

Missouri Law Review

Volume 80
Issue 2 *Spring 2015*

Article 13

Spring 2015

Missouri Abolishes the Corroboration Rule and the Destructive Contradictions Doctrine: A Victory for Victims of Sexual Assault?

Kristen L. Stallion

Follow this and additional works at: <https://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Kristen L. Stallion, *Missouri Abolishes the Corroboration Rule and the Destructive Contradictions Doctrine: A Victory for Victims of Sexual Assault?*, 80 MO. L. REV. (2015)
Available at: <https://scholarship.law.missouri.edu/mlr/vol80/iss2/13>

This Note is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

NOTE

Missouri Abolishes the Corroboration Rule and the Destructive Contradictions Doctrine: A Victory for Victims of Sexual Assault?

State v. Porter, 439 S.W.3d 208 (Mo. 2014) (en banc).

KRISTEN L. STALLION*

I. INTRODUCTION

Since early common law, evidentiary doctrines have limited the weight factfinders may give to the testimony of victims who take the witness stand and retell the traumatizing details of their sexual assaults. Two of these doctrines, the corroboration rule and the destructive contradictions doctrine, existed in Missouri until the summer of 2014. The corroboration rule required additional evidence to support a sexual assault conviction if the victim's testimony was deemed so contradictory to physical evidence, surrounding circumstances, and common experience as to render it doubtful.¹ Similarly, the destructive contradictions doctrine required corroboration to support a conviction if a victim's testimony was self-destructive or in opposition to physical evidence.² These rules reflected a patriarchal common law mentality and the continued subordination of women in a justice system that insisted the victims of sexual assault, who are most commonly women, are not as believable as victims of other types of crimes. Law enforcement officials, juries, and the public scrutinized each detail of an assault because even the slightest discrepancy or inconsistency would throw extreme doubt on the female victim's testimony, which was not enough to support a conviction on its own.

Similar evidentiary doctrines have been reformed and repealed across the nation.³ The change in the treatment of victims of sexual assaults can be credited in large part to the efforts of proponents of the second wave of feminist reform that swept the nation in the 1970s and 1980s.⁴ Thankfully, juries are no longer instructed to view female sexual assault victims as wayward

* B.S., Missouri State University, 2012; J.D. Candidate, University of Missouri School of Law, 2016. Editor in Chief, *Missouri Law Review*, 2015-2016. A sincere thank you to Professor Ben Trachtenberg for his witty guidance and support throughout the writing and editing process.

1. See *State v. Porter*, 439 S.W.3d 208, 211 (Mo. 2014) (en banc).

2. See *State v. Uptegrove*, 330 S.W.3d 586, 590 (Mo. Ct. App. 2011), *abrogated by Porter*, 439 S.W.3d 208.

3. See, e.g., *State v. Byers*, 627 P.2d 788, 796 (Idaho 1981).

4. See *infra* Part V.B.

waifs whose minds are easily subject to impression and whose pasts are scrutinized and thought to be adequate blame for the trauma they have endured. Despite the abolition of the corroboration rule and destructive contradictions doctrine, however, these rules will continue to be effectively enforced by juries due to long-held beliefs on gender and sex norms.⁵ More is needed to adjust these misconceptions about women and rape. Once juries abandon these misconceptions, there may be a substantial increase in the number of convictions and reports of rape in Missouri and throughout the United States.

Part II of this Note explores the issue in the case at hand, *State v. Porter*, which has finally abolished both the corroboration rule and destructive contradictions doctrine in Missouri sexual assault cases. Next, Part III presents the archaic rationale behind the two doctrines and explores its development. Finally, in Part IV, the Supreme Court of Missouri's decision to abolish these doctrines is dissected and the evolution of these evidentiary common law rules is analyzed in light of courts' efforts to remove the high wall of doubt female victims must attempt to overcome. This analysis reveals that much still needs to be done in order to truly prevent sex and gender norms from continuing to enter the courtroom and burden prosecutions of sexual assault.

II. FACTS AND HOLDING

On October 31, 2010, B.Y. (the "Grandmother") was babysitting her three-year-old granddaughter, K.W., in a room K.W.'s mother rented in a rooming house managed by Sylvester Porter.⁶ The Grandmother fell asleep while watching K.W. and when she awoke, she found K.W. lying on Porter's bed with her pants off and a shirtless Porter with his head between K.W.'s legs.⁷ The Grandmother took her granddaughter out of Porter's room and asked what had happened.⁸ K.W. replied that Porter was "sniffing around down there" and "messaging with her bottom part."⁹ When K.W.'s mother returned home about one half hour after the Grandmother awoke from her nap and found K.W. in Porter's room, K.W. told her mother that Porter had touched her vagina.¹⁰ K.W.'s mother then confronted Porter, who denied ever touching K.W.¹¹ K.W. overheard Porter's denial and told him, "[Y]es you did, you touched my kookoo."¹² K.W.'s mother subsequently called St. Louis City Police.¹³

5. See *infra* Part V.C.

6. *State v. Porter*, No. ED98908, 2013 WL 5628670, at *1 (Mo. Ct. App. 2013).

7. See *id.*; see also *Porter*, 439 S.W.3d at 210.

8. *Porter*, 439 S.W.3d at 210.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*; see also Respondent's Substitute Brief, *State v. Porter*, 439 S.W.3d 208 (Mo. 2014) (en banc) (No. SC93851), 2014 WL 1572120, at *11.

On November 12, 2010, a forensic interviewer with Children Advocacy Services of Greater St. Louis (“CAC”) interviewed K.W.¹⁴ In the interview, K.W. volunteered that Porter was in jail after “he put his hand on her private part.”¹⁵ K.W. said she had told Porter to “stop, stop, stop, stop” but that Porter kept touching her.¹⁶ K.W. was able to point to a drawing of the female anatomy to indicate Porter had touched her vagina.¹⁷ K.W. also told the interviewer that Porter had touched her private part with his tongue, that Porter put “hot sauce” on her “kookoo,” and that Porter put his penis near her eye.¹⁸ The State “charged Porter with two counts of first-degree statutory sodomy for touching K.W.’s vagina with his hand (Count I) and with his tongue (Count II).¹⁹ The State also charged Porter with one count of first-degree child molestation for touching K.W.’s head with his penis (Count III).”²⁰

Porter pled not guilty to all three charges, and the St. Louis City Circuit Court held a jury trial from July 9 to July 11, 2012.²¹ K.W. was five years old at the time she testified on July 10, 2012.²² In her testimony, K.W. stated that she knew Porter, but said she did not see him in the courtroom at that time.²³ K.W. said that Porter had “touched her ‘private part’ when she was younger and that this occurred in a different place than where she was then living.”²⁴ K.W. also stated that Porter “touched her with his hand and that he did not touch her private part with any other part of his body.”²⁵ Porter called several witnesses, including a witness from the St. Louis Police Department’s crime laboratory, who testified that no seminal fluid was found on K.W.’s clothing or on K.W.’s vaginal swab.²⁶ A forensic examiner from CAC testified that when she interviewed K.W.’s mother five days after the incident, the mother told her that K.W. cried and recanted when she saw Porter being arrested and that K.W. had said that the Grandmother made K.W. say that Porter touched her.²⁷ K.W.’s mother also reported that the Grandmother had been drinking beer while watching K.W.²⁸ The examiner replied on cross-examination by

14. Respondent’s Substitute Brief, *supra* note 13, at *11. This interview was admitted into evidence as the State’s Exhibit 1 and was played for the jury at Porter’s trial. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at *12.

18. *Id.*; see also *Porter*, 439 S.W.3d at 210.

19. Respondent’s Substitute Brief, *supra* note 13, at *12.

20. *Id.*

21. *State v. Porter*, No. ED98908, 2013 WL 5628670, at *1 (Mo. Ct. App. 2013).

22. Respondent’s Substitute Brief, *supra* note 13, at *13.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at *14.

28. *Id.*

the State that “it was possible a child might recant upon seeing someone get[ting] arrested, notwithstanding whether or not the incident occurred.”²⁹

Porter moved for judgment of acquittal at the close of all evidence, arguing that the State did not make a submissible case after testimony was presented, stating that the Grandmother pressured K.W. to say Porter had touched her.³⁰ The trial court denied Porter’s motions and submitted the case to the jury, who found Porter guilty on all three counts.³¹ The trial court subsequently granted Porter’s motion for judgment of acquittal on his first-degree child molestation charge (Count III) and sentenced Porter “to two concurrent terms of twenty-five years in the Missouri Department of Corrections.”³²

On appeal, Porter contended that the trial court erred by overruling his motion for judgment of acquittal at the close of all evidence and convicting him on Count I (first-degree statutory sodomy) because K.W.’s trial testimony was inconsistent and contradictory and should have required corroboration in order to convict Porter.³³ Porter also argued that the trial court erred in overruling his motion for judgment of acquittal at the close of all evidence and in convicting him of Count II (first-degree statutory sodomy) because K.W.’s “out-of-court statement that Porter touched her vagina with his tongue was inconsistent with, contradicted, and not corroborated by, her other out-of-court statements that nobody touched any part of her body.”³⁴ Additionally, Porter contended that the trial court erred by granting the jury’s request to observe all evidence and in sending K.W.’s CAC interview to the jury for review.³⁵ Porter argued that K.W.’s statements on the tapes were testimonial evidence under Missouri Revised Statutes Section 491.075.1 and gave the jury the ability to listen to the recorded testimony as often as desired, which created the presumption that the recorded interview was to be given more weight.³⁶

The Missouri Court of Appeals for the Eastern District affirmed the trial court’s judgment sentencing Porter for two counts of first-degree statutory

29. *Id.* at *15.

30. Appellant’s Substitute Brief, *State v. Porter*, 439 S.W.3d 208 (Mo. 2014) (en banc) (No. SC93851), 2014 WL 1234675, at *20-21.

31. *State v. Porter*, No. ED98908, 2013 WL 5628670, at *1 (Mo. Ct. App. 2013). The jury requested all exhibits presented in trial in its deliberations, including the CAC video interview of K.W. *Porter*, 439 S.W.3d at 214.

32. *Porter*, 2013 WL 5628670, at *1. There was insufficient evidence that Porter touched K.W.’s head with his penis. *Porter*, 439 S.W.3d at 211. On direct examination, K.W. testified that Porter only touched her private part with his hand and did not touch her with any other part of his body. Appellant’s Substitute Brief, *supra* note 30, at *36.

33. *Id.* at *22.

34. *Id.* at *23.

35. *Id.* at *24.

36. *Id.*

sodomy.³⁷ The appellate court denied Porter's argument that the corroboration rule should be invoked because K.W.'s trial testimony was so contradictory to her out-of-court statement to the CAC interviewer.³⁸ The court reasoned, "As noted by our Supreme Court, 'inconsistent or contradictory statements by a young child relating a sexual experience [do] not, in [themselves] deprive the testimony of all probative force.'"³⁹ The court's rationale was that just because K.W.'s testimony and out-of-court statements were inconsistent did not mean that her trial testimony was "so contradictory or inconsistent as to deprive it of all probative force" as the corroboration rule requires.⁴⁰ The court decided that "[a]ny contradictions or inconsistencies in K.W.'s testimony were properly weighed by the jury in their determination of her credibility."⁴¹ As to Porter's third argument, nothing in the record reflected whether the parties were notified of the jury's request of all state and defense exhibits, videos, and lab reports or whether either party objected to the fulfillment of the jury's request.⁴² Because the record did not indicate what happened after the jury's request for exhibits, the court determined that "[i]n the absence of any record indicating what occurred at the trial court with respect to [the] claim of error, [it was] obligated to affirm the trial court."⁴³

Porter again appealed his convictions for two counts of first-degree statutory sodomy, contending the corroboration rule and destructive contradictions doctrine entitled him to judgments of acquittal on the two counts because K.W.'s testimony was contradictory and lacked sufficient corroboration.⁴⁴ On appeal, the Supreme Court of Missouri abolished the corroboration rule and destructive contradictions doctrine "because, among other reasons, both require[d] appellate courts to act as the finder of fact," which is inconsistent with the standard of review for challenges to the sufficiency of evidence.⁴⁵

III. LEGAL BACKGROUND

The corroboration rule and the destructive contradictions doctrine have been in existence since early common law.⁴⁶ Both rules were initially used to scrutinize the testimony of sexual assault victims and to guide factfinders in assessing the believability of victims.⁴⁷ While the doctrines are similar, the

37. *Porter*, 2013 WL 5628670, at *5.

38. *Id.*

39. *Id.* at *3 (quoting *State v. Silvey*, 894 S.W.2d 662, 673 (Mo. 1995) (en banc)).

40. *Porter*, 2013 WL 5628670, at *3.

41. *Id.*

42. *Id.* at *5.

43. *Id.*

44. *State v. Porter*, 439 S.W.3d 208, 211 (Mo. 2014) (en banc).

45. *Id.* at 210, 212-13.

46. *See infra* Part III.A-B.

47. *See infra* Part III.A-B.

corroboration requirement is strictly limited to sexual assault cases and is, therefore, more closely analyzed below.⁴⁸

A. The Corroboration Rule

1. Early Examples of the Corroboration Rule in Missouri

The use of the corroboration rule in sex crimes cases in Missouri can be observed as early as the nineteenth century.⁴⁹ One such example, *State v. Sibley*, was decided in 1895, where the victim, Lula Hawkins, accused her stepfather of raping her as many as forty times.⁵⁰ Lula testified at trial that her stepfather first raped her when she was between the ages of twelve and thirteen.⁵¹ Soon after, Lula reported the rape to her mother who then “told her that she would have to submit to [her stepfather’s] wishes or leave home.”⁵² It was later discovered that Lula was pregnant, and she was then banished from her home and given what she thought was medication to cause her to have an abortion.⁵³ In its analysis, the court reasoned, “Corroborating evidence must proceed from extraneous sources, and not from the mouth of the witness, when on the stand.”⁵⁴ Thus, Lula’s testimony alone was not enough to convict her stepfather.⁵⁵

At trial, the State presented witnesses on Lula’s behalf who testified that her stepfather had bad character for chastity and virtue.⁵⁶ No evidence was presented to bolster Sibley’s character.⁵⁷ In reversing the trial court’s judgment convicting Lula’s stepfather of defiling and carnally knowing a female under eighteen years of age, the court disregarded evidence of her stepfather’s bad character, determining that “it is a matter of common knowledge that the bad character of a man for chastity does not even in the remotest degree affect his character for truth, when based upon that alone, while it does that of a woman.”⁵⁸ The court then cited the likes of Lord Byron, Lord Somers, and Charles James Fox as men who had a weakness for sexual pleasure, but were nevertheless great and noble.⁵⁹ A woman’s unchaste history was seen to have thrown doubt on her honesty and therefore the credibility of her testimony.⁶⁰

48. See *infra* Part III.A-B.

49. See *State v. Sibley*, 33 S.W. 167, 170 (Mo. 1895) (en banc).

50. *Id.* at 168.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* at 170.

55. *Id.*

56. *Id.*

57. See *id.*

58. *Id.* at 171.

59. *Id.*

60. See *id.*

Evidence of Lula's previous sexual relationships was presented at trial in an effort to show that Lula was unchaste.⁶¹ Her testimony at trial was immediately doubted and seen as so contrary to the evidence presented that a conviction required some other sort of corroborating evidence.⁶²

Prior to *Sibley*, in 1891 the Supreme Court of Missouri had held that because there was no adequate explanation for the delay of a sexual assault victim's report of an assault, evidence of her report was to be excluded as highly improbable and contrary to the demeanor of "actual" sexual assault victims.⁶³ Because the victim's reaction to her assault was considered so contrary to the reaction of a woman who actually had been raped, the court required corroboration.⁶⁴ The court instructed the jury: "[I]n determining the degree of credit to be given to the evidence of the prosecutrix in regard to the alleged rape, it is competent to consider the conduct of the prosecuting witness at and about the time thereof."⁶⁵ In making this determination, juries were to consider the length of time between an alleged rape and the time a victim reported it, whether the victim stayed in the company of the defendant after the alleged offense without making a complaint, and the victim's relationship and conduct with her non-accused husband after the alleged offense.⁶⁶ The court quoted William Blackstone and his assessment of the credibility of sexual assault victims: "[T]he credibility of her testimony, and how far forth she is to be believed, must be left to the jury, upon the circumstances of fact that concur with her testimony," thus giving rise to the need for evidence to corroborate a sexual assault victim's testimony.⁶⁷ Blackstone further states,

If she be of evil fame, and stand unsupported by others; if she concealed the injury for any considerable time after she had opportunity to complain . . . and [if] she made no outcry . . . these and the like circumstances carry a strong . . . presumption that her testimony is false or feigned.⁶⁸

In its reliance on Blackstone, the court reasoned, "When an outrage has been committed on a woman, the instincts of her nature prompt her to make her wrongs known, and to seek sympathy and assistance."⁶⁹ The complaint was seen as a woman's "natural expression of her feelings,"⁷⁰ speaking in favor of the likelihood that the complained of offense actually occurred. No

61. *Id.*

62. *See id.* at 170.

63. *State v. Patrick*, 17 S.W. 666, 671 (Mo. 1891) (en banc).

64. *See id.* at 671-72.

65. *Id.* at 669.

66. *Id.*

67. *Id.* at 670 (quoting 4 WILLIAM BLACKSTONE, COMMENTARIES 213).

68. *Patrick*, 17 S.W. at 670.

69. *Id.* at 670 (quoting *Parker v. State*, 10 A. 219, 220 (Md. 1887)).

70. *Patrick*, 17 S.W. at 670-71.

consideration was given to the varying reactions of those who have experienced traumatizing events.

The court more clearly articulated an early interpretation of the corroboration rule in the 1908 case of *State v. Goodale*.⁷¹ There, the court stated:

[I]t is the law of this state . . . that a conviction for rape may be sustained upon the uncorroborated evidence of the outraged female[.] [I]t is nevertheless equally well settled that the appellate court will closely scrutinize the testimony upon which the conviction was obtained, and, if it appears incredible and too unsubstantial to make it the basis of a judgment, will reverse the judgment.⁷²

This rule was refined in *State v. Tevis*, a 1911 case to which the Supreme Court of Missouri later gave credit for creating the corroboration rule.⁷³ The court held that defendants can be convicted for rape or incest based on the uncorroborated evidence of the victim, “but when the evidence of such prosecutrix is of a contradictory nature, or when applied to the admitted facts in the case her testimony is not convincing but leaves the mind of the court clouded with doubts, she must be corroborated, or the judgment cannot be sustained.”⁷⁴ This standard appeared to be slightly less strict than *Sibley*’s requirement of corroborating evidence regardless of the contents of the victim’s testimony.⁷⁵

In *Tevis*, the victim testified that her father had both raped and molested her for a period of more than five years.⁷⁶ The victim did not report the assaults to anyone until thirteen months after the last act and testified that she waited to report the actions only because she was afraid of her father.⁷⁷ The court held that the evidence produced at trial was insufficient to convict the victim’s father because it was uncorroborated and the court’s mind was clouded with doubt after defense counsel presented evidence of the victim’s disobedience toward her father.⁷⁸ The court also found it highly unlikely that the victim’s father could continue to rape the victim for such an extended period of time without the victim’s mother discovering the assaults.⁷⁹ The court believed the victim’s disobedience toward her father cast complete doubt on her contention that she did not tell her mother sooner because she was afraid of her father’s reaction.⁸⁰

71. 109 S.W. 9 (Mo. 1908).

72. *Id.* at 11.

73. *See State v. Porter*, 439 S.W.3d 208, 211 (Mo. 2014) (en banc).

74. *State v. Tevis*, 136 S.W. 339, 341 (Mo. 1911).

75. *Compare id.* at 341 *with State v. Sibley*, 33 S.W. 167, 170 (Mo. 1895) (en banc).

76. *Tevis*, 136 S.W. at 341.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

In *State v. Burton*, decided in 1946, Burton relied on the corroboration rule set forth in *Tevis* when he appealed his conviction for rape based on the contention that the victim's evidence at trial was "insufficient to sustain the verdict for the reason that the uncorroborated testimony of the prosecutrix [was] contrary to common experiences of womanhood, [was] improbable, and [was] contradicted by other witnesses."⁸¹ Burton specifically pointed to evidence that the victim was not hysterical or crying and did not report an alleged rape to passersby.⁸² The court found it difficult to believe that a woman would not cry or become even slightly hysterical if five men had actually forcibly raped her, and it held that the victim acted in a nature so contradictory to the expected behavior of a woman who had been raped by five men that her testimony must be corroborated.⁸³ The court reasoned,

It is true that her pants were torn, yet there is no evidence that they were soiled. It is true that [the doctor] testified that at some indefinite time she had had sexual relations with a man, but this testimony does not tend to corroborate her testimony that she was forcibly raped. These appellants denied her testimony that they had sexual relations with her at that time or at any other time, and the evidence showed that these appellants bore good reputations.⁸⁴

This holding reflects the notion in *State v. Sibley* that it is "common knowledge" that only a woman's bad character for chastity affects her character for truth – that women are less believable than men – and reaffirms the belief held by William Blackstone that courts can presume an alleged victim's testimony is false when the witness makes no outcry and does not take advantage of an opportunity to report the attack.⁸⁵

2. The Movement from a Corroboration Requirement

More recently, Missouri courts have strictly limited the application of the corroboration rule and given more deference to judges and juries as the factfinders who are better able to assess the credibility of sexual assault victims.⁸⁶ In *State v. Silvey*, a case decided in 1995, the Supreme Court of Missouri did not apply the corroboration rule as strictly as it had in the cases pre-

81. *State v. Burton*, 196 S.W.2d 621, 621 (Mo. 1946), *abrogated by* *State v. Porter*, 439 S.W.3d 208 (Mo. 2014) (en banc); *see id.* at 622-23 (quoting *Tevis*, 136 S.W. at 341).

82. *Burton*, 196 S.W.2d at 623.

83. *Id.*

84. *Id.*

85. *See State v. Sibley*, 33 S.W. 167, 171 (Mo. 1895) (en banc); *see also State v. Patrick*, 17 S.W. 666, 671 (Mo. 1891) (en banc).

86. *State v. Silvey*, 894 S.W.2d 662, 673 (Mo. 1995) (en banc), *abrogated by State v. Porter*, 439 S.W.3d 208 (Mo. 2014) (en banc).

viously mentioned.⁸⁷ The court held that the victim's testimony was not "so contradictory or inconsistent as to deprive it of all probative force. Any contradictions or inconsistencies were properly weighed by the jury in their determination of [the victim's] credibility."⁸⁸

In *State v. Silvey*, a four-year-old victim, A.P., testified at trial that Silvey touched her genitals with his hands, a gun, and a butterfly knife.⁸⁹ Silvey appealed his conviction for two counts of sodomy, arguing there had been insufficient evidence to convict him because A.P.'s testimony had not been corroborated as required and was "so inconsistent and contradictory as to deprive it of any probative force."⁹⁰ While the court admitted that A.P.'s testimony was inconsistent and contradictory to an extent, "inconsistent or contradictory statements by a young child's relation of a sexual experience [do] not, in [themselves], deprive the testimony of all probative force."⁹¹ Because A.P.'s testimony did not conflict with physical evidence, surrounding circumstances, and common experience, it was sufficient to sustain Silvey's convictions without corroboration.⁹²

The Missouri Court of Appeals for the Eastern District questioned the validity and continued purpose of the corroboration rule when it decided *State v. Nelson* in 1991, four years prior to the Supreme Court of Missouri's reaffirmation of the rule in *Silvey*.⁹³ Such questioning appeared in the dicta of *Nelson*, where the court stated: "Missouri courts of appeals have questioned the continued existence of [the corroboration rule]."⁹⁴ Nelson relied on the corroboration rule when appealing his sexual assault convictions, arguing that the victim's testimony at trial was too contradictory and unconvincing to stand without corroborating evidence.⁹⁵ The State argued on appeal that the corroboration rule "should no longer exist and that the testimony of a victim of a sexual offense should be subject to the same standard of review as that of any other witness."⁹⁶ The court then evaluated the history of the corroboration rule in its analysis.⁹⁷ Early Missouri cases had held that appellate courts should scrutinize testimony if it seems "too incredible and unsubstantial to be the basis of a judgment."⁹⁸ Since appellate courts were required to assess the weight of a victim's testimony, "appellate courts reviewed the victim's testi-

87. *Id.*

88. *Id.*

89. *Id.* at 664.

90. *Id.* at 672.

91. *Id.* at 673.

92. *Id.*

93. *State v. Nelson*, 818 S.W.2d 285, 289 (Mo. Ct. App. 1991).

94. *Id.* at 289-90 (citing *State v. Platt*, 496 S.W.2d 878, 881 (Mo. Ct. App. 1973)); *State v. Ellis*, 710 S.W.2d 378, 380 (Mo. Ct. App. 1986).

95. *Nelson*, 818 S.W.2d at 288.

96. *Id.*

97. *Id.* at 288-89.

98. *Id.* at 288 (quoting *State v. Goodale*, 109 S.W. 9, 11 (Mo. 1908)).

mony in detail, making their own assessments of whether the testimony was credible and convincing.”⁹⁹ The court concluded,

[T]here seems to be no logical basis for a separate rule, even a restricted one, which relates solely to the review of the testimony of a victim of a sexual offense. The standards for reviewing the testimony of any witness in a criminal case should be sufficient to assess the testimony of a victim of a sexual offense.¹⁰⁰

The Missouri Court of Appeals for the Southern District shared the same notion as the Eastern District.¹⁰¹ In *State v. Griffith*, the court recognized that all Missouri appellate courts have criticized the corroboration rule.¹⁰² The Southern District cited *State v. Nelson* and the Western District’s decision in *State v. Peters*, which “complained of the ‘inconsistent and sometimes confusing evidentiary and appellate review rules that have evolved in sex offense cases,’ [raising] the pertinent ‘question of why the standards used in every other case would not be sufficient and preferable.’”¹⁰³ The Western District found no reason for a corroboration rule, but like in *State v. Griffith*, the court continued to apply the corroboration rule because the law had not yet been invalidated.¹⁰⁴

B. The Destructive Contradictions Doctrine

Both the corroboration rule and the destructive contradictions doctrine were first created for use in sexual assault cases because the testimony of victims was closely scrutinized and automatically deemed suspect.¹⁰⁵ This premise was based upon the “admonition of Lord Hale that ‘it must be remembered that this is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused.’”¹⁰⁶ While the evidentiary doctrines have an identical genesis, their applications now vary and they are no longer considered one and the same.¹⁰⁷

The destructive contradictions doctrine, as applied to sexual assault cases, was an exception to the general rule that corroboration of a victim’s testi-

99. *Nelson*, 818 S.W.2d at 289.

100. *Id.*

101. *State v. Griffith*, 312 S.W.3d 413, 424 (Mo. Ct. App. 2010).

102. *Id.*

103. *Id.* (quoting *State v. Peters*, 186 S.W.3d 774, 779-80 (Mo. Ct. App. 2006)).

104. *Id.* at 425.

105. *State v. Wadel*, 398 S.W.3d 68, 79 (Mo. Ct. App. 2013), *abrogated by State v. Porter*, 439 S.W.3d 208 (Mo. 2014) (en banc).

106. *State v. Goodale*, 109 S.W. 9, 11 (Mo. 1908); *see State v. Burns*, 671 S.W.2d 306, 311 (Mo. Ct. App. 1984) (explaining the limited applicability of the destructive contradictions doctrine, making it harder for the accused to use the doctrine in defending him or herself).

107. *Wadel*, 398 S.W.3d at 79.

mony at trial is not required in order to have sufficient evidence for a conviction.¹⁰⁸ It provides that “a witness’s testimony loses probative force when his or her statements at trial are so inconsistent, contradictory, and diametrically opposed to one another that they rob the testimony of all probative force.”¹⁰⁹ Therefore, a victim’s testimony must be corroborated if it is “inherently incredible, self-destructive or opposed to known physical facts’ on a vital point or element.”¹¹⁰ However, the destructive contradictions doctrine applies to a victim’s trial testimony only when it is deemed strikingly contradictory and inconsistent to known physical facts.¹¹¹ The doctrine does not apply to “contradictions between the victim’s trial testimony and prior out-of-court statements, to contradictions as to collateral matters, or to inconsistencies not sufficient to make the testimony inherently self-destructive.”¹¹² The application of the destructive contradictions doctrine, as well as the corroboration rule, assumed juries were unable to make their own credibility and factual determinations – an issue directly addressed by the Supreme Court of Missouri in *Porter*.

IV. THE INSTANT DECISION

“Generally,” the court noted, “a witness’s testimony is sufficient evidence to sustain a conviction, and the trier of fact is left to determine credibility issues.”¹¹³ In sex crimes, however, Missouri had used a corroboration rule that applied when “the victim’s testimony [was] so contradictory and in conflict with physical facts, surrounding circumstances, and common experience, that its validity [was] thereby rendered doubtful.”¹¹⁴

In its decision, the court highlighted two fundamental defects warranting the corroboration rule’s abolition.¹¹⁵ The court first noted, “[T]he corroboration rule requires an appellate court to engage in credibility determinations that are the province of the trier of fact.”¹¹⁶ Because appellate courts are required to make credibility determinations, “the corroboration rule is inconsistent with the appropriate standard of review for challenges to the sufficiency of the evidence. That standard is premised on the notion that appellate

108. *State v. Wright*, 998 S.W.2d 78, 81 (Mo. Ct. App. 1999), *abrogated by Porter*, 439 S.W.3d 208.

109. *State v. Goudeau*, 85 S.W. 3d 126, 131-32 (Mo. Ct. App. 2002), *abrogated by Porter*, 439 S.W.3d 208.

110. *State v. Uptegrove*, 330 S.W.3d 586, 590 (Mo. Ct. App. 2011) (quoting *T.L.C. v. T.L.C.*, 950 S.W.2d 293, 295 (Mo. Ct. App. 1997)), *abrogated by Porter*, 439 S.W.3d 208.

111. *Uptegrove*, 330 S.W.3d at 590.

112. *Wright*, 998 S.W.2d at 81.

113. *Porter*, 439 S.W.3d at 211.

114. *Id.* at 211-12 (quoting *State v. Silvey*, 894 S.W.2d 662, 673 (Mo. 1995) (en banc)).

115. *Porter*, 439 S.W.3d at 212.

116. *Id.*

courts are not a ‘super juror’ with the power to override factual determinations supported by sufficient evidence.”¹¹⁷

Second, the court determined that because the rule only applied to sexual assault cases, the corroboration rule was premised on two false assumptions: “(1) that the testimony of sex crime victims is inherently less credible than the testimony of other crime victims; and (2) that judges and juries are uniquely unable to make accurate factual determinations in sex crime cases.”¹¹⁸ The court determined there is no reason to assume that the factfinder in a sex case is any less able to arrive at accurate factual determinations than factfinders in other criminal cases.¹¹⁹ Because the corroboration rule required Missouri appellate courts to make factual determinations in sex cases that are otherwise left to the factfinder, “[t]he corroboration rule [was] abolished in Missouri. Missouri appellate courts reviewing the sufficiency of the evidence to support a conviction for a sex crime, as in all other cases, will [now] review challenges to the sufficiency of the evidence pursuant to [the] generally applicable standard of review.”¹²⁰

Similar to the corroboration rule, the destructive contradictions doctrine states that “a witness’s testimony ‘loses probative value when his or her statements at trial are so inconsistent, contradictory, and diametrically opposed to one another that they rob the testimony of all probative force.’”¹²¹ While the destructive contradictions doctrine is not limited only to sex crimes, it similarly requires appellate courts to make credibility determinations that are properly left to the factfinder at trial.¹²²

The court abolished the destructive contradictions doctrine in Missouri and, as a result, assessed Porter’s insufficient evidence claim according to the usual standard of review concerning the sufficiency of the evidence to support a criminal conviction: “determining whether there is sufficient evidence from which a reasonable jury could have found the defendant guilty beyond reasonable doubt.”¹²³ This standard is not a determination of whether the court believes the evidence put on at trial establishes the defendant is guilty beyond a reasonable doubt, but rather is a question of *whether a rational factfinder* “could have found the essential elements of the crime beyond a reasonable doubt.”¹²⁴

Because the court decided to abolish the corroboration rule and the destructive contradictions doctrine, the court did not assess Porter’s claim that K.W.’s testimony and out-of-court statements were so contradictory that they

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.* at 212-13.

121. *Id.* at 213 (quoting *State v. Uptegrove*, 330 S.W.3d 586, 590 (Mo. Ct. App. 2011)).

122. *Id.*

123. *Id.* at 211, 213.

124. *Id.* at 211 (quoting *State v. Nash*, 339 S.W.3d 500, 509 (Mo. 2011) (en banc)).

could not constitute substantive evidence.¹²⁵ Instead, the court determined that the “inconsistencies in K.W.’s testimony [did] not render the evidence insufficient.”¹²⁶ The court reasoned that the jury was in the best position to determine any credibility issues raised against K.W., and “[t]he jury resolved the inconsistencies in the context of evidence that placed K.W., without pants, alone with a shirtless Porter in his room with his head between her legs, engaging in activity that the Grandmother witnessed and described in terms consistent with oral sex.”¹²⁷ Because this evidence must be viewed in the light most favorable to the prevailing party at trial (the State) and because of the abolition of the corroboration rule and the destructive contradictions doctrine, the court held there “was sufficient evidence to permit a rational fact-finder to find beyond a reasonable doubt that Porter touched K.W.’s genitals with his hand and with his tongue.”¹²⁸

As to Porter’s argument that the trial court erred in allowing the jury to review K.W.’s videotaped CAC interview as often as jurors wished, the court affirmed the court of appeals’ determination and held that “in the absence of any record showing what occurred at the trial level related to this claimed error, the Court on appeal is obligated to affirm the trial court.”¹²⁹ Because the record did not demonstrate whether Porter objected to the trial court’s decision to permit the jury to view the tapes, Porter’s claim was unpreserved and speculative and could not “serve as a basis for reversing the judgment of conviction.”¹³⁰

V. COMMENT

There is no question that the Supreme Court of Missouri’s choice to abolish the corroboration rule and destructive contradictions doctrine was a good decision.¹³¹ *State v. Porter* represents the court’s stand to abolish sexist evidentiary rules that placed doubt on a sexual assault victim who chose to testify and that effectively put that victim on trial before a scrutinizing jury and panel of appellate judges. The *Porter* decision reflects the truth that the testimony of victims of sexual assaults, who are often female,¹³² is no less credible than the testimony of victims of any other crime. No state retains the general corroboration rule exhibited in *Sibley*, which requires evidence in addition to a victim’s testimony in order to secure a conviction for sexual

125. *Id.* at 213.

126. *Id.* at 214.

127. *Id.*

128. *Id.*

129. *Id.* at 215 (quoting *State v. Naucke*, 829 S.W.2d 445, 460 (Mo. 1992) (en banc)).

130. *Id.* at 214-15.

131. *Id.* at 213.

132. See *Female Victims of Violence*, U.S. DEP’T OF JUST. 6, <http://www.bjs.gov/content/pub/pdf/fvv.pdf> (last updated Oct. 23, 2009).

assault.¹³³ Although *Porter* has eliminated the role of the appellate courts as a “super juror,” the decision will have little effect on the weight actual jurors give victim testimony.¹³⁴ While use of the corroboration rule has virtually vanished, more must be done to eliminate its continued application by juries and to eliminate the gender and sex norms that continue to pervade courtrooms across Missouri and the United States.

A. *The Effect of the Corroboration Rule and the Call for Abolishment*

As stated in *Porter*, the corroboration rule assumes: (1) that the testimony of victims of sexual assault is less credible than the testimony of victims of other crimes and (2) that judges and juries are ill-suited to make factual determinations in sexual assault cases.¹³⁵ The doubt attributed to sexual assault victims’ testimony is evident when considering that a conviction for the crime of robbery would be upheld as long as the jury found the defendant’s guilt beyond a reasonable doubt, regardless of whether the robbery victim’s testimony was corroborated.¹³⁶ In contrast, a victim of sexual assault would have no remedy unless other evidence corroborated her testimony at trial.¹³⁷ As the Supreme Court of Idaho stated, as cited in *Porter*, “[t]here should be no different rule in a rape case from any other criminal case, since it falls within no exception.”¹³⁸

The corroboration rule suggests that “if a woman were really raped, she would have corroborating evidence of the assault [and,] therefore, her failure to produce corroboration means that she was not really raped.”¹³⁹ The corroboration rule and the latter contention effectively built barriers to the successful prosecution of sexual assaults and placed extreme doubt on a victim’s credibility.¹⁴⁰ As discussed in Part III of this Note, this doubt was apparent in Missouri’s archaic and patriarchal application of the corroboration rule. These cases reflected that an “unchaste” history affected a victim’s propensity to tell the truth and that any past conduct not in accord with what men expected of a victim of sexual assault served to make the victim’s testimony

133. Patricia J. Falk, “*Because Ladies Lie*”: *Eliminating Vestiges of the Corroboration and Resistance Requirements from Ohio’s Sexual Offenses*, 62 CLEV. ST. L. REV. 343, 349 (2014).

134. *See Porter*, 439 S.W.3d at 212.

135. *Id.*

136. *State v. Byers*, 627 P.2d 788, 792 (Idaho 1981).

137. *Id.*

138. *Id.*

139. Michelle J. Anderson, *The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instructions on Campus Sexual Assault*, 84 B.U. L. REV. 945, 979 (2004).

140. Aya Gruber, *Rape, Feminism, and the War on Crime*, 84 WASH. L. REV. 581, 590 (2009).

inherently contradictory.¹⁴¹ According to Professor Maria Bevacqua, rules like the corroboration rule and destructive contradictions doctrine codified “both the distrust of women’s charges and widely held assumptions about the significance of a woman’s [chastity].”¹⁴²

The corroboration rule served as a hurdle for successful convictions of sexual assault because “the corroboration rule, in effect, arbitrarily single[d] out victims of sex offenses as a class whose credibility [was] immediately suspect.”¹⁴³ Sexual assaults by their very nature make corroborating evidence difficult to obtain.¹⁴⁴ Determining whether a sexual assault took place often turns solely on the conflicting testimony of the victim and the defendant, leaving the factfinder to resolve a “he-said-she-said” dilemma.¹⁴⁵ The corroboration rule required evidence beyond the victim’s report of the sexual assault and her testimony at trial.¹⁴⁶ Examples of corroborating evidence included physical injuries from the assault, torn clothing, and other evidence of a struggle.¹⁴⁷

Evidence of violence and physical injury is relatively uncommon in sexual assaults.¹⁴⁸ Many sexual assaults do not involve a physical fight between the attacker and the victim and many attackers are able to subdue victims through verbal coercion, unknown consumption of a “date rape” drug, or because the victim is “frozen with fear.”¹⁴⁹ While the prosecution of sexual assaults presents issues very different from many other crimes, these differences do not warrant the level of doubt victims must overcome in order for justice to be served and their attackers convicted.

B. The Corroboration Rule and Sexual Assault Evidentiary Doctrines

The corroboration rule and destructive contradictions doctrine were just two evidentiary doctrines that made proving the crime of rape and the decision to pursue criminal charges even more difficult for victims. Victims also had to overcome additional rules that were unique to sexual assault, such as the prompt complaint requirement, the utmost resistance requirement, the

141. See *State v. Sibley*, 33 S.W. 167, 171 (Mo. 1895) (en banc); see also *State v. Patrick*, 17 S.W. 666, 670 (Mo. 1891).

142. MARIA BEVACQUA, RAPE ON THE PUBLIC AGENDA: FEMINISM AND THE POLITICS OF SEXUAL ASSAULT 89 (2000).

143. *Byers*, 627 P.2d at 791.

144. See generally *id.* (attributing the difficulty in corroborating sex assaults to the lack of eye witnesses, the conditioned response of women when faced with an aggressive assailant to not resist, and in certain cases, the lack of physical bruising and potentially the closeness of the relationship between the assailant and the victim).

145. Note, *The Rape Corroboration Requirement: Repeal Not Reform*, 81 YALE L.J. 1365, 1382 (1972).

146. Susan Estrich, *Rape*, 95 YALE L.J. 1087, 1138-39 (1986).

147. Anderson, *supra* note 139, at 979.

148. See *id.*

149. *Id.* at 980.

marital rape exemption, and a virtual chastity requirement.¹⁵⁰ These rules, along with the absence of rape shield laws,

reflected age-old prejudices and unfair, pervasive doubts about the credibility of any woman who claimed to have been raped. When a woman did decide to confront the criminal justice system and pursue criminal charges against her attacker, she was met with obstacles that the legal system had put into place to thwart a fair resolution of her charges. The law wouldn't accept her word alone, and even though rapes are almost always done in a private setting with no witnesses present, corroboration was required.¹⁵¹

The culmination of these doctrines resulted in few successful convictions for rape and led to a relatively low number of reports of assaults.¹⁵² Women felt as if they were met with disbelief and opposition at every stage of prosecution.¹⁵³ The varying evidentiary doctrines proved to be a substantial burden, often acting interdependent of each other; a prompt complaint might serve as corroborating evidence or a lack of corroborating evidence might trigger a cautionary instruction, warning factfinders of Lord Hale's belief that accusations of rape were easy to make and difficult to refute.¹⁵⁴

In an effort to alleviate some of the burden victims faced, feminists lobbied for legal reforms in the mid-1970s and 1980s, an era commonly referred to as the "second-wave" of feminist reform.¹⁵⁵ This movement reflected an effort to reform the chauvinistic laws regarding sexual assault and to educate the public about stereotypes surrounding such laws and the evolution of sex and gender norms.¹⁵⁶ Reform indicated a serious effort "to increase the prosecution, conviction, and punishment for rape," and, in turn, encourage victims to report sexual assaults.¹⁵⁷ These efforts proved to be largely successful because state and federal legislatures "enacted rape shield laws, provided for privileged protection of rape counseling records, repealed marital rape exceptions, eliminated evidentiary corroboration requirements and cautionary in-

150. *Id.* at 953-54.

151. Richard Klein, *An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness*, 41 AKRON L. REV. 981, 1051-52 (2008).

152. Christina E. Wells & Erin Elliott Motley, *Reinforcing the Myth of the Crazy Rapist: A Feminist Critique of Recent Rape Legislation*, 81 B.U. L. REV. 127, 146 (2001).

153. *See id.* at 148.

154. Anderson, *supra* note 139, at 948, 954; *see* State v. Wadel, 398 S.W.3d 68, 78 (Mo. Ct. App. 2013), *abrogated by* State v. Porter, 439 S.W.3d 208 (Mo. 2014) (en banc).

155. Gruber, *supra* note 140, at 591-92.

156. *Id.*

157. Wells & Motley, *supra* note 152, at 129.

structions regarding the absence of corroboration, and abolished the mistake of fact defense.”¹⁵⁸

C. *State v. Porter Is Not Enough*

Common law corroboration requirements codified archaic and patriarchal notions about women and sexuality. Evidentiary doctrines mirrored “classic rape myths” and were effective obstacles to the successful reporting and subsequent prosecution of sexual assaults.¹⁵⁹ While the corroboration rule has virtually disappeared from the vast majority of jurisdictions, the rule continues to pervade trials because jurors continue to require evidence of corroboration in order to convict despite abolition of the formal requirement.¹⁶⁰ Notwithstanding the best efforts of reform, there is little evidence to suggest that there has been significant change in the criminal justice system.¹⁶¹ Sexual assaults remain prevalent and successful prosecutions rare; data suggests that “less than ten percent of all sexual assault assailants will be convicted for their crime.”¹⁶²

“Rape myths” is the term given to beliefs that a victim brought on her own assault or was at fault for the attack because of her behavior or character.¹⁶³ It is true that “both men and women in our society have long accepted norms of male aggressiveness and female passivity which lead to a restricted understanding of rape.”¹⁶⁴ Professor Morrison Torrey of DePaul University College of Law identifies common rape myths such as:

women mean “yes” when they say “no”; women are “asking for it” when they wear provocative clothes, go to bars alone, or simply walk down the street at night; only virgins can be raped; women are vengeful, bitter creatures “out to get men”; if a woman says “yes” once, there is no reason to believe her “no” the next time; women who “tease” men deserve to be raped; the majority of women who are raped are promiscuous or have bad reputations; a woman who goes to the home of a man on the first date implies she is willing to have sex; women cry rape to cover up an illegitimate pregnancy.¹⁶⁵

158. Francis X. Shen, *How We Still Fail Rape Victims: Reflecting on Responsibility and Legal Reform*, 22 COLUM. J. GENDER & L. 1, 54 (2011).

159. See Morrison Torrey, *When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions*, 24 U.C. DAVIS L. REV. 1013, 1040 (1991).

160. Gruber, *supra* note 140, at 597-98.

161. Shen, *supra* note 158, at 7-8.

162. *Id.* at 8.

163. *Id.* at 14-15, 19.

164. Estrich, *supra* note 146, at 1093.

165. Torrey, *supra* note 159, at 1014-15.

These rape myths can develop through the influence of family and friends, the media, and life experiences.¹⁶⁶ These notions about women and rape have been refuted by collected data time and time again, but some of these beliefs are so engrained in jurors and society that some jurors will continue to apply the corroboration doctrine *de facto*, despite the fact that Missouri has abolished the rule *de jure*.¹⁶⁷ As Professor Torrey states, these rape myths “continue to play an important role in the way judges, juries, and others perceive testimony in rape trials.”¹⁶⁸

Societal change can often be initiated in the courts, but reformation of the law regarding sexual assaults has not yet led to the fundamental changes needed to replace widely held rape myths with rape truths. While over three decades have passed since second-wave reform, evidence of belief in rape myths and archaic notions about corroboration persist. Examples are prevalent in the media. Former U.S. Senate candidate for Missouri, Todd Akin, may infamously be remembered for his explanation of his stance against abortions for women whose rape resulted in pregnancy: “If it’s a legitimate rape, the female body has ways to try to shut that whole thing down.”¹⁶⁹ Some commentators believed these comments would actually help Akin’s political career.¹⁷⁰ In the fall of 2014, Robert R. Jennings, then President of Lincoln University of the Commonwealth of Pennsylvania, spoke at an all-women’s convocation.¹⁷¹ At this convocation, Jennings responded to concern regarding the incidence of sexual assault on campus: “[W]e had, on this campus last semester three cases of young women who after having done whatever they did with young men and then it didn’t turn out the way they wanted it to turn out, guess what they did? They went to Public Safety and said, ‘He raped me.’”¹⁷²

These examples reflect the beliefs of some men, and even some educated men, in modern times. While Todd Akin and Robert R. Jennings are relatively public figures, they are among the pool of potential jurors that may be left to decide whether a sexual assault took place and whether to convict. Jurors’ beliefs reflect the attitudes the community has toward women and sexual assault, and it is the “very lack of knowledge about the reality of rape that allows citizens in general and jurors in particular to believe in rape

166. Shen, *supra* note 158, at 22.

167. *See id.* at 24-25.

168. Torrey, *supra* note 159, at 1015.

169. John Eligon & Michael Schwartz, *Senate Candidate Provokes Ire with “Legitimate Rape” Comment*, N.Y. TIMES (Aug. 19, 2012), http://www.nytimes.com/2012/08/20/us/politics/todd-akin-provokes-ire-with-legitimate-rape-comment.html?_r=0.

170. *See id.*

171. Susan Snyder, *A College President’s Words to Young Women About Men*, PHILA. INQUIRER (Nov. 10, 2014), http://articles.philly.com/2014-11-10/news/56395067_1_young-women-college-president-jennings.

172. *Id.*

myths.”¹⁷³ As Professor Susan Estrich noted in 1986, “Statutes and appellate court opinions provide a background for the way rape is defined in practice within the criminal justice system. But on a day-to-day basis, the critical decisions are not made by the legislators or the appellate judges, but by the actors within the system.”¹⁷⁴ When jurors sit in the jury box, they bring their life experiences and long-held beliefs with them.¹⁷⁵ Unfortunately, some jurors may subscribe to the rape myths reflected in the corroboration rule and destructive contradictions doctrine and allow these beliefs to circumvent the law. Additionally, when a juror accepts a rape myth as truth, prosecutors face an even higher burden in achieving justice.¹⁷⁶

In order to eradicate the lingering sexist implications of the corroboration rule and other abolished evidentiary doctrines, reform efforts should be focused on educating potential jurors. Future jurors need to be educated on rape and the truth regarding the ranging demographics of rape victims and different kinds of rapists and must realize that no characteristic or behavior of a victim means she is “deserving” of an assault. Voir dire is the first opportunity prosecutors have to begin educating potential jurors about rape myths and truths.¹⁷⁷ Voir dire allows prosecutors to identify and strike potential jurors whose biases may affect their ability to follow the law.¹⁷⁸ A goal for prosecutors in jury selection is “to delve into juror rape myth acceptance and begin to redefine [those] problematic beliefs into juror competence.”¹⁷⁹ Prosecutors may want to ask whether potential jurors would be less likely to convict if they knew that the defendant and victim had some sort of relationship, whether it be romantic or platonic, or if the potential jurors would be able to follow the judge’s instructions (now void of any remnant of the corroboration rule and destructive contradictions doctrine) despite their personal beliefs. Education of potential jurors needs to begin in voir dire and continue throughout trial in an effort to eliminate the consideration of rape myths and to completely abolish the corroboration rule and destructive contradictions doctrine from sexual assault prosecutions.¹⁸⁰

VI. CONCLUSION

While the abolition of the corroboration rule and destructive contradictions doctrine was legally sound, the Supreme Court of Missouri’s decision in

173. Torrey, *supra* note 159, at 1049.

174. Estrich, *supra* note 146, at 1161.

175. See Christopher Mallios & Toolsi Meisner, *Educating Juries in Sexual Assault Cases*, STRATEGIES 2, July 2010, available at <http://www.aequitasresource.org/EducatingJuriesInSexualAssaultCasesPart1.pdf>.

176. *Id.* at 1.

177. *See id.* at 6.

178. *Id.*

179. *Id.* at 2.

180. *See id.* at 6.

State v. Porter may not lead to its desired effect for some time. Missouri has made the conscious decision to bar sexist evidentiary doctrines from its courtrooms and has, at least facially, equalized the weight of victim testimony in sexual assault cases to the testimony of victims in all other criminal cases. Still, more than just the law needs to change. Members of society make up the juries who are entrusted with determining whether the State has proven, beyond a reasonable doubt, that a crime has taken place. Many potential jury members maintain misconceptions and myths about sexual assault, its victims, and its perpetrators. More needs to be done to educate the public at large in order to fully eradicate the corroboration rule, destructive contradictions doctrine, and other sexist evidentiary doctrines the courts have chosen to abolish.