IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. SADIE A. HUNTOON, Appellant.	No. 66015-2-I DIVISION ONE UNPUBLISHED OPINION FILED: March 5, 2012

Leach, J. — Sadie Huntoon appeals her residential burglary conviction. She claims that the court erred by refusing to allow her to cross-examine her accomplice about the sentence he received after pleading guilty to a lesser offense. She contends this violated her right to confront an adverse witness and present a defense because she could not develop evidence of the witness's bias and potential motive to testify against her. Because the court acted within its discretion in limiting Huntoon's cross-examination, we affirm.

Background

Sadie Huntoon, along with Phillip Flynn, burglarized an apartment temporarily abandoned by its occupant due to flooding. Officer Joshua Hong saw them leaving the area. He recognized them both, knew they did not live in the complex, and that Flynn was someone who "like[d] to do burglaries." He stopped Flynn, who eventually admitted to burglarizing the apartment and turned over his spoils to the police. Flynn

confirmed that Huntoon also entered and stole items from the apartment.

The State charged Huntoon and Flynn with residential burglary. Flynn pleaded guilty to attempted residential burglary. By the time Flynn testified against Huntoon at her trial, he had already been sentenced. At the start of the trial, the court granted, without objection, the State's motion to exclude any evidence or argument concerning any penalty Huntoon might face if convicted.

At trial, on direct examination, Flynn testified that he did not receive any special treatment or any kind of benefit at sentencing so that he would testify against Huntoon. During cross-examination, the State objected when defense counsel asked Flynn about the consequences of pleading guilty to a lesser offense. The State contended that the question improperly sought to place before the jury, in violation of the court's pretrial order, the punishment that might follow Huntoon's conviction. The State also contended that with the question defense counsel sought to elicit sympathy for his client by showing that she was being prosecuted for a more serious offense for conduct similar to or less culpable than Flynn's. Defense counsel asserted that ER 609 allowed the question to demonstrate Flynn's bias or motivation to testify. The trial court sustained the State's objection.

The jury convicted Huntoon of residential burglary. She now appeals.

Standard of Review

We review alleged violations of the state and federal confrontation clauses de novo.[1] We review a trial court's ruling on the admissibility of evidence for an abuse of

[1] State v. Medina, 112 Wn. App. 40, 48, 48 P.3d 1005 (2002).

discretion.[2] Abuse occurs when the trial court's exercise of discretion is manifestly unreasonable or based upon untenable grounds or reasons.[3] We may affirm the lower court's ruling on any grounds adequately supported by the record.[4]

Analysis

At trial, Huntoon claimed ER 609 authorized the disputed inquiry. For the first time on appeal, Huntoon claims that the court's exclusion of this evidence denied her constitutional right to present a defense.[5] A violation of the Sixth Amendment confrontation clause is a manifest error affecting a constitutional right and may be raised directly on appeal.[6] Therefore, Huntoon may raise this issue for the first time on appeal.

The confrontation clause guarantees a criminal defendant the right "to be confronted with the witnesses against him."[7] This includes the right to cross-examine those witnesses.[8] But the right to cross-examine witnesses is not absolute.[9] A defendant does not have a constitutional right to present irrelevant evidence.[10] Generally, evidence of bias is relevant to a witness's credibility.[11] A trial court properly

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[2] State v. Darden, 145 Wn.2d 612, 619, 41 P.3d 1189 (2002).

[3] Darden, 145 Wn.2d at 619.

[4] State v. Costich, 152 Wn.2d 463, 477, 98 P.3d 795 (2004).

[5] The State argues that Huntoon has not preserved a sufficient record for appeal because she did not make an offer of proof after the trial court sustained the State's objection. However, ER 103(a)(2) does not require an offer of proof when, as here, the substance of the evidence was apparent from the context within which the questions were asked. Therefore, we find the record sufficient for review.

[6] RAP 2.5(a); State v. Clark, 139 Wn.2d 152, 156, 985 P.2d 377 (1999).

[7] U.S. Const. amend. VI; Const. art. 1, § 22.

[8] Washington v. Texas, 388 U.S. 14, 19, 23, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967).

[9] Darden, 145 Wn.2d at 620-21.

[10] State v. Hudlow, 99 Wn.2d 1, 15, 659 P.2d 514 (1983).

limits cross-examination where the offered evidence only remotely tends to show bias or prejudice of the witness.[12] However, while the scope of confronting a witness is within the trial court's discretion,

> "[t]he exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. . . . [A] criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness."[13]

Huntoon relies heavily on United States v. Mayans.[14] She correctly notes that the right to cross-examine adverse witnesses is "'especially important with respect to accomplices or other witnesses who may have substantial reason to cooperate with the government.'"[15] Therefore, the details of a plea agreement are "highly relevant" in assessing the credibility of an accomplice who has pleaded guilty, and inquiry into such details is "essential" for effective cross-examination.[16] If Flynn had received a favorable sentencing recommendation from the State in exchange for his testimony, evidence of that would have been relevant because it would show potential bias or motivation for his testimony.

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[11] State v. Lubers, 81 Wn. App. 614, 623, 915 P.2d 1157 (1996).

[12] State v. Knapp, 14 Wn. App. 101, 108, 540 P.2d 898 (1975).

[13] State v. Gregory, 158 Wn.2d 759, 883, 147 P.3d 1201 (2006) (some alterations in original) (internal quotation marks omitted) (quoting Olden v. Kentucky, 488 U.S. 227, 231, 109 S. Ct. 480, 102 L. Ed. 2d 513 (1988)).

[14] 17 F.3d 1174 (9th Cir. 1994).

[15] Mayans, 17 F.3d at 1184 (quoting United States v. Onori, 535 F.2d 938, 945 (5th Cir. 1976)).

[16] Mayans, 17 F.3d at 1184 (citing United States v. Roan Eagle, 867 F.2d 436, 443-44 (8th Cir. 1989)).

Flynn testified that he received no benefit from his testimony. Huntoon had no evidence to the contrary. Huntoon ignores Mayans's observation that "'what tells . . . is not the actual existence of a deal but the witness' belief or disbelief that such a deal exists.'"[17] After Flynn unequivocally stated that he received no benefit in exchange for his plea, the defense had no legitimate reason to pursue the issue further. The trial court agreed with the State that defense counsel's inquiry either was a back door attempt to introduce evidence about the possible sentence Huntoon might receive if convicted or an effort to elicit sympathy and not relevant to demonstrate bias. The trial court did not abuse its discretion by limiting the cross-examination to prevent the jury from hearing this improper evidence.

Conclusion

Because the trial court did not abuse its discretion in limiting Huntoon's cross-examination of Flynn, we affirm.

Leach, J.

WE CONCUR:

Grosse, J.

Dwyer, C. J.

[17] Mayans, 17 F.3d at 1184 (alteration in original) (quoting Onori, 535 F.2d at 945).