

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR 10-157

BRANDON BUFORD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered SEPTEMBER 29, 2010

APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT,
OSCEOLA DISTRICT
[NO. CR-08-190]

HONORABLE VICTOR HILL, JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Brandon Buford was tried before a jury in Mississippi County Circuit Court and found guilty of first-degree murder in the shooting death of Adrian Haymon. Buford contends that the trial court abused its discretion by denying the admission of certain evidence during the penalty phase: (1) Haymon’s prior conviction of delivery of cocaine, and (2) a felony information charging Haymon with attempted murder, later dismissed due to Haymon’s death. We affirm.

The sentencing phase of a criminal trial amounts to a trial in and of itself such that the Arkansas Rules of Evidence apply to those proceedings. *Hill v. State*, 318 Ark. 408, 887 S.W.2d 275 (1994). The trial court’s decision to admit or exclude evidence is reviewed for an abuse of discretion. *Id.* Evidence relevant to sentencing may include, among other things,

relevant character evidence, evidence of mitigating circumstances, and rebuttal evidence. Ark. Code Ann. § 16-97-103 (Repl. 2006).

During the guilt phase of trial, Buford sought to establish that he was justified in shooting Haymon. The shooting occurred outside a night club in Osceola, Arkansas, on May 24, 2008, at about 2:45 a.m. Haymon died as a result of one close-range gunshot wound to the head, and one distance-range gunshot wound to the abdomen. Medical testing showed Haymon's blood-alcohol content to be .14 at the time of death. Defense witnesses testified that they observed Haymon grab Buford by the neck and push his body or head into the door of the club, just prior to the shooting. Buford was seen with a gun in his hand.

Buford testified, admitting that he shot Haymon but stating that Haymon had pulled a gun on him earlier that night. Buford explained that Haymon was "out on bond for attempted murder, I was scared. . . . I am sorry for it, but my life was in danger, my life was threatened. . . . [Haymon] laid his hands on me and I shot him." The jury was instructed on a justification defense, but it returned a guilty verdict on murder in the first degree.

During the penalty phase of trial, Haymon's sister testified that Haymon was a "good person." Buford moved to introduce evidence to demonstrate that Haymon was not a good person and had a reputation for violence. Buford requested to enter Haymon's prior conviction for third-degree battery, which was allowed. Buford also attempted to enter Haymon's prior conviction for delivery of cocaine. The trial court denied the admission of the drug offense, stating that it did not reflect on any violent characteristic and would instead

poison the jury with the idea that Haymon was a “dope dealer.” Buford also requested to admit evidence of Haymon’s pending charge of attempted murder, which charge was later dismissed due to his death. The trial court rejected the admission of that charge on the basis that it would be merely cumulative to the testimony already admitted in the guilt phase of trial.

We hold that the trial court did not abuse its discretion in rejecting the admission of Haymon’s cocaine-delivery conviction. This evidence, while potentially relevant as rebuttal evidence to Haymon’s sister’s testimony that he was a “good person,” was properly determined as potentially confusing to the jury on the issues to be decided. Where Buford was successful in admitting Haymon’s prior battery conviction, and successful in earlier testifying that he was fearful due to Haymon’s pending attempted-murder charge, we hold that the trial court did not abuse its considerable discretion in rejecting Haymon’s drug conviction.

We also hold that the trial court did not abuse its discretion in rejecting the admission of Haymon’s pending charge of attempted murder. This was potentially a mitigating factor. But the trial court concluded that this documentary evidence was cumulative to unrebutted testimony that Buford was afraid of Haymon in part because he was charged with attempted murder. We cannot say that the trial court abused its discretion in so finding. Even relevant evidence can be excluded if it is deemed to be substantially outweighed by the needless presentation of cumulative evidence. Ark. R. Evid. 403.

Cite as 2010 Ark. App. 638

In summary, we affirm because the exclusion of the documents evidencing Haymon's prior drug-delivery conviction and Haymon's then-pending attempted-murder charge does not demonstrate an abuse of the trial court's discretion.

Affirmed.

KINARD and BROWN, JJ., agree.