

FILED
 IN COURT OF CRIMINAL APPEALS
 STATE OF OKLAHOMA
 JUN - 4 2002
 JAMES W. PATTERSON
 CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

PHILLIP SCOTT COULTER,)	
)	NOT FOR PUBLICATION
Appellant,)	
v.)	Case No. F 2001-378
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

JOHNSON, VICE-PRESIDING JUDGE:

Appellant, Phillip Scott Coulter, was convicted by a jury in Kingfisher County District Court, Case No. CF 2000-68, of three counts of Lewd Molestation, in violation of 21 O.S.1991, § 1123(A)(2). Jury trial was held before the Honorable Susie Pritchett, Associate District Judge, from December 4th through December 7th, 2000. The jury set punishment at five (5) years imprisonment on each count. At formal sentencing on March 22, 2001, Judge Pritchett ordered Appellant to serve the sentences consecutively. Appellant thereafter perfected this appeal.

Appellant raises four propositions of error:

1. The evidence presented at trial was insufficient to support the conviction on Counts One and Three because no rational trier of fact could have found beyond a reasonable doubt that Appellant touched the body of any child in a lewd and lascivious manner;
2. Appellant was deprived of his Constitutional rights to a fair trial by the improper tactics, remarks, and arguments of the Prosecutor;
3. Trial counsel represented Appellant in a pervasively ineffective manner to the profound prejudice of Appellant, leading to a collapse of the adversarial process and a denial of Appellant's right to

counsel guaranteed by the Sixth Amendment as interpreted by *United States v. Cronin* and *Strickland v. Washington*; and,

4. Defense was improperly denied the ability to cross-examine the witness regarding sexual acts perpetrated upon her by her half-brothers.

After thorough consideration of the propositions raised and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we have determined that all counts must be reversed and remanded for a new trial.

In Proposition Four, Appellant contends he was denied his right of confrontation and we agree. The Confrontation Clause requires an accused to be afforded the right to cross-examine State's witnesses regarding bias and motive or propensity to lie. *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974). Here, the trial court's refusal to allow defense counsel to impeach the prosecutrix by asking her about other sexual activity was related to the defense strategy, bore directly on her credibility, and was relevant to show motive or a propensity to lie. See *Wells v. State*, 1983 OK CR 4, ¶ 3, 657 P.2d 180, 181, *overruled in part in Beck v. State*, 1991 OK Cr 126, ¶ 12, 824 P.2d 385, 388. In this case, we cannot say the error did not affect the verdict.

Because we reverse and remand all Counts for a new trial, the remaining propositions need not be addressed.

DECISION

The Judgment and Sentences imposed on Counts One through Three in Kingfisher County District Court, Case No. CF 2000-68, are hereby **REVERSED AND REMANDED FOR A NEW TRIAL.**

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OPINION BY: JOHNSON, V.P.J.

LUMPKIN, P.J.: DISSENTS
CHAPEL, J.: CONCURS
STRUBHAR, J.: CONCURS
LILE, J.: DISSENTS

RC

LUMPKIN, PRESIDING JUDGE: DISSENTS

The victim in this case was asked by defense counsel “[h]as anyone else ever done these kind of things to you?” I take this question to ask whether anyone, other than the defendant, had committed the acts with which the defendant was charged, upon the victim. I fail to see how the answer to this question is relevant in showing the victim’s bias. That the victim may have had knowledge of the particular type of sexual misconduct occurring in this case from sources other than those in this case does not impeach her credibility. That the victim may have had similar sexual conduct with her brothers does not show that she made up the allegations against Appellant. If the defense wanted to show that the victim was getting her stories confused, that the sexual conduct was really committed by her brothers and not Appellant, the inquiry in question does not establish that point. If the victim had a motive to lie about the allegations to get back at Appellant, the fact her brothers had previously committed acts of sexual misconduct against her is not relevant to that point.

This case is distinguishable from *Woods v. State*, 657 P.2d 180 (Okl.Cr.1983) *overruled in part by Beck v. State*, 824 P.2d 385, 388 (Okl.Cr.1991.) In *Woods*, defense counsel attempted to elicit on cross-examination that the 15 year old victim had on prior occasions made allegations that she had been either sexually molested or had intercourse with certain family members, and that each time her accusations had been

provoked by, or were in retaliation to, threats to have her fiance arrested. This Court found the inquiry into this area was relevant to impeach the victim's credibility by showing a motive or propensity to lie. The Court stated that inquiry into the fact that prior similar claims had been made by the victim had previously been held to be a proper subject of cross-examination. *Id.*

The issue in this case is not whether the victim made prior allegations of sexual misconduct, but whether prior instances of sexual misconduct had been committed against her. Whether or not such prior instances had occurred has no connection to whether the acts in this case occurred.

The record show the defense was able to elicit testimony from one of the victim's brothers that the brothers had previously committed acts of sexual misconduct against the victim. Therefore, we know the impact of this evidence upon the verdict, i.e. no impact. Consequently, reversal is not warranted in this case.

LILE, JUDGE: DISSENTS

The error, if any, was clearly harmless. I would affirm.