

VAWA CaseLaw Update

VOLUME 3; ISSUE 1
January-March 2022

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Gialenios v. State, 310 Ga. 869 (2021)

Character of victim

In Georgia, evidence of a victim's character is limited to reputation or opinion evidence and carries a strong presumption of admissibility. Even when relevant, the probative value of the evidence must be greater than its prejudicial effect. The Georgia Evidence Code limits this type of evidence to reputation or opinion, not specific bad acts.

McKelvey v. State, 311 Ga. 34 (2021)

Intrinsic Evidence

Intrinsic evidence that explains the context, motive, and setup of a crime and allows the State to complete the story of the crime is admissible, even when it incidentally places the appellant's character at issue.

Hartman v. State, 358 Ga. App. 663 (2021)

Extrinsic Evidence

Evidence of the appellant's prior sexual assaults on other dating partners was properly admitted to prove motive. The State needed the evidence to prove why the appellant acted as he did when he drugged and raped the victim.

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Lopez v. State, 311 Ga. 269 (2021)

Hearsay Exceptions; Excited Utterance; Residual Exception

While in a state of excitement from the event, a victim's hearsay statements describing the circumstances of his stabbing and giving the name and description of his attacker were properly admitted under the dying declaration and excited utterance hearsay exceptions. In addition, statements the victim made to friends about the nature of his relationship with the appellant had exceptional guarantees of trustworthiness to be admitted under the residual exception because of his long relationship with them and the circumstances under which they were made.

Frilando v. State, 360 Ga. App. 50 (2021)

Aggravated Stalking; Relevance

In order to establish the pattern of harassing and intimidating behavior sufficient to prove aggravated stalking, the State may present evidence of the prior history between the parties, appellant's surreptitious conduct, overtly confrontational acts, and any attempts by the appellant to have indirect contact or control the victim through third parties.

Miller v. State, 359 Ga. App. 380 (2021)

Sequestration; Crime Victims' Bill of Rights

The victim of a crime is statutorily exempt from the rule of sequestration unless that victim is shown to be a material and necessary witness, and there is a substantial probability that his or her presence in the courtroom would prevent a fair trial. The State's chief investigative agent may also be exempt from the rule when the State can show that their presence is necessary to assist "with regard to matters that might come up during the course of the trial regarding things that occurred during the investigation."

Jones v. State, 311 Ga. 455 (2021)

Rule 807; Rule 404 (B)

Because a victim's own writings describing acts of domestic violence may bear an increased level of trustworthiness, diary entries written by the deceased victim about the appellant's anger and her fear of him, which left her constantly worried, had sufficient guarantees of trustworthiness to be

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admissible under Rule 807. Evidence of the appellant's assault on previous partners was relevant to show that the appellant acted with malicious intent to cause bodily harm to the victim.

Merritt v. State, 311 Ga. 875 (2021)

Rule 622; Rule 403; Rule 807

The trial court properly prohibited the appellant from cross-examining a witness about his family's Romanichal background when there was no evidence admitted that the witness had any feelings of bias concerning the accused. Furthermore, the appellant did not create a factual basis that racial bias or prejudice existed or influenced the witness' testimony. In addition, the relevance of the evidence was far outweighed by its prejudicial effect.

The deceased victim's statements to her friends about the abuse that occurred in her marriage had sufficient guarantees of trustworthiness. Courts have previously held that "a victim's description of prior acts of domestic violence against her to her family and friends carry an increased level of trustworthiness."

Whitson v. State, 359 Ga. App. 757 (2021)

Extrinsic Evidence

Evidence of other acts of escalating harassment and retaliation the appellant committed against the victim and other romantic partners was admissible under Rule 404(B) because the behaviors helped prove his motive to control his romantic partners using legal and social means to engage in similar conduct.

Castaneda v. State, 360 Ga. App. 316 (2021)

Improper Bolstering; Prior Consistent Statements

After a victim testified at trial about sexual abuse, the court improperly admitted the victim's video-recorded interview about the crime, which contained additional details that were not a part of the victim's original testimony. Because the appellant had not challenged the victim's credibility, the interview should not have been admitted as a prior consistent statement.

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Cantrell v. State, 360 Ga. App. 862 (2021)

Expert Testimony; Ultimate Issue

In a child molestation case, an expert's opinion as to whether or not the child victim's testimony was fabricated was not an issue that was beyond the ken of the average juror. Because the appellant's cross-examination would have elicited an opinion from the expert regarding the credibility of the victim, which was a conclusion that the jury could reach without the expert's testimony, the court properly limited the appellant's cross-examination of the expert.