

IN THE COURT OF APPEALS 12/29/95
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-01299 COA

BENJAMIN REDWINE, A/K/A BENJAMIN WAYNE REDWINE, A/K/A "BEN"

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. HENRY ROSS

COURT FROM WHICH APPEALED: GRENADA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

ROBERT T. LASTER, JR.

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JOLENE M. LOWRY

DISTRICT ATTORNEY: DOUG EVANS

NATURE OF THE CASE: CRIMINAL: ARMED ROBBERY

TRIAL COURT DISPOSITION: SENTENCED TO LIFE IMPRISONMENT

BEFORE BRIDGES, P.J., COLEMAN, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

Benjamin Redwine was convicted in the Grenada County Circuit Court of armed robbery in violation of section 97-3-79 of the Mississippi Code. The court sentenced him to serve a life sentence in the Mississippi Department of Corrections. On appeal, Redwine objects to the trial court's overruling his motion in limine and allowing references to another crime--car theft. Finding no error, we affirm.

DISCUSSION

Redwine robbed the Grenada Lake Chevron Quick Stop at gunpoint and took the cash drawer. He forced Lillie Litton, the store's employee, and her four-year-old granddaughter to lie on the floor during the robbery. Litton later identified Redwine in a photograph lineup and at trial. Testimony indicated that he met with friends at Grenada Lake later that night. Redwine moved for a motion in limine prior to trial to prohibit the state from inquiring into an auto theft in Grenada County, which allegedly occurred on the same night as the robbery. The State argued the necessity of bringing up the car theft to show how Redwine could have robbed the store and later driven to the lake. The trial judge denied Redwine's motion in limine requesting the exclusion of any reference to a car theft. The judge then made an on-the-record determination that the probative value substantially outweighed the prejudicial effect of this evidence, particularly since Redwine indicated his intent to utilize an alibi defense.

The state correctly argues that the car theft was part of the *res gestae* of the crime for which Redwine had been indicted. Evidence that may suggest another crime may be presented where substantially necessary to provide the jury with a complete story of the crime alleged in the indictment or where the other crime is an integral part of a chain of facts necessary for jury interpretation. *Davis v. State*, 530 So. 2d 694, 697-98 (Miss. 1988) (citation omitted); *Brown v. State*, 483 So. 2d 328, 330 (Miss. 1986). A trial judge must apply a balancing test weighing the probative value of the evidence of other crimes against the prejudicial effect that may occur if admitted. M.R.E. 403; *see also Lesley v. State*, 606 So. 2d 1084, 1089-90 (Miss. 1992). The record clearly shows that the trial judge applied the balancing test prior to overruling Redwine's motion in limine.

Redwine also argues that two lines of trial questioning by the state were improper: (1) the state's redirect questioning of Officer Webb about what Lafayette County authorities told him regarding a car theft in Grenada County; and (2) the state's cross-examination questioning of Redwine's mother about her knowledge of a stolen car from Grenada. The Mississippi Supreme Court has stated that if defense counsel "inquires into a subject on cross-examination of the State's witness, the prosecutor on rebuttal is unquestionably entitled to elaborate on the matter." *Hart v. State*, 639 So. 2d 1313, 1317 (Miss. 1994) (quoting *Hogan v. State*, 580 So. 2d 1275, 1278 (Miss. 1991)); *see also Doby v. State*, 557 So. 2d 533, 539-40 (Miss. 1990) (if defense counsel opens the door on cross-examination to a line of testimony, the state may develop a matter within that line of testimony in greater detail); *Jefferson v. State*, 386 So. 2d 200, 202 (Miss. 1980) (citations omitted). Likewise, a line of testimony elicited on direct examination may be explored in greater detail on cross-examination as long as the matter on cross-examination is relevant. *Heflin v. State*, 643 So. 2d 512, 517-18 (Miss.

1994). The scope of cross-examination is broad but limited, within the sound discretion of the trial court, to relevant matters. *Id.* (citations omitted). Moreover, Mississippi Rule of Evidence 611(b) deals with the scope of cross-examination and states that "[c]ross-examination shall not be limited to the subject matter of the direct examination and matters affecting the credibility of the witness." M.R.E. 611(b). "Under this wide-open cross-examination any matter may be probed that is relevant." *Id.* cmt. However, a judge may limit cross-examination under Rule 611(a) in an effort to ascertain the truth, avoid wasted time, and protect witnesses from harassment or undue embarrassment. *Id.*; *see also Ellis v. State*, 661 So. 2d 177, 184 (Miss. 1995) (trial judge should err on side of leniency rather than restrictiveness concerning cross-examination of witness, but judge's discretion regarding extent of cross-examination is coextensive with limits of relevancy). Here, Redwine cross-examined Webb regarding his knowledge of Redwine's involvement with Lafayette County officers and what they had told Webb or what Webb might have known about the car theft suspect. Redwine also inquired, on direct examination of Redwine's mother, as to what kind of car (and its color) that Redwine and his friends drove the night he visited her, which was also the night of the robbery. Redwine's cross-examination of Webb and his direct examination of Mrs. Redwine opened the door to the state's further development of those lines of testimony. The trial court properly allowed the state's redirect questioning of Webb as to certain auto theft crimes in Grenada County and its cross-examination of Mrs. Redwine as to her knowledge that the car Redwine and his friends drove the night she saw him had been stolen from Grenada. The state was properly allowed to clarify matters brought out by defense counsel both on cross-examination of Webb and direct examination of Mrs. Redwine.

We find no error in the trial court below. We therefore affirm Redwine's conviction and sentence.

THE JUDGMENT OF THE GRENADA COUNTY CIRCUIT COURT OF CONVICTION OF ARMED ROBBERY AND SENTENCE OF LIFE IMPRISONMENT IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS ARE TAXED TO GRENADA COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND SOUTHWICK, JJ., CONCUR.