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ARKANSAS COURT OF APPEALS

DIVISION I

No. CR-18-780

SIROME JERRELL DORSEY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered: May 22, 2019

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. 72CR-17-1639]

HONORABLE MARK LINDSAY,
JUDGE

AFFIRMED

RITA W. GRUBER, Chief Judge

A jury convicted appellant of rape and sexual indecency with a child and sentenced him to a total of twenty-seven years in the Arkansas Department of Correction. His sole point on appeal is that the circuit court abused its discretion in excluding evidence of a DVD recording of the victim's interview at the Children's Safety Center. Because this argument is not preserved for our review, we affirm.

Appellant Sirome Jerrell Dorsey and the victim, twelve-year-old OS, attended a pool party at the home of April Goodlander in Fayetteville on May 28, 2017. Several days after the party, while reviewing the footage from surveillance cameras located in the kitchen and living room, Ms. Goodlander noticed that OS and appellant were often alone together, saw OS drinking alcohol with appellant, and observed what appeared to be inappropriate sexual interactions between them. She alerted OS's mother, who contacted the Fayetteville Police Department. During the course of the investigation, OS was interviewed at the Children's

Safety Center. Special investigative detective Scott O'Dell was present at the interview. During the interview, OS disclosed that appellant had digitally penetrated her vagina at the pool party. Detective O'Dell also interviewed appellant and other guests at the pool party. Appellant was convicted by a jury of rape and sexual indecency.

On appeal, appellant challenges the circuit court's ruling denying his request to present a DVD recording of the interview of OS at the Children's Safety Center. The decision to admit or exclude evidence is within the sound discretion of the circuit court, and we will not reverse a circuit court's decision regarding the admission of evidence absent a manifest abuse of discretion. *Starling v. State*, 2016 Ark. 20, at 8, 480 S.W.3d 158, 163. Moreover, we will not reverse absent a showing of prejudice. *Rodriguez v. State*, 372 Ark. 335, 337, 276 S.W.3d 208, 211 (2008).

At trial, the State introduced the testimony of Detective O'Dell, Ms. Goodlander, the police officer who received the initial report of the incident, the nurse who performed the medical exam on OS, appellant's girlfriend who attended the pool party with him, and OS. Appellant testified in his own defense. During appellant's testimony, he made the following attempt to introduce the DVD at issue:

DEFENSE COUNSEL: Okay. Now, you had got to go over all this evidence with me, hadn't you?

APPELLANT: Yes.

DEFENSE COUNSEL: All right. Were you able to see the interview that [OS] gave at the Child Safety Center?

APPELLANT: Yes, sir.

DEFENSE COUNSEL: Okay. May I approach the witness?

THE COURT: You may.

DEFENSE COUNSEL: Without telling me too much about that, do you know exactly what that is?

APPELLANT: Yes. . . . It is the interview that we received through the prosecutor of [OS].

DEFENSE COUNSEL: At the Safety Center?

APPELLANT: Yes.

DEFENSE COUNSEL: And is that a true and accurate copy of that interview?

APPELLANT: Yes.

DEFENSE COUNSEL: Your Honor, at this time, I'd move to enter this as Defendant's Exhibit 1.

THE PROSECUTOR: Your Honor, may counsel approach?

THE COURT: Yes.

THE PROSECUTOR: So Judge he can't lay a foundation He didn't record it. He didn't produce it. Ultimately, it can't come in. It can't come in because of *Crawford*, which is why the State doesn't play an interview with a child. So, the State objects.

DEFENSE COUNSEL: Your Honor, this was—this is the CSC interview. We're not allowed to reproduce or make any copies. Only the prosecutor's office could. It was sent to us in discovery, and he's a witness to that and watched it.

THE PROSECUTOR: It also violates the best evidence rule.

THE COURT: Well, that is discovery, correct? That doesn't mean it's admissible into evidence without a proper person to authenticate it. And your client is not the proper person to authenticate it. So I'm going to sustain the objection.

DEFENSE COUNSEL: All right.

To challenge a circuit court's ruling excluding evidence, an appellant must have proffered the excluded evidence at trial. *Haltiwanger v. State*, 322 Ark. 764, 767, 912 S.W.2d 418, 420 (1995). A proffer "permit[s] the trial judge to make an informed evidentiary ruling" and "create[s] a clear record that an appellate court can review to determine whether there

was reversible error in excluding the [evidence].” *Friday v. State*, 2018 Ark. 339, at 11, 561 S.W.3d 318, 325. Appellant made no proffer of the DVD. Absent the proffer, we have no means of determining if prejudice occurred. Accordingly, we are precluded from reviewing this issue on appeal. *Haltiwanger*, 322 Ark. at 767, 912 S.W.2d at 420.

Affirmed.

ABRAMSON and HARRISON, JJ., agree.

Peter E. Giardino, for appellant.

Leslie Rutledge, Att’y Gen., by: *Jacob H. Jones*, Ass’t Att’y Gen., for appellee.