

RENDERED: January 16, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-1663-MR

DAVID JOSEPH ADAMS

APPELLANT

V. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE RON JOHNSON, JUDGE
ACTION NO. 96-CR-51

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: GUDGEL, CHIEF JUDGE; GARDNER and GUIDUGLI, Judges.

GARDNER, JUDGE: David Joseph Adams (David) appeals from his conviction in Harlan Circuit Court for possession of a controlled substance in the first degree and possession of drug paraphernalia. David argues on appeal that the circuit court incorrectly refused to allow him to impeach one of the Commonwealth's witnesses. We have reviewed the record and have found no error. Thus, we affirm.

David's conviction stems from events occurring on April 15, 1995. Officers Joe Eldridge and John Skrock of the Cumberland City Police Department observed a car coming towards them with its lights on high beam. The driver did not dim the bright lights as the car approached them. Officer Skrock followed the vehicle and

noted that it swerved a little. As a result, the officers stopped the vehicle. Skrock approached the driver's side of the vehicle and smelled alcohol on the breath of Deborah Adams (Deborah) who was driving the vehicle. He administered to her a field sobriety test which she failed. As a result, she was placed under arrest. David, the passenger, also failed a sobriety test, and he was arrested for public intoxication.

The officers searched both occupants of the car and also searched the passenger compartment of the vehicle. Officer Eldridge searched the passenger side and found a plastic cellophane cigarette wrapper with a white powder wrapped in it. Skrock searched the driver's side and discovered a knife. They switched sides of the vehicle to double check their work, and on this second check, Skrock found under the seat, a small metal tube, which he believed was a crack pipe. The object contained some white residue.

As a result of this incident, David was indicted on January 25, 1996. He was indicted for one count of possession of a controlled substance in the first degree, one count of possession of drug paraphernalia and one count of possession of a controlled substance in an improper container. On May 7, 1996, the Commonwealth filed a motion to dismiss count three of the indictment. The trial court on May 8, 1996 ordered this count dismissed. David's case was consolidated with Deborah's case.

The trial before a jury occurred on May 14, 1996. The jury found David guilty of possession of cocaine and possession of

drug paraphernalia. The jury recommended a sentence of five years for the cocaine possession and twelve months for the drug paraphernalia possession, said sentences to run concurrently. The court sentenced David in accordance with the jury's recommendation. This appeal followed.

David contends that the trial court erred to his substantial prejudice and denied his federal constitutional right to cross-examine a witness when it refused to allow him to question Officer Skrock, a witness for the Commonwealth, about his dismissal from the Cumberland police department and alleged bad acts by him which led to his dismissal. We have uncovered no error.

Specifically, David's counsel asked Skrock on cross-examination why he was no longer employed by the Cumberland police department. An objection was raised and a bench conference ensued. David's counsel stated that he sought to impeach Skrock's credibility but conceded that to his knowledge, Skrock had not been formally accused. The court stated that under the rules, unless counsel could show that Skrock had been convicted, he could not bring this evidence in to impeach his credibility. The court refused to allow David's counsel to present this evidence to the jury but permitted him to put on the evidence by avowal. The court instructed Skrock regarding his fifth amendment rights. Skrock contacted his attorney by telephone prior to testifying on avowal.

On avowal, Skrock testified that the letter he received from the Mayor of Cumberland stated that he disobeyed the ordinances and policies of the police department. Counsel asked

Skrock for more details, but Skrock citing advice of counsel, stated that was all he could say. Skrock said that he could not testify about specific allegations on advice of counsel. He stated that he had filed a civil action in federal court and that there were no formal charges pending against him as a result of his employment with the police department.

Generally, Kentucky Rule of Evidence (KRE) 608 provides that the credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to the limitation that the evidence may refer only to general reputation in the community. Under the version of KRE 608 adopted, there exists no authorization in the current law for impeachment of witnesses through cross-examination on specific acts. Robert G. Lawson, The Kentucky Evidence Law Handbook, §4.25 p. 207 (3rd ed. 1993). KRE 609(a) states,

For the purpose of reflecting upon the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record if denied by the witness, but only if the crime was punishable by death or imprisonment for one (1) year or more under the law under which the witness was convicted. The identity of the crime upon which conviction was based may not be disclosed upon cross-examination unless the witness has denied the existence of the conviction. However, a witness against whom a conviction is admitted under this provision may choose to disclose the identity of the crime upon which the conviction is based.

Under KRE 611(b), "[a] witness may be cross-examined on any matter relevant to any issue in the case, including

credibility. In the interests of justice, the trial court may limit cross-examination with respect to matters not testified to on direct examination." Generally, a witness cannot be cross-examined about a matter which is collateral and irrelevant to the issue. Shirley v. Commonwealth, Ky., 378 S.W.2d 816, 818 (1964).

In the case at bar, the circuit court properly prohibited David's counsel from questioning Skrock before the jury about his firing from the Cumberland police department and the specific reasons for it. Under KRE 608 and 609, David's counsel's questions about Skrock's dismissal from the police department were not appropriate for impeachment. Skrock had not been formally charged with any crime, and certainly no conviction had occurred. Counsel went beyond asking merely about reputation in the community and was attempting to elicit answers about specific alleged wrongful acts that Skrock may have undertaken as a police officer. The court correctly noted that Skrock's own fifth amendment interests were in jeopardy. Further, counsel failed to show any real relevance of this questioning to the instant case. No concrete evidence was presented that Skrock had done anything wrong in handling David's case. The cases cited by David are fundamentally distinguishable as they concerned relevant information unique to those cases which specifically impacted on a witness's believability. Some of the evidence in those cases had not been disclosed to defendants by the prosecution prior to trial. In the case at bar, the circuit court was not faced with such a situation.

For the foregoing reasons, the judgment of the Harlan
Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ann T. Eblen
Louisville, Kentucky

BRIEF FOR APPELLEE:

A. B. Chandler III
Attorney General

Amy F. Howard
Assistant Attorney General
Frankfort, Kentucky