

## **Rape Shield Law Prevails in Illinois**

**By Lyn M. Schollett**

Illinois' rape shield law is a powerful tool to keep the attention of the jury where it belongs – on the conduct of the accused – and away from irrelevant information about the victim.

In the first case involving the rape shield law before the Illinois Supreme Court in 14 years, the Court affirmed that the rape shield statute bars the admission of statements - People v. Santos, No. 94620 (IL.S.Ct. June 24, 2004)<sup>1</sup> - regarding the victim's sexual past, even inconsistent statements made by the victim.

In this case, the 16-year old rape victim was asked in the emergency room whether she had had sexual intercourse with anyone other than the offender in the previous 72 hours. The victim said no. The evidence collection kit subsequently produced seminal fluid and pubic hair from two men. Upon follow-up questioning, the victim immediately admitted to having sex with her boyfriend during that time frame.

The issue before the Supreme Court was whether the victim's statement that she had not had sex with anyone else was admissible.

Illinois' rape shield law, passed in 1978, prohibits testimony about the victim's reputation or sexual past, unless it involves the defendant or is constitutionally required. 725 ILCS 5/115-7. Prior to the passage of the law, a popular defense tactic was to suggest to the jury that the victim had an immoral and unchaste past, and therefore was likely to be lying about the rape at issue.

Relying on the rape shield law, the State argued in Santos that the victim's statement that she had not had sex with anyone else should be barred. The defendant argued that it should be admitted, because the victim's credibility was at issue.

The Supreme Court ruled in favor of the State, holding that the victim's statement should not be admitted, based on the rape shield law. In response to defendant's argument that the statement should be admitted because it indicates that the victim is not a truthful person, the court responded that a witness cannot be impeached with a single incident of untruthfulness. Moreover, the court found the victim's statement to be collateral to the case. In other words, the defendant never argued someone else committed the rape, so it does not matter that the kit identified another man's DNA on the victim.

The sole dissenting justice in the case held that the victim's statement is constitutionally required to be admitted, as it is an essential component of the defendant's right to confront the witnesses against him.

The majority opinion in Santos reaffirms the position victim advocates have taken for years: the focus of a criminal prosecution for rape should be on the on the behavior of the accused and whether that behavior violated the law. What the victim wore, who her friends are, what her reputation is, and the identity of her past sexual partners are entirely irrelevant.

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<sup>1</sup> The decision can be found at <http://www.state.il.us/court/Opinions/SupremeCourt/2004/June/Opinions/Html/94620.htm>.

Such information, however, can distract and inflame a jury, causing them to question a victim's character, and even her veracity. In reality, rape victims may have had previous sexual partners, may have unflattering reputations, and may have been raped before. None of that matters. What matters is whether the defendant's conduct in this case violated the law. Hopefully, someday rape trials will focus exclusively on this critical issue. Until that time, we rely on the rape shield statute.