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EVIDENCE

Hearsay: Provide for Admissibility of Testimony Based on Statements by Child Witnesses

CODE SECTION: O.C.G.A. § 24-3-16 (amended)¹
BILL NUMBER: HB 155
ACT NUMBER: 427
GEORGIA LAWS: 1995 Ga. Laws 937
SUMMARY: The Act amends the child hearsay statute to allow adults to testify in court regarding a child's description of certain acts performed in the child's presence.
EFFECTIVE DATE: April 19, 1995²

History

In 1991, two-year-old Artelia Lavant died as the result of a beating inflicted by her mother's boyfriend, Ronnie Lewis Thornton.³ During the trial, Douglas County District Attorney David McDade introduced videotaped testimony of the child's sister and cousin, who asserted that they had witnessed Thornton abusing Artelia in the past.⁴ Thornton was subsequently convicted of murdering the child and was sentenced to death.⁵

On his appeal to the Georgia Supreme Court, the defendant challenged the admissibility of the children's videotaped testimony.⁶ The Georgia Supreme Court, in reversing Thornton's

1. HB 155 affects two separate titles of the Code. This *Peach Sheet*[™] addresses the changes to chapter 3 of title 24. A separate *Peach Sheet* within this issue discusses the changes to chapter 5 of title 49, dealing with the child abuse registry. See *Legislative Review*, 12 GA. ST. U. L. REV. 360 (1995).

2. The Act became effective upon approval by the Governor.

3. Bill Torpy, *Douglas Murder Trial Opens in Child's Death*, ATLANTA CONST., Oct. 13, 1992, at E2.

4. Telephone Interview with David McDade, Douglas County District Attorney (Apr. 26, 1995) [hereinafter McDade Interview].

5. Bill Torpy, *Austell Man Sentenced to Die for Fatally Beating Little Girl*, ATLANTA CONST., Oct. 23, 1992, at G3.

6. Thornton v. State, 449 S.E.2d 98, 104 (Ga. 1994).

death penalty, strictly construed the existing child hearsay law and ruled that the exception only applied to statements made by a child as the victim, not to child witnesses.⁷ The court rejected the prosecutor's argument that the statute, which reads "any act of sexual contact or physical abuse performed *with or on the child*,"⁸ could be construed to include acts done to others in the child's presence.⁹

Consequently, McDade, a member of the legislative committee of the Georgia District Attorneys' Association, approached the association and requested its support for expanding the child hearsay laws to encompass cases like *Thornton v. State*.¹⁰ The association gave its unanimous support to the proposal.¹¹

McDade then contacted Lieutenant Governor Pierre Howard and requested his support for the statutory change.¹² The Lieutenant Governor offered his support and recommended that McDade contact Senator Steve Farrow to request Farrow's sponsorship of the bill.¹³

HB 155

Originally, the child hearsay provision of HB 155 was proposed as SB 124¹⁴ and was sponsored by Senator Farrow.¹⁵ The purpose of SB 124 was to broaden the language of the existing child hearsay statute to allow for testimony regarding statements made by child witnesses.¹⁶

Specifically, SB 124 would have amended the Code's child hearsay statute¹⁷ to include acts "performed with or on another

7. *Id.* at 104-05; Bill Rankin, *The Georgia Supreme Court Death Penalty, Child-Cruelty Case Must be Retried*, ATLANTA J. & CONST., Nov. 1, 1994, at C8; McDade Interview, *supra* note 4.

8. 1986 Ga. Laws 668 (formerly found at O.C.G.A. § 24-3-16 (Supp. 1994)) (emphasis added).

9. *Thornton*, 449 S.E.2d at 104; McDade Interview, *supra* note 4.

10. McDade Interview, *supra* note 4.

11. McDade Interview, *supra* note 4.

12. McDade Interview, *supra* note 4.

13. McDade Interview, *supra* note 4.

14. SB 124, as introduced, 1995 Ga. Gen. Assem.

15. *Id.*

16. Telephone Interview with Sen. Steve Farrow, Senate District No. 54 (Apr. 26, 1995) [hereinafter Farrow Interview]; see also Richard Whitt, *Lawmakers See a Flurry of Bills on Family Violence: Simpson Case Helps Put Issue In the Spotlight*, ATLANTA J. & CONST., Feb. 10, 1995, at E1.

17. 1986 Ga. Laws 668 (formerly found at O.C.G.A. § 24-3-16 (Supp.

in the presence of the child.”¹⁸ This bill would have allowed persons to testify regarding statements made to them by children under age fourteen about such acts, without the statements being excluded as hearsay.¹⁹

SB 124 passed through the Senate Judiciary Committee, the Senate, and the House Judiciary Committee unanimously.²⁰ Throughout this process, the only amendment to the bill was to make it effective immediately upon approval by the Governor.²¹

However, on the House floor, an unrelated amendment was added that would have provided for limited confidentiality of communications within state agencies and established that the Georgia Attorney General was not the sole counsel to Georgia state agencies.²² When the Senate did not agree to the amendment, a conference committee was appointed.²³ The conference committee failed to agree on a compromise, and the bill died.²⁴

After SB 124 failed in committee, Senator Farrow moved to amend HB 155 on the Senate floor, adding the language of SB 124 in order to save his bill.²⁵ Initially, HB 155 was a bill that amended the child abuse registry of Georgia and allowed administrative hearings for alleged abusers before their names were placed on the registry.²⁶

The sponsor of HB 155, Representative Cathy Cox of the 160th District, consented to the amendment adding the language of SB 124 to HB 155.²⁷ No challenge was made to the germaneness of

1994)).

18. SB 124, as introduced, 1995 Ga. Gen. Assem.; *see also* O.C.G.A. § 24-3-16 (1995).

19. SB 124, as introduced, 1995 Ga. Gen. Assem.; Farrow Interview, *supra* note 16.

20. McDade Interview, *supra* note 4.

21. *Compare* SB 124, as introduced, 1995 Ga. Gen. Assem. *with* SB 124 (SCS), 1995 Ga. Gen. Assem.

22. SB 124 (HCSFA), 1995 Ga. Gen. Assem. This was the result of unrelated politics in the House. McDade Interview, *supra* note 4.

23. McDade Interview, *supra* note 4.

24. McDade Interview, *supra* note 4; *see also* Final Composite Status Sheet, Mar. 17, 1995.

25. Farrow Interview, *supra* note 16. *Compare* SB 124, as introduced, 1995 Ga. Gen. Assem. *with* HB 155 (SFS), 1995 Ga. Gen. Assem.

26. Farrow Interview, *supra* note 16; *see* O.C.G.A. §§ 49-5-180 to -187 (Supp. 1995); *see also* *Legislative Review*, 12 GA. ST. U. L. REV. 360 (1995).

27. Farrow Interview, *supra* note 16.

the amendment, even though it amended a different title of the Code.²⁸

HB 155 was approved as amended by the Senate on March 15, 1995,²⁹ and the Senate amendments were agreed to by the House of Representatives on the same day.³⁰ The bill was signed into law by Governor Zell Miller on April 19, 1995.³¹

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28. Farrow Interview, *supra* note 16.

29. Final Composite Status Sheet, Mar. 17, 1995. March 15, 1995 was the thirty-ninth day of the legislative session. Farrow Interview, *supra* note 16.

30. Final Composite Status Sheet, Mar. 17, 1995.

31. *Id.*