

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
LARRY D. VAUGHT, JUDGE

DIVISION IV

CACR06-108

September 27, 2006

SARAH BADEAUX

APPELLANT

APPEAL FROM THE WASHINGTON  
COUNTY CIRCUIT COURT  
[CR-04-2515-1]

V.

HON. WILLIAM A. STOREY,  
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Sarah Badeaux appeals following her conviction for driving while intoxicated. On appeal, she challenges the sufficiency of the evidence to support her conviction. Because Badeaux did not preserve this argument for appeal, we affirm.

On June 16, 2004, Badeaux and two girlfriends took her H2 Hummer “mudding.” The women believed that they were in a creek bed in Falls Creek when, in actuality, they were in Devil’s Den State Park. Badeaux testified that not long after the women realized that they were lost, the vehicle sank into the mud. Because her cell phone would not work, Badeaux called her OnStar system for assistance, and a tow truck was sent. Badeaux testified that after getting stuck, they decided to drink alcoholic beverages. She stated that no one drank any alcoholic beverage until after the vehicle was stuck.

After calling for help, Badeaux crawled up an embankment and waited for the tow truck. Jack Kildow testified that he arrived on the scene with the tow truck and smelled alcohol on Badeaux's breath. He agreed to haul her vehicle out of the lake, but he told her that he would have to get it approved with the park rangers. Kildow contacted Ranger Bruce and Ranger Becker. Both rangers testified that they arrived on the scene and that they too smelled alcohol on Badeaux's breath. Ranger Bruce administered field-sobriety tests on Badeaux, all of which she failed. She was then escorted to the jail, where she registered a .102 on a breathalyzer exam.

At trial, the State presented testimony from Kildow, both rangers, and the detective who administered the breathalyzer exam. Immediately following the State's presentation of proof, Badeaux moved for directed verdict arguing that the State had failed to prove a prima facie case of DWI because there was no evidence of intoxication and actual physical control of the vehicle. The court ruled that Badeaux was correct that the State had failed to prove physical control but that there was sufficient evidence to show she was operating the vehicle while intoxicated to get to a jury. Therefore, the court denied the motion. Badeaux then presented her defense and rested. She failed to renew her motion for directed verdict.

Rule 33.1 of the Arkansas Rules of Criminal Procedure requires a motion for directed verdict to challenge the sufficiency of the evidence at the close of the State's evidence and again at the close of all evidence to avoid a waiver. Because Badeaux failed to renew her motion for directed verdict following her presentation of a defense, her argument is not preserved for our review on appeal. *Fisher v. State*, 84 Ark. App. 318, 139 S.W.3d 815

(2004). Therefore, her challenge to the sufficiency of the evidence is waived on appeal, and we affirm her conviction.

Affirmed.

GRIFFEN and ROAF, JJ., agree.