

VAWA CaseLaw Update

VOLUME 1; ISSUE 1
January-March 2020

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Jail Calls; Testimonial Statements

Denson v. State, 307 Ga. 545 (2019)

Evidence of a jail call made by an inmate to other inmates discussing a crime was properly admitted as a non-testimonial statement. The Court held that it did not violate the Confrontation Clause because it was not a testimonial statement made for the purpose of assisting a future prosecution.

Authentication; Text Messages; Social Media

Nicholson v. State, 307 Ga. 466 (2019)

Cell phone data and social media posts may be properly authenticated by a prima facie showing of circumstantial evidence that sufficiently demonstrates the characteristics of the account that identify its owner. These factors may include slang and terminology, biographical information, or personal or unique information.

Rule 404 (b); Intent

Naples v. State, S19A1571 (2/10/20)

Evidence of a prior act of violence committed by the defendant in a murder trial, where the defendant was accused of killing his girlfriend's daughter, was properly admitted to show intent because the prior act was

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committed with the same state of mind as the charged offense. Intent becomes a material issue to be proved by the State when the defendant pleads not guilty to the charged offenses.

Rule 405 (a); Character of Victim

White v. State, (S19A1257) (2/10/20)

Specific acts of violence committed by the victim against a third party are no longer admissible to prove justification. Under Georgia's New Evidence Code, evidence of a victim's character is limited to reputation or opinion evidence and not specific bad acts.

Right of Confrontation; Hearsay

State v. Stephens, 307 Ga. 615 (2020)

The Confrontation Clause imposes "an absolute bar" to admitting testimonial statements, those that are created for the purpose of a future prosecution. When the defendant does not have an opportunity to cross-examine the declarant, normal rules regarding the admission of hearsay, like the residual exception, apply only *after* a determination is made that a statement is nontestimonial in nature.

Rule 404 (b); Intrinsic Evidence

Allen v. State, 307 Ga. 707 (2020)

The limitations and prohibitions on "other acts" evidence as set out in O.C.G.A. § 24-4-404(b) do not apply to intrinsic evidence. When linked by time and circumstances with the case in chief, intrinsic evidence may be admitted to complete "the story" of the crime and does not require notice.

Text Messages; Continuing Witness

Nix v. State, A19A2377 (2/13/20)

The continuing witness rule did not apply to text messages between the defendant and his child victim admitted at trial. The messages, when admitted into evidence, were classified as original documentary evidence, not as written versions of each person's testimony and were, therefore, appropriate material for the jury to consider during their deliberations.

Residual Hearsay; Rule 807

Davis v. State, 353 Ga. App. 651 (2020)

The trial court properly admitted a disabled rape victim's forensic interview about the attack because her disability rendered her unable to communicate sufficiently to provide meaningful testimony. The Court affirmed the admission of her forensic interview under the residual hearsay exception because it filled in gaps in the victim's testimony.

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Rule 414; Prior Sexual Acts

Wilson v. State, A19A2174 (3/4/20)

In a child molestation trial, the court did not abuse its discretion in allowing the admission of a prior instance of child molestation under O.C.G.A. § 24-4-414. Although the evidence of prior sexual acts was remote in time, the trial court correctly allowed the previous victim's testimony because it was relevant to show the appellant's lustful disposition with respect to younger females.

Continuances; Missing Witnesses

Smith v. State, S19A1098 (2/28/20)

Email is not a proper means for service of a subpoena under O.C.G.A. § 24-13-24. When the statutory requirement for a continuance is not met, the court may deny the continuance.

Prior Consistent Statement; Forgetful Witnesses

Hines v. State, 353 Ga. App. 710 (2020)

An out-of-court statement made by a witness is not hearsay if the witness testifies at the time of trial or hearing, is subject to cross-examination concerning the statement, and the statement is admissible as a prior consistent statement under O.C.G.A. § 24-6-613. However, a prior out-of-court statement of a testifying witness may not be used to bolster the credibility of a witness unless that credibility has been attacked.

Aggravated Sodomy; Evidence of Force

Thurmond v. State, 353 Ga. App. 506 (2020)

Pulling down the pants of a voluntarily intoxicated adult was not sufficient to prove the element of force as required by the aggravated sodomy statute. The term "force," within the meaning of the aggravated sodomy statute, means acts of physical force, threats of death or physical bodily harm, or mental coercion, such as intimidation, which would be sufficient to instill in the victim a reasonable apprehension of bodily harm, violence, or other dangerous consequences to oneself or others. In those cases where the victim is above the age of consent, unable to consent due to mental incompetency or intoxication, the State must show actual, not constructive force.

Expert Testimony; Hearsay

Hambrick v. State, 353 Ga. App. 666 (2020)

In a child molestation trial, the court properly limited the defense expert's testimony to an opinion about the circumstances of the child's disclosure. While the expert was permitted to rely on the police report to form his opinions, it would have been improper to allow the expert to testify to the contents of the report, which would have allowed in inadmissible hearsay.