

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR10-744

CHARLES FOSTER JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** JANUARY 19, 2011

APPEAL FROM THE FAULKNER  
COUNTY CIRCUIT COURT  
[NO. CR-2009-987]

HONORABLE CHARLES EDWARD  
CLAWSON JR., JUDGE

AFFIRMED; MOTION TO WITHDRAW  
GRANTED; MOTION FOR  
RECONSIDERATION DISMISSED

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## RITA W. GRUBER, Judge

Appellant Charles Foster Jr. was tried before a jury and convicted of the aggravated robbery of a Tobacco Superstore in Conway. His counsel has filed a motion to withdraw and a no-merit appeal pursuant to Arkansas Supreme Court Rule 4-3(k)(1) (2009) and *Anders v. California*, 386 U.S. 738 (1967). The motion is accompanied by a brief including both a discussion of matters in the record that might arguably support an appeal and a statement as to why counsel considers the points to be incapable of supporting a meritorious appeal. Foster has filed fourteen pages of pro se points for reversal, and the State has filed a brief asserting that his arguments are either barred or without merit. He also has filed a pro se motion for reconsideration.

There were two trial rulings arguably adverse to Foster: the denial of counsel's motion

for a directed verdict and a ruling on his objection under the best-evidence rule.<sup>1</sup> Counsel acknowledges that the denial of his directed-verdict motion is not preserved for appellate review because it did not indicate a specific deficiency in the evidence. *Bates v. State*, 2010 Ark. App. 417.

The second issue concerns testimony by Detective Tommy Balentine that he obtained Foster's confession in a videotaped interview. Counsel objected that the best evidence was the videotape. The State responded that it had no objection to the jury's seeing the video, but that it was not the best evidence because of gaps in the audio recording. The jury heard Balentine's testimony that Foster confessed, and the video was introduced into evidence. There is no merit to any arguably adverse ruling on Foster's objection. *Cf. Hamm v. State*, 296 Ark. 385, 757 S.W.2d 932 (1988) (finding error in admission of transcription where tape had been erased: appellant could not determine transcription's accuracy without recording, which was the best evidence).

Foster has filed numerous pro se points, labeled 1–26, I–V, and a–t. We agree with the State that they are not preserved for appeal or do not otherwise support reversal. For example, ineffective assistance of counsel was not raised below, rulings were not made on the sufficiency and suppression of evidence, Foster confessed to some participation in the robbery, and witnesses identified him in court and placed him at the crime scene.

We affirm the conviction in this case and grant counsel's motion to withdraw.

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<sup>1</sup>Counsel unnecessarily addresses the court's sustaining his hearsay objection during the State's case-in-chief. *See* Ark. Sup. Ct. R. 4-3(k)(1). The ruling was not adverse to Foster.

Cite as 2011 Ark. App. 38

We dismiss Foster's motion for reconsideration because we have no jurisdiction in the matter. The motion was improperly filed in this court rather than in the circuit court. Motions for reconsideration of a circuit court judgment or conviction must be filed with the circuit court. Ark. R. Crim. P. 33.3 (2010).

Affirmed; motion to withdraw granted; motion for reconsideration dismissed.

ROBBINS and BROWN, JJ., agree.