

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR08-761

LASONJA MOSELY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 25, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FOURTH
DIVISION
[NO. CR2007-1430]

HONORABLE JOHN LANGSTON,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Following a bench trial, appellant Lasonja Mosely was convicted of two counts of third-degree assault and one count of aggravated assault on a family member. Appellant appeals only the aggravated-assault conviction, arguing that the trial court erred in denying her motion for directed verdict based on insufficient evidence. Because appellant failed to preserve this argument for appeal, we affirm.

Appellant was originally charged by felony information with two counts of aggravated assault and one count of aggravated assault on a family member. Testimony at trial established that appellant and her three children were visiting the home of Tawana Brown. At some point, Robert and Norma Dophus, and their child Demetrius, arrived at Brown's



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home. Robert is the brother of Brown and is the father of one of appellant's children. A verbal altercation arose between appellant and Norma, and according to the testimony of Robert, Norma, and third-party witness Valerie Jenkins, appellant got into her car with her children and twice crashed it into the vehicle in which Robert, Norma, and Demetrius were occupying. Thereafter, Robert and appellant exited their vehicles and began to argue. A scuffle ensued, during which appellant brandished a knife. Robert was not injured by the knife, but the leather jacket he was wearing was cut.

After the State rested, appellant's counsel moved for a directed verdict, which was denied by the trial court. After appellant testified, her counsel generally renewed the motion for directed verdict, which was also denied. Thereafter, the trial court found appellant guilty of two counts of third-degree assault relating to Norma and Demetrius (reduced from the two aggravated-assault charges) and aggravated assault on family member Robert Dolphus.¹

Appellant appeals only the conviction for aggravated assault on a family member. She argues that the trial court erred in denying her motion for directed verdict, arguing that there is a lack of sufficient evidence supporting that conviction. A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Mainard v. State*, 102 Ark. App. 210, 283 S.W.3d 627 (2008). In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, considering only the evidence that supports

¹Appellant was convicted of aggravated assault of a family member with the enhancement of committing the crime in the presence of a child. However, at sentencing the parties jointly moved to withdraw the child-presence enhancement, which was granted by the trial court.



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the verdict, and we will affirm a conviction if substantial evidence exists to support it. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without mere speculation or conjecture. *Id.*

We do not reach the merits of appellant's sufficiency argument because she failed to preserve it for appeal. Rule 33.1(a) of the Arkansas Rules of Criminal Procedure provides, "A motion for directed verdict shall state the specific grounds therefor." Ark. R. Crim. P. 33.1(a). Subsection (c) of this rule provides, in pertinent part:

A motion for directed verdict . . . based on insufficiency of the evidence must specify the respect in which the evidence is deficient. A motion merely stating that the evidence is insufficient does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense.

Ark. R. Crim. P. 33.1(c). Rule 33.1 is strictly construed. *Grady v. State*, 350 Ark. 160, 85 S.W.3d 531 (2002).

The reason underlying the requirement that specific grounds be stated and that the absent proof be pinpointed is that it allows the trial court the option of either granting the motion or, if justice requires, allowing the State to reopen its case and supply the missing proof. *Grady, supra*. Finally, a general motion that merely asserts that the State has failed to prove its case is inadequate to preserve the issue for appeal. *Id.*

For her motion for directed verdict, appellant's counsel argued:

At this time, I'd like to make a motion for a directed verdict. Your Honor, as to Count 1, it's Aggravated Assault as to Norma Dolphus. Ms. Dolphus testified that she was in the car when this occurred and that they were hit with the car. Your Honor, I don't



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know if that was enough to put anyone in any sort of serious physical danger. As to Count 2, Demetrius, which is her—apparently, Ms. Dolphus’ son, who I’m assuming was in the back seat of the vehicle, Ms. Dolphus testified the front of the car was hit. Your Honor, I don’t believe there’s enough to make a prima facie case as to aggravated assault. As to the Child Enhancement, Your Honor, there’s been no proof that children observed this incident occurring.

Appellant’s counsel renewed the motion by stating: “I’ll renew my motions, Your Honor.”

These motions do not include any argument relating to the only charge/conviction from which appellant is appealing—the charge relating to Robert. Because these motions fail to reference and identify the insufficient evidence presented on the charge from which she now appeals, appellant has not preserved this argument for appeal. *See* Ark. R. Crim. P. 33.1(a).

Assuming that the argument in appellant’s directed-verdict motion, “Your Honor, I don’t believe there’s enough to make a prima facie case as to aggravated assault,” was a reference to the crime committed against Robert, the general nature of this statement fails to comply with the specificity requirements of Rule 33.1(c) of the Arkansas Rules of Criminal Procedure. *See Grady, supra; Davis v. State*, 97 Ark. App. 6, 242 S.W.3d 630 (2006) (holding that a general motion for directed verdict that merely asserted that the State failed to prove its case and did not inform the trial court of any specific deficiencies in the State’s proof is inadequate to preserve the issue for appeal). Accordingly, we hold that appellant failed to preserve the sufficiency argument, relating to her conviction for aggravated assault on a family member, for appeal.

Affirmed.



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GLADWIN and KINARD, JJ., agree.