

2011 Ark. App. 617

**ARKANSAS COURT OF APPEALS**DIVISION IV  
No. CACR 10-1032

DANIEL E. RHOADES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 12, 2011

APPEAL FROM THE WHITE  
COUNTY CIRCUIT COURT  
[NO. CR-09-361]HONORABLE ROBERT EDWARDS,  
JUDGE

AFFIRMED

**DOUG MARTIN, Judge**

The State charged appellant Daniel Rhoades with one count of felony incest on August 14, 2009, alleging that he had engaged in deviate sexual activity with another person sixteen years of age or older whom he knew to be his stepdaughter. Rhoades was found guilty by a White County jury and sentenced to 120 months in the Arkansas Department of Correction. On appeal, his sole argument is that there was insufficient evidence to support the jury's verdict. Because he failed to move for directed verdict, however, we are unable to reach the merits of his argument, and we affirm.

At the conclusion of the State's case, the State rested; Rhoades, however, did not move for a directed verdict at that time. Rhoades also failed to move for a directed verdict at the conclusion of his own case, at the conclusion of the State's rebuttal case, and at the

2011 Ark. App. 617

conclusion of his own rebuttal.<sup>1</sup> 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 the evidence. Ark. R. Crim. P. 33.1(a) (2011). The failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required in Rule 33.1(a) will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict. Ark. R. Crim. P. 33.1(c) (2011); *see also Bryant v. State*, 2011 Ark. App. 348, \_\_\_ S.W.3d \_\_\_. Rule 33.1 is strictly construed. *Grube v. State*, 2010 Ark. 171, \_\_\_ S.W.3d \_\_\_. Here, Rhoades did not move for a directed verdict at the close of the State's evidence or at the close of all of the evidence. Rhoades failed to follow the requirements of Rule 33.1, and his challenge to the sufficiency of the evidence to support his conviction cannot be considered on appeal.

Affirmed.

GLOVER and ABRAMSON, JJ., agree.

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<sup>1</sup>After new counsel was appointed to represent Rhoades on appeal, his new attorney filed a motion for new trial alleging that trial counsel had been ineffective for failing to move for a directed verdict. The trial court denied the motion, finding that, even if trial counsel had moved for directed verdict, it would have been denied, because any such error was harmless; the trial court commented that the evidence was "clearly substantial and sufficient to cause the court to deny any directed-verdict motion."