

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 09-728

MARCUS HOLLEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JANUARY 13, 2010

APPEAL FROM THE DESHA
COUNTY CIRCUIT COURT
[NO. CR-2008-60-1B]

HONORABLE SAM POPE, JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

WAYMOND M. BROWN, Judge

A Desha County jury found Marcus Holley guilty of two counts of forgery in the first degree and sentenced him to a ten-year term in the Arkansas Department of Correction. Holley's attorney has filed a motion to withdraw as counsel. The motion was accompanied by a no-merit brief, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(k), wherein counsel contends that all rulings adverse to his client are abstracted and discussed. Holley has filed no pro se points. After reviewing the record, we conclude that an appeal in this case would be wholly without merit. Accordingly, we affirm Holley's conviction and grant counsel's motion to withdraw.

According to the State's evidence, Holley and Octavius Stovall used counterfeit bills to make purchases at the Dollar General and the Mad Butcher in Dumas. The actual bills were entered into evidence at trial, and a Secret Service agent confirmed that they were counterfeit.

On August 7, 2008, Holley and Stovall entered the Dollar General, and both made purchases. Employee Tenesha Holley (Marcus Holley's cousin) was working as a cashier. Tenesha did not recognize that the money was counterfeit, but her manager asked to inspect the money used by Stovall. The manager recognized the bill as counterfeit. Upon the manager's request, Tenesha gave the manager the bill used by Holley, which the manager also recognized as counterfeit.

The two then went to the Mad Butcher, where they purchased two \$400 money orders. According to employee Patrice Dunmore, Holley handed the currency to Stovall, who gave the money to her. Dunmore then paged her manager, who called the police. Officer Rose Weathers collected the bills. The counterfeit bills were presented at trial, and Officer Weathers confirmed that they were the same ones that were given to her at the Mad Butcher. The serial numbers on the bills matched those in her report. The bills obtained from the Dollar General also had the same serial numbers as some of those collected at the Mad Butcher.

Stovall and Holley then went to Piggly Wiggly to attempt to cash the money orders. Deputy Clarence McTigrit with the Desha County Sheriff's Department worked security at the Piggly Wiggly and was asked to follow Stovall and Holley. They got into a tan Suburban and left. McTigrit followed and later attempted to stop them. Stovall, the driver, eventually stopped. Holley jumped out of the car and fled, but he was eventually apprehended.

At the end of the State's case, Holley moved for directed verdict, arguing that neither Dunmore nor Tenesha testified that they actually received the counterfeit money that was presented to the court. The court denied the motion. Holley then testified in his own defense

and renewed the motion, which was again denied. The jury later found Holley guilty of two counts of forgery in the first degree and sentenced him to two concurrent ten-year terms in the Arkansas Department of Correction.

An attorney's request to withdraw from appellate representation based upon a meritless appeal must be accompanied by a brief that contains a list of all rulings adverse to his client made on any objection, motion, or request made by either party. *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). The argument section of the brief must contain an explanation of why each adverse ruling is not a meritorious ground for reversal. *Id.* We are bound to perform a full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous. *Campbell v. State*, 74 Ark. App. 277, 47 S.W.3d 915 (2001). If counsel fails to address all possible grounds for reversal, we can deny the motion to withdraw and order rebriefing. *Sweeney v. State*, 69 Ark. App. 7, 9 S.W.3d 529 (2000).

We consider challenges to the sufficiency of the evidence before reviewing any other allegations of error. *See Boldin v. State*, 373 Ark. 295, 283 S.W.3d 565 (2008). When considering a challenge to the sufficiency of the evidence, this court considers the evidence in the light most favorable to the State, considering only the evidence in favor of the guilty verdict, and affirms if the conviction is supported by substantial evidence. *Mitchem v. State*, 96 Ark. App. 78, 238 S.W.3d 623 (2006). Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003).

At trial, Holley argued that the evidence was insufficient because neither Dunmore nor Tenesha testified that they actually received the counterfeit money that was identified at trial. However, a Secret Service agent confirmed that the bills were counterfeit, and Officer Weathers testified that the bills presented at trials were the same ones that she received from the stores, which were the ones given to them by Stovall and Tenesha. Substantial evidence supports the convictions, and there is no meritorious argument for appeal on this point.

The next objection was to the admissibility of the counterfeit bills. Holley argued at trial that the State presented insufficient evidence of chain of custody. When an object is subject to positive identification, the proof of chain of custody need not be conclusive. *Abdullah v. State*, 301 Ark. 235, 783 S.W.2d 58 (1990). In this case, the bills were identified by serial number, and the serial numbers matched those in Officer Weathers's report. This is sufficient identification of the evidence for it to be admissible.

The remaining points on appeal are general evidentiary rulings, which are reviewed under the abuse-of-discretion standard. *Barrett v. State*, 354 Ark. 187, 119 S.W.3d 485 (2003). First, prior to trial, Holley filed a motion in limine to exclude evidence of him fleeing from police after leaving the Mad Butcher. Holley claimed that the evidence was irrelevant; however, it is settled that flight following the commission of an offense is a factor that may be considered with other evidence in determining probable guilt and may be considered as corroboration of evidence tending to establish guilt. *Chapman v. State*, 343 Ark. 643, 38 S.W.3d 305 (2001).

Second, Holley made hearsay objections during Deputy McTigrit's testimony when the

deputy told the court about the call he received regarding the suspects. The trial court correctly ruled that such testimony is not hearsay when it is offered to show the basis of the officer's actions. *McKenzie v. State*, 69 Ark. App. 186, 12 S.W.3d 250 (2000).

Third, the prosecutor had a hearsay objection during Holley's testimony when Holley's attorney asked him about a statement from the Secret Service agent. The court sustained the objection, and Holley's attorney continued the direct examination without proffering the statement. Without a proffer as to what the actual statement is, no argument regarding the admissibility of that statement is properly before this court. Ark. R. Evid. 103(a)(2).

Fourth, during the State's cross-examination of Holley, Holley made a relevancy objection when the State asked him how long he had been in custody. The State stated that the question was to lay a foundation for future questioning, and the court allowed the State to proceed without ruling on the objection. While counsel explains that the question was fair, the failure to obtain a ruling precludes this court from reversing on this point. *See Williams v. State*, 375 Ark. 132, 289 S.W.3d 97 (2008).

Finally, during the sentencing phase, Holley tried to introduce a document showing that Stovall pleaded guilty and received five years for the forgery. The trial court disallowed the document and correctly so. The sentence received by a codefendant is not relevant to a defendant's guilt, innocence, or punishment. *Baxter v. State*, 324 Ark. 440, 922 S.W.2d 682 (1996).

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without merit. Counsel has complied with the dictates of *Anders* and Ark. Sup. Ct. R. 4-3(k).

Accordingly, we grant his motion to withdraw and affirm appellant's conviction.

Affirmed; motion to withdraw granted.

HENRY and BAKER, JJ., agree.