

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION IV

CACR 07-410

DECEMBER 5, 2007

JASON E. PARKER

APPELLANT

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
GREENWOOD DISTRICT
[NO. CR-2005-156-G]

V.

STATE OF ARKANSAS

APPELLEE

HONORABLE JAMES ROBERT
MARSCHESKI, JUDGE

AFFIRMED

Appellant Jason E. Parker appeals his conviction for misdemeanor fleeing, as found by the Sebastian County Circuit Court, arguing that there is insufficient evidence to support the conviction. The State counters that the sufficiency of the evidence is not preserved for review, or alternatively that the State presented sufficient evidence to support the finding of guilt. We affirm.

Rule 33.1 (b) of the Arkansas Rules of Criminal Procedure provides that:

In a nonjury trial, if a motion for dismissal is to be made, it shall be made at the close of all of the evidence. The motion for dismissal shall state the specific grounds therefor. If the defendant moved for dismissal at the conclusion of the prosecution's evidence, then the motion must be renewed at the close of all of the evidence.

The failure to challenge the sufficiency of the evidence as required in subsection (b) constitutes a waiver of the sufficiency issue. Ark. R. Crim. P. 33.1(c). Rule 33.1 is strictly construed. *State v. Holmes*, 347 Ark. 689, 66 S.W.3d 640 (2002); *Christian v. State*, 318 Ark. 813, 889 S.W.2d 717 (1994); *Bradley v. State*, 41 Ark. App. 205, 849 S.W.2d 8 (1993).

In this case, the State rested, and appellant moved for directed verdict, which was denied. Thereafter, the State presented rebuttal evidence, the State presented closing argument, and appellant presented closing argument. Appellant failed to renew his motion for directed verdict at the close of all the evidence, as required by Rule 33.1. Consequently, appellant's challenge to the sufficiency of the evidence was not preserved for appellate review.

Even were we to consider the merits of this argument, we would affirm. Appellant was convicted of misdemeanor fleeing by means of a vehicle in violation of Ark. Code Ann. § 5-54-125 (Repl. 2005), which on these facts required proof that appellant knew that his immediate detention was being attempted by a law enforcement officer, and that appellant failed to refrain from fleeing. Appellant's whole defense rested on the assertion that he was unaware that the officer was behind him and wanted him to pull over. The State presented sufficient eyewitness testimony of the officer pursuing appellant that appellant was aware that the officer was seeking to detain him, and that appellant failed to stop his vehicle and instead led a chase through town. Any challenge to this evidence would rest on an attack on the officer's credibility, which assessments are left to the finder of fact.

We affirm.

PITTMAN, C.J., and BIRD, J., agree.