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ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-17-541

	Opinion Delivered: January 24, 2018
QUENTIN KYLE GREEN APPELLANT	APPEAL FROM THE MILLER COUNTY CIRCUIT COURT [NO. 46CR-16-388]
V.	HONORABLE KIRK JOHNSON, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

KENNETH S. HIXSON, Judge

Quentin Green appeals after he was convicted by a Miller County jury of rape and sexual assault in the second degree. He was sentenced to serve consecutively 300 months and 60 months in the Arkansas Department of Correction, respectively. Appellant argues on appeal that the trial court abused its discretion in refusing to allow defense counsel to inquire of an expert witness concerning her previous testimony in an unrelated case. We affirm.

Appellant was charged by felony information with one count of rape, a Class Y felony, and two counts of sexual assault in the second degree, a Class B felony.[1] A trial was held on March 2, 2017. At trial, the State presented several witnesses. Lyndi Green, appellant's former wife, testified that she has four children. K.B. is one of her middle

[1]One count of sexual assault in the second degree was subsequently nolle prossed.

children. Lyndi testified that when K.B. was ten years old, K.B. told her that appellant, K.B.'s stepfather at the time, had touched her inappropriately under her pajamas and under her panties. Appellant denied the allegations after Lyndi confronted him about the incident. Lyndi testified that on that same night when she confronted appellant, appellant indicated that he thought about killing himself. After that incident, Lyndi had K.B. stay with her grandparents and took K.B. to see a counselor. A few days later and after further conversations with Lyndi about the ramifications of the allegations, K.B. recanted her story, apologized to appellant, and returned home. Additionally, the family went to an attorney, Michael Peek, and a video was taken of K.B. explaining that she had recanted her story. A few years later, K.B. told her mother, Lyndi, that she had lied when she had recanted her story. Additionally, K.B. told her biological father about the incident, and it was reported to law enforcement.

Officer Patsy DeHart testified that she was the investigator assigned to the case in 2016 against appellant. Officer DeHart testified that law enforcement had received a call on the Arkansas State Police hotline with the allegations. Arkansas State Police Crimes Against Children took the initial report, and it was screened by the Arkansas Department of Human Services (DHS). Officer DeHart contacted the Children's Advocacy Center (CAC) and arranged for K.B. to be interviewed.

Melanie Halbrook, a forensic interviewer at the CAC in Benton County, testified that she had interviewed K.B. K.B. was fifteen years old at the time of the interview. Halbrook testified that during the interview, K.B. disclosed that appellant had digitally penetrated her when she was ten or eleven years old. Although K.B. reported that the first

time happened when she was about ten years old, K.B. indicated that appellant had continued to inappropriately touch her on subsequent occasions. K.B. additionally disclosed to her that she had falsely recanted her story after the first incident because her mother did not believe her. Halbrook testified that over 85 percent of children will recant their statements when there is a lack of maternal support and the abuse is by a male caretaker. Halbrook further testified that of the 85 percent of children who recant, about 93 percent of them will later reaffirm those allegations. Regarding the video that was taken in Attorney Peek's office, Halbrook testified that the interview was not conducted under the protocols used by her office. She testified that Peek used a lot of direct questions, forced multiple-choice answers, legal jargon, and hypothetical questions, all of which she avoids. Halbrook testified that after her interview, she opined that K.B.'s statement and body language were consistent with sexual abuse.

K.B. testified and described in detail two incidents in which appellant inappropriately touched her. K.B. testified that on at least one occasion, appellant digitally penetrated her vagina. K.B. admitted that she recanted her story after telling her mother about one of the incidents and that she had lied during the video that was recorded in Peek's office. She explained that her mother at that time did not believe her story and that she felt that the counselor also did not believe her. In 2016, after Lyndi and appellant had divorced in 2015, K.B. attended a church retreat. K.B. testified that she told her friends at the event that appellant had, in fact, inappropriately touched her despite her prior statements to the contrary. Afterward, she told Lyndi and her biological father that she had not made up the story about the incidents.

Appellant testified and denied the allegations. Appellant indicated that at the time K.B. had made the initial allegations, she was angry with her mother and wanted to live with her biological father. He did not know why she realleged the allegations. Appellant further denied that he had ever threatened suicide to Lyndi.

Attorney Peek testified that he had interviewed K.B. after appellant and Lyndi hired him. At that time, K.B. had initially accused appellant of inappropriately touching her and then recanted her story. Peek explained that it was not his duty to find out the truth but to protect his client that paid him. Peek testified that he does not necessarily model his interview the way that CAC does. However, he does try to avoid leading questions on all material parts and felt that he did so during K.B.'s interview.

Appellant finally offered two character witnesses on his behalf. Appellant's grandmother testified that appellant did not ever touch anyone inappropriately to her knowledge or do anything that would cause her concern. Furthermore, appellant's pastor testified that he did not have any concerns about appellant being around either of his children or grandchildren.

After all evidence was presented, including the videos from both interviews, the jury found appellant guilty of rape and sexual assault in the second degree, and appellant was sentenced to serve a total of 360 months in the Arkansas Department of Correction. This appeal followed.

On appeal, appellant does not contest the sufficiency of the evidence. Instead, appellant argues that the trial court abused its discretion in refusing to allow defense counsel to ask Halbrook questions about her testimony in another unrelated rape case in which that

jury allegedly found that defendant not guilty. Appellant argues that the excluded cross-examination would have impeached Halbrook's credibility as a witness and should have been allowed. We, however, are precluded from addressing this issue on appeal.

Evidentiary rulings are a matter of discretion and are reviewed only for abuse of that discretion. *Gilcrease v. State*, 2009 Ark. 298, 318 S.W.3d 70. Rule 611 of the Arkansas Rules of Evidence provides in pertinent part:

> (b) Scope of Cross-Examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

While an accused is accorded wide latitude in cross-examination to impeach the credibility of a witness against him or her, the trial court also is accorded wide latitude to impose reasonable limits on cross-examination based on concerns about harassment, prejudice, waste of time, confusion of issues, or interrogation that is repetitive or only marginally relevant. *Gilcrease*, *supra*; *Larimore v. State*, 317 Ark. 111, 877 S.W.2d 570 (1994); *Fowler v. State*, 2015 Ark. App. 579, 474 S.W.3d 120. To determine whether the restrictions placed on the right to cross-examine a witness rise to the level of a constitutional deprivation, we look to the record as a whole to determine if the restrictions imposed created a substantial danger of prejudice to appellant. *Gordon v. State*, 326 Ark. 90, 931 S.W.2d 91 (1996). We will not disturb the discretion of the trial court upon review in the absence of a showing of abuse. *Id.*; *Johnson v. State*, 80 Ark. App. 79, 94 S.W.3d 344 (2002).

During appellant's cross-examination of Halbrook, the following colloquy occurred:

[HALBROOK]: Based on her statement and her body language, it's consistent with sexual abuse.

[APPELLANT]: Okay. And I suppose you are seldom ever wrong about that? Is that right?

[HALBROOK]: I mean I don't understand the question.

[APPELLANT]: What about Strodney Davis? He was acquitted by a Bowie County jury –

[STATE]: Your Honor, I'm going to object.

THE COURT: Sustained. You know better than that, Mr. – get up here.

(Bench conference as follows:)

THE COURT: What are you doing?

[APPELLANT]: I'm just impeaching her, Your Honor.

THE COURT: You can't come in with some case off the wall that nobody knows anything about and ask questions about it.

[APPELLANT]: Well, I'm not trying to get into the other case. I'm just –

THE COURT: You certainly are. You've got a picture there.

[APPELLANT]: I was just trying to impeach her, Your Honor, as to whether this is exact science or if she's ever wrong about this.

[STATE]: Are you trying to use a case in which somebody was found not guilty?

[APPELLANT]: I'm just trying to impeach her.

[STATE]: You're trying to bring up a case in which she was involved about a rape that a jury found not guilty?

[APPELLANT]: Is that improper?

[STATE]: Yes.

[APPELLANT]: I'm sorry.

THE COURT: Extremely. Extremely improper.

[APPELLANT]: Yes, Your Honor.

In *Larimore*, our supreme court found that the trial court did not abuse its discretion in limiting cross-examination to exclude evidence of the state medical examiner's findings in other investigations that were totally unrelated to the theory put forth by him during trial. *Larimore*, *supra*. Larimore was on trial for the first-degree murder of his wife. A critical element in the State's circumstantial-evidence case was proof that the murder took place before appellant went to work. *Id.* The medical examiner testified that the time of death occurred before appellant went to work based on his theory that the body temperature of stabbing victims will rise for a short while after they lose large amounts of blood. *Id.* Larimore's theory was that the medical examiner's opinion was based on "junk science." *Id.* On cross-examination, Larimore attempted to impeach the medical examiner by questioning him about other rulings that he had made in unrelated cases, including (1) marijuana-induced sleep as an explanation of the reason two teenagers were lying on a railroad track, did not hear a train coming, and were run over; (2) a conclusion of death by suicide when a victim was shot three to five times in the chest; and (3) the opinion that a fourteen-year-old girl had broken her neck from stepping off a four- to six-inch-high porch. *Id.* However, the trial court refused to allow the impeachment, stating that these findings had nothing to do with the issues in the present case, but told Larimore that he could cross-examine the medical examiner on anything that was part of the basis of his opinion regarding the body temperature of victims who have lost large amounts of blood. *Id.*

Larimore argued on appeal and as acknowledged by our supreme court, that the proposed cross-examination might have had the effect of diminishing the expert's

credibility. *Id.* However, our supreme court held that because the findings in other investigations were totally unrelated to the theory advanced against Larimore, they were not consequential to a determination of whether the expert's theory was to be believed and that the trial court did not abuse its discretion in refusing to allow the cross-examination evidence. *Id.*

Here, appellant sought to cross-examine Halbrook about testimony that she had allegedly given in an unrelated case, in which the accused was allegedly acquitted. While the proposed questioning may have been consequential to whether the expert's theory was to be believed, we are precluded from reviewing the appellant's argument on appeal because he failed to proffer the excluded evidence for us to fully analyze this issue under our standard of review as our supreme court was able to do in *Larimore*. When challenging the exclusion of evidence, a party must make a proffer of the excluded evidence at trial so that this court can review the decision, unless the substance of the evidence is apparent from the context. *Edison v. State*, 2015 Ark. 376, 472 S.W.3d 474. Although we know that appellant apparently desired to ask questions concerning Halbrook's testimony in an unrelated case, there is nothing in the record as to what her responses would have been. From our record, we cannot determine what Halbrook's "theory" was in her previous testimony. For example, we are unable to determine whether Halbrook's testimony or opinion in that case was based on a victim's prior recantation or the statistical analysis she provided in appellant's trial or perhaps other theories. Without knowing the substance of Halbrook's testimony in the prior case, there could have been any number of reasons that might have caused the jury to acquit the defendant in the prior case unrelated to her testimony. Therefore, we are

precluded from performing the analysis outlined in *Larimore*. Furthermore, absent a proffer of the excluded evidence, we have no way of knowing whether appellant sustained prejudice, and we would only be speculating if we were to presume prejudice and reverse on this basis. *Id.*; *McEwing v. State*, 366 Ark. 456, 237 S.W.3d 43 (2006). The failure to proffer evidence so that our court can make a determination on prejudice precludes our review of this issue on appeal. *Edison*, *supra*. Accordingly, we must affirm.

Affirmed.

ABRAMSON and VAUGHT, JJ., agree.

Short Law Firm, by: *Lee D. Short*, for appellant.

Leslie Rutledge, Att'y Gen., by: *Adam Jackson*, Ass't Att'y Gen., for appellee.