

GEORGIA



# Family Violence Newsletter



Governor's Office for

Children and Families

## >>> OUR MISSION

The goal of PAC's Domestic Violence and Sexual Assault Program is to effectively assist and be a resource to prosecutors, law enforcement and victim advocates across Georgia, and to improve the effective adjudication of domestic and sexual violence cases and to reduce such crimes across our state.

A PUBLICATION OF THE PROSECUTING ATTORNEYS' COUNCIL OF GEORGIA  
DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAM

## Domestic Violence and Children: Exploring the Impact of the Prosecution of Domestic Violence Case on Children

By Sharla D. Jackson, Domestic Violence and Sexual Assault Resource Prosecutor,  
Prosecuting Attorneys' Council of Georgia

When prosecuting family violence or sexual assault cases involving children, prosecutors are acutely aware of the immediate impact of these crimes on children. What is not always recognized is the special role that children play as witnesses in these cases. Recent studies revealed that 13.6 million children witness domestic violence during their lifetimes.<sup>1</sup> Nationally, in 2012, more than 5 million children were exposed to intimate partner violence, and almost 1 million of them experienced serious violence such as kicking, choking and beating. Additionally, in one study, one third of children who witnessed a domestic violence incident, were also victims themselves.<sup>2</sup>

If I didn't see her there, I knew he had done something to her. I would play the game with my stomach in knots, not knowing what I would find when I got home. I wanted to hurt him because of what he did to my mother. I'm glad that I never did, because I would have been in prison rather than going on to have a successful career.

—An adult survivor of domestic violence

In Georgia, 14,447 children witnessed a domestic violence incident. According to the Georgia Commission on Family Violence, in a review of cases studied through the Commission's 2013 Fatality Review Project, 18% of domestic violence homicides were witnessed by children.<sup>3</sup> Furthermore, The Governor's Office of Children and Families reports that Georgia domestic violence shelters provided refuge for 7,807 women and children in 2013.<sup>4</sup>

Some studies indicate that children may also experience long-term health problems. A study published in the *American Journal of Preventative Medicine* surveyed 9508 adults who had recently received medical services at a Kaiser Permanente HMO. Respondents answered surveys about seven categories of adverse childhood experiences including physical and psychological abuse, sexual abuse and violence against a mother. The study concluded that adults who had these experiences were likely to have multiple health risk factors for several of the leading causes of death in adults including heart disease, depression, suicide attempts and obesity later in life.<sup>5</sup> Adults who reported exposure to a greater number of the seven categories, more than four, had even more health risk factors including "substance abuse, multiple intercourse partners and cancer."<sup>6</sup>

### Domestic violence has differing and long-term impacts on its smallest victims.

The violence can have short and long-term impacts on a child's emotional, physical, social and academic development. Many child victims carry the scars of what they experienced well into adulthood.

A child may have long term mental, physical or emotional health problems, substance abuse, social or educational issues, all from growing up in a family where domestic violence occurs. Experts have also observed the resilience of children. With appropriate treatment and referral to proper services, they can overcome the effects of the violence.

When I was growing up, my stepfather used to beat my mother. She would fight back but he kept doing it. I used to play football in high school. At every game, I would look up into the stands for my mother.

For adult victims of domestic violence, their concerns are more apparent. They may be anxious about their financial situation, keep-

## >>> CONTENTS



Children who witness domestic violence can suffer long-term consequences. Photo Credit: Poxland/Pixland/Getty Images

### feature articles

Tips for Talking With Children	3
April is Sexual Assault Awareness Month	4
CaseLaw Update	5
Domestic Violence and Sexual Assault Resources for Prosecutors	7
Upcoming Training Events	8

This newsletter is a publication of the Prosecuting Attorneys' Council of Georgia and was made possible by a Grant from the Governor's Office for Children and Families. PAC encourages readers to share varying viewpoints on current topics of interest. We invite law enforcement, prosecutors and victim advocates to write an article for publication. The views expressed in this publication are those of the authors and not necessarily of the State of Georgia, PAC or the Council staff. Please send comments, suggestions or articles to Sharla Jackson at [sdjackson@pacga.org](mailto:sdjackson@pacga.org).

ing their family together or future physical harm. A victim may also feel the emotional pull of still caring for the abuser. Victims may blame themselves for being victimized or be judged by others. They may also fear losing their children by reporting the violence. A prosecutor, while concerned about the best interests of the child, may be primarily focused on protecting the victim and the public through a successful prosecution of the abuser. For a child victim or witness of domestic violence, their concerns are more complex.

### Children may be physically injured or killed as a result of domestic violence

According to the Georgia Commission on Family Violence, eleven children were killed in domestic violence murder-suicides between 2010-2013.<sup>7</sup> Many more children are injured or killed when they intervene on behalf of their parent or are the subject of abuse themselves. Sometimes a parent who is stressed from dealing with the effects of being abused may abuse their children.<sup>8</sup> Tragically, this abuse may end in the death of a child. One study found a strong association between domestic violence and fatal child abuse. Another revealed that in almost 100% of cases of “chronic, violent abuse of women by men”, there was also prevalent physical abuse of children.<sup>9</sup>

### Child victims of domestic violence experience conflicts that other witnesses do not.

Children may experience many conflicts as a witness against their perpetrator. Many children may feel responsible for the abuse; they may fear revealing the intimate details for their situation to a room full of strangers. Additionally, they may be feeling, anxiety, sadness and often safety concerns. If the abuser is a parent or caregiver, a child may be conflicted by caring for the perpetrator but feeling hurt by the violence. The child may wish for the violence to stop but may not want the abuser to go to jail. In families where the violence has been sustained and consistent, a child may become desensitized to it, or may feel that the batterer is justified in his or her actions. Many children may feel forced to choose between a parent and the batterer. A child may also experience financial difficulties or homelessness, as in many instances they are forced to leave their homes for safety or financial reasons. Many of our homeless shelters are filled with children who are fleeing domestic violence. They may then feel responsible for their family’s homelessness. Finally, in those cases where children may not have the relationship with the batterer that their mother has, their mother’s al-

legiance to the batterer, may leave children feeling angry that their mother rejected them for the batterer.

### A child may face being placed in foster care as a result of domestic violence

Older children, usually boys may end up in foster care because they engage in physical altercations with their mother’s boyfriends, and the mother chooses their partner over their child. These children often become angry and very violent themselves.

—A Child Advocate

Some children may find themselves in foster care because of domestic violence. An advocate representing the best interests of a child in deprivation hearings under



the Georgia Juvenile Code, may find that as much as 30% of their cases include domestic violence as a reason for children needing placement in foster care. One of the factors a court considers when making a “best interests” analysis for the purpose of determining parental rights is whether there is “any evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical abuse in any current, past, or considered home for each child.”<sup>10</sup>

The Georgia Juvenile Code lists family violence as a type of child deprivation, describing it as, “the commission of an act of family violence as defined in Code Section 19-13-1 in the presence of a child.”<sup>11</sup>... Under O.C.G.A. § 19-13-1, the definition of family violence includes any felony; or battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.<sup>12</sup> The State Attorney General’s Child Advocates represent children’s interests in deprivation hearings conducted under the Georgia Juvenile Code. Many counties may include these advocates on staff as part of child advocacy centers.

The reality of being taken from the home may affect an older child’s willingness to cooperate

with a domestic violence prosecution. An adult parent engaged in such a situation may be reluctant to report incidents of violence for fear of losing their parental rights.

Prosecutors should always look at other counties’ Juvenile Courts or the Department of Family and Children Services for a history of deprivation cases related to domestic violence. By communicating with their counterparts in the Juvenile Court and the Child Advocate in their county, prosecutors can find out if this is the case and work with them to ensure the security and cooperation of their child witnesses.

### Children may be harmed or intimidated by the perpetrator while a domestic violence prosecution is pending

Children may be under great danger while a domestic violence case is pending. A great many domestic violence assaults happen when parents are meeting to allow for visitation of children. The perpetrator may withdraw financial support as a means of controlling the victim and forcing her to come back to the relationship. Batterers may use finances as leverage to prevent children from testifying against them.

During the pendency of a domestic violence case, a court may issue a temporary protective order under O.C.G.A. § 19-13-4. Under this code section, a court may order that the perpetrator provide financial support to the victim, leave the home, and refrain from harassing or intimidating the victim. A violation of the conditions of a temporary protective order may be prosecuted under O.C.G.A. § 16-5-95.

Prosecutors should ensure that the perpetrator is required to turn in all firearms while a protective order is in place. Prosecutors should also encourage parent victims to work with a victim’s advocate to create a safety plan. Victim’s advocates have special training in creating safety plans which contemplate a child’s need to be safe during visitation with the defendant. Visitation under these circumstances can be potentially dangerous for children. The Council of Superior Court Judges, Domestic Violence Benchbook<sup>13</sup> contains forms for creating a sample safety plan as well as practical information for ensuring victim safety during this process. Finally, prosecutors should ask their victim to notify them if or when there is a violation of a protective order so that the violator may be charged.

### Child victims of domestic violence are expected to react and testify in the same manner as adults.

Many child victims have experienced trauma beyond what an adult would be able to cope with or comprehend. Often these experiences go well beyond their developmental or educational capacity. Still, they are expected to excel in the sterile, contentious court environment under circumstances that are difficult for adults to handle. The pressure of

*continued >*

 Don't forget to visit our Training Web page to register for our family violence-related conferences and training courses.

coming into a courtroom and testifying about a traumatic event to a roomful of strangers, authority figures and the perpetrator of the crime can be a terrifying experience to children. In addition to the process of testifying, actually sitting on the witness stand and facing the abuser while testifying may cause children to re-live the experience about which they are testifying. A prosecutor should consider this when preparing children for trial.

A prosecutor can ameliorate these concerns by preparing children to be good child witnesses. First, all child witnesses under the age of 16 should be interviewed about the incident by a forensic interviewer as close as possible to the incident. Forensic interviewers are skilled at getting the facts of a case without further traumatizing them. They are also able to document children's statements and to testify under the child hearsay statute. Finally, by connecting children with a child advocacy center, they will be directed to necessary counseling services to address any emotional needs.

However, prosecutors should not solely rely on victims' advocates to maintain contact with their child witnesses. In order to have child witnesses that feel secure enough to testify, those children need to have a level of comfort and trust with that prosecutor. It is important that a prosecutor meet with them on many occasions if possible, to create that trusting relationship. When speaking with children, avoid legalese and use age and developmentally appropriate language. As part of that preparation, the prosecutor should explain the following: the court process; what the timeline is for the disposition of the case; what the prosecutor expects to happen; and what is being done to ensure their safety while testifying. When preparing children to testify, the prosecutor or victim advocate should take them to the courtroom where the trial will take place and give them the opportunity to become familiar with the room and the roles of all court personnel. Children should practice answering questions from the witness stand so that they will feel comfortable. If they are particularly afraid to testify in the presence of the defendant, a prosecutor should consider filing a motion to allow them to testify by closed circuit video. Under the newly passed House Bill 804<sup>14</sup>, if the State can demonstrate at a pretrial evidentiary hearing, by a preponderance of the evidence, that a child under 17 will suffer psychological damage or emotional distress which will impair the child's ability to testify in the presence of the accused, that child may testify by closed circuit video. The prosecutor should also plan and be prepared for children to behave differently on the witness stand than in previous meetings. Under the Crime Victim's Bill of Rights, a court is also obligated to provide a safe waiting area for all child victims away from the defendant and minimize contact between the defendant and child victims during all proceedings.<sup>15</sup>

In prosecuting domestic violence cases, prosecutors can successfully meet their obliga-

tions as advocates for the State, while serving the best interests of child witnesses, by addressing their individual needs with thoughtfulness and compassion. In so doing prosecutors can help their child victims to overcome the trauma of their court experience. **GFV**

## Endnotes

1. Citing Hamby, S. Finkelhor, D., Turner, H., & Ormrod, R, Futures without Violence, The Facts on Children's Exposure to Intimate Partner Violence, (2011). Children's Exposure to Intimate Partner Violence and Other Family Violence, Juvenile Justice Bulletin - NCJ 232272. Washington, DC: U. S. Government Printing Office. Retrieved at: <http://www.unh.edu/ccrc/pdf/jvq/NatSCEV-Children's%20Exposure-Family%20Violence%20final.pdf>.
2. Ibid.
3. Georgia Commission on Family Violence, "Domestic Violence in Georgia (2013).
4. Ibid.
5. Fellitt, V., Anda, R. F., Nordenberg, D., Williamson, D., Spitz, A., Edwards, V., Koss, M., Marks, J., Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults, The Adverse Childhood Experiences Study, *Am J. Prev Med* 1998; 14(4).
6. Ibid.
7. Georgia Commission.
8. Humphreys, S. and Mullender, A., "Children and Domestic Violence: a research overview of the impact on children" Research in Practice, [www.rip.org.uk](http://www.rip.org.uk).
9. Ibid.
10. O.C. G. A. § 15-11-26(18).
11. O.C.G.A. § 15-11-2(2).
12. O.C.G.A. § 19-3-1.
13. Council of Superior Court Judges, "Domestic Violence Bench Book, A Guide to Civil and Criminal Proceedings," Seventh Edition.
14. HB 804 amends O.C.G.A. § 17-8 55 to increase the age of children permitted to testify via video conference from 10 years of age from 17 years of age.
15. O.C.G.A. § 17-7-9.

>>>

## TIPS FOR TALKING WITH CHILDREN

- Address the child at eye level.
- Use simple, direct, age-appropriate language.
- If the child does not understand your role, explain it in terms that are easily understood.
- Discuss confidentiality and its limits.
- Honor a child's loyalty to an abusive parent. Do not criticize or demean the abusive parent.
- Acknowledge a child's right to not speak. do not coerce a child to talk if he/she is not comfortable doing so.
- Don't make promises you can't keep.
- Communicate your concern about safety of the child.

Courtesy of Center for Children & Families in the Justice System of the London Family Court Clinic, Inc., *Children Exposed to Violence: A Handbook for Police Trainers to Increase Understanding and Improve Community Responses*. <http://www.lfcc.on.ca/police-us.PDF>. Developed by the Child Witness to Violence Project, Boston Medical Center, One Boston Medical Center Place, Mat. 5, Boston, MA 02118-2393.



>>>

## DID YOU KNOW?

- Research indicates the number one protective factor in helping children heal from the experience is the presence of a consistent, supportive and loving adult-most often their mother.
- According to the National Council of Juvenile and Family Court Judges, the most effective way to protect children is to keep their mothers safe.

Georgia Commission, citing, Masters, A. S. (2006). *Promoting resilience in development: A general framework for systems of care*. National Council of Juvenile and Family Court Judges (2011). *Checklist to Promote Perpetrator Accountability in Dependency Cases Involving Domestic Violence*. Retrieved from [www.ncjfcj.org](http://www.ncjfcj.org).

continued >

## SHORT TERM EFFECTS: POTENTIAL PROBLEMS ASSOCIATED WITH EXPOSURE TO DOMESTIC VIOLENCE IN CHILDHOOD

<u>Types of Problems</u>		<u>Examples for Children &amp; Adolescents</u>
• Increased externalized behaviors	>>>	• Aggression toward others (e.g., bullying, fighting, dating violence); property destruction; antisocial behaviors (e.g., lying, stealing)
• Increased internalized behaviors	>>>	• Withdrawn, fearful, reluctant to try new things, anxious
• Increased physical complaints	>>>	• Increased stomachaches, headaches, tiredness; changes in appetite
• Lower social capabilities	>>>	• Fewer age-appropriate social skills to initiate and sustain relationships, to seek assistance from others, and to satisfy personal needs
• Learned attitudes supporting violence	>>>	• Violence is okay to teach others a lesson; ‘might is right’; violence enhances one’s image and peer status
• Less developed thinking skills	>>>	• Less developed attention and concentration abilities; poorer understanding of social situations

Courtesy of Center for Children & Families in the Justice System of the London Family Court Clinic, Inc., *Children Exposed to Violence: A Handbook for Police Trainers to Increase Understanding and Improve Community Responses.* <http://www.lfcc.on.ca/police-us.PDF>



## April is Sexual Assault Awareness Month

By Jennifer Bivins, MS, President/CEO  
Georgia Network to End Sexual Assault

During the month of April and at all times, it is important to be aware that Sexual Violence can affect anyone, regardless of gender, including the elderly, the LGBTQ community and the disabled. Sexual Violence is a public health issue and a continued threat to our communities. The effects of sexual violence are devastating and can have long-term effects on its victims as it violates their privacy, dignity, security and humanity.

It is essential that court personnel having contact with sexual assault victims, are trained to understand the myriad ways victims may behave after a traumatic event. Everyone has different reactions to common experiences. A traumatic experience can cause victims to display behavior that may seem inconsistent to the average person. While it may seem counterintuitive, many victims often delay reporting a sexual assault. The trauma of the incident may cause a victim’s account of

the incident to change over time. Because victims’ reactions to trauma can vary to such a great extent, there is no way to define what “appropriate” victim behavior is. Any behavior in response to being victimized can be considered normal. The way trauma affects a victim in the short and long term can make a tremendous difference in how they respond to the prosecution of a case. Because victim behavior does not always match common stereotypes, it is critical that the community and jurors are educated in order to dispel these uninformed beliefs.

In the end, a successful prosecution requires all involved professionals to provide support and understanding to all victims of sexual violence.

Every individual deserves to be safe from sexual violence. Every victim deserves justice. As such, perpetrators of sexual violence should be held accountable. The community

should also hold its members accountable, while challenging the attitudes, beliefs and behaviors that perpetrate sexual violence.

As the sexual assault coalition for the State of Georgia, GNESEA is committed to the intervention and prevention of sexual violence. For more information on how to end sexual violence within your community, please visit our website at [www.gnesa.org](http://www.gnesa.org) to locate a center near you. 



Don’t forget to visit our Training Web page to register for our family violence-related conferences and training courses.

# CaseLaw Update

By Sharla D. Jackson, Domestic Violence and Sexual Assault Resource Prosecutor,  
Prosecuting Attorneys' Council of Georgia

## *Hudson v. State*

A13A2043 (February 5, 2014)

The defendant Hudson was convicted of child molestation, two counts of cruelty to children in the third degree, aggravated assault and interference with a 911 call. He appealed his conviction, arguing that the trial court erred by failing to instruct the jury on mutual combat and justification.

Hudson and the victim got into a fight when the victim confronted Hudson after learning that her daughter accused him of touching her inappropriately. Hudson hit his wife in the face with a trophy, leaving a two- to three-inch gash under her eye that required sutures. When Mrs. Hudson said she was going to call 911, Hudson pulled the phone out of the wall. Police responded to the domestic dispute at Hudson's house. They saw that Mrs. Hudson was covered in blood and that blood was on the wall, the bed, and the furniture. Hudson had a scratch on the top of his head that "wasn't that bad;" he did not even look like he had been in a fight. The Court upheld the trial court's refusal to charge the jury on mutual combat, holding that a charge on mutual combat generally is proper only when there is evidence of a mutual intention or agreement to fight." *Pulley v. State*, 291 Ga. 330, 334 (3) (729 SE2d 338) (2012). Here however, the evidence showed that Hudson did not even look like he had been in a fight and Mrs. Hudson had significant injuries. Thus, the Court found, there was no showing in the context of this domestic violence case, that there was a mutual agreement to fight between the parties.

## *Washington v. State*

S13A1620 (February 24, 2014)

The defendant Washington appealed his murder and firearms conviction for the killing of his pregnant coworker. Washington and the victim were having an affair. Washington was married, his wife had just given birth to a child, and he also had an extramarital relationship with another coworker. The victim had become pregnant and met up with the defendant to discuss the matter. She was happy about the pregnancy and had already told her family and friends about it. During the encounter, Washington shot the victim in the back of the head, killing her. Washington contested the admission of evidence of his extramarital affair with his coworker, arguing that it improperly placed his character

in evidence. The State admitted the evidence to prove that the defendant's motive for killing the victim was to conceal his extramarital affair from his wife and coworker. The Supreme Court affirmed the trial court's admission of evidence, under the former O.C.G.A. § 24-2-2. Now, O.C.G.A. § 24-4-404, "the general character of the parties and conduct in other transactions is irrelevant unless the nature of the action renders necessary the investigation of such conduct. Evidence of other acts may be admitted for some other purpose when it is relevant to prove motive even if it places the defendant's character in evidence." The State properly presented evidence of Washington's extramarital relationship with his other coworker to show motive even though it incidentally placed his character in issue, because its relevance outweighed the prejudicial effect.

## *Nichols v. State*

A13A2210 (February 21, 2014)

A jury convicted Nichols of aggravated sexual battery, aggravated sodomy, false imprisonment and public indecency. The defendant appealed his conviction contending that the trial court erred in denying his motion for a directed verdict of acquittal on the false imprisonment count and in denying his motion for a mistrial because the prosecutor improperly placed his character at issue by referring to his prior incarceration.

Nichols lived with his girlfriend and their child for about a month. One night, Nichols and his girlfriend, the victim, went out to a club with friends. Nichols became extremely intoxicated and left the club with her. While the victim was driving home, he became enraged and assaulted her. Nichols removed the victim from vehicle, pushing her into the backseat. Nichols sat on the victim's chest and forced his fingers into her vagina. The victim pleaded with Nichols to stop and get off of her, but he refused. Nichols did not stop until he was distracted by a flashing stop sign, which caused him to get out of the vehicle. Seeing an opportunity to flee, the victim left taking Nichols' clothes with her. Still naked, Nichols went to a nearby house where the homeowner, alarmed at his appearance, called the police. Nichols was charged and taken into custody.

The Court of appeals affirmed the conviction. Regarding the denial of the directed verdict, the Court held, "A directed verdict is appropriate when there

is no conflict in the evidence and the evidence introduced with all reasonable deductions and inferences therefrom shall demand a verdict of acquittal or not guilty as to the entire offense or to some particular count or offense." Using the sufficiency of the evidence test, the Court ruled the State presented sufficient evidence supporting the charge of False Imprisonment when it showed that Nichols forced the victim into the backseat of the car before assaulting her.

The Court also affirmed the trial court's denial of the defendant's motion for mistrial. The prosecutor's brief reference to the Nichols' pretrial incarceration during the State's direct exam of the victim did not put his character at issue and did not require a mistrial where it was obvious that the references to his incarceration referred to the instant case.

## *Miller v. State*

A13A2500 (February 18, 2014)

The Court of Appeals affirmed the conviction and denial of a motion for new trial of defendant Miller who was convicted of Rape. Miller contested the sufficiency of the evidence of rape presented at trial and the trial court's admission of evidence of two prior rapes, offered as similar transactions. The evidence showed that Miller gave the victim a ride when she was stranded on the side of the road. The victim testified that once she got into the truck with Miller, his demeanor changed. He struck her and repeatedly pounded her in the ribs, took her to a wooded area and raped her. Miller drove off, leaving her in the woods. The victim walked back to the road and saw a house, where she went for help. After calling the police, she was taken for a forensic exam, during which DNA matching the defendant was removed from her body. The defendant was arrested and charged with rape. Miller argued that the State presented insufficient evidence to prove the charge of rape. He also asserted that the trial court erred in admitting the two similar transactions, because the State failed to prove that the two prior rapes happened, that he was not the perpetrator and that the evidence allowed was unduly prejudicial.

At trial, the victim testified that Miller had sexual intercourse against her against her will. The Court held that this evidence was sufficient under the former O.C.G.A. § 24-8-8, "the testimony of a single witness is generally sufficient to establish a fact." The Court also held that the State presented sufficient evidence to identify the defendant as the perpetrator of the two similar transactions when it presented evidence of photographic line-ups where two other women identified him as the perpetrator of the

two previous rapes. Further, one of the similar transaction witnesses who had been raped by the defendant six years earlier, had lost some of her memory and could not testify to all of the facts. The State introduced prior inconsistent statements made by this witness to investigators where she identified the defendant as her attacker. The court upheld the admission of the similar transaction stating that “absolute proof is not required that a defendant committed the offense in a similar transaction... Rather the State need only prove that the defendant committed the prior offense by the preponderance of the evidence.” The Court allowed the use of the prior inconsistent statements as they went to the weight of the evidence and not its admissibility. Finally, the Court held that the trial court admitted the similar transactions for an appropriate purpose because they were relevant to prove bent of mind, course of conduct and corroborated the victim’s testimony about her lack of consent.

### ***Oliver v. State***

S13A1904 (February 24, 2014)

The Supreme Court reversed the denial of a general demurrer to an indictment charging Oliver with the distribution of material depicting sexual content under O.C.G.A. § 16-12-81. Oliver sent unsolicited pictures of his genitals by phone to a woman. In reversing the judgment, the Court held: “When analyzing a general demurrer, the question is whether a defendant can admit to the conduct and still be innocent of the crime *Dorsey v. State*, 279 Ga. 534, 538 (615 SE2d 512) (2005).” The Court held that O.C.G.A. § 16-12-81 did not circumscribe his conduct and it did not apply the facts as alleged by the State. In reaching their conclusion, the Court held that the language of the statute, which refers to “material,” describes tangible, not digital content. Therefore, Oliver could admit to all of the conduct in the indictment and still be innocent.

### ***State of Nebraska V. Kibbee***

284 Neb 72 (2014)

In *State v. Kibbee*, 284 Neb. 72, 815 N.W.2d 872 (2012), the defendant was charged with one count of first degree sexual assault against a 16 year old female. The crime allegedly occurred in 2009. The trial court allowed the prosecutor to introduce evidence under Neb. Rev. State. § 27-414 of prior bad acts committed by the defendant against other minor female victims. The defendant argued that the admission of such evidence under § 27-414 was an ex post facto violation because the statute was not in effect at the time of the sexual

contact with the victim. The statute was adopted by the Nebraska Legislature in 2009, but did not become effective until 2010. The Nebraska Supreme Court disagreed. The Court noted “[w]hen a Nebraska Evidence Rule is substantially similar to a corresponding federal rule of evidence, Nebraska courts will look to federal decisions interpreting the corresponding federal rule for guidance in construing the Nebraska rule.” 284 Neb. at 94. In interpreting the new code section, the Court found as follows: Section 27-414 does not violate the Ex Post Facto Clauses of the federal and state Constitutions. The statute does not affect the sufficiency of the evidence and does not change the quantum of evidence needed for conviction. It is an ordinary rule of evidence, which relates to admissibility and simply provides that evidence of prior sexual misconduct may be admitted to prove propensity. The statute does not suggest that the admissible propensity evidence would be sufficient, by itself, to convict a person of any crime. The trial court did not err in finding that § 27-414 does not violate the Ex Post Facto Clauses of the federal and state Constitutions.

Cobb County ADA Mike Carlson, co-author of *Carlson on Evidence* (2013-2014 Ed.) notes that recently, there has been academic resistance to retroactive application of evidentiary rules, particularly with regard to provisions regarding sex crimes. Since there is now a presumption of admissibility for prior bad acts and evidence of criminal propensity in sex crime cases under our new evidence code, see O.C.G.A. § 24-4-414, this academic resistance could be problematic for prosecutors seeking to admit such evidence. Mike further notes that while *Kibbee* is not controlling authority, prosecutors may wish to use it as persuasive authority should this issue arise in a case.

### ***Reeves v. State***

S13A124 (March 3, 2014)

Reeves was charged with murder, felony murder and aggravated assault. Reeves argued that his murder conviction should be reversed because the circumstantial evidence presented by the State was insufficient. Reeves also claimed that the trial court erred when allowing evidence of similar transactions because they were not sufficiently similar. The body of the female victim was found on a wooded path; she had been raped and strangled. The State presented evidence including an autopsy, documenting anal and vaginal lacerations. Male DNA taken from the victim was later matched to Reeves. The victim’s body also showed evidence of strangulation. Finally, crime scene photos showed evidence of a struggle. Although the DNA was Reeves’

he argued there was reasonable doubt that he committed the crime, because the prosecution failed to present evidence that Reeves and the victim did not know each other. He also asserted that evidence from the crime scene, including condom wrappers, supported the hypothesis that someone else had committed the crime. The Court affirmed the conviction finding that the State’s evidence although circumstantial, “excluded all reasonable hypothesis except that of guilt.”

The Court upheld the admission of the similar transactions. Holding that the proper focus in a similar transaction case is on the similarities between the two transactions and not the differences, the trial court noted several similarities between the crimes in its order admitting the similar transactions. “The two victims were both approximately the same age at the time they were attacked, that both victims were young African-American women; both victims were choked or strangled; in both instances, the victim’s clothing was torn and her pants or underpants were pulled down. In both instances, the attacker pressed the victim’s face into the ground and the victim was sexually assaulted; although they occurred at different locations, each attack occurred in the summer on a path through a wooded empty lot and the lots were within blocks of each other. The 1998 attack occurred at night while the victim was walking alone and the crime at issue in this case apparently occurred at night or in the pre-dawn hours also while the victim was walking alone.” Although nine years had passed between the similar transaction and the case in chief, it went to the weight of the evidence and not its admissibility. The Court held that the prior transaction was sufficiently similar to the crime charged so that proof of the former tended to prove the latter and that there is “an exception to the general rule that evidence of independent crimes is inadmissible which has been most liberally extended in the area of sexual offenses. *Johnson v. State*, 242 Ga. 649, 653 (3) (250 SE2d 394) (1978).”

### ***Brown v. State***

S13A1543 (March 3, 2014)

Brown appealed his conviction for murder and other charges related to the death of his girlfriend. After arguing with his girlfriend and her son about her relationship with her estranged husband, Brown left the house and returned with an axe, partially concealed behind his back. Brown then swung the axe repeatedly at Grant and Medley, using both hands. Medley and Grant tried to escape from him, but Brown struck Grant multiple times with the axe. While swinging the axe at the two of them, he struck her in the head and body, killing her. The Court upheld the

trial court's refusal to give the voluntary manslaughter instruction. In affirming the trial court's decision, the Court held that the defendant failed to show that his actions did not meet the standards of O.C.G.A § 16-5-2, "A person commits the offense of voluntary manslaughter when he causes the death of another human being under circumstances which would otherwise be murder and if he acts solely as the result of a sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a reasonable person; however, if there should have been an interval between the provocation and the killing sufficient for the voice of reason and humanity to be heard, of which the jury in all cases shall be the judge, the killing shall be attributed to deliberate revenge and be punished as murder." The fact that Brown and Medley argued and that Brown was afraid that Medley might get a weapon was not sufficient provocation to support voluntary manslaughter. "Acting out of fear is not the same as acting in the heat of sudden, irresistible passion."

### *Sellers v. State*

A13A1857 (February 27, 2014)

The Court of Appeals affirmed the defendant's convictions for rape and aggravated sexual battery while reversing his conviction on kidnapping. The defendant was charged with raping and kidnapping a 69 year old woman inside her home. The victim was alone in her home at night and heard a noise in her guest bedroom. She went to investigate and saw the defendant, wearing a mask and standing in her bathroom. The defendant tied her up, pushed her into the bedroom and raped her. In overturning the kidnapping conviction, the Court cited the factors in *Garza v. State*, 284 Ga. 696 (2008), in finding that there was not sufficient evidence of asportation to support the kidnapping conviction. The factors include (1) the duration of the movement; (2) whether the asportation occurred during a separate offense; (3) whether the movement was inherent or part of the offense; and (4) whether the movement posed significant danger to the victim independent of the danger posed by the separate offense. Because the evidence showed that the movement necessary to the commission of the rape and not an attempt to "substantially isolate the victim from protection or rescue," it was found to be an element of the rape and not a separate crime.

*Recognizing the magnitude and impact of Domestic Violence in the State, the Governor's Office for Children and Families awarded a grant to the Prosecuting Attorneys' Council of Georgia. The grant provides much needed funding to train law enforcement officers, prosecutors, and victim advocates to more effectively respond to and prosecute crimes of domestic and sexual violence. The training is designed to improve the effective adjudication of domestic and sexual violence cases and effectuate the reduction of such crimes across our state.*

## Domestic Violence and Sexual Assault Resources for Prosecutors

**24/7 Domestic Violence Hotline:** 1.800.33.HAVEN (1.800.334.2836)  
V/TTY

### Websites:

Governor's Office of Children and Families: <https://children.georgia.gov/crisis-assistance>

Georgia Care Connection: <http://www.georgiacareconnection.com>

Georgia Network to End Sexual Assault: <http://gnesa.org>

Battered Women's Justice Project: <http://www.bwjp.org>

Georgia Commission on Family Violence: <http://www.gcfv.org>. Provides Georgia domestic violence statistics, domestic violence protocols.

Georgia Coalition Against Domestic Violence: <http://gcadv.org>

Forensic Healthcare Online: <http://www.forensichealth.com>. Provides links to studies on intimate partner violence and sexual assault.

AEquitas: <http://www.forensichealth.com>. AEquitas publishes the STRATEGIES newsletter and monographs on complex topic areas, emerging issues, and promising practices related to the prosecution of violence against women cases.

Prosecutor's Resource on Violence Against Women – [www.Aequitasresource.org](http://www.Aequitasresource.org)

The Women's legal defense and Education fund – [www.Legalmomentum.org](http://www.Legalmomentum.org)

End Violence Against Women International – [www.evawintl.org](http://www.evawintl.org)

National Sexual Violence Resource Center – [www.nsvrc.org](http://www.nsvrc.org)

### Other sites:

<http://www.nij.gov/journals/264/SANE.htm>

<http://www.aequitasresource.org/library.cfm>

[http://www.aequitasresource.org/Prosecutor\\_Reference\\_Medical\\_Evidence.pdf](http://www.aequitasresource.org/Prosecutor_Reference_Medical_Evidence.pdf)

[http://www.aequitasresource.org/Benefits\\_of\\_Specialized\\_Prosecution\\_Units\\_in\\_Domestic\\_and\\_Sexual\\_Violence\\_Cases\\_Issue\\_8.pdf](http://www.aequitasresource.org/Benefits_of_Specialized_Prosecution_Units_in_Domestic_and_Sexual_Violence_Cases_Issue_8.pdf)

[http://www.aequitasresource.org/Benefits\\_of\\_a\\_Coordinated\\_Community\\_Response\\_to\\_Sexual\\_Violence\\_Issue\\_7.pdf](http://www.aequitasresource.org/Benefits_of_a_Coordinated_Community_Response_to_Sexual_Violence_Issue_7.pdf)

[http://www.aequitasresource.org/Absence\\_of\\_Anogenital\\_Injury\\_in\\_the\\_Adolescent\\_Adult\\_Female\\_Sexual\\_Assault\\_Patient\\_Issue\\_13.pdf](http://www.aequitasresource.org/Absence_of_Anogenital_Injury_in_the_Adolescent_Adult_Female_Sexual_Assault_Patient_Issue_13.pdf)

[http://www.aequitasresource.org/Prosecuting\\_Cases\\_of\\_Sexual\\_Abuse\\_in\\_Confinement.pdf](http://www.aequitasresource.org/Prosecuting_Cases_of_Sexual_Abuse_in_Confinement.pdf)

[http://www.wcasa.org/file\\_open.php?id=3](http://www.wcasa.org/file_open.php?id=3)

<http://law.lclark.edu/live/files/6470-a-criminal-justice-guide-legal-remedies-for-adult>

[http://www.aequitasresource.org/Rape\\_and\\_Sexual\\_Assault\\_Analyses\\_and\\_Laws.pdf](http://www.aequitasresource.org/Rape_and_Sexual_Assault_Analyses_and_Laws.pdf)

<http://www.legalmomentum.org/our-work/njep/mat-for-jd-edu/the-challenges-of-adult-victim-sexual-assault-cases-materials-for-new-judges/title-page-and-main-menu/newjudgesmainmenu.html>

<http://legalmomentum.org/search/node/sexual%20assault%20cases> 



Don't forget to visit our Training Web page to register for our family violence-related conferences and training courses.

>>>

## UPCOMING TRAINING EVENTS

**MAY 16, 2014**

### Family Violence - Jonesboro

Banke Justice Center  
Ceremonial Courtroom 401  
9151 Tara Boulevard, 4th Floor  
Jonesboro, Georgia 30236  
9:00 AM to 4:00 PM

**MAY 30, 2014**

### Family Violence - Albany

Dougherty County Courthouse  
255 Pine Avenue  
Albany, Georgia 31701  
9:00 AM - 4:00 PM

**JUNE 6, 2014**

### Family Violence - Augusta

LOCATION TO BE DETERMINED  
9:00 AM - 4:00 PM



Prosecutors and Law Enforcement working together during an exercise given at a recent Family Violence Training Session. The Domestic Violence and Sexual Assault Resource Prosecutor is available to provide technical assistance or training for your office. Please feel free to contact DVSARP Sharla D. Jackson at (404) 969-4001, or by email at [sdjackson@pacga.org](mailto:sdjackson@pacga.org).

**GEORGIA**

# Family Violence Newsletter

Prosecuting Attorneys' Council of Georgia  
Domestic Violence and Sexual Assault Resource Program  
104 Marietta Street, NW  
Suite 400  
Atlanta, Georgia 30303



Governor's Office for  
**Children and Families**

>>>

## GEORGIA DOMESTIC VIOLENCE AND SEXUAL ASSAULT RESOURCE PROGRAM



**Sharla D. Jackson**  
Domestic Violence and Sexual  
Assault Resource Prosecutor  
(404) 969-4001 (Atlanta)  
[sdjackson@pacga.org](mailto:sdjackson@pacga.org)

>>>

### DID YOU KNOW?

In Georgia, "Family Violence" also known as Domestic Violence is defined as: "the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household: (1) Any felony; or (2) Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass. The term "family violence" shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention."

*-Statistics from 2012 Georgia Domestic Violence Fatality Review Annual Report courtesy Georgia Coalition Against Domestic Violence ([www.gcadv.org](http://www.gcadv.org)) and Georgia Commission on Family Violence ([www.gcfv.org](http://www.gcfv.org))*