

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 66507-3-I
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
)	
MERLIN NORMAN BELL,)	
)	
Appellant.)	FILED: December 10, 2012

Grosse, J. — A defendant’s right to present a defense and right to cross-examine adverse witnesses are not absolute. To be admissible, evidence a defendant seeks to present or elicit on cross-examination must be relevant. Further, even if relevant, the evidence may be excluded if the State’s interest in precluding the evidence outweighs the defendant’s need for the information or if the probative value of the evidence is outweighed by the danger of confusing the issues or misleading the jury. Here, the probative value of the witness’s statement to the police about when he and the victim organized and perpetrated a robbery of the defendant, Merlin Bell, was outweighed by the danger that admission of the evidence would confuse the issues or mislead the jury. The trial court did not abuse its discretion in preventing Bell from cross-examining the witness as to this issue. Further, the issues raised in Bell’s Statement of Additional Grounds are without merit. Accordingly, we affirm the trial court.

FACTS

Bell's conviction arose out of the shooting death of De'Von Winston-Parks at the Federal Way Transit Center on September 17, 2009. Bell claimed he shot Winston-Parks in self-defense. At issue in this appeal is whether the trial court erred in denying Bell the opportunity to impeach one of the State's witnesses, Johnathan Stanley, with a prior inconsistent statement.

Stanley described Winston-Parks as his best friend. About four days before Winston-Parks was killed, he, Stanley, and a few others decided to rob Bell of marijuana. Winston-Parks called Bell and told him he wanted to buy marijuana from him, but the plan really was to steal the marijuana from Bell. Winston-Parks told Stanley where he could find Bell, and Stanley went to that location and found Bell. Stanley approached Bell, pulled out a gun, and robbed Bell of about an ounce of marijuana and a chain Bell was wearing around his neck. Stanley left the scene, found Winston-Parks, and divided the marijuana with him.

After the robbery, Bell left voice messages on the cell phone of one of the persons who planned the robbery with Winston-Parks and Stanley, saying things such as "you guys are dead," "I hope you have fun with that bud . . . this is your last song," and "if I see you guys at the transit center, you guys are done."

On the day Winston-Parks was killed, he and Anthony Leonard were at the Federal Way Transit Center. Leonard saw Bell get off a bus and told Winston-Parks to watch his back. Winston-Parks took a gun wrapped in a

bandana out of his backpack and put it in the backpack's side pocket. Leonard saw Bell walking quickly towards Winston-Parks and when Bell got close to Winston-Parks, Leonard saw him flash a gun that was in his waistband and ask Winston-Parks where his chain was. Winston-Parks told Bell he did not have his chain and turned around. Bell took the gun from his waistband and hit Winston-Parks on the head with it. Very shortly after that, Bell and Winston-Parks started "tussling" and Bell shot Winston-Parks in the neck. Winston-Parks died from the gunshot wound.

The State charged Bell with first degree murder, second degree murder, and second degree unlawful possession of a firearm. The first two counts included a firearm allegation. After a bench trial on stipulated facts, the trial court found Bell guilty of unlawful possession of a firearm. The jury was unable to agree on the first degree murder charge, but found Bell guilty of the lesser included offense of first degree manslaughter. The jury also found Bell guilty of second degree murder and that he was armed with a firearm during the commission of the offenses. The trial court vacated the conviction of first degree manslaughter because a conviction of that offense and a conviction of second degree murder would violate double jeopardy principles. The trial court sentenced Bell to 304 months, and he appeals.

ANALYSIS

Witness Impeachment

Prior to trial, Bell sought to admit evidence of other robberies Winston-

Parks and Stanley had committed, including a shooting and robbery of a person named Andre Green that occurred two miles from the Federal Way Transit Center just hours before Winston-Parks was killed. After the robbery, Green was unable to pick Winston-Parks out of a photomontage. Because of this, the trial court found no nexus between Winston-Parks and the incident and denied Bell's request to admit evidence of the Green robbery.¹

Prior to Stanley's testimony, Bell asked for permission to conduct a wide-ranging cross-examination of Stanley to establish his relationship with Winston-Parks and how that relationship might bias Stanley on the witness stand. The court again ruled that evidence of robberies Winston-Parks and Stanley engaged in prior to their robbery of Bell four days before Winston-Parks' death was not relevant and was not admissible. The court stated that Bell was clearly entitled to cross-examine and impeach Stanley as to his relationship with Winston-Parks "and so on, so long as it's proper." The court also specifically allowed Bell to impeach Stanley with prior convictions, including three juvenile adjudications.

¹ The trial court stated:

As to the incident which [defense counsel] entitled the Green Incident, based on the offer of proof that has been provided to this court, I can find no nexus that connects Mr. Winston[-Parks] to the Green shooting.

In fact, if anything, there is evidence to the contrary, and that evidence is that a montage or photo show-up if you will was provided to the victim and Mr. Winston-Parks was not identified. So, as a result of that, I find that there is no relevance as to the Green incident and the shooting that took place at the transit center that afternoon, around 3 o'clock. So defense motion to have that admitted is denied.

During Stanley's testimony, Bell wanted to impeach him with a prior statement Bell claimed was inconsistent with Stanley's trial testimony that the robbery of Bell took place four days before Winston-Parks was shot. Specifically, the prior statement was Stanley's statement to the police in which he attempted to identify the day on which he robbed Bell. Stanley's statement is ambiguous as to whether he believed that the robbery occurred four days before Bell shot Winston-Parks or on the same day Bell shot Winston-Parks. The State argued that Stanley's statement to police showed that he was confused about which robbery was being discussed—the robbery of Bell or the robbery of Green. Clearing up the confusion, the State argued, would necessitate the introduction of evidence about the Green robbery, which the trial court had earlier ruled inadmissible.

The trial court agreed that Stanley's statement to the police reflected confusion on Stanley's part as to which robbery was being discussed. The court concluded that Stanley's statement was not inconsistent with his trial testimony and that admission of the statement would introduce evidence about an incident the court had previously ruled not relevant.² Accordingly, the court denied Bell's request to cross-examine Stanley about his statement. On appeal, Bell argues that the trial court denied him the right to present a defense and the right to cross-examine an adverse witness by not allowing him to impeach Stanley with

² The trial court stated: "I don't see this as an inconsistent statement, either, I see this as a way to get information in, and I don't even know how he could respond to the question without testifying to an incident that this Court has excluded. Therefore, I am going to find that it is not an inconsistent statement, and I'm not going to allow you to go there."

his prior statement to the police. Bell argues that his prior statement shows that the Bell robbery occurred the day Winston-Parks was shot, not four days earlier. Evidence that the robbery occurred on the same day Winston-Parks was shot, Bell argues, supports his defense of self-defense.

The rights to present a defense and to confront and cross-examine adverse witnesses are guaranteed by both the federal and state constitutions.³ These rights are not, however, absolute.⁴ Defendants have a right to present only relevant evidence in their defense, and even relevant evidence may be excluded if the State shows that the evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial and the State's interest outweighs the defendant's need for the information sought.⁵ A defendant's right to cross-examine an adverse witness is subject to similar limitations; namely, the evidence sought must be of at least minimal relevance and, if relevant, the State must show that the evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial. Further, the State's interest in excluding the evidence must be balanced against the defendant's need for the information sought and the evidence may be excluded if the State's interest outweighs the defendant's need.⁶

³ U.S. Const. amend. VI; Wash. Const. art. I, § 22; State v. Hudlow, 99 Wn.2d 1, 14-15, 659 P.2d 514 (1983).

⁴ State v. Jones, 168 Wn.2d 713, 720, 230 P.3d 576 (2010).

⁵ Jones, 168 Wn.2d at 720; see also ER 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.").

⁶ State v. Darden, 145 Wn.2d 612, 621, 41 P.3d 1189 (2002).

In reviewing whether the trial court, in refusing to admit evidence or prohibiting cross-examination on a particular issue, denied a defendant the right to present a defense, the ultimate question is whether the trial court erred in its evidentiary ruling. We review a trial court's ruling on the admissibility of evidence for abuse of discretion.⁷ Similarly, a trial court's limitation on cross-examination will not be disturbed absent a manifest abuse of discretion.⁸

We find no abuse of discretion in the trial court's decision not to allow Bell to cross-examine Stanley about his statement concerning the robbery that occurred the day Winston-Parks was shot. Aside from this subject, the trial court permitted Bell a broad cross-examination of Stanley. The trial court allowed Bell to impeach Stanley with prior adult convictions and, under ER 609, prior juvenile adjudications.⁹ Allowing Bell to cross-examine Stanley about his statement as to when he robbed Bell would have required the admission of evidence of the Green robbery, which the court had, rightly, ruled inadmissible. Under these circumstances, allowing Bell to cross-examine Stanley on his statement to the police would have confused the issues and misled the jury. We find no abuse of discretion in the trial court's decision to disallow cross-examination on this issue.

⁷ Darden, 145 Wn.2d at 619.

⁸ Darden, 145 Wn.2d at 619.

⁹ ER 609(d) provides:

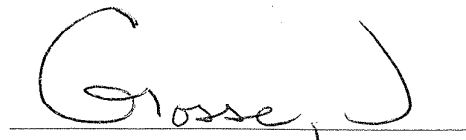
Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a finding of guilt in a juvenile offense proceeding of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

Statement of Additional Grounds (SAG)

Bell filed a SAG consisting only of verbatim quotations of various paragraphs of the motion for arrest of judgment and for a new trial that his counsel submitted below. This court is not obligated to search the record to support claims made in a statement of additional grounds for review.¹⁰ Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.¹¹

Moreover, the decision to grant or deny a motion for a new trial is within the discretion of the trial court, and we will overturn that decision only for an abuse of discretion.¹² Bell's SAG shows no abuse of discretion on the part of the trial court. Further, Bell's motion for arrest of judgment alleged insufficiency of the proof of a material element of the crime.¹³ "The evidence presented in a criminal trial is legally sufficient to support a guilty verdict if any rational trier of fact, viewing the evidence in a light most favorable to the state, could find the essential elements of the charged crime beyond a reasonable doubt."¹⁴ Bell has not shown, under this standard, that the evidence was not legally sufficient to support the guilty verdict.

Affirmed.

A handwritten signature in black ink, appearing to read "Grosse, J.", is written over a horizontal line.

¹⁰ RAP 10.10(c).

¹¹ State v. Johnson, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992).

¹² State v. Israel, 113 Wn. App. 243, 296, 54 P.3d 1218 (2002).

¹³ CrR 7.4(a)(3).

¹⁴ State v. Longshore, 141 Wn.2d 414, 420-21, 5 P.3d 1256 (2000).

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WE CONCUR:

Spencer, A.W.

Becker, J.