

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR10-187

TRACY PARKS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 3, 2010

APPEAL FROM THE GREENE
COUNTY CIRCUIT COURT
[NO. CR-2008-566(B)]

HONORABLE RANDY FRANKLIN
PHILHOURS, JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

A Greene County jury convicted Tracy Parks of permitting the abuse of her daughter, L.W. Tracy was sentenced to twenty years' imprisonment and ordered to pay a \$15,000 fine among other costs and fees. On appeal, Tracy challenges the sufficiency of the evidence and argues that the circuit court abused its discretion by allowing certain evidence to be admitted. We affirm.

Sufficiency of the Evidence

“A person commits the offense of permitting abuse of a minor if, being a parent, guardian, or person legally charged with the care or custody of a minor, he or she recklessly fails to take action to prevent the abuse of a minor.” Ark. Code Ann. § 5-27-221(a) (Repl. 2006). In other words, the State had to prove that Tracy was L.W.'s parent, that L.W. was

a minor, that L.W. was abused, and that Tracy recklessly failed to take action to prevent the abuse. On appeal, Tracy argues only that the State failed to show that she acted recklessly.

At the close of the State's case, Tracy's attorney made the following directed-verdict motion, which the circuit court subsequently denied:

At this time the defense would move for a directed verdict. . . . We'd ask for a directed verdict on the grounds that the case – the State has not met its burden of proof or it's not met a prima facie case on the elements of the offense. There's not been testimony about the age of [L.W.] during the relevant time frame that was charged in the information, and actually the each of the elements of the offense we contend that the State's not made a prima facie case.

Tracy's attorney renewed the directed-verdict motion at the close of all the evidence. The circuit court again denied it.

Arkansas Rule of Criminal Procedure 33.1 provides in pertinent part:

(a) In a jury trial, if a motion for directed verdict is to be made, it shall be made at the close of the evidence offered by the prosecution and at the close of all of the evidence. A motion for directed verdict shall state the specific grounds therefor.

. . . .

(c) The failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required in subsections (a) and (b) above will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment. A motion for directed verdict or for dismissal based on insufficiency of the evidence must specify the respect in which the evidence is deficient. A motion merely stating that the evidence is insufficient does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense. A renewal at the close of all of the evidence of a previous motion for directed verdict or for dismissal preserves the issue of insufficient evidence for appeal. If for any reason a motion or a renewed motion at the close of all of the evidence for directed

verdict or for dismissal is not ruled upon, it is deemed denied for purposes of obtaining appellate review on the question of the sufficiency of the evidence.

The reasoning behind Rule 33.1 “is that when specific grounds are stated and the absent proof is pinpointed, the circuit court can either grant the motion, or, if justice requires, allow the State to reopen its case and supply the missing proof.” *Pinell v. State*, 364 Ark. 353, 357, 219 S.W.3d 168, 171 (2005).

Here, Tracy’s directed-verdict motion was specific in that she argued that the State had failed to prove that L.W. was a minor. Though preserved, Tracy does not challenge this element on appeal. However, the general statement that the State failed to make a prima facie case on “each of the elements” was not specific enough to preserve the detailed argument she now makes on appeal about the State’s failure to prove the element of recklessness. Indeed, “a general motion that merely asserts that the State has failed to prove its case is inadequate to preserve the issue for appeal.” *Conner v. State*, 334 Ark. 457, 464, 982 S.W.2d 655, 658 (1998). We therefore do not reach Tracy’s sufficiency challenge.

Evidentiary Rulings

Tracy argues second that the circuit court abused its discretion by allowing evidence and testimony about the prior sexual abuse of her daughters by two other men. Tracy argues that this evidence and testimony should have been excluded under Arkansas Rule of Evidence 403 and/or 404(b). We do not reach the merits of this evidentiary issue because even if we assume, for purposes of this appeal, that admitting the challenged testimony and evidence was error, the error was harmless.

“[W]hen a circuit court errs in admitting evidence, the appellate court will affirm the conviction and deem the error harmless if the evidence of guilt is overwhelming and the error is slight.” *Marmolejo v. State*, 102 Ark. App. 264, 268, 284 S.W.3d 78, 81 (2008). “To determine if the error is slight, we can look to see if the defendant was prejudiced.” *Id.* But “[p]rejudice is not presumed, and a conviction will not be reversed on appeal absent a showing of prejudice by the defendant.” *Id.* at 269, 284 S.W.3d at 82.

At trial, Lana Bridges, a DHS supervisor, testified that she first met Jason Parks, L.W.’s abuser, when she became a caseworker on Tracy’s case in March 2005. In mid-2007, Jason Parks was accused of molesting L.W.’s cousin, A.L. At the time, according to Paragould police officer Rhonda Thomas, Jason was Tracy’s boyfriend and the two were living together. Bridges testified that she “was very scared and very worried about [Tracy’s children’s] safety regarding Mr. Parks.” Part of Bridges’s concern was that Tracy “is very apathetic towards her children.” Thomas also said that Tracy was well aware of the charges against Jason regarding A.L. because Tracy was with Jason when Thomas arrested him. Thomas testified that she explained to Tracy that a condition of Jason’s bond was that he have no contact with A.L. or Tracy’s children.

DHS workers established a case plan in early August 2007, which also included that there was to be no contact between Tracy’s children and Jason. Bridges testified that she “had to basically just get in [Tracy’s] face and make her choose, you know, you’ve gotta tell me today whether you’re gonna choose this man or are you gonna choose your children.”

Less than a month later, Tracy and Jason were married. In November 2007, after DHS learned that Tracy was allowing contact between her children and Jason, it exercised a seventy-two-hour hold on the children and an order for emergency custody was entered. The children were removed from Tracy's custody and placed in foster care.

In January 2008, the police received a new report that Jason had sexually abused two of Tracy's daughters, one being L.W. Jason was arrested and ultimately pleaded guilty to the second-degree sexual assault and rape of L.W. Thomas testified that the charges stemmed from incidents that occurred after Jason had been released on bond and during the time he was not supposed to have any contact with Tracy's children.

L.W., who was fourteen at the time at the time of the trial, testified that Jason was living with her mother before he was arrested for sexually abusing A.L. When Jason was released from jail, L.W. said that she was told that she was not allowed to be around him, but that Jason moved into a trailer within walking distance of Tracy's home. According to L.W., Tracy helped Jason get the trailer and lived with Jason in the trailer. L.W. said that she was living at her mother's house near the trailer or at her father's house during this time period. L.W. testified that she would go to the trailer to see her mother, that her mother would sometimes come and get her to take her to the trailer, and that she would spend the night there on occasion. According to L.W., her mother never told her not to come to the trailer, but instead instructed her not to say anything to the DHS workers about the visits. L.W. testified in detail about how Jason sexually abused her during this time period.

Cite as 2010 Ark. App. 740

In sum, even if the circuit court abused its discretion by admitting the evidence and testimony about the previous abuse to Tracy's daughters by other men, the error was slight and the other evidence presented at the trial overwhelmingly supports Tracy's conviction. Moreover, Tracy has not shown how the introduction of the challenged evidence prejudiced her. Thus, any error in admitting the challenged evidence and testimony was harmless. *Marmolejo*, 102 Ark. App. at 267–69, 284 S.W.3d at 81–82.

Affirmed.

HENRY and BROWN, JJ., agree.