

MAY 26 2000

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

EDDIE KENNEDY,

Appellant,

-vs-

STATE OF OKLAHOMA,

Appellee.

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) NOT FOR PUBLICATION
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) Nos. F-99-664 & F-99-665
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SUMMARY OPINION

STRUBHAR, PRESIDING JUDGE:

Appellant, Eddie Kennedy, was convicted of Delivery of a Controlled Dangerous Substance, in the District Court of Texas County, Case Numbers CF-98-229 and CF-98-231, following a jury trial before the Honorable George H. Leach. Following its return of guilty verdicts, the jury recommended that Appellant be sentenced to serve a term of twenty years imprisonment and a ten thousand dollar fine in each case, with the sentences to run consecutively.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we reverse. In reaching our decision, we considered the following propositions of error and determined reversal to be required under the law and the evidence:

- I. The trial evidence was insufficient to prove beyond a reasonable doubt that Appellant possessed and then delivered the cocaine for which he was charged.
- II. The trial court's improper restriction of impeachment of prosecution witnesses for bias and for untruthfulness denied Appellant a fair trial.

III. Appellant was denied a fair trial by the trial court's failure to give a cautionary jury instruction on the credibility of informants.

IV. Appellant was prejudiced by the prosecutor's closing argument, which improperly vouched for the credibility of witnesses for the State.

DECISION

We find merit in Appellant's second proposition wherein he complains that the trial court improperly restricted his cross examination of witnesses for purposes of impeachment. This Court has long held that "[a] witness may be cross examined as to any matter tending to show bias or prejudice or circumstances under which one would be tempted to swear falsely." *Dunham v. State*, 762 P.2d 969, 973 (Okla.Cr.1988). This common law principle has been held to include evidence of witness' prior arrests as such may be admissible to show bias. *Carolina v. State*, 839 P.2d 663, 665-66 (Okla.Cr.1992). *See also Scott v. State*, 891 P.2d 1283, 1292 (Okla.Cr.1995). However, this general rule is not without limitation as the scope and procedure for admitting evidence of prior arrests to show bias must conform to the general requirements set forth in the Oklahoma evidence code. The admissibility of such evidence must be based upon a finding that a showing of bias to impeach a witness is relevant under 12 O.S.1991, § 2401 and admissible under 12 O.S.1991, § 2402. Further, evidence of bias, though

relevant, should be excluded if its probative value is substantially outweighed by the dangers specified in 12 O.S.1991, § 2403. *Id.*

Appellant has shown the evidence of Marsh Prouty's arrests to be relevant to bias and not unfairly prejudicial. We find the trial court erred in restricting this line of cross examination. To determine whether or not this error is harmless, we look to the analysis set forth in *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967). See *Beck v. State*, 824 P.2d 385, 390 (Okl.Cr.1991). Under *Chapman*, in order for constitutional error to be deemed harmless, the Court must find beyond a reasonable doubt, that it did not contribute to the verdict. Under the circumstances of these cases, including the discrepancy riddled testimony of McAnarney and the poor quality of the audio tapes, we cannot find the improper restriction of cross-examination to have been harmless beyond a reasonable doubt. Accordingly, these cases should be reversed and remanded for a new trial.

The Judgment and Sentence of the trial court is **REVERSED** and **REMANDED** for a **NEW TRIAL**.

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OPINION BY: STRUBHAR, P.J.
LUMPKIN, V.P.J.: CONCUR IN RESULTS
JOHNSON, J.: CONCUR
CHAPEL, J.: CONCUR
LILE, J.: CONCUR IN RESULTS

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