



SEPTEMBER 14, 2015

## Watson v. State

***The Supreme Court holds that the offense of sexual battery must be construed to require actual proof of the victim's lack of consent, regardless of the victim's age and overrules all cases holding to the contrary***

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In *Watson v. State*, S15G0385 (9/14/15), appellant was convicted of two counts of sexual battery against his daughter. The evidence showed that appellant touched the victim's breasts and pubic area on several occasions when she was between the ages of 11 and 13. The Court granted certiorari to review the propriety of the trial court's jury charge on sexual battery, to the extent it instructed that a victim under the age of 16 lacks the legal capacity to consent to sexual conduct. The Court of Appeals held that the jury charge was an accurate statement of the law adjusted to the facts of the case and thus, was proper. *Watson v. State*, 329 Ga.App. 334 (2014).

The Court stated that the sexual battery statute defines the offense of sexual battery as "intentional[] . . . physical contact with the intimate parts of the body of another person without the consent of that person." O.C.G.A. § 16-6-22.1(b). The plain language of this Code section thus prescribes three elements that are required to establish the offense of sexual battery: (1) physical contact with the victim's intimate body parts; (2) intent to have such contact; and (3) lack of consent on the part of the victim. The question presented here was whether the victim's age alone may conclusively establish the lack-of-consent element of sexual battery. The Court noted that under current law, a victim under the age of 16 cannot legally consent to sexual intercourse, sexual acts, or other sexual contact, and proof that a victim was younger than age 16 at the time of an alleged offense involving sexual contact – absent any specific statutory language to the contrary – will constitute conclusive proof of the lack-of-consent element of such offense.

But, the Court stated, despite its denomination as "sexual" battery, the offense does not require any sexual contact at all. Rather, it involves non-consensual, intentional physical contact with a victim's intimate body parts. That an individual younger than 16 is legally incapable of consenting to sexual contact does not necessarily mean that such individual is legally incapable of consenting to physical contact with her intimate body parts. To hold otherwise, the Court noted, would "include contacts commonly occurring on an athletic field or school playground, contacts attendant to a physician's breast examination on a 15-year-old patient, and even the act of changing a baby's diaper. We decline to construe the sexual battery statute in a manner that would criminalize a wide range of apparently innocent conduct." Therefore, the Court held, the statute must be

State Prosecution Support Division



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construed to require actual proof of the victim’s lack of consent, regardless of the victim’s age and “those cases that have held to the contrary are hereby overruled.” See, e.g., *Haynes v. State*, 302 Ga.App. 296, 302, n.4 (2010); *Carson v. State*, 259 Ga.App. 21 (1) (2002); *Strickland v. State*, 223 Ga.App. 772 (1) (b) (1996).

Moreover, the Court held, any jury instruction suggesting that an underage victim is not capable of consenting to the contact constituting sexual battery, is misleading and thus erroneous. Therefore, the Court also overruled those cases that have sanctioned the giving of such an instruction. See, e.g., *Engle v. State*, 290 Ga.App. 396 (2) (2008); *Hendrix v. State*, 230 Ga.App. 604 (3) (1997).

Finally, the Court found, because the erroneous jury instruction here effectively relieved the State of its burden to prove an essential element of the crime of sexual battery, the instruction could not be said to have been harmless. Accordingly, appellant’s conviction for sexual battery was reversed.