

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
KAREN R. BAKER, JUDGE

DIVISION III

CACR07-848

MAY 7, 2008

LIGIE WITT WADDELL

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE RANDOLPH
COUNTY CIRCUIT COURT
[NO. CR2007-33]

HONORABLE HAROLD S. ERWIN,
JUDGE

AFFIRMED

Appellant Ligie Witt Waddell was convicted by a jury in Randolph County Circuit Court of first-degree terroristic threatening. He was sentenced as a habitual offender to 120 months' imprisonment in the Arkansas Department of Correction, with an additional twenty-four months' suspended. Appellant's sole point on appeal is that the evidence was insufficient to support his conviction. Because we find that appellant's argument is not preserved for appellate review, we affirm the trial court's decision.

The victims in this case were Bridget Kirkpatrick, her mother Doris Stills, and her infant son; they lived next door to appellant on Shannon Street in Pocahontas, Arkansas. On February 4, 2007, at approximately 8:00 p.m., Ms. Kirkpatrick saw a fire on her property and called the fire department. The fire department arrived and extinguished the fire. On February 5, 2007, Ms. Kirkpatrick again saw a fire on her property. The fires on February 4 and 5 were located beneath

her window and along the fence separating her house from appellant's. Ms. Kirkpatrick testified that appellant was responsible for starting the fires.

On February 6, 2007, Ms. Kirkpatrick's nephew and her sister, Candy McReynolds, visited Ms. Kirkpatrick at her home on Shannon Street. As they were leaving, Ms. Kirkpatrick walked them out to their car. Appellant began yelling at Ms. McReynolds. He yelled, "Tell Doris Stills I've caught it on fire – You better call the fire department." Ms. McReynolds responded, "[T]ell her yourself." Ms. Kirkpatrick testified that appellant "took a glass of some kind of liquid and threw it at [me]." She then went inside to call the police. On her way inside, she heard appellant yell words to the effect of, "I'm going to burn you out" or "I'll make you move." She described him as very angry. She did not understand his anger, as she had not "done anything to him that would cause him to want to burn [my] house down." Ms. Kirkpatrick testified that she was very concerned about the safety of her infant son and mother, who lived there with her.

Ms. McReynolds testified at trial that as she was walking to her car with her son, appellant yelled, "Tell Doris I'm on fire." He also yelled, "You're moving. You're moving. I'm burning you out." Ms. McReynolds understood appellant to mean that he was going to burn her sister's house down. She also confirmed that appellant threw a container of liquid at Ms. Kirkpatrick.

Ms. Porterfield also testified at trial. She stated that on February 6, she was at appellant's home with her mother to load into a truck a treadmill that her father had purchased from him. When she entered appellant's home, his radio—pointed toward Ms. Kirkpatrick's home—was "blasting" in the bathroom. Ms. Porterfield testified that appellant told her "he was trying to get the neighbors to move out" because he "[did not] like them and wanted them to move." When Ms. Porterfield and appellant stepped outside to load the treadmill, appellant began yelling at Ms. Kirkpatrick, shouting the following statements: "You are going to move"; "You're going to get out of this place"; "I don't

want you”; and “I’ll burn your place down.” At the time appellant began yelling, Ms. Kirkpatrick had not spoken to appellant. Ms. Porterfield testified that appellant kept repeating the statements to Ms. Kirkpatrick over and over again. Ms. Porterfield then testified that appellant said to Ms. Kirkpatrick, “I don’t care [that there is a child in there]. You’ll sleep sometime. You’ll either move out or you’ll die.” Ms. Porterfield testified that she did not leave immediately because she was unsure of what was about to happen. She testified that Ms. Kirkpatrick then told appellant she was calling the police. Then, appellant got a water hose and extinguished the existing fire. Appellant then remarked that he would start the fire again at a later time. Ms. Porterfield testified that the two or three small fires that were burning when she arrived at appellant’s home on February 6, were burning close to the house. Appellant told Ms. Porterfield that he had started the fires.

Ms. Porterfield’s mother, Lucina Hart, also testified at the hearing. She confirmed Ms. Porterfield’s testimony and added that appellant said “he didn’t like those people over there.” Ms. Hart testified that appellant told her that “he was going to burn their house down and he had lit a fire on the grass and was trying to get it going towards their house.” Ms. Hart stated that when she arrived at appellant’s home, she walked past three fires before she got to appellant’s door. She also stated that she saw appellant start a fire. After the police left, she saw appellant light the fire again and attempt to “[push] the grass and weeds and everything towards their apartment.” Ms. Hart testified that she was frightened by appellant’s actions and threats to burn Ms. Kirkpatrick’s home.

At the close of the evidence, defense counsel made a motion for a directed verdict, and the trial court denied the motion.

Appellant’s only argument on appeal is that the trial court erred in denying his motion for a directed verdict. Rule 33.1 of the Arkansas Rules of Criminal Procedure states in relevant part:

(a) In a jury trial, if a motion for directed verdict is to be made, it shall be made at the close of the evidence offered by the prosecution and at the close of all of the evidence. A motion for directed verdict *shall state the specific grounds therefor*.

(c) The failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required by subsections (a) and (b) above will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment. A motion for directed verdict or for dismissal 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. A renewal at the close of all of the evidence of a previous motion for directed verdict or for dismissal preserves the issue of insufficient evidence for appeal.*

(Emphasis added.)

Appellant's motion, which the trial court denied, was as follows: "Your Honor, the defense moves for a directed verdict and he [has] nothing else." While appellant did move for a directed verdict, his motion merely asked for a directed verdict, failing to identify in what respect the evidence was insufficient. *See Ark. R. Crim. P. 33.1(a)*. A general motion that merely asserts that the State has failed to prove its case, such as the motion made by appellant in this case, is inadequate to preserve the issue for appeal. *Carey v. State*, 365 Ark. 379, 230 S.W.3d 553 (2006). The reason underlying the requirement that specific grounds be stated and that the absent proof be pinpointed is that it allows the circuit court the option of either granting the motion, or, if justice requires, of allowing the State to reopen its case and supply the missing proof. *Id.* Moreover, in failing to renew his motion at the close of all the evidence, as required by Arkansas Rules of Criminal Procedure 33.1(a), appellant did not preserve his argument for appeal. As a result, we will not address the merits of his argument as to the sufficiency of the evidence.

In sum, appellant's motion was general in nature, failed to specify the respect in which the evidence was insufficient, and was not renewed at the close of all the evidence. As a result, we will

not address the merits of his argument as to the sufficiency of the evidence.

Affirmed.

GLADWIN and GRIFFEN, JJ., agree.