

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION II

CACR06-40

September 6, 2006

DAVID D. RAMEY
APPELLANT

AN APPEAL FROM UNION
COUNTY CIRCUIT COURT
[CR04-724-1]

V.

HON. HAMILTON H. SINGLETON,
JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

On September 21, 2005, a Union County jury found David Ramey guilty of possession of drug paraphernalia and driving while intoxicated, first offense.¹ Appellant appeals from the conviction for possession of drug paraphernalia, challenging the sufficiency of the evidence. Because appellant failed to adequately preserve his sufficiency challenge, we affirm.

According to the testimony adduced at trial, Kent Holmes, a part-time deputy for the Union County Sheriff's Office, was driving home at 3:00 a.m. on August 14, 2004, when he saw a Honda CRV traveling southbound on Arkansas Highway 7 North. The vehicle was traveling erratically, crossing the fog line and the other lane of traffic. Because he was driving in his personal vehicle, Officer Holmes contacted the Union County Sheriff's Office.

¹Appellant was also charged with possession of a controlled substance (cocaine) with intent to deliver, but he was found not guilty. Accordingly, testimony regarding that charge is not recounted here.

Minutes later, Karl Nichols of the El Dorado Police Department headed to the area and started following the Honda CRV. The driver of the automobile continued to drive erratically. Concerned about the driver's ability to maintain his automobile, Officer Nichols initiated a traffic stop.

As Officer Nichols approached the vehicle, he smelled the odor of alcohol. Appellant was the driver of the automobile. Officer Nichols asked appellant for his driver's license, insurance, and registration. He then asked appellant to step out of the vehicle and was immediately concerned when appellant stepped out, took a couple of steps back, and leaned against the vehicle for balance. Officer Nichols attempted to perform a field sobriety test and afterward arrested appellant for suspicion of DWI. After placing appellant in his vehicle, Officer Nichols searched appellant's vehicle and found a set of digital scales and baggies inside the console. Officer Nichols testified that in his experience, digital scales were used to measure narcotics.² In this case, the scales had "white" on them. Appellant was taken to the Union County Sheriff's Office, where he took a Breathalyzer test and blew a 0.205 on the machine.

At the close of the State's case, appellant moved for directed verdict. Regarding the charge for possession of drug paraphernalia, appellant argued "that there's no substantial evidence to show that the Defendant possessed drug paraphernalia." The court denied appellant's motion. The jury later found appellant guilty of possession of drug paraphernalia and driving while intoxicated, first offense. Appellant was sentenced to ten years in the Arkansas Department of Correction and was fined a total of \$2000.

Appellant argues that the trial court erred in denying his motion for a directed verdict

²Randy Connelly of the El Dorado Police Department testified pertaining to the chain of custody of the State's exhibits. His testimony is irrelevant for the purposes of this appeal except to the extent that he also testified that the digital scales found in appellant's automobile were used in connection with narcotics.

on the possession charge. He contends that the State presented insufficient evidence that he possessed drug paraphernalia or knew that the scales and baggies found in his car were contraband. The State argues that appellant's argument is not preserved for appellate review. We agree.

Rule 33.1(a) of the Arkansas Rules of Criminal Procedure requires that a directed-verdict motion specifically state how the State's evidence is insufficient. *See also Nelson v. State*, ___ Ark. ___, ___ S.W.3d ___ (Feb 16, 2006). The failure of a defendant to challenge the sufficiency of the evidence in this manner constitutes a waiver of any question pertaining to the sufficiency of the evidence. *Id.*

At trial, appellant merely argued "that there's no substantial evidence to show that the Defendant possessed drug paraphernalia." This argument is not specific, as we are unable to determine whether appellant challenged at trial the State's evidence that he possessed the items found in his automobile or that the items in his automobile were drug paraphernalia. Appellant makes both arguments on appeal; however, because they were not made at trial below, we are precluded from considering them on appeal. *See id.*

Affirmed.

ROBBINS and CRABTREE, JJ., agree.