

John CLAIBORNE v. STATE of Arkansas  
 CR 94-661

511  
 897 S.W.2d 324<sup>e</sup>

Supreme Court of Arkansas  
 Opinion delivered February 20, 1995

APPEAL & ERROR — SUFFICIENCY OF EVIDENCE ISSUE NOT PRESERVED —  
 MOTION TO RENEW MADE TOO LATE. — Where appellant renewed a  
 motion for directed verdict after the jury was charged, it was  
 untimely; having failed to renew his motion for a directed verdict  
 at the “close of the case,” appellant failed to preserve the issue of  
 the sufficiency of the evidence for appeal.

Appeal from Pulaski Circuit Court, Fourth Division; *John  
 W. Langston*, Judge; affirmed.

*Clarence Walden Cash*, for appellant.

*Winston Bryant*, Att’y Gen., by: *Sandy Moll*, Asst. Att’y  
 Gen., for appellee.

ANDREE LAYTON ROAF, Justice. This is an appeal from a  
 conviction on theft and burglary charges which questions only the  
 sufficiency of the evidence. We affirm.

John Henry Claiborne, appellant, was working as a cashier  
 at a Target store during Christmas, 1992, when he met Renee  
 Davis. He gave her his number and asked her to call, which she  
 did a few days later. She testified she had visited him on a few  
 occasions but he had come to her apartment only once and had  
 never been in the bedroom.

On March 23, 1993, Davis reported her apartment had been  
 burglarized and electronics equipment had been stolen. The police  
 came to investigate and discovered that entrance had been gained  
 through a rear bedroom window. The police lifted palm prints  
 from the interior sill of that window and got smudged finger  
 prints from underneath the same interior sill. The investigator  
 who collected them testified the palm prints were going forward,  
 toward the inside of the apartment, consistent with those of some-  
 one gaining entrance into the apartment by climbing through the  
 window from the outside.

Two of Davis’ neighbors told police they noticed a black

Dodge Ram pickup parked in Davis' parking spot on the day of the burglary, but neither of them could identify the driver. When Davis told police that Claiborne had a similar truck, the police got palm prints from him and found they matched those lifted from the sill at Davis' home.

Claiborne had a jury trial and was convicted on the burglary and theft charges. He was determined to be an habitual offender and sentenced to 25 years and 10 years respectively.

On appeal Claiborne argues the evidence was insufficient to support the verdict, contending that palm prints alone are insufficient proof of guilt. He points out that he admitted at trial he was outside Davis' apartment on the day of the burglary, but left when he found she was not home. He argues the only evidence tying him to the burglary was the palm prints which could have been placed there on a prior visit.

We do not reach the merits of the argument as appellant has failed to preserve the point for appeal. After the close of all the evidence and after the jury had been instructed, but before closing arguments, defense counsel asked if it was too late to renew his motions. The trial court said it would consider the motions as if they were timely and ruled they were denied. Closing arguments were then made and the jury was instructed to retire.

[1] A motion for directed verdict must be renewed at the end of the "close of the case." Ark. R. Crim. P. 36.21 (b). An attempt to renew a motion for directed verdict *after* the jury has been charged is not timely and is not in compliance with the rule. *Marshall v. State*, 316 Ark. 753, 875 S.W.2d 814 (1994); *Thomas v. State*, 315 Ark. 504, 868 S.W.2d 483 (1994). Here, the motion to renew was made after the jury had been instructed, and was too late.

Affirmed.