STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 14, 2004
v	No. 250534 Chippewa Circuit Court
JAMI NATURALITE, Defendant-Appellant.	LC No. 00-007049-FH

Before: Hoekstra, P.J., and Griffin and Borrello, JJ.

PER CURIAM.

Defendant was convicted by a jury of extortion, MCL 750.213, and was sentenced as a fourth habitual offender, MCL 769.12, to twenty to thirty years' imprisonment. He[1] appeals as of right. We affirm.

Defendant argues that the trial court committed error requiring reversal when it did not permit him to ask his accomplice, who entered into a plea agreement in which he agreed to testify truthfully against defendant, the length of sentence that could have been imposed for the crime with which the accomplice was originally charged.[2]

We review an evidentiary ruling for an abuse of discretion. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). There is an abuse of discretion only "'when the result is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but [the] defiance [of it] . . . ."'" *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). However, because of the constitutional entitlement to confront and cross-examine witnesses, the standard for finding an abuse of discretion is more rigorous when the issue is the cross-examination of an accomplice witness concerning a grant of

[1] Defendant is a male, although he refers to himself as "Miss Naturalite."

[2] We note that the comments made by defendant, who acted in propria persona, after the ruling excluding the question, could be taken as acquiescing in the trial court's ruling and, therefore, due to an affirmative waiver, review of this issue is barred. *People v Aldrich*, 246 Mich App 101, 111; 631 NW2d 67 (2001). Because we resolve the issue on an alternative ground, we need not address this ground for affirmance.

immunity given to secure the witness's testimony. In such cases, it is clear error for the trial court to deny the defendant the opportunity to elicit this information. *People v Minor*, 213 Mich App 682, 684-685; 541 NW2d 576 (1995).

In this case, defendant was not denied that opportunity. Evidence was presented to the jury that the accomplice received, as part of the plea bargain, a "delayed sentence" of twelve months, and that, as explained by the accomplice, a delayed sentence essentially means no sentence at all, contingent on his good behavior. This fact distinguishes the present case from *People v Bell*, 88 Mich App 345; 276 NW2d 605 (1979), in which the defendant was denied the opportunity to establish that the offense to which the accomplice was permitted to plead was one for which the sentence could be limited to probation.

The fact that defendant was able to present evidence of the minimal nature of the punishment the accomplice received under the plea agreement also serves to distinguish this case from *People v Mumford*, 183 Mich App 149; 455 NW2d 51 (1990), in which the defendant was not permitted to establish the gross disparity between the penalty for the charge the accomplice originally faced, and that to which he was allowed to plead under the plea bargain. Similarly, it distinguishes the instant case from *Minor, supra*, in which the defendant was not allowed to inform the jury that the witness was granted immunity by the prosecution. In all of these cases, the defendants were denied the opportunity to advise the jury that the witness, in exchange for testifying, received extraordinarily lenient treatment that could have been a motivation to provide untruthful testimony. Because this fact was presented to the jury in the instant case, the rule of these cases was not violated.[3]

Next, defendant argues that the jury instruction concerning the elements of extortion was improper. Specifically, he argues that the instruction that a threat may be conveyed in "general or vague terms" had the potential to mislead the jury as to the elements of the crime – in particular, whether a threat was made to publicly accuse the judge of having committed a crime – and whether the extortionary letter (which was addressed to a third party) was meant to be seen by the judge. We disagree.

We review claims of error as to criminal jury instructions de novo. *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996). In doing so, we read the instructions as a whole, not piecemeal, and the key question is not whether they were absolutely perfect, but whether "they fairly presented the issues to be tried and sufficiently protected the defendant's rights." *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001).

Under this standard, we find no error in the instruction. Taken as a whole, the instructions clearly conveyed the elements of the crime and, in particular, the requirements that defendant threatened to accuse the judge of a crime and intended that the judge give money or take other action against his will. Therefore, the instructions were proper.

[3] In light of this holding, we need not consider whether any error in limiting the cross-examination was harmless beyond a reasonable doubt under the rule of *Minor*, *supra* at 685.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello