

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
SAM BIRD, JUDGE

DIVISION IV

CACR07-277

FEBRUARY 6, 2008

JIMMY SMITH

APPELLANT

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT, FIFTH  
DIVISION, [NO. CR2006-1007]

V.

HON. WILLARD PROCTOR JR.,  
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Antoine Baker and appellant Jimmy Smith were charged in Pulaski County with first-degree murder in the death of Corte Beavers, who died from gunshot wounds on November 9, 2005. Smith was found guilty in a jury trial and was sentenced as a habitual offender to sixty years' imprisonment. He contends that the trial court abused its discretion in refusing to permit defense counsel to cross examine State's witness Brenda Gonzalez about her pending one-year jail sentence as proof of her motive to testify falsely. We agree with the State that the point on appeal is not preserved for our review.

Brenda Gonzalez testified during direct examination that Beavers, who was lying in the street, told her that he had been shot and was dying. She testified that Beavers named

Smith as one of his assailants. Counsel for the defense approached the bench during cross-examination, and the following colloquy ensued:

DEFENSE COUNSEL:

I would like to ask the witness if she, number one, is a prostitute; number two, if she has been convicted of second offense prostitution in Saline County, if she received a year in jail for that and if she has that presently on appeal and if she has an expectation that this prosecutor will help her to get out of that year that she's been sentenced to in her trial *de novo* in circuit court for prostitution. . . . I think this shows that she would do anything to further her selfish interest, including having sex with strangers for money, that this shows her motive to testify for the prosecutor. This shows that she needs to stay on good terms with the prosecution since her occupation is that she's a prostitute. It's part of the *res gestae*.

It also impeaches her story that she's out in the early morning hours just doing her laundry. It goes to her credibility and allows me to confront her about this dying declaration more fully and under the Sixth Amendment right to confront witnesses. . . . I have a right to present a defense and fully explore this witness's credibility.

. . . .

PROSECUTING ATTORNEY:

. . . I don't have a problem if he wants to ask her about her prostitution. I think she's going to answer truthfully on that. . . . [S]he's going to say yes, she prostituted for crack cocaine in the past.

The other thing is she's been convicted of the prostitution and given a year in jail. She filed an appeal. We have nothing to do with that. Misdemeanor convictions just aren't admissible. I mean he can ask all day—he can ask all day if she's gotten a deal or she expects help on anything. . . . He can ask all day on—if there's a deal or whatever, but the specificity of that, I just don't see that she's been convicted twice of prostitution, what relevance that has.

And the fact that it's on appeal, there's no way we could—I mean it's one thing to testify to sentencing, that someone testified that an appeal—there's absolutely nothing we could do anyway.

The trial court ruled that defense counsel would be allowed to ask Gonzalez if she had any expectation of help from the prosecutors or the State, but questioning about the Saline County conviction would not be allowed. Defense counsel argued that the testimony would go to the witness's bias and motive to testify favorably for the State in hopes of not having to serve her one-year sentence. The court again ruled that the testimony would not be allowed. Under further cross examination Gonzalez testified that she was a prostitute, that she did not have “any expectation that the State will help in my business endeavors by testifying here,” and that the State had “not even offered.” On redirect examination she explained that she was not taking crack on the night in question. She stated that, having already told the jury that she “prostituted” and was a crack addict, she had no reason not to tell them if she had been engaged in prostitution on the night that Beavers was killed.

Defense counsel again approached the bench at the beginning of re-cross examination, contending that the State opened the door to the Saline County prostitution conviction by asking “do you have any reason to lie after you've told that you're a prostitute and when you gave the statement, you were in jail, did you need help?” He argued that the question created the impression that Gonzalez did not need help for her problems “and, in fact, she's going to have to do a year if she doesn't get help in Saline County, if her case isn't resolved favorably on appeal.” Counsel repeated his earlier arguments regarding the Sixth Amendment, “all

those reasons . . . stated previously,” and “the right to present a trial.” The court denied his motion and allowed no further argument.

*Point on Appeal*

Smith contends on appeal that the trial court abused its discretion in refusing to permit defense counsel to develop proof of Gonzalez’s motive to testify falsely by cross-examining her about her pending one-year jail sentence in Saline County. He asserts that he should have been allowed to cross-examine her on this point in order to avoid her possible bias in favor of the State. He argues that the jury, if made aware of the pending sentence, could have assessed whether she had an expectation that in return for her testimony implicating Smith the State would try to reduce or eliminate her then pending sentence.

Rule 103 of the Arkansas Rules of Evidence requires a party to make a proffer of the testimony or evidence sought to be admitted unless it is clear from the context of the questions asked what the evidence would be. *See also Halford v. State*, 342 Ark. 80, 87, 27 S.W.3d 346, 350 (2000) (holding that the exclusion of testimony relevant to bias of the State’s witness was not preserved for review where defense counsel, after advising the trial court that he wanted to pose certain questions on cross-examination, failed to go forward with a proffer of what the testimony would have been).

Although the State acknowledged at a bench conference that Gonzalez had a pending jail sentence for prostitution, nothing in the record suggests how she would have answered questions about the sentence itself or her possible expectations that the prosecutor might help her avoid it. Because no proffer of her testimony was made and because it is not clear from

the questions of defense counsel what her testimony would have been, the issue is not preserved for appeal.

Affirmed.

GLOVER and VAUGHT, JJ., agree.