

Naming the Victim of a Sexual Assault

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Suppose the State is prosecuting a defendant for the sexual assault of a young child. Though the child has been identified by name in the arrest warrant and investigative reports provided to the defendant, the State would prefer not to name the victim in the indictment. May it refer to the victim in that document as “Victim #1”?

No.

The state supreme court held in [State v. White](#), ___ N.C. ___, 827 S.E.2d 80 (May 10, 2019), that an indictment alleging a sex offense with a child under 13 must name the child. The *White* court determined that the phrase “Victim #1” did not name the child as the phrase did not distinguish the victim from other children or victims. And the court rejected the notion that the identification of the victim in other documents related to the case, including the arrest warrant and the original indictment, cured the flaw in the superseding indictment that referred to the minor victim only as “Victim #1.” A court may not, it explained, look to extrinsic evidence to supplement a missing or deficient allegation in an indictment.

A matter of statutory interpretation. The *White* court based its analysis on the short-form indictment provisions in [G.S. 15-144.2\(b\)](#), which expressly call for “naming the child.” G.S. 15-144.2(a) and (c) likewise require that indictments for other sex offenses name the victim. And a companion statute, [G.S. 15-144.1](#), requires that short form indictments for rape state the name of the victim. Thus, under the rationale in *White*, an indictment charging any rape or sexual offense must name the victim.

Public policy concerns. The court acknowledged the public policy concerns that led the State to omit the minor victim’s name: “Protecting a victim’s identity from the public increases privacy and safety,” Chief Justice Beasley wrote for the court, “and encourages overall reporting of sexual assaults.” ___ N.C. at ___; 827 S.E.2d at 84. Yet, the court deemed itself bound by existing statutes and saw the extension of privacy protections for victims as falling within the purview of the General Assembly. The court cited statutes from other states limiting the disclosure of information related to victims of sexual assault.

Two dissents. In a dissent joined by Justice Newby, Justice Morgan criticized the majority for placing the right of a criminal defendant to notice of the charges and the State’s desire to protect the identity of a minor victim of a sex crime on an “unnecessary collision course” through its “narrow and rigid interpretation” of the law. ___ N.C. at ___; 827 S.E.2d at 84 (Morgan, J., dissenting). Justice Morgan deemed the superseding indictment sufficient because it was filed in the same criminal case bearing the same file number as the warrant and original indictment, which stated the victim’s name, and the dismissal filed by the State expressly noted that the only substantive changes between the two charging instruments were a correction of the dates of the offenses and an increase in the level of the charged felony. Justice Newby wrote separately to note his dissent based on the rationale of the dissent in *State v. Rankin*, ___ N.C. ___, 821 S.E.2d 787 (2018) (Martin, C.J., dissenting) (discussing the progression of indictment jurisprudence and concluding that the Criminal Procedure act indicates that flaws in indictments should no longer be considered jurisdictional matters) (discussed in [this blog post](#)).

What are the State's options for protecting the privacy of victims in sexual assault prosecutions? *White* makes clear that omitting the victim's name altogether from the charging instrument will not suffice. What measures short of that might work?

Using initials. The State may consider using initials in place of a victim's name. In [State v. McKoy](#), 196 N.C. App. 650 (2009), the court of appeals rejected the defendant's argument that the indictment charging him with rape and sexual offense was defective because it identified the victim only by her initials. The document named the victim by using her initials, the court reasoned, and it notified the defendant of the charges sufficiently to allow him to prepare a defense and to protect him from double jeopardy.

The court of appeals in *White* relied on *McKoy* in deeming the indictment in that case sufficient. But the state supreme court in *White* distinguished *McKoy*, noting that "[e]ven if this Court decides that initials are sufficient to satisfy 'naming the victim' requirement, the indictment in this case is still insufficient," as it did not name the child at all, but rather sought to conceal her identity. ___ N.C. at ___; 827 S.E.2d at 83.

Given the court of appeals opinion in *McKoy*, the State may choose in an appropriate case to identify a sexual assault victim by her initials. But the State [should proceed with caution](#) as the state supreme court made clear in *White* that it was not endorsing this approach. See also [State v. Shuler](#), ___ N.C. App. ___, 822 S.E.2d 737 (Dec. 18, 2018) (noting that using the victim's initials "may satisfy the 'naming' requirement").

Sealing the indictment. The *White* court suggested another possibility: asking the court to seal the indictment to protect victim information from public inspection. My former colleague, Michael Crowell, wrote about access to court records [here](#), noting that courts have inherent authority to seal documents when necessary to serve an overriding public interest. Sealing the entire indictment is a clumsy tool for protecting the victim's privacy interests, particularly given that the public may have an interest in learning about the charges against the defendant, but the State may consider asking for this relief in an appropriate case.

Otherwise identifying the victim. There may be circumstances in which the State cannot ascertain the identity of a sexual assault victim. Suppose, for example, the defendant is discovered in the act of a sexual assault and the victim flees without identifying herself. Perhaps such a victim could be identified, or "named" by physical description in an indictment based upon all of the information known to the State.