

February 7, 2012

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## *Hatley v. State*

### Supreme Court Re-construes Child Hearsay Statute and Establishes New Procedure for Admission of Child Hearsay Testimony

In *Hatley v. State*, S11A1617 (Feb. 6, 2012), appellant was convicted of aggravated child molestation, aggravated sodomy and two counts of sexual battery against a three year old victim. Appellant contended that the Child Hearsay Statute, O.C.G.A. § 24-3-16, was unconstitutional because it violated the Confrontation Clause under *Crawford v. Washington*, 541 U.S. 36, 124 SC 1354, 158 LE2d 177 (2004) and *Melendez-Diaz v. Massachusetts*, \_\_\_ U.S. \_\_\_, 129 SC 2527, 174 LE2d 314 (2009). The Court noted that in *Sosebee v. State*, 257 Ga.298 (1987), it had previously construed O.C.G.A. § 24-3-16 to require the trial court 1) at the request of either party, to cause a child molestation victim to take the stand before the State rests; and 2) inform the jury that the court called the child as a witness. However, the Court concluded, *Sosebee* and its progeny “cannot now pass constitutional muster because it fails to put the onus on the prosecution to put the child victim on the witness stand to confront the defendant...[and a]ny cases suggesting the contrary are hereby overruled.” *Hatley*, slip op. at 7.

Nevertheless, the Court did not declare O.C.G.A. § 24-3-16 to be unconstitutional. Instead, the Court found that *Melendez-Diaz* recognized that the right of confrontation may be waived by the failure to object and that states may adopt procedures governing the exercise of such objections. Therefore, to avoid finding O.C.G.A. § 24-3-16 unconstitutional, the Court held that the following procedure must be used: 1) the prosecutor must notify the defendant within a reasonable period of time prior to trial of its intent to use a child victim’s hearsay statements and to give the defendant an opportunity to raise a Confrontation Clause objection; 2) if the defendant objects, and the prosecutor wishes to introduce the statements under O.C.G.A. § 24-3-16, the prosecutor must present the child witness at trial; 3) if the defendant does not object, the prosecutor can introduce the hearsay statements subject to the trial court’s determination that the circumstances of the statements provide sufficient indicia of reliability; and 4) the trial court should take reasonable steps to ascertain, and put on the record, whether the defendant waives his right to confront the child witness. *Id.*, at 8. The Court noted that these general guidelines will assure a defendant’s right of confrontation is protected until a more detailed procedure is provided by either a uniform superior court rule or a statutory amendment. *Id.*, at 8 n.2.