Constitutional Law - Sixth Amendment - Defendant's Right of Confrontation - Impeachment to Show Bias

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Recommended Citation
Christine M. Guthrie, Constitutional Law - Sixth Amendment - Defendant's Right of Confrontation - Impeachment to Show Bias, 32 Duq. L. Rev. 329 (1994).
Available at: https://dsc.duq.edu/dlr/vol32/iss2/8

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CONSTITUTIONAL LAW—SIXTH AMENDMENT—DEFENDANT’S RIGHT OF CONFRONTATION—IMPEACHMENT TO SHOW BIAS—The Supreme Court of Pennsylvania held that even if the lower court denies defendants their confrontation right to reveal bias by exposing a witness’ pending conviction, the decision will not be reversed if the error was harmless.


In October 1984, Bernard Lane (“Lane”) was convicted of second degree murder, robbery and possession of an instrument of crime in connection with a murder.1 At trial, prosecution witness George Thomas (“Thomas”) testified that Lane had confessed to the murder.2 At the time of his testimony, charges of robbery, theft, kidnapping and attempted rape were pending against Thomas.3

On cross examination, Lane’s counsel attempted to impeach Thomas by uncovering that Thomas possessed a possible motive which could have induced him to testify falsely against Lane.4 Through the examination of Thomas with respect to these charges, Lane’s counsel attempted to demonstrate that Thomas hoped to

1. Commonwealth v. Lane, 621 A.2d 566 (Pa. 1993). Lane was convicted of the murder of Wesley Mahoney in Philadelphia on February 19, 1983. Lane, 621 A.2d at 566.
2. Id. The trial transcript revealed that following the murder, George Thomas met Lane in the C & B lounge where Lane stated that he “just busted a guy”. Brief for Appellant at 5, Lane (no. 168) [hereinafter Appellant’s Brief]. The transcript also revealed that Thomas interpreted this as an indication that Lane had shot a person. Appellant’s Brief at 5. Further, Thomas also testified that he had seen appellant with a forty-five automatic weapon on that same night. Appellant’s Brief at 5-6.
3. Lane, 621 A.2d at 567.
4. Id.
gain favorable treatment in the sentencing of the separate prosecutions which he had received.  

The trial court permitted Lane's attorney to question Thomas as to the charges of robbery and theft, but not to the more serious charges of kidnapping and attempted rape. Instead, the trial court limited reference to these latter crimes as "other felonies of a serious nature." The trial court reasoned that these latter crimes were not crimen falsi offenses. Lane appealed to the Superior Court of Pennsylvania. The superior court affirmed the lower court decision, finding that the distinction made by the trial court between the seriousness of the charges was erroneous, but that the error was harmless.

On appeal, the Supreme Court of Pennsylvania affirmed the superior court's decision and addressed the issue of whether Lane's confrontation rights were violated by the trial court's decision to limit cross-examination during the impeachment of Thomas. Further, the court addressed whether the resulting error was harmless.

The supreme court agreed with the superior court that the trial court had erred by distinguishing between crimen falsi charges and other charges. Specifically, the supreme court recognized that impeachment of a witness could be accomplished through prior crimen falsi convictions or through a showing of bias based on pending criminal charges in the same jurisdiction. The court noted that in the present case, impeachment was based on bias due to pending charges against Thomas. Thus, the court determined

5. Id. The trial transcript revealed that Thomas had made an agreement with the prosecutor regarding his pending charges and a bargain had been struck with regard to bail. Appellant's Brief at 6. If Thomas was convicted, his testimony against Lane would be made known to the sentencing judge. Appellant's Brief at 6.

6. Lane, 621 A.2d at 567.
7. Id.
10. Lane, 621 A.2d at 567.
11. Id. at 568.
12. Id.
13. Id.
14. Lane, 621 A.2d at 568.
15. Id. See also Fed. R. Evid. 609. The 1990 amendment to Rule 609(a) applied to the balancing test of Rule 403 to protect against unjust impeachment of a witness. The advisory committee noted:
that it was not the nature of the offense, but rather the harshness of the penalties accompanying the conviction of those pending charges which produced the possible basis for the witness’ bias and motive to aid the prosecution.¹⁶

Furthermore, the supreme court held that the Pennsylvania Constitution guaranteed criminal defendants the right to confront a witness in order to reveal bias.¹⁷ The supreme court affirmed the superior court decision and asserted that if the possibility of bias existed as a result of outstanding criminal charges, then this possibility must be revealed to the jury.¹⁸ Further, the court held that the right of confrontation included the right of a defendant to cross-examine a prosecution witness when the circumstances presented any possibility that the witness was biased.¹⁹

The balancing test protects civil litigants, the government in criminal cases, and the defendant in a criminal case who calls other witnesses. The amendment addresses prior convictions offered under Rule 609, not for other purposes, and does not run afoul, therefore, of Davis v. Alaska, 415 U.S. 308 (1974). . . . The defendant in a criminal case has the right to demonstrate the bias of a witness and to be assured a fair trial, but not to unduly prejudice a trier of fact. See generally Rule 412. In any case in which the trial court believes that confrontation rights require admission of impeachment evidence, obviously the Constitution would take precedence over the rule. . . .

FED. R. EVID. 609 Senate Advisory Committee’s note.
The court in Davis held that the confrontation clause of the U.S. Constitution guaranteed a defendant the right to be confronted with an adverse witness in state and criminal proceedings. Davis, 415 U.S. at 308. See notes 92-100 and accompanying text.

16. Lane, 621 A.2d at 567.
17. Id. Article I, § 9, of the Pennsylvania Constitution, in relevant part provides: “In all criminal prosecutions the accused hath the right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witness face to face. . . .” PA. CONST. art. I, § 9.
18. Lane, 621 A.2d at 567. The supreme court relied on its decision in Evans in affirming the superior court decision. Commonwealth v. Evans, 512 A.2d 626 (Pa. 1986). See notes 63-70 and accompanying text. In Evans, the court held that the lower court erred in not allowing the defendant to question the state’s key witness regarding charges pending against him and not only his role in the crime in question. Evans, 512 A.2d at 626. Further, the court held this error was not harmless. Id.
19. Lane, 621 A.2d at 567. The court relied on its earlier decision in Commonwealth v. Butler, 601 A.2d 268 (Pa. 1991), in which a pending civil action created the possibility of bias. Butler, 601 A.2d at 268. See notes 71-82 and accompanying text. In Butler, the court held that the defendant should have been permitted to cross-examine a detective who was a defendant in a civil suit brought by the defendant. Id. See also Commonwealth v. Sullivan, 402 A.2d 1019 (Pa. 1979). See notes 55-60 and accompanying text. In Sullivan, a police officer attempted to arrest the defendant’s son. Sullivan, 402 A.2d at 1019. The defendant faced prosecution for hindering apprehension and for simple assault. Id. The court held that the trial court erred by refusing to allow the defendant to cross examine the arresting police officer regarding his suspension from the police force, resulting from the incident. Id. The court held that the defendant should have been permitted to question the police officer to show any interest and resulting bias the police officer had in the outcome of the case. Id.
Nonetheless, the supreme court affirmed the trial court’s determination that the jury had been informed adequately and was able to assess the bias and credibility of Thomas in regard to his testimony. In essence, the court agreed with the superior court that the error was harmless. The court held that it was within the discretion of the trial judge to limit the scope of cross-examination. Moreover, the court opined that the trial judge was best able to determine the proper scope of cross-examination. The court declared that the function of the trial judge was to balance the probative value of introducing pending criminal charges against a witness versus the prejudicial effect of revealing such charges. The court concluded that the trial judge acted within the sound discretion of the court. Hence, although the limiting instruction was erroneous, Lane had not been prejudiced in his defense.

Justice Larsen, in a concurring opinion, disagreed with the majority and proposed that the harmless error doctrine was not applicable to this case, as it only applied to judicial rulings. Accordingly, Justice Larsen held that no error was committed by the trial court.

Justice Nix, in a dissent, agreed with the majority opinion insofar as it found that the trial court committed an error when it limited defendant’s right to question Thomas regarding pending charges of attempted rape and kidnapping. However, Justice Nix disagreed that the error was harmless. Instead, Justice Nix con-
tended that the majority should have followed precedent and determined that if there existed a possibility that a prosecution witness may be biased, that bias must be revealed to the jury. Therefore, once the trial judge limited defense counsel from questioning Thomas regarding the kidnapping and attempted rape charges, Lane was prejudiced in his defense.

In analyzing cases dealing with a criminal defendant's right to cross-examine an adverse witness, the Pennsylvania courts have used three district approaches. First, the courts have examined the area of impeachment for the purpose of revealing bias. Second, the courts have looked to a criminal defendant's right to cross-examine an adverse witness and have focused on the confrontation clause of the Sixth Amendment to the United States Constitution. Third, the courts have considered the defendant's rights pursuant to article, 1 section 9, of the Pennsylvania Constitution. Similarly, a historical analysis of impeachment is best illustrated by following this three-part analytical framework.

In 1908, the Pennsylvania courts first addressed the issue of impeachment of a witness in order to show bias. In Lenahan v. Pittston Coal Mining Co., the defendant called his attorney to testify for the purpose of discrediting a plaintiff's witness. The attorney also represented the surety company that had insured the defendant. The court in Lenahan addressed the issue of whether the trial court erred in allowing opposing counsel to question the attorney to demonstrate that he also represented the surety, so as to show possible bias. The Supreme Court of Pennsylvania held that a party against whom a witness is called always has the right to show by cross-examination that he had an interest direct or collateral in the result of the trial, or that he had a relation to the party from which bias would naturally arise.

31. Id. This bias could be the result of either outstanding criminal charges or any non-final criminal disposition against the witness. Id. Justice Nix relied on the court's decision in Commonwealth v. Evans for this proposition. Evans, 512 A.2d at 626. See also note 19 and accompanying text.
32. Lane, 621 A.2d at 569 (Nix, J., dissenting). Accordingly, Justice Nix concluded that he would have reversed the order of the superior court and granted the defendant a new trial. Id.
34. PA. CONST. art. I, § 9.
35. 70 A. 884 (Pa. 1908).
36. Lenahan, 70 A. at 884.
37. Id. at 885.
38. Id.
39. Id.
Sixty-five years later, in Commonwealth v. Coades, the court addressed the related issue of whether a witness can be questioned regarding an indictment resulting from the same crime for which he is testifying. In Coades, a witness for the prosecution testified against a co-defendant, when both had been charged with burglary, robbery, larceny, and conspiracy. The witness had pleaded guilty to conspiracy and received a sentence of three months probation.

On appeal, the supreme court reversed the trial court decision, and held that the court had committed error when it did not permit the co-defendant to cross-examine the witness on the charges which had been nolle prossed. The court further explained that a jury should be given the opportunity to evaluate whether the witness testified in order to gain favorable treatment in his own case. The supreme court held that a witness, indicted for the same crime as that of the case in which he was testifying, was permitted to be cross-examined about that indictment.

Subsequently, in Commonwealth v. Joines, the superior court broadened the Coades rule to permit cross-examination of a witness to reveal bias relating to any crime committed by the witness within the jurisdiction. In Joines, the appellant attempted to question a prosecution witness regarding his outstanding indictment and guilty plea in an unrelated case. The trial court refused to permit cross-examination of the witness, and found appellant guilty of the charges. On appeal, the superior court noted an ex-

41. Coades, 311 A.2d at 897-98.
42. Id. at 897.
43. Id.
44. Id. "Nolle Prossed" refers to an entry upon the record made by a plaintiff in a civil suit, or by the prosecuting attorney in a criminal suit in which the party states he "'will no further prosecute'." BLACK'S LAW DICTIONARY 1048 (6th ed. 1990).
45. Coades, 311 A.2d at 897.
46. Id. The court reasoned that if the co-defendant had been permitted to pursue this questioning, it might have revealed that the witness was biased because of the favorable treatment he received from the prosecution. Id.
48. See notes 40-46 and accompanying text.
49. Joines, 399 A.2d at 778. The court in Joines stated that "'[t]he rationale for permitting this type of cross-examination is that the jury should be allowed to evaluate whether the witness testified for the prosecution to gain favorable treatment in his own case.'" Id. (quoting Coades, 311 A.2d at 898).
50. Id. at 778.
51. Id.
ception to the general rule that a witness cannot be impeached by past criminal conduct unless convicted of the crime. Hence, the superior court reversed the lower court and held the error could not be deemed harmless. In interpreting the Coades rule, the court noted two requirements: (1) the existence of an indictment against the witness, and (2) evidence that the prosecution could promise leniency.

In addition to cross-examination as to a witness' criminal history, Pennsylvania courts have consistently determined that a criminal defendant could cross-examine an adverse witness by impeaching him with evidence demonstrating possible bias resulting from his interest in the outcome of the trial. For instance, in Commonwealth v. Sullivan, the defendant was prosecuted and found guilty of hindering apprehension and simple assault after he had a confrontation with a police officer during the arrest of his son. The police officer was suspended following the incident out of which the prosecution arose. At the defendant's trial, the court denied the defendant the right to question the police officer regarding his suspension. The supreme court reversed and granted the defendant a new trial, reasoning that the possible bias of a witness is always relevant and can be uncovered at trial to discredit the witness. Accordingly, the Supreme Court of Pennsylvania in Sullivan held that a defendant could not be denied his confrontation right to examine a witness as to any motives he may have had in testifying.

Relying on Coades and Joines, the supreme court, in Commonwealth v. Evans, addressed the issue of whether restricting

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52. Id.
53. Id. at 779.
54. Joines, 399 A.2d at 778.
57. Id. at 1020.
58. Id.
59. Id. Specifically, the court stated:
   A more particular attack on the witness' credibility is effected by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is "always relevant as discrediting the witness and affecting the weight of his testimony."
   Id. at 1020 (quoting Davis v. Alaska, 415 U.S. 308, 316 (1973)).
60. Sullivan, 402 A.2d at 1020.
61. See notes 40-46 and accompanying text.
62. See notes 47-54 and accompanying text.
63. 512 A.2d 626 (Pa. 1986).
the examination of a witness regarding pending charges against him was a violation of constitutionally guaranteed rights of the defendant.\textsuperscript{64} For the first time, the supreme court was willing to enunciate a rule which had previously been too speculative: even when no promise of leniency has been made, a prosecution witness may be biased upon an expectation of leniency.\textsuperscript{65} In \textit{Evans}, the defendant was charged and convicted of second degree murder, criminal conspiracy and robbery.\textsuperscript{66} At trial, the court restricted the defendant’s examination of an informant who was the main witness for the prosecution.\textsuperscript{67} On appeal, the supreme court reversed the lower court decision, holding that the defendant should have been allowed to cross-examine the informant regarding the charges pending against the informant in another crime.\textsuperscript{68} Thus, even if the prosecution had not made any agreements, or any promise of an agreement, the possibility existed that the witness may have hoped for favorable treatment if he testified in favor of the prosecution.\textsuperscript{69} Hence, the court in \textit{Evans} asserted that if the possibility exists that a witness may be biased and will testify in favor of the prosecution as a result of pending charges against that witness, this bias must be revealed to the jury.\textsuperscript{70} Therefore, the court recognized the significance of revealing bias.

Later, in \textit{Commonwealth v. Butler},\textsuperscript{71} an adverse witness in the defendant’s case was also a defendant in a civil suit brought by the defendant.\textsuperscript{72} The issue presented was whether a witness can be

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\item \textsuperscript{64} \textit{Evans}, 512 A.2d at 632.
\item \textsuperscript{65} \textit{Id}.
\item \textsuperscript{66} \textit{Id}. at 628.
\item \textsuperscript{67} \textit{Id}. Although the court did allow the appellants to question the witness/informant with regard to his motive in testifying in the defendant’s case, they were restricted from examining the witness in regard to whether he expected leniency in the other criminal charges pending against him. \textit{Id}.
\item \textsuperscript{68} \textit{Evans}, 512 A.2d at 628. The court considered the number and seriousness of pending charges against the witness in determining that an error had occurred. \textit{Id} at 629.
\item \textsuperscript{69} \textit{Id}. at 631.
\item \textsuperscript{70} \textit{Id}. The court in \textit{Evans} stated specifically, “whenever a prosecution witness may be biased in favor of the prosecution because of outstanding criminal charges or because of any non-final criminal disposition against him in the same jurisdiction, that possible bias, within fairness must be made known to the jury.” \textit{Id}.
\item The court also noted that the jury must determine whether it believes the witness after the testimony. Further, the court stated that the court should not determine if cross-examination would affect the jury’s decision, because cross-examination is a right guaranteed by the Confrontation Clause of the United States Constitution as well as the Pennsylvania Constitution. \textit{Id}. at 632.
\item \textsuperscript{71} 601 A.2d 268 (Pa. 1991).
\item \textsuperscript{72} \textit{Butler}, 601 A.2d 269.
\end{itemize}
questioned regarding his involvement in a pending civil suit. The defendant in Butler was originally charged with prostitution and acquitted. At trial, the defendant had testified that she had never been convicted of a crime. Subsequent to her acquittal, the defendant filed a civil suit based on a coercive body cavity search. Following the institution of her civil suit, it was discovered that the defendant did have a prior conviction. At the subsequent trial where the defendant faced charges of perjury and false swearing, evidence regarding the civil suit was not permitted to be presented to the jury. The defendant was convicted and sentenced to twenty-three months imprisonment. On appeal, the superior court reversed, holding that the witness’ personal liability to the defendant was a basis from which the jury could have inferred bias on the part of the witness. The supreme court, in affirming the superior court, held that the defendant should have been permitted to question the witness regarding the civil suit. The supreme court reaffirmed that a criminal defendant possessed the right to question an adverse witness with evidence demonstrating that the witness had an interest in the outcome of the trial due to a related civil suit.

Recently, in Commonwealth v. Birch, the supreme court expanded the rule regarding impeachment in relation to civil suits. In Birch, the witness broke the window of, and attempted to steal,

73. Id. at 268.
74. Id.
75. Id. The defendant later testified at trial that although she had been convicted previously, she honestly believed that since an appeal had been taken, it was not final. Id.
76. Butler, 601 A.2d at 269. The defendant claimed to have been forced to submit to a body cavity search and that the police had threatened to transport her to a hospital where she would be shackled for a gynecological exam. Id.
77. Id. The authorities had discovered that the defendant had been convicted for prostitution and was in violation of her probation. Id.
78. Id. The defendant contended that the perjury charges were the result of prosecutorial vindictiveness. Id.
79. Id. at 270.
80. Id.
81. Butler, 601 A.2d at 270. Specifically the court stated: Detective O'Leary was a defendant in a civil suit instituted by [the defendant], against whom he testified, and therefore, could be personally liable to [the defendant]. This would provide a legitimate basis for a jury to infer bias on the part of Detective O'Leary, particularly where the outcome of the trial would materially affect the probability of success of the civil action.
Id. at 271.
82. Id.
84. Birch, 616 A.2d at 978.
appellant's car.\textsuperscript{85} As a result, the appellant was charged with aggravated assault and reckless endangerment when he shot and injured the witness.\textsuperscript{86}

Prior to the trial, the witness had acquired counsel to initiate a civil action for his injuries, but he had not yet filed suit.\textsuperscript{87} At trial, the defense was not permitted to question the witness regarding the possible civil suit as a source of bias.\textsuperscript{88} On appeal, the supreme court granted the appellant a new trial, holding that, in light of these possible motives, the witness should have been examined for the purpose of revealing any bias due to the possible civil claim.\textsuperscript{89} The court reasoned that even in a situation in which no civil action had yet been filed, a witness may be motivated to testify falsely.\textsuperscript{90} Thus, the court concluded that even when a civil suit had not yet been filed, the jury should have been informed of any possible witness bias due to the possibility of a subsequent civil suit.\textsuperscript{91}

The courts have also analyzed impeachment as an implication of the Confrontation Clause of the U.S. Constitution. For example, in \textit{Davis v. Alaska},\textsuperscript{92} an Alaska trial court issued a protective order prohibiting the questioning of a key witness.\textsuperscript{93} The order was an attempt to protect the anonymity of the juvenile witness.\textsuperscript{94} The Alaska Supreme Court affirmed the lower court.\textsuperscript{95}

On appeal, the United States Supreme Court held that the Confrontation Clause of the U.S. Constitution guarantees an accused

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\item \textsuperscript{85} \textit{Id.} at 977-78.
\item \textsuperscript{86} \textit{Id.} The incident occurred as appellant noticed two men by his car and saw a shiny metallic object in one of the men's hands. \textit{Id.} Appellant claimed he feared this was a weapon and reacted by firing his gun and wounding the witness in the hip. \textit{Id.}
\item \textsuperscript{87} \textit{Id.}
\item \textsuperscript{88} \textit{Id.}
\item \textsuperscript{89} \textit{Birch}, 616 A.2d at 974.
\item \textsuperscript{90} \textit{Id.} at 979. The court noted that a witness may be biased based on a belief that if the defendant was convicted, evidence of this conviction could be beneficial to the witness in a subsequent civil suit. \textit{Id.}
\item \textsuperscript{91} \textit{Id.}
\item \textsuperscript{92} 415 U.S. 308 (1974).
\item \textsuperscript{93} \textit{Davis}, 415 U.S. at 310-11.
\item \textsuperscript{94} \textit{Id.} at 314. The trial court relied on Alaska Rule of Children's Procedure 23 which provided: "No adjudication, order, or disposition of a juvenile case shall be admissible in a court in acting in the exercise of juvenile jurisdiction except for use in a presentencing procedure in a criminal case where the superior court, in its discretion, determines that such use is appropriate." \textsc{Alaska R. Children's P.} 23.
\item \textit{Id.} at 314. The trial court also relied on an Alaska statute which provided: "[t]he commitment and placement of a child and evidence given in the court are not admissible as evidence against the minor in a subsequent case or proceedings in any other court. . . ." \textsc{Alaska Stat.} § 47.10.080(g) (1990).
\item \textsuperscript{95} \textit{Davis}, 415 U.S. at 314.
\end{itemize}
the right to be confronted with an adverse witness in state and federal criminal proceedings. The United States Supreme Court based its conclusion on two factors: (1) the defense had the right to show that a witness was biased due to probationary status and possible charges which might be filed against him, and (2) a petitioner's right of confrontation superseded a state's policy in protecting the confidentiality of juvenile offenders. On this basis, the Court rejected the state court's conclusion that the accused had been permitted to sufficiently question the witness on the issue of bias.

The Court recognized that one of the functions included in the constitutionally protected right of cross-examination is a defendant's ability to uncover the partiality of a witness' testimony. Accordingly, the United States Supreme Court reversed, holding that petitioner was denied his right of confrontation.

Although the Pennsylvania courts had applied Davis in several instances, in Commonwealth v. Mines, the Superior Court of Pennsylvania maintained that the application of Davis did not automatically confer upon a defendant a constitutional right to cross-examine a witness to show bias. In Mines, a key witness had identified the defendant as one of two men who had robbed him. The defendant attempted to question the witness regarding his juvenile record in order to reveal a motive for falsely testifying. Essentially, the defendant wanted to show that the witness may have lost his valuables while gambling and was giving false testimony so as to not reveal this to his parents.

96. Id. at 315. See also Thaddeus R. Lightfoot, Sixth Amendment Issues at Trial, 75 Geo. L.J. 1108 (1987) (discussing what guarantees the Sixth Amendment affords a defendant at trial).
98. Id. at 318. The court quoted Professor Wigmore's treatise on evidence: The main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination. The opponent demands confrontation not for the idle purpose of gazing upon the witness, or of being gazed upon by him, but for the purpose of cross-examination, which cannot be had except by the direct and personal putting of questions and obtaining immediate answers.
99. Id. at 315-16 (citation omitted).
100. Id. at 316.
102. Mines, 468 A.2d at 1116.
103. Id. At trial, the witness testified as having had his watch and a few dollars taken.
104. Id. at 1116.
105. Id. at 1117. Further, the defendant hoped to show that the witness' parents had
The superior court affirmed the lower court decision, finding the defendant’s theory of possible witness bias too speculative. Thus, the court in Mines determined that if a defendant’s theory is too speculative, or is related only partially to the facts in issue, cross-examination to show bias may be denied without infringing on a defendant’s constitutional rights.

The Supreme Court of Pennsylvania, however, overruled Mines in Commonwealth v. Simmons. In Simmons, the defendant became involved in a confrontation resulting in the stabbing of the witness. At the trial, the defendant attempted to introduce the witness’ juvenile record to reveal any possible bias. The superior court had relied on Mines and denied the defendant’s counsel the opportunity to cross-examine the witness to adequately develop the issue of bias.

The supreme court reversed the superior court’s decision, holding that the appellee was denied her Sixth Amendment right of confrontation of cross-examination. The court found error with its previous decision in Mines, stating that the court cannot speculate as to the jury reaction to this theory of bias due to a witness’ recently filed incorrigibility petitions against the witness, and the witness feared that if they discovered his gambling activities, they would turn him into the police and the probation officer, thereby resulting in the suspension of his probation. Id.

106. Id.

107. Mines, 468 A.2d at 1117. The Supreme Court of Pennsylvania in Evans, although not addressing the claim of a Sixth Amendment violation, noted:

In a recent case before that Court, Delaware v. Van Arsdall, 473 U.S. 923 (1986), the United States Supreme Court held that a defendant in a criminal case was denied his Sixth Amendment right of confrontation when he was denied opportunity to cross-examine one of sixteen prosecution witnesses as to whether, prior to his testimony in this case, an unrelated criminal charge of drunkenness on a highway had been dismissed after the witness agreed to speak with the prosecutor. Evans, 512 A.2d at 632.


109. Simmons, 555 A.2d at 861. The confrontation was the result of a longstanding feud between the neighbors, their families and a male acquaintance, whom the witness believed to be the father of her daughter. Id. The defendant was subsequently arrested and charged with aggravated assault, recklessly endangering another person, and possession of an instrument of crime. Id.

110. Id. at 862. The defendant attempted to reveal the witness’ juvenile record and probationary status to reveal that her vulnerable status as a probationer could serve as a possible motive for testifying falsely and with bias. Id.

111. Id. The superior court based its conclusion on the examination of the trial transcript, from which the court determined that the transcript did not support any inference that the incident would have jeopardized the witness’ probationary status. Id.

112. Id. Specifically, the court stated that “[w]e now disavow Commonwealth v. Mines and herein hold that a prosecution witness’ juvenile probationary status is relevant to show bias regardless of whether the person appears as the victim/complainant.” Id. at 863.
status as a probationer if it had been permitted.\textsuperscript{113} Further, the
court concluded that the jurors were entitled to have the theory
presented to them to allow them to make an informed
judgement.\textsuperscript{114}

Finally, in Commonwealth v. Borders,\textsuperscript{115} the appellant at-
ttempted to establish bias through the introduction of pending ju-
venile criminal charges which were filed subsequently to the juve-
nile’s arrest for a stabbing.\textsuperscript{116} The trial court did not permit the
introduction of the record, holding that introduction of this infor-
mation would have served only to smear the character of the wit-
ness.\textsuperscript{117} The superior court affirmed and on an appeal was reversed
by the supreme court.\textsuperscript{118}

The Supreme Court of Pennsylvania reaffirmed the law in Pennsyl-
vania with regard to a criminal defendant’s right to question a
prosecution witness regarding his criminal record.\textsuperscript{119} The court rea-
soned that although the acts constituting the basis of the juvenile
record occurred subsequently to the present case, this did not af-
fect the possibility that the witness had some ulterior motive in
testifying unjustly.\textsuperscript{120} Further, the court held that it was a violation
of a defendant’s right to full confrontation, provided by the Sixth
Amendment of the United States Constitution, not to permit
cross-examination in order to establish a witness’ motive for falsely
testifying.\textsuperscript{121}

An understanding of the history of impeachment in Pennsylva-
nia requires an analysis of a third aspect, which is the Pennsylva-
nia courts’ application of the state constitution. In addition to the
United States Constitution, Pennsylvania courts have also relied

\begin{align*}
113. & \text{Simmons, 555 A.2d at 863.} \\
114. & \text{Id.} \\
115. & 560 A.2d 758 (Pa. 1989). \\
116. & \text{Borders, 560 A.2d at 759. The defendant was arrested for aggravated assault and}
\text{criminal conspiracy in the stabbing of the witness. Id. Subsequent to the arrest of the}
\text{defendant, juvenile charges were lodged against the witness. Id.} \\
117. & \text{Id.} \\
118. & \text{Id.} \\
119. & \text{Id. at 760.} \\
120. & \text{Id. The supreme court opined:} \\
& \text{The strength or weakness derived from an attempt to show that the victim has some}
\text{ulterior motive for continuing his role as an accuser due to subsequent acts, bringing}
\text{him into the sphere of influence of the prosecutor, must rightly be determined by the}
\text{jury, which, after hearing all the evidence in the matter before them, will be most}
\text{able to ferret out the presence or absence of improper motive on the part of the}
\text{victim.} \\
& \text{Borders, 560 A.2d at 760.} \\
121. & \text{Borders, 560 A.2d at 760.}
\end{align*}
on article I, section 9 of the Pennsylvania Constitution when ruling on cross-examination to show bias; however, the court has not done an independent analysis apart from this section's counterpart to the Federal Constitution. Even though the court in *Evans* based its decision mainly on the U.S. Constitution, the Supreme Court of Pennsylvania asserted that the right to cross-examine an adverse witness regarding pending charges was a right guaranteed by article I, section 9 of the Pennsylvania Constitution.

The Superior Court of Pennsylvania in *Commonwealth v. Rhodes*, consistent with the supreme court's analysis in *Evans*, based its decision on article I, section 9 of the Pennsylvania Constitution. In *Rhodes*, the defendant, while engaging in a drug transaction, was accused of being a police informant by a companion of the witness. The defendant shot the man and claimed it was self-defense. At trial, defense counsel was not permitted to question the witness regarding his arrest for the delivery of a controlled substance.

On appeal, the superior court considered the issue of whether the defendant should have been permitted to reveal to the jury the pending charges against the witness. The defendant argued that the existence of the pending charges could have raised doubts in the mind of the jury regarding his motive to testify. The superior court held that the right of a defendant to confront his accuser was inherent in the guarantees provided by the Pennsylvania Constitution, which includes the right to raise doubt in the mind of the jury as to whether the witness was biased. Thus, the superior court opined that the defendant should have been given the opportunity to reveal the possible bias to the jury, and the refusal to allow the defendant to cross-examine the witness violated the state constitution. Accordingly, the superior court reversed the lower

122. 512 A.2d at 630. See notes 63-70 and accompanying text.
123. Id. See note 18 for the text of article I, § 9.
127. Id.
128. Id. During trial and the witness' testimony, eight months had passed, yet the witness had not faced his preliminary hearing regarding the pending charges. Id.
129. Id.
130. Id. At trial it was revealed that the arresting officer had been told by the District Attorney to "let the case ride because the witness is involved as a Commonwealth witness in a homicide case." Id. at 1362 (citations omitted).
There exists an inconsistency in Pennsylvania with respect to the treatment of cases dealing with impeachment to show bias. In *Evans*, the Supreme Court of Pennsylvania clearly held that a defendant has a constitutional right to confront a witness. The court further noted that this confrontation right includes the right to question a witness to reveal any interest the witness may have in the trial as a source of bias. Additionally, the supreme court noted that this interest included any favorable treatment the witness expects to receive. Hence, when a conflict arose between a constitutional right and a non-constitutional right, the constitutional right prevailed.

Yet, in the recent case of *Commonwealth v. Lane*, the same court determined that although the defendant was wrongly restricted from questioning an adverse witness regarding pending charges, the error was not reversible. The court opined that the error did not prejudice the defendant’s case. However, Justice Nix stated in his dissent in *Lane* that once the defendant was denied the right of confrontation, he was automatically prejudiced in his defense. Further, the Supreme Court of Pennsylvania in the *Evans* decision had held that it was a question for the jury and not the court to determine whether cross-examination for bias would affect the jury’s decision. The decision in *Lane*, therefore, raises the question of whether the court in *Evans* intended to completely remove from the judge’s discretion the determination of whether a defendant may cross-examine a witness in an attempt to reveal bias.

In *Davis*, the United States Supreme Court made clear its position that the defendant must be afforded the constitutional right to cross-examine a witness, even if defendant’s theory of impeachment was based on mere speculation. In line with the decision in *Davis*, the Pennsylvania courts in *Evans*, *Sullivan* and *Rhodes* held that the Pennsylvania Constitution guarantees a defendant the right to question a witness to show possible bias. Following the decisions in *Evans* and *Rhodes*, the Supreme Court of Pennsylvania in *Commonwealth v. Edmunds* set forth a method the courts

132. *Id.* at 1362.
133. See notes 63-70 and accompanying text.
134. See notes 10-28 and accompanying text.
135. See notes 63-70 and accompanying text.
136. See notes 92-100 and accompanying text.
137. 586 A.2d 887 (Pa. 1991). The applicability of *Edmunds* to the constitutionality of
can follow when confronted with a state constitutional issue which has a federal constitutional counterpart.\textsuperscript{138} In doing so, the Supreme Court of Pennsylvania referred to the necessity for a state court to exercise its independence and freedom to interpret its analogous constitutional provisions in order to provide greater protection than those contained in the Bill of Rights.\textsuperscript{139}

The method that the court developed for independent analysis consisted of four parts: (1) the court examined the text of both provisions to determine if the wording was similar; (2) the court examined the history of the applicable section in the Pennsylvania Constitution; (3) the court analyzed the decisions in other states which had examined the question as applied to their own constitutions; and (4) policy issues were addressed.\textsuperscript{140}

Based on the procedure set forth in \textit{Edmunds}, future decisions implicating the state constitution will require the state courts to conduct an independent analysis of the applicable state provisions as set forth in \textit{Edmunds}. Apparently, the Supreme Court of Penn-

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\textsuperscript{138} \textit{Id.} at 895-86. In \textit{Edmunds}, a police trooper obtained a warrant to inspect the appellant's premises. \textit{Id.} at 888. During the search, marijuana was seized and the appellant was charged with criminal conspiracy. \textit{Id.} The marijuana was subsequently rendered inadmissible as the affidavit failed to state the time frame within which the anonymous informants had observed the marijuana. \textit{Id.} at 890. The trial court granted the prosecution's request to provide oral supplementation to the affidavit's facts, in order to establish a "good faith" exception to the exclusionary rule. \textit{Id.} At the hearing, the judge ruled that the evidence seized, although obtained through a defective warrant, was nonetheless admissible. \textit{Id.} The trial court concluded that the officer had acted in "good faith" based on the test enunciated by the United States Supreme Court in \textit{United States v. Leon}, 468 U.S. 897 (1984). \textit{Id.} In \textit{Leon}, the Court held that evidence seized pursuant to an invalid warrant issued by an impartial magistrate, where the officer acted in good faith reliance, is permitted to be admitted as evidence. \textit{Leon}, 468 U.S. at 917-18.

\textsuperscript{139} \textit{Edmunds}, 586 A.2d at 894.

\textsuperscript{140} \textit{Id.} at 895-905. In \textit{Edmunds}, the appellant was found guilty and on appeal the conviction was affirmed by the superior court. \textit{Edmunds}, 586 A.2d at 888. The superior court held that article I, § 8 of the Pennsylvania Constitution did not provide greater protection than the Fourth Amendment to the United States Constitution. \textit{Id.} The Fourth Amendment to the United States Constitution reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be search, and the persons or things to be seized.

U.S. Const. amend. IV.

The court held that article I, § 8 of the Pennsylvania Constitution provides greater protection than that afforded by the analogous provision in the United States Constitution. \textit{Edmunds}, 586 A.2d at 906.
sylvania in *Lane* disregarded the constitutionally protected right of confrontation in favor of a theory of harmless error.\[141\] The holding in *Lane* contradicts the principles established by the Supreme Court of Pennsylvania in *Evans* and the United States Supreme Court in *Davis*.

If the court had applied the rule it set forth in *Evans*, the court would have reversed the *Lane* decision based on the lower court’s error which resulted in denial of a constitutional right. Furthermore, the court in *Evans* held that even the mere expectancy of leniency in pending cases must be made known to the jury. In *Lane*, it was not established that a promise of leniency had been made. Nonetheless, application of the mere expectancy rule from *Evans* should have allowed *Lane* to reveal to the jury the charges of kidnapping and attempted rape pending against the witness. In fact, in *Evans*, the court had established that it was for the jury to determine if any bias existed as a result of any pending charges.

What impact the decision in *Lane* will have on the law regarding impeachment evidence is unclear. Undoubtedly, the Supreme Court of Pennsylvania will revisit the issue of when impeachment evidence may be used to show bias. The *Lane* decision seems to suggest that a court has substantial leeway in determining whether to restrict the admissibility of such evidence and can make its decision on a case by case analysis. The supreme court can provide more stringent protection to defendants than that afforded by the United States Constitution by following the framework established in *Edmunds* to conduct an independent analysis in order to establish “adequate and independent” grounds as the basis of its future decisions regarding the confrontation clause.

The United States Supreme Court decision in *Davis* mandated that the defendant has a constitutional right to cross-examine a witness to reveal the existence of bias. As this right is of constitutional dimension, the decision in *Lane* must be reexamined by the Supreme Court of Pennsylvania with the *Davis* and *Edmunds* opinions in mind.

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141. See note 27.