

**FILED**  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

MAY 12 2004

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

MICHAEL S. RICHIE  
CLERK

BRADLEY ALLEN CRAWFORD, )  
 )  
 Appellant, )  
 )  
 -vs- ) No. M-2003-784  
 )  
 STATE OF OKLAHOMA, )  
 )  
 Appellee. )

**SUMMARY ORDER REVERSING**  
**APPELLANT'S JUDGMENT AND SENTENCE**  
**AND REMANDING FOR A NEW TRIAL**

The Appellant, Bradley Allen Crawford, has appealed to this Court from his Judgment and Sentence in Case No. CM-2002-2499 in the District Court of Oklahoma County, entered by the Honorable James B. Croy, Special Judge. In that case, Appellant was convicted by a jury of Stalking, and was sentenced to six (6) months in the County Jail.

In this appeal, Appellant asserts one proposition of error. Appellant claims he was denied the right to show the bias of the complaining witness in this case. The State contends the trial court properly excluded the evidence of bias because Appellant failed to lay a proper foundation for its admission; or in the alternative, any error in the trial court's ruling is harmless.

Appellant complains of three rulings made by the trial court. During pre-trial proceedings, Appellant asked to call an attorney to testify that Appellant could be a witness against the complaining witness in a child

custody case. The trial court did not think the attorney's testimony would be admissible. Then, after direct examination of the complaining witness, counsel for Appellant attempted to cross-examine the complaining witness about the child custody case. The trial court sustained the State's objection about not getting into other domestic cases. Finally, after the jury returned its verdict, Appellant moved for a new trial because the trial court excluded the evidence about the possible bias and motive of the complaining witness. The trial court denied the motion.

Evidence that impeaches a witness for bias is routinely admitted under common law principles that derive from the constitutional right of confrontation, a right that is liberally construed by this Court. *Beck v. State*, 1991 OK CR 126, ¶11, 824 P.2d 385, 388. Unlike the restrictions placed on most other forms of impeachment evidence, a witness may be cross-examined about any matter tending to show her bias or prejudice. *Beck*, 1991 OK CR 126 at ¶12, 824 P.2d at 388. Clearly bias evidence is never collateral. *Id.* The trial court in ruling on evidentiary issues regarding bias evidence for purposes of impeachment, and this Court in reviewing those rulings, shall determine: first, is the fact situation such that the showing of bias to impeach a witness is relevant under 12 O.S.2001, § 2401; second, is the evidence admissible under 12 O.S.2001, § 2402; and third, even though admissible, should it be excluded under 12 O.S.2001, § 2403. *Beck*, 1991 OK CR 126 at ¶15, 824 P.2d at 389; *Martinez v. State*, 1995 OK CR 52, ¶16, 904 P.2d 138, 141. It is our opinion that evidence about the potential bias and motive of the complaining witness in this case, is

relevant. Such evidence is admissible and would not be unfairly prejudicial.

One of the very arguments made by the State in this case points up the confrontation violation in this case. *Martinez*, 1995 OK CR 52 at ¶14, 904 P.2d at 141. The State claims Appellant failed to lay a proper foundation for admission of the bias evidence by not seeking to first question the victim about her possible motive to eliminate the defendant as a witness against her in the custody proceeding. Appellant could not lay a foundation by questioning the victim about her motive, because that is exactly what Appellant was prohibited from doing by the trial court's rulings. Moreover, the State called the complaining witness as the first to testify, immediately placing her credibility at issue and laying a foundation for questioning about bias and motive. *But cf. Douglas v. State*, 1997 OK CR 79, ¶44, 951 P.2d 651, 667 (*before the witness ever testified it was error to admit, not exclude, bias and motive evidence*).

Constitutional error which pervades the entire trial is not subject to harmless error analysis; constitutional error which occurs during the presentation of the case is. *Martinez*, 1995 OK CR 52 at ¶17, 904 P.2d at 141. The denial of cross-examination of one witness is a discrete act, which occurs during the presentation of the case and thus may be declared harmless, but only if this Court finds beyond a reasonable doubt that it did not affect the outcome of the case. *Martinez*, 1995 OK CR 52 at ¶18, 904 P.2d at 141.

In this case, the witness's testimony and credibility pervade the entire trial. Even the testimony of the police officers was based upon accounts given to them by the witness. In any event, we cannot find beyond a reasonable doubt

that the error did not affect the outcome of this case.

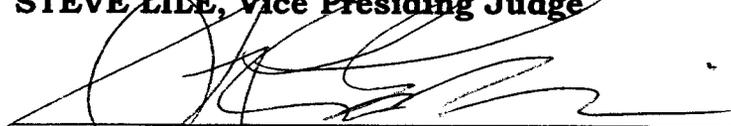
**IT IS THEREFORE THE ORDER OF THIS COURT** that Appellant's Judgment and Sentence in Case No. CM-2002-2499 in the District Court of Oklahoma County should be, and is hereby, **REVERSED** and **REMANDED** for a new trial.

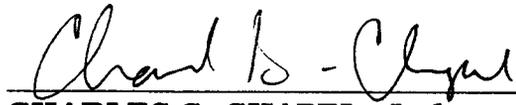
**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 12<sup>th</sup> day of May, 2004.

  
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**CHARLES A. JOHNSON, Presiding Judge**

  
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**STEVE LILE, Vice Presiding Judge**

  
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**GARY L. LUMPKIN, Judge**

  
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**CHARLES S. CHAPEL, Judge**

  
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**RETA M. STRUBHAR, Judge**

ATTEST:

  
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Clerk