ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CACR07-1324

June 25, 2008

FRANCISCO MALDONADO APPELLANT	AN APPEAL FROM FAULKNER COUNTY CIRCUIT COURT [No. CR2007-0124]
V.	HON. CHARLES E. CLAWSON, JR., JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED; MOTION TO BE RELIEVED GRANTED

This is a no-merit appeal from Francisco Maldonado's conviction for possession of a controlled substance, methamphetamine. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(j), appellant's counsel filed a motion to withdraw on the ground that the appeal is wholly without merit. Counsel's motion was accompanied by a brief listing the sole adverse ruling made by the trial court and explaining why that adverse ruling does not present a meritorious ground for reversal.[1] We affirm appellant's conviction and grant counsel's motion to be relieved.

Appellant and Sylvia Van Arsdayle were charged with possession of methamphetamine, pursuant to Ark. Code Ann. § 5-64-401 (Supp. 2007). A bench trial was scheduled for both defendants for August 10, 2007. However, at the beginning of the trial, the prosecutor announced his intent to drop the charges against Van Arsdayle, in exchange for her testimony

[1]Appellant filed no *pro se* points of appeal, and the State, accordingly, filed no responsive brief.

against appellant.

Officer Matt Rahburn, the arresting officer, testified that he was on patrol for the Conway Police Department on February 5, 2007. He followed a gold Lincoln Towncar that matched the description of a vehicle that was involved in a hit-and-run accident earlier the same day. The officer initiated a traffic stop and the vehicle abruptly pulled into a driveway. The passenger, Van Arsdayle, jumped out of the vehicle and walked up the driveway, away from the car. The driver, appellant, jumped into the passenger seat of the vehicle.[2]

Rahburn ordered Van Arsdayle back to the car and began speaking with appellant. As he spoke with appellant, the officer saw, in plain view, in the center console, a baggie containing a white powdery substance, with one corner "snipped" open. Rahburn said that the console was within appellant's reach, as well as within Van Arsdayle's reach. Rahburn *Mirandized* each of the parties; each denied ownership of the plastic bag. Van Arsdayle told the officer that she did not know where the drugs came from or to whom they belonged. As established by State's Exhibit 2, the Arkansas Crime Laboratory Report, the white powdery substance was determined to be .0129 grams of methamphetamine.

Van Arsdayle testified that she owned the vehicle and that appellant was driving that evening because she was intoxicated. She said that there were no drugs in her car before appellant got into her car. Van Arsdayle said that earlier that evening, at a friend's house, appellant offered her some drugs that he removed from his wallet, but she refused. She thought that appellant told her the drugs were methamphetamine. Van Arsdayle testified that after they stopped, appellant told her to switch seats because he either had outstanding warrants or a suspended license. She said that when she got out of the car, she thought that they were at the house of someone she knew, so she began walking toward the house. Van

[2]A third passenger, who was "nearly passed out" in the back seat, was not charged and did not testify.

Arsdayle admitted that she did not tell Rahburn that appellant offered her methamphetamine. She further admitted that it was in her best interest to testify that the drugs belonged to appellant because the outcome of her case depended on her testimony.

Appellant also testified, admitting that he had been driving Van Arsdayle's car for an hour-and-a-half before they stopped because she was too intoxicated to drive. He also admitted that he asked Van Arsdayle to change seats and that he jumped over into the passenger seat when they stopped. However, he said that he did so because he knew Van Arsdayle's car would be towed because he was driving on a suspended driver's license, and he did not want Van Arsdayle to lose her vehicle. Appellant maintained that he never saw the baggie in the console because it was dark and he was concentrating on driving. He said that he told Rahburn that he had "no idea" about the drugs.

At the close of the State's case-in-chief, appellant moved for a directed verdict, which the trial court denied. At the close of all of the evidence, appellant renewed his motion for a directed verdict, which was again denied. The trial court deferred its decision to review its notes and "think about it a little bit" so that it would be "comfortable with that decision." The court subsequently found appellant guilty of driving on a suspended license and possession of a controlled substance; it merged the former conviction with the latter. The court expressly based its determination on "the credibility of the witnesses, the proof presented, and those items received into evidence." It thereafter placed appellant on probation for three years and fined him $1000.

As this is a no-merit appeal, counsel is required to list each ruling adverse to the defendant and to explain why each adverse ruling does not present a meritorious ground for reversal. *See Anders, supra*; Ark. Sup. Ct. R. 4-3(j)(1); *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). The test is not whether counsel thinks the trial court committed no reversible error, but whether the points to be raised on appeal would be wholly frivolous.

See Anders, supra; *Eads, supra*. Pursuant to *Anders,* we are required to make a determination of whether the case is wholly frivolous after a full examination of all the proceedings. *See Anders, supra*; *Eads, supra*.

It appears that the sole adverse ruling is the trial court's denial of appellant's motion for a directed verdict. No meritorious appeal would lie from the denial of appellant's motion for a directed verdict, first, because he failed to challenge any specific element of the State's proof. At the close of the State's case–in-chief, appellant's counsel stated, "I move for a directed verdict," to which the trial court responded, "overruled." Thus, appellant failed to preserve any specific objection to the sufficiency of the State's proof against him. *See* Ark. R. Crim. P. 33.1(a) and (c).

Second, substantial evidence demonstrates appellant's constructive possession of, or dominion and control over, the methamphetamine in Van Arsdayle's car. *See Malone v. State*, 364 Ark. 256, 217 S.W.3d 810 (2005). Van Arsdayle testified that the drugs belonged to appellant, and it was for the trial court to determine whether to believe appellant or Van Arsdayle. *See Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). Additionally, appellant had been driving the vehicle for an hour-and-a-half; the contraband was in plain view, immediately within his reach; and he acted suspiciously by jumping into the passenger seat when the vehicle stopped. The trial court could have believed that appellant jumped into the passenger seat in attempt to appear as though he did not have dominion or control over the car.

Affirmed; motion to be relieved granted.

ROBBINS and VAUGHT, JJ., agree.