

Legal Letters by Andrew Agatston: The Legal List

Hearsay Exception for Diagnosis of Treatment

Brown v. State

Georgia Court of Appeals

Case No. A11A0657

(Decided July 13, 2011)

Background: The Defendant was convicted of multiple crimes arising out of the sexual abuse of his 14-year-old cousin. This case involves the testimony of the sexual assault nurse examiner.

Specifically, it involves the issues regarding hearsay testimony, and one of the many exceptions to the hearsay rule.

In this case, the defendant drove his cousin to a nearby park, where she watched him play baseball. Afterward, while the Defendant was driving the victim home, he made a number of sexually suggestive remarks to her. When they returned to her home, the Defendant followed the victim through the door, forced her to the bedroom, and sexually abused and raped her.

Afterward, the victim told a friend, then her mother later in the evening. Her mother took her to a hospital, where the SANE nurse examined her. Ultimately, the SANE nurse testified at the trial of the case.

Hearsay. That word keeps coming up in hearings, trials, and Legal Letters. Yes, we've talked about the topic many times in the past, and particularly the exceptions to the hearsay rule that allows such testimony to be introduced into trials.

The topic of hearsay can be confusing. And the law doesn't help, because even the definition of hearsay is confounding. Here is Georgia's definition:

“Hearsay evidence is that which does not derive its value solely from the credit of the witness but rests mainly on the veracity and competency of other persons.”

Ok.

It’s easier to give an example than to explain the definitions. I walk up on a car accident, not having seen it. A man, Joe, comes up and tells me the red car ran the red light and hit the blue car.

Joe can’t be found for trial, so I’m subpoenaed. I’m asked what happened. I say, I didn’t see it, but Joe told me that the red car ran the red light and hit the blue car.

That’s hearsay. I’ve just testified about an out-of-court statement made by someone else, Joe, and Joe is not in court to be cross-examined.

This is problematic for the law, because one purpose of cross-examination is to test the veracity of the witness who testifies from the witness stand. Hearsay testimony doesn’t allow that.

But as we know by now, there are many exceptions. In Georgia and other states, there is a Child Hearsay Statute, for example. And in Georgia and many other states, there is an exception to the hearsay rule, which allows such hearsay statements made by someone for purposes of a medical diagnosis or treatment.

The law in Georgia is found at O.C.G.A. § 24-3-4: ***“Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment shall be admissible in evidence.”***

As always, the competent and qualified lawyer of your choice will be glad to research the law in your state.

Turning to the facts of today's case, the victim (identified in the case as "M.B.") was taken to the hospital where she was examined by the SANE nurse, who observed bruising to M.B.'s clitoral area, which she testified was consistent with M.B.'s description of the struggle and the incident.

At trial, defense counsel objected to the nurse's testimony, claiming that it improperly bolstered M.B.'s testimony.

The trial judge, in turn, overruled defense counsel's objection, and instead gave the jury what is known as a "limiting instruction." A limiting instruction in effect tells the jury the purpose for which they should use the testimony in their deliberations.

In this case, the judge's limiting instruction was that the jurors should view the testimony ***"[a]s not offered to prove the truth of what M.B. reported to the nurse, but as offered simply to explain what information was provided for medical examination and treatment."***

Pop Quiz to Legal Eagles: Is this a correct ruling?

No, not under Georgia law and potentially the law of your state.

First, when reviewing statutes that routinely apply to your professional area, it's always, always, always a good idea to understand the public policy behind the law. This helps people gain a thoroughly understanding of the law itself.

And so if the concern about hearsay, generally, is that such statements are unreliable because the out-of-court person who made the statement is not subject to cross-examination, then why would

hearsay statements made *“for purposes of diagnosis and treatment”* be admitted and therefore determined by law to be reliable?

Answer: Because the law believes we are reptiles! Like reptiles, we all make choices designed for survival, and therefore we are only going to tell the truth to people who are trying to save and/or protect our lives: *“for purposes of diagnosis and treatment.”*

Therefore, the Georgia Court of Appeals decided, those statements by M.B. to the SANE nurse that were made for purposes of diagnosis and treatment were admissible under this hearsay exception.

However, the Defendant properly challenged those statements M.B. made to the nurse regarding the events *leading up* to the rape, and *the identification of the Defendant* as the perpetrator. In fact, the Court of Appeals specifically held that:

“Brown is correct that M.B.’s statements to the Examining Nurse identifying Brown as her perpetrator and providing information unrelated to the purpose of medical diagnosis and treatment were outside the scope of the hearsay exception defined in O.C.G.A. § 24-3-4.”

But despite this holding, the Court of Appeals still affirmed the convictions. Why?

That leads to yet another rule -- an evidence rule related to a witness’s ***prior consistent statements***.

This is sometimes seen as separate from a hearsay analysis. But it also comes up frequently in child molestation cases, and in this case the Court of Appeals applied the “prior consistent statement” evidence rule, which allowed it to decide that the hearsay testimony identifying the Defendant as the perpetrator was properly admitted.

In the “prior consistent statement” context, if a witness’s veracity has been placed in issue (as is the case with alleged child molestation victims), then under certain circumstances a child’s prior consistent statement can be introduced ***“if affirmative charges of recent fabrication, improper influence, or improper motive (of the witness) are raised during cross-examination.”***

Here, the defense lawyer chief strategy was to attack M.B.’s credibility and attempt to show that her claims were fabricated. As such, the Court of Appeals held:

“It is undisputed that M.B.’s statements to the Examining Nurse predated her allegedly fabricated trial testimony. Under these circumstances, we conclude that the admission of the complained testimony was not erroneous.”

Best regards.

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