Introducing Character Evidence in Child Sexual Abuse Cases

On January 1, 2013, Georgia's new evidence code—which adopts the Federal Rules of Evidence—took effect. One of the most significant changes in the code deals with the admission of character evidence.

In cases where a defendant is accused of sexually abusing a child, the defense may seek to introduce evidence that the defendant has a history of treating children appropriately or has a reputation for sexual morality and decency. Under Georgia's old evidence code, this sort of testimony was prohibited. In *Brooks v. State*, 236 Ga. App. 604, 512 S.E.2d 693 (1999), the Georgia Court of Appeals held that testimony that the defendant had a reputation for acting appropriately toward children was not admissible. Up until now, only testimony concerning the defendant's general reputation in the community and reputation for truthfulness was admissible.

However, under the new evidence code, O.C.G.A. § 24-4-404(a) provides that evidence of a "pertinent trait of character" of the defendant is admissible if it is relevant to the offense for which he is charged. For example, a defendant charged with a violent crime would seek to introduce evidence of his peaceful character and a defendant charged with a crime involving dishonesty would seek to introduce evidence of his truthful character.

O.C.G.A. § 24-4-405(a) states that evidence of a pertinent character trait can be offered via testimony as to the defendant's reputation or testimony as to the witness' personal opinion of the defendant.

Also, O.C.G.A. § 24-4-405(b) provides that when the "character or a trait of character of a person is an essential element of a charge, claim, or defense or when an accused testifies to his or her own character, proof may also be made of specific instances of that person's conduct." In *Goggins v. State*, 330 Ga. App. 350 (2014), the Georgia Court of Appeals held that this rule applied to a child molestation defendant where his good character was an essential element of his defense. This was a major departure from previous appellate decisions in Georgia which consistently limited character evidence in such cases to reputation and

opinion testimony.

Furthermore, the Court in *Goggins* permitted character witnesses to testify that he was the *Father of the Year*, that the witnesses had no reservations about leaving their kids alone with him, and that they had personally observed him acting appropriately with children.

Under the new code, there is going to be a considerable debate over what pertinent character traits would be admissible in a case where a defendant is facing child sexual abuse charges. To answer this question, we need to examine the decisions in other states that have similarly adopted the Federal Rules of Evidence.

The overwhelming majority of these jurisdictions have held that a defendant accused of child sexual abuse is permitted to introduce evidence of pertinent character traits such as sexual morality and decency as well as evidence that the defendant acts appropriately toward children.

In *People v. McAlpin*, 812 P.2d 563 (Cal. 1991), the California Supreme Court held that the defendant, convicted of engaging in nonviolent lewd conduct with a child, should have been allowed to introduce character evidence from witnesses who both had sexual relations with the defendant and observed him interact with children that the defendant was not a "sexual deviant" and had "normalcy in his sexual tastes." The Court even suggested that due to jurors' likely lack of experience with the circumstances surrounding child sexual abuse allegations, the defendant may also call an expert to testify that, in his opinion, the defendant is not a sexual deviant.

In *State v. Griswold*, 991 P.2d 657 (Wash. Ct. App. 2000), the Washington Court of Appeals held that the defendant, convicted of third degree child molestation, should have been allowed to introduce evidence of his reputation for sexual morality and decency, provided he established the proper foundation for the evidence.

In *State v. Miller*, 709 P.2d 350 (Utah 1985), the Utah Supreme Court indicated that evidence of the defendant's reputation for sexual morality would have been admissible if it had been offered at his trial for sexually abusing a child.

In *State v. Rhodes*, 200 P.3d 973 (Ariz. 2008), the Arizona Court of Appeals held

that the defendant, convicted of having sexual contact with a minor, should have been allowed to introduce evidence of his reputation for sexual normalcy and exhibiting appropriate behavior toward children.

In *U.S. v. John*, 309 F.3d 298 (5th Cir. 2002), the U.S. Court of Appeals (Fifth Circuit) held that the defendant, convicted of having sexual contact with a minor, properly introduced character evidence from his wife indicating the couple had a normal sexual relationship, from a social worker indicating he was a good parent, and from his daughter indicating he had a good reputation for sexual morality and decency in the community.

In *Wheeler v. State*, 67 S.W. 3d 879 (Tex. Crim. App. 2002), the Texas Court of Criminal Appeals held that the defendant, convicted of aggravated sexual assault, was allowed to introduce evidence of "his good character (or propensity) for moral and safe relations with small children or young girls."

In the minority is the Florida District Court of Appeals which held in *Hendricks v. State*, 34 So.3d 819 (Fla. Dist. Ct. App. 2010) that a defendant charged with sexual battery on a child was prohibited from introducing evidence of his reputation for sexual morality. The Court reasoned that, unlike reputation for honesty or peacefulness, a person's sexual morality is not something generally known in the community—rather it is a trait exhibited privately—and thus a person's reputation for sexual morality is an inherently unreliable form of character evidence.

It remains to be seen which side of this debate the Georgia appellate courts will lean. The significance of character evidence in child sexual abuse cases cannot be overstated considering that criminal juries in Georgia are instructed that they must consider the evidence of a defendant's pertinent character trait in determining whether they have a reasonable doubt about the defendant's guilt.