

Maynard, J., Dissenting Concurring Opinion, Case No.23537 State of West Virginia v. James Quinn

No. 23537 - State of West Virginia v. James Quinn

Maynard, Justice, dissenting:

The trial of a rape or sexual abuse case is often humiliating for the victim. Describing the details of sexual abuse is difficult under the most benign circumstances, let alone in a courtroom packed with strangers. Moreover, until recently, the sexual assault was not the only abuse of the victim. A second attack occurred at trial, where defense counsel impeached the victim with evidence regarding the victim's sexual history. Such impeachment took two forms: (1) opinion or reputation evidence, or (2) proof of specific instances of the victim's past sexual conduct. One consequence of such impeachment was to place the victim on trial along with the defendant. In response to this unsatisfactory situation, states enacted rape shield statutes. . . .

John E.B. Myers, 1 Evidence in Child Abuse and Neglect Cases 5.28 (2d ed. 1992).

West Virginia has enacted just such a statute. *See* W.Va. Code 61-8B-11 (1986).

This decision is a sword which will be used to pierce the rape shield statute and will cruelly stab like a driven nail into the most vulnerable child victims of rape and will further victimize those children.

Allowing child victims to be cross-examined regarding prior false allegations really permits inquiry into the victim's past sexual behavior in violation of our rape shield statute and the practical and actual result is a brutal attack on the general credibility of the child. I agree completely with the trial judge in the case of *United States v. Cardinal*, 782 F.2d 34, 36 (6th Cir. 1986), who said:

I don't see how you can separate evidence of a victim's past sexual behavior from the fact that she had made an allegation of rape and then withdrawn [sic] it. I think they are interwoven. This is a thirteen-year-old young lady [and under] the spirit of Rule 412, it seems to me that it's just this type of allegation that this young woman should be protected from.

I would not permit any cross-examination of child victims regarding any alleged prior false allegations. Accordingly, for the foregoing reasons, I dissent.