



SUPREME COURT OF GEORGIA
Case No. S18C1354

Atlanta, December 7, 2018

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

THE STATE v. JAMES PHILLIP BURNS

Court of Appeals Case No. A18A0227

It is hereby ordered that the order of the Court in the above-styled case dated November 15, 2018, is hereby withdrawn, and a substitute order is hereby entered in this case, as follows:

The writ of certiorari in this case is hereby granted. All the Justices concur, except Melton, C.J., not participating, and Bethel, J., disqualified.

This case is assigned to the March 2019 oral argument calendar.

This Court is particularly concerned with the following issue or issues:

1. This Court held in State v. Smith, 259 Ga. 135 (1989), that evidence of prior false allegations by a victim of sexual misconduct is admissible in a criminal case regarding alleged sexual misconduct. Was our decision one of constitutional law or of evidence law?
2. If our holding in Smith was one of constitutional law, was it rightly decided? If it was instead an evidentiary holding, does it remain good law under the new Evidence Code?
3. Given the answers to the first two questions, in a criminal proceeding involving alleged sexual misconduct, does OCGA § 24-4-403 apply to evidence of prior false accusations of sexual misconduct made by the victim or a person close to the victim?

Appellant's brief filed December 5, 2018, is hereby withdrawn from the Court's docket. Subsequent briefs should be submitted only on the points stated above. See Supreme Court Rule 45. The briefing schedule shall reset as of the date of this order.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

A handwritten signature in black ink that reads "Thirsa A Barnes". The signature is written in a cursive style with a large, looped initial "T".

, Clerk