

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-1247

ROBERT EUGENE CASEY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered April 28, 2010

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. CR2007-1492]

HONORABLE DAVID L. REYNOLDS,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Robert Eugene Casey was convicted of ten counts of sexual assault in the second degree. He was sentenced to twenty years' imprisonment, to run concurrently, on each count. On appeal he asks our court to reverse his convictions and sentences and that the case be remanded "for all other relief to which he is entitled" based on his allegation that the circuit court erred by excluding the testimony of several character witnesses during the guilt phase of trial. We refuse to do so and affirm.

The essential facts of this case are as follows. Casey was charged in Faulkner County with multiple counts of sexual assault. The amended felony information alleged that he had committed these acts between May 1, 2001, and July 27, 2003. After several continuances, trial was scheduled for April 16, 2009. On April 13, 2009, the prosecuting attorney

requested—in writing—that Casey provide the names of his witnesses “in a timely manner and not on the date of trial.” The original discovery motion was filed by the State on February 26, 2008. On April 14 and 15, Casey’s counsel faxed to the prosecutor a list of names and telephone numbers of his witnesses. However, on the date of trial, the prosecutor sought exclusion of the witnesses because Casey had not disclosed their names in a timely manner. The trial court granted the State’s request, over Casey’s objection, but did allow the witnesses to testify during the sentencing stage of trial.

On appeal, the State argues that the trial court did not abuse its discretion by excluding the potential testimony during the guilt phase of trial because the names of the eighteen witnesses had not been revealed in a timely manner. Alternatively, the State argues that Casey failed to make a sufficient proffer of the excluded testimony. Casey responds that the witnesses’ testimony during the sentencing phase serves as an adequate substitute for a proffer. However, the State answers, that assuming that were true, the great portion of the “proffered” testimony presented during the sentencing phase was inadmissible under Rules 404, 405, and 608 of the Arkansas Rules of Evidence for purposes of determining guilt. In essence, the State claims that in view of the inadmissibility of the “proffered” testimony, Casey cannot demonstrate that he was prejudiced by its exclusion for failure to comply with the rules. Furthermore, the State asserts that the evidence of Casey’s guilt was overwhelming and, as such, any alleged error was harmless.

When testimony of defense witnesses has been excluded, we will neither reverse absent an abuse of discretion nor will we reverse absent a showing of prejudice. *Huddleston v. State*,

339 Ark. 266, 270, 5 S.W.3d 46, 49 (1999). Here, we are troubled by the trial court's decision to not allow the character witnesses to testify in the guilt portion of trial. We conclude that the better route would have been for the trial court to allow the sentencing-phase testimony plus any admissible testimony in the guilt phase of Casey's trial as well. However, we cannot say its failure to do so was an abuse of discretion. Moreover, if we had reached such a conclusion, Casey's appeal would still fail.

On appeal, he has the burden to prove both error and resulting prejudice. Ark. R. Evid. Rule 103(a). When evidence of guilt is overwhelming and the error is slight, we may declare that error was harmless and affirm. *Barr v. State*, 336 Ark. 220, 984 S.W.2d 792 (1999). Here, assuming arguendo that the trial court erred in excluding the admissible portions of these eighteen witnesses' character testimony during the guilt phase of Casey's trial, the error was harmless in view of the overwhelming evidence of Casey's guilt established through Casey's statements to police and testimony of his victims. *Spencer v. State*, 348 Ark. 230, 72 S.W.3d 461 (2002); *Jackson v. Buchman*, 338 Ark. 467, 996 S.W.2d 30 (1999).

The record establishes that both victims testified that Casey had sexually assaulted them on numerous occasions. And our law is settled that the uncorroborated testimony of a victim that describes a sexual assault is sufficient to support a conviction. *Swaim v. State*, 2009 Ark. App. 557. However, in this case, there was compelling evidence that in fact corroborated the victims' testimony. The testimony of the investigator established that when Casey was asked pointedly if he had touched his children on their sexual organs for the purpose of sexual gratification, he replied "I don't think so." Additionally, Trisha Mellow testified that Casey

had sexually assaulted her in a manner similar to that described by his female victim, thereby establishing proof of Casey's propensity to engage in such conduct. *Bell v. State*, 371 Ark. 375, 385, 266 S.W.3d 696, 704 (2007).

In view of the compelling evidence of guilt, we are satisfied that if we were to accept Casey's argument on its face—completely overlooking the potential discovery or proffer violations—he was not substantially harmed.¹ After balancing the sparse amount of character evidence that might (arguably) have been admissible at trial with the enormous proof of his guilt, we are satisfied that Casey cannot demonstrate prejudice of a sufficient degree to warrant reversal. As such, we affirm his convictions and sentences.

Affirmed.

GRUBER and GLOVER, JJ., agree.

¹Because the evidence was admitted during the sentencing phase of the trial and because we are deciding the case under a harmless-error theory, we need not address the State's failure-to-proffer argument.