

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING NOVEMBER 28, 2014

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## THIS WEEK:

- **Prior Inconsistent Statements; Plea Hearings**
- **Rape Shield; O.C.G.A. § 24-4-412**

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### **Prior Inconsistent Statements; Plea Hearings**

*Wright v. State, S14A0602 (11/24/14)*

Appellant was convicted of the murder of one victim, aggravated assault on four victims, and armed robbery of another victim. At trial, the State called Stokes, appellant's co-defendant to testify. Stokes had pled guilty but thereafter moved to withdraw his plea, claiming he was "forced into" pleading. Stokes at first refused to testify, but the trial court forced him to do so. In his testimony, he shaded his testimony to minimize his involvement in the crimes. The State was then allowed to impeach Stokes with the transcript of Stokes' plea hearing.

Appellant argued that Stokes' testimony during the plea hearing should not have been admitted at his trial as Stokes never denied having made the statements recorded in the plea hearing transcript. However, the Court stated, under former O.C.G.A. § 24-9-83, the fact that the witness admits that he or she made the inconsistent pre-trial statement does not render it inadmissible. And, the Court stated, it has previously rejected the assertion that a prior inconsistent statement is admissible only if the witness denies making the prior statement, but not if he simply disputes the truth of the earlier statement. There is no such "denial" requirement under former O.C.G.A. § 24-9-83.

Appellant also argued that the State's recitation of the factual basis for the pleas, and the portions of the plea transcript addressing Stokes' attorney's representation of him at the hearing, were not prior inconsistent statements made by Stokes, and thus, not admissible under former O.C.G.A. § 24-9-83. However, the Court found, this argument ignored the fact that at trial the State asserted that these portions of the plea hearing transcript contradicted Stokes' trial testimony that he did not know the facts underlying the charges against him when he entered his guilty pleas, and that his pleas were coerced. As such, the evidence was admissible not under former O.C.G.A. § 24-9-83, but under former O.C.G.A. § 24-9-82. Although the trial court apparently relied upon former O.C.G.A. § 24-9-83 in admitting the evidence, the Court noted it will affirm a trial court's ruling if it is right for any reason. Furthermore, to the extent that appellant asserted that he was deprived of his right to confront the witnesses against him, as he could not question the prosecutor who stated the factual basis for Stokes' pleas, Stokes' plea counsel, or the judge who presided over the plea hearing, the issue was not preserved for appellate review.

### **Rape Shield; O.C.G.A. § 24-4-412**

*Algren v. State, A14A1098 (11/10/14)*

Appellant was convicted of the statutory rape of a 14 year old. He contended that the trial court erred in charging the jury that a child under the age of 16 years cannot consent to sexual intercourse, arguing that, under O.C.G.A. § 24-4-412, evidence of the victim's consent is relevant even in statutory-

rape cases. Specifically, he contended that because O.C.G.A. § 24-4-412(b) includes statutory rape as one of the prosecutions for which evidence of the victim's past sexual behavior may be admissible to support a defendant's belief that the victim consented to the sexual conduct at issue, the trial court erred in charging the jury that "[a] child under the age of 16 cannot consent to sexual acts." The Court disagreed.

First, the Court stated, appellant's arguments ignore the fact that in Georgia it is unquestionably a crime to have physical sexual contact with a person 15 years of age or younger. Second, the Court stated, while appellant's "argument perhaps demonstrates that the drafters of O.C.G.A. § 24-4-412(b) lacked an eye for detail, ultimately, it is neither clever nor particularly novel." Thus, the Court noted, construing the former version of the statute, which was only minimally changed in the new Evidence Code, the Court held that although evidence of a victim's past sexual behavior may be admissible under exceptions to the statute relating to whether the victim consented, when the complaining victim has no legal capacity to consent, the statutory exceptions do not apply. And, the Court found, pursuant to appellant's argument, evidence that the child victim consented would necessarily entail evidence that she and appellant engaged in prior sexual acts to which *she could not consent under current law*. Accordingly, the Court concluded, "we flatly refuse to construe Georgia's Rape Shield Statute in a manner that would necessarily imply that the General Assembly intended for that statute to supplant the clear dictates of our criminal code." Therefore, the trial court did not err in its charge.