



AUGUST 20, 2018

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FYI: ATKINS v. STATE

The Georgia Supreme Court holds that a victim's prior consistent statement cannot provide the required corroborating evidence for a conviction on statutory rape.

In *Atkins v. State*, S17G1996 (8/20/18), the Georgia Supreme Court held that a victim's prior consistent statement cannot provide the required corroborating evidence for a conviction on statutory rape. In *Atkins v. State*, 342 Ga. App. 422 (803 SE2d 122) (2017), the Court of Appeals affirmed Jerome Atkins's convictions for statutory rape and aggravated child molestation. The Georgia Supreme Court granted certiorari and posed two questions: (1) whether a victim's prior statements can constitute sufficient corroboration under OCGA § 16-6-3, Statutory Rape; and (2) whether the defendant was properly prohibited from eliciting testimony regarding the victim's sexual activity with others pursuant to OCGA § 24-12-412.

The Court wrote: "OCGA § 16-6-3 (a) provides: 'A person commits the offense of statutory rape when he or she engages in sexual intercourse with any person under the age of 16 years and not his or her spouse, provided that no conviction shall be had for this offense on the unsupported testimony of the victim.' In other words, there must be some evidence that corroborates the victim's testimony that the defendant committed the statutory rape. The purpose of the corroboration requirement is to 'furnish the jury with a criterion for ascertaining the degree of credit which should be given to the testimony of the injured female.' (Citation omitted.) *Strickland v. State*, 207 Ga. 284, 287 (5) (61SE2d 118) (1950). Corroborating evidence may be slight. The quantum of corroboration needed in a statutory rape case is not that which is in itself sufficient to convict the accused, but only that amount of *independent* evidence which tends to prove that the incident occurred as alleged. Slight circumstances may be sufficient corroboration, and ultimately the question of corroboration is one for the jury. (Citation and punctuation omitted; emphasis supplied.) *Williamson v. State*, 315 Ga. App. 421, 424 (1) (b) (727 SE2d 211) (2012)."

The Georgia Supreme Court found that the Court of Appeals conflated the purpose and value of prior consistent statements, such as the initial outcry of the victim, with that of corroborating evidence which provides independent details that support the victim's accusations. The Court opined corroborating evidence, however, is in a different category. Corroborating evidence is evidence that differs from but strengthens or confirms what other evidence shows. Black's Law Dictionary (10th ed. 2014). Corroborat-

State Prosecution Support Division



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ing evidence earns its value because it is independent from the victim’s statement. It is evidence from an independent source that supports the conclusion that the defendant committed the statutory rape of the victim. The Court concluded, for this fundamental reason, a prior statement by a victim is not, by definition or otherwise, corroborating evidence that the statutory rape occurred.

The Court held that there was no sufficient corroborating evidence in this case. The only possible evidence identified by the State is the fact that, on occasion, the victim, A. O., spent time at Atkins’s house. The State argued that the fact that Atkins had access to A.O. should be sufficient corroborating evidence. The Court disagreed, writing that, corroborating evidence must at least “be of ‘such a character and quality as tends to prove the guilt of the accused by connecting him with the crime.’” *Timmons v. State*, 182 Ga. App. 556, 557 (356 SE2d 523) (1987). The Court found the fact that A. O. occasionally visited Atkins’s home, standing alone, did not directly connect Atkins with the statutory rape of A. O., and the State presented no other evidence to satisfy the corroboration requirement. Under these circumstances, the State failed to provide sufficient evidence of Atkins’s guilt for the offense of statutory rape, and the conviction was reversed.

Atkins also argued that the trial court erred by prohibiting him from eliciting testimony regarding the victim’s prior sexual activity, specifically the identity of the individual who fathered her aborted fetus, as DNA testing revealed Atkins was not the biological father. The trial court prohibited the testimony under OCGA § 24-12-412. It is important to note that OCGA § 24-12-412, the “new rape shield” statute, tracks the language of the former statute, OCGA § 24-2-3. The Georgia Supreme Court found that defendant was seeking to conduct a fishing expedition regarding the identity of all of the victim’s sexual partners, and the trial court properly did not allow him to do so.