



JUNE 18, 2019

FYI: STATE v. BURNS

The Georgia Supreme Court overrules Smith v. State to the extent that it relies on federal constitutional law to create, in sexual offense prosecutions, a per se rule of admissibility for evidence of prior false allegations where falsity has been established, notwithstanding other rules of evidence.

In *State v. Burns*, S18G1354 (June 10, 2019), Burns was charged with aggravated sexual battery, aggravated sodomy, and incest. The charges followed the discovery of a social-media message written by Burns' step-daughter, K.R., detailing an alleged July 2015 sexual encounter with Burns. The message also included the following statement: "And my brother's best friend tried to rape me." K.R. later acknowledged that the attempted-rape statement was "made up," and the State moved in limine to prevent Burns from mentioning it at trial. The trial court granted the motion under OCGA § 24-4-403, but issued a certificate of immediate review. The Court of Appeals, relying on *Smith v. State*, 259 Ga. 135 (1) (1989), reversed. The Supreme Court granted the State's petition for writ of certiorari to determine if *Smith* is still good law.

In *Smith*, the Court held that once certain procedural requirements are satisfied, a defendant in a sexual-offense prosecution may adduce evidence at trial that the complaining witness has made prior false accusations of sexual misconduct and, further, that such evidence is admissible both to attack the credibility of the victim and as substantive evidence tending to prove that the conduct underlying the charges did not occur. In deciding the propriety of its holding in *Smith*, the Court noted that the decision was premised on both evidence law and constitutional law. Thus, the Court stated, it must first consider whether the evidentiary holding of *Smith* remains good law following the recent overhaul of Georgia's Evidence Code.

The Court found that the core language of the Rape Shield statute, OCGA § 24-4-412 (a), has remained relatively unchanged since its adoption in 1976. And, when the General Assembly adopted Georgia's new Evidence Code, it did not adopt the federal counterpart to Georgia's Rape Shield statute. Therefore, the Court determined, its evidentiary holding in *Smith* is consistent with the decades-old plain language of the Rape Shield statute and remains good law in the era of the new Evidence Code.



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Turning to the constitutional portion of its holding in *Smith*, the Court noted that the opinion seemingly relies on the Sixth and Fourteenth Amendments to create a per se rule of admissibility for evidence of prior false allegations where falsity has been established, notwithstanding other rules of evidence. However, the Court found, these constitutional provisions demand no such rule. Thus, the Court held, *Smith*'s blanket holding that rules of evidence must "yield" to constitutional concerns — and must permit the admission of evidence that may be considered for both impeachment and as substantive evidence — was based on a misunderstanding of *federal* constitutional law. Accordingly, because it was unwarranted and incorrect, the Court overruled the constitutional holding in *Smith*, as well as nine (9) cases with similar holdings. Furthermore, the Court also disapproved of forty-six (46) cases to the extent that they cite and rely on the constitutional holding in *Smith*.

Finally, the Court stated that it must determine whether the evidence here is admissible under Rule 403. The Court noted that in sexual-offense prosecutions, where, like here, the case comes down to witness credibility, evidence that the complaining witness has made a prior false allegation of sexual misconduct is not of "scant" probative force. As to the issue of "unfair prejudice," the primary concern is that a jury will decide a case on an improper basis, commonly, though not necessarily, an emotional one. And here, the Court found, it was unclear how K.R.'s admittedly false statement would inflame passions of the jury or inspire an emotional decision rather than facilitate a reasoned decision based on the evidence and determinations of credibility. Last, with respect to "confusion of the issue," the Court found that this prosecution involves one defendant and a single incident that allegedly occurred in July 2015. The false allegation at hand plainly describes an event involving someone else at a separate time; thus, there is no basis for confusion. Accordingly, the Court concluded that the trial court abused its discretion under Rule 403. Consequently, the Court of Appeals, though wrong in its reliance on *Smith*, was ultimately correct that Rule 403 does not pose a bar to the jury learning about K.R.'s false statement.