

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
TERRY CRABTREE, JUDGE

DIVISION II

CACR 06-246

October 11, 2006

JAMES ARD

APPELLANT

APPEAL FROM THE CIRCUIT COURT OF
PULASKI COUNTY
[NO. CR 05-899]

V.

HONORABLE JOHN W. LANGSTON,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

In a bench trial, appellant James Ard was found guilty of careless and prohibited driving, a violation of Ark. Code Ann. § 27-51-104 (Supp. 2005), for which he was fined \$100 and ordered to pay court costs. Appellant's argument on appeal is that the evidence is not sufficient to support the finding of guilt. We affirm.

On November 11, 2004, appellant was issued a citation for careless and prohibited driving after an incident involving a MEMS ambulance that was driving to another post on a non-emergency run. According to the State's witnesses, appellant's vehicle was traveling in the inside lane when the ambulance was merging onto I-30. Appellant's vehicle was said to be a short distance behind the ambulance when it merged onto the expressway, but that appellant's vehicle then came within inches alongside the driver's side of the ambulance and tried to run it off the road, causing the ambulance to strike construction barrels. Appellant then got in front of the ambulance and braked,

almost causing a rear-end collision. As the ambulance jerked into the outside lane, it was said that appellant began pushing the ambulance toward the concrete barrier. Both vehicles then came to a stop in the median. There was testimony that appellant gunned his engine and came toward one of the paramedics, who jumped and landed on the hood.

Appellant testified that he saw the ambulance as it was merging onto the expressway and that he assumed it would fall in behind him. He said that he was in front of the ambulance when it activated its lights. He said that he could not pull into the left lane because another car was in that lane, so he braked and pulled to the right, stopping as fast as he could so as to get out of the way of the ambulance. He said that a man flashing a badge came screaming toward him and jumped on the hood, leaving two dents in it.

Appellant argues that there is no substantial evidence to support the finding of guilt. However, the State correctly points out that appellant failed to preserve this issue for appeal. Rule 33.1(b) of the Rules of Criminal Procedure provides that in a nonjury trial a motion for dismissal, stating specific grounds, must be made at the close of all evidence. Subsection (c) of the rule provides that questions pertaining to the sufficiency of the evidence are waived if a defendant fails to challenge the sufficiency of the evidence at the times and manner specified in the rule. In this case, although appellant made a closing argument, at no time did he move for dismissal. Our supreme court applies Rule 33.1 strictly and has held that closing argument is not the equivalent of a motion to dismiss. *See Raymond v. State*, 354 Ark. 157, 118 S.W.3d 567 (2003); *State v. Holmes*, 347 Ark. 689, 66 S.W.3d 640 (2002). Because appellant failed to make a motion for dismissal, his sufficiency argument is not preserved for appeal, and we affirm.

Affirmed.

HART and ROBBINS, JJ., agree.