

OCT 11 2006

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**  
MICHAEL S. RICHIE  
CLERK

JESSE ALLEN CHESHIRE,	)	
	)	<b><u>NOT FOR PUBLICATION</u></b>
Appellant,	)	
v.	)	Case No. F-2004-1229
	)	
STATE OF OKLAHOMA	)	
	)	
Appellee.	)	

**SUMMARY OPINION**

**LUMPKIN, VICE-PRESIDING JUDGE:**

Appellant Jesse Allen Cheshire was tried by jury and convicted of two counts of Child Sexual Abuse (10 O.S. 2001, § 7115(E)), Case No. CF-2002-383, in the District Court of Bryan County.<sup>1</sup> The jury recommended as punishment eight (8) years imprisonment in each count. The trial court sentenced accordingly, ordering the sentences to be served consecutively. It is from this judgment and sentence that Appellant appeals.

Appellant raises the following propositions of error in support of his appeal:

- I. Insufficient evidence exists to convict Appellant of sexual abuse of a child. The evidence, even when considered in a light most favorable to the state, is inconsistent and does not rise to the level of proof beyond a reasonable doubt. In light of this evidence, no reasonable jury could have convicted Appellant of these allegations. Appellant's convictions and sentences therefore violated his state and federal constitutional rights.

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<sup>1</sup> The jury returned a not guilty verdict Count III, Assault and Battery on a Police Officer. (O.R. 194).

- II. Appellant's federal and state due process rights were violated when Bullard and Trent were allowed to testify to alleged hearsay statements made to them by the alleged victims, in violation of Appellant's federal constitutional confrontation rights as re-defined by *Crawford v. Washington*.
- III. The State's witnesses improperly vouched for the credibility of W.C.'s and A.C.'s alleged incrimination of their father.
- IV. The trial court erroneously excluded Defense Exhibit 1, the letter from Dr. Brock concerning his finding, while at the same time admitting State's exhibits about other experts' findings.

After a thorough consideration of these propositions and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we have determined that error raised in Proposition II warrants reversal of the convictions and remand for a new trial.

In Proposition II, considered in light of *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), we find the admission of the child victims hearsay statements through prosecution witnesses Trent and Bullard, when the child victims do not testify in person during the trial, violated Appellant's rights under the Confrontation Clause. Both witnesses were trained workers in the field of child abuse and interviewed the victims as part of the investigation into possible criminal conduct committed by Appellant. Any incriminating statements would be used in Appellant's prosecution. While neither witness was a police officer, their roles in this case were similar to the role of a police officer in the investigation of a criminal case. As such admission of hearsay statements by the non-testifying victims violated Appellant's right to confront his accusers. While subject to a harmless error analysis, this

confrontation clause violation was not harmless error. *Conover v. State*, 1997 OK CR 6, ¶ 80, 933 P.2d 904, 923. Considered in light of the other evidence presented at trial, including the victim's initial naming of someone other than Appellant as the perpetrator and a subsequent recantation of the allegation against Appellant, there is a reasonable probability the victims' hearsay statements might have contributed to the conviction. Therefore, the conviction is reversed and the case remanded for a new trial.

### **DECISION**

The Judgment and Sentence is **REVERSED and REMANDED FOR A NEW TRIAL**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2005), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF BRYAN COUNTY  
THE HONORABLE WILLARD DRIESEL, DISTRICT JUDGE

#### **APPEARANCES AT TRIAL**

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**OPINION BY: LUMPKIN, V.P.J.**

CHAPEL, P.J.: CONCUR

C. JOHNSON, J.: CONCUR

A. JOHNSON, J.: CONCUR

LEWIS, J.: CONCUR

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