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ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-23-690

CODY WOOLEMS APPELLANT V. STATE OF ARKANSAS APPELLEE	Opinion Delivered June 5, 2024 APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT [NO. 26CR-20-234] HONORABLE RALPH C. OHM, JUDGE AFFIRMED

RITA W. GRUBER, Judge

Cody Woolems appeals the June 12, 2023 Garland County Circuit Court order sentencing him to seventy-five years' imprisonment and $15,000 in fines. On appeal, he does not challenge the sufficiency of the evidence supporting his conviction. Rather, he contends that the circuit court abused its discretion in admitting what he argues was improper rebuttal testimony during his sentencing hearing and requests that we reverse and remand for resentencing. We affirm.

I. *Background*

On June 12, 2023, Woolems pled guilty in the circuit court to criminal attempt to commit first-degree murder, first-degree criminal mischief, and first-degree domestic battering. The case stemmed from an altercation that occurred on January 30, 2020, between Woolems and his ex-girlfriend, Jacqueline D'Laine Scallion. Despite their recent break up,

Scallion and Woolems were still living in the same house. The incident began as a verbal altercation, which escalated into Woolems's shooting Scallion in her hand and face.

A sentencing hearing was held June 12 and 13, 2023. During the defense's case-in-chief, Woolems's friend, Ed Boardman, testified that Woolems is not the type of person to "go after a person"; he is a "man of great character," and Boardman has never seen Woolems act in any type of violent way. Monica Woolems then testified in relevant part that she and Woolems were married from 2000 until their divorce in 2014, and she never saw him act violently during their marriage. She testified further that she never would have "dreamed" that they would be in this situation; that in the fourteen years they were together, she never felt physically threatened by him; and that what had occurred was "very out of character."

Woolems testified that he served in the Air Force for 10 years and has been diagnosed with post-traumatic stress disorder. He has five degrees, the highest of which is an MBA. He recalls locking Scallion out of their home on the night of the incident. He ultimately let her in, and she stayed "in his face" after that. He remembers nothing about the shooting or immediately thereafter.

After the defense rested, the State identified two rebuttal witnesses, both of whom are also Woolems's ex-wives: G.O. and L.H. The court inquired regarding the nature of G.O.'s testimony, and the State responded that she was "going to rebut the evidence that was elicited as to his character for non-violence. Personally to 404 and 405 of Rules of Evidence." Woolems's counsel objected. The State acknowledged that such testimony is generally prohibited but argued that if the defense "brings it in themselves," as had occurred

here, the State had a right "to rebut under 404A." The court—noting Boardman's testimony that Woolems has a nonviolent character—ruled that the State has the right to challenge that issue and Boardman's testimony, and if the testimony did, in fact, rebut the testimony concerning Woolems's nonviolent character, then it would be permitted. The court then noted the defense's objection and "preserve[d] . . . [his] objection for appeal."

G.O. testified that she and Woolems were in an "on and off" relationship from approximately 2016 until 2019; they were married briefly and lived together at various times. When G.O. was asked if the relationship was ever violent, she said yes. When asked how, she explained, "He would bite me in my privates. He had hit me to where my daughter had heard him hit me and me fall on the floor; and she . . . came to the door and tried to interrupt and intervene." Defense counsel then stated, "Judge, I'm gonna object." The court held a bench conference during which defense counsel stated, "And that's hearsay with the daughter." In a colloquy regarding whether the testimony constituted hearsay, the court warned counsel to stay away from any statements by the daughter, and then the testimony resumed. The objection was neither overruled nor sustained. G.O. testified that Woolems was violent when he hit her with his fist but then continued unprompted, saying, "Did I get bruises from other things, yes." The State asked, "Like what?" She responded, "Sex." Defense counsel objected that the testimony was improper rebuttal testimony, arguing that it went beyond the scope. The objection was overruled.

L.H. testified that she was briefly married to Woolems after the incident with Scallion. She testified that once they moved in together, he began drinking more and started "getting

more violent-ish and mental abusing." When asked to explain what she meant by violent, she responded that he would get in her face and force her to back up. She described a specific instance on New Year's Eve when Woolems was "hateful and mean," despite the fact that her friend was in the home. L.H. elaborated that they went to their bedroom to continue their "confrontation," and Woolems wanted to have sex, but she did not. Woolems objected to this as improper rebuttal testimony, arguing that the State was "not even talking about violence anymore . . . just . . . sex and arguing." The circuit court agreed that they were getting "somewhat off track." L.H. then testified that Woolems grabbed her while she was naked, threw her over the bed, and then knocked her off the bed onto her leg.[1]

On the recommendation of the jury, Woolems was sentenced to an aggregate of seventy-five years' incarceration with respect to the three charges, and a $15,000 fine on only the attempted murder charge. The sentencing order was entered June 12, 2023, from which Woolems timely appeals.

II. *Standard of Review*

Generally, relevant character evidence is admissible at sentencing. *Shreck v. State*, 2016 Ark. App. 374, at 3, 499 S.W.3d 677, 679. Evidence relevant to sentencing by either the court or a jury may include . . . [r]elevant character evidence . . . [and] . . . [r]ebuttal evidence. Ark. Code Ann. § 16-97-103(5), (9) (Supp. 2023). When a defendant chooses to introduce evidence about his character at trial, he opens the door to rebuttal by cross-examination or

[1]L.H. testified that she recently had stopped using crutches, which she had been using due to a "total bone fracture" and "foot [that] was completely broke."

other testimony of prosecution witnesses. *Shreck*, 2016 Ark. App 374, at 10, 499 S.W.3d at 682. When a defendant either testifies or produces a character witness, he may also open the door to evidence that might otherwise be inadmissible. *Wilcoxon v. State*, 2022 Ark. App. 458, at 14, 655 S.W.3d 686, 696. Moreover, once the door is open, the State may inquire into the witness's knowledge of specific instances of conduct, and there is no limit, other than relevancy, on the kind of instances of misconduct with respect to which cross-examination may occur. *Id.* Genuine rebuttal evidence consists of evidence offered in reply to new matters. *Chatman v. State*, 2023 Ark. App. 590, at 6, 680 S.W.3d 805, 808. Evidence can still be categorized as genuine rebuttal evidence even if it overlaps with the evidence-in-chief. *Id.* However, the evidence must be responsive to that which is presented by the defense. *Id.* The scope of a rebuttal witness's testimony is accorded wide latitude. *Id.*

A circuit court's decision to admit evidence in the penalty phase of a trial is reviewed for an abuse of discretion. *Wilcoxon*, 2022 Ark. App. 458, at 13, 655 S.W.3d at 696. The abuse-of-discretion standard is a high threshold that does not simply require error in the circuit court's decision but requires that the circuit court act improvidently, thoughtlessly, or without due consideration. *England v. State*, 2016 Ark. App. 211, at 8, 489 S.W.3d 721, 726. An evidentiary error in the sentencing phase of a trial may be declared harmless, and the appellate court may affirm when the evidence of guilt is overwhelming and the error is slight. *Wilcoxon*, 2022 Ark. App. 458, at 15, 655 S.W.3d at 697. To determine if the error is slight, the court looks to see if the defendant was prejudiced. *Id.* To show prejudice, a

defendant must demonstrate that the sentence was either outside the statutory range or the maximum allowed. *Id.* at 15–16, 655 S.W.3d at 697.

III. *Discussion*

Woolems contends that the circuit court abused its discretion by admitting the testimony of the two rebuttal witnesses. Woolems first complains about G.O.'s testimony that Woolems bit her "privates." His second complaint concerns L.H.'s testimony that Woolems became violent when she refused his sexual advances. Woolems argues that his character witnesses testified that he is a nonviolent person, and no evidence was introduced about sex or sexual violence during his case-in-chief. He argues that the State's introduction of testimony during rebuttal regarding specific instances of alleged sexual violence was thus improperly admitted and was also irrelevant under Arkansas Code Annotated section 16-97-103(9). He further argues that the error was not harmless because the testimony prejudiced his defense at sentencing, given that the jury was already aware that he had pleaded guilty to attempted murder.[2]

The State responds that Woolems's argument is partially unpreserved and wholly meritless. The State contends that Woolems's argument regarding G.O.'s testimony was unpreserved because he did not object to her testimony that he bit her in her "privates." The State further contends that Woolems's argument regarding L.H.'s testimony that Woolems became violent when she refused his sexual advances is wholly meritless because he does not

[2]The jury was also aware that Woolems had pleaded guilty to first-degree criminal mischief and first-degree domestic battering.

cite any legal authority to support his premise that rebuttal testimony must be limited to specific kinds of violence in specific circumstances. The State argues that Woolems's witnesses testified that Woolems is not violent, and it was proper for the circuit court to allow testimony of specific instances in which he was violent, regardless of whether the violence was characterized as sexual. The State also argues that Woolems cannot demonstrate that he was prejudiced by the admission of the at-issue testimony because, while he was sentenced to the maximum terms of imprisonment for each conviction, he was not sentenced to pay the maximum fines; thus, he did not receive the maximum sentence possible.

Woolems did object to G.O.'s testimony in the first instance, and her testimony regarding her "privates" and her daughter were contained in the same response to the State's question, to which Woolems globally objected and then added the hearsay objection. However, that objection was neither sustained nor overruled; thus, the State is correct that it is not preserved. *See, e.g.*, *Cluck v. State*, 365 Ark. 166, 175, 226 S.W.3d 780, 787 (2006).

Regarding Woolems's objection to L.H.'s testimony, Woolems opened the door. Woolems placed his character at issue when he presented evidence that he was not the type of person to "go after a person" and was a "man of great character" whom the witness had never seen act violently in any way. He further opened the door by presenting character evidence through his ex-wife's testimony that she "never physically felt threatened by him at all," that he never acted violently during their marriage, and that she could never have "dreamed" they would be in this situation because violence was very out of character for Woolems. The State was entitled to rebut that evidence by showing specific instances of

violent conduct, regardless of its nature. *See, e.g.*, *Shreck*, *supra*. Testimony that Woolems was violent—albeit during sexual encounters—was permissible rebuttal evidence regarding his character for violence.

Woolems argues that the jury's sentencing him to the maximum allowable sentence on each charge establishes that he was prejudiced. Woolems was required to develop his argument regarding prejudice and failed to do so here. *Shreck*, 2016 Ark. App. 374, at 11, 499 S.W.3d at 683. Thus, it is not preserved. Assuming the argument was preserved, any error was harmless. While Woolems was sentenced to the maximum number of years of imprisonment, he was not sentenced to the maximum amount of fines. *See* Ark. Code Ann. §§ 5-4-201(a)(1), (a)(2) (Repl. 2013); 5-10-102 (Supp. 2023); 5-26-303(b)(1) (Supp. 2023); 5-38-203(b)(3) (Supp. 2023); 16-90-120(a) (Supp. 2023). A defendant who is sentenced within the statutory range and short of the maximum sentence cannot establish prejudice from the admission of evidence at sentencing. *See Wilcoxon*, 2022 Ark. App. 458, at 16, 655 S.W.3d at 697. Because Woolems was sentenced within the statutory range and did not receive the maximum sentence, he cannot demonstrate prejudice. *See, e.g.*, *id.* at 16, 655 S.W.3d at 697.

Moreover, the evidence of Woolems's guilt was overwhelming. Scallion testified in detail regarding what occurred the night of the shooting. She arrived home after work but was unable to enter the house because Woolems had locked her out. He finally let her in but called her names when she entered. She ultimately went to the guest bedroom and fell asleep. She was awoken by the sound of multiple gunshots coming from within the house, so she hid in her closet. When the shots stopped, she exited the closet and was confronted

by Woolems, who was in the bedroom. A verbal altercation ensued regarding his shooting the gun inside the house.[3] She realized he had the gun in his hand and began begging him to leave the bedroom. The altercation turned physical, and Scallions got between the wall and her bed. He fired a shot above her head. She tried to calm him down "talking to him with [her] hands," and he shot her in her hand. She "went to [her] knees" and pleaded with him, and he said, "[Y]ou deserve to die bitch and you're gonna die tonight." He pointed the gun at her face and pulled the trigger. She remembered seeing her teeth and blood come out of her mouth and being unable to breath. She heard the gun "click again" while it was still pointed at her face, but nothing came out. She heard him reloading the magazine. The next thing she remembered was waking up in the hospital on a ventilator and a feeding tube. She did not remember running across the street to a neighbor's house. She further testified regarding her extensive physical injuries and ongoing issues, including her inability to live independently or work as a registered nurse. Consequently, any alleged error was harmless. Accordingly, we affirm.

Affirmed.

ABRAMSON and WOOD, JJ., agree.

James Law Firm, by: *William O. "Bill" James, Jr.*, and *Drew Curtis*, for appellant.

Tim Griffin, Att'y Gen., by: *A. Evangeline Bacon*, Ass't Att'y Gen., for appellee.

[3]An officer testified that approximately forty spent shell casings were found inside the house.