ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR11-630

JANA FRENCH CARRUTH APPELLANT	OPINION DELIVERED MAY 2, 2012 APPEAL FROM THE CONWAY COUNTY CIRCUIT COURT, [NO. CR 2010-225]
V.	HONORABLE JERRY D. RAMEY, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED; MOTION GRANTED

ROBERT J. GLADWIN, Judge

This is the second attempt at a no-merit appeal from appellant Jana French Carruth's conviction on a charge of driving while intoxicated in the Conway County Circuit Court, for which she was sentenced to 180 days in the county jail and ordered to pay costs. On January 11, 2012, we issued an opinion in which the court denied Carruth's counsel's motion to withdraw and ordered rebriefing because of omissions in counsel's brief in violation of Rule 4-2(a)(5)–(7) (2011) of the Rules of the Arkansas Supreme Court and Court of Appeals. *See Carruth v. State*, 2012 Ark. App. 35.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) (2011) of the Rules of the Arkansas Supreme Court and Court of Appeals, Carruth's counsel has filed a motion to withdraw on the grounds that the appeal is wholly without merit. The motion is accompanied by an abstract, brief, and addendum referring to everything in the record that might arguably support the appeal, together with a statement of reasons why none of those

motorists or pedestrians. Ark. Code Ann. § 5-65-102(2) (Repl. 2005); *see also* AMI Crim. 6501.

Carruth was observed by officers and the general public driving erratically. Carruth was charged with driving while intoxicated. She passed some field-sobriety tests, while failing others. These facts support the element of the offense charged as to her behavior causing a risk to herself and others. Her urine test came back positive for amphetamines, barbiturates, benzodiazepines, cannabinoids, and opiates. She admitted to smoking marijuana the night before the arrest. Carruth admitted to taking prescription drugs that she alleges would cause her to test positive for the other drugs and that should not be taken prior to driving. She stated that she knew she was not supposed to drive while taking these medications but indicated that she had not had trouble when previously driving. This evidence supports the element of the offense charged in that it shows intoxicants were in her system and that the drugs in her system were contraindicated to driving.

The positive drug screen, admission of taking drugs that were known by Carruth to be contraindicated with operating a motor vehicle, and the observed reckless driving are sufficient evidence to support the fact-finder's conclusion that Carruth was intoxicated. *See Johnson v. State*, 337 Ark. 196, 987 S.W.2d. 694 (1999). Because sufficient evidence was presented to meet each element of the offense charged, we hold that the trial court did not err in its finding that appellant was guilty of the offense of driving while intoxicated.

Carruth filed pro se points challenging her jury conviction of one count of driving while intoxicated, first offense. Carruth raises the following pro se points on appeal: (1) the officer who testified at trial, Rick Emerson, was never on the scene; (2) the jury consisted of

close associates of the prosecuting attorney; (3) the jury foreperson was the wife of a police officer involved in her case; and (4) she was prescribed the drugs that had produced the positive test results for amphetamines, barbiturates, benzodiazapines, cannabinoids, and opiates.

Carruth asserts that the original investigating officer did not testify at her trial and that Officer Emerson, who testified that he made the initial stop, was not, in fact, on the scene. To the extent that this allegation represents a challenge to the sufficiency of the evidence, we hold that it is barred on appeal. At the close of the State's case-in-chief, Carruth's counsel moved for a directed verdict and stated as follows: "Judge, I move for a directed verdict based on some [of] the evidence that shows that she was under a doctor's care." The trial court denied the motion. At the close of all evidence, counsel renewed the motion by stating: "Judge, I am going to renew my motion as previously stated." The trial court again denied the motion. Arkansas Rule of Criminal Procedure 33.1(a) (2011) requires that a motion for a directed verdict specify how the evidence is deficient. A party is bound by the scope and nature of a directed-verdict motion and cannot change the grounds on appeal. *Plessy v. State*, 2012 Ark. App. 74, __ S.W.3d __. Because Carruth did not raise an issue regarding the State's alleged failure to produce a crucial witness, she is precluded from raising it on appeal.

Carruth also alleges that the conviction should be reversed because she had been prescribed medications by her physician which produced the positive drug-screen results. To the extent that this also represents a challenge to the sufficiency of the evidence, it likewise fails. Carruth's motion for a directed verdict merely stated that she was under a doctor's care, and there was no specific contention that the evidence was insufficient because she was under

the influence of substances that had been prescribed to her by a physician. Thus, this issue likewise is barred on appeal. *Plessy, supra.*

Finally, Carruth contends that the jury consisted of biased jurors who were familiar with the prosecutor and certain officers involved in her arrest. The record discloses that, at the end of the selection process, the trial court inquired if the jury was acceptable to both parties, and neither party objected. The qualifications of jurors cannot be challenged for the first time on appeal. *Irons v. State*, 272 Ark. 493, 615 S.W.2d 374 (1981). When a biased juror is forced upon a defendant, he must make an appropriate record at the end of voir dire. *Watson v. State*, 289 Ark. 138, 709 S.W.2d 817 (1986).

Furthermore, in order to challenge a juror's presence on appeal, an appellant must have exhausted his peremptory challenges and must show that he was forced to accept a juror who should have been excused for cause. *Willis v. State*, 334 Ark. 412, 977 S.W.2d 890 (1998). Under Arkansas law, a defendant is entitled to three (3) peremptory challenges in prosecutions for misdemeanors. Ark. Code Ann. § 16-33-305 (Repl. 2006). Here, there is no evidence in the record that Carruth was forced to accept a juror after having exhausted her three peremptory challenges.

Based on our review of the record and the briefs presented to this court, we conclude that there has been full compliance with Rule 4-3(k) and that the appeal is without merit. Counsel's motion to be relieved is granted, and the judgment of conviction is affirmed.

Affirmed; motion granted.

VAUGHT, C.J., and WYNNE, J., agree.