

Cite as 2010 Ark. App. 621

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-68

STEVEN W. EVANS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered SEPTEMBER 22, 2010

APPEAL FROM THE WHITE
COUNTY CIRCUIT COURT
[CR-2009-81]

HONORABLE ROBERT EDWARDS,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Steven W. Evans was charged in White County Circuit Court with first-degree battery and aggravated assault for events that occurred in front of his home the night of January 16, 2009. He was tried before the bench, was found guilty on both counts, and was sentenced to two concurrent terms of six years' imprisonment. In his sole point on appeal, he challenges the sufficiency of the evidence to support the convictions. He does not deny that he fired a .40-caliber pistol and injured a passenger in a car from which paint balls had been shot at his home; he asserts that his actions were justified as self-defense. The issue is not preserved for our review.

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 the specific grounds thereof. Ark. R. Crim. P. 33.1(b); *Marcyniuk v. State*, 2010 Ark. 257, 373 S.W.3d 243. The failure of a defendant to challenge

the sufficiency of the evidence at the times and in the manner required by the rule constitutes a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment. Ark. R. Crim. P. 33.1(c). A closing argument does not substitute for a motion to dismiss. *State v. Holmes*, 347 Ark. 689, 66 S.W.3d 640 (2002).

The defense presented its case after the State rested. Evans testified that he fired the pistol in self-defense, thinking that he heard shots from a small-caliber weapon and feeling that his life and property were in danger. In a closing argument made at the conclusion of all the evidence, defense counsel argued that Evans acted in self-defense and was justified in shooting back because he thought someone was shooting a real gun at him. Counsel did not move for dismissal at any time.

Because Evans made no motion challenging the sufficiency of the evidence and arguing the defense of justification, he has waived the issue for purposes of appeal.

Affirmed.

HENRY and BAKER, JJ., agree.