

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING  
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

CARLA ANN THOMAS

Appellant,

v.

Appeal No. CRC 11-00060 APANO  
UCN: 522011AP000060XXXXCR

STATE OF FLORIDA

Appellee.

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Opinion filed September 11, 2012.

Appeal from a judgment and sentence  
entered by the Pinellas County Court  
County Judge Donald E. Horrox

Frank D. L. Winstead, Esquire  
Attorney for Appellant

Kaitlyn Bagnato, Esquire  
Office of the State Attorney  
Attorney for Appellee

**ORDER AND OPINION**

PETERS, Judge.

THIS MATTER is before the Court on Carla Ann Thomas' appeal from a conviction, after a jury trial, of Animal Neglect, a first degree misdemeanor, in violation of § 828.13(2) Fla. Stat. (1991). Ms. Thomas argues the trial court erred in allowing the

State Attorney to cross examine her expert witness concerning the State Attorney's Office previous prosecution of the expert witness for practicing veterinary medicine without a license. After review of the record and the briefs, we find no error and affirm the judgment and sentence.

*Factual Background and Trial Court Proceedings*

On September 14, 2011, Appellant, Carla Ann Thomas, was convicted after a jury trial, of Animal Neglect. On the morning the trial was to begin, Ms. Thomas moved the court to exclude any testimony or evidence regarding complaints previously filed against her expert witness. The trial court initially addressed the issue of the anticipated expert testimony:

Okay. Well, he doesn't necessarily have to have a veterinary license, right? He can be an expert through, as [defense counsel] has accurately cited, 90.702 through knowledge, skill, experience, training or education. And as much as the State doesn't want to make cause of death an issue in the case, the inference is that the State's theory and proof -- or offered proof is going to be that, as a result of not having enough food and water, the dog died. And I think it's only fair for the Defense to be able to advance alternative theories which could be substantiated, which is where the tumor doesn't come in because that can't be substantiated. The Defense should be allowed to offer their theories of defense, which are substantiated in fact in this case which would include the electrical cord and the possibility of electrocution. The possibility of, I guess, through fastings, if that's what Ms. Thomas was practicing, I don't know. I mean, my sense is that he can testify to the -- the scope of his testimony is going to be limited and his credibility is going to be for the jury to determine whether he's credible or not. So [defense counsel], you inferred earlier that you were going to have a Motion in Limine with respect to improper conduct on his part, but his conduct is not at issue in this case. What the State is going to seek to do, from what I can tell, is attack his credibility. And if he gave up his license and took up this holistic approach to practice veterinary medicine, it's all subject to cross-examination by the State.

It was then brought to the attention of the court that there had been previous complaints against the expert. Defense counsel stated, "[b]asically in '04 they came after him for practicing what they believed was holistic medicine with a veterinary license. At that

point his license was already given up. So that was unfounded.” The trial court asked “[h]ow did all this end up?” Defense counsel responded, “Judge, believe it or not, he was actually -- he went to trial and he was found not guilty here in Pinellas.” The Assistant State Attorney added, “[i]n '04 he was prosecuted for unlawful practicing of veterinary medicine, which the State would also argue goes to his bias against not only the government, but members of our office particularly. He did go to trial and was found not guilty.” After argument, the trial court denied Ms. Thomas’ motion to exclude any testimony or evidence regarding complaints previously filed against the expert witness. The trial court commented, “I think it all comes in. I think the fact that he was charged comes in. The fact that he went to trial comes in. The fact that he was found not guilty comes in. It all comes in.”

At trial, during cross examination of the Ms. Thomas’ expert witness, the following exchange occurred:

Question: Now, it's true that you are not licensed to practice veterinary medicine at this time, correct?

Answer: Yes.

Question: You actually gave back or surrendered your license after you were under investigation, correct?

Answer: That's correct.

Question: And you were also issued a notice to cease and desist practicing veterinary medicine; is that correct?

Answer: Correct.

Question: And you were also prosecuted by the very office I work for and represent for practicing veterinary medicine without a license, correct?

Answer: Correct.

Question: So you're not exactly fond of my office, the state licensing board, or the criminal justice system, correct?

Answer: I have issues with the criminal justice system because it's not justice, it's injustice. So, no, you're not my friends, but it's nothing personal.

In redirect examination of this expert witness, defense counsel did not mention the prosecution for practicing veterinary medicine without a license. Thereafter this appeal was timely filed.

#### *Standard of Review*

A trial judge's rulings on the admission or exclusion of evidence are reviewed under the abuse of discretion standard. *LaMarca v. State*, 785 So.2d 1209, 1212 (Fla. 2001). The matter of cross-examining a witness to show bias rests largely in the trial court's discretion, and its rulings will not be disturbed absent a clear showing of abuse of this discretion. *Pandula v. Fonseca*, 199 So. 358, 360 (Fla. 1940); *Alvarez v. Mauney*, 175 So.2d 57, 58 -59 (Fla. 2nd DCA 1965). Under the abuse of discretion standard, discretion is abused only 'when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable person would take the view adopted by the trial court. *Frances v. State*, 970 So.2d 806, 813 (Fla. 2007). If reasonable people could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion. *Bryant v. State*, 901 So.2d 810, 817 (Fla. 2005).

#### *Evidence of Bias of a Witness*

"Our evidence code liberally permits the introduction of evidence to show the bias or motive of a witness. In relevant part, section 90.608(2) states:

*Any party*, including the party calling the witness, may attack the credibility of a witness by:

(2) Showing that the witness is biased.

§ 90.608(2), Fla.Stat. (1993).” *Gibson v. State*, 661 So.2d 288, 291 (Fla. 1995) (emphasis added). “It has long been established that evidence of a witness's interest, motives, animus, or status in relation to the proceeding is not collateral or immaterial. ... Although a trial court has discretion regarding the admission of evidence, that discretion is limited by the rules of evidence. ... Those rules provide that the credibility of a witness may be attacked by showing that the witness is biased. § 90.608(2), Fla. Stat. (2008). A criminal defendant has the right to show a witness's possible ulterior motive for testimony, ... and he or she should be afforded wide latitude in questioning a witness about her bias or motive for testifying.” *Peterson v. State*, 24 So.3d 686, 689 (Fla. 2nd DCA 2009) (internal citations omitted). Evidence of bias is subject to the balancing test mandated by section 90.403, Florida Statutes (2007), which requires a court to hold otherwise admissible evidence inadmissible if it’s unfair prejudice to a party substantially outweighs its probative value. *Jackson v. State*, 25 So.3d 518, 526 (Fla. 2009).

#### *The Present Case*

Was it an abuse of discretion for the trial court to allow the State Attorney to cross examine the defense expert witness concerning the State Attorney’s Office previous prosecution of that expert witness for practicing veterinary medicine without a license? Given the provisions of the Florida Evidence Code, § 90.608(2) and the requirement that parties be afforded wide latitude in questioning a witness concerning bias or motive for testifying, it is clear that, at the very least, reasonable people could differ as to the propriety of allowing this cross examination; it was certainly not arbitrary, fanciful, or unreasonable. We conclude that the cross examination of the defense expert that

occurred in this case was not an abuse of discretion. It did not unfairly prejudice the defense.

*Conclusion*

The judgment and sentence of the trial court should be affirmed.

IT IS THEREFORE ORDERED that the judgment and sentence of the trial court are affirmed.

MEYER, Judge. Concur

GROSS, Judge, Dissenting.

Respectfully, I dissent. I would reverse and remand for a new trial.

ORDERED at Clearwater, Florida this 11<sup>th</sup> day of September, 2012.

Original order entered on September 11, 2012, by Circuit Judges Raymond O. Gross, L. Keith Meyer, Jr., and R. Timothy Peters.

cc: Honorable Donald E. Horrox  
Frank D. L. Winstead, Esquire  
Office of the State Attorney