ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-09-1250

	Opinion Delivered November 6, 2013
SHANNON WILLIAMS APPELLANT	APPEAL FROM THE GREENE COUNTY CIRCUIT COURT [NO. CR-2008-468]
V.	
STATE OF ARKANSAS APPELLEE	HONORABLE DAVID N. LASER, JUDGE
	AFFIRMED

WAYMOND M. BROWN, Judge

On June 23, 2009, a Greene County jury found Shannon Williams guilty of one count of rape and sentenced him to fifteen years in the Arkansas Department of Correction.[1] Williams appeals arguing that the improper comments made by the State during its closing argument were so prejudicial and inflammatory that Williams was deprived of his constitutional guarantee of a fair trial. We affirm.[2]

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[1]He was charged with three counts of rape.

[2]This is the fifth time this case has been before us. In the last opinion, we relieved Williams's former attorney and appointed the current attorney. *See Williams v. State*, 2011 Ark. App. 41; *Williams v. State*, 2011 Ark. App. 643; *Williams v. State*, 2012 Ark. App. 113; *Williams v. State*, 2013 Ark. App. 75.

Williams contends that the statements made by the State during its rebuttal rose to such a level that the trial court was required to intervene on its own motion. During rebuttal, the State argued in pertinent part:

> Three years this poor guy has been having to relive this incident in his life. Oh, I feel so sorry for poor, poor, pitiful father who molested his child, having to think about it every day. That disgusts me that he is trying to exude sympathy from you of how he has had to relive this every day. He's been torn apart because he might have to face some jail time. That's all I heard from those audio conversations. Not any remorse about what he did, worry that he is going to get in trouble. There is no testimony, medical evidence, any inclination that the prescription medication that he was taking caused any type of a blackout. No one has testified about the gravity that these prescriptions had upon him to where he would black out an incident of having sex with his daughter.
>
> That is ludicrous. As Mr. Miller said, and with all due respect to him about how this is the craziest defense he has ever had to say, it is the craziest defense that I have ever heard in all of these cases I have had to try, that the victim manipulated the Defendant to where he was going to admit that he had sex with her. That is the most unusual defense that he has ever had to use and there is a reason for most unusual defense because it is absurd, it is the most unreasonable thing I think I have ever heard and it is an insult to your intelligence to think that you would believe that. Wild horses could not drag those statements out of anyone. He is not so stupid to where he does not know what he is saying. If there is a mental disease or defect I guarantee we would have heard about [it] and there is testimony about that.
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> That was the most far-fetched excuse I have ever heard in my life. When you are in desperate times there is no telling what kind of desperate measures they will be throwing out.

We will not reverse the action of a trial court in matters pertaining to its control, supervision, and determination of the propriety of arguments of counsel in the absence of manifest abuse of discretion.[3] Our law is well settled that we will not consider issues raised

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[3] *Anderson v. State*, 353 Ark. 384, 108 S.W.3d 592 (2003).

for the first time on appeal, even constitutional ones, because the trial court was deprived of the opportunity to rule on them.[4]

Williams admits that he did not raise his right-to-a-fair-trial argument to the trial court but contends that it is preserved for review because it falls within the third *Wicks* exception.[5] *Wicks* presents four narrow and rarely applied exceptions to the contemporaneous-objection rule: (1) when the trial court in a death-penalty case fails to bring to the jury's attention a matter essential to its consideration of the death penalty; (2) when defense counsel has no knowledge of the error and thus no opportunity to object; (3) when the error is so flagrant and highly prejudicial in character that the trial court should intervene on its own motion to correct the error; and (4) when the admission or exclusion of evidence affects a defendant's substantial rights.[6]

The *Anderson* court acknowledged that the third *Wicks* exception has never been applied to consider possible prosecutorial errors in relation to closing arguments.[7] We reject Williams's invitation to this court to apply the third *Wicks* exception to the comments made by the State at his trial. We do, however, express serious concern over both the prosecutor's

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[4] *Gaines v. State*, 2010 Ark. App. 439.

[5] *Wicks v. State*, 270 Ark. 781, 606 S.W.2d 366 (1980).

[6] *See Mahomes v. State*, 2013 Ark. App. 215, 427 S.W.3d 123 (citing *J.S. v. State*, 2009 Ark. App. 710, 372 S.W.3d 370).

[7] *See Buckley v. State*, 349 Ark. 53,76 S.W.3d 825 (2002) (court rejected an argument that the third *Wicks* exception should apply where the State had allegedly argued outside the record by telling jurors that Buckley had been trafficking in drugs for ten years and Buckley failed to object).

improper closing argument and defense counsel's failure to object to the prosecutor's statements. Although improper, the comments did not rise to the level to require the trial court to intervene on its own motion. Accordingly, Williams's claim is not preserved for appellate review because it was not raised below.

Affirmed.

WALMSLEY and HIXSON, JJ., agree.

Mylissia M. Blankenship, for appellant.

Dustin McDaniel, Att'y Gen., by: *Nicana C. Sherman*, Ass't Att'y Gen., for appellee.