

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2019-KA-00288-COA

LORENZO EVANS

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	01/22/2019
TRIAL JUDGE:	HON. TOMIKA HARRIS IRVING
COURT FROM WHICH APPEALED:	CLAIBORNE COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: GEORGE T. HOLMES JUSTIN TAYLOR COOK
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: LAURA HOGAN TEDDER
DISTRICT ATTORNEY:	ALEXANDER C. MARTIN
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 04/14/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE J. WILSON, P.J., WESTBROOKS AND McDONALD, JJ.

WESTBROOKS, J., FOR THE COURT:

¶1. In September 2018, a Claiborne County grand jury indicted Lorenzo Evans for one count of burglary of an automobile in violation of Mississippi Code Annotated section 97-17-33(1) (Rev. 2014). Following a jury trial, Evans was found guilty and convicted as charged. Evans filed a motion for judgment notwithstanding the verdict or, alternatively, a new trial on January 18, 2019, which the trial court denied. Evans was sentenced to serve three years in the custody of the Mississippi Department of Corrections (MDOC). The trial court also ordered Evans to complete the MDOC Long-Term Therapeutic Alcohol and Drug Treatment

Program and pay court costs. Evans appealed his conviction, and finding no error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2. Anthony Brown worked as maintenance man for the Claiborne County Sheriff's Department and owned a lawn service. Brown hired Evans to assist him with the lawn service business on an as-needed basis. On October 7, 2018, Brown enlisted Evans's assistance for a lawn job. After concluding work for the day, Brown and Evans returned to Brown's truck, which he had parked at the sheriff's department. Brown paid Evans for the day's work and rode away with a group of acquaintances; Brown's truck remained parked at the sheriff's department. Brown testified that he closed his glove compartment and locked his truck before leaving. When Brown returned to his vehicle later that night, he found the back window of the truck shattered and the glove compartment opened.

¶3. Brown left his truck at the sheriff's department with plans to have investigators examine the scene the next morning. A friend agreed to drive him home. Brown testified that on the way home, he noticed Evans intoxicated and walking. Brown stated that they stopped to pick up Evans and asked him if he had broken into Brown's truck. Evans denied any involvement.

¶4. Investigator James Jefferson of the sheriff's department was assigned Brown's case. Based on video evidence from the cameras in the sheriff's department parking lot, Investigator Jefferson arrested Evans in connection with the automobile burglary. Investigator Jefferson testified that Evans admitted to breaking into Brown's truck. Evans told Investigator Jefferson that he was in fear of his life and broke into Brown's truck to look

for a gun he believed was in the glove compartment. Based on his statement, Evans was placed under arrest.

¶5. At trial, Evans rescinded his admission and claimed that he did not break into Brown's truck; instead, he slid the back window open to get his money and cigars out of the vehicle. He claimed that Investigator Jefferson coerced him into making his earlier statement.

¶6. At Evans's request, Mississippi Rule of Evidence 615¹ was invoked at trial. Before calling the proposed witness (Michelle), Evans's attorney acknowledged that Michelle had been inside the courtroom and heard testimony of other witnesses in violation of the sequestration rule. Evans's trial counsel claimed to be unaware of Michelle's presence until "she said something" and argued that the rule violation was inadvertent. The trial court did not allow her to testify. Evans's trial counsel did not attempt to proffer Michelle's testimony.

¶7. On January 15, 2019, the jury found Evans guilty of burglary of an automobile. Evans filed a motion for judgment notwithstanding the verdict (JNOV) or, alternatively, a new trial on January 18, 2019, which the trial court denied. Evans was sentenced to serve three years in the custody of the MDOC. The trial court also ordered Evans to complete the MDOC Long-Term Therapeutic Alcohol and Drug Treatment Program and pay court costs.

¶8. On appeal, Evans alleges that the trial court deprived him of his constitutional right to compulsory process and the right to fully present his theory of defense by excluding Michelle's testimony. The State asserts that because no proffer of Michelle's proposed

¹ Rule 615 requires the sequestration of witnesses at trial and provides in pertinent part, "At a party's request the court must order witnesses excluded so that they cannot hear other witnesses' testimony." *See also Avery v. State*, 119 So. 3d 317, 319 (¶7) (Miss. 2013).

testimony was made, Evans waived the issue on appeal.

STANDARD OF REVIEW

¶9. “A trial court’s decision to exclude or admit evidence will not be reversed unless the trial court abused its discretion. *Williams v. State*, 54 So. 3d 212, 213 (¶5) (Miss. 2011). This Court is “limited to an abuse-of-discretion standard when reviewing an alleged sequestration violation.” *Johnson v. State*, 242 So. 3d 145, 163 (¶36) (Miss. Ct. App. 2017) (quoting *White v. State*, 127 So. 3d 170, 173 (¶10) (Miss. 2013)).

DISCUSSION

Whether the trial court erred in excluding testimony of Evans’s proposed witness.

¶10. The purpose of Rule 615 “is to ‘exercise a restraint on witnesses “tailoring” their testimony to that of earlier witnesses and aid in detecting testimony that is less than candid.’” *Randle v. State*, 220 So. 3d 217, 222 (¶13) (Miss. Ct. App. 2017) (quoting *Avery*, 119 So. 3d at 319 (¶7)). “Simply put, Rule 615 guards against ‘falsification, inaccuracy, and collusion.’” *Id.* (quoting *Avery*, 119 So. 3d at 319 (¶7) (quoting M.R.E. 615 advisory committee note)). However, “failure to comply with a sequestration order does not automatically render [a] witness’s testimony inadmissible. Rather, the decision to exclude the witness’s testimony rests within the trial court’s sound discretion.” *Harris v. State*, 937 So. 2d 474, 479 (¶16) (Miss. Ct. App. 2006).

¶11. In his sole issue on appeal, Evans argues that the trial court erred in refusing to allow a proposed rebuttal witness to testify, despite Evans’s violation of Rule 615 requiring the proposed witness to remain sequestered during the trial. Evans contends that the trial court

denied him the opportunity to fully assert his theory of defense by imposing the most extreme sanction available without regard for less radical measures (i.e., denial of fully developed cross-examination).

¶12. As the State points out, Evans failed to preserve his objection for appeal. We recognize the Supreme Court’s long-held rule that “when testimony is not allowed at trial, a record of the proffered testimony must be made in order to preserve the point for appeal.” *Davis v. State*, 130 so. 3d 1141, 1150 (¶32) (Miss. Ct. App. 2013) (quoting *Metcalfe v. State*, 629 So.2d 558, 567 (Miss. 1993)). Evans failed to respond to this argument, and the record clearly reflects that at trial, no proffer of Michelle’s proposed testimony was given or requested by Evans’s counsel. In *Harrell v. State*, 179 So. 3d 16, 21-22 (¶¶14-18) (Miss. Ct. App. 2014), this Court again “affirmed the necessity of a proffer being made at the trial[-] court level to preserve for appellate review an issue of improper exclusion of evidence,” relying on the following:

Generally, when a party seeks to offer evidence which in turn is excluded by the trial court, before we will consider the matter on appeal the party must have somehow placed in the record the nature and substance of the proffered evidence for our consideration. When testimony is excluded at trial, a record must be made of the proffered testimony in order to preserve the point for appeal.

(Quoting *Barron v. State*, 130 So. 3d 531, 539-40 (¶32) (Miss. Ct. App. 2013)). Absent a proffer of the proposed testimony, we cannot find that the trial court abused its discretion by excluding Michelle’s testimony.

¶13. Accordingly, we affirm the trial court’s ruling and Evans’s conviction and sentence for burglary of an automobile.

¶14. **AFFIRMED.**

**BARNES, C.J., CARLTON AND J. WILSON, P.JJ., GREENLEE, TINDELL,
McDONALD, LAWRENCE, McCARTY AND C. WILSON, JJ., CONCUR.**