

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR09-236

THEOTRICE MITCHELL
APPELLANT
V.
STATE OF ARKANSAS
APPELLEE

Opinion Delivered October 28, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FIRST
DIVISION [CR-2008-1312]

HONORABLE MARION A.
HUMPHREY, JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

Appellant, Theotrice Mitchell, was convicted in a bench trial in Pulaski County Circuit Court of the offenses of possession of cocaine with intent to deliver, possession of marijuana with intent to deliver, possession of drug paraphernalia, and maintaining a drug premises. He was sentenced to a total of ten years' imprisonment, with the recommendation of boot camp. On appeal, Mitchell argues that the trial court erred in finding that he was in constructive possession of the contraband seized from the residence located at 1600 Lynette Drive. This argument is not preserved for appellate review; therefore, we affirm Mitchell's convictions.

Rule 33.1(b) of the Arkansas Rules of Criminal Procedure provides that, in a bench trial, "if a motion for dismissal is to be made, it shall be made at the close of all of the

evidence.” Such motion must state the specific grounds for dismissal. Subsection (c) of Rule 33.1 states that failure to challenge the sufficiency of the evidence “at the times and in the manner required in subsection . . . (b) above will constitute a waiver of any question pertaining to the sufficiency of the evidence to support . . . the judgment.”

In this case, after Mitchell rested, the trial court asked if there was any rebuttal, and the State replied in the negative. The trial court then asked if there was anything in closing. Without interruption, the State proceeded to make its closing arguments, followed by Mitchell’s closing arguments, which included the argument Mitchell now makes on appeal. However, in *McClina v. State*, 354 Ark. 384, 123 S.W.3d 883 (2003), our supreme court held that Rule 33.1 is strictly construed and interpreted, and that in order to preserve the sufficiency issue, the appellant is required to make a motion for dismissal at the close of all evidence before closing arguments. Because Mitchell did not make a motion to dismiss at the close of all of the evidence, his sufficiency argument is not preserved for appellate review.

Affirmed.

PITTMAN and HART, JJ., agree.