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ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-18-241

SHAWN DANIEL DRAKE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 16, 2019

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. 72CR-17-1568]

HONORABLE JOANNA TAYLOR,
JUDGE

AFFIRMED; MOTION TO WITHDRAW
GRANTED

N. MARK KLAPPENBACH, Judge

Shawn Daniel Drake was convicted in the Washington County Circuit Court of rape and terroristic threatening in the first degree. On appeal, his counsel has filed a no-merit brief and a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k), asserting that there is no issue of arguable merit to support an appeal. Drake has not filed any pro se points for reversal despite being informed of his right to do so. We affirm Drake's convictions and grant counsel's motion to withdraw.

A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief including an abstract and addendum. Ark. Sup. Ct. R. 4-3(k)(1). The brief shall contain an argument section that consists of a list of all rulings adverse to

the defendant made by the circuit court on all objections, motions, and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. *Id.* This framework ensures that indigents are afforded their constitutional rights. *Leaks v. State*, 2018 Ark. App. 361, 553 S.W.3d 768. In furtherance of the goal of protecting these constitutional rights, it is the duty of both counsel and this court to perform a full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous. *Id.*

Counsel has identified four adverse rulings, including the denial of Drake's motion for a directed verdict. At the jury trial, the victim testified that while she was working at a laundromat, Drake asked for her help and then followed her into a back room when she went to retrieve some soap. Once in the back, Drake refused to let her leave, brandished a steel pipe, and threatened to kill her. Drake ordered the victim to take her clothes off, turn around, and bend over. The victim testified that Drake then "savagely" assaulted her, including penetrating her with his fingers and attempting to penetrate her with his penis. When Drake left, he ordered her to stay in the back for five minutes or he would kill her. Surveillance video from the laundromat was played for the jury. In a police interview, Drake denied touching the victim, but DNA obtained from a rectal swab of the victim matched his DNA profile. Additionally, the metal pipe described by the victim and observed by police in the surveillance video was discovered in Drake's vehicle.

A person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another person by forcible compulsion. Ark. Code Ann. § 5-14-103(a)(1)

(Supp. 2017). In his directed-verdict motion, Drake challenged the sufficiency of the evidence as to rape in four respects: (1) that there was no clear testimony of penetration; (2) that there was no testimony as to sexual gratification; (3) that there was no testimony as to forcible compulsion; and (4) that the DNA evidence found on the rectal swab was contradictory to the victim's testimony, which did not mention penetration of the rectum. A person commits the offense of terroristic threatening in the first degree if, with the purpose of terrorizing another person, the person threatens to cause death or serious physical injury to another person. Ark. Code Ann. § 5-13-301(a)(1)(A) (Supp. 2017). As to terroristic threatening, Drake argued below that there was no testimony regarding his intent in making the alleged threats to the victim.

The test for determining sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial; substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Caldwell v. State*, 2009 Ark. App. 526, 334 S.W.3d 82. Evidence is viewed in the light most favorable to the State; only evidence that supports a verdict is considered. *Id.* In his brief, counsel adequately addresses each element of Drake's directed-verdict motion in explaining why the circuit court's ruling was correct. We agree with counsel that the victim's testimony provides substantial evidence to support the convictions and that there are no nonfrivolous grounds for an appeal on this point.

Counsel identifies three other adverse rulings. First, the circuit court denied Drake's motion in limine to preclude the crime-lab witness from testifying that there was a

DNA match “within all scientific certainty” or “to a reasonable degree of scientific certainty.” We agree with counsel that there is no merit to an appeal of this ruling. Drake had no legal authority to support his motion, and the circuit court ruled that the defense could cross-examine the witness regarding the reliability of such statements. The next adverse ruling occurred when surveillance video from the laundromat was played during the victim’s testimony. Drake objected to the playing of a different angle of the video because he alleged it was cumulative to what had already been played. As counsel explains, Drake was not prejudiced, and the circuit court did not abuse its discretion by admitting evidence that might have been merely cumulative. *See Turner v. State*, 2014 Ark. App. 428, 439 S.W.3d 88. The last adverse ruling occurred during the testimony of Sue Stockton, a sexual-assault nurse examiner. Stockton testified that when she examined the victim, she observed abrasions, bruises, and bleeding, as well as “a big laceration” in the anal area. Drake objected to the relevancy of any mention of anal injuries because the victim did not allege such injuries. We agree with counsel that the circuit court did not abuse its discretion in ruling that the witness could testify as to what she observed because she had personal knowledge of the matter. *See Arkansas Rule of Evidence 602.*

After thoroughly reviewing the record and counsel’s brief, we conclude that counsel has complied with the requirements of Rule 4-3(k)(1) and that the appeal is wholly without merit. Accordingly, we affirm Drake’s convictions and grant counsel’s motion to withdraw.

Affirmed; motion to withdraw granted.

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

Joseph C. Self, for appellant.

One brief only.