

Cite as 2019 Ark. App. 74  
**ARKANSAS COURT OF APPEALS**

DIVISION IV  
No. CR-18-456

TIMOTHY DAVID

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered:** February 6, 2019

APPEAL FROM THE FAULKNER  
COUNTY CIRCUIT COURT  
[NO. 23CR-16-507]

HONORABLE CHARLES E. CLAWSON,  
JR., JUDGE

AFFIRMED; REMANDED TO  
CORRECT SENTENCING ORDER

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**WAYMOND M. BROWN, Judge**

A Faulkner County jury found appellant Timothy David guilty of first-degree domestic battery in the June 8, 2016 machete attack on his brother, Frankie David. He was sentenced to twelve years' imprisonment. Appellant argues that the trial court erred in denying his directed-verdict motion because the "State incorrectly relied on proof of another element of the offense charged to prove 'purpose.'" We affirm but remand to correct an error in the sentencing order.<sup>1</sup>

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<sup>1</sup>The sentencing order reflects that appellant was found guilty by the court and sentenced by the jury; however, the jury also found appellant guilty at trial. On remand, we direct the court to correct this error.

Appellant's jury trial took place on February 7, 2018. After the State's case, appellant made a motion for directed verdict, contending that the State had failed to show that appellant's purpose was to cause serious physical injury. The court denied the motion and the defense presented its case. There is no indication that appellant renewed his motion for a directed verdict at this time. The State subsequently put on a rebuttal witness, and appellant failed to renew the directed-verdict motion following this testimony.

Rule 33.1(a) of the Arkansas Rules of Criminal Procedure provides that in a jury trial, a motion for directed verdict shall be made at the close of the State's evidence and at the close of all the evidence. The failure to challenge the sufficiency of the evidence at the times and in the manner required constitutes a waiver of a sufficiency-of-the-evidence argument on appeal.<sup>2</sup> Failure to renew a motion for directed verdict after the close of the State's rebuttal testimony waives the issue of sufficiency of the evidence on appeal.<sup>3</sup> A renewal is more than a matter of mere form; it goes to the substance of the evidence against a criminal defendant.<sup>4</sup> Although appellant initially made his directed-verdict motion at the close of the State's case, he failed to renew his motion after the close of the State's rebuttal testimony and thus waived any challenge to the sufficiency of the evidence on appellate review. Therefore, we affirm.

Affirmed; remanded to correct sentencing order.

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<sup>2</sup>Ark. R. Crim. P. 33.1(c) (2018).

<sup>3</sup>*Harrison v. State*, 2017 Ark. App. 580, 533 S.W.3d 146.

<sup>4</sup>*Id.*

GRUBER, C.J., and HIXSON, J., agree.

*Brian G. Brooks, Attorney at Law, PLLC*, by: *Brian G. Brooks*, for appellant.

*Leslie Rutledge, Att’y Gen.*, by: *Rebecca Kane, Ass’t Att’y Gen.*, for appellee.