

NOT DESIGNATED FOR PUBLICATION

DIVISION III

CACR07-69

September 26, 2007

DONALD HARRIS

APPELLANT

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[NO. CR 06-2538]

V.

HONORABLE JOHN W. LANGSTON,  
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Following a nonjury trial, appellant, Donald Harris, was convicted of robbery, theft of property, and possession of a firearm by a felon. On appeal, he challenges the sufficiency of the evidence to support the convictions. These challenges, however, were waived by appellant. Accordingly, we affirm.

Rule 33.1(b) of the Arkansas Rules of Criminal Procedure provides that “[i]n a nonjury trial, if a motion for dismissal is to be made, it shall be made at the close of all of the evidence” and that “[i]f the defendant moved for dismissal at the conclusion of the prosecution’s evidence, then the motion must be renewed at the close of all of the evidence.” Rule 33.1(c) provides that “[t]he failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required in subsections (a) and (b) above will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment.”

Following the State's rebuttal evidence, appellant failed to move for a dismissal and thereby challenge the sufficiency of the evidence. By failing to move for dismissal at the close of all the evidence—which here was after the State's rebuttal evidence—appellant waived his challenges to the sufficiency of the evidence. See *Flowers v. State*, 362 Ark. 193, 208 S.W.3d 113 (2005). Further, we observe that a motion to dismiss made following the State's closing argument and during a defendant's closing argument also does not satisfy Rule 33.1(b) and (c). See *State v. Holmes*, 347 Ark. 689, 66 S.W.3d 640 (2002). Accordingly, because appellant's challenges to the sufficiency of the evidence were waived, we affirm appellant's convictions.

Affirmed.

BIRD and GRIFFEN, JJ., agree.