

# VAWA CaseLaw Update

**VOLUME 1; ISSUE 3**  
**July-September 2020**

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## **Unavailability; Forfeiture by Wrongdoing Domestic Violence**

*Lopez v. State, 355 Ga. App. 319 (2020)*

In a prosecution for family violence battery, the trial court correctly admitted an unavailable victim's testimonial statement under the doctrine of forfeiture by wrongdoing when the State established, by a preponderance of the evidence, all three factors as required under OCGA § 24-8-804 (b) (5).

## **Unavailability**

*Scott v. State, S20A0125 (6/16/20)*

In a murder prosecution, the trial court properly applied Rule 804 (a) (4) declaring a witness unavailable due to physical illness or infirmity when it admitted her prior testimony about a previous robbery committed by the defendant.

## **Hearsay, Expert Testimony**

*Smith v. State, S20A0119 (6/29/20)*

The trial court appropriately refused to allow the admission of hearsay statements from the defendant's family made to a psychologist preparing to give expert testimony at her trial. The Court found that the

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statements were inadmissible because they were made in anticipation of litigation and not for the purposes of a medical diagnosis.

## **Rule 404 (b), Rule 404 (a) Rule 405**

*Strong v. State, S20A0270 (6/29/20)*

The Court reversed the defendant's murder conviction because evidence admitted about other violent acts committed by the defendant did not satisfy the Rule 404 factors. These include the probative value of other-act evidence offered to show intent, the prosecutorial need for the other-act evidence, its similarity to the charged crimes, and its temporal remoteness. Evidence of the defendant's previous violent acts lacked definitive proof that the defendant actually committed the other violent acts crimes.

## **Sentencing; Special Conditions**

*Chaney v. State, A20A0287 (6/23/20)*

The Court held that the special conditions of the defendant's sentence banning her from having contact with any child under the age of 18 were overbroad. They were not stated with reasonable specificity to notify the defendant of the groups and locations she should avoid; so broadly worded that it included groups and locations "not rationally related to the purpose of the sentencing objective"; and effectively terminated her parental rights.

## **Residual Hearsay; Medical Diagnosis and Treatment**

*McEady v. State, A02A0185 (6/25/20)*

The trial court improperly admitted hearsay under Rule 807 of the new Evidence Code (the residual exception) because it did not engage in the required analysis under the Rule prior to admitting the hearsay evidence.

## **Expert Witness; Lay Witness**

*Best v. State, A20A0418 (6/26/20)*

A law enforcement officer may be qualified to provide both lay opinion and expert testimony. As lay witnesses, they may draw on their professional experiences to guide their opinions without necessarily being treated as expert witnesses.

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## **Sex Offender Registry**

*Smart v. State, A20A0682 (6/29/20)*

The Court reversed the defendant's conviction on failure to register as a sexual offender, the based on a misdemeanor charge from another state. Because there was insufficient evidence of the defendant having been convicted of a sexual offense involving a minor, the jury could not have found him guilty beyond a reasonable doubt.

## **Child Hearsay; Unavailable Witness**

*Allison v. State, A20A0552 (6/29/20)*

At a trial for the prosecution of child molestation, when the witness is made available for confrontation and cross-examination, the defendant's rights are protected, even if the witness is uncommunicative or unresponsive.

## **Aggravated Stalking; Character Evidence**

*Carlton v. State, A20A0327 (6/29/20)*

Evidence that the defendant violated a protective order by sending postcards to his children was a sufficient showing of harassing and intimidating behavior for a conviction. However, the trial court abused its discretion by admitting evidence of the defendant's sexually deviant behavior, which did not include acts against his children. It was not relevant to prove the charges, and its prejudicial effect outweighed its probative value, requiring a reversal of the conviction.

## **Expert Testimony; Culture; Delayed Outcry**

*Martinez-Arias v. State, A20A1080 (7/14/20)*

Testimony from a child molestation victim's school counselor regarding Latino culture was relevant to explain why the victim did not immediately disclose acts of sexual abuse.