

## Insights

# GEORGIA APPELLATE COURT SIGNALS ADOPTION OF FEDERAL PRECEDENT FOR STATE PATTERN JURY INSTRUCTIONS

Oct 18, 2023

## SUMMARY

The Georgia Court of Appeals recently considered a challenge to Georgia's preponderance-of-the-evidence pattern jury instruction, which is based upon a repealed version of Georgia's prior evidence code. Reading from the preamble to the current version of the code, the court found it "*must look to federal caselaw* in determining Georgia's legal definition of this evidentiary standard." Following this decision, Georgia litigants should consider replacing the preponderance-of-the-evidence pattern jury instruction with a definition aligned with federal precedent. Litigants should also consider whether to rely on other pattern instructions to the extent those instructions are still based upon the repealed evidence code and inconsistent with federal precedent.

The Georgia Court of Appeals recently considered a challenge to Georgia's pattern jury instruction on the preponderance-of-the-evidence standard, which derives from Georgia's repealed version of the state's prior evidence code. The court considered whether the 2012 passage of the new code required the pattern instruction to be modified. The Court of Appeals ruled it did. In so doing, the court determined the proper definition for this standard must now be gleaned from federal sources —namely, the Federal Rules of Evidence and federal appellate decisions.

In its decision, *White v. Stanley*, No. A23A0986, \_\_\_ Ga. App. \_\_\_, \_\_\_ S.E.2d \_\_\_, 2023 WL 6413214 (Oct. 3, 2023), the Court of Appeals looked to the preamble for Georgia's current evidence code and specifically the state legislature's acknowledgement that it passed the new code with the intent "to revise, modernize, and reenact the general laws of this state relating to evidence while adopting, *in large measure*, the Federal Rules of Evidence." *Id.* at \*3 (citations omitted, emphasis added). Premised on this expression of intent by the General Assembly to adopt the Federal Rules, the Court of Appeals declared: "*we must look to federal caselaw* in determining Georgia's legal definition of this evidentiary standard." *Id.* (emphasis added).

Following *White v. Stanley*, litigants in Georgia courts should certainly consider replacing Georgia's pattern jury instruction on the preponderance of the evidence with a definition aligned with federal precedent. Litigants would also be prudent to exercise caution when seeking to use other pattern instructions not at issue in this decision to the extent those instructions are still based upon provisions from the repealed evidence code—particularly if these instructions are not consistent with the Federal Rules of Evidence or interpretations of those Rules.

## THE *WHITE* DECISION:

*White* arose from a negligence action involving an automobile collision in which the plaintiff claimed the defendants either completely or partially caused the accident that resulted in the plaintiff's alleged injuries. At trial, the jury found for the defendants.

The plaintiff challenged the jury's verdict, arguing a new trial was necessary because the trial court's jury instruction on the preponderance-of-the-evidence standard applicable in civil cases was an incorrect statement of law. The Court of Appeals agreed the instruction was erroneous but nonetheless found this insufficient to grant the plaintiff a new trial because the plaintiff had testified under oath that the defendants "did nothing wrong" and, therefore, the erroneous jury instruction was unlikely to have influenced the jury's decision.

## THE JURY INSTRUCTION AT ISSUE:

At trial, an instruction was given to the jury on the preponderance-of-the-evidence standard which, as the Court of Appeals recognized, is nearly identical to Georgia's current pattern jury instruction on this standard. Specifically:

The plaintiff has the burden of proof, which means the plaintiff must prove whatever it takes to make his case, except for any admissions in the pleadings by the defendant. The plaintiff must prove his case by what is known as preponderance of the evidence; that is, evidence upon the issues involved, while not enough to wholly free the mind from a reasonable doubt, is yet sufficient to incline a reasonable and impartial mind to one side of the issue rather than the other.

*Id.* at \*2 (reciting instruction given); *compare* Georgia Suggested Pattern Jury Instructions, Vol. I, 02.020.

## GEORGIA'S ADOPTION OF THE CURRENT EVIDENCE CODE:

More than a decade ago, Georgia's General Assembly adopted the state's current evidence code. This code applies in all cases tried on or after January 1, 2013.

Under the prior evidence code: "'preponderance of the evidence' [was] statutorily defined as that superior weight of evidence upon the issues involved, which, while not enough to free the mind wholly from a reasonable doubt, is yet sufficient to incline a reasonable and impartial mind to one

side of the issue rather than to the other.” O.C.G.A. § 24-1-1(5) (2012). This definition was quoted almost identically in the instruction given at trial in the *White* case for the preponderance-of-the-evidence standard.

However, when the current evidence code became effective in 2013, it no longer included a statutory definition of the preponderance-of-the-evidence standard. Despite that deletion, the old, pre-2013 pattern instruction persisted, and it (or nearly identical formulations of it like the one used by the trial court in *White*) continued to be used regularly.

## DETERMINING THE CORRECT PREPONDERANCE DEFINITION:

In the absence of a statutory definition for preponderance of the evidence in Georgia’s current evidence code, the Court of Appeals looked to the code’s preamble—specifically, the General Assembly’s intent “to . . . adopt[ ], in large measure, the Federal Rules of Evidence.” *White*, 2023 WL 6413214, at \*3 (citing *State v. Almanza*, 304 Ga. 553, 555-56 (2018); Ga. L. 2011, pp. 99, 100 § 1). Based on this preamble, the court concluded:

because our General Assembly’s codified intent in enacting the current evidence code was to, for the most part, model it after the Federal Rules of Evidence (which do not provide a definition of preponderance of the evidence), we agree with [the plaintiff] that we *must look to federal caselaw* in determining Georgia’s legal definition of this evidentiary standard.

*Id.* (emphasis added).

In considering federal case law, including that of the Supreme Court of the United States and the Eleventh Circuit, the Georgia Court of Appeals also noted that “[t]he burden of showing something by a ‘preponderance of the evidence’ . . . simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence.” *Id.* The Court of Appeals further found that the Supreme Court of Georgia had similarly provided a definition of the preponderance-of-the-evidence standard consistent with federal precedent: “[p]roof by a preponderance simply requires that the evidence show that something is more likely true than not.” *Id.* (citing *White v. State*, 307 Ga. 601, 607 (2020)).

Based upon the federal preponderance-of-the-evidence standard, the Court of Appeals determined that the trial court’s jury instruction was improper. The trial court’s instruction referenced a much higher reasonable doubt standard without explaining to the jury that such a standard did not apply in civil matters. In other words, the trial court’s jury instruction was misleading or confusing in its application and, therefore, erroneous.

## IMPACT ON FUTURE CASES

The Court of Appeals’ ruling in *White* potentially has significant implications.

First, the preponderance-of-the-evidence standard contained in the pattern jury instructions must be rewritten.

Second, the opinion raises the question whether there are additional pattern jury instructions that may be inconsistent with the new evidence code and/or federal law. The Pattern Jury Instructions Committee of the Council of Superior Court Judges of Georgia usually does a fine job of updating the pattern instructions, but it might be wise to take another look given the *White* decision. As of the date of this article, no revisions have taken place following the *White* decision.

Third, if a pattern jury instruction comes under scrutiny by a Georgia appellate court, and that jury instruction is based upon the prior evidence code, the Georgia Court of Appeals has clearly signaled that it will look to federal sources to analyze the propriety of that instruction. Although the preamble to the current evidence code states that the Federal Rules of Evidence are adopted by Georgia “in large measure” (i.e. not “in full” or “in their entirety”), the Court of Appeals states in *White* that Georgia courts “*must* look to federal case law” in construing the current evidence code, absent more direct, binding state authority on the subject.

## RELATED CAPABILITIES

- Appellate
- Class Actions
- Business & Commercial Disputes

## MEET THE TEAM



### Christian Bromley

Atlanta / Los Angeles

[christian.bromley@bclplaw.com](mailto:christian.bromley@bclplaw.com)

[+1 404 572 6841](tel:+14045726841)

---

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon ([kathrine.dixon@bclplaw.com](mailto:kathrine.dixon@bclplaw.com)) as the responsible attorney.