SLIP OPINION

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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR 08-1104

	Opinion Delivered June 16, 2010
ANTONIO DESHAUN SARTIN APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. CR2008-57]
V.	HONORABLE JOHN LANGSTON, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

M. MICHAEL KINARD, Judge

Antonio Deshaun Sartin was convicted by a Pulaski County jury of aggravated robbery and felony theft of property for taking a Chevrolet Monte Carlo driven by Terry Donley, Jr. Sartin was found to be a habitual offender and sentenced to 240 months' imprisonment and 120 months' imprisonment, respectively, with the terms to be served consecutively. This case was before this court last year, with appellant's counsel submitting a no-merit brief and motion to withdraw as counsel. This court certified to our supreme court the question whether a single omission from a no-merit brief necessarily requires rebriefing. The supreme court held that it did and ordered rebriefing. *See Sartin v. State*, 2010 Ark. 16. The case is now back before this court, this time in merit form. Appellant challenges the sufficiency of the evidence supporting his aggravated-robbery conviction. We affirm.

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At trial on June 17, 2008, Terry Donley, Jr., testified that on November 18, 2007, he had pulled over on the side of the road to help some girls he knew who had run out of gas. According to Donley, he went to get some gasoline and brought it back for them. Donley stated that while he was pulled over, his cousin, Tyrone Phillips, stopped because he believed he was too low on gas to make it to a gas station, and some friends driving an Expedition also stopped. Donley testified that he saw a four-door black Chevrolet Caprice follow him to the gas station and repeatedly drive by his parked car. Donley believed somebody was coming to try to get his mother's newly restored 1986 Chevrolet Monte Carlo that he had been driving. The person was wearing a white hoodie and had his hand underneath, indicating to Donley that he had a weapon. Donley stated that he got out of the car when the person indicated that he had a weapon, but as he was getting out, he grabbed his mother's gun out of her car, which he was driving. He heard shots fired when he grabbed the gun, he ducked, and he fired into the car because that is where he assumed the shots were coming from. The person drove away in the Monte Carlo, and Donley's friends followed in their Expedition. Donley's phone was broken during this incident, and he used his cousin's cell phone to call the police. The friends who had followed Donley's mother's car called and told Donley where the vehicle was left; Donley relayed that information to police. Donley identified Sartin as the person who drove off in his mother's vehicle.

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Tyrone Phillips, Donley's cousin, testified that Donley was telling him and the others who were stopped on the side of the road that someone in a "box Chevy" was following him when the same car passed by. Donley pointed it out, and everyone got in their cars. The Chevy then turned around and parked behind Donley's car. According to Phillips, Donley was getting out of his car and asking what was going on. Phillips testified that he turned around and then heard a door slam, somebody pulling away, and gun shots. He looked and saw Donley shooting back.

Kedrick Humphreys, who was a passenger in his friend Adrian's Ford Expedition, testified to the events of November 18, 2007. Humphreys stated that he was in the car when Adrian came back and all of a sudden he heard three shots and saw Donley's car and a Caprice drive off very quickly. Adrian and Humphreys followed Donley's car to a neighborhood in southwest Little Rock.

Donley's mother, Monica Brown, testified that she owned the stolen 1986 Monte Carlo. Brown stated that she had bought the car the year before for $2000, had it redone, and planned to sell it for $4500 the previous November. She stated that no one besides her son had permission to drive her car that day. She testified that her son knew she carried a gun in the car.

Benny Dandy, an officer with the Little Rock Police Department, testified that he answered the carjacking call to South University on November 18, 2007. No one was there when he arrived, and he then responded to a follow-up call at 6 Windsor Circle.

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Upon arriving at the Windsor location, he noticed a car "that had been shot up, had bullet holes in it" and blood on the driver's side seat.

Officer Rena Matthews with the Little Rock Police Department testified that, around 3 a.m. on November 18, 2007, she responded to a report of a shooting at 32nd and University. At the scene, she found a white 2000 Ford Explorer and three individuals: Carla Tyler, Joseph Pettis, and appellant, who had been shot in his upper left shoulder. They told officers that they were at 32nd and University because they had run out of gasoline on their way to the hospital. Officer Matthews found a set of keys in the vehicle that were later determined to belong to the victim of the Monte Carlo carjacking.

Officer Chris Young testified that he responded to 6 Windsor Circle on November 18, 2007. He stated that he went to assist other officers at the scene, and they searched for suspects with a gun.

Megan Sawchuck, a crime specialist with the Little Rock Police Department, testified that she examined the stolen yellow 1986 Monte Carlo after it was towed to the crime scene bay. She testified to there being apparent blood on the driver's seat and two bullet strikes to the vehicle's rear window; one bullet apparently struck the driver's side head rest (fragments were extracted) and the other exited the front windshield.

Sergeant James Lesher testified that on November 18, 2007, he took Donley back to the scene of the crime, where Donley's broken cell phone was located, as well as "a

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large oily spot that appeared to be gasoline." Lesher also recovered the gun from the yard where Donley had thrown it following the carjacking.

Detective Jason Follett, with the Little Rock Police Department, showed a photo spread to the victim Terry Donley. Follett testified that Donley picked appellant out of the six photos presented.

Carla Taylor testified that she and appellant, her boyfriend, lived at 6 Windsor Circle with her mother, and lived there on November 18, 2007. That night, she stated that appellant knocked on the door and told her he had been shot. She stated that she tried to take him to the emergency room in her Ford Explorer, but they (and a friend who they had picked up on the way) ran out of gas at the Shell station on University. At that point, she called 911 for an ambulance. Taylor also testified that appellant was driving a black Caprice back in November, when the incident occurred.

At the close of the State's case, appellant moved for a directed verdict based upon the State's failure to show "any intention on the part of [appellant] to commit the offense of armed robbery." The motion was denied, the defense rested without presenting evidence, and the jury returned a verdict of guilty on both charges. This appeal followed.

The standard of review is well settled and has been set forth as follows:

> We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. We have repeatedly held that in reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. We affirm a conviction if substantial evidence exists to support it. Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a

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conclusion one way or the other, without resorting to speculation or conjecture. *Gillard v. State*, 372 Ark. 98, 100–01, 270 S.W.3d 836, 838 (2008) (internal citations omitted).

First, it should be noted that the State contends that appellant's arguments are not preserved for appellate review. Appellant's motion for directed verdict at trial stated only that the State failed to show "any intention on the part of Mr. Sartin to commit the offense of armed robbery." Thus, it appears that appellant failed to raise to the trial court the specific argument regarding the weapon that he now makes on appeal. A party 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. *E.g.*, *Pyle v. State*, 340 Ark. 53, 8 S.W.3d 491 (2000). Accordingly, appellant's argument is not preserved for our review.

Even if the argument had been preserved, we would still affirm. On the merits of this appeal, appellant challenges the sufficiency of the evidence to sustain only the conviction for aggravated robbery. A person commits robbery if the person, with the purpose of committing a theft, employs or threatens to immediately employ physical force on another person. Ark. Code Ann. § 5-12-102 (Repl. 2006). A person commits aggravated robbery if he or she commits robbery and is armed with a deadly weapon or represents by word or conduct that he or she is armed with a deadly weapon. Ark. Code Ann. § 5-12-103 (Repl. 2006).

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Here, appellant appears to be challenging the sufficiency of the evidence that he was armed with, or represented that he was armed with, a deadly weapon. Appellant cites *Fairchild v. State*, 269 Ark. 273, 600 S.W.2d 16 (1980), and argues that the fact situation at hand is directly in line with that case. In *Fairchild*, our supreme court modified a conviction for aggravated robbery to simple robbery. The court wrote:

> We are not persuaded that appellant's hand under his shirt, even with the admitted intention of conveying to the victim that he was armed, is sufficient representation to satisfy the requirements of aggravated robbery in the absence of the victim's appreciation that he was armed. It is clear from [the victim's] testimony that she did not attach any special significance to this conduct and certainly did not perceive it to be in any way threatening. . . . Since the appellant's subjective intent does not control what is objectively conveyed to another, a hand under a shirt has no meaning in the context of the aggravated robbery statute unless the victim at least perceives it to be menacing.

Id. at 275, 600 S.W.2d at 17. This case is distinguishable from *Fairchild*, however, because the victim in this case testified that the man who took the car "indicated [he] had a weapon 'cause their [sic] hand was under their [sic] white hoodie. . . . When he indicated that he had a weapon I got out of the car." Thus, the victim perceived that appellant represented by his conduct that he was armed with a gun. We hold that the evidence in this case was sufficient to support a conviction for aggravated robbery.

Affirmed.

BAKER and BROWN, JJ., agree.