

SUPREME COURT OF ARKANSAS

No. CR11-194

STATE OF ARKANSAS

APPELLANT

V.

BERNARD KINDALL,

APPELLEE

Opinion Delivered October 27, 2011

APPEAL FROM THE PULASKI COUNTY
CIRCUIT COURT, FIRST DIVISION,
NO. CR2009-3167,
HON. MARION A. HUMPHREY, JUDGE

REVERSED AND REMANDED.

KAREN R. BAKER, Associate Justice

The State of Arkansas appeals an order of the circuit court permitting admission of evidence of prior sexual conduct under the rape-shield statute. *See* Ark. Code Ann. § 16-42-101 (Repl. 1999). We reverse and remand for failure to issue a written order in compliance with the rape-shield statute. While the circuit court ruled from the bench that the evidence was relevant, the required written order failed to make the mandatory findings that the evidence was relevant to prove a fact in issue and that the probative value outweighed any inflammatory or prejudicial nature of the evidence. *See* Ark. Code Ann. § 16-42-101(c)(2)(C). The State brings this interlocutory appeal pursuant to the rape-shield statute, Arkansas Code Annotated section 16-42-101(c)(2)(B) (Repl. 1999), and Rule 3 of the Arkansas Rules of Appellate Procedure—Criminal (2011). Our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(a)(8) (2011).



Appellee Bernard Kindall was charged under Arkansas Code Annotated section 5-14-125 with second-degree sexual assault of K.J., a person less than fourteen years old. Prior to trial, Kindall filed a motion pursuant to the rape-shield statute alleging that evidence K.J. had made similar allegations of sexual misconduct against others was relevant and admissible.

Pursuant to the rape-shield statute, the circuit court held an in-camera hearing on Kindall's motion. At that hearing, K.J. testified that in 2006, her cousin D.R. sexually abused her, and that her mother confronted her about the abuse on the day it happened. K.J. testified that she initially denied that the abuse occurred because she feared her mother would not believe that she was an unwilling participant. However, K.J. testified that she later that same day told her mother that the abuse had occurred and thereafter never wavered in her assertion that the allegation was true. D.R. testified and denied the abuse. He admitted to being taken into custody but reported he was released when the case was dismissed. The circuit court ruled from the bench that the alleged prior sexual conduct was relevant as to K.J.'s credibility, but the written order does not make a finding that the offered evidence was "relevant to a fact in issue." *See* Ark. Code Ann. § 16-42-101(c)(2)(C).

Pursuant to the rape-shield statute, evidence of a victim's prior sexual conduct is generally inadmissible by a defendant "to attack the credibility of the victim, to prove consent or any other defense, or for any other purpose" in a rape or sexual assault trial. Ark. Code Ann. § 16-42-101(b). An exception to this rule exists when the circuit court, after an in-camera hearing, issues a written order finding that such evidence is relevant to a fact in issue and that its probative value outweighs its inflammatory or prejudicial nature. Ark. Code Ann.



Cite as 2011 Ark. 451

§ 16-42-101(c)(2)(C). The circuit court’s order must also set out what evidence may be introduced, as well as the nature of the questions that may be posed in accordance with the applicable rules of evidence. *See* Ark. Code Ann. § 16-42-101(c). “The statute’s purpose is to shield victims of rape or sexual abuse from the humiliation of having their personal conduct, unrelated to the charges pending, paraded before the jury and the public when such conduct is irrelevant to the defendant’s guilt.” *Bond v. State*, 374 Ark. 332, 335–36, 288 S.W.3d 206, 209 (2008). Further, “the circuit court is vested with a great deal of discretion in determining whether the evidence is relevant, and we will not overturn the circuit court’s decision unless it constituted clear error or a manifest abuse of discretion.” *Id.* at 336, 288 S.W.3d at 209.

In the present case, the written order is silent on relevancy of the evidence to a fact in issue. Where evidence is admitted under the rape-shield statute, the written order must be specific and set out the relevant fact in issue. *See* Ark. Code Ann. § 16-42-101(c)(2)(C). Additionally, the order failed to address whether the probative value of the evidence outweighs any inflammatory or prejudicial nature. This issue must also be addressed in the written order. *See id.* This case is reversed and remanded for the circuit court to issue a written order in compliance with the rape-shield statute.

Reversed and remanded.