Cite as 2023 Ark. App. 587

ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-22-458

JIGGS DEAN COMPTON APPELLANT V. STATE OF ARKANSAS APPELLEE	Opinion Delivered December 13, 2023 APPEAL FROM THE NEWTON COUNTY CIRCUIT COURT [NO. 51CR-21-75] HONORABLE JOHN R. PUTMAN, JUDGE AFFIRMED

STEPHANIE POTTER BARRETT, Judge

Jiggs Dean Compton was convicted by a Newton County Circuit Court jury of one count of second-degree sexual assault and was sentenced to twenty years' imprisonment. His sentence was enhanced by ten years for committing the offense in the presence of a child, and the sentences were to be served consecutively. On appeal, Compton argues that the circuit court erred in three ways: (1) by failing to dismiss the jury pool due to a violation of Arkansas Code Annotated section 16-33-302; (2) by making several evidentiary-ruling errors that prejudiced him; and (3) in failing to grant his directed-verdict motion. We affirm.

The victim in this case, MC1, was eleven in July 2021 when she, her mother, and her two younger brothers, MC2 and MC3, spent the night at Compton's house after spending the day at Greg Zabawa's house. MC1 and her brothers slept in Compton's bed, which is where MC1 was sexually assaulted.

At trial, Sergeant Jackie Stinnett of the Arkansas State Police testified that he investigated the allegations against Compton, and he interviewed Compton as a part of his investigation. That interview, which was recorded, was played for the jury; in it, Compton confirmed that Michelle Lawson and her three minor children were at his residence on the night in question, but he denied that anything improper occurred between him and MC1 on that night. Compton further denied that he locked the doors of the cabin that night while he was inside or that Michelle Lawson, who was outside on the front porch, had to beat on the door for him to let her inside. He even denied that the children slept in the bed that night, telling Sergeant Stinnett that there was only one bed in the house, and he was the only person who slept in it. When asked why MC1 would accuse him of touching her improperly, Compton said that Lawson probably told her to say it to get back at him.

Michelle Lawson testified that on July 11, 2021, she, MC1, MC2, and MC3 had gone to Zabawa's house to celebrate her daughter Rebecca's eighteenth birthday; Compton was also there. She and her younger children left Zabawa's house around nine or ten; they went to Compton's house to stay the night because she had injured her foot that day and because Compton was going to help her get new tires on her truck the next day. One of Lawson's friends, Chris McCullen, also went to Compton's house with her to spend the night.

Lawson testified that when they arrived at Compton's house, she went inside to make sure that there was a room where she and her children could sleep; she said that although it was a one-room cabin, it was clean, the bedroom area was curtained off from the rest of the cabin, and there was a king-size bed. Lawson got the children ready for bed and put them

down; then she, McCullen, and Compton sat in the living room while McCullen played the guitar. Compton began making inappropriate comments about how "hot" Lawson's eighteen-year-old daughter was and that he would like to have sex with her; when Lawson expressed her displeasure at the remarks, Compton replied, "Well, she's legal." Lawson excused herself to the porch; McCullen went with her and continued to play his guitar. Lawson testified that after about fifteen or twenty minutes, she tried to open the cabin door, but it was locked; she had to knock on the door and yell for Compton to open the door. She said that when Compton came to the door, he acted like he did not know who was at the door; Lawson asked him why the door was locked, and he said that he always locked his door. Lawson told him that he did not need to lock the door because her children were inside. Compton finally let her in; she checked on her children, used the bathroom, told Compton to please not lock the door because her children were inside, and went back out on the front porch, where McCullen was still playing his guitar. After another fifteen or twenty minutes, McCullen tried to go inside, but the door was again locked; Lawson said that when McCullen had to knock, she knew that the door was locked again, which upset her. Compton asked again who was there, and when McCullen told Compton that it was him, Compton acted like he did not know who was at the door. Lawson testified that she began yelling for Compton to open the door; when he did, she ran to check on her kids; MC1 was awake, and Lawson could tell from the look on her face that something had happened. Lawson, seeing that MC1 was upset and crying, asked MC1 if Compton had touched her; MC1 said yes and showed Lawson where he had touched her. Lawson

communicated with McCullen that Compton had "messed with" MC1; McCullen offered to beat Compton up, which Lawson declined, and they concocted a reason to leave so that they could avoid a confrontation with Compton in front of the children. She said that when they were trying to leave, Compton came outside, threw a large chunk of ice toward the truck, and began yelling at them; Lawson said that Compton knew something was off, and he was trying to figure out why she was leaving.

MC3, who was eight at the time of trial, testified that he remembered talking to Compton at Zabawa's house on the day in question, but he did not remember what they talked about. When asked if he saw Compton in the courtroom, MC3 pointed to Compton and said he thought that was him. MC3 explained what Compton's cabin had looked like inside, and he said that he had taken a "nap" in the bed with MC1 and MC2. MC3 admitted on cross-examination that he did not know about anything inappropriate occurring that night before they left Compton's house but that his mother had talked to him some about the investigation of what happened between Compton and MC1.

MC2, who was ten at the time of trial, testified that he remembered going to Compton's house last summer, but he did not remember what Compton looked like, and he did not think that he saw him in the courtroom. He said that when they went to Compton's house, they watched television for a little while, and then he and MC1 and MC3 went to the bedroom, and their mom told them to take a nap; when he woke up, his mom told him to grab his bag and get in the car.

When MC1, who was twelve at the time of trial, testified, she was asked if she remembered what Compton looked like last summer; she said he had gray hair and big eyes. When asked if she saw Compton in the courtroom, MC1 said that she thought so, that she saw someone who looked similar to Compton. MC1 stated that she remembered that Compton talked to her earlier in the day at Zabawa's house about if she had started her period yet, which she thought was odd. She said that they went to Compton's house when it was getting dark; she could not really remember what the inside of the cabin looked like. She recalled that she went to bed in the bedroom when they got to Compton's house, but her brothers stayed up and watched television for a while before coming to bed. MC1 stated that she slept next to the wall in the bed; when she woke up, Compton had removed her socks and was rubbing her feet, and her brothers were asleep in the bed beside her. When she rolled over to try to make him stop rubbing her feet, Compton put her socks back on and asked if he could sit at the foot of the bed. He then asked MC1 if he could lay his head on her stomach, which he did, and she said that he then touched her private parts, which she identified as her vagina, as well as her butt, through her jeans until her mother began banging on the door of the cabin, at which time Compton got up and opened the door. MC1 said that, to her knowledge, her brothers did not wake up while Compton was touching her. MC1 testified that when her mother asked her if something had happened, she told her yes; that she was upset and crying; and that her mother had her wake her brothers up, and they left. MC1 also testified that she is not Compton's spouse.

The State rested after MC1's testimony, and Compton moved for a directed verdict on the charge of second-degree sexual assault, arguing that the State had failed to prove that sexual contact occurred or that there was sexual gratification. He also moved for a directed verdict on the enhancement because the offense occurred in the presence of a minor, arguing that MC1's brothers were both asleep; therefore, they did not observe anything and could not have suffered any physical or psychological damage associated with the events. The circuit court denied the directed-verdict motion with respect to the sexual-assault charge, but it did not rule on the directed-verdict motion with respect to the enhancement, stating that that would be dealt with if there was a conviction. The defense rested without presenting any evidence and renewed the directed-verdict motion, which was again denied.

The jury retired to deliberate and returned with a verdict of guilty of second-degree sexual assault. The jury further found that Compton had committed the offense in the presence of a child. During the sentencing phase, the State placed a certified copy of Compton's prior rape conviction in Missouri into evidence. Kevin Thomas, a deputy sheriff for Newton County, testified that Compton had registered as a sex offender in Newton County in October 2020; while he initially registered Compton as a level-four sex offender—the highest and most restrictive level available in Arkansas—due to the fact that Compton had been convicted in Missouri for the forcible rape of a nine-year-old child, the State ultimately reduced Compton's level from four to three. The defense presented no witnesses but renewed all previous motions and arguments; the circuit court stated that the previous rulings would stand. The jury returned with a sentence of twenty years and a $15,000 fine

for the second-degree sexual-assault conviction as well as a ten-year sentence for the enhancement for committing the offense in the presence of a child, with the sentences to be served consecutively.

Although Compton's sufficiency argument is his third point on appeal, we must address it first for purposes of double jeopardy. *Lewondowski v. State*, 2022 Ark. 46, 639 S.W.3d 850. A motion for directed verdict at a jury trial is considered a challenge to the sufficiency of the evidence. *Bolen v. State*, 2023 Ark. App. 373, 675 S.W.3d 145. In reviewing a challenge to the sufficiency of the evidence, this court views the evidence in the light most favorable to the State and considers only the evidence that supports the verdict. *McLemore v. State*, 2022 Ark. App. 512, 657 S.W.3d 190. We will affirm a circuit court's denial of a directed-verdict motion if there is substantial evidence, either direct or circumstantial, to support the verdict. *Marbley v. State*, 2019 Ark. App. 583, 590 S.W.3d 793. Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other without resorting to speculation and conjecture. *Barfield v. State*, 2019 Ark. App. 501, 588 S.W.3d 412.

With regard to second-degree sexual assault, Compton summarily argues that the State failed to demonstrate that he acted with the purpose of obtaining sexual gratification. We disagree. A person commits sexual assault in the second degree if the person, being eighteen years of age or older, engages in sexual contact with another person who is less than fourteen years of age and is not the person's spouse. Ark. Code Ann. § 5-14-125(a)(3) (Supp.

2019).[1] "Sexual contact" is defined as "any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female." Ark. Code Ann. § 5-14-101(10) (Supp. 2019).

A sexual-assault victim's testimony may constitute substantial evidence to sustain a conviction for sexual assault. *Bahena v. State*, 2023 Ark. App. 261, 667 S.W.3d 553. The victim's testimony need not be corroborated, and the victim's testimony alone describing the sexual contact is enough for a conviction. *Id.* The State is not required to provide direct proof that an act is done for sexual gratification if it can be assumed that the desire for sexual gratification is a plausible reason for the act because sexual gratification is rarely capable of proof by direct evidence and must usually be inferred from the circumstances. *Ford v. State*, 2020 Ark. App. 526. The jury is free to believe the State's version of the facts over the defendant's account, is not required to abandon common sense, and may draw reasonable inferences from the evidence. *Robinson v. State*, 2017 Ark. App. 689, 537 S.W.3d 765. Here, MC1 testified that Compton touched her private parts and her butt through her jeans while she was lying in the bed. Viewed in the light most favorable to the State, this testimony constitutes substantial evidence to support Compton's conviction for second-degree sexual assault.

[1]Act 615 of 2021 removed the requirement that the victim not be the person's spouse; however, that amendment was not effective until July 28, 2021, and this offense occurred on July 11, 2021.

Compton next argues that there was insufficient identification that he is the person who committed the offense because MC1 did not recognize him in open court, nor did her brothers identify him. This argument is not preserved for appellate review since it is being made for the first time on appeal. Our court will not address arguments made for the first time on appeal; a party is bound by the scope and nature of the arguments made at trial. *Lewis v. State*, 2017 Ark. App. 442, 528 S.W.3d 312. Although he concedes that he did not preserve this issue with a proper directed-verdict motion below, Compton nevertheless argues that this court should still address the issue under the third and fourth exceptions to the contemporaneous-objection rule found in *Wicks v. State*, 270 Ark. 781, 606 S.W.2d 366 (1980): a circuit court should intervene on its own motion to correct a serious error or when the admission or exclusion of evidence affects a defendant's substantial rights. We disagree. Application of the *Wicks* exceptions has been limited to specific constitutional and statutory-error arguments that are distinct from sufficiency-of-the-evidence arguments; a challenge to the sufficiency of the evidence is not included among the *Wicks* exceptions to the contemporaneous-objection rule. *McDaniels v. State*, 2012 Ark. App. 219.

Compton's last sufficiency argument concerns the enhancement of his sentence by an additional ten years pursuant to Arkansas Code Annotated section 5-4-702(a)(7) (Supp. 2019) because the second-degree sexual-assault offense was committed in the presence of a child. He argues that the enhancement is not applicable because MC1's brothers were asleep; therefore, they did not suffer any trauma from being present during the assault, which he contends is the evident purpose of the statute. This argument is not preserved for

appellate review. Although Compton made a directed-verdict motion on this basis at the close of the State's case, the circuit court did not rule on that motion, stating that it would take it up in the sentencing phase if Compton was convicted. However, this issue was never raised again, and Compton never obtained a ruling. It is the defendant's responsibility to obtain a clear ruling from the court, and we do not consider issues where the defendant has failed to do so. *Conley v. State*, 2011 Ark. App. 597, 385 S.W.3d 875.

Compton next argues that the circuit court erred in refusing to quash the jury pool. He noted before jury selection began that Arkansas Code Annotated section 16-33-101(c)(1) (Supp. 2019) required a prospective juror's address and telephone number to be redacted from juror questionnaires before being provided to the attorneys for the parties, and this information had not been redacted as required; therefore, he argued, the entire jury pool had to be dismissed. The circuit court denied this request. Compton contends on appeal that this denial is reversible error. We disagree.

A circuit court's denial of a motion to quash a jury panel will be reversed only when there is a manifest abuse of discretion. *Henderson v. State*, 2019 Ark. App. 220, 575 S.W.3d 617. Irregularities affecting the selection of the jury panel warrant a new trial only if a timely objection was made prior to the verdict and resulting prejudice is shown. *Gwathney v. State*, 2009 Ark. 544, 381 S.W.3d 744. An appellant is in no position to assert that he was prejudiced by such irregularities unless he has exhausted his peremptory challenges. *Id.* Compton cannot show that the circuit court's denial of his motion to quash was an abuse

of discretion; not only did he not exhaust his peremptory challenges, he fails to show how having prospective jurors' addresses and telephone numbers prejudiced him in any way.

Compton's last point on appeal addresses several evidentiary rulings that he contends were in error. The circuit courts have broad discretion in deciding evidentiary issues, and a circuit court's ruling will not be disturbed on appeal without a demonstration that the appellant has been prejudiced by an abuse of that discretion. *Taylor v. State*, 2022 Ark. App. 464, 655 S.W.3d 330.

The first evidentiary ruling of which Compton complains is that there was hearsay testimony from MC1 and Lawson contained in the video interview of him by Sergeant Stinnett. The prosecutor posited that the statements from MC1 and Lawson were not offered for the truth of the matter asserted during the interview but, rather, to place Compton's statements into context. The circuit court offered to admonish the jury; Compton's counsel agreed to the admonition but still maintained his objection and contended that it was prejudicial to Compton. The circuit court admonished the jury that anything other than what Compton said during the interview was to be considered only as background information, not for the truth of the matter asserted; statements from anyone other than Compton were just to put his responses into context.

On appeal, Compton argues that Stinnett's statements during his interview about what other people had told Stinnett were hearsay and violated the Confrontation Clause. Because Compton is raising his Confrontation Clause argument for the first time on appeal, it is not preserved for appellate review; our court will not address arguments made for the

first time on appeal. *Lewis*, *supra*. Furthermore, Compton's hearsay objections were not contemporaneously made, and he failed to make an objection when the jury requested to listen to the recorded interview for a second time after retiring for deliberations. A contemporaneous objection is required to preserve an issue for appeal; because there was not a contemporaneous objection, this issue was not preserved for appeal. *May v. State*, 2022 Ark. 216, 655 S.W.3d 74.

Nevertheless, even if preserved for appeal, there was no abuse of discretion in allowing the statements because they were not hearsay. The State contended that MC1's and Lawson's statements referenced by Stinnett during the interview were not being offered for the truth of the matter asserted but were instead necessary to place Compton's statements into context; the circuit court admonished the jury to that effect. A circuit court does not abuse its discretion by admitting out-of-court statements that are not offered for the truth of the matter asserted but instead are questions to place the defendant's admissible answers into context. *Campbell v. State*, 2017 Ark. App. 59, 512 S.W.3d 663. This is exactly what occurred in this case.

The next evidentiary ruling of which Compton complains is when Lawson testified that McCullen, who did not testify at trial, told her that he would beat up Compton after he learned that Compton had sexually assaulted MC1. However, no objection to this testimony was made at trial; therefore, the issue is not preserved for appeal. *May*, *supra*. Compton contends that Lawson's testimony was "sufficiently flagrant and prejudicial" to be addressed under the fourth *Wicks* exception, when the admission or exclusion of evidence affects a

defendant's substantial rights. It is not. Our supreme court has declined to apply *Wicks* to hearsay testimony when a hearsay objection was not raised at trial. *See Johnson v. State*, 289 Ark. 589, 715 S.W.2d 441 (1986).

The last alleged evidentiary error of which Compton complains is that the State asked MC1 a leading question when she was asked, "And [Compton] said he was going to put his head where?" Counsel objected to the State's asking leading questions, stating that there had been no prior question about where Compton put his head. The prosecutor stated that he would rephrase the question, and the circuit court instructed the jury to disregard the last question since the prosecutor was going to rephrase the question, which he did; MC1 then testified that Compton asked her if he could lay his head on her stomach. Here, Compton received the relief he requested; counsel objected to the question as leading, and the prosecutor rephrased the question. A party who received the relief requested has no basis for appeal. *McClain v. State*, 361 Ark. 133, 205 S.W.3d 123 (2005).

Affirmed.

MURPHY and BROWN, JJ., agree.

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