You Decide

8.5 Stephen F. (Child) appeals his convictions for two counts of criminal sexual penetration and argues that the trial court improperly excluded evidence of the alleged victim's past sexual activities. Child claimed that this evidence would have demonstrated her motive to fabricate. Under Sections 30-9-11 through 30-9-15 of New Mexico Statutes, evidence of the victim's past sexual conduct and opinion evidence of the victim's past sexual conduct or of reputation for past sexual conduct shall not be admitted unless, and only to the extent, the court finds that the evidence is material to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Child (age fifteen) and the alleged victim (B.G., age sixteen) engaged in sexual intercourse. Child, B.G., and B.G.'s brother had been watching movies in B.G.'s bedroom. Child had been a friend of B.G.'s brother and family for nine years, and he usually slept on the couch in the living room when he spent the night. B.G. testified that after Child had headed for bed in the living room, he returned to her room and forced her to engage in sexual conduct, including oral, vaginal, and anal intercourse. The morning after the incident, B.G. told her mother that Child had raped her. Child was convicted of two counts of criminal sexual penetration. Child contended that the intercourse was consensual and claimed that B.G. lied because she feared that she would be punished by her religious parents. B.G. previously had been punished by her parents after having had consensual sexual relations with her then boyfriend. B.G. reportedly had told Child that her mother "was really upset . . . [about my having engaged in sex with my boyfriend;] she said that it was going to take her a long time to trust me again, . . . about