

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA12-272

B.R.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered NOVEMBER 7, 2012

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. J-11-260-3]HONORABLE MARK THOMPSON
FRYAUF, JUDGE

AFFIRMED

CLIFF HOOFFMAN, Judge

Appellant B.R. appeals from the circuit court's order adjudicating him delinquent after finding that he had committed the offense of rape. On appeal, B.R. argues that the circuit court erred in admitting unreliable hearsay evidence by the child victim under Ark. R. Evid. 803(25) (2011). We affirm.

On April 12, 2011, the State filed a juvenile-delinquency petition alleging that fourteen-year-old B.R. had committed rape by engaging in deviate sexual activity with his four-year-old niece, L.C., during the summer of 2010. An adjudication hearing was held on December 29, 2011.

L.C., who was five years old at the time of the hearing, testified and denied that B.R. had touched her inappropriately or that she had touched him. The State then sought to introduce a videotape of an interview conducted with L.C. at the Child Advocacy Center on November 9, 2010, to show that her testimony was inconsistent with her prior statements

during the interview. The State asserted that the tape was admissible under Ark. R. Evid. 803(25) as an exception to the hearsay rule and that it had given defense counsel the required notice of its intention to use this evidence prior to the hearing. A foundation for the admission of the tape was laid by the testimony of Erin Kramer, the forensic interviewer at the Child Advocacy Center who conducted the interview with L.C. The trial court then reviewed the contents of the tape to determine whether it was trustworthy, as required by Rule 803(25). The court found that the videotape was admissible and offered sufficient guarantees of trustworthiness, noting several specific reasons for that conclusion. Defense counsel asked the court to “hold off” on its ruling and objected to the tape’s admission into evidence until counsel had been given the opportunity to cross-examine L.C. Subsequent to L.C.’s cross-examination, there was no further objection by defense counsel, and the videotape was admitted into evidence at the conclusion of the State’s case. During L.C.’s taped interview, she disclosed that B.R. had touched her on her “pee pee,” that she had touched his “pee pee,” and that he had placed his penis in her mouth. In his testimony, B.R. denied any inappropriate contact with L.C.

Following the hearing, the circuit court found that the State had proved beyond a reasonable doubt that B.R. committed rape and adjudicated him delinquent, placing him on supervised probation. An order to this effect was entered on January 3, 2012, and B.R. filed a timely notice of appeal from this order.

On appeal, B.R. argues that the circuit court erred in admitting the videotaped interview under Ark. R. Evid. 803(25). According to this rule, a hearsay statement by a child

under the age of ten years concerning any type of sexual offense, or attempted sexual offense, with, on, or against that child, which is inconsistent with the child's testimony and offered in a criminal proceeding, is admissible if the child is subject to cross-examination at trial, and if the trial court conducts a hearing outside the presence of the jury and finds that the statement possesses a reasonable guarantee of trustworthiness considering the competency of the child both at the time of the out-of-court statement and at the time of the testimony. Ark. R. Evid. 803(25)(A) (2011).

A circuit court's ruling on the admission of evidence will not be reversed absent an abuse of discretion. *Mathis v. State*, 2012 Ark. App. 285, ___ S.W.3d ___. An abuse of discretion is a high threshold and occurs when a circuit court acts improvidently, thoughtlessly, or without due consideration. *Id.*

B.R. contends that the circuit court erred in finding that the videotaped statement by L.C. was reliable at the time of her statement and at the time of her testimony because the prior statement had "several hallmarks of unreliability." The State responds that B.R.'s argument is not preserved for appeal.

We agree with the State. After the circuit court watched the videotape to determine its admissibility under Ark. R. Evid. 803(25) and found that it was trustworthy, defense counsel only objected on the basis that she had not yet cross-examined the child. After counsel's cross-examination of L.C., there was no further objection to the admissibility of the videotape. Further, at the conclusion of its case, the State confirmed with the circuit court that the tape had in fact been admitted into evidence, and defense counsel did not object at

that time. This court will not consider arguments raised for the first time on appeal; thus, a party cannot change the grounds for an objection on appeal but is instead bound by the scope and nature of his arguments made at trial. *C.L. v. State*, 2012 Ark. App. 374. Because B.R. failed to raise the argument he now makes on appeal to the circuit court, it is not preserved for our review.

Although we may affirm on that basis, we further note that we find no abuse of discretion on the part of the circuit court in admitting the videotape under Ark. R. Evid. 803(25). Erin Kramer, who interviewed L.C., testified that she was trained in and had used the accepted method for interviewing children of alleged sexual abuse, which is “RAITAC,” an acronym that stands for rapport and anatomy identification, touch inquiry, abuse scenario, and closure. Despite B.R.’s contention that Kramer’s questioning of L.C. was inappropriate, the circuit court found that the questions were not leading and that the child’s responses were truthful. The court also considered L.C.’s age and found her competent to testify, stating that there was no evidence of motive or bias on the part of the child against B.R. In addition, as the court noted in its ruling at the conclusion of the hearing, L.C. spontaneously brought up B.R.’s name during the interview, and the court found that her description of the deviate acts on the videotape was based on first-hand knowledge, as it went “far beyond” something that she could have learned from other sources. Thus, there was no abuse of discretion by the circuit court in admitting this evidence.

Affirmed.

ROBBINS and MARTIN, JJ., agree.

James Law Firm, by: *Patricia A. James*, for appellant.

Dustin McDaniel, Att’y Gen., by: *Lauren Elizabeth Heil*, Ass’t Att’y Gen., for appellee.