



Supreme Court of Georgia

Jane Hansen, Public Information Officer
244 Washington Street, Suite 572
Atlanta, Georgia 30334
404-651-9385
hansenj@gasupreme.us



SUMMARIES OF OPINIONS

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THE STATE V. ANTONIO TAPIA ALMANZA (S18G0585)

The Supreme Court of Georgia has reversed a Georgia Court of Appeals decision in a **Cobb County** child sex abuse case and ruled that when the case goes to trial, hearsay evidence identifying the alleged abuser is not categorically barred under Georgia’s new rules of evidence.

According to the facts of the case, in May 2014, **Antonio Tapia Almanza**’s stepdaughter reported to her mother that about a year earlier, Almanza had twice molested her. The mother reported the accusations to law enforcement, who arrested Almanza on May 28, 2014. Police instructed the mother to take the child for a physical exam at Scottish Rite children’s hospital in Atlanta, which she did the next day. At the hospital, the mother told the emergency room physician that her daughter had told her Almanza on two occasions had touched the child’s vagina and placed his penis “inside of her.” Subsequently, Almanza was indicted for aggravated child molestation, aggravated sexual battery, statutory rape, child molestation, and incest. Following the indictment, the child’s mother took the child out of Cobb County (and possibly the country), and the District Attorney’s efforts to locate them have since failed.

After their disappearance, the State filed a motion seeking a court order that would allow prosecutors to introduce into evidence the testimony of both the emergency room physician who examined the child at Scottish Rite and the child’s regular pediatrician. The State relied on Georgia Code § 24-8-803 (4) (“Rule 803 (4)”), which is part of Georgia’s “new” Evidence Code (which took effect in 2013). Under Rule 803 (4), statements for purposes of medical diagnosis or treatment are one of the exceptions to the hearsay rule, which is the rule that generally prohibits the admission of hearsay testimony. At an October 2016 hearing on the State’s motion, both

doctors testified that the mother had been the sole source of information about the alleged molestation and that the child herself had not said anything to them. Following the hearing, and relying on cases interpreting a provision of the “old” Evidence Code (former Georgia Code § 24-3-4), the trial court ruled that the doctors could testify at trial about the mother’s statements that her child had reported being sexually abused. But they would not be permitted to testify about her statements that the child had identified Almanza as the abuser.

The State appealed to the Court of Appeals, arguing that the trial court erred by relying on cases decided under the old Evidence Code to determine the scope of Rule 803 (4) that is part of the new Evidence Code. The State argued that because Rule 803 (4) mirrors Federal Rule of Evidence 803 (4), the trial court was required to base its ruling on federal court cases interpreting that federal rule. The State argued the trial court erred in excluding the mother’s statements about Almanza being the abuser. In a lengthy opinion, however, the Court of Appeals upheld the trial court’s exclusion of the statements identifying Almanza as the abuser, ruling that such statements are categorically inadmissible under Rule 803 (4). The intermediate appellate court concluded that Georgia case law interpreting the old Evidence Code’s medical diagnosis and treatment hearsay exception remained valid under the new Evidence Code. The State then appealed to the Georgia Supreme Court.

In today’s unanimous opinion, written by **Justice Nels S.D. Peterson**, the high court concludes that, “the Court of Appeals’s categorical bar on the admissibility of identification under Rule 803 (4) in child sexual abuse cases was error.”

“Georgia’s new Evidence Code largely mirrors the Federal Rules of Evidence,” the opinion says. “This is by design. The preamble to the act adopting the new Evidence Code is explicit: ‘It is the intent of the General Assembly in enacting this Act to adopt the Federal Rules of Evidence, as interpreted by the Supreme Court of the United States and the United States circuit courts of appeals as of January 1, 2013 to the extent that such interpretation is consistent with the Constitution of Georgia.’”

“Under the new Evidence Code, we know that Georgia evidence rules that track the federal rules are to be interpreted according to federal case law, while rules that were instead carried over from the old Evidence Code are to be interpreted according to our case law interpreting the old Code,” the opinion says. “But Georgia Rule 803 (4) is materially identical to *both* an existing federal rule *and* a provision of the old Georgia Evidence Code.” Yet, while federal courts construing Federal Rule of Evidence 803 (4) have held that the identity of an alleged child sexual abuser may in certain circumstances be admissible, Georgia courts construing the nearly identical old state rule have held that such evidence is not admissible.

In today’s 23-page opinion, “we conclude that the new Evidence Code displaced our old Georgia precedent and so federal case law applies here. Accordingly, Rule 803 (4) permits the admission of identity in child sexual abuse cases when reasonably pertinent to medical diagnosis or treatment,” the opinion says. “We reverse the Court of Appeals’s decision to the contrary and remand with instructions to vacate the trial court’s order and remand for further proceedings consistent with this opinion.”

Appellant (State): D. Victor Reynolds, District Attorney, Michael Carlson, Dep. Chief Asst. D.A., John Edwards, Sr. Asst. D.A., Amelia Pray, Sr. Asst. D.A., John Melvin, Chief Asst. D.A., Charles Boring, Dep. Chief Asst. D.A., Lindsay Gardner, Sr. Asst. D.A.

Appellee (Almanza): John Merchant, III, Ashleigh Merchant

IN OTHER CASES, the Supreme Court of Georgia has upheld **murder** convictions and life prison sentences for:

- * Darron Cato, Jr. (Fulton Co.) **CATO V. THE STATE (S18A1169)**
- * Billy Randy Davis (Putnam Co.) **DAVIS V. THE STATE (S18A0824)**
- * Tiwana Kidd (Fulton Co.) **KIDD V. THE STATE (S18A1025)**
- * Manuel G. Lord (Fulton Co.) **LORD V. THE STATE (S18A0959)**
- * Richard McWilliams (Fulton Co.) **MCWILLIAMS V. THE STATE (S18A0728)**