

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-261

CHRISTIAN ADAN VILLAGRAN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered December 14, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FIRST
DIVISION
[No. CR2009-1125]

HONORABLE MARION A.
HUMPHREY, JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Christian Villagran was charged by amended felony information with one count of murder in the first degree. He was also charged with theft by receiving, and the State sought an enhancement for employing a firearm while committing the felony offense. Villagran was found guilty of both murder in the first degree and the firearm enhancement. He argues on appeal that 1) the trial court erred in failing to suppress the statements he made after invoking his right to counsel; and 2) that the trial court erred in excluding a witness who would have testified about an alleged eyewitness bias.

After being charged, Villagran's defense counsel filed a motion to suppress Villagran's statements to officers claiming that Villagran invoked his right to counsel. The trial court denied the request to suppress the statement that Villagran made during his custodial interrogation. The statement was not introduced at trial, but was used for impeachment when Villagran testified.

The trial testimony consisted of testimony from investigating officers and Guillermo



Estrada, the victim's brother. Guillermo testified that he was with the victim, Carlos Estrada, on February 18, 2009, when Carlos was killed by Villagran. During the trial, Villagran attempted to introduce a witness who would have testified that Guillermo was in the fake-identification business, which the defense claimed would show bias because Villagran was also in the fake-identification business.

Villagran testified in his own defense that he felt threatened by Carlos, because Carlos was coming after him, and Carlos was much larger than he was. The jury found Villagran guilty of murder and the firearm enhancement and sentenced him to thirty-five years in the Arkansas Department of Correction. It is from that conviction that Villagran now appeals.

Villagran first claims that the trial court erred in its refusal to grant his motion to suppress statements that he made after invoking his right to counsel. Villagran claims that he invoked his right to counsel and was not equivocal in his invocation of his right. From our reading of the translated interview, whether Villagran invoked his right to counsel is an extremely close question. However, we do not need to settle the issue in order to resolve the matter before us. The State did not use the allegedly ill-gotten statement in its case in chief. Arguably, this was done because the State, too, realized the potential constitutional infirmities of the statement after an attempt was made by Villagran to invoke his right to counsel.

The statements, even if obtained in violation of Villagran's right to counsel, can still be used to impeach his contradictory testimony. In other words, his trial testimony will not go unchallenged simply because his pretrial statements were inadmissible. In *Kansas v. Ventris*, 556 U.S. 586 (2009), the Supreme Court noted "it is one thing to say the Government cannot make



an affirmative use of evidence unlawfully obtained. It is quite another to say that the defendant can provide himself with a shield against contradictions and untruths. Once the defendant testifies in a way that contradicts prior statements, denying the prosecution use of the traditional truth-telling devices of the adversary process is a high price to pay for vindication of the right to counsel at the prior state.” *Id.* at 589–90.

However, citing no authority, Villagran argues that the State improperly used his pretrial statements to impeach his trial testimony because the prior statements “tended to significantly diminish his credibility.” However, this is the precise point of impeachment and goes to the very heart of the Supreme Court’s logic in the *Ventris* case. Recognizing the limitations of his argument, Villagran more specifically claims that the State’s impeachment of him (via the allegedly infirm custodial statements) should have been limited to the precise words in any denial or assertion he made. This hair-splitting argument, however, is not supported by any citation to authority or argument explaining why his credibility should not have been questioned, except to say that his credibility was “the most important aspect of trial.” We do not consider an argument, even a constitutional one, when the appellant presents no citation to authority or convincing argument in its support, and it is not apparent without further research that the argument is well taken. *Roberts v. State*, 324 Ark. 68, 71, 919 S.W.2d 192, 194 (1996); *Cook v. State*, 321 Ark. 641, 906 S.W.2d 681 (1995).

Villagran also argues that the trial court erred in its refusal to allow him to introduce extrinsic evidence that Guillermo, the victim’s brother, was a biased witness. At the outset we note that the trial court has wide discretion in making evidentiary rulings, and we will not reverse



absent an abuse of discretion. *Kelley v. State*, 375 Ark. 483, 488, 292 S.W.3d 297, 300 (2009). At trial, Guillermo testified that he went to dinner with his brother and his brother's wife at LaRegionale Store on Baseline. While there, according to Guillermo's testimony, they were approached by three people, including Villagran, who provoked a fight. During the fight, Villagran began firing shots, including the shot that killed Carlos.

The record shows that Villagran admitted that he was the only person with a gun and that he fired the shot that killed Carlos. It is undisputed that Villagran shot and killed an unarmed person. Villagran testified that he shot Carlos because he was bigger and taller and also sold false documents. The trial court instructed the jury that Villagran claimed he had acted in self-defense. However, on the second day of trial, Villagran attempted to introduce testimony from a woman who claimed that Guillermo had "given [her] a [fake-identification] card" that day. According to Villagran, introducing evidence that Guillermo was also in the business of selling false documents (and had done so recently), would show that the State's sole eyewitness was biased. Villagran further claimed that the woman's testimony was relevant because it would show that Guillermo was "lying out of his mind" and was "willing to lie" in order to send Villagran to jail "for a thousand years."

However, the State objected claiming that the woman had stated she did not witness the altercation and had been sitting in the courtroom throughout the trial and had heard all of the testimony. Specifically, the State claimed that Arkansas Rule of Evidence 608(b) (2010) prohibited the testimony because it dealt with an unrelated transaction that allegedly occurred sometime before the fight commenced, from someone who did not see the fight. The State



further argued that whether Guillermo sold false documents was not at issue during trial, and it is the exact type of extrinsic evidence that Rule 608(b) was conceived to prohibit. The trial court agreed and found that the evidence was not admissible and noted that the issue had been covered during Villagran's cross-examination of Guillermo.

Villagran responded that his limited purpose with the witness was to question Guillermo's truthfulness (as opposed to attacking his credibility), and therefore, it would not be inadmissible under Ark. R. Evid. 608(b). However, the record shows that Guillermo neither denied that he was biased nor denied that he was selling false documents. Our case law states that a witness must first deny bias before he can be impeached for knowledge, bias, or personal interest using collateral, extrinsic evidence. *Williams v. State*, 338 Ark. 178, 192, 992 S.W.2d 89, 98 (1999). Because there was no basis for challenging his credibility or showing a bias in his version of events (which were admitted to in all significant parts by Villagran), the trial court did not abuse its discretion in its exclusion of the witness.

In sum, we find no reversible error in either issue presented by Villagran on appeal and affirm his convictions.

Affirmed.

PITTMAN and GRUBER, JJ., agree.