

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR10-718

TYRONE McGRAW

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered FEBRUARY 2, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SECOND DIVISION
[NO. CR09-3973]

HONORABLE CHRISTOPHER
CHARLES PIAZZA, JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

On February 6, 2006, the City of Little Rock Department of Housing and Neighborhood Programs (the City) sent Tyrone McGraw a warning notice advising him that his property located at 1214 Schiller Street had been inspected and that the inspection had revealed that the structure was unsafe and unfit for human habitation.

On May 4, 2006, McGraw was issued a citation to appear stating that he had violated section 20-24¹ of the Little Rock City Code for failing to abate or demolish an unsafe structure and by failing to comply with a notice issued on April 4, 2006.

¹ This code section provides:

It shall be a violation of this article for any owner, as defined herein, to permit, allow to remain, fail to take action to demolish and/or remove or correct, or fail to board and secure any dangerous, dilapidated, substandard or unsafe building or structure as directed by the city pursuant to section 20-28.

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On August 3, 2006, McGraw entered a guilty plea in Little Rock District Court to a violation of Little Rock City Code section 20-24 for failure to repair or demolish a structure that is deemed unsafe.

Between August 3, 2006 and November 20, 2008, McGraw appeared before the court numerous times, and it was determined each time that his property remained out of compliance with the Little Rock City Code. On November 20, 2008, the City requested that daily fines be assessed. The court granted that request and assessed daily fines in the amount of \$10 per day. Between November 20, 2008 and October 5, 2009, McGraw reported to the district court numerous times and each time it was determined that the property remained out of compliance with the Little Rock City Code. On October 5, 2009, McGraw appeared, and it was again determined that the property was not in compliance with the Little Rock City Code. The City requested Judgment on the daily fines for an accrued amount of \$2385, which the district court granted.

McGraw timely perfected a *de novo* appeal to the Pulaski County Circuit Court. At the bench trial held on March 18, 2010, McGraw asserted that there was an insufficient record/basis to support the \$2385 fine. He argued that he had not been under a daily fine for the entire time his case was before the Environmental Court because at times the court had suspended the imposition of daily fines to allow him to come into compliance and that, when daily fines had been imposed, the daily rate had been between \$5 and \$15 a day.

After hearing from Little Rock Code Enforcement Officer Charlie Cowart, Patricia

McGraw, and McGraw, the trial court, finding that McGraw's violation of the Little Rock City Code was, in its nature, continuous with respect to time, again imposed fines in the amount of \$2385.

McGraw filed a timely appeal of the circuit court's order. On appeal he argues that there was insufficient evidence to show that he had not made substantial progress on making his property safe and habitable; and, therefore, the fines assessed against him should be abated. He further claims that his fines should be abated because he had brought his house into compliance with the City's building and safety codes. Finally, he argues that, because it is unclear how the final amount of fines imposed was calculated, his due-process rights were violated.

McGraw's first argument challenges the sufficiency of the evidence. He claims that he had been making sufficient progress on correcting the violations and, in fact, had brought the house into compliance with the City's building and safety codes. As there was insufficient evidence of noncompliance and as there was evidence that because he had brought his house into compliance with the City's building and safety codes, he asserts his fines should have been abated. We do not reach this issue, however, because it was not properly preserved for appeal.

Rule 33.1(b) of the Arkansas Rules of Criminal Procedure requires that in nonjury trials, if a motion for dismissal is to be made, it shall be made at the close of all of the evidence, and if a motion for dismissal is made at the close of the State's evidence, it must be renewed at the close of all of the evidence; in both cases, the motion for dismissal must state the specific grounds therefor. The failure to challenge the sufficiency of the evidence at the time and in the

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manner specified constitutes a waiver of any question pertaining to the sufficiency of the evidence. Ark. R. Crim. P. 33.1(c) (2010). McGraw never made the appropriate motions to dismiss and, therefore, his argument as to the sufficiency of the evidence is waived.

McGraw next argues that the fine imposed by the trial court did not comport with procedural due-process because of the difficulty in ascertaining how the amount was calculated. While McGraw questioned at trial the manner in which the fine was calculated, he never made a procedural due process argument to the circuit court and never received a ruling on that ground. Thus, his claim is not preserved for review. An allegation that a due-process right has been violated is waived unless it is first raised before the trial court; even constitutional arguments must be raised to the trial court before they will be addressed on appeal. *Dulaney v. State*, 327 Ark. 30, 937 S.W.2d 162 (1997).

Affirmed.

VAUGHT, C.J., and GRUBER, J., agree.