

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

---

No. 1D19-1481

---

PATRICK BENNETT LOUVIERE JR.,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

---

On appeal from the Circuit Court for Duval County.  
Mark Borello, Judge.

November 4, 2020

ROWE, J.

Patrick Bennett Louviere Jr. appeals his judgment and sentence for battery and possession of a firearm by a convicted felon. He argues that the trial court erred by granting the State's motion in limine to exclude evidence of the nonviolent nature of Louviere's prior convictions. He also contends that the court erred by not allowing his counsel to cross-examine the victim on her reputation for dishonesty. Finding no merit in either claim, we affirm.

*Facts*

Louviere went to trial on charges of aggravated battery, possession of a firearm by a convicted felon, and aggravated

assault. The charges stemmed from what began as a sexual encounter between the victim and Louviere.

At trial, the victim testified that she was hanging out at a convenience store when Louviere asked her if she wanted to make \$20. She took him up on the offer, and they drove to a nearby parking lot. Louviere gave her the money in exchange for oral sex. But the victim became uncomfortable with the way Louviere was treating her, so she stopped performing oral sex on him. When Louviere threatened to shoot her if she did not continue, the victim tried to get out of the truck. Louviere grabbed her shirt and pulled her back inside the truck. Louviere repeatedly hit the victim with a gun. When she managed to get away, she noted the license plate number on Louviere's truck. She then sought medical treatment at the hospital. The victim suffered a skull fracture and received stitches on her head and face.

On cross-examination, defense counsel asked the victim if she had a reputation for being dishonest. The State objected, and the trial court sustained the objection. Defense counsel then approached the court at sidebar and explained the basis for the question. Counsel explained to the court that during her deposition, he asked the victim, "Isn't it true that you have a reputation for dishonesty? People tell you all the time, they don't believe you." The victim responded, "Yeah, all the time." After hearing counsel's explanation, the trial court still sustained the objection.

As the trial continued, the State introduced evidence showing that the police identified Louviere and his truck based on the license plate number provided by the victim. When police officers searched the truck, they discovered the victim's glasses. They also found traces of blood that later DNA testing would match to the victim. Police officers also obtained a surveillance video of the parking lot where the victim said the assault occurred. On that night, the video showed Louviere's truck stopped for about five or six minutes. The driver got out of the truck and ran around it before getting back into it to leave. The State rested its case.

During a recess before Louviere took the stand to testify in his own defense, the prosecutor informed the court that defense

counsel planned to ask Louviere about the nature of his prior felony convictions. The State moved in limine to prevent Louviere from presenting such testimony.

Defense counsel explained that he wanted the jury to know that Louviere's prior convictions were for nonviolent offenses. The court observed that it did not believe such a question was permissible unless there was a dispute over the number of convictions. Defense counsel stated that he would preserve the issue by asking the question.

The court questioned him to determine if his decision to testify was knowing and voluntary. The court explained that the State could ask about the number of his prior felony convictions. But if there was an agreement about the number of convictions, the trial court would not permit the State to inquire into the nature of the convictions or the sentences imposed. The State then expressed its intention to object if defense counsel asked about the nature of the prior convictions, and the court stated that it would sustain the objection.

Louviere took the stand and admitted that he had four felony convictions. He stated that he approached the victim because he wanted to buy marijuana from her. They drove to the parking lot to meet her dealer. When they arrived, a man approached Louviere's truck, shoved a gun through the window, and asked for Louviere's wallet and keys. Louviere said he fought the man and managed to take the gun away from him. When the victim tried to grab the gun, Louviere shoved and hit her until she left the truck.

The jury found Louviere guilty of the lesser-included offense of battery and guilty of possession of firearm by a convicted felon. They acquitted him on the aggravated assault charge. This timely appeal follows.

### *Analysis*

In his first claim of error, Louviere contends that the trial court abused its discretion by granting the State's motion in limine to exclude evidence on the nature of his prior felony convictions. He asserts that his testimony on his prior convictions would have

shown the jury that his prior convictions were for nonviolent offenses.

A defendant may engage in anticipatory rehabilitation of his character and present impeaching evidence on direct examination. *See Lawhorne v. State*, 500 So. 2d 519, 521 (Fla. 1986) (holding that a party presenting testimony may bring out impeaching evidence on direct examination “to steal the thunder of impeachment it is anticipated the other side will elicit on cross” and “to rehabilitate the witness before he has been impeached”); *Morrison v. State*, 860 So. 2d 458, 461 (Fla. 1st DCA 2003) (same). And impeachment on the nature of a defendant’s prior convictions may be permissible. *See Lawhorne*, 500 So. 2d at 521.

Even so, Louviere’s argument fails because he did not preserve the issue on appeal. Defense counsel did not obtain a clear ruling on his objection to the exclusion of Louviere’s testimony on the prior convictions. *See Braddy v. State*, 111 So. 3d 810, 838 (Fla. 2012) (holding that defendant did not preserve issue when his counsel “failed to obtain a clear ruling on his objection”). Although the trial court twice stated that it *would* sustain an objection to any question about the nature of Louviere’s prior felonies, it never had a chance to do so because defense counsel never asked the question.

Further, defense counsel never proffered evidence on the nature of Louviere’s convictions. “A proffer of the evidence being excluded is necessary to preserve a claim of improperly excluded evidence ‘because an appellate court will not otherwise speculate about the admissibility of such evidence.’” *Teachman v. State*, 264 So. 3d 242, 246 (Fla. 1st DCA 2019) (quoting *Lucas v. State*, 568 So. 2d 18, 22 (Fla. 1990)). Defense counsel represented that Louviere’s prior convictions contained “no crimes of violence.” But counsel never told the court the exact nature of those convictions. Nor did he argue how evidence of his prior convictions would show that Louviere did not act violently toward the victim. And so, because the record does not show that counsel made the necessary proffer, this Court must affirm the trial court’s ruling on the motion in limine. *See id.* at 247 (holding that when counsel did not make the necessary proffer the record was not “sufficient to put

the trial court on notice that the as-yet-unknown evidence would be admissible at trial”).

In his second claim of error, Louviere argues that the trial court erred by sustaining the State’s objection and preventing his counsel from cross-examining the victim on her reputation for dishonesty. He asserts that eliciting reputation testimony from the victim would have shown the jury that she was not trustworthy. We review the trial court’s ruling for an abuse of discretion. *See McCray v. State*, 919 So. 2d 647, 649 (Fla. 1st DCA 2006).

Under the Florida Evidence Code, when evidence of a person’s character is admissible, it may be proven by testimony about that person’s reputation. *See* § 90.405(1), Fla. Stat. (2017). But before reputation evidence may be introduced, the party offering the testimony must show that the witness is aware of the person’s general reputation in the community. *See* § 90.803(21), Fla. Stat. (2017) (establishing a hearsay exception for “[e]vidence of reputation of a person’s character among associates or in the community”); *Pitts v. State*, 263 So. 3d 834, 840 (Fla. 1st DCA 2019) (affirming on preservation grounds the trial court’s exclusion of evidence on the defendant’s reputation for sexual non-violence because counsel never proffered evidence of a witness who could testify about that reputation). And “the community must be sufficiently broad to provide adequate knowledge and a reliable assessment.” *Ibar v. State*, 938 So. 2d 451, 469 (Fla. 2006).

Defense counsel sought to proffer the victim’s testimony on her own reputation for dishonesty based on the victim’s answers during her deposition about her reputation. But counsel offered no other predicate. And nothing in the record shows that the proffered reputation testimony represented a sufficiently broad segment of the community. *See Rigterink v. State*, 66 So. 3d 866, 894–95 (Fla. 2011).

Instead, the victim’s proffered testimony about her own reputation rested on people telling her that they did not believe her. Defense counsel did not explain who “people” were or what segment of the community “people” represented. Because nothing suggested that the victim’s testimony rested on a “broad-based knowledge of the community’s opinion,” the trial court did not

abuse its discretion in excluding the testimony. *Morrison v. State*, 818 So. 2d 432, 451 (Fla. 2002).

Because Louviere showed no reversible error by the trial court, we AFFIRM his judgment and sentence.

LEWIS and JAY, JJ., concur.

---

***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

---

Andy Thomas, Public Defender, and Kevin Steiger, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Sharon S. Traxler, Assistant Attorney General, Tallahassee, for Appellee.