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ARKANSAS COURT OF APPEALS

DIVISION III

No. CR-17-581

C.C.F.

APPELLANT

Opinion Delivered: September 26, 2018

APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT
[NO. 63JV-17-45]

V.

STATE OF ARKANSAS

APPELLEE

HONORABLE BOBBY MCCALLISTER,
JUDGE

AFFIRMED; REMANDED FOR
CORRECTION OF DELINQUENCY
ORDER

BART F. VIRDEN, Judge

The Saline County Circuit Court adjudicated appellant C.C.F. delinquent upon finding that he committed third-degree battery against his football teammate D.J.G. The trial court placed C.C.F. on probation for twenty-four months. The trial court further ordered that C.C.F. pay \$35 in court costs, probation fees of \$20 per month, a fine of \$250 with \$150 suspended, and half of \$1,657.45 in restitution; complete forty hours of community service; and serve forty-eight hours in detention with forty-eight hours suspended. C.C.F. argues that there was insufficient evidence to support the delinquency adjudication. We affirm without reaching the merits of C.C.F.'s arguments and remand for correction of the delinquency order.

I. *Hearing*

On December 15, 2016, C.C.F. and D.J.G., football teammates and students at Bryant Middle School, fought over a headband belonging to C.C.F. They met in a parking lot near the school after football practice. A crowd of students gathered to watch the fight, some of whom were “egging on” the fight and filming it on their camera phones. C.C.F. admittedly first pushed or struck D.J.G.; D.J.G. threw punches at C.C.F.’s face; and C.C.F. broke D.J.G.’s nose, ending the fight.

At the close of all the evidence, the following colloquy occurred:

THE COURT: Anything else from anybody?

DEPUTY PROSECUTOR: No, sir.

DEFENSE COUNSEL: Judge, just the defense’s argument that it was the alleged accuser who started the fight, and that it was a fair one-to-one fight and then things got out of hand, but it was the alleged victim’s conduct that initiated the fight.

II. *Discussion*

C.C.F. argues that the weight of the evidence clearly supports the contention that he was “compelled to act” when he became “trapped in circumstances well beyond his control.” According to C.C.F., he could not retreat and was forced to defend himself in the fight that D.J.G. had set in motion.

The State argues that C.C.F.’s argument is not preserved for review. We agree. The Arkansas Rules of Criminal Procedure apply to delinquency proceedings. Ark. Code Ann.

§ 9-27-325(f) (Supp. 2017). Rule 33.1(b) provides that, in a nonjury trial, if a motion for dismissal is to be made, it shall be made at the close of all the evidence and shall state the specific grounds therefor. Ark. R. Crim. P. 33.1(b) (2017). The failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the judgment. Ark. R. Crim. P. 33.1(c).

Here, C.C.F. did not move for dismissal. As the State put it, “At best, he made a closing argument asking the court to find credible testimony that the victim had started the fight.” If a specific argument supporting the motion for dismissal is made during closing argument, any challenge to the sufficiency of the evidence is not preserved. *Hudson v. State*, 2014 Ark. App. 305; *D.S. v. State*, 2009 Ark. App. 314; *A.D.S. v. State*, 98 Ark. App. 122, 252 S.W.3d 144 (2007).

Because C.C.F.’s argument is not preserved for review, we affirm. We must, however, remand for correction of the delinquency order to state that C.C.F.’s probation ends in 2019. See *Burr v. State*, 2016 Ark. App. 182, 487 S.W.3d 395. As it stands, the delinquency order provides that C.C.F.’s probation ended on the date that it was filed—March 17, 2017.

Affirmed; remanded for correction of delinquency order.

HARRISON and KLAPPENBACH, JJ., agree.

Jones Law Firm, by: *F. Parker Jones III*, for appellant.

Leslie Rutledge, Att’y Gen., by: *Brad Newman*, Ass’t Att’y Gen., for appellee.