IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID C. REID,	)	
	)	No. 247, 2005
Defendant Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for Kent County
	)	
STATE OF DELAWARE,	)	Cr. ID. No. 0403025083
	)	
Plaintiff Below,	)	
Appellee.	)	

Submitted: November 10, 2005
Decided: November 30, 2005

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 30th day of November, 2005, upon consideration of the briefs of the parties, it appears to the Court as follows:

1. Defendant-Appellant David C. Reid appeals his conviction for one count of Rape III and Unlawful Sexual Contact II.[1] On appeal, Reid first argues that the trial judge committed reversible error when he denied his motion for mistrial after a State's witness offered evidence of other bad acts for which Reid was not being tried, despite the trial judge's instruction to the jury to disregard such evidence. Second, Reid argues that the trial judge erred when he refused to allow him to use a juvenile adjudication of delinquency to impeach the

[1] In violation of 11 Del C. §§ 771 and 768, respectively.

complaining witness. Because the trial judge did not abuse his discretion, the judgment of the Superior Court is AFFIRMED.

2. Reid was born on December 12, 1961. Beginning in December 2003, he moved into the home of his girlfriend, Betty Trotter. Betty Trotter lived in a trailer in Magnolia, Delaware with five of her children. One of her children, Tasha Trotter, was the complaining witness. Because of the confines of the trailer, the children slept in the bedrooms and Betty Trotter and Reid slept on a mattress in the living room.

3. On March 9, 2004, Reid and Tasha were sitting on the couch in the living room. The record reflects that Reid engaged in sexual conduct with Tasha that included fondling and cunnilingus. At the time of the incident, Tasha was 15 years old, a freshman in high school, and visibly pregnant (not by Reid). Tasha told her older sister, Angela Trotter, about the incident three days later. Angela, in turn, called the Delaware State Police. Detective Kevin Mack investigated the complaint.

4. During the course of Mack's investigation, several of Reid's incriminating statements were audio-taped and later introduced at trial.[2] At trial, Reid neither testified nor presented any witnesses.

[2] The propriety of the taped statements are not at issue on appeal.

5. The first argument Reid raises on appeal is that the trial judge erred when he denied Defendant's motion for a mistrial after Betty Trotter testified to other bad acts. Further, Reid argues that the trial judge's curative instruction to the jury insufficiently alleviated the risk of unfair prejudice. We review the trial judge's denial of Reid's motion for a mistrial for an abuse of discretion.[3]

6. During her testimony, the prosecutor asked Betty Trotter how Reid reacted when she and several of her children confronted him. Betty Trotter testified:

> Well, he [Reid] got disturbed a little bit and said, "I don't know what these girls are talking about, or what she's talking about, maybe they don't like me or something." And, you know, I respond to him and I told him, I said, "Well, you know, I don't know what's going on," because it was out before that he had did something to the girls.[4]

Defense counsel objected and the court held a sidebar where defense counsel moved for a mistrial. At the heart of the motion for mistrial was Betty Trotter's reference to it being "*out before* that he had did something to the girls," which

[3] *See Taylor v. State*, 827 A.2d 24, 27 (Del. 2003) ("Our standard of review, for a trial court's denial of a motion for mistrial is one of abuse of discretion.") (citing *Ashley v. State*, 798 A.2d 1019, 1022 (Del. 2002)).

[4] A73-74.

Reid contends was tied to additional counts of his indictment on which the prosecution had entered *nolle prosequis*.[5]

7. Before denying the motion for a mistrial, the trial judge heard arguments at sidebar and ruled:

> I think it can be corrected with a curative instruction. I don't think that the question was intended to draw that answer. She just said it. It contained no specifics. I think that I can correct it.
>
> ***
>
> The application for a mistrial is denied. I'm going to instruct the jury to disregard the last answer and not to let it affect their deliberations in any way.[6]

8. "A trial judge should grant a mistrial only where there is manifest necessity or the ends of public justice would be otherwise defeated."[7] As a general rule, a curative instruction is usually sufficient to remedy any prejudice which might result from inadmissible evidence admitted through oversight."[8] This Court

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[5] Originally, Reid was indicted on four counts: the two for which he was found guilty as well as two counts of Unlawful Sexual Conduct in the Second Degree in violation of 11 Del. C. § 768. Before trial, the State attempted to amend the complaint to reflect alleged improper sexual conduct with another Trotter daughter. The trial court denied the State's application, at which point the State entered a *nolle prosequi* on Counts Three and Four of the indictment, and proceeded only on Counts One and Two.

[6] A75-76.

[7] *Steckel v. State*, 711 A.2d 5, 11 (Del. 1998) (quoting *Fanning v. Superior Court*, 320 A.2d 343, 345 (Del. 1974)) (internal quotations omitted).

[8] *Steckel*, 711 A.2d at 11 (quoting *Zimmerman v. State*, 628 A.2d 62, 66 (Del. 1993)) (internal quotations omitted).

routinely emphasizes that prompt curative instructions "will usually preclude a finding of reversible error."[9]

9. Reid argues that the curative instruction was inadequate because the trial judge did not tell the jury that there was no evidence to support Betty Trotter's statement. In *Milligan v. State*,[10] we noted that "[a] trial court's jury instruction can be a basis for reversal if the 'deficiency undermined the ability of the jury to intelligently perform its duty returning a verdict.'"[11] We explained that under the facts of *Milligan*, the limiting instruction issued by the court failed to meet this standard since "the jury charge was misleading, improper, and undermined the ability of the jury to accurately and intelligently return an appropriate verdict free of unfairly prejudicial effect."[12]

10. A review of the record evidence presented, and the trial judge's curative instruction in light of Betty Trotter's testimony, leads this Court to the conclusion that the trial judge promptly issued a curative instruction and left no room for the jury to be misled. The trial judge's language – "Ladies and Gentlemen, I instruct you to *completely* disregard the witness' last answer and do

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[9] *Garvey v. State*, 873 A.2d 291, 300 (Del. 2005) (citing *Sawyer v. State*, 634 A.2d 377, 380 (Del. 1993)).

[10] 761 A.2d 6 (Del. 2000).

[11] *Id*. at 11 (*quoting Floray v. State*, 720 A.2d 1132, 1137 (Del. 1998)).

[12] *Id.*

not allow it to affect your deliberations *in any way*"[13]—was a clear command that the jury should not allow the immediately preceding answer to be a factor in its decision.

11. The propriety of the trial judge's action turns on whether his curative instruction appropriately shielded Reid from unfair prejudice that might result from speculative inferences that could be drawn from Betty Trotter's statement. The instruction was comprehensive and unequivocal. The trial judge's curative instruction left no room for improper or unfair speculation.

12. Defendant's second claim is that the trial judge committed reversible error when he refused to allow Reid to use a witness's juvenile adjudication of delinquency predicated on third degree burglary for impeachment purposes on cross-examination. As his basis for this argument, Reid cites D.R.E. 609(d), and the Confrontation Clauses of the Sixth Amendment of the United States Constitution[14] and Article I, section 7 of the Delaware Constitution.[15]

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[13] A77-78 (emphasis added).

[14] U.S. CONST. amend. VI:

> In all criminal prosecutions, the accused shall enjoy the right -- to be confronted with the witnesses against him. . . .

[15] DEL. CONST. art. I, § 7:

> In all criminal prosecutions, the accused hath a right to -- meet the witnesses in their examination face to face. . . .

Reid has cited both U.S. CONST. amend. VI and DEL. CONST. art. I, § 7 as grounds for relief, but he has offered no support for the position that Delaware Confrontation Clause provides more protection than the Federal Confrontation Clause in this situation. Thus, we analyze both claims

13. *Rhodes v. State*[16] directly addresses this contention. In *Rhodes*, we explained the standard controlling the admission of juvenile adjudications of delinquency pursuant to D.R.E. 609(d):

> Delaware Rule of Evidence 609(d) generally excludes evidence of juvenile adjudications of delinquency for impeachment purposes. However, the court in a criminal case may allow evidence of juvenile adjudications of delinquency of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission is necessary for a fair determination of guilt. Evidentiary rulings on this issue are reviewed for abuse of discretion.[17]

We also held:

> The trial judge acknowledged that crimes of Theft and Burglary are crimes of dishonesty. However, the trial judge distinguished these crimes from False Statements, Fraud, or Perjury. Although the credibility of the victim's testimony was important to the State's case, we cannot conclude that the trial judge's decision amounted to an abuse of discretion. This standard of review affords significant deference to the trial judge's decision. This deference combined with the general policy of Rule 609 to exclude evidence of juvenile adjudications of delinquency for impeachment purposes lead us to this result.[18]

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under the United States Constitution. *See Fleek v. State*, 620 A.2d 222, 228 (Del. 1993) (both clauses "guarantee[] only 'an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'")(internal citation omitted).

[16] 825 A.2d 239 (Del. 2004).

[17] *Id*. (footnotes and citations omitted).

[18] *Id*.

Further, we concluded that the defense counsel had effectively brought the credibility of the witness into question by showing an ulterior motive for the witness' testimony; specifically that the witness and defendant had "argued about money which led to the defendant moving out shortly before [the charged] incident as well as the defendant's assertion that the victim sold drugs out of his trailer."[19]

14. In this case, the trial judge also acknowledged that Tasha's delinquency adjudication based on burglary third was a crime of dishonesty: "It's a crime of dishonesty, but it's not the same category with some other forms of crimes of dishonesty, if it was burglary third."[20] The trial judge recognized that the crime of burglary third is distinguishable from false statements, fraud, or perjury; cases falling within the *crimen falsi* category.

15. Additionally, the trial judge found that the admission of Tasha' juvenile adjudication of delinquency was not necessary for a fair determination of Defendant's guilt or innocence in the underlying matter.[21] Specifically, the trial judge noted that: "All right, I'm not persuaded that the admission of that evidence is necessary for a fair determination of the issue of guilt or innocence of this

[19] *Id.*

[20] A21.

[21] *See Rhodes*, 825 A.2d at 239; D.R.E. 609(d).

defendant. It's somewhat remote … I just think it's two [sic] tangential to be admitted."[22]

16. Reid argues that Tasha's credibility was a key element in the State's case. However, Reid's own audio-taped admissions were sufficient to support his convictions. Like *Rhodes*, Reid had an opportunity to highlight examples of Tasha's credibility problems during cross-examination without resort to her juvenile adjudication of delinquency.[23] Because the trial judge properly applied the *Rhodes* standard, we conclude that the trial judge did not abuse his discretion under D.R.E. 609 when he denied Reid's request to use Tasha's juvenile adjudication of delinquency for impeachment purposes.

17. This Court has resolved similar issues by analyzing the trial court's ruling under D.R.E. 609(d) without addressing constitutional claims.[24] Here the defendant has expressly alleged a violation of the Sixth Amendment. This case offers the opportunity to clarify the analysis necessary to balance the Confrontation Clause and DRE 609(d) impeachment of a witness with juvenile adjudications of delinquency, especially as the Rule applies to a child witness. In *Davis v. Alaska*, the United States Supreme Court held that the defendant's Sixth Amendment right

[22] A20-21.

[23] *See, e.g.,* A35-48.

[24] *Haney v. State*, 878 A.2d 430, 434 (Del. 2005); *Morris v. State*, 795 A.2d 653, 665 (Del. 2002)

to confront a witness was violated where the accused was prohibited from cross-examining a prosecution witness about his juvenile record where the examination would have revealed the witness's specific motive to lie in the immediate case.[25] "The Court concluded that the state's interest in preserving the confidentiality of juvenile records was overcome where the witness was crucial to the prosecution's case and impeachment could have done 'serious damage' to that case."[26] Professors Wright and Gold have commented on *Davis* directly:

> The lower courts have been reluctant to extend [*Davis v. Alaska*] to justify admitting juvenile adjudications offered to impeach under Rule 609. It makes some sense to draw such a distinction between juvenile-adjudication evidence offered to impeach for bias and such evidence offered to impeach under Rule 609. Evidence offered under Rule 609 undermines credibility only indirectly by showing a criminal character and, thus, a propensity which is only generally linked to truthfulness. On the other hand, bias evidence shows the witness has a motive to lie in the specific case. Thus, evidence offered to impeach under Rule 609 is less likely to do "serious damage" to the prosecution's case than is bias evidence. On the other hand, it is not inconceivable that a case could arise where the prosecution witness is crucial, the Rule 609 evidence is convincing, and there is no other comparably effective way to attack credibility. In such a case, the reasoning employed in Davis suggests that exclusion under Rule 609(d) may be unconstitutional. However, in such a case there should be no conflict between Rule 609(d) and the confrontation clause. This is because subdivision (d) should not bar the evidence since these circumstances suggest that the evidence is

[25] Charles Alan Wright and Victor James Gold, FEDERAL PRACTICE & PROCEDURE §6138 (citing *Davis v. Alaska*, 415 U.S. 308, 318-319 (1974)).

[26] *Id.*

> "necessary for a fair determination of the issue of guilt or innocence."[27]

18. Reviewing these cases, it is apparent that when a trial judge is called upon to balance the Confrontation Clause and Rule 609(d), he should ask whether the impeachment evidence of earlier juvenile adjudications of delinquency is (1) offered to show bias (*i.e.*, the motive to lie in the specific case) and (2) important to the assertion of that bias.[28] This second prong tracks the explicit requirement of Rule 609(d) that evidence be "necessary for a fair determination of the issues of guilt or innocence." In other words, the Confrontation Clause does not mandate a right to use juvenile adjudications of delinquency for general impeachment. The confrontation clause is implicated only where impeachment is used to establish

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[27] *Id*. *See, e.g., U.S. v. Williams*, 963 F.2d 1337, 1340-1341 (10th Cir. 1992) (trial court did not violate defendants' right to confrontation under *Davis v. Alaska* by excluding evidence of prosecution witnesses' juvenile adjudications; jury was otherwise aware of witnesses' motives to lie, witnesses were not key witnesses for prosecution, and other substantial evidence was introduced to attack the witnesses' credibility); *U.S. v. Ciro*, 753 F.2d 248, 249 (2nd 1985) *cert. denied* 471 U.S. 1018 (trial court properly excluded juvenile-adjudication evidence under subdivision (d) since *Davis* was distinguishable on the grounds the evidence did not show the witness had a strong motive to lie and the witness's credibility could be effectively attacked with other evidence); *U.S. v. Jones*, 557 F.2d 1237, 1239 (8th Cir. 1977) (where trial court permitted defendant to impeach prosecution witness with juvenile conviction, *Davis v. Alaska* did not compel admission of additional details concerning that conviction); *U.S. v. Decker*, 543 F.2d 1102, 1105 (5th 1976) (trial court did not abuse discretion in excluding evidence offered under Rule 609(d) since *Davis v. Alaska* was distinguishable on grounds that the witness was not to be impeached for bias and his testimony was not shown to be important). *See also Davis v. Alaska*, 415 U.S. 308, 321 (1974) (Stewart, J., concurring) ("[T]he Court neither holds nor suggests that the Constitution confers a right in every case to impeach the general credibility of a witness through cross-examination about his past delinquency adjudications or criminal convictions"); *State v. McAllister*, 511 S.E.2d 660, 663 (N.C.App. 1999) (Greene, J., dissenting) (citing treatise).

[28] *Id*.

specific bias. The party offering the evidence should have the burden of showing that the exception to impeachment evidence is necessary for a fair determination of the issue of guilt or innocence.[29]

19. Here, Reid failed to show how Tasha's earlier juvenile adjudication of delinquency for burglary could demonstrate her bias or motivation to lie in this unrelated rape case. Nor did he show that her earlier juvenile adjudication of delinquency for burglary was important or critical to his assertion of bias. Rather, Reid sought to demonstrate that Tasha had a general propensity for untruthfulness. Because Reid sought only to introduce Tasha's juvenile record for general impeachment, not for allegations of specific bias, the Confrontation Clause is not implicated.

NOW, THEREFORE, IT IS ORDERED, that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

[29] Charles Alan Wright and Victor James Gold, FEDERAL PRACTICE & PROCEDURE §6138 (citing *U.S. v. Williams*, 963 F.2d 1337, 1341 (10th Cir. 1992) ("Rule 609(d) creates a presumption that evidence of juvenile adjudications is generally not admissible."); *U.S. v. Decker*, 543 F.2d 1102, 1104 (5th Cir 1976) (trial court properly excluded evidence of juvenile-delinquency adjudication where party offering evidence failed to show that evidence was "necessary for a fair determination of the issue of guilt or innocence").