

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVARRIO DEONTE WEBB,

Defendant-Appellant.

UNPUBLISHED

August 16, 2012

No. 305017

Saginaw Circuit Court

LC No. 10-034573-FC

Before: TALBOT, P.J., AND WILDER AND RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree home invasion, MCL 750.110a(2), two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, safe breaking, MCL 750.531, and felon in possession of a firearm, MCL 750.224f. Defendant was sentenced to 10 to 20 years for first-degree home invasion, two years for each count of felony-firearm, 10 to 20 years for safe breaking, and 10 to 20 years for felon in possession of a firearm.¹ We reverse and remand for further proceedings.

I. FACTUAL BACKGROUND

Richard Schomaker returned home in Saginaw Township after an evening away. Upon entering his house, Schomaker immediately noticed that it had been ransacked, there were blood drops on the floor, a living room window broken, and the safe had been pried open. The safe's entire contents of a wedding ring set, five long guns, and \$1,600 cash were missing. Schomaker called the police who arrived and collected a sample of the blood from the kitchen floor. The blood sample was then run through CODIS, the nationwide law enforcement DNA database, and resulted in a match to defendant's DNA profile that was in the system for an unrelated matter.

Pursuant to a search warrant, the police collected another DNA sample from defendant, which corroborated the first DNA test. The DNA expert testified that there were astronomical odds that the blood from the kitchen floor would have come from anyone other than defendant.

¹ Defendant's sentences for the two counts of felony-firearm run consecutively.

The DNA evidence was the only evidence linking defendant to the crime. Before trial, defendant requested the appointment of a DNA expert witness, which the trial court denied. The jury found defendant guilty of first-degree home invasion, safe breaking, felon in possession of a firearm, and two counts of felony-firearm. Defendant now appeals.

II. STANDARD OF REVIEW

“We review the decision whether to appoint an expert for an abuse of discretion.” *People v Lueth*, 253 Mich App 670, 689; 660 NW2d 322 (2002). “[A]n abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes.” *People v Carnicom*, 272 Mich App 614, 617; 727 NW2d 399 (2006) (internal quotations and citation omitted).

III. ANALYSIS

“Under the Due Process Clause, states may not condition the exercise of basic trial and appeal rights on a defendant’s ability to pay for such rights.” *People v Leonard*, 224 Mich App 569, 580; 569 NW2d 663 (1997). MCL 775.15 provides that an indigent defendant may request that the judge, “in his discretion[,] . . . make an order that a subpoena be issued” for a material witness favorable to defendant “without whose testimony [defendant] cannot safely proceed to a trial[.]” As reflected in this permissive language, it is a discretionary decision and “a trial court is not compelled to provide funds for the appointment of an expert on demand.” *People v Tanner*, 469 Mich 437, 442; 671 NW2d 728 (2003). “[A] defendant must show a nexus between the facts of the case and the need for an expert.” *Leonard*, 224 Mich App at 582. Also, “[i]t is not enough for the defendant to show a mere possibility of assistance from the requested expert. Without an indication that expert testimony would likely benefit the defense, a trial court does not abuse its discretion in denying a defendant’s motion for appointment of an expert witness.” *Tanner*, 469 Mich at 443 (internal quotations and citation omitted).

The trial court abused its discretion in denying defendant’s request for an expert witness. The only evidence linking defendant to the crime was the DNA evidence. Thus, there was a nexus between the facts of the case and the need for a DNA expert, *Leonard*, 224 Mich App at 582, as the DNA evidence was the only evidence the prosecutor presented that defendant was guilty of the charged crime. Without the ability to have an independent DNA expert examine the blood samples, defendant was deprived of an opportunity to present a defense to the charged crimes. “[F]undamental fairness requires that the state not deny [indigents] an adequate opportunity to present their claims fairly within the adversary system.” *Leonard*, 224 Mich App at 580 (internal quotations and citation omitted). In spite of this concern for fundamental fairness, the trial court failed to articulate any reasons justifying the denial of defendant’s request for an independent DNA expert. Therefore, we find that the trial court abused its discretion in denying defendant’s request for a DNA expert.

IV. CONCLUSION

The trial court abused its discretion in denying defendant's motion for an expert witness. We reverse and remand for further proceedings. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Michael J. Riordan