

DIVISION II

ARKANSAS COURT OF APPEALS

No. CACR07-270

BRUCE E. WEBSTER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 24, 2007

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT [NO. CR-2006-
418-J]

HON. JAMES R. MARSCHEWSKI,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Chief Judge

Bruce E. Webster appeals from his conviction at a bench trial of possession of drug paraphernalia, for which imposition of sentence was suspended for five years. He argues that the finding of guilt is not supported by substantial evidence. We affirm without reaching the merits of his argument.

In order to preserve for appeal the issue of the sufficiency of the evidence, a defendant must first raise the issue to the trial court in the manner provided in Ark. R. Crim. P. 33.1. Rule 33.1(b) provides that, in a nonjury trial, a defendant must challenge sufficiency by a specific motion to dismiss at the close of all of the evidence. If the defendant moves for dismissal at the close of the State's proof and the trial court denies the motion, then the motion must be renewed at the close of all of the evidence. *Id.* A defendant's failure to raise the issue at the time and in the manner required by the rule 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, appellant moved to dismiss at the close of the State's case and renewed the motion at the close of his own case. However, he failed to renew his motion at the close of the State's rebuttal evidence. The requirement that the motion be renewed at the close of all of the evidence obliged appellant to renew his motion at the close of the State's rebuttal case in order to preserve the issue. *Doss v. State*, 351 Ark. 667, 97 S.W.3d 413 (2003); *King v. State*, 338 Ark. 591, 999 S.W.2d 183 (1999); *Hamm v. State*, 91 Ark. App. 177, 209 S.W.3d 414 (2005). Appellant's failure to do so in this case was a waiver of the issue raised on appeal.

Affirmed.

GLADWIN and ROBBINS, JJ., agree.