IMPORTANT NOTICE

NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.

RENDERED: JUNE 16, 2005
NOT TO BE PUBLISHED

Supreme Court of Kentucky

FINAL

2004-SC-0462-MR DATE 7-7-05 ElaGraith D.C.

GARY DEAN VAUGHN — APPELLANT

V.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE JERRY D. WINCHESTER, JUDGE
2003-CR-0201

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

This appeal is from a judgment based on a jury verdict which convicted Vaughn of first-degree assault, first-degree robbery, first-degree arson and as a first-degree persistent felony offender. He was sentenced to life in prison on each count to run concurrently.

The sole question presented here is whether it was an abuse of discretion by the trial judge to decline to allow Vaughn to cross-examine a police officer regarding statements made to the victim because it infringed on the right to present a defense.

Vaughn went to the home of the victim seeking employment. After talking a few minutes and drinking a beer, the victim told Vaughn he did not have any work for him at that time. Vaughn left the home but returned at approximately 11 p.m., demanded money, beat up the victim, took a small amount of money and set the house on fire.

The victim testified that Vaughn muttered that he could not let the victim live and that he did not have "no trouble killing [my daughter]," that is the defendant's daughter.

At trial, the victim testified regarding the statement uttered by Vaughn during the attack. Defense counsel did not object to the comment regarding the daughter of Vaughn and did not question the victim about the remark. The prosecution called the sheriff to testify as to the report of the crimes which he did. Defense counsel attempted to cross-examine the sheriff about his work on an unrelated prior crime, the death of the defendant's daughter. The prosecution objected to the cross-examination on the basis of relevancy. The trial judge considered the arguments of both counsel and concluded that the cross-examination was not relevant to the proceedings underway. At the conclusion of the trial, the jury found Vaughn guilty of all charges. This appeal followed.

Vaughn now argues that the refusal of the trial judge to permit the defendant to cross-examine the police officer regarding statements made to the victim is reversible error because it infringes on the right of the defendant to present a defense. We disagree.

The trial judge did not abuse his discretion in limiting the cross-examination of the police witness in regard to an unrelated crime. The trial judge has broad discretion to regulate cross-examination. Commonwealth v. Maddox, 955 S.W.2d 718 (Ky. 1997). See also Moore v. Commonwealth, 771 S.W.2d 34 (Ky. 1988). The trial judge has the authority to establish the proper boundaries on cross-examination. We recognize that KRE 611 permits a witness to be cross-examined on any relevant matter to any issue in the case. However, the rule still allows the trial judge to limit cross-examination. Such limitation is permitted when necessary to further the search for truth, avoid waste of time or protect witnesses against unfair and unnecessary attack.

DeRossett v. Commonwealth, 867 S.W.2d 195 (Ky. 1993), *citing* Lawson Kentucky Evidence Handbook §3.20(II) (3d ed. 1993).

In general, the role of cross-examination is to permit the defendant an opportunity to impeach a particular witness as to credibility. A defendant cannot be denied the opportunity to impeach a witness for bias or from presenting facts from which the jury could draw inferences regarding the credibility of the witness. Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674; Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974). However, limiting cross-examination does not unduly infringe on the confrontational clause of the United States Constitution which is only implicated if the cross-examination concerns a matter giving the witness reason to testify falsely during the trial at hand. Cf. Beaty v. Commonwealth, 125 S.W.3d 196 (Ky. 2004). The confrontation clause does not limit the discretion of the trial judge in imposing limits on cross-examination if there is a problem about confusion or relevancy. Cf. Delaware, supra.

Here, the questioning and testimony which Vaughn attempted to elicit from the deputy did not expose facts from which the jury could draw reasonable inferences relating to the credibility of the witnesses. Olden v. Kentucky, 488 U.S. 227, 109 S.Ct. 480, 102 L.Ed.2d 513 (1988). Vaughn concedes that the line of testimony was not intended to reveal motive, bias or reliability of the witness. Clearly, it was intended as factual testimony regarding an unrelated criminal investigation. The cross-examination was not intended to show bias or animus against the defendant. The questioning of the deputy was factual in nature. KRS 611 was not intended to allow a criminal defendant to introduce evidence on his own behalf or to create confusion about the facts of the case under consideration. A defendant is not allowed to present unsupported theories

in the guise of cross-examination and invite the jury to speculate as to some cause other than the one supported by the evidence. Maddox, supra. Questioning the deputy regarding the truth of the matters in the statement began to introduce irrelevant testimony into the proceedings at hand. Although partiality and bias will always be relevant to discredit a witness, the issue here is whether the testimony on cross-examination was relevant to this trial. DeRossett, supra.

The defense wanted to show that Vaughn was not a suspect in the death of his daughter, an unrelated crime. He wanted to cross-examine the deputy regarding information discovered in that investigation. As such, it was entirely unrelated to the current charges. Even if cross-examination may reveal some relevant information, the trial judge can still limit the questioning because it may confuse or mislead the jury on the present issues. See Maddox.

The victim testified during trial regarding the defendant's daughter and the defendant did not object to the testimony, nor follow with any questions on it. The prosecution called a deputy sheriff to testify as to the first report of the crimes and the subsequent investigation. Defense counsel attempted to cross-examine the deputy about his work on a prior crime in the area, that is, the death of Vaughn's daughter. The prosecution objected to that line of questioning on the grounds of relevancy, and after considering the arguments of both counsel, the trial judge ruled that the direction of the cross-examination was not relevant to the case at hand. Other than the victim himself, no other witness mentioned anything regarding the role of Vaughn in the death of his own daughter.

The trial judge did not abuse his discretion in limiting the cross-examination of the police witness in regard to an unrelated crime.

The judgment of conviction is affirmed.

Lambert, C.J., Cooper, Graves, Johnstone, Scott and Wintersheimer, JJ., sitting.

All concur except Johnstone, J., who concurs in result only.

COUNSEL FOR APPELLANT:

Karen Maurer
Assistant Public Advocate
Department of Public Advocacy
100 Fair Oaks Lane, Suite 302
Frankfort, KY 40601

COUNSEL FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Robert E. Prather
Assistant Attorney General
Criminal Appellate Division
Office of the Attorney General
1024 Capital Center Drive
Frankfort, KY 40601-8204