

In his argument on appeal, Jackson refers to two firearms, and although he referred in his directed-verdict motion to the lack of evidence that he had handled the .22 pistol, he makes no argument with regard to that firearm on appeal. Tuck testified that Jackson had

pistol-whipped her, causing her head to bleed profusely, and the .22 pistol had Tuck's blood on the barrel. Given that Jackson was in physical possession of methamphetamine and considering that Jackson does not challenge on appeal his possession of the .22 pistol, we affirm Jackson's conviction for simultaneous possession of drugs and firearms.

C. Kidnapping

A person commits the offense of kidnapping if, without consent, the person restrains another person so as to interfere substantially with the other person's liberty with the purpose of holding the other person for any act to be performed for the other person's release, facilitating the commission of any felony, inflicting physical injury upon the other person, or terrorizing the other person. Ark. Code Ann. § 5-11-102(a)(1)(B), (a)(3), (a)(4), & (a)(6) (Repl. 2013). Jackson argues that there was no proof that he restrained Tuck or that he did so with the purpose of inflicting physical harm on her. He also asserts that it was Griffith who held Tuck down in the bathroom and prevented her from leaving.

In his directed-verdict motion, Jackson referred to the statute's elements and said that he did not restrain Tuck for any particular purpose. On appeal, however, he challenges only one of the possible purposes of restraining her. Tuck testified that Jackson dragged her into the bathroom by her hair when she attempted to escape. There was evidence that Jackson was holding Tuck in the bathroom until she returned his methamphetamine and that he battered and terrorized her—both of which are Class D felonies—while she was confined in the bathroom. This was substantial evidence of kidnapping.

As a side point, Jackson argues that there was insufficient evidence that he interfered with Tuck's liberty to an extent beyond that which was incidental to the crimes of battery or terroristic threatening.² In *Summerlin v. State*, 296 Ark. 347, 756 S.W.2d 908 (1988), the Arkansas Supreme Court decided how section 5-11-102 should apply to a defendant accused of both kidnapping and an underlying crime (rape) and interpreted the kidnapping statute in such a situation as to require that the restraint of the victim's liberty must exceed that normally incidental to the underlying crime. See also *Chism v. State*, 312 Ark. 559, 853 S.W.2d 255 (1993); *Thomas v. State*, 311 Ark. 609, 846 S.W.2d 168 (1993). Jackson, however, did not say anything in his directed-verdict motion about his restraint not going beyond that which was incidental to the offenses of battery or terroristic threatening. We do not address this particular argument, which is being raised for the first time on appeal; thus, we affirm Jackson's conviction for kidnapping.

D. Terroristic Threatening

A person commits the offense of first-degree terroristic threatening if, with the purpose of terrorizing another person, the person threatens to cause death or serious physical injury to another person. Ark. Code Ann. § 5-13-301(a)(1)(A). The supreme court in *Jones v. State*, 347 Ark. 409, 64 S.W.3d 728 (2002), addressed the issue of "true threats" and listed five factors to consider, including but not limited to, (1) the reaction of the recipient of the

²Jackson does not otherwise raise a separate challenge to the sufficiency of the evidence supporting his conviction for second-degree battery.

threat and of other listeners; (2) whether the threat was conditional; (3) whether the victim had reason to believe that the maker of the threat had a propensity to engage in violence; (4) whether the threat was communicated directly to its victim; and (5) whether the maker of the threat had made similar statements to the victim in the past. *Lilly v. State*, 2020 Ark. App. 88, 596 S.W.3d 509 (citing *United States v. Dinwiddie*, 76 F.3d 913 (8th Cir. 1996)).

Jackson argues that there was insufficient proof that he issued a true threat to Tuck by telling her that she would not live for two hours if she left his home. Jackson, however, did not argue the true-threat factors in his directed-verdict motion. In fact, counsel mischaracterized Jackson's statement by saying that Jackson told Tuck, "I'll find you" or "I'll come and get you." According to Tuck, Jackson told her that she would not live two hours, even if she escaped. Tuck testified that she thought Jackson meant that he would kill her or have her killed. She said that she took Jackson's words to mean that she "wasn't going to be alive anymore." The jury apparently believed that Jackson had issued a true threat to Tuck. We hold that there is substantial evidence to support Jackson's conviction for first-degree terroristic threatening.

Affirmed.

GLADWIN and HIXSON, JJ., agree.

Lassiter & Cassinelli, by: *Michael Kiel Kaiser*, for appellant.

Tim Griffin, Att'y Gen., by: *Christopher R. Warthen*, Ass't Att'y Gen., for appellee.