

Cite as 2010 Ark. App. 39

ARKANSAS COURT OF APPEALS

DIVISION III

No. CACR08-588

JEFFREY L. BOEN,

APPELLANT

V.

STATE OF ARKANSAS,

APPELLEE

Opinion Delivered 13 JANUARY 2010APPEAL FROM THE JOHNSON
COUNTY CIRCUIT COURT,
[NO. CR2006-102.A]THE HONORABLE JAMES D.
KENNEDY, JUDGEAFFIRMED; MOTION TO
WITHDRAW GRANTED**D.P. MARSHALL JR., Judge**

The supreme court having granted a rule on the clerk, 374 Ark. 61, 285 S.W.3d 667 (2008), and our court having ordered rebriefing, 2009 Ark. App. 535, ___ S.W.3d ___, we can now decide this appeal. A jury convicted Jeffrey Boen of theft of property and first-degree criminal mischief. Boen, who trades horses, livestock, and equipment for a living, stole three cows and a red bull from a fenced-in pasture. The circuit court sentenced Boen to fifteen years' incarceration and a sixteen thousand dollar fine. His lawyer has submitted a supplemented no-merit brief and again moved to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967) and Arkansas Supreme Court and Court of Appeals Rule 4-3(k).

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Boen's counsel addressed three rulings in his brief: (1) the circuit court's denial of Boen's directed verdict motion; (2) the court's sustaining the State's objection to part of Boen's closing argument; and (3) the court's setting Boen's appeal bond at \$50,000.00 instead of the requested \$10,000.00. In his pro se point for reversal, Boen asserts that the court abused its discretion by disallowing his lawyer's closing argument about the toolmark of bolt cutters—a mark “almost as unique as a fingerprint.” On this record, we agree with Boen's lawyer: an appeal on the merits would be wholly frivolous. *Cf. Campbell v. State*, 74 Ark. App. 277, 279–80, 47 S.W.3d 915, 917 (2001).

After the State's case, Boen put on his defense. Boen failed to renew his motion for a directed verdict at the close of all the evidence. Though he did move at the close of the State's evidence, the governing Rule required Boen to renew his motion to preserve his sufficiency challenge. Ark. R. Crim. P. 33.1(a), (c). He thus waived sufficiency.

The circuit court did not abuse its discretion in denying the attempt by Boen's lawyer to argue about the toolmark of bolt cutters. Closing arguments are confined to the evidence introduced during trial and the reasonable inferences from that evidence. *Rohrbach v. State*, 374 Ark. 271, 280, 287 S.W.3d 590, 597 (2008). During his closing, Boen's lawyer attempted to comment on the State's failure to offer any

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toolmark proof linking the cut fence to Boen. The State objected. No evidence about toolmarks had been introduced during trial. It was no abuse of discretion, therefore, for the court to sustain the State's objection and limit Boen's closing in this way. *Ibid.*

After sentencing, Boen asked the court to leave the \$10,000.00 trial bond as the appeal bond, but the court set a new \$50,000.00 bond. We were not sure if this was an adverse ruling within the meaning of our Rule and *Anders* because the point did not go to Boen's conviction, Ark. Sup. Ct. R. 4-3(k)(1), but we asked counsel to brief the point. Further research has convinced us that our affirmance of Boen's conviction moots the appeal-bond issue. *Walley v. State*, 353 Ark. 586, 608-09, 112 S.W.3d 349, 362 (2003).

Affirmed; motion to withdraw granted.

VAUGHT, C.J., and GLOVER, J., agree.