

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DIVISION IV

CACR05-1129

MARCH 15, 2006

BRODERICK ALLEN	APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. CR-2005-000209]
V.		HON. WILLARD PROCTOR, JR., JUDGE
STATE OF ARKANSAS	APPELLEE	AFFIRMED

ROBERT J. GLADWIN, Judge

The Pulaski County Circuit Court found appellant Broderick Allen guilty of robbery in a bench trial and sentenced him to seven years' imprisonment at the Arkansas Department of Correction. Appellant's sole argument on appeal is that the trial court erred in overruling his objection based on relevance during the testimony of the State's witness. We affirm.

On December 23, 2004, Pulaski County Deputy Sheriff Jody Gieber was working off duty as a security officer at Dillard's in the Park Plaza Mall in Little Rock. Gieber was watching the cameras in the security office, which is located in Dillard's on the east side of the mall, when he observed appellant entering Dillard's on the west side of the mall. Appellant came inside Dillard's with a white shopping bag into which he stuffed a woman's shirt and two purses. According to Gieber, it looked as though appellant was leaving Dillard's and entering the rest of the mall. Gieber rushed to meet appellant and encountered him near Victoria's Secret, where he asked to speak to appellant regarding the stolen items. Gieber was preparing to handcuff appellant when appellant suddenly broke free and ran toward the mall's main entrance. Gieber attempted to subdue appellant, but instead he

slipped and almost fell. Appellant continued to run, looking over his shoulder at Gieber. Because he was not watching where he was going, appellant collided with a man and a column and then fell into a railing. Appellant's bungling allowed Gieber to catch up to him, and Gieber again attempted to overpower appellant. Appellant hit Gieber in the face hard enough that Gieber tasted blood in his mouth. Appellant continued to run with Gieber still following him, and Little Rock Police Officer Antonio Metcalf, who was also working off duty at the mall, tackled appellant. Appellant continued to resist while the officers were trying to handcuff him. Joshua Larimer, an employee of Dillard's who was on his break, testified that he saw appellant strike Gieber and saw the aftermath.

Appellant's version of events differed drastically. He admitted that he went to Dillard's to shoplift and that he left with items without paying for them. According to appellant, when Gieber approached him outside of Dillard's, he asked the officer "why was he doing all this." Appellant testified that Gieber began spraying him with mace and that he ran in order to avoid the fumes from the mace. According to appellant, another officer then blind-sided him, and four or five cops were on top of him. Appellant said the officers took him to the loss prevention office where they interrogated him, beat him, and sprayed mace on him before taking him to jail. Appellant said that he did not fight with Gieber because he had a "brand new" knee and hip, but rather Gieber fought with him.

The testimony at issue in this appeal occurred when Gieber explained what happened when he and other officers escorted appellant to the security room. Gieber stated:

This is at the point where I ended up having some complications myself. I had a bad reaction, I guess, to – in reference to my medicine. I take blood pressure medicine, and I am ADHD, which I have to take a medicine for that also. And combination of that and the amount of weight I had lost, I hadn't had anything to eat – since I hadn't had anything to eat that day, it caused a bad reaction with my medicine. I ended up having a hard time with breathing.

Defense counsel objected to Gieber's testimony on the basis that it was not relevant. Gieber responded, "I am explaining why I had to be put on a stretcher and transported out

on a stretcher into an ambulance and taken to Baptist emergency room, because my blood pressure was 90 over 50 and my heart rate was 148. According to the doctor, that's pretty close to death." The trial court sustained defense counsel's objection as to what the doctor said but overruled it as to the rest.

On appeal, appellant argues that the trial court erred in admitting Gieber's testimony because it was irrelevant. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Ark. R. Evid. 401. According to Ark. R. Evid. 402, evidence that is not relevant is not admissible. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Ark. R. Evid. 403. The balancing of probative value against prejudicial effect is a matter left to the trial court's sound discretion. *Sasser v. State*, 321 Ark. 438, 902 S.W.2d 773 (1995). Trial courts have broad discretion in deciding evidentiary issues, including the admissibility of evidence, and those decisions will not be reversed absent an abuse of discretion. *Neal v. State*, 320 Ark. 489, 898 S.W.2d 440 (1995).

Appellant cites Ark. Code Ann. § 5-12-203, which provides that a person commits robbery if, with the purpose of committing a felony or misdemeanor theft or resisting apprehension immediately thereafter, he employs or threatens to immediately employ physical force upon another. Appellant argues that the State simply had to prove that he used force in the commission of the offense and that Gieber's health problems had nothing to do with appellant's actions. He contends that Gieber's testimony was irrelevant and that he should be given a new trial.

Gieber's testimony had at least marginal relevance in that Gieber distinguished between the harm he sustained from the force employed by appellant when he hit him and the complications of a personal nature that resulted in his being taken from the mall in an

ambulance. We cannot say that the trial court abused its discretion in admitting Gieber's testimony. The circumstances of a bench trial are different with respect to relevant evidence because a judge is better equipped to sort out what is pertinent to the issue at hand. *Walls v. State*, 336 Ark. 490, 986 S.W.2d 397 (1999). During a bench trial, a trial judge can consider evidence only for its proper purpose, and there is no risk of prejudice by the mention of contested evidence. *Id.* In any event, appellant admitted that he went to Dillard's with the purpose of committing theft; Gieber and Metcalf testified regarding appellant's resistance to apprehension by them; and Gieber and Larimer testified that appellant used physical force in that he hit Gieber in the face. When the evidence of guilt is overwhelming, as it is here, and the error is slight, we can declare that the error was harmless and affirm. *See Cobb v. State*, 340 Ark. 240, 12 S.W.3d 195 (2000).

Affirmed.

GRIFFEN and NEAL, JJ., agree.