

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING MARCH 23, 2018

State Prosecution Support Staff

Peter J. Skandalakis
Executive Director

Todd Ashley
Deputy Director

Robert W. Smith, Jr.
General Counsel

Lalaine Briones
State Prosecution Support Director

Sheila Ross
Director of Capital Litigation

Sharla Jackson
Domestic Violence, Sexual Assault,
and Crimes Against Children
Resource Prosecutor

Gilbert A. Crosby
Sr. Traffic Safety Resource Prosecutor

Jason Samuels
Sr. Traffic Safety Resource Prosecutor

William Johnson
Adult Abuse, Neglect, and
Exploitation Prosecutor

Gary Bergman
State Prosecutor

Kenneth Hutcherson
State Prosecutor

Austin Waldo
State Prosecutor

THIS WEEK:

- **Right to be Present; Critical Stages of Trial**
- **Search & Seizure; Hot Pursuit**
- **Jury Deliberations; Continuing Witness Rule**
- **Jury Instructions; Juror Misconduct**
- **Motions for Mistrial; Character Evidence**
- **Fair Market Value; Evidence of Repairs**
- **State's Right to Appeal; Tender of Evidence**
- **Search & Seizure; Traffic Stops**
- **Recusal Motions; Judicial Code of Conduct**
- **Search & Seizure; Search Warrant Affidavits**

Search & Seizure; Impoundment

State v. Lewis, A17A1692 (2/21/18)

Lewis was charged with VGCSA and weapons offenses. The State contended that the trial court erred in granting his motion to suppress. The Court disagreed. Briefly stated, the evidence showed that on November 4, 2016, an officer was running tags and noticed Lewis's vehicle. A check with GCIC (confirmed through DSS) and the Atlanta Criminal Information Center (ACIC) showed the vehicle was not covered by insurance. The officer stopped the vehicle. Appellant testified that he showed the officer an e-mail and an insurance company app on his cell phone demonstrating that he had

insurance, but the officer told him he could not accept that information. The officer then impounded the vehicle and a search of the vehicle led to the drug and weapons charges.

At the motion hearing, Lewis presented documents showing that he insured the vehicle on Oct. 28, 2016. Also, at the trial court judge's request, Lewis showed the judge the screenshot of his insurance card from his phone, which he said he showed the officer that night. The court found that based on the totality of the circumstances, and considering the credibility of the witnesses and the evidence presented, Lewis presented the officer with proof of insurance. Thus, there was no probable cause to issue Lewis a citation and impound his vehicle.

Initially, the Court found that the officer had reasonable articulable suspicion to initiate the traffic stop based on his reliance of the two databases showing that Lewis was committing the offense of driving without insurance. However, the issue was whether in the course of the traffic stop, the officer had probable cause to issue a citation and impound the vehicle. And here, the Court noted, the trial court found that Lewis showed the officer his insurance app, which demonstrated Lewis had obtained insurance for the car seven days before the stop, which the Court could not say was clearly erroneous based on the record. Furthermore, Lewis testified

that he showed the officer his phone app and email confirming his insurance coverage, and the documentation presented at the hearing showed that he obtained that insurance on October 28, 2016. The officer did not dispute Lewis's testimony; rather, he simply did not remember seeing the app. Moreover, the officer conceded that in his experience sometimes cars with insurance showed up as having no insurance in the police databases. Additionally, Lewis showed the trial judge a screenshot of what he showed the officer during the stop. And because the record contained no copy of this screenshot, the Court found that it must assume the screenshot supported the trial court's findings. Consequently, because the Court must accept the trial court's finding that Lewis provided proof of insurance, the Court concluded that even though the officer had reasonable articulable suspicion to initiate the traffic stop, once Lewis provided proof of insurance in a manner acceptable under OCGA § 40-6-10, the officer did not have probable cause to arrest Lewis or issue him a citation. Without probable cause to issue the citation, the officer had no basis for impounding Lewis's vehicle. Accordingly, the trial court properly granted the motion to suppress.

Severance; Gang Evidence

Lang v. State, A17A1483 (2/21/18)

Appellant was convicted of possession of a firearm by a convicted felon and participation in criminal gang activity. The criminal gang activity count was based on appellant's commission of the firearm offense charged in the first count while being associated with the 83 Crips gang. Appellant contended that the trial court erred in denying his motion to sever or bifurcate the charges. The Court disagreed.

The Court stated that where a defendant is charged both with

possession of a firearm by a convicted felon and with a more serious offense which is unrelated in the sense that proof of the former is not required to prove the latter, the trial must be bifurcated to prevent evidence of the defendant's prior felony conviction from influencing the jury unnecessarily. On the other hand, where the count charging possession of a firearm by a convicted felon might be material to a more serious charge – as, for example, where the offense of murder and possession are charged in one indictment, and the possession charge might conceivably become the underlying felony to support a felony murder conviction on the malice murder count of the indictment – the trial need not be bifurcated. And here, the possession of a firearm by a convicted felon charge was material to the criminal gang activity count as it was the underlying felony for that count. Thus, the trial court did not abuse its discretion in ruling that a bifurcated trial was not required.

Appellant argued that the trial court erroneously admitted certain gang-related evidence because it was either irrelevant or its prejudice outweighed its probative value. First, he challenged the admission of evidence that approximately a year before the crimes at issue here, appellant and two other Crips gang members were at a house that was the target of a drive-by shooting. But, the Court stated, in order to prove the gang activity count, the State had to prove that appellant was associated with a criminal street gang, which is defined in OCGA § 16-15-3 (2) as any organization, association, or group of three or more persons associated in fact that engages in criminal gang activity. Thus, the evidence that appellant was with two other gang members at the scene of a shooting was relevant to the material issue of his association with a criminal street gang.

Second, appellant argued that

the trial court erred in admitting evidence that a police investigator had seized a “book of knowledge” from the house of another 83 Crips member. The investigator, qualified as a gang expert, testified that the book is “almost like an employee handout or employee policy manual” for gang members. Based on that book and other information, the expert explained that members of the 83 Crips gang are required to possess firearms, that such firearms contribute to the gang's cache of weapons which can be used for retaliation against another gang or for security during illegal activities such as drug transactions, and that members can be punished for failing to comply with the rule that they possess weapons. Therefore, the Court found, this evidence was relevant to a material issue in the case because a conviction under OCGA § 16-15-4 (a) requires that there be some nexus between the enumerated act and an intent to further street gang activity. Thus, evidence tending to show that the enumerated act of appellant possessing a weapon was in furtherance of gang activity was properly admitted and its weight left to the jury.

Finally, appellant contended that the trial court erred in admitting evidence that several months prior to the incident in this case, he was in possession of one or two guns when he went to a friend's house seeking help for a gunshot wound to his finger. The Court noted that at the time of trial, the former version of OCGA § 16-5-9 provided that “[t]he commission of any offense enumerated in paragraph (1) of Code Section 16-5-3 by any member or associate of a criminal street gang shall be admissible in any trial or proceeding for the purpose of proving the existence of the criminal street gang and criminal gang activity.” The enumerated offenses in paragraph (1) of §16-5-3 included “[a]ny criminal offense in the State of Georgia, any other state, or the United States that involves . . . possession of a weapon[.]” Thus, because, appellant was

a convicted felon at the time of the prior incident, evidence of the incident was relevant to show that while a member of a gang he committed a criminal offense involving possession of a weapon. Accordingly, the Court held, the trial court did not abuse its discretion in admitting the evidence.

DUI; Search & Seizure

Cherry v. State, A17A2085 (2/21/18)

Appellant was convicted of DUI. He contended that notwithstanding that he was advised of his right to refuse chemical testing under Georgia's Implied Consent law, he refused to submit to a state-administered breath test in reliance on his Fourth Amendment protections against unreasonable searches and seizures and the corresponding protections of our state constitution. Appellant argued that because Georgia law precludes the admission as evidence of guilt of a defendant's exercise of his constitutional rights, the trial court erred in admitting evidence that he refused to submit to testing. The Court disagreed.

The Court noted that in *Olevik v. State*, 302 Ga. 228, 234 (2) (b) (2017), our Supreme Court held that the Fourth Amendment permits a warrantless breath test as a search incident to a DUI arrest. And since a warrantless breath test is permitted as a search incident to a valid DUI arrest, securing a breath test after arrest pursuant to our Implied Consent law does not violate the Fourth Amendment. Consequently, appellant's refusal to take the state-administered breath test was not the exercise of the constitutional right against unreasonable searches and seizures. Thus, the trial court did not err in admitting evidence that appellant refused to take the breath test required under Georgia's Implied Consent law.

Judicial Commentary

Winn v. State, A17A1550 (2/21/18)

Appellant was convicted of VGCSA and a weapon possession charge. Appellant contended that the trial court violated OCGA § 17-8-57 in its instruction to a witness. The Court disagreed.

The record showed that during the State's direct examination of the confidential informant (CI), the CI refused to answer a question, instead asserting that he was "just going to plead the Fifth." The State requested that the trial court instruct the CI that he had "use immunity for the course of this trial." The trial court responded that, "You need to answer the question. What the DA says is true." Defense counsel did not object.

Initially, the Court noted that under former OCGA § 17-8-57, which was effective during trial, counsel was not required to object to an allegedly improper comment by the trial judge in order to preserve the error for appellate review. However, because OCGA § 17-8-57 is a procedural law and it does not provide otherwise, the appellate courts will apply the law as it exists at the time the appeal is decided. Thus, the current version of OCGA § 17-8-57 applies in this case. Consequently, appellate review was limited to whether the judge's comments violated the statute and, if so, whether the violation constituted plain error that affected the substantive rights of the parties.

Here, the Court found, the trial court's statement, when considered in context, did not express or intimate such an opinion. The trial court's comment was essentially a ruling on a point of law- the inability to plead the Fifth Amendment after being granted use immunity. Therefore, the Court held, although it strongly discourages the giving of direction or the use of language that could create the appearance of alignment between the trial court and either the prosecution or defense, the trial court in this case did not express or intimate its opinion as to what had or had not been proven so as to violate OCGA § 17-8-57.

Ineffective Assistance of Counsel; Conflicts of Interest

Delevan v. State, A17A1998 (2/21/18)

Appellant was convicted of DUI. The record and evidence, briefly stated, showed that Clark, an attorney with the Appellate Division of the Georgia Public Defender Council ("GPDC"), timely filed a motion for new trial. Following a hearing, the court denied the motion for new trial on November 29, 2016. Neither Clark nor appellant filed a timely notice of appeal from that order. In March 2017, Clark filed a motion for an out-of-time appeal on behalf of appellant. Clark alleged that he just learned that the clerk never received the notice of appeal he sent. He further alleged that he and his office staff were at fault for the failure to timely file the notice of appeal; that such failure constituted "ineffective assistance of counsel per se"; and that, as a result, appellant was entitled to an out-of-time appeal.

The trial court held a hearing. Appellant was represented by Tarleton, an attorney who was also employed by the Appellate Division of the GPDC and worked in the same office as Clark. Clark was not called as a witness, but appellant testified that he learned in mid-December, 2016 that no appeal had been filed. The trial court ruled that appellant was "asleep at the wheel" and thus, was at least partly responsible for the failure to timely file the notice of appeal. Therefore, the court denied appellant's motion for an out-of-time appeal.

The Court stated that an attorney may not ethically present a claim that he provided a client with ineffective assistance of counsel. Consequently, a claim of ineffective assistance of counsel may not be pursued unless the counsel at issue is no longer representing the defendant and, instead, the defendant either is represented by conflict-free counsel or represents himself pro se.

Here, the Court found, although appellant testified on that issue during the hearing, there was a critical conflict between his testimony and Clark's statements in the motion for an out-of-time appeal. Appellant testified that he called Clark's office in mid-December 2016 and left a voicemail message telling Clark that no notice of appeal had been filed in his case. In contrast, in the motion for an out-of-time appeal, Clark specifically stated that he did not learn that a notice of appeal had not been filed until the State moved to enforce appellant's sentence on February 20, 2017. In fact, Clark did not refer to any phone calls or messages he received from appellant during the time period between the court's denial of the motion for a new trial in November 2016 and March 2, 2017, when he filed the motion for an out-of-time appeal. Thus, the Court held, given these apparent conflicts, Clark was a necessary witness on the "critical and disputed matter" at the center of this case, i.e., whether appellant contributed to the failure to timely file the notice of appeal. Therefore, Clark should have been disqualified from representing appellant once his ineffective assistance was asserted as the basis for the motion for an out-of-time appeal.

Next, the Court addressed whether Tarleton was authorized to represent appellant during the hearing on the motion for an out-of-time appeal. The Court noted that he and Clark were employed by the same office. Also, the fact that Tarleton did not call Clark as a witness to testify on the ineffective assistance claim during the motion hearing suggests that a conflict of interest may have existed between Tarleton's loyalty to his client, appellant, and his office colleague, Clark. Furthermore, because an attorney cannot reasonably be expected to assert or argue his own ineffectiveness, it would not be reasonable to expect one member of a law firm to assert the ineffectiveness of another member.

Attorneys in a public defender's office are to be treated as members of a law firm for the purposes of raising claims of ineffective assistance of counsel. Consequently, different attorneys from the same public defender's office are not to be considered "new" counsel for the purpose of raising ineffective assistance claims. Therefore, Tarleton should have been disqualified from representing appellant once the motion for an out-of-time appeal was filed in the trial court. Accordingly, the Court vacated the trial court's order denying the motion for an out-of-time appeal and remanded the case to the trial court with directions to appoint a conflict-free counsel for appellant.

Wiretaps; Requirements of Sealing

Booth v. State, A18A0730, A18A0731, A18A0732, A18A0733, A18A0734, A18A0735 (2/22/18)

Appellants were indicted for various crimes, including illegal use of a communication facility. Each of the appellants filed identical motions to suppress "all evidence resulting from an unlawful wiretap" based upon the State's delay in sealing the recordings. Following a consolidated hearing for all six cases, the trial court denied the motions to suppress.

The record showed that on June 19, 2015, a superior court judge signed three separate orders authorizing wiretaps on cell phones belonging to Adrian Lehsten. On June 21, 2015, approximately two weeks before the orders were scheduled to expire, Lehsten was arrested in another county. The next day, the police learned of his arrest and stopped the electronic surveillance since Lehsten "was no longer using his phone because he was in jail." A narcotics officer received the recordings on June 24, 2015. On July 2, the judge who issued the wiretap orders signed an order sealing the recordings.

Appellants contended that the trial

court erred by denying appellants' motion to suppress because the State's failed to immediately present wiretap recordings for sealing as required by 18 USC § 2518 (8) (a). This federal law mandates that "[i]mmediately upon the expiration of the period of the order [authorizing interception of wire, oral, or electronic communications], or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions." The Court noted that in *North v. State*, 250 Ga. App. 622 (2001), it addressed "the problematic question of whether a sealing delay must be calculated from the expiration date of the warrant or the date that the tap is actually terminated, where such date precedes the expiration date on the wiretap order." After examining 18 USC § 2518 (8) (a), the *North* Court concluded that "the statute, on its face, requires immediate sealing only after 'the expiration of the period of the order, or extensions thereof.'" (Emphasis in original.) *Id.* at 624.

Here, the Court found, the record showed that the discs were created June 24, 2015, the issuing judge signed an order sealing the discs on July 2, 2015, and the authorizing order expired around July 6, 2015. Therefore, based upon *North* as binding precedent, the Court concluded that the State did not need to provide an explanation of the delay between the sealing and the date the authorizing order expired. As the evidence showed that the recordings were sealed before the expiration of the authorizing order, the Court affirmed the trial court's order denying appellants' motion to suppress.

Grand Juries; Garrity

State v. Scott, A17A2127 (2/26/18)

Scott, a GSP officer, was indicted by a grand jury for misdemeanor reckless driving and speeding after he was involved in a collision while in the performance of his duties. Scott moved

to quash the indictment and dismiss the charges, arguing that his rights under *Garrity v. New Jersey*, 385 U. S. 493 (87 SCt 616, 17 LE2d 562) (1967) were violated when the State introduced during the grand jury proceedings a summary of some of his statements made to a GSP officer during an inter-departmental review following the collision. The trial court granted the motion, and the State appealed.

The Court noted that in *Garrity*, the United States Supreme Court held that statements obtained under the threat of removal from government employment or office cannot be used “in subsequent criminal proceedings.” The State conceded that it could not use any of the evidence obtained during the interview of Scott at the trial in this case, agreeing that the interviewers violated their own DPS policies as well as the protections set forth in *Garrity*. Thus, the Court noted, the sole issue was whether the State’s introduction of Scott’s statements during the grand jury proceedings required dismissal of the indictment.

The State argued that grand jury proceedings are not “criminal proceedings” contemplated by *Garrity*. But, the Court stated, it need not decide that issue because there was additional evidence admitted before the grand jury to support the indictment. Dismissal of an indictment and suppression of evidence are extreme sanctions, used only sparingly as remedies for unlawful government conduct. A defendant seeking to quash an indictment has the burden to overcome the presumption that it was returned on legal evidence by showing there was no competent evidence upon which it could lawfully have been returned. The sufficiency of the legal evidence before the grand jury will not be inquired into. And here, the Court found, in addition to the testimony regarding Scott’s statements during the interview, the State also introduced the videotape of Scott’s approach to the intersection

where the collision occurred and the impact, a diagram of the intersection, and testimony estimating Scott’s speed at the time immediately before and at impact. Thus, the Court found, Scott failed to carry his burden of showing that the evidence on which the indictment was returned was based on wholly incompetent evidence. Accordingly, the Court reversed.

OCGA § 24-6-608; Rehabilitation Evidence

Belcher v. State, A17A1982 (2/26/18)

Appellant was convicted of armed robbery, kidnapping with bodily injury, hijacking a motor vehicle, possession of a firearm during the commission of a felony, financial-transaction-card fraud, battery, and possession of a firearm by a convicted felon during a crime. The evidence showed that appellant and his two codefendants (Smith and Partee), kidnapped the victim using the victim’s car, stole from him, and beat him severely before finally releasing him. The record reflected that after the victim was cross-examined and questioned at length about statements he made to law enforcement that were inconsistent with his trial testimony, the State sought to rehabilitate the victim by questioning him about Smith’s father and the fact that he had been offered \$5,000 by the father if he said that Smith was not involved in the robbery and that appellant was the mastermind. Before hearing this testimony, the jury was instructed that it was being introduced for the limited purpose of the jury’s consideration of the witness’s credibility and believability.

The Court stated that there are many acceptable methods of attacking the credibility of a witness including, but not limited to the following: (1) attacking the general character for truthfulness of the witness; (2) showing that, before trial, the witness made statements that are inconsistent with his or her trial testimony; (3) showing

bias of the witness; (4) showing that the witness’s capacity to perceive, recall, or relate the relevant event is impaired; and (5) contradicting the substance of the testimony by the witness. Some, but not all, of these methods of impeachment are explicitly included in the rules of evidence. However, the Court noted, our rules of evidence address the *rehabilitation* aspect of only two of these methods—the witness’s character for truthfulness and prior statements made by the witness. Accordingly, because admissibility of evidence regarding a witness’s alleged bias, diminished capacity, and contradictions in his testimony is not specifically addressed by the Rules, the admissibility is limited only by the relevance standard of OCGA § 24-4-402.

First, appellant argued that the State’s failure to link the testimony regarding Smith’s father’s attempt to influence the victim to any defendant was error because the State did not introduce the testimony as circumstantial evidence of *guilt*. Instead, the State argued that it was introducing the testimony to rehabilitate the victim’s credibility, and the court admitted it for that purpose, giving the jury two limiting instructions to that effect. However, the Court stated, here, the evidence was not being used to establish guilt, but instead as evidence to *rehabilitate* a witness’s credibility.

Next, appellant argued that the trial court erred in admitting the evidence to rehabilitate the victim’s credibility because no rule of evidence would permit the admission of the type of evidence the State used. Specifically, he argued the defendants could not have “opened the door” to the inadmissible testimony and that the evidence was not admissible under OCGA § 24-6-608 because the victim’s character for truthfulness had not been attacked, leaving the State with no reason to introduce the testimony.

The Court noted that under Rule 608 (a), witness credibility may be

supported by opinion or reputation evidence subject to two limitations: (1) the evidence may only refer to character for truthfulness, and (2) evidence of truthful character is only admissible “after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.” Assuming without deciding that the cross-examination to which the victim was subjected opened the door to rehabilitation under Rule 608 (a), the testimony at issue was not the type of rehabilitative evidence allowed by the rule (i.e., testimony by a different witness regarding opinion or reputation of the victim's truthfulness), precluding admission via Rule 608 (a).

As for Rule 608 (b), it provides that, with certain exceptions, “[s]pecific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, ... may not be proved by extrinsic evidence.” But such instances may, “in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness[] ... [c]oncerning the witness's character for truthfulness or untruthfulness.” And here, the Court found, Rule 608 (b) does not support admission of the testimony because it was elicited on redirect, not cross-examination, and the evidence was presented in order to rehabilitate the witness, not impeach.

The Court then addressed the applicability of OCGA § 24-6-613. A witness's veracity is placed in issue so as to permit the introduction of a prior consistent statement only if affirmative charges of recent fabrication, improper influence, or improper motive are raised during cross-examination. Moreover, even assuming that the victim was cross-examined with charges of recent fabrication or improper influence as the State argued, Rule 613 provides that when this occurs, the witness may be rehabilitated through the introduction of a prior consistent

statement that was made before the alleged recent fabrication or improper influence or motive arose. And here, the Court found, the victim was not rehabilitated with a prior consistent statement. Furthermore, the testimony regarding the attempted bribery was not used to in any way explain the prior inconsistent statements to law enforcement about which the victim was cross examined. Instead, the State presented testimony regarding the father of one of the co-defendants attempting to influence the victim's testimony by offering a bribe that the victim rejected. Thus, the Court held, the State could not have introduced the evidence through Rule 613.

Accordingly, the Court concluded, given these particular circumstances the complained-of testimony was neither admissible as generally relevant nor under the rehabilitation strictures of Rules 608 nor 613. Consequently, the trial court erred by permitting the State to introduce testimony concerning the attempt to bribe the victim for purposes of rehabilitating the victim's credibility. Nevertheless, the Court found that the error was harmless and therefore did not require reversal of appellant's convictions.

Rape Shield; OCGA § 24-4-412

Frye v. State, A17A1554 (2/26/18)

Appellant was convicted of child molestation and aggravated sexual battery of his minor granddaughter. He contended that the trial court committed reversible error by determining that certain proposed testimony was inadmissible because it would violate OCGA § 24-4-412—i.e., Georgia's Rape Shield statute. The Court disagreed.

The record showed that prior to trial, appellant filed a motion seeking the admission of testimony regarding a separate, independent investigation into child-molestation allegations by

the victim against a man other than himself. Specifically, he argued that the victim made false allegations against the other man and, thus, that evidence of those allegations should be admissible at appellant's trial as an exception to the Rape Shield law. But during pretrial arguments on the motion, appellant admitted that he sought to use evidence that was “a little bit outside the traditional scope” of the Rape Shield exception in that the victim initially denied having any sexual contact with the other man, then later said that contact was limited to him giving her a hickey on the neck, even though a friend claimed to have witnessed the victim engaging in sexual intercourse with the man. Thus, appellant argued, the victim was untruthful in the other investigation when she claimed that “nothing happened.”

Appellant further argued that the allegations against the other man created “an established potential ulterior motive for [the victim's] outcry [against appellant], the timing of it, when it happened, [and] who she told it to.” According to appellant, this was so because the outcry against him was made approximately three weeks after the incident with the other man and, thus, appellant argued that the outcry against him could have been motivated by a desire to shift attention away from the other incident, which he described as a “sex scandal.” The trial court denied the motion, ruling that what appellant sought to admit was not encompassed by the exception to the Rape Shield statute.

The Court noted that the Rape Shield law in the old and new Evidence Codes are nearly identical. Thus, when courts consider the meaning of those new provisions, they may rely on Georgia decisions under the old Code. Under the new evidence code, there is an exception to the Rape Shield law in that such evidence may be admissible to show the victim's lack of credibility when the victim has made prior false

allegations of child molestation. In *Smith v. State*, 259 Ga. 135 (1989), a case decided under the old evidence code, the Court held that “prior false allegations by the victim” do not involve the victim's past sexual conduct, but instead concern “the victim's propensity to make false statements regarding sexual misconduct.”

And here, the Court found, the trial court did not abuse its discretion by declining to admit the proposed evidence because appellant's proposed evidence did not comport with the narrow exception outlined in *Smith*. Appellant sought to admit what he alleged were false *statements* by the victim made during an investigation into suspected sexual misconduct—i.e., the victim initially stated that another man had *not* engaged in sexual misconduct with her when, in fact, some sort of sexual misconduct had occurred. The Court found that these statements by the victim are not prior false *allegations* of sexual misconduct. They are instead the exact type of evidence prohibited by the Rape Shield rule (i.e., “evidence relating to the past sexual behavior of the complaining witness”), and the trial court did not abuse its discretion in excluding these statements.