IN THE COURT OF APPEALS OF IOWA

No. 8-708 / 97-2147

STATE OF IOWA,

Appellee,

vs.

JUSTIN J. TALBERT,

Appellant.

FILED
MAR 31 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Richard G. Blane, Judge.

Justin Talbert appeals the judgment and sentence entered upon his conviction for assault with intent to commit serious injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, John P. Sarcone, County Attorney, and Joseph Weeg, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel, and Zimmer, JJ.

ZIMMER, J.

The defendant, Justin Talbert, appeals the judgment and sentence entered upon his conviction for assault with intent to commit serious injury. He contends the trial court erred in limiting his cross-examination of two State witnesses regarding possible bias they might have because of other criminal charges against them. We affirm.

Talbert was driving with friends Robert Ritchie and Idris Kareem when they saw Marcus Cade walking on the street. After stopping the car Ritchie and Kareem exited and the defendant climbed into the driver seat. A shootout followed in which Ritchie was shot in the leg and Kareem was killed by a bullet to the head. The defendant was not involved in the shooting. Talbert picked Ritchie up in the car as he fled the scene of the shooting.

The State originally charged the defendant with attempted murder. At trial the State called Chad Stumpf who had witnessed a portion of the events from his living room window. During direct examination he testified that he recently pled guilty to an unrelated charge of possession of a controlled substance with intent to deliver and was awaiting sentencing at the time. On cross-examination the defense attempted to question Stumpf regarding the potential penalty for the offense but was denied the opportunity by the court. The defendant offered no evidence the State had offered any leniency on the unrelated drug charge in return for Stumpf's testimony in this trial. Stumpf testified in the defendant's offer of proof, "I was informed that these are two different cases and neither one would affect the other case."

The State also called Marcus Cade who had recently been sentenced on unrelated charges of terrorism and going armed with intent. As part of his plea agreement in that case, the charge of terrorism pending against Cade was reduced from a class "C" felony to a class "D" felony. Prior to defendant's trial, Cade pled guilty to carrying a concealed weapon in connection with his shootout with Ritchie and Kareem. Cade was also sentenced for that offense prior to Talbert's trial. Cade testified he had not received any deal to testify at the defendant's trial. The State confirmed Cade had not received any sentencing concessions as a result of his testimony. The defendant did not offer any evidence the State had made a deal with Cade in return for his testimony.

The trial court did not prohibit the defendant from cross-examining Cade regarding his recent convictions. In addition, the defendant was permitted to ask Cade the sentence he received as a result. Cade testified he was sentenced to seven years imprisonment. The court only restricted the defendant from inquiring into the maximum possible sentences Cade could have received.

After the close of the State's evidence the court granted a judgment of acquittal on the attempted murder charge but allowed the jury to consider the lesser offense of assault with intent to commit serious injury. The jury convicted the defendant of that charge.

The determination to admit or to refuse to admit evidence rests in the discretion of the trial court. *State v. McGhee*, 280 N.W.2d 436, 440-41 (Iowa 1979). Review

of evidentiary issues is for abuse of discretion. *State v. Predka*, 555 N.W.2d 202, 204 (Iowa 1996). In order to show an abuse of discretion, one must show the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Sackett*, 499 N.W.2d 312, 313 (Iowa App. 1993) (quoting *Weeks v. Burnor*, 132 Vt. 603, 326 A.2d 138, 140 (1974)).

On appeal, the defendant contends the court erred in limiting his cross-examination of Stumpf and Cade. Although he acknowledges there was no explicit *quid pro quo* for their testimony, he maintains they were in "vulnerable" positions with the State such that he should have been allowed to explore their prior charges and possible deals more deeply, although he presented no evidence of any deals or bias.

We agree with the defendant's contention that courts have generally allowed liberal cross-examination by a defendant of a witness for the prosecution with respect to his motive for testifying. This is especially true where the witness is a co-defendant or accomplice of the accused whose testimony may be influenced by a promise or expectation of leniency in return for testimony. *See, e.g.*, R. P. Davis, Annotation, 62 A.L.R.2d 610, 624 (1958).

"Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested." *Davis v. Alaska*, 415 U.S. 308, 315-16, 94 S. Ct. 1105, 1110, 39 L. Ed. 2d 347, 353 (1974). In *Davis*, the court reversed the Alaska supreme court which had affirmed the trial court's limitation of

cross-examination. The defendant wanted to question the witness about his status on probation from juvenile court. Alaska law protected the anonymity of juvenile offenders.

While it is true the defendant has the right to effective cross-examination, it is also true the trial court retains "wide latitude" to impose reasonable limits on cross-examination based on "among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S. Ct. 1431, 1435, 89 L. Ed. 2d 674, 683 (1986). A constitutional violation occurs only when the defendant is prohibited from engaging in "otherwise appropriate cross-examination" and thereby prevented from exposing facts from which jurors "could appropriately draw inferences relating to the reliability of the witness." *Id.* at 680, 106 S. Ct. 1436, 89 L. Ed. 2d at 684.

Defendant cites several Iowa cases which emphasize a defendant should be allowed liberal cross-examination to show bias on the part of a witness. *See, e.g., State v. Donelson*, 302 N.W.2d 125, 130 (Iowa 1981); *State v. Sackett*, 499 N.W.2d 312, 315 (Iowa App. 1993). Each of these cases, however, deals with an accomplice who pled guilty to a lesser crime in exchange for testifying for the State.

Here, the record is void of any evidence that either Stumpf or Cade pled guilty to lesser crimes or received sentencing concessions in exchange for testifying for the State in this case. In addition, defendant's offers of proof failed to demonstrate the

circumstances of witnesses Stumpf and Cade were sufficient to permit the jury to infer bias from the limited evidence excluded by the trial court. We conclude the trial court did not abuse its discretion in limiting cross-examination of witnesses Stumpf and Cade.

AFFIRMED.