

# ARKANSAS COURT OF APPEALS

DIVISION III  
No. CA11-1021

I.P.

APPELLANT

Opinion Delivered April 18, 2012

V.

APPEAL FROM THE FAULKNER  
COUNTY CIRCUIT COURT,  
[NO. JV-2011-174]

STATE OF ARKANSAS

HONORABLE RHONDA KAY  
WOOD, JUDGE

APPELLEE

AFFIRMED

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## RAYMOND R. ABRAMSON, Judge

Appellant I.P. appeals his adjudication of delinquency by the Faulkner County Circuit Court on one count of harassing communications and one count of disorderly conduct for which he was placed on probation for one year. His sole argument on appeal is that the evidence was insufficient to support the adjudication of delinquency.

A petition was filed on March 8, 2011, alleging that I.P. had committed first-degree terroristic threatening. I.P. was alleged to have posted a comment on his Facebook page in which he threatened to bring weapons to his school.<sup>1</sup> The petition was subsequently amended on June 28, 2011, to allege harassing communications and disorderly conduct.

An adjudication hearing was held on June 29, 2011. Greenbrier Junior High Assistant Principal Brett Meek and Lieutenant James Guffey, the school resource officer, testified on

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<sup>1</sup> His post was as follows: “F\*\*k shooting up the school, i’m going in there with f\*\*king SHURIKENS: and f\*\*king KATANAS! And NINJA REFLEXES!”



behalf of the State regarding their investigation of the threatening post. At the close of the State's case, I.P. moved to dismiss the charges on sufficiency grounds, and the trial court denied the motion. I.P.'s father and Michael Moore, a student at the school who responded to I.P.'s Facebook post, then testified for the defense. I.P. did not renew his motion to dismiss the charges at the close of the evidence.

The court found that I.P. had committed harassing communications and disorderly conduct as alleged and entered an order adjudicating I.P. delinquent. The court then placed I.P. on twelve months' probation. I.P. filed a timely notice of appeal.

On appeal, I.P. argues that there was insufficient evidence to support his adjudication. However, because he failed to renew his motion to dismiss at the close of all the evidence, his arguments are not preserved for appeal. Under the Juvenile Code, the Arkansas Rules of Criminal Procedure apply to delinquency proceedings. Ark. Code Ann. § 9-27-325(f) (Supp. 2009). 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 and shall state specific grounds. Ark. R. Crim. P. 33.1(b)(2011). 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. *Id.* The failure of a defendant to challenge the sufficiency of the evidence at the times required under the rules constitutes a waiver of any question pertaining to the sufficiency of the evidence. *See* Ark. R. Crim. P. 33.1(c). I.P.'s failure to challenge the sufficiency of the evidence at the close of all the evidence thus bars his arguments on appeal.

Affirmed.



Cite as 2012 Ark. App. 273

PITTMAN and BROWN, JJ., agree.

*Michael Sutterfield*, for appellant.

*Dustin McDaniel*, Att’y Gen., by: *Karen Virginia Wallace*, Ass’t Att’y Gen., for appellee.