



FYI: WHITE v. THE STATE

The Georgia Supreme Court holds that a defendant can invoke the Rape Shield Statute to prohibit the admission of evidence of a victim's past sexual behavior offered by the State and such offered evidence is inadmissible pursuant to the terms of the Rape Shield Statute.

In *White v. The State*, S18G0365 (02/04/19), the Georgia Supreme Court held that: (1) A defendant can invoke the Rape Shield Statute to prohibit the admission of evidence of a victim's past sexual behavior offered by the State and such offered evidence is inadmissible pursuant to the plain meaning of the Rape Shield Statute; (2) evidence of a complaining witness's past sexual behavior is only admissible under the Rape Shield Statute if that evidence is relevant to the issue of consent; and (3) the trial court improperly permitted the State to admit evidence of the complaining witness's past sexual behavior, but the admission of this evidence did not amount to plain error requiring reversal of White's convictions.

White filed a motion in limine to have evidence of S.M.'s prior sexual acts excluded from his trial, arguing that the admission of the evidence would have been more prejudicial to White than probative of any issue at trial. The trial court denied White's motion, and, at trial, the State elicited testimony from S.M. regarding her prior sexual misconduct and her delinquency adjudication. The sexual abuse by White came to light when the victim was accused of sexual behavior against two other minors. The State also presented expert testimony in which the expert noted briefly that, in general, young children who act sexually toward other children may be exhibiting behavior consistent with having been victims of sexual abuse. The Court of Appeals affirmed White's convictions, finding that Georgia's Rape Shield Statute could not be invoked by a defendant to prevent a victim from offering evidence that was otherwise relevant to the case. The Georgia Supreme Court granted White's petition for a writ of certiorari.

In reaching its decision that the Rape Shield Statute applies to the State, the Court wrote: "The only exception to the evidentiary restrictions created by the Rape Shield Statute is contained in OCGA § 24-4-412 (b), which establishes that a defendant may introduce evidence relating to the past sexual behavior of the complaining witness if the past sexual behavior directly involved the participation of the accused and the evidence expected to be introduced supports an inference that the accused could have reasonably believed that the complaining witness consented to the

conduct complained of in the prosecution. There is no additional exception in the Rape Shield Statute that would exempt the State from its application. Evidence of a complaining witness's past sexual history that falls outside of the one specific exception contained in OCGA § 24-4-412 is inadmissible in any prosecution to which the Rape Shield Statute applies and may not be introduced by either party as "direct evidence or on cross-examination of the complaining witness or other witnesses." The Court further opined, "regardless of the State's possible desire to introduce evidence of a complaining witness's past sexual history to support its theory of a case against a defendant (i.e. outcry, sexual acting out consistent with abuse) or for some other purpose, there is simply no additional exception written into the statute to allow the State to do so, and this Court cannot write such an exception into the statute for the State".

The Court further held, the sole exception to the evidentiary restrictions contained in the Rape Shield Statute allows a defendant to introduce evidence of the complaining witness's past sexual behavior where such activities directly involved the defendant and supports an inference or is relevant to the issue of whether the complaining witness consented to the conduct complained of in the prosecution. There is no exception written into the statute for any party to introduce evidence of a complaining witness's sexual behavior that is "otherwise relevant" but falls outside of the scope of the sole statutory exception, consent. The Georgia Supreme Court found that the Court of Appeals was not authorized to write a "relevance" exception into the statute. The Court of Appeals cases purporting to allow a relevance exception to the Rape Shield Statute for the admission into evidence of a complaining witness's past sexual behavior beyond that contained in OCGA § 24-4-412 (b) are overruled.

Lastly, the Supreme Court did not find that the error "likely affected" the outcome of the trial. The Court opined, "while the improperly introduced evidence from the State in this case was potentially prejudicial to White, defense counsel was able to mitigate this potential prejudice by using the evidence of S.M.'s prior sexual behavior to White's advantage during his cross-examination of S.M. and in his closing argument. Moreover, the State's reference to S.M.'s prior sexual behavior and the expert testimony that referenced children being more likely to molest others if they themselves had been molested, was minimal, and the State did not emphasize this theory in its closing argument.