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ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR10-1336

CURVIN VONTAL McCOY APPELLANT	**Opinion Delivered** October 12, 2011 APPEAL FROM THE BRADLEY COUNTY CIRCUIT COURT [No. CR-200-33-4]
V.	HONORABLE DON GLOVER, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

LARRY D. VAUGHT, Chief Judge

Curvin Vontal McCoy was convicted by a Bradley County Circuit Court jury of robbery and theft of property and sentenced to forty years' imprisonment. He appeals only the robbery conviction, arguing that there was insufficient evidence to support it. Because McCoy's argument is not preserved for appeal, we affirm.

The State's evidence presented at trial established that on May 20, 2010, at a gas station, McCoy pushed a woman in her back and took her pocketbook. At the conclusion of the State's evidence, counsel for McCoy moved for a directed verdict, arguing that the State failed to prove that McCoy was the person who robbed the victim. The trial court denied the motion, and the defense presented McCoy's testimony. On the stand, McCoy admitted that he was the person who took the victim's pocketbook and was guilty of theft of property. However, he testified that he was not guilty of robbery because he did not push the victim.

The defense rested following McCoy's testimony. When the trial court asked defense counsel whether he had any motions to make, counsel stated, "I do not Your Honor." After

asking the parties about the jury instructions, the trial court acknowledged a comment made by McCoy.[1] In response, counsel for the State stated that McCoy believed "snatching somebody's purse from them is not robbery." The State's counsel added that because there was testimony from the victim that McCoy pushed her in the back, there was evidence of bodily injury—an element of robbery. Counsel for the State said that McCoy was separately charged with theft of property for stealing the debit cards in the victim's pocketbook. To this, counsel for McCoy stated that he had explained the robbery and theft-of-property statutes to McCoy and recommended that McCoy not testify. Defense counsel further stated that McCoy wanted to introduce some cases showing that he did not commit a robbery. The abstract and record reflect that the trial court, without comment, moved on to jury instructions. Later, the jury returned a guilty verdict on both counts—robbery and theft of property.

On appeal, McCoy argues that there is insufficient evidence supporting his robbery conviction. Specifically, he argues that there was a lack of evidence of the employment of physical force against the victim who claimed that she was pushed by McCoy. However, in the only motion for directed verdict made by McCoy's counsel at trial (made at the close of the State's case), this argument was not made. At that time, McCoy's counsel argued only that it was not McCoy who committed the robbery. Further, at the close of the defense's case, there was no motion for directed verdict or a renewal of the prior motion.

Rule 33.1(a) of the Arkansas Rules of Criminal Procedure provides that, in a jury trial, a motion for directed verdict shall be made at the close of the State's case and at the close of the

[1]The record does not reveal what McCoy's comment was.

evidence, and shall state the specific grounds therefor. Ark. R. Crim. P. 33.1(a). The failure of a defendant to make a specific directed-verdict motion constitutes a waiver of any question pertaining to the sufficiency of the evidence. Ark. R. Crim. P. 33.1(c). A motion for directed verdict based on insufficiency of the evidence must specify the respect in which the evidence is deficient. *Id.* A renewal at the close of all of the evidence of a previous motion for directed verdict preserves the issue of insufficient evidence for appeal. *Id.* Rule 33.1 is to be strictly construed, and the reason underlying the requirement for specific grounds is to give the State the opportunity to reopen its case to supply the missing proof, if justice so requires. *Arroyo v. State*, 2011 Ark. App. 523, at 3–4.

Based upon Rule 33.1, we hold that McCoy's argument is not preserved. The only motion for directed verdict made (at the close of the State's evidence) did not include the argument he now makes on appeal. At the close of all of the evidence, McCoy's counsel did not add the argument he now makes on appeal (or any other argument for that matter). Ark. R. Crim. P. 33.1 (a), (c). Accordingly, we affirm.

Affirmed.

HOOFMAN and BROWN, JJ., agree.