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ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-620

BELTON SIMPSON APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** December 16, 2009 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, [NO. CR2008-4664] HONORABLE BARRY SIMS, JUDGE AFFIRMED

JOSEPHINE LINKER HART, Judge

Belton Simpson, an inmate at the Wrightsville Unit, appeals from his conviction in a Pulaski County bench trial on a charge of furnishing prohibited articles into a correctional facility. He was sentenced to five years' imprisonment to be served consecutively to his current sentence. On appeal, Simpson argues that the trial court erred in denying his motion to dismiss because the State failed to prove that he "introduced" the prohibited items into the Wrightsville Unit. We affirm.

Simpson was charged by information with knowingly introducing a "CELL PHONE, AMPLIFIER, [and] MARIJUANA" into a correctional facility. At Simpson's bench trial, Officer Donald Williams, a correctional officer at the minimum-security Wrightsville Unit, testified that on February 25, 2008, he conducted a random "shakedown" of Simpson's locked footlocker. During the search, Officer Williams discovered a cell phone, an adaptor, and some

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marijuana. He stated that the items in question were contraband. The cell phone and associated electrical devices were photographed, and the photo was admitted into evidence. The State then rested.

Simpson's trial counsel then made the following motion for dismissal:

> Your Honor, the State has charged Mr. Simpson with furnishing prohibited articles. The information is based on Arkansas Criminal Code Title Five, Chapter 54, Section 119, furnishing prohibited articles. Your Honor, the State has not put forth a prima facie case today that Mr. Belton Simpson did introduce or otherwise furnish a prohibited article, namely a cell phone and amplifier into the Arkansas Department of Correction. Your Honor, what they have produced evidence of is that Mr. Simpson perhaps was in possession of a cell phone and an adapter, but they did not include proof that he either furnished or otherwise introduced, which are both terms used in 5-54-119, either of these items into the Department of Correction. If the Arkansas legislature had intended on possession to be a crime that fit under 5-54-119, furnishing prohibited articles, they would have used the language possession or possessing, as they do in many places in Title Five. So for those reasons, Your Honor, the State has failed to put on a prima facie case of furnishing prohibited articles and this should be dismissed.

The trial court denied the dismissal motion. After the defense put on a case in which Simpson denied that the items depicted in the photograph were his, Simpson's trial counsel renewed the dismissal motion without any "new or additional reasons to offer." Again the trial court denied the dismissal motion and found Simpson guilty as charged.

On appeal, Simpson argues that this case turns on the meaning of the verb "introduce." Citing this court's decision in *Laster v. State*, 76 Ark. App. 324, 64 S.W.3d 800 (2002), he contends that "introduce" means to "bring into from outside," and at trial, the State, at best, proved that he possessed the prohibited articles. While we found a virtually identical argument in *Laster* compelling, we cannot reach the merits of Simpson's argument in this case.

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It is settled law that an appellant in a criminal appeal is bound by the scope and nature of the arguments presented at trial. *Wallace v. State*, 53 Ark. App. 199, 920 S.W.2d 864 (1996). As noted previously, Simpson was charged with introducing multiple items into a correctional facility: a cell phone, amplifier, and marijuana. Yet, despite testimony by Officer Williams that marijuana was among the prohibited items that were discovered in Simpson's footlocker, Simpson specifically addressed his dismissal motion to only the cell phone and the amplifier. At trial, as on appeal, he did not mention the marijuana. We cannot ignore this omission.

Under Arkansas Code Annotated section 5-54-119(a)(2) (Repl. 2005), controlled substances are specifically enumerated as prohibited articles. Even if we were to hold that proof regarding the cell phone and amplifier was insufficient, as Simpson urges, we are unable to find anywhere in his brief where he even mentions the marijuana. Accordingly, Simpson's failure to make a similar argument regarding the marijuana is fatal to his appeal. *See Pugh v. State*, 351 Ark. 5, 89 S.W.3d 909 (2002). Therefore, we must affirm.

Affirmed.

PITTMAN and GLADWIN, JJ., agree.