

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID W. RHODES,)
) C.A. No. 597, 2002
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for New Castle County
)
 STATE OF DELAWARE,) Cr.ID. No. 0110007432
)
 Plaintiff Below,)
 Appellee.)

Submitted: April 15, 2003
Decided: May 16, 2003

Before **VEASEY**, Chief Justice, **HOLLAND** and **STEELE**, Justices.

ORDER

This 16th day of May 2003, upon consideration of the briefs of the parties, it appears to the Court as follows:

1. In May 2002, a Superior Court jury convicted Appellant, David W. Rhodes, of Robbery First Degree, Burglary First Degree, and related offenses. This is Rhode's direct appeal from his convictions. Rhodes claims that the trial judge abused his discretion by denying a defense request to admit, as impeachment evidence, two delinquency adjudications of the victim. Rhodes further claims that the trial judge abused his discretion by failing to instruct the jury to disregard a witness' testimony. We believe that the trial judge acted within his discretion and accordingly affirm.

2. The victim, a paraplegic, resided in a trailer in Townsend, Delaware. On October 11, 2001, some time after midnight, Dorman was awakened by the sound of someone kicking in his door. Two men rushed in, assaulted Dorman, and demanded his money. After rummaging through Dorman's belongings, the two assailants fled. Dorman immediately called the police.

3. The State's case relied upon the witness identification of the assailants. The victim identified the two robbers, one a former roommate and the other a childhood acquaintance. The State also presented evidence that the former roommate, defendant-appellant David Rhodes, attempted to avoid capture through a wooded area in Maryland.

4. The defense filed a motion informing the trial judge of its intent to impeach the credibility of the victim's testimony by introducing the victim's earlier juvenile adjudications. The victim was found delinquent in Family Court for Theft in 1994 and Burglary Third Degree in 1996 respectively. Delaware Rule of Evidence 609(d)¹ 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

¹ D.R.E. 609(d) (2002).

fair determination of guilt.² Evidentiary rulings on this issue are reviewed for abuse of discretion.³

5. The trial judge ruled that the defense may not introduce the victim's earlier juvenile adjudications under Rule 609(d). 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. Moreover, Defense counsel effectively undermined the victim's credibility by introducing evidence that the victim and defendant argued about money which led to the defendant moving out shortly before this incident as well as the defendant's assertion that the victim sold drugs out of his trailer. Therefore, we find no abuse of discretion on the facts of this case.

6. At trial, a police detective testified during cross-examination that he was familiar with the defendant as a result of patrolling Townsend.

² *Id.*

³ *Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994).

The defense requested that the trial judge strike this statement because it raised an impermissible impression that the defendant had been in trouble with the law before. The trial judge interpreted defense counsel's motion as a request to instruct the jury to disregard the statement. The trial judge recognized that the statement might suggest previous involvement with the defendant but denied relief because a curative instruction would only serve to highlight any possible prejudice. We review a trial judge's determination regarding the effect of prejudice engendered by a witness' answer to a question on cross-examination for abuse of discretion.⁴

7. The defense failed to articulate any prejudice as a result of the Detective's testimony. First, the testimony did not inform the jury of any uncharged crimes. In addition, the detective's contact with the defendant could have occurred for any number of reasons and not necessarily for past criminal conduct.⁵ Furthermore, defense counsel's question invited such a response. Therefore, the trial judge properly weighed the value of a curative instruction versus no action at all and did not abuse his discretion by declining to give one.

⁴ *Thompson v. State*, 399 A.2d 194, 199 (Del. 1979).

⁵ *See Hooks v. State*, 1992 WL 219078 *2 (Del. Supr.) (Noting with approval trial court's finding that detective's testimony about previous dealings with defendant did not suggest previous criminal activity).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice