

DIVISION I

ARKANSAS COURT OF APPEALS

No. CACR 07-136

LARRY DONNELL BUSH
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered October 24, 2007

APPEAL FROM THE CIRCUIT COURT
OF PULASKI COUNTY
[NO. CR2006-2752]

HONORABLE JOHN W. LANGSTON,
JUDGE

AFFIRMED

SARAH J. HEFFLEY, Judge

In a bench trial, appellant Larry Donnell Bush was found guilty of being a felon in possession of a firearm, and he was sentenced as an habitual offender to ten years in prison.¹ Appellant's only argument on appeal is that there is insufficient evidence to support this conviction. Specifically, he contends that the State failed to introduce substantial evidence that the pistol he possessed met the statutory definition of a firearm. We affirm.

At 3:00 a.m. on May 3, 2006, Brenda Bush, appellant's sister, was awakened by the sound of tapping on her bedroom window. She could see that a silver gun was being used to knock on the window, but she could not see who was holding the gun. Ms. Bush stayed in bed and had her friend, Fentress Newburn, go to the door. Ms. Bush testified that appellant came into her bedroom,

¹ Appellant was also found guilty of third-degree assault and sentenced to thirty days in jail, but appellant appeals no aspect of that conviction.

pointed the gun at her and Mr. Newburn, and threatened to kill them. Appellant ran out of the apartment while Ms. Bush was calling the police.

Mr. Newburn testified that appellant was at the door and that he had a chrome-colored, silver pistol or handgun. He said appellant was agitated and that he pointed the pistol at them and threatened to kill everyone in the apartment.

Officer Richard Betterton of the Jacksonville Police Department located a weapon in the vicinity where appellant was apprehended. Both Ms. Bush and Mr. Newburn positively identified this weapon as the one appellant had in his possession. The pistol was in two pieces when it was introduced into evidence, as the slide had been removed. Officer Betterton explained that there had been a piece of tape around the top part of the slide, and that the slide came off when he pulled it back to clear the gun of any possible ammunition. As it turned out, the gun did not have a clip in it, nor any bullets. Betterton testified that the gun appeared to be capable of firing at the time he found it and that, after the slide came off, it would not have fired without a bullet in the chamber.

Arkansas Code Annotated section 5-73-103(a)(1) (Repl. 2005) provides that it is unlawful for a person convicted of a felony to possess or own any firearm. The term "firearm" is defined in our criminal code as any device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use. Ark. Code Ann. § 5-1-102(6)(A) (Supp. 2007). The definition includes a device that is not loaded or lacks a clip or another component to render it immediately operable. Ark. Code Ann. § 5-1-102(6)(B).

When a defendant challenges the sufficiency of the evidence that led to a conviction, the evidence is viewed in the light most favorable to the State, and only the evidence supporting the

verdict will be considered. *Loar v. State*, 368 Ark. 171, ___ S.W.3d ___ (Nov. 30, 2006). The appellate court will affirm a judgment of conviction if there is substantial evidence to support it. *Id.* Substantial evidence is evidence of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other without resorting to speculation or conjecture. *Id.*

In his motion for a directed verdict, appellant argued that the pistol did not meet the definition of a firearm because it was inoperable, was not loaded, and had no clip. The supreme court, however, rejected similar arguments in *Hunt v. State*, 354 Ark. 682, 128 S.W.3d 820 (2003), where it held that under the statutory definition of a firearm it was immaterial whether the weapon was loaded, lacked a clip, or was not immediately operable, so long as it was a device made for the purpose of expelling a projectile by the action of an explosive. *See also S. T. v. State*, 318 Ark. 499, 885 S.W.2d 885 (1994) (holding that a pistol met the definition of “handgun” even though it was not operable) and *Ward v. State*, 64 Ark. App. 120, 981 S.W.2d 96 (1998) (holding that rifles adapted to fire only blanks were firearms within the meaning of the statute).

Appellant now argues on appeal that the evidence is not sufficient to show that the pistol was a firearm because there was no direct evidence that the pistol was a device designed to expel a projectile by the action of an explosive. This argument is not consistent with the argument appellant made at trial in his motion for a directed verdict. To preserve an issue for appeal from a decision on a directed-verdict motion, the issue must be stated clearly and specifically to the trial court. *Phillips v. State*, 361 Ark. 1, 203 S.W.3d 630 (2005). A party cannot change the grounds for a directed-verdict motion on appeal, but is bound by the scope and nature of the argument presented at trial. *Avery v. State*, 93 Ark. App. 112, 217 S.W.3d 162 (2005). Because appellant has changed his ground

for argument on appeal, his argument is not preserved. Accordingly, we affirm.

Affirmed.

GLOVER and VAUGHT, JJ., agree.