

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR08-1061

DIANA MICHELLE CARTER,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLEE

Opinion Delivered 18 MARCH 2009

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT,
[NO. CR-07-45-4]

THE HONORABLE CAROL
CRAFTON ANTHONY, JUDGE

AFFIRMED

D.P. MARSHALL JR., Judge

Diana Carter was charged with manslaughter for stabbing and killing her on-again, off-again boyfriend. A Ouachita County jury convicted Carter of negligent homicide—a lesser-included offense. She was sentenced to twelve months' imprisonment and fined \$1,000.00. She now challenges the sufficiency of the evidence. Her argument, however, is not preserved.

Carter's attorney moved for a directed verdict at the appropriate times, making two arguments. First, Carter argued that the State had failed to rebut Carter's justification defense, thus entitling her to a dismissal of all charges as a matter of law. Second, Carter argued that the State had not proven that she acted recklessly—the state of mind required for manslaughter. On appeal, Carter makes neither of these arguments. Instead, she contends that the evidence was insufficient to support her

negligent-homicide conviction because her actions were justified and not criminally negligent.

“[I]n order to preserve challenges to the sufficiency of the evidence supporting convictions for lesser-included offenses, defendants must address the lesser-included offenses either by name or by apprising the trial court of the elements of the lesser-included offenses questioned by their motions for directed verdict.” *Mainard v. State*, 102 Ark. App. 210, 214, ___ S.W.3d ___, ___ (2008); *see also Grillot v. State*, 353 Ark. 294, 304, 107 S.W.3d 136, 142 (2003). Carter’s appeal stumbles because she never mentioned negligent homicide or the negligence element of this lesser-included offense in her directed-verdict motions.

Mainard is directly on point. There the appellant was charged with first-degree murder and convicted of second-degree murder, a lesser-included offense. 102 Ark. App. at 211, ___ S.W.3d at ___. Mainard timely made and renewed his motion for a directed verdict, arguing that the State had not proven the elements of first-degree murder and that the State had not presented evidence rebutting Mainard’s justification defense. 102 Ark. App. at 212–13, ___ S.W.3d at ___. On appeal, Mainard argued that substantial evidence did not support his second-degree-murder conviction because the State failed to negate his justification defense. 102 Ark. App. at 214, ___ S.W.3d at ___. Our court held that Mainard’s argument was not preserved because Mainard’s directed-verdict motions did not mention the lesser-included offense of second-degree

murder or any of its elements. *Ibid.*

Like *Mainard*, Carter never mentioned negligent homicide or any of its elements when seeking a directed verdict. Therefore, she waived her sufficiency challenge on this lesser-included offense. *Ibid.*

Affirmed.

GRUBER and GLOVER, JJ., agree.