Introducing Prior False Accusations by the Alleged Victim

One of the most effective ways in which we can impeach the credibility of alleged victims is with evidence that he or she has made a prior and/or subsequent false accusation of abuse. Georgia's rape shield statute prohibits, to a certain extent, "evidence relating to the past sexual behavior of the complaining witness…"

However, Georgia courts have held that evidence of prior or subsequent false accusations pertains to the alleged victim's propensity to lie about the sexual misconduct of others and is therefore not considered "past sexual behavior" under the rape shield statute. See, *Wagner v. State*, 253 Ga. App. 874, 560 S.E.2d 754 (2002); *Campbell v. State*, 221 Ga. App. 135, 470 S.E.2d 524 (1996).

In *Smith v. State,* 259 Ga. 135, 377 S.E.2d 158 (1989), the Supreme Court of Georgia held that, subject to a threshold determination, evidence of prior false allegations by an alleged victim of sexual abuse "is admissible to attack the credibility of the alleged victim and as substantive evidence tending to prove that the instant offense did not occur."

However, before admitting evidence of prior false accusations, the trial court, outside the presence of the jury, must determine that a reasonable probability of falsity exists. *Palmer v. State,* 248 Ga. App. 515, 546 S.E.2d 886 (2001). A reasonable probability of falsity has been defined as "a probability sufficient to undermine confidence in the outcome." *Walker v. State*, 308 Ga. App. 176, 707 S.E.2d 122 (2011). It has been held that it is not enough to show that the incidents were not prosecuted to prove that past allegations of sexual abuse were false. *Banks v. State*, 250 Ga. App. 728, 552 S.E.2d 903 (2001).

Additionally, the defendant has the burden of introducing evidence at a pretrial hearing to establish a reasonable probability that the victim had made a prior false accusation of sexual misconduct. *Roberts v. State*, 286 Ga. App. 346, 648 S.E.2d 783 (2007).

When attempting to present evidence of prior and/or subsequent false accusations of abuse made by an alleged victim or witness, the defense must file a written motion requesting the court to determine the admissibility of this evidence prior

to trial and then must present the evidence to the court at the pretrial hearing. Under *Trusty v. State*, 237 Ga. App. 839, 517 S.E.2d 91 (1999), a trial court's ruling on the admissibility of this evidence will not be overturned on appeal absent an abuse of discretion.

Therefore, it is imperative that defendants take particular care to follow all of the procedural steps for admissibility and be prepared to satisfy their burden at the pretrial hearing of proving that the victim did, in fact, make a prior false accusation of sexual abuse.