

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION I

CACR 06-12

OCTOBER 25, 2006

CARL TERRY PIPPEN, JR.
APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FOURTH DIVISION, [NO. CR 05-143]

V.

HONORABLE JOHN W. LANGSTON,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Carl Terry Pippen appeals his conviction for the first-degree murder of Juan Jordan, as determined by a jury in Pulaski County Circuit Court. Appellant contends that an evidentiary error by the trial court deprived him of his right to confront witnesses against him. We hold that appellant has failed to demonstrate reversible error. Therefore, we affirm his conviction.

The State sought to prove that appellant was the person who shot and killed the victim, Juan Jordan, at the Palace Night Club on Wright Avenue in Little Rock, Arkansas, just after four in the morning on December 5, 2004. The State had ready two eye witnesses, Prescious Lyons and Shannon Rader, to testify that they saw appellant shoot Juan in the back of the head. These two witnesses were also supposed to testify that appellant saw these two

young women a couple of hours later that day and admitted to shooting Juan. Prior to the trial beginning, the prosecutor moved in limine to have the trial judge exclude any evidence about a shooting on Jefferson Street that occurred at approximately eight in the morning on December 5, wherein appellant and Shannon were shot. They purportedly went to this location for drugs, and the house was riddled with gunfire in a drive-by shooting. Shannon and appellant were struck in the legs with bullets. The State asserted that this incident was not known to be related to the shooting at the Palace Night Club, it would just confuse the jury, and therefore any testimony or witnesses regarding the Jefferson Street incident should be excluded. This motion was granted over objection by the defense counsel, who thought the incidents were related, insinuating that Shannon had lured appellant into the house where he could be shot. The trial judge ruled that he would grant the motion in limine, but that he would reconsider the ruling during the course of the trial if evidence came in to justify revisiting the ruling on relevance.

During the course of trial, after the women had already testified and the State rested its presentation, defense counsel called appellant to the stand. On cross-examination, the prosecution asked appellant a question that brought out a comment about the Jefferson Street shooting. Appellant basically said that the girls “got me shot” on Jefferson Street and were covering for someone. Before commencing with redirect examination, both counsel approached the bench. Defense counsel noted that he was concerned that appellant might respond with information about Jefferson Street, and the State asked that appellant be

instructed not to discuss the Jefferson Street incident. The judge overruled the State's objection and refused to instruct the witness, noting that the State had already asked appellant a question that led to this kind of response, which would show bias or animosity on the part of these two women. The prosecutors inquired whether these two witnesses were still available to be re-called, and the trial judge ensured that they were. Defense counsel proceeded with redirect, but did not question appellant about the Jefferson Street incident. At the end of defense counsel's questioning of appellant, the judge called counsel to the bench and said:

I want to make sure that the record reflects that the State's last objection is not to go into anything about that shooting was not sustained. It was, in fact, overruled. [Defense] counsel said they didn't want to go into it. I just want to make sure the record's clear. You may proceed, sir.

Defense counsel responded, "we didn't go into it." The judge said that he understood that but wanted to make sure the record was clarified. Defense counsel then said that this was the defense's last witness, so defense would rest. The case was concluded, motions were entertained, and closing arguments were presented. Thereafter, the jury returned a verdict of guilty. This appeal followed.

On appeal, appellant does not challenge the propriety of the initial grant of the motion in limine. Instead, appellant argues that the judge later changed his ruling, but that defense counsel did not understand the ruling. As a result of defense counsel's confusion, appellant contends that he was deprived a fair trial in being denied his constitutional right to confront the witnesses against him. We disagree.

We first dispose of the constitutional aspect of his argument on appeal because it was never raised to the trial court. To preserve an argument for appeal, there must be an objection in the trial court that is sufficient to apprise the court of the particular error alleged. *Vanesch v. State*, 343 Ark. 381, 37 S.W.3d 196 (2001). This court will not address arguments raised for the first time on appeal. *Id.* Additionally, 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. *Id.* Thus, even a constitutional argument, such as a Confrontation Clause argument, is waived if it is not presented to the trial court. *Echols v. State*, 326 Ark. 917, 936 S.W.2d 509 (1996), cert. denied, 520 U.S. 1244 (1997). The Confrontation Clause was never raised at trial, and as such, his argument is now barred from review.

To the extent that appellant's argument is preserved, he has shown no reversible error. The trial court ruled, after considering that the door had been opened to this line of questioning, that the questions to appellant were not improper in light of the motion in limine. The trial court told appellant's counsel that it would entertain a reopening of its ruling if the evidence at trial presented a question of whether the Jefferson Street incident was relevant. Defense counsel did not ask the trial court to reconsider its ruling. On appeal, appellate counsel reaffirms that appellant does not question the propriety of the initial ruling on the motion in limine. Given that appellant failed to seek any relief from the trial court on this matter, we perceive no error and no prejudice to appellant from any trial court ruling.

Accordingly, we affirm appellant's conviction.

Affirmed.

GLADWIN and BAKER, JJ., agree.