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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2025 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through May 12, 2025. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through May 12, 2025.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice Forms Annotated.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Seventh Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2025 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2025 supplement pamphlets and in the bound volumes of the Code.

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TITLE 16

CRIMES AND OFFENSES

Chap.

1. General Provisions, 16-1-1 through 16-1-12.
3. Defenses to Criminal Prosecutions, 16-3-1 through 16-3-40.
5. Crimes Against the Person, 16-5-1 through 16-5-110.
6. Sexual Offenses, 16-6-1 through 16-6-25.

Law reviews.

For article, “Restoring Public Confidence in the Criminal Justice System: Policing Prosecutions When Prosecutors Prosecute Police,” see 67 Emory L.J. 853 (2018).

For article, “From the Crime Scene to the Courtroom: The Future of Forensic Science Reform: The First Amendment Case for Public Access to Secret Algorithms Used in Criminal Trials,” see 34 Ga. St. U.L. Rev. 915 (2018).

For article, “From the Crime Scene to the Courtroom: The Future of Forensic Science Reform: The UK Forensic Science Regulator: A Model for Forensic Science Regulation?,” see 34 Ga. St. U.L. Rev. 945 (2018).

For article, “From the Crime Scene to the Courtroom: The Future of Forensic Science Reform: Three Transformative Ideals to Build a Better Crime Lab,” see 34 Ga. St. U.L. Rev. 1007 (2018).

For article, “From the Crime Scene to the Courtroom: The Future of Forensic Science Reform: Deploying the Secret Police: The Use of Algorithms in the Crimi-

nal Justice System,” see 34 Ga. St. U.L. Rev. 1073 (2018).

For article, “From the Crime Scene to the Courtroom: The Future of Forensic Science Reform: Safety from Flawed Forensic Sciences Evidence,” see 34 Ga. St. U.L. Rev. 1129 (2018).

For article, “From the Crime Scene to the Courtroom: The Future of Forensic Science Reform: Symposium Keynote Address: Uncovering Forensic Laws: An Outside Perspective,” see 34 Ga. St. U.L. Rev. 1221 (2018).

For article, “Racial Justice and Federal Habeas Corpus as Postconviction Relief from State Convictions,” see 69 Mercer L. Rev. 453 (2018).

For article, “The Right to Two Criminal Defense Lawyers,” see 69 Mercer L. Rev. 675 (2018).

For article, “Participatory Defense: Humanizing the Accused and Ceding Control to the Client,” see 69 Mercer L. Rev. 715 (2018).

For annual survey of criminal law, see 71 Mercer L. Rev. 967 (2020).

CHAPTER 1

GENERAL PROVISIONS

Sec.

16-1-3.

Definitions.

16-1-3. Definitions.

As used in this title, the term:

(1) “Affirmative defense” means, with respect to any affirmative defense authorized in this title, unless the state’s evidence raises the issue invoking the alleged defense, the defendant must present evidence thereon to raise the issue. The enumeration in this title of some affirmative defenses shall not be construed as excluding the existence of others.

(2) “Agency” means:

(A) When used with respect to the state government, any department, commission, committee, authority, board, or bureau thereof; and

(B) When used with respect to any political subdivision of the state government, any department, commission, committee, authority, board, or bureau thereof.

(3) “Another” means a person or persons other than the accused.

(4) “Conviction” includes a final judgment of conviction entered upon a verdict or finding of guilty of a crime or upon a plea of guilty.

(5) “Felony” means a crime punishable by death, by imprisonment for life, or by imprisonment for more than 12 months.

(6) “Forcible felony” means any felony which involves the use or threat of physical force or violence against any person.

(7) “Forcible misdemeanor” means any misdemeanor which involves the use or threat of physical force or violence against any person.

(8) “Government” means the United States, the state, any political subdivision thereof, or any agency of the foregoing.

(8.1) “Law enforcement officer” means:

(A) A peace officer;

(B) Any state or federal law enforcement officer who renders assistance to a law enforcement agency of this state or any political subdivision thereof in response to a declaration of a state of emergency or disaster issued by the Governor pursuant to Code Section 38-3-51;

(C) An appointed chief of police or department head of a law enforcement unit who has not completed the applicable training required by Code Section 35-8-20 or 35-8-20.1 from the date of initial appointment to the date by which such training is to be completed pursuant to the applicable Code section;

(D) An individual certified or commissioned in another state as a law enforcement officer, peace officer, or other official as being authorized to make arrests and carry firearms in the performance of his or her official duties who is employed by a law enforcement agency, enforcement unit, agency, or department of this state or any municipality, county, or other political subdivision thereof but who has not completed the applicable training required by Chapter 8 of Title 35, the “Georgia Peace Officer Standards and Training Act,” provided that such individual’s certification or commission in another state remains in good standing; and

(E) A federal law enforcement officer who is employed by the United States government as a full-time law enforcement officer, is in good standing with his or her federal agency of employment, is authorized to carry a firearm in the performance of his or her official duties, and is empowered to arrest a person for criminal violations of the United States Code; while serving at the request of a Georgia state or local peace officer or to prevent imminent death or bodily harm.

(9) “Misdemeanor” and “misdemeanor of a high and aggravated nature” mean any crime other than a felony.

(10) “Owner” means a person who has a right to possession of property which is superior to that of a person who takes, uses, obtains, or withholds it from him and which the person taking, using, obtaining, or withholding is not privileged to infringe.

(11) “Peace officer” means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all crimes or is limited to specific offenses.

(12) “Person” means an individual, a public or private corporation, an incorporated association, government, government agency, partnership, or unincorporated association.

(13) “Property” means anything of value, including but not limited to real estate, tangible and intangible personal property, contract rights, services, choses in action, and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, and electric or other power.

(14) “Prosecution” means all legal proceedings by which a person’s liability for a crime is determined, commencing with the return of the indictment or the filing of the accusation, and including the final disposition of the case upon appeal.

(15) “Public place” means any place where the conduct involved may reasonably be expected to be viewed by people other than members of the actor’s family or household.

(16) “Reasonable belief” means that the person concerned, acting as a reasonable man, believes that the described facts exist.

(17) “State” means the State of Georgia, all land and water in respect to which this state has either exclusive or concurrent jurisdiction, and the airspace above such land and water.

(18) “Without authority” means without legal right or privilege or without permission of a person legally entitled to withhold the right.

(19) “Without his consent” means that a person whose concurrence is required has not, with knowledge of the essential facts, voluntarily yielded to the proposal of the accused or of another.

History.

Laws 1833, Cobb’s 1851 Digest, p. 780.; Code 1863, § 6; Code 1868, § 5; Code 1873, § 5; Code 1882, § 5; Penal Code 1895, § 2; Penal Code 1910, § 2; Code 1933, § 26-101; Code 1933, § 26-401, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1970, p. 236, § 1; Ga. L. 1973, p. 292, § 3; Ga. L. 1982, p. 3, § 16; Ga. L. 2025, p. 580, § 2/SB 99, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, added paragraph (8.1).

Editor’s notes.

Ga. L. 2025, p. 580, § 1/SB 99, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Law Enforcement Partners Act.’”

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Recruiting services not included in definition of term of service. — Trial court erred in denying the agency summary judgment on the recruiter’s civil RICO claims because the trial court erred by concluding the term services meant the definition of personal property under the RICO Act, O.C.G.A. § 16-14-1 et seq., specifically O.C.G.A. § 16-1-3, as recruiting services were not included within the scope of the RICO Act. *Five Star Athlete Mgmt., Inc. v. Davis*, 355 Ga. App. 774, 845 S.E.2d 754, 2020 Ga. App. LEXIS 386 (2020).

Failure to charge on affirmative defenses error even if defendant re-

fused to admit criminal conduct. — In the defendant’s aggravated assault trial, O.C.G.A. § 16-5-21(a)(2), based on the defendant aiming a BB rifle at two victims, the trial court erred in denying the defendant’s requested jury instructions on the defense of self and habitation, on the basis that the defendant did not admit pointing the gun at the victims; if slight evidence supported the defenses, the charges should have been given. Defendant was not required to admit the elements of the crime in order to argue the defendant’s theory of defense. *McClure v. State*, 306 Ga. 856, 834 S.E.2d 96, 2019 Ga. LEXIS 643 (2019).

16-1-6. Conviction for lesser included offenses.**JUDICIAL DECISIONS****ANALYSIS**

ASSAULT

MURDER

MISCELLANEOUS CRIMES

Assault

Aggravated assault merged into aggravated battery. — Because the aggravated assault charge was based on the single criminal act of the defendant throwing acid on the victim, and differed from the aggravated battery counts only with respect to the specificity of the injury or risk of injury the victim actually suffered, the aggravated assault was included in the aggravated battery and should have merged. *Fordham v. State*, 352 Ga. App. 520, 835 S.E.2d 360, 2019 Ga. App. LEXIS 599 (2019), cert. denied, No. S20C0442, 2020 Ga. LEXIS 392 (Ga. May 18, 2020).

Because the aggravated assault was a lesser included offense of aggravated battery, the trial court should have merged the aggravated assault count into the aggravated battery account for purposes of sentencing. *Owens v. State*, 374 Ga. App. 56, 911 S.E.2d 330, 2025 Ga. App. LEXIS 4 (2025).

Merger of aggravated assault and simple battery. — Defendant's conviction and sentence for simple battery was vacated and the case was remanded for resentencing because the defendant was convicted of aggravated assault and the lesser-included offense of battery on the count of aggravated battery; thus, the battery conviction was included in the aggravated assault conviction and the battery conviction should have merged into the aggravated assault conviction. *Chadwick v. State*, 360 Ga. App. 491, 861 S.E.2d 612, 2021 Ga. App. LEXIS 374 (2021).

Error in failing to give jury instruction on lesser-included offense harmless. — Any error in refusing to instruct the jury on the lesser included offense of misdemeanor obstruction with respect to the charge of felony fleeing or attempting to elude a police officer was harmless given the overwhelming evidence that the defendant committed felony fleeing or eluding (as

opposed to misdemeanor obstruction) by fleeing from police at speeds exceeding 20 mph above the posted speed limit. *Rouse v. State*, 373 Ga. App. 838, 910 S.E.2d 245, 2024 Ga. App. LEXIS 488 (2024).

Murder

Attempted armed robbery and attempted murder did not merge. — Petitioner's attempted armed robbery conviction did not merge into his attempted murder conviction because the convictions involved entirely different categories of injuries, depriving a victim of life versus depriving a victim of property. *Jackson v. Crickmar*, 311 Ga. 870, 860 S.E.2d 709, 2021 Ga. LEXIS 486 (2021).

Merger of aggravated assault conviction into voluntary manslaughter conviction. — Trial court erred in failing to merge both defendants' convictions for voluntary manslaughter and aggravated assault with a deadly weapon because the indictments charged the defendants with felony murder by alleging that the defendants committed aggravated assault, but the court then charged the defendants with aggravated assault based on the exact same conduct; and, although the jury convicted the defendants of voluntary manslaughter as a lesser-included offense of felony murder, the court, nevertheless, followed the defendants' convictions for aggravated assault merged as a matter of fact into the defendants' convictions for voluntary manslaughter. *Hamlette v. State*, 353 Ga. App. 640, 839 S.E.2d 161, 2020 Ga. App. LEXIS 61 (2020).

Aggravated assault and aggravated battery merged into attempted murder. — Petitioner's convictions for aggravated assault and aggravated battery merged into the petitioner's conviction for attempted murder. *Jackson v. Crickmar*, 311 Ga. 870, 860 S.E.2d 709, 2021 Ga. LEXIS 486 (2021).

Murder (Cont'd)

Aggravated battery merged with attempted murder. — Most reasonable understanding of the conviction for lesser included offenses statute as applied to attempted murder and aggravated battery is that the aggravated battery merges into the greater offense of attempted murder when the crimes are predicated upon the same conduct. The Georgia Supreme Court overrules *Hernandez v. State*, 317 Ga. App. 845 (2012), *Zamudio v. State*, 332 Ga. App. 37 (2015), and *Dobbs v. State*, 2020 Ga. App. Lexis 279 (2020), to the extent that those cases hold otherwise. *Priester v. State*, 309 Ga. 330, 845 S.E.2d 683, 2020 Ga. LEXIS 465 (2020).

Aggravated battery and felony murder predicated on cruelty to children. — Appellant's sentence for aggra-

vated battery was vacated because that count should have merged with a felony murder conviction under the particular facts of the case as the indictment charged that same conduct established aggravated battery and felony murder predicated on cruelty to children. *Gonzales v. State*, 315 Ga. 661, 884 S.E.2d 339, 2023 Ga. LEXIS 46 (2023).

Miscellaneous Crimes

Aggravated battery counts merged. — As to the two counts of aggravated battery, both counts were accomplished by the single act of throwing acid on the victim and, therefore, one count should have merged into the other. *Fordham v. State*, 352 Ga. App. 520, 835 S.E.2d 360, 2019 Ga. App. LEXIS 599 (2019), cert. denied, No. S20C0442, 2020 Ga. LEXIS 392 (Ga. May 18, 2020).

16-1-7. Multiple prosecutions for same conduct.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
INCLUDED CRIMES

2. CRIMES AGAINST THE PERSON

JOINT PROSECUTION OF OFFENSES

- 1. IN GENERAL
- 2. CRIMES AGAINST THE PERSON
- 3. CRIMES AGAINST PROPERTY

SEVERANCE
3. SENTENCING

General Consideration

Subsequent prosecution not barred by prior payment of fines. — In an action for driving under the influence and failure to maintain a lane, the trial court erred by granting the plea in bar because the citations were not actually adjudicated and disposed of in the Villa Rica Municipal Court when the defendant paid the fines for an open container violation and failing to maintain a lane. *State v. Harris*, 372 Ga. App. 742, 905 S.E.2d 868, 2024 Ga. App. LEXIS 341 (2024).

Multiple offenses where they did not occur at same place or same time. — Trial court properly denied the defen-

dants' motions for autrefois convict and pleas of procedural double jeopardy based on O.C.G.A. §§ 16-1-7 and 16-1-8 as to a majority of the counts because the offenses did not necessarily occur at either the same scene or the same time, with the gun possession arising from defendant's encounter with police at the hospital, some time after the shooting over 2.5 miles away. *Maxwell v. State*, 311 Ga. 673, 859 S.E.2d 58, 2021 Ga. LEXIS 295 (2021).

Same transaction established. — Defendant's plea in bar on double jeopardy grounds was improperly denied as to the offense of use of a communication facility in committing a crime under the

Fulton County indictment because the state agreed to nolle pros the Forsyth County indictment; and the county and city detectives' testimony confirmed that the communications charged were one and the same. *Laghaeifar v. State*, 360 Ga. App. 843, 861 S.E.2d 808, 2021 Ga. App. LEXIS 403 (2021).

Offenses not arising from same transaction. — Trial court did not err by denying the defendant's plea in bar because the defendant's prior acquittal for an armed robbery of a location across the street from the location involved in the instant action did not preclude prosecution when the robberies, though committed at nearby locations, occurred three weeks apart at different locations, against different victims and, thus, did not constitute a continuing course of conduct. *Daniels v. State*, 355 Ga. App. 134, 843 S.E.2d 18, 2020 Ga. App. LEXIS 271 (2020).

Juvenile proceedings. — Because of the unique nature of juvenile court proceedings and the fact that a disposition or adjudication order is not a conviction of a crime, the doctrine of merger is inapplicable in juvenile proceedings. In the *Interest of I. H.*, 350 Ga. App. 394, 829 S.E.2d 437, 2019 Ga. App. LEXIS 307 (2019).

Separate proceedings in separate jurisdictions. — Defendant's plea in bar and motion to dismiss the Fulton County charges was improperly denied as the defendant negotiated a plea deal in Clayton County; and the prosecution for false imprisonment in Fulton County was not distinct from those crimes to which the defendant pled in Clayton County because, by crossing the county line into Clayton County, a new crime was not committed against the victim, but was a continuation of a crime that had begun in Fulton County. *Arnold v. State*, 352 Ga. App. 777, 835 S.E.2d 759, 2019 Ga. App. LEXIS 637 (2019).

Motion to dismiss based upon prior municipal court proceeding. — Trial court did not err by denying the defendant's plea in bar and motion to dismiss the charges in the indictment based on a prior municipal court proceeding based on the same conduct because the defendant

did not meet the defendant's burden to show that the city attorney had actual knowledge of all the facts supporting the trial court charges. The attorney, in testifying about the guilty plea the attorney took from the defendant in the first criminal proceeding, testified that the attorney could not say whether the attorney had actual knowledge of any offenses beyond the citations the attorney prosecuted. *Massengille v. State*, 356 Ga. App. 729, 848 S.E.2d 902, 2020 Ga. App. LEXIS 516 (2020).

Offenses should have been merged.

Trial court's sentencing with regard to the aggravated assault was error because the defendant fired a single bullet that killed the victim, and the single shot was the basis for both the aggravated assault and the malice murder charges; there was no evidence of a deliberate interval. Therefore, the trial court should have merged the aggravated assault charge with the malice murder conviction. *Heade v. State*, 312 Ga. 19, 860 S.E.2d 509, 2021 Ga. LEXIS 475 (2021).

Trial court erred in failing to merge the defendant's convictions for aggravated assault and aggravated battery because, by their very terms, the two counts accused the defendant of committing aggravated assault and aggravated battery through the exact same conduct — by repeatedly striking the victim's face and by striking the victim's head against the bench. *Gaines v. State*, 360 Ga. App. 546, 861 S.E.2d 457, 2021 Ga. App. LEXIS 385 (2021).

Sexual offenses should have merged. — When two counts charged the defendant with touching, in some way, the victim's genitals, and the record showed that it occurred in a single incident, the conduct charged in those counts was a single unit of prosecution, and those counts should have merged for sentencing. *Hogg v. State*, 356 Ga. App. 11, 846 S.E.2d 183, 2020 Ga. App. LEXIS 406 (2020).

Included Crimes

2. Crimes Against the Person

Underlying felony is a lesser, etc.

Trial court erred in sentencing the appellant on both the armed robbery and

Included Crimes (Cont'd)**2. Crimes Against the Person (Cont'd)**

felony murder counts because the armed robbery was the predicate felony to support the felony murder conviction; thus, the trial court should have merged the armed robbery count into the felony murder count for sentencing purposes rather than sentencing the appellant on that count. *Waller v. State*, 311 Ga. 517, 858 S.E.2d 683, 2021 Ga. LEXIS 271 (2021), overruled in part, *Cook v. State*, 313 Ga. 471, 870 S.E.2d 758, 2022 Ga. LEXIS 65 (2022).

Aggravated battery and aggravated assault.

Because the aggravated assault charge was based on the single criminal act of the defendant throwing acid on the victim, and differed from the aggravated battery counts only with respect to the specificity of the injury or risk of injury the victim actually suffered, the aggravated assault was included in the aggravated battery and should have merged. *Fordham v. State*, 352 Ga. App. 520, 835 S.E.2d 360, 2019 Ga. App. LEXIS 599 (2019), cert. denied, No. S20C0442, 2020 Ga. LEXIS 392 (Ga. May 18, 2020).

Defendant's conviction and sentence for simple battery was vacated and the case was remanded for resentencing because the defendant was convicted of aggravated assault and the lesser-included offense of battery on the count of aggravated battery; thus, the battery conviction was included in the aggravated assault conviction and it should have merged into the aggravated assault conviction. *Chadwick v. State*, 360 Ga. App. 491, 861 S.E.2d 612, 2021 Ga. App. LEXIS 374 (2021).

Because the aggravated assault was a lesser included offense of aggravated battery, the trial court should have merged the aggravated assault count into the aggravated battery count for purposes of sentencing. *Owens v. State*, 374 Ga. App. 56, 911 S.E.2d 330, 2025 Ga. App. LEXIS 4 (2025).

Aggravated battery counts merged.

— As to the two counts of aggravated battery, both counts were accomplished by the single act of throwing acid on the victim and, therefore, one count should

have merged into the other. *Fordham v. State*, 352 Ga. App. 520, 835 S.E.2d 360, 2019 Ga. App. LEXIS 599 (2019), cert. denied, No. S20C0442, 2020 Ga. LEXIS 392 (Ga. May 18, 2020).

Aggravated battery and felony murder.

Because the crime of aggravated battery by shooting the victim with a gun was the underlying felony for the defendant's felony murder conviction, it should have merged with the felony murder conviction for sentencing purposes. *Rodriguez v. State*, 309 Ga. 542, 847 S.E.2d 303, 2020 Ga. LEXIS 527 (2020).

Appellant's sentence for aggravated battery was vacated because that count should have merged with the felony murder conviction under the particular facts of the case as the indictment charged that same conduct established aggravated battery and felony murder predicated on cruelty to children. *Gonzales v. State*, 315 Ga. 661, 884 S.E.2d 339, 2023 Ga. LEXIS 46 (2023).

No merger of rape and incest. — Defendant's rape and incest convictions did not merge because rape required the state to prove that defendant lacked consent, which was not an element of incest, and to establish incest the state had to prove that the victim was of a certain relation to defendant which was not an element of rape. *Peterman v. State*, 373 Ga. App. 847, 909 S.E.2d 466, 2024 Ga. App. LEXIS 476 (2024).

Merger of child molestation crimes. — After the defendant was convicted of four counts of child molestation, the court of appeals erred in evaluating the defendant's claim that three of the child molestation counts should have been merged together using the "required evidence" test because the defendant was convicted of multiple counts of the same crime, and the court of appeals should have used the applicable unit-of-prosecution analysis to determine whether the three child molestation counts merged. *Scott v. State*, 306 Ga. 507, 832 S.E.2d 426, 2019 Ga. LEXIS 525 (2019).

Trial court properly did not merge the defendant's aggravated sodomy and aggravated child molestation convictions because O.C.G.A. § 16-1-7(a) did not apply

since there was evidence of two separate incidents of oral sodomy. *Hamby v. State*, 358 Ga. App. 105, 853 S.E.2d 874, 2021 Ga. App. LEXIS 11 (2021).

Joint Prosecution of Offenses

1. In General

Same conduct and same jurisdiction not shown. — Because the reduced possession of marijuana charge to which defendant pled guilty in Forsyth County arose from the seizure of 11 pounds of marijuana in the parking lot of a hotel in Forsyth County on the morning of April 4, 2018, while Count 2 of the Fulton County indictment arose from the discovery of additional marijuana at defendant's home pursuant to the execution of a search warrant later that same day, it was proper to charge each offense separately. *Laghaeifar v. State*, 360 Ga. App. 843, 861 S.E.2d 808, 2021 Ga. App. LEXIS 403 (2021).

Offenses with different conduct and victims did not merge. — Although the RICO conviction was based in part on conduct that supported other convictions, the predicate acts involved different conduct and different victims, so it was not all the “same conduct.” Thus, the RICO conviction did not merge. *Sillah v. State*, 315 Ga. 741, 883 S.E.2d 756, 2023 Ga. LEXIS 23 (2023).

2. Crimes Against the Person

Conviction of aggravated assault and armed robbery.

Because the same incident, involving crimes against the same victim on the same day, was used to support both the armed robbery and aggravated assault convictions, the aggravated assault conviction should have been merged into the armed robbery conviction. *Torres-Toledo v.*

State, 366 Ga. App. 526, 883 S.E.2d 545, 2023 Ga. App. LEXIS 34 (2023).

Merger of family violence assault and battery. — Trial court did not err by failing to merge defendant's convictions for family violence aggravated assault and family violence battery because the record showed the initial act of strangulation had been completed by the time the struggle began, and the two acts were therefore separated by the deliberate interval of getting out of bed on opposite sides as opposed to a continuous tussle. *Santoro v. State*, 361 Ga. App. 546, 864 S.E.2d 719, 2021 Ga. App. LEXIS 511 (2021).

3. Crimes Against Property

Merger of aggravated assault with felony murder conviction. — Because the crime of aggravated assault by shooting the victim with a gun was the underlying felony for the felony murder conviction, it should have merged with the felony murder conviction for sentencing purposes. *Allen v. State*, 307 Ga. 707, 838 S.E.2d 301, 2020 Ga. LEXIS 46 (2020).

Severance

3. Sentencing

Distinguishing aggravated assault with intent to rape and aggravated assault by strangulation. — Trial court did not err by imposing separate sentences for defendant's convictions for aggravated assault with intent to rape and aggravated assault by strangulation because the aggravated assaults were separate offenses under the required evidence test as the aggravated assault with intent to rape required proof of a fact, the intent to rape, that aggravated assault based on strangulation did not. *Wilkins v. State*, 369 Ga. App. 42, 892 S.E.2d 61, 2023 Ga. App. LEXIS 400 (2023).

RESEARCH REFERENCES

ALR.

2022 to 2023 A.L.R. United States Supreme Court Review, 83 A.L.R.7th 1.

16-1-8. When prosecution barred by former prosecution.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
OFFENSES ARISING FROM SAME CONDUCT
MOTION TO DISMISS
RETRIAL
APPLICATION GENERALLY

General Consideration

Prosecution permitted after guilty plea in federal action. — Georgia’s statutory law governing successive prosecutions for crimes that violate both state and federal law did not prohibit the State of Georgia from prosecuting the defendant for trafficking in methamphetamine after the defendant, who was also indicted in federal court on crimes stemming from the same set of facts, reached a plea agreement in federal court pursuant to which the defendant pled guilty to a weapons charge in exchange for the dismissal of the pending drug charges. *State v. Adams*, 355 Ga. App. 875, 846 S.E.2d 148, 2020 Ga. App. LEXIS 398 (2020), cert. denied, No. S20C1485, 2021 Ga. LEXIS 98 (Ga. Feb. 15, 2021).

No double jeopardy if federal offenses required proof of fact state offenses did not. — Because the federal offense of theft of medical services required proof of a fact not required by the four state offenses, malice murder, felony murder, practicing medicine without a license and aggravated battery, and the four state offenses each required proof of a fact that the federal offense did not, the state’s prosecution of the defendant for the state offenses for which the defendant was indicted was not barred. *Roberts v. State*, 309 Ga. 639, 847 S.E.2d 541, 2020 Ga. LEXIS 590 (2020).

Multiple accusations and indictments not barred. — Trial court did not err denying defendant’s plea in bar because there was a sufficient break in the action such that the offenses alleged in the two indictments did not arise from the same conduct, therefore, defendant’s guilty plea for burglary and theft did not

preclude the state from bringing additional charges for the rape and related offenses. *Abercrombie v. State*, 369 Ga. App. 46, 892 S.E.2d 171, 2023 Ga. App. LEXIS 403 (2023).

Subsequent prosecution not barred by prior payment of fines. — In an action for driving under the influence and failure to maintain a lane, the trial court erred by granting the plea in bar because the citations were not actually adjudicated and disposed of in the Villa Rica Municipal Court when the defendant paid the fines for an open container violation and failing to maintain a lane. *State v. Harris*, 372 Ga. App. 742, 905 S.E.2d 868, 2024 Ga. App. LEXIS 341 (2024).

Appealability. — Denial of the defendant’s statutory double jeopardy claim against successive prosecution was directly appealable under the collateral order doctrine. *Roberts v. State*, 309 Ga. 639, 847 S.E.2d 541, 2020 Ga. LEXIS 590 (2020).

Offenses Arising from Same Conduct

Prior plea agreement with defendant barred reindictment. — Although the trial court correctly found that the defendant’s subsequent prosecution for kidnapping in Fulton County was not barred on statutory double jeopardy grounds because there had been no conviction or acquittal in the former prosecution of that charge in Clayton County, the state was barred from reindicting the defendant based on the state’s prior plea agreement with the defendant; thus, the defendant’s plea in bar and motion to dismiss the Fulton County charges was improperly denied. *Arnold v. State*, 352 Ga. App. 777, 835 S.E.2d 759, 2019 Ga. App. LEXIS 637 (2019).

Prosecution on state and federal charges of murder and kidnapping. —

Defendant's conviction and sentence for simple battery was vacated and the case was remanded for resentencing because the defendant was convicted of aggravated assault and the lesser-included offense of battery on the count of aggravated battery; thus, the battery conviction was included in the aggravated assault conviction and the battery conviction should have merged into the aggravated assault conviction. *Chadwick v. State*, 360 Ga. App. 491, 861 S.E.2d 612, 2021 Ga. App. LEXIS 374 (2021).

Communications charged were one in the same transaction. — Defendant's plea in bar on double jeopardy grounds was improperly denied as to the offense of use of a communication facility in committing a crime under the Fulton County indictment because the state agreed to nolle pros the Forsyth County indictment; and the county and city detectives' testimony confirmed that the communications charged were one and the same. *Laghaeifar v. State*, 360 Ga. App. 843, 861 S.E.2d 808, 2021 Ga. App. LEXIS 403 (2021).

Motion to Dismiss

Motion to dismiss based upon prior municipal court proceeding. — Trial court did not err by denying the defendant's plea in bar and motion to dismiss the charges in the indictment based on a prior municipal court proceeding based on the same conduct because the defendant did not meet the defendant's burden to show that the city attorney had actual knowledge of all the facts supporting the trial court charges. The attorney, in testifying about the guilty plea the attorney took from the defendant in the first criminal proceeding, testified that the attorney could not say whether the attorney had actual knowledge of any offenses beyond the citations the attorney prosecuted. *Massengille v. State*, 356 Ga. App. 729, 848 S.E.2d 902, 2020 Ga. App. LEXIS 516 (2020).

Retrial

Judicial emergency declared due to COVID requiring retrial. — Trial court

did not abuse the court's discretion by declaring a mistrial based on manifest necessity or in denying the defendant's plea in bar because of the COVID-related judicial emergency, the 30-day prohibition on jury service in the county, and the potentially COVID-related health concerns among the trial's participants. *Hightower v. State*, 315 Ga. 399, 883 S.E.2d 335, 2023 Ga. LEXIS 6 (2023).

Retrial was barred, etc.

Denial of the plea in bar, which asserted double jeopardy grounds after the first trial of the defendant ended with the trial judge's sua sponte declaration of a mistrial due to a violation of the sequestration rule, was erroneous as there was no manifest necessity for a mistrial because there was no evidence that the rule was violated; even if two defense witnesses could have heard testimony from the witness stand, there was no evidence of prejudice from any presumed overhearing of testimony as there was no evidence showing that either of the witnesses would have changed their testimony to match that of other witnesses; and the mere absence of an objection to the mistrial, without more, did not constitute consent to the mistrial. *Brown v. State*, 354 Ga. App. 493, 841 S.E.2d 125, 2020 Ga. App. LEXIS 199 (2020), cert. denied, No. S20C1448, 2021 Ga. LEXIS 96 (Ga. Mar. 1, 2021).

Application Generally

Charging separate drug crimes. —

Because the reduced possession of marijuana charge to which the defendant pled guilty in Forsyth County arose from the seizure of 11 pounds of marijuana in the parking lot of a hotel in Forsyth County on the morning of April 4, 2018, while Count 2 of the Fulton County indictment arose from the discovery of additional marijuana at the defendant's home pursuant to the execution of a search warrant later that same day, it was proper to charge each offense separately. *Laghaeifar v. State*, 360 Ga. App. 843, 861 S.E.2d 808, 2021 Ga. App. LEXIS 403 (2021).

Multiple offenses where they did not occur at same place or same time. —

Trial court properly denied the defendants' motions for autrefois convict and

Application Generally (Cont'd)

pleas of procedural double jeopardy based on O.C.G.A. §§ 16-1-7 and 16-1-8 as to a majority of the counts because the offenses did not necessarily occur at either the same scene or the same time, with the

gun possession arising from the defendant's encounter with police at the hospital, some time after the shooting over 2.5 miles away. *Maxwell v. State*, 311 Ga. 673, 859 S.E.2d 58, 2021 Ga. LEXIS 295 (2021).

CHAPTER 2
CRIMINAL LIABILITY
ARTICLE 1
CULPABILITY

16-2-1. “Crime” defined.

JUDICIAL DECISIONS

ANALYSIS

INTENT
CRIMINAL NEGLIGENCE

Intent

Intention is manifested by circumstances surrounding perpetration of offense. — Evidence that defendant made unwanted, sexually suggestive comments to adults was relevant evidence of whether defendant's later solicitation, enticement, or taking of a minor was done for the purpose of child molestation or indecent acts as they were made close in time and under similar circumstances of trying to lure the victims into a car through deception and the comments had some tendency to make it more probable that defendant's enticement of the minor was done for a sexual purpose. *State v. Green*, 321 Ga. 204, 913 S.E.2d 621, 2025 Ga. LEXIS 49 (2025).

Criminal Negligence

Instruction on definition of “crime.” — Pattern jury instruction on “definition of crime,” which referenced criminal negligence, was not improper because the instruction was an accurate statement of the law; and, although the

instruction made a passing reference to criminal negligence, there was no further mention of the term in the jury charge, and the jury was otherwise properly instructed on the general law of intent, as well as the intent required to prove malice murder. *Walker v. State*, 308 Ga. 33, 838 S.E.2d 792, 2020 Ga. LEXIS 97 (2020).

Trial court did not err by including a reference to “criminal negligence” within its definition of a “crime” during the jury charge as the instruction was an accurate statement of the law pursuant to O.C.G.A. § 16-2-1. *Kessler v. State*, 311 Ga. 607, 858 S.E.2d 1, 2021 Ga. LEXIS 192 (2021).

Requisite criminal negligence in leaving young child on couch. — Evidence was sufficient to convict the defendant of second-degree cruelty to children because the defendant's failure to secure the very young victim before leaving the victim on a couch for 15 minutes while the defendant used the bathroom exposed the victim to an obvious risk of injury of being smothered by couch cushions; and the defendant's actions showed the defendant's reckless disregard for the victim's

safety. *Scott v. State*, 307 Ga. 37, 834 S.E.2d 88, 2019 Ga. LEXIS 635 (2019).

16-2-2. Effect of misfortune or accident on guilt.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

CULPABLE NEGLIGENCE OR UNLAWFUL ACT

General Consideration

Accidental death not attributable to conduct of defendant. — Defendant failed to establish plain error by trial court failing to give a jury instruction on accident with regard to his conviction for the felony murder of his daughter because the error was unlikely to have affected the outcome of the trial since defendant's primary theory at trial was not that the child's injuries resulted from an accident, but that someone else inflicted the injuries that caused her death. *Johnson v. State*, 316 Ga. 672, 889 S.E.2d 914, 2023 Ga. LEXIS 127 (2023).

Failure to charge accident in child molestation trial. — In a child molestation case, the trial court did not plainly err in failing to sua sponte charge the jury on the defense of accident because accident was not the defendant's sole defense to the charge that the defendant molested the victim by touching the victim's vaginal area with the defendant's hand as the state presented evidence that the defendant molested the victim in that manner on several occasions, and the defendant's accident defense addressed only one of those instances; further, the defendant did not show that the trial court's failure to charge the jury on accident likely affected the outcome of the proceedings. *Pinkston v. State*, 353 Ga. App. 88, 834 S.E.2d 571, 2019 Ga. App. LEXIS 513 (2019).

Charge not required where defendant did nothing by accident or mistake.

Trial court did not err by failing to charge the jury on the defense of accident because defendant's misuse of the firearm constituted criminal negligence and death caused by criminal negligence was not an

accident. Defendant, after drinking, retrieved her loaded gun and went into the victim's room to intimidate him, she intentionally raised the gun over her head, and swung it down to hit the victim on the head with it while her finger was "probably" on the trigger. *Williams v. State*, 320 Ga. 592, 910 S.E.2d 566, 2024 Ga. LEXIS 301 (2024).

Trial court did not err in refusing to instruct the jury on accident as an affirmative defense, as the defendant's own testimony established the defendant engaged in a criminal scheme and acted with criminal intent. *Rivera v. State*, 375 Ga. App. 211, 915 S.E.2d 412, 2025 Ga. App. LEXIS 163 (2025).

Failure to instruct on accident harmless error in wrong way driving case. — Trial court's error in failing to instruct the jury on accident was harmless because evidence that the defendant initially drove up the off-ramp accidentally had no bearing on why the defendant continued driving for about three miles at between 75 and 80 miles per hour, passing multiple warning signs, at least five places on the road where the defendant could have safely pulled the defendant's car onto the side of the road, and four motorists who had to swerve from their lanes to avoid a head-on collision with the defendant's vehicle. *Sullivan v. State*, 308 Ga. 772, 843 S.E.2d 411, 2020 Ga. LEXIS 347 (2020).

Since the vehicular homicide and the reckless driving charges at issue were merged into the first degree vehicular homicide charge for purposes of sentencing, any error in failing to give the accident jury charge was harmless and was not shown to have contributed to the outcome at trial. *Mitchell v. State*, 355 Ga.

General Consideration (Cont'd)

App. 7, 842 S.E.2d 322, 2020 Ga. App. LEXIS 246 (2020), cert. denied, No. S20C1166, 2020 Ga. LEXIS 783 (Ga. Oct. 19, 2020).

Evidence insufficient to establish accident.

Evidence was sufficient to reject defendant's accident defense and to convict defendant of malice murder as defendant physically abused the victim, defendant's pregnant girlfriend, causing visible marks and bruises; the abuse increased and escalated over time, supporting an inference that defendant graduated from using bodily physical force against the victim to harming the victim with a firearm; and the jury could have inferred that the shooting was intentional based on the expert testimony about the pistol's safety features, including a manual safety, a magazine safety, and a six-and-a-quarter pound trigger pull, which decreased the likelihood of an accidental discharge. *Jones v. State*, 314 Ga. 400, 877 S.E.2d 232, 2022 Ga. LEXIS 218 (2022).

Evidence was sufficient to support defendant's conviction of malice murder because the jury was authorized to discredit defendant's self-serving assertion that defendant's wife's death was an accident and was not required to believe any portion of defendant's statements to defendant's sister-in-law that amounted to a denial of an intent to kill defendant's wife. The medical examiner's testimony showed that the wife was strangled by use of a chokehold for a long enough time to kill the wife. *Allaben v. State*, 315 Ga. 789, 885 S.E.2d 1, 2023 Ga. LEXIS 54 (2023).

Failure to charge the jury on the affirmative defense of accident, etc.

Trial court did not err when the court failed to give the defendant's requested

accident charge because the evidence, including the defendant's own testimony, showed that the defendant intended to shoot the gun at the victim and there was no evidence supporting the defendant's argument that the jury could have found the shooting to be the result of an accident or misfortune. *Stepp-McCommons v. State*, 309 Ga. 400, 845 S.E.2d 643, 2020 Ga. LEXIS 471 (2020).

Trial court erred by failing to instruct the jury on accident as a defense to malice murder and because defendant's testimony that the collision was an accident presented at least slight evidence to warrant an instruction, as he testified that he misjudged the turning radius of his car, he lost his focus on the victim as he checked for traffic as he turned, he turned his car to the right, away from the victim, before the collision, and he slammed on the brakes. *Schmitt v. State*, 318 Ga. 835, 901 S.E.2d 102, 2024 Ga. LEXIS 106 (2024).

Trial court did not plainly err by omitting an instruction on the defense of accident because the defendant's account mischaracterized a witness's testimony, which made clear that before the victim grabbed the defendant, the defendant was charging at the victim with the knife and, therefore, the testimony undercut the defendant's contention that the stabbing was an accident. *Johnson v. State*, 319 Ga. 562, 905 S.E.2d 570, 2024 Ga. LEXIS 170 (2024).

Culpable Neglect or Unlawful Act

Intentionally firing gun in victim's direction. — State rebutted the affirmative defense of accident because the state's evidence showed that the defendant intentionally fired a gun in the victim's direction. *Rogers v. State*, 311 Ga. 634, 859 S.E.2d 92, 2021 Ga. LEXIS 284 (2021).

16-2-6. Intention a question of fact.

JUDICIAL DECISIONS

ANALYSIS

**GENERAL CONSIDERATION
APPLICATION**

General Consideration

Evidence of criminal intent. — Defendant's conduct and demeanor evinced criminal intent authorizing the jury's verdict finding the defendant guilty of malice murder in connection with the shooting death of a police officer because the defendant and the defendant's friends were overheard discussing beating up the officer; when the officer attempted to arrest one of the friends with the defendant, the defendant drew the defendant's pistol and fired five shots into the officer's back; and the jury received expert testimony that the defendant did not have Post-Traumatic Stress Disorder at the time of the incident. *Bowman v. State*, 306 Ga. 97, 829 S.E.2d 139, 2019 Ga. LEXIS 386 (2019).

Application

Intent to arouse or satisfy sexual desires. — Sufficient evidence supported

jury's determination that defendant had requisite intent to molest as evidence showed defendant committed acts while alone with girls, defendant continued trying to penetrate one of them despite victim's complaint of pain, and defendant kept video recordings of acts on phone even after girlfriend discovered one. *Johnson v. State*, 367 Ga. App. 344, 886 S.E.2d 5, 2023 Ga. App. LEXIS 155 (2023).

Trial court did not err denying defendant's motion for a directed verdict of acquittal because the victim's testimony alone was sufficient to establish the elements of the child molestation and the jury was authorized to consider, as substantive evidence of defendant's guilt, the victim's out-of-court statements about the sexual abuse that the victim made in the recorded forensic interview and to the sheriff's deputy in the body camera recording. *Brantley v. State*, 370 Ga. App. 757, 899 S.E.2d 284, 2024 Ga. App. LEXIS 84 (2024).

ARTICLE 2

PARTIES TO CRIMES

16-2-20. When a person is a party to a crime.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

CONSPIRACY

AIDING AND ABETTING

APPLICATION

1. IN GENERAL
4. MURDER OR MANSLAUGHTER
5. OTHER CRIMES AGAINST THE PERSON
6. PROPERTY OFFENSES

General Consideration

Jury instruction on accomplice versus unknown participation. — Trial court did not commit plain error by giving the jury a pattern jury instruction excluding certain witnesses from the definition of "accomplice" because, even assuming that there was at least slight evidence that two witnesses were accomplices whose testimony required corroboration,

the provision of an accomplice-corroboration jury instruction did not preclude the trial court from also giving a jury charge on a witness's unknowing participation as the state introduced at least slight evidence that the witnesses were unknowing participants. *Collins v. State*, 312 Ga. 727, 864 S.E.2d 85, 2021 Ga. LEXIS 640 (2021).

Sentencing enhancement. — After the defendant was convicted of being a

felon in possession of a firearm in violation of 18 U.S.C. § 922(g), the district court did not err sentencing the defendant pursuant to ACCA because the defendant's Georgia conviction for being a party to burglary under O.C.G.A. § 16-2-20 counted as one of three predicate crimes necessary to invoke ACCA. Defendant failed to establish a realistic probability that the party-to-a-crime liability under the Georgia burglary statute extended significantly beyond liability under generic accomplice liability standard. *United States v. Coats*, 8 F.4th 1228, 2021 U.S. App. LEXIS 24027 (11th Cir. 2021).

Conspiracy

Where conspiracy is shown, etc.

Trial court did not abuse the court's discretion by denying the defendant's motion for new trial on general grounds because several codefendants testified that the defendant was a coconspirator and a participant in the victim's robbery, there was evidence that the defendant placed the telephone call to summon the victim, that the defendant was the first to confront the victim, and that the robbery was the defendant's idea. *Smith v. State*, 350 Ga. App. 336, 829 S.E.2d 408, 2019 Ga. App. LEXIS 298 (2019).

Aiding and Abetting

Evidence sufficient as to aiding and abetting armed robbery.

Evidence was sufficient to find appellant guilty for felony murder predicated on armed robbery as evidence presented at trial showed that the car that approached the victim for the gun sale belonged to appellant, a witness's testimony indicated the victim was meeting two men, one of whose fingerprint was on the victim's car, and appellant admitted to purchasing the gun the victim intended to sell, but the person appellant said sold the gun to appellant denied doing so. *Green v. State*, 317 Ga. 250, 892 S.E.2d 733, 2023 Ga. LEXIS 191 (2023).

Evidence sufficient for conviction.

Evidence was sufficient to support the defendant's convictions for financial transaction card fraud and possession of tools for the commission of a crime as the

defendant was not merely present during the criminal activity as the two financial transaction card forgery counts pertained to the credit cards with embossed numbers were found in the driver's door pocket of the defendant's car, which the defendant was driving at the time of the stop. *Riley v. State*, 356 Ga. App. 290, 846 S.E.2d 617, 2020 Ga. App. LEXIS 431 (2020), overruled, *Hill v. State*, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence that the defendant, either as the shooter or as a party to the crimes, fired multiple shots through a door and into a room where the victims were sleeping, the defendant and another had guns at the scene, and casings from the same caliber gun as the defendant owned were found at the scene was sufficient to support the defendant's convictions for malice murder, aggravated assault, and possession of a firearm during the commission of a felony. *Sams v. State*, 314 Ga. 306, 875 S.E.2d 757, 2022 Ga. LEXIS 182 (2022).

There was sufficient evidence to support the first defendant's convictions for malice murder, felony murder, and aggravated assault as a party to the crime because a witness identified the first defendant as one of the parties involved in the stabbing and supplied a motive, explaining that the victim's gang was executing a hit on the victim for a prison debt. *Ward v. State*, 316 Ga. 295, 888 S.E.2d 75, 2023 Ga. LEXIS 101 (2023).

Trial court did not err in denying the second defendant's motion for a directed verdict because evidence beyond his gang affiliation supported the convictions, including the testimony of two witnesses who said the second defendant was involved in the stabbings. *Ward v. State*, 316 Ga. 295, 888 S.E.2d 75, 2023 Ga. LEXIS 101 (2023).

Sufficient evidence existed to authorize a rational trier of fact to find appellants guilty beyond a reasonable doubt as parties to the crimes committed against the four victims, including malice murder, even if they did not possess or fire a weapon, as they were not merely present at the scene, since the vehicles two appellants drove were filled with armed gang members, a feud existed with another

gang, and shell casings were found in the vehicles and around where they were parked. *Muse v. State*, 316 Ga. 639, 889 S.E.2d 885, 2023 Ga. LEXIS 128 (2023).

Evidence was sufficient to support defendant's conviction of concealing the death of another as a party to the crime because the evidence showed that defendant led the two witnesses to the victims' bodies, directed them to dispose of them, pulled one victim's body over to the hole and stomped on it to make it fit, and provided the witnesses with the shower curtain to put over the bodies. *Jones v. State*, 319 Ga. 758, 906 S.E.2d 699, 2024 Ga. LEXIS 201 (2024).

Evidence was sufficient to support defendant's conviction of felony murder as a party to the crime because phone records showed that defendant was associated with the other members of the group at the time of the "gang war" and shooting. Defendant also traveled with the group into rival gang territory, provided one of the guns used in the victim's shooting, and drove the getaway car. *Wallace v. State*, 320 Ga. 272, 907 S.E.2d 657, 2024 Ga. LEXIS 233 (2024).

Instruction on corroboration of accomplice testimony. — Because the defendant pointed to no evidence that the witness knew that the defendant was planning on assaulting the victim, and the defendant failed to cite precedent requiring an accomplice-corroboration instruction under circumstances similar to those presented, the appellate court concluded that the trial court did not commit obvious error in failing to instruct the jury on the need for corroboration of accomplice testimony. *Wilson v. State*, 351 Ga. App. 794, 833 S.E.2d 175, 2019 Ga. App. LEXIS 489 (2019).

Evidence insufficient to support conviction of trafficking in methamphetamine. — Evidence was insufficient to support the defendant's conviction of trafficking in methamphetamine because the evidence showed nothing more than the defendant's mere presence in the owner's house at a time when methamphetamine was not being actively manufactured. *Denson v. State*, 353 Ga. App. 450, 838 S.E.2d 117, 2020 Ga. App. LEXIS 18 (2020).

Application

1. In General

Furnishing prohibited items to inmates. — Evidence was sufficient to convict defendant as a party to the crime of furnishing prohibited items to inmates because there was testimony that an inmate hired an accomplice to drive defendant to the prison, defendant was offered money to ride to the prison at night, defendant put the bag in the trunk of the car, defendant offered another man money to ride along with him to the prison, the GPS showed the prison as the destination, and defendant asked to exit the car when they arrived. The jury was able to hear the inconsistencies in the statements given to police as compared to the testimony at trial. *Henry v. State*, 374 Ga. App. 246, 911 S.E.2d 455, 2025 Ga. App. LEXIS 10 (2025).

Evidence sufficient to support finding of participation. — First defendant's conviction for conspiring and being a party to the second defendant's unlicensed practice of medicine was supported by evidence that former patients believed the second defendant was a doctor because the first defendant referred to the second defendant as such in their presence and the first defendant allowed the second defendant to refer to the second defendant as an assistant or trainee prior to performing procedures, despite knowing the second defendant lost the second defendant's license. *Ulbrich v. State*, 363 Ga. App. 503, 870 S.E.2d 859, 2022 Ga. App. LEXIS 152 (2022).

Severance properly denied when defendants acted in concert. — Trial court did not err in denying the defendant's motion to sever because it was not required under the applicable law on party to a crime to show that any specific co-defendant physically possessed a weapon for that defendant to be convicted of felony murder or of the predicate offense of aggravated assault as a party to a crime; and the fact that the evidence as to one of the co-defendants was stronger did not demand a finding that the denial of a severance motion was an abuse of discretion since there was evidence showing that the defendants acted in concert.

Application (Cont'd)
1. In General (Cont'd)

Smith v. State, 308 Ga. 81, 839 S.E.2d 630, 2020 Ga. LEXIS 144 (2020).

4. Murder or Manslaughter

Party to malice murder.

Evidence was sufficient to support the defendant's malice murder conviction because there was evidence apart from the accomplice's testimony from which the jury could have inferred that the defendant was a participant, including eyewitness testimony that an accomplice pointed a gun at the victim when the group attempted to rob the victim, a witness testified that the defendant did not abandon the group at this point but proceeded with the others in the victim's direction, the defendant remained for the attempted robbery of the victim, the defendant did not seek aid for the victim after the victim was shot, and the defendant fled the scene. Daniels v. State, 306 Ga. 559, 832 S.E.2d 372, 2019 Ga. LEXIS 524 (2019).

Evidence was sufficient to convict the defendant of malice murder, armed robbery, and concealing the death of another as a party to the crimes, and the defendant's voluntary intoxication provided no defense because the defendant admitted that the defendant was not coerced into participating in the crimes; the defendant admitted that the defendant took money from the victim's pockets as an accomplice; bludgeoned the victim with a baseball bat; the defendant admitted participating in removing the victim's body from the apartment; and the defendant presented no evidence at trial that the defendant's brain function had been permanently altered. Perez v. State, 309 Ga. 687, 848 S.E.2d 395, 2020 Ga. LEXIS 612 (2020).

Evidence was sufficient to support defendant's conviction of malice murder because it authorized the jury to conclude that defendant helped to restrain the victims while the cohort attacked and killed them, as the medical examiner testified that it would have been very difficult for one person to have committed the crimes alone. Defendant also admitted that defendant conspired with and assisted the

cohort in robbing and killing the victims. Felts v. State, 311 Ga. 547, 858 S.E.2d 708, 2021 Ga. LEXIS 266 (2021).

Evidence was sufficient to support defendant's convictions and, therefore, the trial court did not err by denying a motion for directed verdict of acquittal, because it was not necessary for the state to prove that appellant personally fired the shots that killed one of the victims. Because two of the victims testified that defendant joined an accomplice and shot at the victims the jury was authorized to conclude that defendant was at least a party to the crime. Harris v. State, 312 Ga. 602, 864 S.E.2d 31, 2021 Ga. LEXIS 643 (2021).

Evidence was sufficient to support the defendant's conviction for felony murder predicated on aggravated assault with a deadly weapon as a party to the crime because the evidence showed that the defendant was present with the co-defendants for the planning of the robbery, the defendant knew and called the victim, and defendant followed the co-defendants to the area near the victim's house while giving directions. Collins v. State, 312 Ga. 727, 864 S.E.2d 85, 2021 Ga. LEXIS 640 (2021).

Evidence was sufficient to support the defendant's conviction of felony murder as a party based on the predicate felony of armed robbery because there was evidence of defendant's involvement in the planning of the robbery as well as defendant's presence with the other perpetrators before, during, and after the robbery. The evidence also showed that the victim's death occurred during the armed robbery. Barrett v. State, 312 Ga. 676, 864 S.E.2d 403, 2021 Ga. LEXIS 653 (2021).

In an action for malice murder and other offenses, the defendant's challenge to the sufficiency of the evidence failed because multiple witnesses contradicted the defendant's claim the defendant did not participate in the drive-by shooting, authorizing the jury to conclude that the defendant was a party to the crimes. Williams v. State, 313 Ga. 325, 869 S.E.2d 389, 2022 Ga. LEXIS 35 (2022).

Evidence that the surviving victim positively identified the defendant as one of the assailants and testified to seeing the defendant pistol-whip the deceased victim

on the head was sufficient to support the defendant's conviction for malice murder as a party to a crime. *Butler v. State*, 313 Ga. 675, 872 S.E.2d 722, 2022 Ga. LEXIS 135 (2022).

Evidence was sufficient to convict the second defendant of malice murder as a direct participant or as a party to the crime because the DNA evidence conclusively tied the second defendant to the 9mm firearm that had been fired multiple times inside the victim's apartment; and the ballistics evidence, the medical examiner's testimony, and the circumstances of the shooting in which the victim was shot while naked in the bathroom, tended to strongly contradict the second defendant's claim of self-defense. *Mitchell v. State*, 315 Ga. 382, 882 S.E.2d 322, 2022 Ga. LEXIS 316 (2022).

Evidence was sufficient to support defendant's convictions because the jury was authorized to reject defendant's testimony and find, based upon other direct and circumstantial evidence, that both defendant and the co-defendant were parties to the victim's murder, and that defendant killed the victim because the victim had quit the victim's job while owing defendant thousands of dollars. The co-defendant's statement to the police was sufficiently corroborated as the forensic evidence and witness testimony corroborated the co-defendant's statement and showed that defendant participated in the murder. *Williams v. State*, 315 Ga. 797, 884 S.E.2d 877, 2023 Ga. LEXIS 57 (2023).

Evidence was sufficient to support codefendant's convictions for malice murder as the codefendant admitted to being at the scene of the shootings, was connected to one of the murder weapons through a statement to police, ballistics evidence, and the testimony of two witnesses, text messages showed bragging about the murders after the fact, and one witness's testimony narrated how the leader ordered the codefendant and others to carry out the murders. *Henderson v. State*, 317 Ga. 66, 891 S.E.2d 884, 2023 Ga. LEXIS 179 (2023).

Evidence was sufficient to support defendant's convictions as a party to the crimes because the jury could have in-

ferred that, given the short period of time between when the men got into the car and when one drove the car alongside the victim's car, it was unlikely that defendant was drunk and asleep in the back seat, it was unlikely that he slept through the gunfire, he said in a recorded jail call that he always kept a gun on his hip, and the jury could have inferred that defendant knew which gun was the murder weapon. *Adams v. State*, 317 Ga. 342, 893 S.E.2d 85, 2023 Ga. LEXIS 197 (2023).

Evidence was sufficient to support defendants' convictions as parties to the crimes because the evidence showed that they assisted the codefendants in carrying out the plan to kill the victim because he was believed to be a police informant. The jury was authorized to reject defendant's claim that he was merely an unwitting driver and a codefendant's story that he alone killed the victim in self-defense and to conclude that defendants shared a common criminal intent with their co-defendants to beat and kill the victim, take his car, and cover up the crimes. *Rooks v. State*, 317 Ga. 743, 893 S.E.2d 899, 2023 Ga. LEXIS 230 (2023).

Evidence was sufficient to support defendant's convictions of malice murder as a party to the crime because defendant admitted to being present when the victim was shot, witnesses testified that defendant and the shooter were together most of the day, they were the last two people seen with the victim before the victim's body was found, defendant did not seek medical aid for the victim, and defendant left the scene with the shooter in the victim's vehicle. *Scoggins v. State*, 317 Ga. 832, 896 S.E.2d 476, 2023 Ga. LEXIS 266 (2023).

Evidence was sufficient to support defendant's conviction of malice murder as a party to the crime because defendant and the co-conspirator armed and masked themselves and committed a series of burglaries in which they stole ammunition and a large number of firearms, the next day they conspired with two others to continue committing such crimes, defendant drove the stolen vehicle that night, defendant kept driving as an officer attempted to stop the vehicle, defendant ran away in the same direction as the co-

Application (Cont'd)**4. Murder or Manslaughter (Cont'd)**

conspirators, a co-conspirator testified that defendant was with the co-conspirator around the time of the shooting, defendant hid the stolen firearms the next day, and defendant was planning on selling them and keeping one stolen rifle. *Clements v. State*, 317 Ga. 772, 896 S.E.2d 549, 2023 Ga. LEXIS 255 (2023).

Evidence was sufficient for the jury to reject the claim of defendants two and three that they were merely present at the murder because cell phone data showed that defendants' phones moved together around the city before and after the crimes and stayed in communication throughout the day, defendant two lied to the police that he was texting when the crimes occurred, and the defendant three parked his car behind the victim's car at the murder scene. *Bates v. State*, 317 Ga. 809, 896 S.E.2d 581, 2023 Ga. LEXIS 262 (2023).

Evidence was sufficient to support defendant's conviction of malice murder and other crimes as a party to the crimes because it showed that defendant was the driver of the vehicle from which the shots were fired, defendant facilitated the shooting by intentionally maneuvering defendant's car close to the victim's car, and a firearm that was fired during the shooting was found in defendant's bedroom the day after the crimes. *Adams v. State*, 318 Ga. 105, 897 S.E.2d 396, 2024 Ga. LEXIS 8 (2024).

Evidence showing co-defendant 2 had an ongoing dispute with neighbors thought to be interfering with drug sales, shared with co-defendant 1 the criminal intent to start the fire, and evidence that co-defendant 2 told co-defendant 1 to change clothes and intimidate a witness was sufficient as a matter of due process to authorize the jury to find co-defendant 2 guilty as either a direct participant in or party to the crime of the malice murder of the victims. *Kirkland v. State*, 318 Ga. 639, 898 S.E.2d 536, 2024 Ga. LEXIS 39 (2024).

Evidence was sufficient to support defendant's convictions of malice murder and possession of a firearm during the

commission of a crime either as the shooter or as a party to the crimes because the morning after the victim was shot a witness told police that defendant shot the victim. In addition, the witness told police that defendant and the co-defendant went looking for the victim together after arguing with the victim, they left the scene together in the co-defendant's car after the victim was shot, and the victim's blood was found inside the co-defendant's car. *Milton v. State*, 318 Ga. 737, 900 S.E.2d 590, 2024 Ga. LEXIS 90 (2024).

Murder for obtaining gang status.

— Evidence was sufficient to convict the defendant as a party of, inter alia, malice murder and a violation the Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., as the defendant and the codefendant were active members of the same gang; cell phone records placed the defendant's phone near the victims' apartment, various ATMs, and the gang house on the day of the murders; the jury was free to reject as unreasonable the possibility that some other unidentified person was using the defendant's SUV and phone; and the jury could infer that the murders were committed in order to obtain status within the gang. *Beamon v. State*, 314 Ga. 798, 879 S.E.2d 457, 2022 Ga. LEXIS 261 (2022).

Every person concerned in commission of crime guilty.

Accomplice testimony about the appellant's participation in the victim's murder was adequately corroborated by independent evidence based on the appellant's admissions, the testimony of the appellant's girlfriend, and cell phone records, which placed the appellant in the same area at the time of the murder and showed communications with the victim and the individual who held the murder weapon after the killing. *McCammon v. State*, 306 Ga. 516, 832 S.E.2d 396, 2019 Ga. LEXIS 505 (2019).

Evidence was sufficient to show defendants' participation in the attempted robbery during which the victim was killed based on the evidence showing that defendant 1 rolled up the window just before or as defendant 2 drove off, from which the jury could infer was an attempt to retain the victim's cash and cell phone that was

contemporaneous with the use of force dragging the victim on down the road and shooting the victim for that purpose. *McCabe v. State*, 319 Ga. 275, 903 S.E.2d 78, 2024 Ga. LEXIS 135 (2024).

Murder and armed robbery.

Evidence was sufficient to support defendant's conviction of felony murder based on armed robbery as a party to the crime because it showed that defendant and two other men planned to rob the victim on the pretext of buying marijuana, after the victim gave marijuana to one man defendant shot him multiple times, and they fled to Atlanta where they split the marijuana. *Perez v. State*, 316 Ga. 433, 888 S.E.2d 526, 2023 Ga. LEXIS 118 (2023).

Party to felony murder.

Defendant's conviction for felony murder was supported by evidence that the defendant agreed to sell methamphetamine and possessed a handgun, which the defendant gave to the defendant's cohort on the way to the drug sale; the two then robbed the two victims and shot at both victims, killing one; the two left the scene together, telephoned a senior gang member, and traveled to a gang safe house in Atlanta together. *Boyd v. State*, 306 Ga. 204, 830 S.E.2d 160, 2019 Ga. LEXIS 439 (2019).

Rational jury could have inferred from the defendant's conduct on the day of the shooting that the defendant intentionally advised, encouraged, and counseled an accomplice, who was a member of the same gang as the defendant, to shoot the victim after the defendant had been in an argument with the victim prior to the shooting about a fight involving the defendant's brother the day before and, thus, that the defendant was guilty as an accomplice of felony murder predicated on aggravated assault. *Worthen v. State*, 306 Ga. 600, 832 S.E.2d 335, 2019 Ga. LEXIS 513 (2019).

Evidence was sufficient to convict the defendant of felony murder because the co-defendants testified that the defendants were part of the card-game robbery scheme with the defendant, and that the defendant was the masked individual who entered the first victim's home with a handgun, forced patrons to turn over the

patrons' cash at gunpoint, and shot the first victim to death when the first victim attempted to thwart the robbery; and the jury did not need to know whether the defendant was the shooter in order to find the defendant guilty of being a party to the murder. *Rich v. State*, 307 Ga. 757, 838 S.E.2d 255, 2020 Ga. LEXIS 58 (2020).

Evidence was sufficient to convict the defendant as a party to the crimes of felony murder and possession of a firearm during the commission of a felony in connection with the shooting death of one of the accomplices to an attempted armed robbery because the defendant was not just an innocent bystander as the defendant admitted that the defendant was with the accomplices before the shooting; the jury could have reasonably inferred that the defendant was the person whom two witnesses overheard in the background of a call encouraging the armed robbery; and the defendant admitted that the defendant accompanied the accomplices knowing that the buyer and the group the defendant was with planned to rob each other during a purported drug deal. *Frazier v. State*, 308 Ga. 450, 841 S.E.2d 692, 2020 Ga. LEXIS 231 (2020).

Evidence was sufficient to convict the defendant of felony murder predicated on burglary and armed robbery because the defendant, the codefendant, and a third person drove to the victim's house pursuant to a plan to steal money from within the victim's house and that the defendant and the codefendant entered the house without authority; and the codefendant shot the victim, who died of a gunshot wound to the chest, and then left carrying several firearms that the codefendant had taken from inside the house. *Satterfield v. State*, 309 Ga. 843, 849 S.E.2d 165, 2020 Ga. LEXIS 656 (2020).

Evidence was sufficient to convict the defendants, either directly or as parties to the crimes, of the felony murder of the first victim predicated on aggravated assault, the aggravated assault of the second victim, and the firearm-possession offenses because the female accomplices had connected with the victims through a dating website the females used for prostitution and made plans to meet with the

Application (Cont'd)**4. Murder or Manslaughter (Cont'd)**

victims on the night of the crimes; the defendants, both convicted felons, met with the female accomplices before the females left to meet the victims and followed the females to their meeting; and cell phones used by the defendants and one of the accomplices traveled in a similar path from the area near one defendant's house to the area near the crime scene and back. *Butler v. State*, 310 Ga. 892, 855 S.E.2d 551, 2021 Ga. LEXIS 75 (2021).

Evidence was sufficient to support defendant's convictions of felony murder predicated on aggravated assault based on defendant being a party to the crime because it showed that defendant and another woman connected with the victims through a dating website they used for prostitution, the two convicted felons met with them before they left to meet the victims, gave the woman a gun, and followed them to the meeting, cell phones used by the felons and defendant communicated with each other immediately before, during, and after the shootings, and the victim was killed by shots fired from a shotgun and a handgun. *Poole v. State*, 312 Ga. 515, 863 S.E.2d 93, 2021 Ga. LEXIS 630 (2021).

In a case in which defendant was convicted of felony murder and attempt to commit armed robbery, the trial court did not err in denying the defendant's motion for a directed verdict and in convicting the defendant as a party because the codefendant's account that the codefendant and the defendant worked together during the armed attack was corroborated by a witness's testimony that the defendant got out of the car with the codefendant to try to rob the victim, pistol-whipped the victim, and pointed a gun at the victim before the codefendant shot the victim. *Crawford v. State*, 312 Ga. 452, 863 S.E.2d 75, 2021 Ga. LEXIS 619 (2021).

Evidence was sufficient to convict the defendant of felony murder of the first victim and aggravated assault of the second victim as a party because the defendant took part in the robbery and home invasion; the defendant searched the

home after the first co-defendant shot the first victim; the defendant heard the first co-defendant state that the first co-defendant was going back to the house to kill the first victim; the first co-defendant returned to the house and shot the first victim and pointed the gun at the second victim; and the defendant received part of the proceeds from the robbery. *Baker v. State*, 312 Ga. 363, 863 S.E.2d 55, 2021 Ga. LEXIS 602 (2021).

Evidence that the defendant had a handgun with the defendant and in the defendant's vicinity during day of the shootings authorized the jury to find that the defendant was at least a party to the felony murder and related offenses. *Taylor v. State*, 312 Ga. 1, 860 S.E.2d 470, 2021 Ga. LEXIS 476 (2021).

Evidence was legally sufficient to prove that the first defendant shared responsibility for the victim's death, as a rational jury could infer from the first defendant's actions before, during, and after the shooting that the first defendant shared a common criminal intent with the second defendant and that the murder of the victim was a foreseeable consequence of the robbery. *Moore v. State*, 311 Ga. 506, 858 S.E.2d 676, 2021 Ga. LEXIS 263 (2021).

Evidence was sufficient to convict the defendant of felony murder predicated on armed robbery, hijacking a motor vehicle, and possession of a firearm during the commission of a felony as a party because, although the state did not establish that the defendant personally shot the victim, took the victim's cellphone through the use of a handgun, or took the victim's car by force and intimidation while in possession of a handgun, the jury could reasonably conclude that the defendant was present at the scene and went through the victim's pockets, participated in the armed robbery of another person shortly before, and traveled to and from the scene with the codefendants, and so shared in the criminal intent. *Fortson v. State*, 313 Ga. 203, 869 S.E.2d 432, 2022 Ga. LEXIS 27 (2022).

Evidence, including phone calls between the defendant and the codefendants and the defendant procuring a hotel room in the defendant's name for all three, authorized the jury to reject other hypoth-

eses and find beyond a reasonable doubt that the defendant participated in or aided others from their initial contact with the victim through and after the crimes (felony murder, home invasion, and other crimes) and was thus was a party to the crimes for which the defendant was convicted. *Graham v. State*, 313 Ga. 436, 870 S.E.2d 424, 2022 Ga. LEXIS 51 (2022).

Corroborating evidence was sufficient to convict the defendant as a party to felony murder and armed robbery as the co-indictee broke into the victim's home; the defendant hit the victim twice with a baseball bat; the defendant and the co-indictee put the victim's body into a burn pit and tried to burn it; and, when the defendant was arrested, the defendant was wearing the victim's Army ring. *Downer v. State*, 314 Ga. 617, 878 S.E.2d 537, 2022 Ga. LEXIS 254 (2022).

Evidence was sufficient as a matter of federal constitutional due process and of Georgia statutory law to support the defendant's convictions as a party to the shooting, even despite the defendant's claim of self-defense and the denial to firing a weapon, as the gun that shot the victim was found in a car the defendant drove regularly. *Goodman v. State*, 313 Ga. 762, 873 S.E.2d 150, 2022 Ga. LEXIS 152 (2022).

Georgia Supreme Court upheld defendant's felony murder conviction of defendant's husband as the jury was presented with sufficient circumstantial evidence against defendant for murder, which included the position of the body after the shooting indicating husband was shot from within the house, defendant and co-defendant were having an affair, and defendant called to inquire on husband's million-dollar life insurance policy, for which defendant was the beneficiary, the day after the shooting. *Young v. State*, 315 Ga. 208, 881 S.E.2d 689, 2022 Ga. LEXIS 313 (2022).

Evidence was sufficient to convict the defendant as a party to felony murder and other crimes in connection with the attempted burglary and shooting death of the first victim, as well as theft by receiving of the second victim's SUV, because the defendant and the co-defendant were

driving around in a stolen SUV two days before the murder; the defendant's fingerprints were discovered in the stolen SUV; the defendant and the co-defendant discussed "hitting a lick;" and the defendant told the girl that the defendant was dating that the lick went bad and the man was shot. *McCoy v. State*, 315 Ga. 536, 883 S.E.2d 740, 2023 Ga. LEXIS 28 (2023).

Rational juror likely would have inferred that defendant and the fellow inmate shared a specific intent to kill because both acted to conceal evidence of the crime by blocking the view into the cell when the lockdown ended, cleaning the cell with a bleach solution, and attempting to dispose of clothing and towels that might yield incriminating evidence, and the evidence showed that defendant and the inmate were in the same gang and that their gang leader had ordered them to kill the victim. *Burley v. State*, 316 Ga. 796, 888 S.E.2d 507, 2023 Ga. LEXIS 120 (2023).

Evidence was sufficient to authorize the jury to find defendant guilty of felony murder and possession of a firearm during the commission of another crime beyond a reasonable doubt as either a direct participant or as a party to the crimes because it showed that after a verbal altercation with the victim, defendant engaged in a physical altercation with the victim before the shooting, and the victim's blood was found in defendant's car. *Stroud v. State*, 318 Ga. 744, 900 S.E.2d 619, 2024 Ga. LEXIS 89 (2024).

Evidence was sufficient to support defendant's felony murder conviction as a party to the crime because the evidence showed that defendant had knowledge of the victim's substantial gambling winnings, communicated with the co-defendant several times on the night of the crimes both before and after the victim's murder, attempted to delete evidence of her communications with the co-defendant, and lied to officers about those communications. *Grant v. State*, 319 Ga. 490, 904 S.E.2d 338, 2024 Ga. LEXIS 153 (2024).

Party to murder. — Defendant's murder conviction was supported by evidence that the defendant was a party to the crime, O.C.G.A. § 16-2-20, although the

Application (Cont'd)**4. Murder or Manslaughter (Cont'd)**

defendant's friend was the actual shooter, because the defendant drove the vehicle, confronted the victim, then drove the car away and then ran away with the shooter after crashing the car. *Williams v. State*, 307 Ga. 689, 838 S.E.2d 314, 2020 Ga. LEXIS 42 (2020).

Evidence was sufficient to show that the second defendant intentionally participated in the criminal plan, as the evidence presented authorized the jury to find that the second defendant had lived at the burglarized home previously, knew of the occupant's drug-dealing and income tied to that business, served as a potential connection between the codefendant and the occupant, and planned to meet and did meet the occupant at a hotel while the crimes were being committed. *Fitts v. State*, 312 Ga. 134, 859 S.E.2d 79, 2021 Ga. LEXIS 291 (2021).

Evidence was constitutionally sufficient to authorize the defendant's convictions for murder and related offenses because testimony showed that the defendant and the co-defendants planned the crimes and the defendant was a party to them. *Blash v. State*, 318 Ga. 325, 898 S.E.2d 522, 2024 Ga. LEXIS 41 (2024).

Evidence sufficient to sustain conviction for felony-murder.

Evidence was legally sufficient to convict the defendant of felony murder and other crimes either as a principal or as a party to the crimes because a witness saw either the defendant or the codefendant in the victim's truck; the witness heard a loud noise from the house and saw either the defendant or the codefendant run out and jump in the victim's truck; the witness found the victim lying dead inside the house; less than an hour after the shooting the defendant and the codefendant used one of the victim's credit cards; the codefendant told a cousin that the codefendant and the defendant killed the victim; and police found a pair of blue jeans with blood splatter containing the victim's DNA. *Watts v. State*, 314 Ga. 746, 879 S.E.2d 424, 2022 Ga. LEXIS 268 (2022).

Evidence sufficient to sustain ver-

dict of malice murder. — Evidence was sufficient for the jury to conclude that the defendant committed malice murder either as the shooter or as a party to the crime because the evidence showed that the defendant came back to the first victim's home after visiting the first victim that day, pulled a gun on the victim and told the first victim to "give it up" after the first victim refused to sell the defendant drugs, restrained the first victim when the first victim attempted to run for the door, and left the first victim to die after the first victim was shot; and the defendant fled the country immediately after the crimes occurred. *Coates v. State*, 310 Ga. 94, 849 S.E.2d 435, 2020 Ga. LEXIS 733 (2020).

Evidence was sufficient to convict the defendant of malice murder and possession of a firearm during the commission of a felony as either a direct participant or a party because, when the victim returned from the store to the car, either the defendant or the driver shot the victim using a .40-caliber pistol loaded with .40-caliber hollow-point bullets; the defendant was known to own a .40-caliber pistol like the one used in the shooting; and .40-caliber hollow-point bullets were discovered by police in the defendant's bedroom. *Meadows v. State*, 316 Ga. 22, 885 S.E.2d 780, 2023 Ga. LEXIS 67 (2023).

Failure to give aiding and abetting instruction. — Appellant's claim of plain error based on an omission of a jury instruction failed, as did the related claim of ineffective assistance of counsel, because the appellant did not show that the jury likely would have reached a different verdict if the jury had been instructed that the jury could also find the appellant guilty if, for example, the appellant merely intentionally aided or encouraged another in the shooting. *Jackson v. State*, 306 Ga. 69, 829 S.E.2d 142, 2019 Ga. LEXIS 392 (2019).

5. Other Crimes Against the Person

Evidence sufficient to support conviction for being party to crime of simple battery, etc.

Evidence supported a finding that the second defendant was a party to the crime of battery as several witnesses testified

that, when the victim fell to the ground after being pistol-whipped, the second defendant joined in attacking the victim, and that the second defendant shot the victim while the victim was lying on the ground after being beaten. *Jackson v. State*, 318 Ga. 393, 897 S.E.2d 785, 2024 Ga. LEXIS 21 (2024).

Aggravated assault.

Evidence that the defendant entered the victim's vehicle with the co-defendant for the purpose of purchasing marijuana, struggled with the victim over the bag of marijuana while the co-defendant hit the victim with the gun, took the victim's cell phone and threatened that the co-defendant would bust the victim, and then fled with the co-defendant, was sufficient for the jury to find that the defendant was a party to the crime of aggravated assault of the victim. *Pride v. State*, 356 Ga. App. 835, 849 S.E.2d 686, 2020 Ga. App. LEXIS 538 (2020).

Jury was authorized to conclude that defendant was at least party to crime of aggravated assaults of victims based on state presenting evidence that defendant and co-defendants were discussing plans to commit robbery hours before crimes and that defendant re-entered apartment shortly after crimes under guise of providing assistance. *Perkins v. State*, 313 Ga. 885, 873 S.E.2d 185, 2022 Ga. LEXIS 154 (2022).

Evidence was sufficient to support defendant's convictions of aggravated assault and criminal damage as a party to those crimes because it showed that defendant conspired with his co-defendants to rob the victim and in executing their plan they shot and killed him. During their getaway, a member of the trio shot at the second victim's vehicle, and based on defendant's conduct throughout the enterprise and the fact that defendant was with a co-defendant when they were apprehended the jury was authorized to reject defendant's claim that he had withdrawn from the enterprise. *Saylor v. State*, 316 Ga. 225, 887 S.E.2d 329, 2023 Ga. LEXIS 92 (2023).

Evidence that the defendant participated in the attack on the victim by blocking the doorway and stabbing the victim authorized the jury to find that the defen-

dant shared a common criminal intent with the direct perpetrators of the crimes. *Owens v. State*, 374 Ga. App. 56, 911 S.E.2d 330, 2025 Ga. App. LEXIS 4 (2025).

Aggravated assault of child. — Evidence was sufficient to convict the defendant of aggravated assault of the two-year-old child as a party because a neighbor testified that, after the neighbor heard the first few gunshots, the neighbor heard the children screaming and crying; and a jury could infer that the child was placed in reasonable apprehension of immediately receiving a violent injury. *Baker v. State*, 312 Ga. 363, 863 S.E.2d 55, 2021 Ga. LEXIS 602 (2021).

Party to false imprisonment and aggravated assault. — In the defendant's aggravated assault and false imprisonment trial arising out of the defendant's and the defendant's brother's beating of a marijuana dealer with a handgun, whether the defendant knew that the defendant's brother was going to steal the marijuana was not relevant; regardless of whether the defendant knew that the defendant's brother was going to steal the marijuana, the defendant actively participated in the false imprisonment and beating of the victim and was responsible as a party. *Gonzalez v. State*, 350 Ga. App. 297, 829 S.E.2d 385, 2019 Ga. App. LEXIS 288 (2019).

Evidence sufficient for conviction of aggravated assault. — Evidence was sufficient to convict the defendant of aggravated assault because the aggravated assault statute, O.C.G.A. § 16-5-21, did not require that the defendant point a deadly weapon directly at the second victim to be guilty of aggravated assault against the victim, but merely that the defendant used the deadly weapon in such manner as to place another in reasonable apprehension of immediately receiving a violent injury; the second victim was in reasonable apprehension of immediately receiving a violent injury when the defendant pulled a gun on the first victim; and the jury was authorized to find the defendant guilty of aggravated assault of the second victim as a party to the crime. *Coates v. State*, 310 Ga. 94, 849 S.E.2d 435, 2020 Ga. LEXIS 733 (2020).

Evidence sufficient as party to

Application (Cont'd)**5. Other Crimes Against the Person (Cont'd)**

armed robbery. — Evidence was sufficient to convict the defendant of armed robbery as a party to the offense and to find that the defendant did not abandon the defendant's effort to commit the crime prior to the crime's completion because, although the defendant told police that the defendant begged off from the robbery at the last moment, the defendant helped plan the robbery of the bank, provided the guns used in the robbery, dropped the accomplices off near the bank so that the accomplices could rob the bank, waited at the gas station knowing the robbery was taking place, and then followed the accomplices as the accomplices fled after taking the money. *Birdsong v. State*, 353 Ga. App. 316, 836 S.E.2d 232, 2019 Ga. App. LEXIS 683 (2019).

Evidence was sufficient to support the defendant's conviction of attempted armed robbery as a party to the crime because there was evidence apart from the accomplice's testimony from which the jury could have inferred that the defendant was a participant, including evidence that multiple witnesses identified the defendant as part of the group that approached the second victim with the accomplice pointing a gun at the second victim, the second victim testified that the defendant directed an associate to check the second victim's pockets or socks, and after the group was unable to obtain anything from the second victim, they went in the direction of the first victim. *Daniels v. State*, 306 Ga. 559, 832 S.E.2d 372, 2019 Ga. LEXIS 524 (2019).

6. Property Offenses**Party to armed robbery.**

Sufficient evidence supported the defendant's convictions for robbery and related crimes because DNA evidence indicated that the defendant was with the co-defendant in exact incident location around the time of the crimes, and the defendant instructed the girlfriend to testify they were at their apartment at the time, which the jury could use as evidence of the defendant's consciousness of guilt. *Spears v. State*, 367 Ga. App. 92, 883 S.E.2d 866, 2023 Ga. App. LEXIS 60 (2023).

Evidence sufficient for participation in burglary.

Evidence that defendant was found wearing dark clothing while hiding face down in bamboo in a back yard with a large amount of currency and wire cutters in the defendant's possession was sufficient to support the defendant's conviction for burglary as a party to a crime. *Kelly v. State*, 364 Ga. App. 556, 874 S.E.2d 442, 2022 Ga. App. LEXIS 290 (2022).

Evidence sufficient for conviction as party to armed robbery. — Testimony from the defendant's former cellmate that the defendant admitted identifying the victim as a robbery target, rode to the victim's house in a stolen vehicle, called the others involved during the robbery and met them after they fled, and later burned the vehicle with the others, and cell phone records showing the defendant's locations at the time of the offenses was sufficient to support the defendant's convictions as a party to the charged offenses. *Heard v. State*, 309 Ga. 76, 844 S.E.2d 791, 2020 Ga. LEXIS 455 (2020).

16-2-21. Prosecution of parties who did not directly commit the crime.**JUDICIAL DECISIONS**

Evidence sufficient to support conviction. — Evidence was sufficient to enable the jury to find the appellant guilty of armed robbery, as well as felony murder based upon the armed robbery, beyond a reasonable doubt as the evidence in the case was sufficient to prove that, at a

minimum, the appellant was a participant in the armed robbery of the victim and a participant in a crime may be convicted for the crime although the participant is not the one who directly committed the crime. *Waller v. State*, 311 Ga. 517, 858 S.E.2d 683, 2021 Ga. LEXIS 271 (2021),

overruled in part, *Cook v. State*, 313 Ga. 471, 870 S.E.2d 758, 2022 Ga. LEXIS 65 (2022).

Evidence insufficient to support conviction. — Evidence was insufficient to support the defendant’s conviction of trafficking in methamphetamine because

the evidence showed nothing more than defendant’s mere presence in the owner’s house at a time when methamphetamine was not being actively manufactured. *Denson v. State*, 353 Ga. App. 450, 838 S.E.2d 117, 2020 Ga. App. LEXIS 18 (2020).

CHAPTER 3

DEFENSES TO CRIMINAL PROSECUTIONS

Article 2		Sec.	
Justification and Excuse			murder or manslaughter prosecution.
Sec.		16-3-24.2.	Immunity from prosecution; exception.
16-3-21.	Use of force in defense of self or others; evidence of belief that force was necessary in	16-3-26.	Coercion.

ARTICLE 1
RESPONSIBILITY

16-3-1. Minimum age.

JUDICIAL DECISIONS

Presumption rebutted. — Trial court did not plainly err by admitting evidence of defendant’s alleged prior offenses of child molestation under O.C.G.A. § 24-4-414 because the trial court was authorized to conclude that the defendant’s prior acts constituted crimes, as evidence that the defendant knew right

from wrong at the time of the prior acts was sufficient to rebut the presumption of defendant’s incapacity to commit a crime based on the defendant’s young age at the time of the prior acts under O.C.G.A. § 16-3-1 and the Adams decision. *Wilson v. State*, 312 Ga. 174, 860 S.E.2d 485, 2021 Ga. LEXIS 481 (2021).

16-3-2. Mental capacity; insanity.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
APPLICATION

General Consideration
Insanity defense available to juveniles. — Georgia Supreme Court held that in a delinquency proceeding, a child

may assert an insanity or delusional-compulsion defense under O.C.G.A. § 16-3-2 or O.C.G.A. § 16-3-3 when the child’s delinquency charge is based on an

General Consideration (Cont'd)

allegation that the child committed an act designated a crime by the laws of Georgia. In the Interest of T.B., 313 Ga. 846, 874 S.E.2d 101, 2022 Ga. LEXIS 165 (2022).

Defendant could not simultaneously be insane and not insane. —

Verdicts of not guilty by reason of insanity on a malice murder charge and guilty but mentally ill on a felony murder charge were vacated because the convictions required affirmative findings of different mental states that could not exist at the same time; the defendant could not be insane and not insane during a single criminal episode against a single victim. McElrath v. State, 308 Ga. 104, 839 S.E.2d 573, 2020 Ga. LEXIS 127 (2020).

Noncompliance with medication did not preclude insanity defense. —

Allowing the state to argue that the defendant was not entitled to an insanity defense based on alleged medication non-compliance created an exception not found in the clear language of the insanity defense statutes. Wierson v. State, 372 Ga. App. 102, 903 S.E.2d 792, 2024 Ga. App.

LEXIS 257 (2024), *aff'd* in part, No. S24G1299, 2025 Ga. LEXIS 114 (Ga. May 28, 2025).

Application

Evidence insufficient to require charge on insanity. —

Trial court did not err by declining to give a jury instruction on insanity because, while the jury heard testimony that the defendant was “acting crazy” at the time of the alleged offense and urinated in a trash can at the police station, there was no evidence that the defendant was legally insane or operating under a delusion. Hudson v. State, 308 Ga. 443, 841 S.E.2d 696, 2020 Ga. LEXIS 242 (2020).

Conflicting opinion evidence. —

Because there was competing expert testimony concerning the defendant’s sanity, and the jury was not required to accept the opinion of the defense experts, the jury was authorized to conclude that the defendant failed to show that the defendant was not guilty by reason of insanity. Bowman v. State, 306 Ga. 97, 829 S.E.2d 139, 2019 Ga. LEXIS 386 (2019).

16-3-3. Delusional compulsion.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

APPLICATION

General Consideration

Defendant could not simultaneously be insane and not insane. —

Verdicts of not guilty by reason of insanity on a malice murder charge and guilty but mentally ill on a felony murder charge were vacated because the verdicts required affirmative findings of different mental states that could not exist at the same time; the defendant could not be insane and not insane during a single criminal episode against a single victim. McElrath v. State, 308 Ga. 104, 839 S.E.2d 573, 2020 Ga. LEXIS 127 (2020).

Insanity defense available to juveniles. — Georgia Supreme Court held that in a delinquency proceeding, a child

may assert an insanity or delusional-compulsion defense under O.C.G.A. § 16-3-2 or O.C.G.A. § 16-3-3 when the child’s delinquency charge is based on an allegation that the child committed an act designated a crime by the laws of Georgia. In the Interest of T.B., 313 Ga. 846, 874 S.E.2d 101, 2022 Ga. LEXIS 165 (2022).

Noncompliance with medication did not preclude insanity defense. —

Allowing the state to argue that the defendant was not entitled to an insanity defense based on alleged medication non-compliance created an exception not found in the clear language of the insanity defense statutes. Wierson v. State, 372 Ga. App. 102, 903 S.E.2d 792, 2024 Ga. App.

LEXIS 257 (2024), *aff'd* in part, No. S24G1299, 2025 Ga. LEXIS 114 (Ga. May 28, 2025).

Conflicting opinion evidence on sanity. — Because there was competing expert testimony concerning the defendant's sanity, and the jury was not required to accept the opinion of the defense experts, the jury was authorized to conclude that the defendant failed to show that the defendant was not guilty by reason of insanity. *Bowman v. State*, 306 Ga. 97, 829 S.E.2d 139, 2019 Ga. LEXIS 386 (2019).

Application

Delusions must exist during offense to warrant instruction. — In an action for murder and other offenses, there was no plain error in the failure to give a delusional compulsion insanity instruction because the defendant failed to offer evidence that at the time of the crimes the

defendant suffered from any mental disease or congenital deficiency. *Hood v. State*, 311 Ga. 855, 860 S.E.2d 432, 2021 Ga. LEXIS 473 (2021).

Failure to establish ineffective assistance of counsel. — Trial counsel was not deficient in presenting the meritless defense of ineffective assistance of counsel, and the defendant failed to show prejudice because for a defendant to prevail on an insanity defense based on a delusional compulsion, the defendant must show that the defendant was laboring under that compulsion of the criminal act; thus, for purposes of the defendant's particular ineffective-assistance claim, the defendant's mental state at the time of trial was irrelevant. *Serdula v. State*, 356 Ga. App. 94, 845 S.E.2d 362, 2020 Ga. App. LEXIS 359 (2020), *cert. denied*, No. S20C1508, 2021 Ga. LEXIS 241 (Ga. Apr. 5, 2021).

16-3-4. Intoxication.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
APPLICATION TO SPECIFIC CRIMES

General Consideration

Brain function not permanently altered by alcohol. — Evidence was sufficient to convict the defendant of malice murder, armed robbery, and concealing the death of another as a party to the crimes, and the defendant's voluntary intoxication provided no defense because the defendant admitted that the defendant was not coerced into participating in the crimes; the defendant admitted that the defendant took money from the victim's pockets as an accomplice; bludgeoned the victim with a baseball bat; the defendant admitted participating in removing the victim's body from the apartment; and the defendant presented no evidence at trial that the defendant's brain function had been permanently altered. *Perez v. State*, 309 Ga. 687, 848 S.E.2d 395, 2020 Ga. LEXIS 612 (2020).

Defense of involuntary intoxication. — Trial counsel was not ineffective for failing to pursue evidence and request a jury instruction regarding the defense of involuntary intoxication because there was no evidence that the defendant was involuntarily intoxicated due to excusable ignorance or the coercion, fraud, or contrivance of another person. *Jacobs v. State*, 306 Ga. 571, 832 S.E.2d 363, 2019 Ga. LEXIS 519 (2019).

Trial counsel's failure to request a jury instruction on involuntary intoxication did not amount to ineffective assistance in violation of the Sixth Amendment because there was no persuasive evidence on that point; to the contrary, the evidence tended to show that the defendant was much more sober than the victim. *Hills v. State*, 306 Ga. 800, 833 S.E.2d 515, 2019 Ga. LEXIS 631 (2019).

Application to Specific Crimes

Fact of intoxication will not lessen character or degree of malice apparent from circumstances. — Evidence was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that the defendant was guilty of the crimes for which the defendant was con-

victed as the jury was free to reject the defendant’s claim that the defendant was involuntarily intoxicated and acting in self-defense at the time that the defendant shot and killed the victim. *Cox v. State*, 306 Ga. 736, 832 S.E.2d 354, 2019 Ga. LEXIS 514 (2019).

16-3-5. Mistake of fact.

JUDICIAL DECISIONS

ANALYSIS

JURY INSTRUCTIONS

Jury Instructions

Trial court did not err in refusing to charge mistake of fact, etc.

When the defendant was convicted of malice murder, the trial court did not err in failing to instruct the jury on mistake of fact as the defendant’s ignorance of the exact moment of the victim’s death did not negate the defendant’s mental state in performing the lethal act. *Collett v. State*, 305 Ga. 853, 828 S.E.2d 362, 2019 Ga. LEXIS 331 (2019).

Failure to give a mistake of fact jury charge did not amount to plain error because the defendant could not show that

the trial court’s failure to give the charge likely affected the outcome of the proceedings as the evidence established that the defendant fought with the victim, the defendant’s father, prior to the victim’s death, was holding the gun to the victim’s head when the gun fired, fled the scene and failed to call for help after the shooting, admitted to numerous people that the defendant had shot the victim, lied to law enforcement on numerous occasions about the defendant’s role in the victim’s death, and wrote a letter to the district attorney taking full responsibility for the victim’s death. *Norris v. State*, 309 Ga. 11, 843 S.E.2d 837, 2020 Ga. LEXIS 359 (2020).

ARTICLE 2

JUSTIFICATION AND EXCUSE

Law reviews.

For note, “Heating Up and Cooling Down: Modifying the Provocation Defense by Expanding Cooling Time,” see 54 Ga. L. Rev. 761 (2020).

For article, “How the Fourth Amendment Frustrates the Regulation of Police Violence,” see 70 Emory L.J. 521 (2021).

16-3-20. Justification.

Law reviews.

For article, “HB 479: Repeal of Georgia’s

Citizen’s Arrest Law,” see 38 Ga. St. U.L. Rev. 25 (2021).

JUDICIAL DECISIONS

ANALYSIS

JURY INSTRUCTION

Jury Instruction

Defendant was not required to admit criminal conduct to be entitled to a charge on justification. — In the defendant's aggravated assault trial, O.C.G.A. § 16-5-21(a)(2), based on the defendant aiming a BB rifle at two victims, the trial court erred in denying the defendant's requested jury instructions on the defense of self and habitation, on the basis that the defendant did not admit aiming at the victims; if slight evidence supported the defenses, the charges should have been given. Defendant was not required to admit the elements of the crime in order to argue the defendant's theory of defense.

McClure v. State, 306 Ga. 856, 834 S.E.2d 96, 2019 Ga. LEXIS 643 (2019).

Ineffective assistance not found.

Counsel was not ineffective for failing to ask for a charge to support a justification defense and instead seeking a charge to support a coercion defense because coercion was a defense to the charged crimes of aggravated assault and fleeing and attempting to elude, and the defendant failed to show that an unspecified justification charge would have been more beneficial to the defendant than the coercion charge given by the trial court. Frazier v. State, 309 Ga. 219, 845 S.E.2d 579, 2020 Ga. LEXIS 460 (2020).

16-3-21. Use of force in defense of self or others; evidence of belief that force was necessary in murder or manslaughter prosecution.

(a) A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force; however, except as provided in Code Section 16-3-23, a person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony.

(b) A person is not justified in using force under the circumstances specified in subsection (a) of this Code section if he:

(1) Initially provokes the use of force against himself with the intent to use such force as an excuse to inflict bodily harm upon the assailant;

(2) Is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or

(3) Was the aggressor or was engaged in a combat by agreement unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other, notwithstanding, continues or threatens to continue the use of unlawful force.

(c) Any rule, regulation, or policy of any agency of the state or any

ordinance, resolution, rule, regulation, or policy of any county, municipality, or other political subdivision of the state which is in conflict with this Code section shall be null, void, and of no force and effect.

(d)(1) In a prosecution for any offense prohibited under Chapter 5 of this title, if a defendant raises as a defense a justification provided by subsection (a) of this Code section, the defendant may offer relevant evidence that the defendant had been subjected to acts of family violence, dating violence, or child abuse committed by the alleged victim, as such acts are described in Code Sections 19-13-1, 19-13A-1, and 19-15-1, respectively, in order to establish the defendant's reasonable belief that the threat or use of force or deadly force was immediately necessary.

(2) Relevant evidence includes, but is not limited to:

(A) Evidence pertaining to the alleged victim's prior acts, including, but not limited to:

(i) Evidence indicating the defendant sought law enforcement assistance;

(ii) Evidence indicating the defendant sought services from a counselor, social worker, domestic violence program, or other relevant agency or service provider;

(iii) Evidence indicating the defendant sought medical attention;

(iv) Evidence of the effects of battering and post-traumatic stress disorder on the defendant; and

(v) Temporary protective order petitions, ex parte orders, and final orders in which the alleged victim is the respondent;

(B) Expert testimony, including, but not limited to, testimony as to relevant facts and circumstances relating to the family violence, dating violence, or child abuse, as such acts are described in Code Sections 19-13-1, 19-13A-1, and 19-15-1, respectively, that are the bases of such expert's opinion; and

(C) Any other evidence the court determines is of sufficient credibility or probative value.

(3) Evidence introduced under this subsection shall be subject to Code Sections 24-4-401, 24-4-402, and 24-4-403.

History.

Laws 1833, Cobb's 1851 Digest, p. 785.; Code 1863, § 4230; Code 1868, § 4267; Code 1873, § 4333; Code 1882, § 4333; Penal Code 1895, § 73; Penal Code 1910, § 73;

Code 1933, § 26-1014; Code 1933, § 26-902, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1975, p. 1209, § 1; Ga. L. 1993, p. 1716, § 2; Ga. L. 2001, p. 1247, § 1; Ga. L. 2025, p. 497, § 2/HB 582, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, rewrote subsection (d)

Editor's notes.

Ga. L. 2025, p. 497, § 1/HB 582, not codified by the General Assembly,

provides: "This Act shall be known and may be cited as the 'Georgia Survivor Justice Act.'"

Law reviews.

For article with annual survey on criminal law, see 73 Mercer L. Rev. 75 (2021).

JUDICIAL DECISIONS**ANALYSIS**

GENERAL CONSIDERATION

FEAR OF REASONABLE MAN

MUTUAL COMBAT

JURY CHARGE

1. IN GENERAL

2. CONTENT

APPLICATION

General Consideration**Justification is affirmative defense.**

— City was not vicariously liable for the officer's alleged battery because the officer's use of deadly force was justified as the officer did not violate the Fourth Amendment in using deadly force against the decedent based on the decedent using the decedent's vehicle to elude and threaten the officers. *L. T. v. Owens*, 808 Fed. Appx. 814, 2020 U.S. App. LEXIS 10387 (11th Cir. 2020).

Section may provide a defense to unlawful possession of weapon. — O.C.G.A. §§ 16-3-21(a) and 16-11-138 in combination effectively provide this rule of law: A person is justified in threatening or using force against another, or in possessing a weapon in circumstances otherwise prohibited under the Code, when and to the extent that he or she reasonably believes that such threat or force or conduct otherwise prohibited is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force. *Johnson v. State*, 308 Ga. 141, 839 S.E.2d 521, 2020 Ga. LEXIS 136 (2020).

Fear of Reasonable Man

Fear in reasonable man justifying deadly force is jury question. — Evidence presented at trial was sufficient to authorize a rational jury to find beyond a reasonable doubt that appellant did not

shoot at the victim in self-defense because multiple witnesses testified that the victim was unarmed, never moved to strike appellant, and that the confrontation was entirely verbal before appellant opened fire. *Wilkerson v. State*, 317 Ga. 242, 892 S.E.2d 737, 2023 Ga. LEXIS 188 (2023).

Defendant's testimony regarding prior rape irrelevant. — Defendant's testimony that the defendant was raped at age 11 was barred because it was not relevant to the jury's determination regarding voluntary manslaughter; to support a claim of justification or self-defense as the defendant did not contend that the victim sexually abused the defendant as a child, and the defendant withdrew the requested charges on justification and self-defense; or to show the defendant's alleged subjective mental state in the absence of an insanity defense, which was withdrawn from consideration by the jury. Furthermore, the jury heard the defendant's testimony that the defendant feared both for the defendant's life and that the defendant was about to be raped, and the trial court did instruct the jury on the definition of voluntary manslaughter. *Riggs v. State*, 306 Ga. 759, 833 S.E.2d 112, 2019 Ga. LEXIS 601 (2019).

Mutual Combat

Mutual combat involves agreement to fight with deadly weapons. — Defendant's convictions for malice murder and other crimes was upheld because the

Mutual Combat (Cont'd)

trial court did not err in instructing the jury on mutual combat as the mutual combat instruction was warranted since there was evidence both parties intended to resolve their dispute by fighting with deadly weapons. *Stewartson v. State*, 371 Ga. App. 329, 900 S.E.2d 209, 2024 Ga. App. LEXIS 149 (2024).

Jury Charge**1. In General****Self-defense instruction not warranted.**

Defendant failed to prove that the trial court erred in refusing to instruct the jury on self-defense because the defendant pointed to no evidence to support a reasonable belief that shooting the victim was necessary to defend from any imminent use of unlawful force. Although the defendant and the victim were engaged in an argument before the shooting, nothing in the record suggested that the defendant was in danger of imminent violence when the defendant retrieved a gun and pointed the gun at the victim or when the defendant fired the gun. *Crider v. State*, 356 Ga. App. 36, 846 S.E.2d 205, 2020 Ga. App. LEXIS 410 (2020), cert. denied, No. S20C1517, 2021 Ga. LEXIS 105 (Ga. Mar. 1, 2021).

Trial court did not err in failing to instruct the jury regarding self-defense because there was no evidence to support such an instruction and trial counsel was not deficient for failing to request a charge on self-defense since the defense strategy was that the defendant had no involvement in the victim's death. *Floyd v. State*, 307 Ga. 789, 837 S.E.2d 790, 2020 Ga. LEXIS 13 (2020).

In a case in which the defendant was convicted of two counts of aggravated assault and one count of aggravated battery, the trial court did not err in failing to instruct the jury on self-defense or justification as the defense's theory of the case was that the victim caused the victim's own injuries and the damage to the car by diving into the vehicle and punching the defendant; and the defendant did not testify that the defendant intentionally

threatened or used force in an attempt to defend the defendant's self. *Smith v. State*, 362 Ga. App. 610, 869 S.E.2d 554, 2022 Ga. App. LEXIS 70 (2022).

Defendant failed to meet the plain-error test to establish the trial court erred by failing to charge the jury on self-defense as it was not obvious or beyond reasonable dispute that there was at least slight evidence defendant reasonably believed that shooting the victim was necessary to defend defendant from any imminent use of unlawful force. *Williams v. State*, 316 Ga. 304, 888 S.E.2d 60, 2023 Ga. LEXIS 106 (2023).

Even if the trial court erred by declining to instruct the jury on self-defense under O.C.G.A. § 16-3-21 during defendant's malice murder trial, the error was harmless because the evidence presented at trial that defendant shot the victim in self-defense was weak, the handgun they kept in their house was not involved while they were "tussling," there was no evidence that the victim wielded a weapon at any point on the night of the shooting, and defendant told a detective that defendant was sure defendant shot the victim and declined to state a reason for doing so. *Jones v. State*, 317 Ga. 853, 896 S.E.2d 493, 2023 Ga. LEXIS 258 (2023).

Trial court did not err by failing to charge the jury on self-defense because defendant's own testimony showed that whatever altercation that occurred between her and the victim had concluded at the time she decided to retrieve her gun and the victim was not imminently attacking defendant when defendant shot him. *Williams v. State*, 320 Ga. 592, 910 S.E.2d 566, 2024 Ga. LEXIS 301 (2024).

Instruction on self-defense appropriate. — Trial court did not err in explaining that the jury would have to make a determination of whether the defendant acted in self-defense at the moment of the stabbing, and that a finding that the victim brought the knife to the fight would not end that determination because, even if the jury found that the victim brought a knife to the fight, in order to determine that the defendant acted in self-defense, the jury would have to find, among other things, that the defendant reasonably believed that it was necessary to defend the

defendant's self against the victim's imminent use of unlawful force. *Knighton v. State*, 310 Ga. 586, 853 S.E.2d 89, 2020 Ga. LEXIS 925 (2020).

Justification instruction not warranted.

Any error in the trial court's failure to charge on justification during the defendant's trial for murder was harmless because it was highly probable that the jury would have reached the same verdict even had the trial court given the charge as the jury would have independently concocted a theory of the victim's death that was inconsistent with the state's theory of the case and inconsistent with the defendant's own account of the events. *Guerrero v. State*, 307 Ga. 287, 835 S.E.2d 608, 2019 Ga. LEXIS 732 (2019).

Trial court's decision not to give a justification instruction was not error as there was evidence presented that the defendant was the initial aggressor on the night of the shooting. *Crider v. State*, 356 Ga. App. 36, 846 S.E.2d 205, 2020 Ga. App. LEXIS 410 (2020), cert. denied, No. S20C1517, 2021 Ga. LEXIS 105 (Ga. Mar. 1, 2021).

Trial counsel was not ineffective for failing to request an instruction on a justification defense because there was at best slight evidence presented at trial that would have allowed the jury to infer that the defendant acted in self-defense and there was no direct evidence that the victim was armed or that the defendant was in imminent danger from the victim at the time of the shooting. *Gaston v. State*, 307 Ga. 634, 837 S.E.2d 808, 2020 Ga. LEXIS 14 (2020).

Trial court did not err when the court denied the defendant's request to charge the jury on the defense of justification, as the jury saw the video recording depicting the defendant opening fire, amidst a crowd of people talking, dancing, and mingling, and nothing in the video suggested that the defendant was in such danger that the defendant reasonably believed it was necessary to immediately fire a gun at a victim, much less to fire the gun in such a manner as to injure multiple bystanders. *Jones v. State*, 310 Ga. 886, 855 S.E.2d 573, 2021 Ga. LEXIS 76 (2021).

Trial court did not plainly err by not instructing the jury on justification be-

cause defendant failed to show that the error likely affected the outcome of the trial, as the evidence supporting his self-defense theory was weak. No witness testified that there was more than one shooter at the crime scene and an investigator testified that all shell casings and bullets recovered from the scene were fired from a single weapon. *Reese v. State*, 317 Ga. 189, 891 S.E.2d 835, 2023 Ga. LEXIS 173 (2023).

Trial court did not err by refusing to instruct the jury on the defense of justification because the evidence showed that defendant initiated the confrontation by pointing a handgun at the victim and defendant's ex-wife and that the victim reached toward defendant's gun only because defendant was threatening the victim and the ex-wife. There was no evidence that the victim was armed or that he threatened defendant in any way. *Kinlaw v. State*, 317 Ga. 414, 893 S.E.2d 712, 2023 Ga. LEXIS 218 (2023).

Trial court did not err in failing to sua sponte give a charge on justification based on self-defense and the doctrine of reasonable beliefs because there was not the slightest evidence to support such a charge; defendant pointed to no evidence that shooting the victims was necessary to defend himself or any third person from any imminent use of unlawful force. *Tucker v. State*, 321 Ga. 278, 912 S.E.2d 639, 2025 Ga. LEXIS 30 (2025).

Trial court did not commit plain error by failing to expressly instruct the jury that the defense of justification is available to convicted felons in possession of a firearm because precedent did not provide that a trial court must always include such language in its jury instruction on justification. *Hill v. State*, 321 Ga. 177, 913 S.E.2d 547, 2025 Ga. LEXIS 44 (2025).

Defendant was not required to admit criminal conduct to be entitled to charge on justification. — In the defendant's aggravated assault trial, O.C.G.A. § 16-5-21(a)(2), based on the defendant aiming a BB rifle at two victims, the trial court erred in denying the defendant's requested jury instructions on the defense of self and habitation, on the basis that the defendant did not admit aiming at the

Jury Charge (Cont'd)
1. In General (Cont'd)

victims; if slight evidence supported the defenses, the charges should have been given. Defendant was not required to admit the elements of the crime in order to argue the defendant's theory of defense. *McClure v. State*, 306 Ga. 856, 834 S.E.2d 96, 2019 Ga. App. LEXIS 643 (2019).

Charge on mutual combat not adjusted to the evidence. — Supreme Court of Georgia has held that because a mutual combat charge authorizes the jury to find the defendant guilty of voluntary manslaughter in lieu of murder, the charge benefits defendants and, as such, a convicted defendant's complaint that it was improper to give a mutual combat charge was without merit. *Johnson v. State*, 350 Ga. App. 478, 829 S.E.2d 652, 2019 Ga. App. LEXIS 326 (2019).

Jury charge on mutual combat not error. — Trial court did not err in denying the defendant's claim that trial counsel rendered ineffective assistance by failing to object to the jury charge on mutual combat because there was some evidence, in the form of the defendant's testimony, that the victim was armed and it was undisputed that the defendant was armed; thus, trial counsel's performance could not have been deficient for failing to object as such objection would have been futile. *Johnson v. State*, 350 Ga. App. 478, 829 S.E.2d 652, 2019 Ga. App. LEXIS 326 (2019).

Trial counsel not ineffective.

Because the homeowner's testimony supported an instruction on defense of self or others, not an instruction on mutual combat or voluntary manslaughter, trial counsel was not ineffective in declining to pursue instructions on mutual combat or voluntary manslaughter. *Bannister v. State*, 306 Ga. 289, 830 S.E.2d 79, 2019 Ga. App. LEXIS 437 (2019).

Trial counsel was not ineffective for failing to pursue a justification defense as the defendant offered no record evidence suggesting that the defendant reasonably believed that hitting the victim in the face was necessary; and trial counsel testified that counsel did not think that a justifica-

tion defense was appropriate because the defendant's position was that the defendant never hit the victim, and the defendant would not have been willing for the sake of argument to accept that the defendant punched the victim. *Merchant v. State*, 365 Ga. App. 42, 877 S.E.2d 361, 2022 Ga. App. LEXIS 377 (2022).

Jury charge incorrect but did not constitute plain error. — Defendant failed to show that trial counsel was ineffective for pursuing a defense of justification by self-defense because given the lack of evidence and the instructions the jury received, there was nothing from which the jury could conclude that the defendant was barred from asserting a self-defense claim based on counsel's speculation in closing argument that the defendant may have been attempting to purchase marijuana. *Brooks v. State*, 309 Ga. 630, 847 S.E.2d 555, 2020 Ga. App. LEXIS 591 (2020).

Although the trial court's statement about the knife not mattering in the court's second instruction on self-defense incorrectly suggested that all of the evidence about how the defendant got the knife was irrelevant, when evaluated in the context of the first instruction and the charge as a whole, that instruction did not create a clear and obvious error beyond reasonable dispute with respect to the jury's understanding that the jury was to consider all of the evidence presented at trial in determining whether the defendant acted in self-defense when the defendant fatally stabbed the victim. *Knighton v. State*, 310 Ga. 586, 853 S.E.2d 89, 2020 Ga. App. LEXIS 925 (2020).

2. Content

Charge on justifiable homicide not reversible error.

Trial court did not commit plain error when the court instructed the jury about self-defense because the instructions properly told the jury that the defendant could not claim self defense as to shooting if, when the defendant shot the victim the defendant was attempting to commit robbery, a different felony than the shooting the defendant claimed was justified. *Harris v. State*, 320 Ga. 92, 907 S.E.2d 669, 2024 Ga. App. LEXIS 231 (2024).

Application

Admission of police department's use of force policy reversible error. —

Trial court erred by admitting into evidence the police department's use of force policy because the department's directives were in conflict with Georgia's law of self-defense and, therefore, they were null, void, and of no force or effect within the context of defendant's criminal trial in which his sole defense was self-defense. *Olsen v. State*, 371 Ga. App. 12, 899 S.E.2d 518, 2024 Ga. App. LEXIS 104 (2024).

Possession of firearm by felon in self-defense. — Evidence supported the defendant's contention that the defendant shot the victim in self-defense; therefore, if the defendant's possession of a firearm at the shooting was justified under the rule created under O.C.G.A. §§ 16-3-21 and 16-11-138, then it could not be said that the defendant was committing a felony when the defendant shot the victim, and the preclusive bar of § 16-3-21(b)(2) would not apply. However, the trial court needed to consider whether possession of the firearm before or after the shooting could be prosecuted. *State v. Remy*, 308 Ga. 296, 840 S.E.2d 385, 2020 Ga. LEXIS 178 (2020).

Assertion of self-defense by provoker. — Evidence was sufficient to authorize the jury to conclude that defendant was the aggressor and reject his claim of self defense because it showed that he let himself into his ex-girlfriend's apartment, was asked to leave, returned with a machete, woke the victim by tapping him with the machete, stated he was not afraid of the victim, punched and then stabbed the victim. *Russell v. State*, 319 Ga. 556, 905 S.E.2d 578, 2024 Ga. LEXIS 167 (2024).

Hearing panel in student disciplinary proceeding should have considered student's claim of self-defense. —

In a university's appeal of the reversal of a student's suspension following a disciplinary hearing arising from an altercation at an off-campus bar with another student, the hearing panel erred by not considering the student's claim of self-defense under O.C.G.A. § 16-3-21 before finding the student guilty of conduct violations and the failure to do so was an

error of law warranting certiorari review. *Bd. of Regents of the Univ. Sys. of Ga. v. Drake*, 372 Ga. App. 202, 904 S.E.2d 37, 2024 Ga. App. LEXIS 276 (2024).

When use of force not justified.

In the defendant's trial for murder, the evidence that the defendant did not shoot in self-defense, O.C.G.A. § 16-3-21(a), was overwhelming: multiple witnesses testified that the victim was not armed, did not threaten the defendant, simply walked toward the defendant's car, and was still a considerable distance away when the defendant opened fire. *Watts v. State*, 308 Ga. 455, 841 S.E.2d 686, 2020 Ga. LEXIS 241 (2020).

Evidence was sufficient to support the defendant's convictions for malice murder and other crimes in connection with the shooting death of the victim as the evidence did not support the defendant's assertion that the defendant acted in self-defense because, although the defendant testified that the victim exited the victim's home and began firing at the defendant, two GBI experts testified, based on the stippling on the victim's skin and the shattered glass at the scene, that the victim had not stepped out of the victim's house when the defendant shot the victim. *Davenport v. State*, 311 Ga. 667, 859 S.E.2d 52, 2021 Ga. LEXIS 287 (2021).

Evidence was more than sufficient for the jury to reject defendant's assertion that he was acting in self-defense when he shot two victims because no evidence was presented to show that the victims were armed at the time of the shootings, one victim was not within close range of defendant when the shooting occurred, and the other victim was not threatening defendant when he shot the victim. *Jackson v. State*, 315 Ga. 543, 883 S.E.2d 815, 2023 Ga. LEXIS 22 (2023).

In a felony murder case, the trial court did not err by denying the defendant's motion for immunity because the video did not show that the trial court's finding that the victim was not pointing a gun at the defendant when the defendant fired was erroneous and the trial court was authorized to not only reject the defendant's self-serving testimony but also to conclude that the defendant failed to meet the burden to prove justification so as to

Application (Cont'd)

entitle the defendant to immunity. *Allen v. State*, 317 Ga. 1, 890 S.E.2d 700, 2023 Ga. LEXIS 143 (2023).

Evidence was sufficient for the jury to reject defendant's claim that defendant shot the victim because defendant reasonably feared for defendant's life because, given defendant's admitted lies to investigators and the inconsistency between the forensic evidence, indicating defendant's gun was fired from more than three feet away, and defendant's claim that defendant fired as the victim was about to strike defendant, the jury could have disbelieved defendant's claim that defendant fired out of fear rather than anger. *Copeland v. State*, 316 Ga. 452, 888 S.E.2d 517, 2023 Ga. LEXIS 113 (2023).

Evidence was sufficient for the jury to find that any belief on defendant's part that it was necessary to shoot the victim was not a reasonable belief and therefore could not serve as a basis for justification because the only evidence that the victim ever held a gun was defendant's statement and testimony, defendant's statement and testimony showed that the victim was turning away from him when he first fired in the victim's direction, and multiple shots were fired at the victim when he was on the ground. *DeMuro v. State*, 317 Ga. 155, 892 S.E.2d 31, 2023 Ga. LEXIS 177 (2023).

Jury was authorized to reject defendant's theory of self-defense on the basis that defendant could not have reasonably believed that the use of force was necessary to prevent death or great bodily injury to defendant from the victim's umbrella. *Chambliss v. State*, 318 Ga. 161, 896 S.E.2d 469, 2023 Ga. LEXIS 254 (2023).

Evidence was sufficient to support defendant's conviction of aggravated assault against the victim based on defendant physically assaulting the victim, a girlfriend, and pointing a gun at the victim's aunt, and the state disproved defendant's justification defense beyond a reasonable doubt by showing that defendant was not in danger when the defendant exited the home and fired at officers. *Bass v. State*, 372 Ga. App. 510, 904 S.E.2d 699, 2024 Ga. App. LEXIS 320 (2024).

Evidence was sufficient to support defendant's conviction of felony murder and to disprove his justification defenses of self-defense and defense of habitation because the jury could infer from the evidence that the victim was retreating unarmed when defendant fired the fatal shot, posing no threat. The ballistic and trajectory evidence supported the state's theory that defendant shot the victim from the porch as he was retreating. *Reddick v. State*, 321 Ga. 73, 911 S.E.2d 638, 2025 Ga. LEXIS 8 (2025).

Stabbing of victim not self-defense.

— Any error in admitting the testimony of a Georgia Bureau of Investigation special agent regarding the circumstances of a 2008 stabbing incident involving the defendant was harmless as the evidence pointed directly to an intentional and malicious killing committed by the defendant rather than one that was committed in self-defense because the defendant did not deny initiating the attack against the victim, another inmate; the defendant did not know if the victim was armed when the defendant decided to attack the victim; and five correctional officers testified that the defendant and the co-defendant were the aggressors, and that the pair cornered the unarmed victim before stabbing the victim a total of 17 times. *Rodrigues v. State*, 306 Ga. 867, 834 S.E.2d 59, 2019 Ga. LEXIS 640 (2019).

Evidence authorized jury to believe that the defendant did not act in self-defense.

Evidence was sufficient to prove that the defendant fatally shot the victim, and that the defendant did not act in self-defense, because the jury was entitled to give greater weight to the evidence that the defendant had a gun cocked and ready before the meeting with the victim, while the victim was unarmed; the defendant told the homeowner to make the scene look like a burglary and threatened the homeowner; the defendant disposed of the gun and clothes; and there was evidence that the defendant was engaged in a felony drug deal at the time of the shooting, which would preclude the defendant's self-defense claim; thus, the defendant was not entitled to a new trial based on general grounds. *Bannister v. State*, 306 Ga. 289, 830 S.E.2d 79, 2019 Ga. LEXIS 437 (2019).

In a murder case, the jury was authorized to reject the defendant's claim that the defendant shot the victim in self-defense because it could have concluded from the video recording that the defendant incited a physical encounter with the victim and the defendant testified at trial that the defendant shot the victim because the defendant believed the victim had a box cutter and intended to use it but the box cutter was never mentioned in the defendant's post-arrest statement to police. *Huff v. State*, 315 Ga. 558, 883 S.E.2d 773, 2023 Ga. LEXIS 21 (2023).

Trial evidence was sufficient to authorize the jury to reject the defendant's self-defense claim and conclude that the defendant did not reasonably believe that deadly force was necessary to defend against the victim, as the video recording of the incident authorized a jury to find that the defendant did not reasonably fear that the victim posed a threat of death or great bodily injury when the defendant shot the victim because the victim was leaving the apartment complex when defendant fired the gun. *Williams v. State*, 316 Ga. 147, 886 S.E.2d 818, 2023 Ga. LEXIS 78 (2023).

Evidence was sufficient to disprove defendant's claim of self-defense because three witnesses testified that defendant expressed defendant's intent to kill the victim in retaliation for the victim's affair with defendant's partner; two witnesses testified that they saw defendant throw the first punch without provocation from the victim; witnesses did not see the victim with a gun and no such weapon was found at the scene; defendant fled the immediate area, and the only evidence supporting self-defense was defendant's own self-serving testimony. *Maynor v. State*, 317 Ga. 492, 893 S.E.2d 724, 2023 Ga. LEXIS 222 (2023).

Evidence was sufficient for the jury to reject the defendant's justification defense and find that the defendant did not reasonably believe deadly force was necessary to defend himself and the co-defendant as it showed that the victim was likely already injured and on the ground when the defendant shot the victim in the back multiple times and that the defendant admitted shooting the victim in the

back. *Mills v. State*, 320 Ga. 457, 910 S.E.2d 143, 2024 Ga. LEXIS 292 (2024).

Evidence of justification. — Evidence was sufficient for the trial court to determine that the defendant was entitled to immunity from prosecution for the aggravated assault charge because there was evidence in the record to support the trial court's finding that the victim was the first person to wield a gun and that the victim became aggressive with the gun, waiving the gun around and pointing the gun at the two men involved in the fight, as well as the trial court's conclusion that the defendant was justified in the belief that it was necessary to defend third parties against the victim's imminent use of unlawful force. *State v. Jenkins*, 355 Ga. App. 39, 840 S.E.2d 742, 2020 Ga. App. LEXIS 252 (2020), cert. denied, No. S20C1275, 2020 Ga. LEXIS 951 (Ga. Dec. 21, 2020).

Evidence of the victim's violent reputation, the severe beating of defendant earlier that day, and the victim's aggressive actions leading up to the shooting supported a reasonable belief by defendant that deadly force was necessary to prevent death or great bodily harm, thus meeting the preponderance standard for immunity. *State v. Hylton*, 321 Ga. 292, 914 S.E.2d 295, 2025 Ga. LEXIS 62 (2025).

Evidence sufficient to disprove justification defense. — In a malice murder case, the evidence was sufficient to disprove beyond a reasonable doubt the claim of self-defense as the defendant was heard shouting about the defendant's missing ten dollars just before the victim was seen motionless on the ground; the defendant was found hiding in the curtains of a nearby room; the medical examiner testified that the victim suffered multiple contusions, lacerations, bruises, and facial fractures and that the lacerations on the victim's face were the result of multiple strikes; and the defendant did not suffer any injuries that were visible at the time of the defendant's arrest. *Willerson v. State*, 312 Ga. 369, 863 S.E.2d 50, 2021 Ga. LEXIS 606 (2021).

Self defense claim rejected.

Jury was authorized to find that defendant was not acting in self-defense when defendant strangled the victim and

Application (Cont'd)

punched the victim’s face because the victim testified that the victim was unconscious and awoke to find defendant punching the victim and that defendant had the knife first, and the evidence showed that defendant had strangled the victim to the point of unconsciousness, punched and spit on the victim, threatened her with a knife, and was reaching for a bow and arrow before the victim took up the knife to stab defendant. *Freeman v. State*, 365 Ga. App. 332, 878 S.E.2d 578, 2022 Ga. App. LEXIS 440 (2022).

Insufficient evidence of justification. — There was no evidence to support the trial court’s grant of immunity as to the charge of aggravated assault against the second victim because the undisputed evidence showed that the defendant initially shot at and hit the second victim, who was unarmed and standing 20 to 30 feet away from the first victim, who the defendant maintained was wielding the gun. *State v. Jenkins*, 355 Ga. App. 39, 840 S.E.2d 742, 2020 Ga. App. LEXIS 252 (2020), cert. denied, No. S20C1275, 2020 Ga. LEXIS 951 (Ga. Dec. 21, 2020).

Immunity properly found. — Trial court properly granted immunity to the defendant because there was evidence to support that the defendant reasonably believed shooting the victim was necessary to prevent death or great bodily injury to himself after the victim struck the defendant and demanded money from the defendant. *State v. Gates*, 321 Ga. 45, 912 S.E.2d 673, 2025 Ga. LEXIS 21 (2025).

Immunity properly found. — Order granting the defendant immunity was upheld because the evidence supported the determination that the use of deadly force against the ex-husband was justified based on the defendant’s statements that the ex-husband had physically abused her for years and that he was attacking her at the time she shot him, the testimony of several witnesses about the ex-husband’s routine and ongoing physical abuse of the defendant, and the ex-husband’s threat to use deadly force on the night in question. *State v. Hamilton*, 308 Ga. 116, 839 S.E.2d 560, 2020 Ga. LEXIS 140 (2020).

Immunity motion properly denied. — Defendant was not immune from prosecution based on self-defense because, even if the victim lunged at the defendant, the defendant was not entitled to slam the victim onto a concrete sidewalk and then punch the victim multiple times with enough force to cause the significant facial injuries and brain damage that led to the victim’s death; and the defendant never told the police that the defendant thought the victim might have had a large knife when the victim lunged at the defendant. *Gardhigh v. State*, 309 Ga. 153, 844 S.E.2d 821, 2020 Ga. LEXIS 448 (2020).

Trial court did not err by denying the defendant’s immunity defense on the ground of defense of self or others because the evidence did not demonstrate that the victim posed any threat to the defendant or the defendant’s family once the victim’s family members began escorting the victim to a vehicle. *Chadwick v. State*, 360 Ga. App. 491, 861 S.E.2d 612, 2021 Ga. App. LEXIS 374 (2021).

RESEARCH REFERENCES

ALR.

Inheritance Under Slayer Statute by Person Determined to Have Acted in Self-Defense, 80 A.L.R.7th 5.

Supreme Court jurisprudence on governmental use of excessive force as viola-

tion of constitutional or civil rights, 80 A.L.R. Fed. 3d 3.

Inheritance under slayer statute by person determined to have acted in self-defense, 80 A.L.R.7th 5.

16-3-23. Use of force in defense of habitation.

Law reviews.

For article with annual survey on criminal law, see 73 Mercer L. Rev. 75 (2021).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

WHAT CONSTITUTES HABITATION

General Consideration

Use of force not justified.

Defendant's claim that the evidence was insufficient to convict the defendant of malice murder because the state failed to disprove the defense of habitation beyond a reasonable doubt failed because the jury was authorized to conclude that the use of deadly force was unreasonable given that the victim only slapped the defendant once and did not use any aggressive words, and the struggle that followed was like child's play. *Clark v. State*, 307 Ga. 537, 837 S.E.2d 265, 2019 Ga. LEXIS 850 (2019).

Jury was authorized to reject defendant's theory of defense of habitation on the basis that it was unreasonable for defendant to believe that the victim was attempting, making, or had made an unlawful entry into defendant's home that required deadly force to protect against, as the evidence showed that the victim was invited there, left the home when defendant asked her to, and was leaving when defendant said the victim came at defendant with an umbrella. *Chambliss v. State*, 318 Ga. 161, 896 S.E.2d 469, 2023 Ga. LEXIS 254 (2023).

Evidence was sufficient to support defendant's conviction of aggravated assault against the victim based on defendant physically assaulting the victim, a girlfriend, and pointing a gun at the victim's aunt, and the state disproved defendant's justification defense beyond a reasonable doubt by showing that defendant was not in danger when the defendant exited the home and fired at officers. *Bass v. State*, 372 Ga. App. 510, 904 S.E.2d 699, 2024 Ga. App. LEXIS 320 (2024).

Evidence was sufficient to support defendant's conviction of felony murder and to disprove his justification defenses of self-defense and defense of habitation because the jury could infer from the evidence that the victim was retreating unarmed when defendant fired the fatal

shot, posing no threat. The ballistic and trajectory evidence supported the state's theory that defendant shot the victim from the porch as he was retreating. *Reddick v. State*, 321 Ga. 73, 911 S.E.2d 638, 2025 Ga. LEXIS 8 (2025).

Defendant not required to admit criminal conduct to be entitled to charge on justification. — In the defendant's aggravated assault trial, O.C.G.A. § 16-5-21(a)(2), based on the defendant aiming a BB rifle at two victims, the trial court erred in denying the defendant's requested jury instructions on the defense of self and habitation, on the basis that the defendant did not admit aiming at the victims; if slight evidence supported the defenses, the charges should have been given. Defendant was not required to admit the elements of the crime in order to argue the defendant's theory of defense. *McClure v. State*, 306 Ga. 856, 834 S.E.2d 96, 2019 Ga. LEXIS 643 (2019).

Immunity motion properly denied. — Trial court did not err in denying the defendant's immunity defense on the ground of defense of self or others because the evidence did not demonstrate that the victim posed any threat to the defendant or the defendant's family once the victim's family members began escorting the victim to a vehicle. *Chadwick v. State*, 360 Ga. App. 491, 861 S.E.2d 612, 2021 Ga. App. LEXIS 374 (2021).

With regard to defendant's conviction for simple battery, the denial of immunity to defendant was upheld because even if the granddaughter's boyfriend was trespassing, defendant failed to show a reasonable belief force was necessary to protect defendant's home and property, given the conflicting testimony about whether the boyfriend acted aggressively. *Rutledge v. State*, 372 Ga. App. 433, 901 S.E.2d 620, 2024 Ga. App. LEXIS 185 (2024).

Jury charge on defense of habitation.

Because there was no evidence that the victim entered the first defendant's habi-

General Consideration (Cont'd)

tation at any point during this confrontation, that the victim made any attempt to enter the first defendant's habitation, or that the victim threatened to enter the first defendant's habitation, there was no evidence to support the giving of an instruction on defense of habitation. *Jackson v. State*, 318 Ga. 393, 897 S.E.2d 785, 2024 Ga. LEXIS 21 (2024).

Trial court did not err by refusing to charge the jury on the defense of habitation because there was no evidence that defendant shot the victim when she was entering or attempting to enter his car. The evidence showed that defendant shot the victim after they exited the car and were walking away from it. *Rana v. State*, 320 Ga. 66, 907 S.E.2d 674, 2024 Ga. LEXIS 242 (2024).

No error in failing to charge on defense of habitation. — Trial court erred in failing to give the pattern jury charge on defense of habitation because the state's evidence did not show that the deputies entered the defendant's home unlawfully and the defendant did not present evidence raising the issue. *Calmer v. State*, 309 Ga. 368, 846 S.E.2d 40, 2020 Ga. LEXIS 475 (2020).

Counsel was not ineffective for failing to present defense. — Defendant failed to show that trial counsel was ineffective for failing to assert a defense of justification by defense of habitation because during the incident neither victim "entered" the vehicle, as the victims were already inside at the time the defendant entered the vehicle and it was doubtful in any event whether the defendant could

claim the victims' vehicle as the defendant's "habitation" as opposed to the "habitation" of the victims, the driver and owner. *Brooks v. State*, 309 Ga. 630, 847 S.E.2d 555, 2020 Ga. LEXIS 591 (2020).

Trial counsel was not deficient for failing to raise the defense of habitation because there was no evidence that defendant or the victim were entering or attempting to enter the second victim's vehicle at the time of the shooting. *Nesbit v. State*, 321 Ga. 240, 913 S.E.2d 650, 2025 Ga. LEXIS 45 (2025).

Counsel was ineffective for failing to present defense. — Defendant's trial counsel rendered constitutionally ineffective assistance by failing to request a jury charge on the use of force in defense of habitation because counsel knew the defense of self-defense that the defendant did pursue was legally foreclosed, counsel testified that the defendant was unaware that "habitation" referred to a motor vehicle, and no reasonable trial counsel would have made a strategic decision not to request such an instruction. *Swanson v. State*, 306 Ga. 153, 829 S.E.2d 312, 2019 Ga. LEXIS 401 (2019).

What Constitutes Habitation

Motor vehicles. — Trial court did not commit plain error when it failed to sua sponte charge the jury on the defense of habitation because there was no evidence that defendant shot the victim when the victim was entering or attempting to enter defendant's vehicle. The evidence showed that defendant shot the victim while they both stood outside the vehicle. *Fox v. State*, 321 Ga. 411, 915 S.E.2d 592, 2025 Ga. LEXIS 83 (2025).

16-3-23.1. No duty to retreat prior to use of force in self-defense.**Law reviews.**

For article with annual survey on criminal law, see 73 *Mercer L. Rev.* 75 (2021).

JUDICIAL DECISIONS

Immunity motion properly denied. — Trial court did not err in denying the defendant's immunity defense on the ground of defense of self or others because

the evidence did not demonstrate that the victim posed any threat to the defendant or the defendant's family once the victim's family members began escorting the vic-

tim to a vehicle. *Chadwick v. State*, 360 Ga. App. 491, 861 S.E.2d 612, 2021 Ga. App. LEXIS 374 (2021).

16-3-24. Use of force in defense of property other than a habitation.

Law reviews.

For article with annual survey on criminal law, see 73 *Mercer L. Rev.* 75 (2021).

JUDICIAL DECISIONS

Immunity motion properly denied.

— With regard to the defendant's conviction for simple battery, the denial of immunity to the defendant was upheld because even if the granddaughter's boyfriend was trespassing, the defendant failed to show a reasonable belief that

force was necessary to protect the defendant's home and property, given the conflicting testimony about whether the boyfriend acted aggressively. *Rutledge v. State*, 372 Ga. App. 433, 901 S.E.2d 620, 2024 Ga. App. LEXIS 185 (2024).

16-3-24.2. Immunity from prosecution; exception.

A person who uses threats or force in accordance with Code Section 16-3-20, 16-3-21, 16-3-23, 16-3-23.1, 16-3-24, or 17-4-20 shall be immune from criminal prosecution therefor unless in the use of deadly force, such person utilizes a weapon the carrying or possession of which is unlawful by such person under Part 2 of Article 4 of Chapter 11 of this title.

History.

Code 1981, § 16-3-24.2, enacted by Ga. L. 1998, p. 1153, § 1.2; Ga. L. 1999, p. 81, § 16; Ga. L. 2006, p. 477, § 2/SB 396; Ga. L. 2014, p. 599, § 1-3/HB 60; Ga. L. 2024, p. 543, § 1/SB 517, effective May 2, 2024.

Amendments.

The 2024 amendment, effective May 2, 2024, inserted "16-3-20," deleted "or" preceding "16-3-24," and inserted ", or 17-4-20". See Editor's notes for applicability.

Editor's notes.

Ga. L. 2024, p. 543, § 3/SB 517, not codified by the General Assembly, makes this Code section applicable to all offenses committed and causes of action accruing on or after May 2, 2024.

Law reviews.

For article with annual survey on criminal law, see 73 *Mercer L. Rev.* 75 (2021).

JUDICIAL DECISIONS

Motion must be decided pre-trial. —

Assuming that motions for immunity under O.C.G.A. § 16-3-24.2 were required to be made before trial, the defendant was entitled to file the defendant's motion after the grant of a new trial because it was as though no trial had been had under O.C.G.A. § 5-5-48. *State v. Remy*,

308 Ga. 296, 840 S.E.2d 385, 2020 Ga. LEXIS 178 (2020).

State's election to retry defendant allowed defendant to seek immunity.

— It was not procedurally improper for the defendant to have moved for immunity from prosecution under O.C.G.A. § 16-3-24.2 before a new trial because

once the state elected to retry the defendant, the defendant was free to seek immunity from prosecution under § 16-3-24.2 before any new trial was conducted. *State v. Hamilton*, 308 Ga. 116, 839 S.E.2d 560, 2020 Ga. LEXIS 140 (2020).

Evidence sufficient for immunity. — Evidence of the victim's violent reputation, the severe beating of defendant earlier that day, and the victim's aggressive actions leading up to the shooting supported a reasonable belief by the defendant that deadly force was necessary to prevent death or great bodily harm; thus, meeting the preponderance standard for immunity. *State v. Hylton*, 321 Ga. 292, 914 S.E.2d 295, 2025 Ga. LEXIS 62 (2025).

Immunity properly found.

Evidence was sufficient for the trial court to determine that the defendant was entitled to immunity from prosecution for the aggravated assault charge against the victim because there was evidence in the record to support the trial court's finding that the victim was the first person to wield a gun and that the victim became aggressive with the gun, waiving the gun around and pointing the gun at the two men involved in the fight, as well as the trial court's conclusion that the defendant was justified in the belief that it was necessary to defend third parties against the victim's imminent use of unlawful force. *State v. Jenkins*, 355 Ga. App. 39, 840 S.E.2d 742, 2020 Ga. App. LEXIS 252 (2020), cert. denied, No. S20C1275, 2020 Ga. LEXIS 951 (Ga. Dec. 21, 2020).

Order granting the defendant immunity was upheld because the evidence supported the determination that the use of deadly force against the ex-husband was justified based on the defendant's statements that the ex-husband had physically abused her for years and that he was attacking her at the time she shot him, the testimony of several witnesses about the ex-husband's routine and ongoing physical abuse of the defendant, and the ex-husband's threat to use deadly force on the night in question. *State v. Hamilton*, 308 Ga. 116, 839 S.E.2d 560, 2020 Ga. LEXIS 140 (2020).

Trial court properly granted immunity to the defendant because there was evi-

dence to support that the defendant reasonably believed shooting the victim was necessary to prevent death or great bodily injury to himself after the victim struck the defendant and demanded money from the defendant. *State v. Gates*, 321 Ga. 45, 912 S.E.2d 673, 2025 Ga. LEXIS 21 (2025).

Possession of firearm by felon in self-defense. — Evidence supported the defendant's contention that the defendant shot the victim in self-defense; therefore, if the defendant's possession of a firearm at the shooting was justified under the rule created under O.C.G.A. §§ 16-3-21 and 16-11-138, then it could not be said that the defendant was committing a felony when the defendant shot the victim, and the preclusive bar of § 16-3-21(b)(2) would not apply. However, the trial court needed to consider whether possession of the firearm before or after the shooting could be prosecuted. *State v. Remy*, 308 Ga. 296, 840 S.E.2d 385, 2020 Ga. LEXIS 178 (2020).

Immunity properly found for police officer. — For the patrol officer to meet his burden of proving that he was entitled to immunity from prosecution pursuant to the statute, he was not required to show that he reasonably believed that the arrestee's use of force against him was intended or likely to cause death or great bodily harm because there was no evidence that the patrol officer used the baton in a way likely to cause death or great bodily harm to the arrestee. *State v. Larscheid*, 367 Ga. App. 660, 888 S.E.2d 197, 2023 Ga. App. LEXIS 205 (2023).

Immunity improperly found.

There was no evidence to support the trial court's grant of immunity as to the charge of aggravated assault against the second victim because the undisputed evidence showed that the defendant initially shot at and hit the second victim, who was unarmed and standing 20 to 30 feet away from the first victim, who the defendant maintained was wielding the gun. *State v. Jenkins*, 355 Ga. App. 39, 840 S.E.2d 742, 2020 Ga. App. LEXIS 252 (2020), cert. denied, No. S20C1275, 2020 Ga. LEXIS 951 (Ga. Dec. 21, 2020).

Immunity motion properly denied.

Defendant was not immune from prosecution based on self-defense because,

even if the victim lunged at the defendant, the defendant was not entitled to slam the victim onto a concrete sidewalk and then punch the victim multiple times with enough force to cause the significant facial injuries and brain damage that led to the victim's death; and the defendant never told the police that the defendant thought the victim might have had a large knife when the victim lunged at the defendant. *Gardhigh v. State*, 309 Ga. 153, 844 S.E.2d 821, 2020 Ga. LEXIS 448 (2020).

Trial court did not err by denying the defendant's immunity defense on the ground of defense of self or others because the evidence did not demonstrate that the victim posed any threat to the defendant or the defendant's family once the victim's family members began escorting the victim to a vehicle. *Chadwick v. State*, 360 Ga. App. 491, 861 S.E.2d 612, 2021 Ga. App. LEXIS 374 (2021).

Trial court did not err in denying the defendant's motion for immunity because the trial court was authorized not only to reject the defendant's self-serving testimony that the defendant shot the victim to protect the defendant's family but also to conclude that the defendant had not met the burden to prove justification so as to entitle the defendant to immunity given that two witnesses said they did not see the victim with a gun. *Ellison v. State*, 313 Ga. 107, 868 S.E.2d 189, 2022 Ga. LEXIS 6 (2022).

Other than appellant's self-serving testimony, there was no evidence appellant acted in self-defense and no evidence that the trial court erred in denying the defendant's pre-trial motion for immunity; rather, as the trial court concluded, evidence showed the appellant was upset with the victim for failing to help with rent and forensic evidence showed that the victim was not holding a weapon at the time the appellant shot the victim multiple times. *Harris v. State*, 316 Ga. 141, 886 S.E.2d 790, 2023 Ga. LEXIS 76 (2023).

With regard to defendant's conviction for simple battery, the denial of immunity to defendant was upheld because even if the granddaughter's boyfriend was trespassing, defendant failed to show a reasonable belief force was necessary to pro-

tect defendant's home and property, given the conflicting testimony about whether the boyfriend acted aggressively. *Rutledge v. State*, 372 Ga. App. 433, 901 S.E.2d 620, 2024 Ga. App. LEXIS 185 (2024).

Trial court did not abuse the court's discretion by denying defendant's pretrial motion seeking immunity from prosecution because the evidence showed the victim was not attempting to enter defendant's home when shot, but rather was unarmed and retreating toward the victim's car. *Reddick v. State*, 321 Ga. 73, 911 S.E.2d 638, 2025 Ga. LEXIS 8 (2025).

Denial of immunity proper. — Trial court did not err in considering the defendant's duty and failure to retreat as a ground for denying the defendant immunity because the defendant's testimony that the victim had a gun and placed the defendant in reasonable apprehension of fear of imminent death or great bodily injury lacked proof as the defendant was able to leave the room unarmed and there was no evidence that the victim had a gun. *Hughes v. State*, 312 Ga. 149, 861 S.E.2d 94, 2021 Ga. LEXIS 492 (2021).

Counsel not ineffective for failing to file motion for immunity from prosecution.

Trial counsel testified that counsel did not believe an immunity motion based on self-defense would have been successful as there was insufficient evidence of self-defense, including that the victim was unarmed; the trial court likewise found that a pretrial immunity motion would have lacked merit. Trial counsel was not deficient for failing to file such a motion. *Mathis v. State*, 309 Ga. 110, 844 S.E.2d 736, 2020 Ga. LEXIS 446 (2020).

Defendant failed to show that his counsel was ineffective for failing to file a pretrial motion for immunity from prosecution because counsel testified that he chose not to do so because he did not want to reveal his defense strategy to the state or to allow the state an opportunity to cross-examine defendant. Defendant's claim of self-defense was significantly undermined by evidence that overwhelming showed that he was the aggressor. *Russell v. State*, 319 Ga. 556, 905 S.E.2d 578, 2024 Ga. LEXIS 167 (2024).

Defendant failed to show that trial counsel was ineffective for failing to file a

pretrial motion for immunity from prosecution based on self-defense because counsel testified that the evidence supporting such a defense was conflicting and that if some of the state's unavailable witnesses testified at a hearing on an immunity motion their testimony would be preserved for later use at trial. *Depriest v. State*, 319 Ga. 874, 907 S.E.2d 274, 2024 Ga. LEXIS 216 (2024).

Georgia Supreme Court held that even if requesting an immunity hearing would have been a reasonable strategy, that did not mean that trial counsel's different strategy was objectively unreasonable and that certain difficult decisions regarding the defense tactics to be employed with which appellant and appellate counsel disagree, did not require a finding that the representation below was so inadequate as to amount to a denial of effective assistance of counsel. *Pope v. State*, 311 Ga. 557, 858 S.E.2d 492, 2021 Ga. LEXIS 258 (2021).

Counsel not ineffective in allowing defendant to testify at immunity hearing. — Counsel was not unreasonable in allowing the defendant to testify under oath at a pretrial immunity hearing; the defendant's claim of immunity was supported by the defendant's own testimony that the defendant acted in self-defense or defense of habitation (the defendant's van) at the time that the defendant shot the victim. It was not unreasonable for counsel to support the defendant in the defendant's desire to testify at the immunity hearing in order to provide this evidence. *Newman v.*

State, 309 Ga. 171, 844 S.E.2d 775, 2020 Ga. LEXIS 457 (2020).

Trial counsel was not ineffective for failing to file a pretrial motion for immunity from prosecution based on self-defense as counsel would not have been able to show by a preponderance of the evidence that the defendant acted in self-defense because the evidence contradicting the defendant's claim of self-defense was overwhelming as the evidence presented at trial showed that, after the defendant brutally beat the victim to death with a hammer and then attempted to conceal the body and other evidence, the defendant admitted to the police that the victim had not had a weapon and had not threatened the defendant. *Velasco v. State*, 306 Ga. 888, 834 S.E.2d 21, 2019 Ga. LEXIS 692 (2019).

Failure to apply the proper standard. — In an action for aggravated assault and possession of a firearm during the commission of a felony, the trial court erred by dismissing the defendant's pretrial motion for immunity from prosecution under O.C.G.A. § 16-3-24.2 because the court made no specific findings regarding whether the defendant had a reasonable fear that such force was necessary to prevent the victim from attacking the defendant. Instead, the court conflated immunity from prosecution under § 16-3-24.2 with the affirmative defense of justification as set forth under O.C.G.A. § 16-3-21. *Griffin v. State*, 372 Ga. App. 245, 904 S.E.2d 100, 2024 Ga. App. LEXIS 285 (2024).

16-3-26. Coercion.

A person is not guilty of a crime, except for the offense of murder provided for in subsection (a) of Code Section 16-5-1, if the act upon which the supposed criminal liability is based is performed under such coercion that he or she reasonably believes that performing the act is necessary to prevent imminent death or great bodily injury to himself or herself or a third person.

History.

Laws 1833, Cobb's 1851 Digest, p. 780.; Code 1863, § 4202; Code 1868, § 4238; Code 1873, § 4303; Code 1882, § 4303; Penal Code 1895, § 41; Penal Code 1910, § 41; Code 1933, § 26-402; Code 1933, § 26-906, enacted by Ga. L. 1968, p. 1249,

§ 1; Ga. L. 2025, p. 497, § 3/HB 582, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, rewrote this Code section.

Editor's notes.

Ga. L. 2025, p. 497, § 1/HB 582, not

codified by the General Assembly, provides: “This Act shall be known and

may be cited as the ‘Georgia Survivor Justice Act.’”

JUDICIAL DECISIONS

Evidence did not support coercion defense. — Evidence did not support a defense of coercion because the evidence demonstrated that the defendant had a reasonable way to escape any threat of harm posed by the wanted individual who was staying on the defendant’s property. *Haney v. State*, 365 Ga. App. 22, 877 S.E.2d 276, 2022 Ga. App. LEXIS 370 (2022).

Coercion defense rejected. — Reasonable finder of fact could have concluded that the state disproved the defendant’s coercion defense based upon the defendant’s repeated failures to seek help from police despite multiple opportunities to do so because the evidence showed that instead of running into a house for help the defendant ran, instead of calling the police the defendant called an aunt, when a police car pulled up the defendant ran, and when the defendant was apprehended by the police the defendant did not tell the police that the defendant had been coerced but instead lied. *Willis v. State*, 359 Ga. App. 289, 857 S.E.2d 278, 2021 Ga. App. LEXIS 182 (2021).

Harmless error. — Even if the trial court erred by failing to give a jury in-

struction on coercion, the error was harmless given that the evidence of defendant’s guilt for the crimes of which defendant was convicted was substantial, because it showed that defendant was, at a minimum, a party to the crimes of murder and possession of a firearm during the commission of a crime. The state also presented evidence from which the jury could infer that defendant was the shooter. *Williams v. State*, 315 Ga. 797, 884 S.E.2d 877, 2023 Ga. LEXIS 57 (2023).

Coercion defense a matter of trial strategy. — Counsel was not ineffective for failing to ask for a charge to support a justification defense and instead seeking a charge to support a coercion defense because coercion was a defense to the charged crimes of aggravated assault and fleeing and attempting to elude, and the defendant failed to show that an unspecified justification charge would have been more beneficial to the defendant than the coercion charge given by the trial court. *Frazier v. State*, 309 Ga. 219, 845 S.E.2d 579, 2020 Ga. LEXIS 460 (2020).

16-3-28. Affirmative defenses.

Law reviews.

For article, “HB 479: Repeal of Georgia’s

Citizen’s Arrest Law,” see 38 Ga. St. U.L. Rev. 25 (2021).

ARTICLE 3

ALIBI

16-3-40. Alibi.

JUDICIAL DECISIONS

ANALYSIS

WHEN CHARGE NOT REQUIRED

When Charge Not Required

Counsel was not ineffective in failing to request an alibi charge, etc.

Trial counsel was not ineffective for fail-

ing to request a charge on alibi, which was defendant’s sole defense at trial, because the trial court fully instructed the jury on identity, the burden of proof, the presumption of

When Charge Not Required (Cont'd)
innocence, and grave suspicion, and defendant's alibi testimony did not establish the

impossibility of defendant's presence at the scene of the charged crimes. *Buenrrostro v. State*, 370 Ga. App. 659, 897 S.E.2d 626, 2024 Ga. App. LEXIS 32 (2024).

CHAPTER 4

CRIMINAL ATTEMPT, CONSPIRACY, AND SOLICITATION

16-4-1. Criminal attempt.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
APPLICATION

- 1. OFFENSES AGAINST PROPERTY
- 2. OFFENSES AGAINST INDIVIDUALS

General Consideration

Indictment sufficient. — Defendant's alleged act of procuring the gun and bringing it to a particular place (a school) with the intent to kill was sufficient to satisfy the substantial step requirement for attempted murder and thus, was sufficient to survive the defendant's general demurrer. *Stapleton v. State*, 362 Ga. App. 740, 869 S.E.2d 83, 2021 Ga. App. LEXIS 588 (2021).

No fatal variance in indictment. — Even if there was a deviation between the allegations in the indictment and the evidence adduced at trial, there was no fatal variance because the defendant was sufficiently informed of the nature and substance of the charge of criminal attempt to commit armed robbery and failed to show that the defendant was unable to present a viable defense. *Brown v. State*, 307 Ga. 24, 834 S.E.2d 40, 2019 Ga. LEXIS 647 (2019).

Application

Participation sufficient for armed robbery resulting in death. — Evidence was sufficient to show defendants' participation in the attempted robbery during which the victim was killed based

on the evidence showing that defendant 1 rolled up the window just before or as defendant 2 drove off, from which the jury could infer was an attempt to retain the victim's cash and cell phone that was contemporaneous with the use of force dragging the victim on down the road and shooting the victim for that purpose. *McCabe v. State*, 319 Ga. 275, 903 S.E.2d 78, 2024 Ga. LEXIS 135 (2024).

Merger appropriate. — Because the defendant's conviction for aggravated assault with intent to rape was established by proof of the same or less than all the facts required to establish the conviction for attempted rape, the former merged into the latter under the required evidence test. *Gibson v. State*, 363 Ga. App. 296, 870 S.E.2d 884, 2022 Ga. App. LEXIS 161 (2022).

No merger of attempted burglary and conspiracy to commit armed robbery. — Because attempted burglary and conspiracy to commit armed robbery each required different statutory elements and, thus, required proof of a fact the other did not, the offenses did not merge. *Owens v. State*, 353 Ga. App. 616, 838 S.E.2d 909, 2020 Ga. App. LEXIS 58 (2020).

Merger of aggravated assault and attempted armed robbery. — Defen-

dant's convictions for aggravated assault should have merged into the conviction for attempted armed robbery. *Rice v. State*, 311 Ga. 620, 857 S.E.2d 230, 2021 Ga. LEXIS 130 (2021).

1. Offenses Against Property

Evidence of criminal attempt to enter automobile sufficient. — There was sufficient evidence to support the defendant's conviction for criminal attempt to commit the felony of entering an automobile as the state presented circumstantial evidence that the defendant attempted to enter the victim's vehicle with the intent to commit a theft, including the victim's testimony that the victim observed the defendant attempting to lift the door handle of the victim's car. In the *Interest of M. F.*, 353 Ga. App. 737, 839 S.E.2d 291, 2020 Ga. App. LEXIS 79 (2020).

Evidence that the defendant's DNA was on the steering wheel of a vehicle identified as being at the scene of the offenses, that the defendant and the accomplice were together either the day after the murder or the next day, and that the defendant was driving the car on the day of the murder was sufficient to support the conviction for entering one automobile and attempting to enter a second automobile and the jury's rejection of the theory that someone else was with the accomplice was not insupportable. *Chestnut v. State*, 353 Ga. App. 530, 838 S.E.2d 605, 2020 Ga. App. LEXIS 34 (2020).

Evidence sufficient for conviction of attempt to commit burglary. — Evidence that the defendant rang the doorbell, made a motion in which the defendant appeared to adjust a gun, and that two other people stood to the defendant's side, one wearing a mask and holding a sawed-off shotgun and the other crouched behind the defendant with a pistol was

sufficient to support the defendant's conviction for criminal attempt to commit burglary. *Owens v. State*, 353 Ga. App. 616, 838 S.E.2d 909, 2020 Ga. App. LEXIS 58 (2020).

Rule of lenity did not apply. — Trial court did not err by not applying the rule of lenity in sentencing the defendant on criminal attempt to commit a felony, rather than on aggravated assault, because the statutory language and indictment showed that the two counts did not address the same criminal conduct as the criminal attempt (of murder) included the substantial step of pulling the trigger of the handgun aimed at the victim's head, which additional step was not required for the commission of aggravated assault. *Gonzalez v. State*, 352 Ga. App. 83, 833 S.E.2d 727, 2019 Ga. App. LEXIS 528 (2019).

Evidence sufficient for criminal attempt to commit armed robbery.

Circumstantial evidence was sufficient to convict the defendant of felony murder predicated on criminal attempt to commit armed robbery because the victim was found dead from gunshot wounds; the victim's wallet was missing when the victim was found; the suspect fled the scene in a small, silver sedan; the defendant's co-indictee was driving a vehicle matching that description in the area at the time of the murder; and the defendant stated in a jailhouse telephone conversation that the defendant was involved in the week-long crime spree. *Perdomo v. State*, 307 Ga. 670, 837 S.E.2d 762, 2020 Ga. LEXIS 9 (2020).

Evidence that the defendant approached the victim with a handgun, pointed the gun at the victim while demanding money, and ultimately shot the victim was sufficient to support the defendant's convictions for armed robbery, criminal attempt to commit armed robbery.

Application (Cont'd)**1. Offenses Against Property (Cont'd)**

bery, aggravated assault, and possession of a firearm during the commission of a crime. *Cooke v. State*, 356 Ga. App. 679, 848 S.E.2d 693, 2020 Ga. App. LEXIS 509 (2020).

Victim's testimony that the defendant pointed a gun at the victim, the victim got on the ground, and the defendant then asked where the money was allowed a reasonable jury to conclude that the defendant's demand for money was not merely a demand for the deceased victim's money and supported the attempted armed robbery conviction. *Wilson v. State*, 320 Ga. 766, 911 S.E.2d 670, 2025 Ga. LEXIS 19 (2025).

2. Offenses Against Individuals

Enticement and intended motivation must be shown to support attempt to entice a child for indecent purposes. — Defendant's convictions for criminal attempt of enticing a child for indecent purposes were reversed because the state failed to present any evidence to show that an act of indecency or child molestation was the intended motivation behind the defendant's apparent attempts to entice the victims into the defendant's vehicle when the defendant drove by the alleged victims or asked one to put their bike in the truck. *Phillips v. State*, 354 Ga. App. 88, 840 S.E.2d 165, 2020 Ga. App. LEXIS 123 (2020), cert. denied, No. S20C1235, 2020 Ga. LEXIS 891 (Ga. Nov. 2, 2020).

Evidence was insufficient to support defendant's conviction of attempting to entice the minor victim to enter defendant's vehicle to commit indecent acts because the victim denied that defendant said anything about wanting to take the victim somewhere else to try to have relations with the victim or anything similar. *Green v. State*, 371 Ga. App. 259, 899 S.E.2d 493, 2024 Ga. App. LEXIS 146 (2024), rev'd in part, 321 Ga. 204, 913 S.E.2d 621, 2025 Ga. LEXIS 49 (2025).

Evidence sufficient for attempted aggravated child molestation. — Evidence of the defendant's extensive communications expressing a desire to engage

in oral sex after learning the girl was only 14 and the decision to travel to an established meeting location for the purpose of engaging in the planned encounter provided sufficient evidence of a substantial step to sustain the defendant's conviction for attempted aggravated child molestation. *Brailsford v. State*, 366 Ga. App. 331, 882 S.E.2d 648, 2023 Ga. App. LEXIS 1 (2023).

Indictment for attempted child molestation. — Trial court did not err in denying the defendant's general demurrer as to the indictment's criminal attempt to commit child molestation charge because, although the indictment did not explicitly state the defendant's travel to Forsyth County was a substantial step toward the commission of the crime, it was necessarily inferred by the allegation that the defendant committed the crime when the defendant drove to Forsyth County to meet an individual under 16, for the purpose of committing a sexual act with that individual, with the intent to arouse and satisfy the defendant's sexual desires. *Stinson v. State*, 370 Ga. App. 603, 898 S.E.2d 612, 2024 Ga. App. LEXIS 63 (2024).

No merger of crimes of attempted child molestation and computer pornography. — Convictions for computer pornography and criminal attempt to commit child molestation did not merge for sentencing purposes because the substantial step element of the attempt charge was not required to prove the computer pornography charge, while the use of a cellular telephone or internet messaging service element was not required to prove the attempted child molestation charge. *Franco-Arroyo v. State*, 365 Ga. App. 369, 878 S.E.2d 609, 2022 Ga. App. LEXIS 446 (2022).

Defendant's conviction of attempted child molestation, etc.

Evidence was sufficient to convict the defendant of the remaining counts of aggravated child molestation, child molestation, attempted child molestation, and cruelty to children, not included in Count 3, based on the video-recordings of the children's forensic interviews; testimony about the children's various disclosures; the children's testimony; and the neigh-

bors' testimony that the neighbors observed bruises and other injuries on the children, and saw the defendant kick one of the children. *Shepherd v. State*, 353 Ga. App. 228, 836 S.E.2d 221, 2019 Ga. App. LEXIS 678 (2019).

Conviction of criminal attempt to commit child molestation and to entice a child upheld; the defendant had sexual contact with his daughters when they were children, with one of the daughters giving birth to two of his children, he touched the victim (his 10-year-old granddaughter) inappropriately, and he gave her a note asking to lie in bed with her and caress her. *Shaum v. State*, 355 Ga. App. 513, 844 S.E.2d 863, 2020 Ga. App. LEXIS 343 (2020).

Attempt to influence a witness. — There was sufficient evidence to support the defendant's conviction for attempt to influence a witness as the defendant and a friend went to the victim's apartment armed with three guns and the defendant pointed a gun at the victim, threatened to shoot police, the victim's children, and the victim's brother, threatened to throw a flammable "cocktail" through the children's window, and provided the victim's name, physical appearance, and the apartment the victim lived in to the people on the jail calls. *Seals v. State*, 358 Ga. App. 783, 856 S.E.2d 384, 2021 Ga. App. LEXIS 130 (2021).

Completed attempt to commit robbery by intimidation. — Trial court did not err by denying defendant's request to charge criminal attempt to commit robbery by intimidation because the evidence showed the crime of robbery by intimidation was completed when defendant or perhaps another inmate obtained possession of the key. *Penix v. State*, 367 Ga. App. 765, 888 S.E.2d 352, 2023 Ga. App. LEXIS 228 (2023).

Criminal attempt to commit murder. — In view of the circumstances of the chase, in which the codefendant leaned the codefendant's upper body out the window of the moving vehicle while shooting at the trooper, the jury could have concluded that the defendant assisted the codefendant by steering the vehicle and the jury was free to reject as unreasonable the hypothesis that the defendant was a

mere passenger who did not assist the codefendant. *Best v. State*, 355 Ga. App. 881, 846 S.E.2d 157, 2020 Ga. App. LEXIS 400 (2020).

Most reasonable understanding of the conviction for lesser included offenses statute as applied to attempted murder and aggravated battery is that the aggravated battery merges into the greater offense of attempted murder when the crimes are predicated upon the same conduct. The Georgia Supreme Court overrules *Hernandez v. State*, 317 Ga. App. 845 (2012), *Zamudio v. State*, 332 Ga. App. 37 (2015), and *Dobbs v. State*, 2020 Ga. App. Lexis 279 (2020), to the extent that those cases hold otherwise. *Priester v. State*, 309 Ga. 330, 845 S.E.2d 683, 2020 Ga. LEXIS 465 (2020).

Evidence was sufficient to support defendant's conviction of criminal attempt to commit murder because it showed that defendant expressed contempt for the victim from the moment the victim's care began, defendant continually administered excessive doses of numerous sedating and narcotic medications to the victim, and inquired as to whether the victim had life insurance and then attempted to make funeral arrangements while the victim was still living. *Bonner v. State*, 369 Ga. App. 693, 894 S.E.2d 451, 2023 Ga. App. LEXIS 516 (2023).

Evidence was sufficient to support defendant's conviction of attempted murder because the record contained extensive evidence of defendant's prior intentional acts of violence against the victim and both the victim and defendant agreed that he waved a loaded and cocked weapon close to her head. *Thompson v. State*, 370 Ga. App. 359, 897 S.E.2d 505, 2024 Ga. App. LEXIS 20 (2024).

Attempted kidnapping. — Evidence was sufficient to support defendant's conviction of attempted kidnapping because defendant's overt act of seeking to lure the minor victim into defendant's car by falsely claiming that the victim's father, whom defendant referenced by name, needed the victim and opening the car door and reaching out toward the victim as encouragement to get into the vehicle with defendant constituted a substantial step toward the commission of the crime

Application (Cont'd)
2. Offenses Against
Individuals (Cont'd)

of kidnapping. *Green v. State*, 371 Ga. App. 259, 899 S.E.2d 493, 2024 Ga. App. LEXIS 146 (2024), rev'd in part, 321 Ga. 204, 913 S.E.2d 621, 2025 Ga. LEXIS 49 (2025).

There was sufficient evidence to support a conviction of criminal attempt to commit kidnapping when the defendant, a stranger to the victim and to the victim's parent, pulled up beside the victim in the defendant's vehicle, falsely told the victim that the parent, whom the defendant called by name, needed the victim, opened the car door, and reached out to encourage the victim to get into the vehicle, and when the parent testified that during the two days before the incident, the parent's mail had been ripped open and left inside

the mailbox. *Green v. State*, 371 Ga. App. 259, 899 S.E.2d 493, 2024 Ga. App. LEXIS 146 (2024), rev'd in part, 321 Ga. 204, 913 S.E.2d 621, 2025 Ga. LEXIS 49 (2025).

Jury instructions. — Trial court did not commit plain error in instructing the jury on criminal attempt to commit child molestation because the court instructed the jury that the indictment and the plea formed the issues to be decided, the court explicitly instructed the jury that the jury could only find defendant guilty if the jury found beyond a reasonable doubt that the defendant committed the charged offenses as alleged in the indictment, which required finding that the defendant believed the undercover officer to be a 14-year-old child. In addition, the trial court gave a copy of the indictment to the jury to review during deliberation. *Baggett v. State*, 367 Ga. App. 851, 888 S.E.2d 636, 2023 Ga. App. LEXIS 246 (2023).

16-4-2. Conviction for criminal attempt where crime completed.

JUDICIAL DECISIONS

No fatal variance in indictment for murder conviction as opposed to attempted drug purchase. — Appellant's murder conviction was upheld because the appellant did not establish a fatal variance in the indictment as the appellant did not even allege how the indictment

impaired the appellant's ability to present a defense or that the appellant would be subjected to prosecution for a completed offense, as opposed to the attempted purchase of marijuana. *Scott v. State*, 309 Ga. 764, 848 S.E.2d 448, 2020 Ga. LEXIS 605 (2020).

16-4-5. Abandonment of effort to commit a crime as an affirmative defense.

JUDICIAL DECISIONS

When a crime is already completed, etc.

Evidence was sufficient to convict the defendant of armed robbery as a party to the offense and to find that the defendant did not abandon the defendant's effort to commit the crime prior to the crime's completion because, although the defendant told police that the defendant begged off from the robbery at the last moment, the defendant helped plan the robbery of the bank, provided the guns used in the robbery, dropped the accomplices off near the bank so that the accomplices could rob

the bank, waited at the gas station knowing the robbery was taking place, and then followed the accomplices as the accomplices fled after taking the money. *Birdsong v. State*, 353 Ga. App. 316, 836 S.E.2d 232, 2019 Ga. App. LEXIS 683 (2019).

Jury instruction on abandonment not warranted. — Trial counsel was not ineffective in failing to request a jury charge on the defense of abandonment because the testimony of two witnesses showed that the defendant did not voluntarily abandon the defendant's criminal

purpose within the meaning of O.C.G.A. § 16-4-5; and the defendant's claim that the defendant was merely present near the scene and wanted nothing to do with the robbery was a claim that the

defendant never committed a crime, as opposed to having abandoned an attempt to commit a crime. *Satterfield v. State*, 309 Ga. 843, 849 S.E.2d 165, 2020 Ga. LEXIS 656 (2020).

16-4-8. Conspiracy to commit a crime.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
WHAT CONSTITUTES CONSPIRACY
INDICTMENT
JURY CHARGE

General Consideration

Gang activities and murders.

Evidence was sufficient to support defendant's convictions of malice murder, conspiracy to murder, possession of a firearm during the commission of a felony, and violation of the Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., because there was eye witness testimony that defendant and a co-defendant drove to the victim's apartment, called them to the car, and defendants shot the victims. The evidence also showed defendant was a high-ranking gang member. *Campbell v. State*, 320 Ga. 333, 907 S.E.2d 871, 2024 Ga. LEXIS 247 (2024).

No merger of attempted burglary and conspiracy to commit armed robbery. — Because attempted burglary and conspiracy to commit armed robbery each required different statutory elements and, thus, required proof of a fact the other did not, the offenses did not merge. *Owens v. State*, 353 Ga. App. 616, 838 S.E.2d 909, 2020 Ga. App. LEXIS 58 (2020).

What Constitutes Conspiracy

Conspiracy to purchase marijuana.

Evidence was sufficient to support the defendant's conviction of conspiracy to purchase marijuana because the defendant had previously gone to the seller's home to purchase marijuana, the defendant accompanied the codefendant to the seller's home when the latter went to purchase marijuana, the defendant en-

tered the neighbor's porch with the codefendant where the seller was selling marijuana, drugs and money were visible on the porch, the defendant remained with the seller and the codefendant as they discussed the sale of marijuana for \$20 and \$10, and the defendant blocked the seller's friend's exit as the friend was leaving the residence. *Hunter v. State*, 355 Ga. App. 520, 844 S.E.2d 858, 2020 Ga. App. LEXIS 346 (2020).

Evidence was sufficient to support the defendant's conviction for conspiracy to purchase marijuana as the defendant's girlfriend testified that the girlfriend gave the defendant money because the defendant said that the defendant was going to go buy weed; multiple witnesses testified that the defendant and the two codefendants divided the marijuana among themselves after they had obtained it; and all three did overt acts in furtherance of their plan. *Wilson v. State*, 315 Ga. 728, 883 S.E.2d 802, 2023 Ga. LEXIS 29 (2023).

Conspiracy to commit armed robbery.

— Evidence was sufficient to support the defendant's conviction of conspiracy to commit robbery because the evidence was sufficient for a reasonable juror to infer that the defendant entered into an agreement with the other codefendants to carry out a plot to recover drugs and money from the victim's home. In the week prior to the incident, a codefendant repeatedly met the defendant to discuss "retrieving" drugs and cash from the victim's home, on the night of the home invasion defendant left the hotel with the

What Constitutes

Conspiracy (Cont'd)

other co-defendants in a white truck, which was identified as being at the scene of the incident, and the defendant was present with the other co-defendants in the hotel room after the incident. *Stokes v. State*, 355 Ga. App. 565, 845 S.E.2d 305, 2020 Ga. App. LEXIS 353 (2020), cert. denied, No. S20C1425, 2021 Ga. LEXIS 58 (Ga. Feb. 1, 2021).

Given that the defendant was accompanied by two other people, one masked, who had guns and who stood outside the door's line of sight, a rational trier of fact could have found that the defendant intended to commit armed robbery and that the defendant had conspired with the other people to do so. *Owens v. State*, 353 Ga. App. 616, 838 S.E.2d 909, 2020 Ga. App. LEXIS 58 (2020).

Evidence of conspiracy to commit armed robbery sufficient. — Evidence that the defendant drove a codefendant to the victim's residence, a shootout ensued, the men left the scene and returned the murder weapon to a third defendant, and the defendant confessed to a cousin that the defendant and the codefendant went to the victim's house to rob the victim and the victim died as a result of being shot was sufficient to support the defendant's convictions for felony murder and conspiracy to commit armed robbery. *McIntyre v. State*, 312 Ga. 531, 863 S.E.2d 166, 2021 Ga. LEXIS 622 (2021).

Possession as lesser included offense of conspiracy to purchase marijuana. — Trial court did not plainly err by failing to instruct the jury on possession of marijuana as a lesser-included offense of conspiracy to purchase marijuana because the offense of possession of marijuana was not a lesser-included offense of conspiracy to purchase marijuana as the facts necessary to prove each offense were different. *Hunter v. State*, 355 Ga. App. 520, 844 S.E.2d 858, 2020 Ga. App. LEXIS 346 (2020).

Even assuming that conspiracy to possess marijuana was a lesser included offense of conspiracy to purchase, the evidence could not support a finding that the defendant was guilty only of conspiracy to

possess marijuana and not conspiracy to purchase because it was undisputed that the defendant at least knew about the plan to buy more marijuana from the victim; and, if the defendant conspired with the two codefendants to possess that marijuana, it could only have been through that purchase. The two possible conspiracies were the same: the plan to possess the marijuana necessarily included the step of purchasing it from the victim. *Wilson v. State*, 315 Ga. 728, 883 S.E.2d 802, 2023 Ga. LEXIS 29 (2023).

Federal crime of conspiracy to transport stolen goods matched Georgia's conspiracy crime. — Trial court properly imposed recidivist punishment pursuant to O.C.G.A. § 17-10-7 based on the defendant's prior federal conviction for conspiracy to transport stolen goods in interstate commerce, 18 U.S.C. §§ 371 and 2314, because the conviction's elements matched felony conspiracy to commit a crime under Georgia law as defined in O.C.G.A. § 16-4-8. It did not match Georgia's receiving stolen goods crime, O.C.G.A. § 16-8-7. *Nordahl v. State*, 306 Ga. 15, 829 S.E.2d 99, 2019 Ga. LEXIS 389 (2019).

Indictment

Indictment held sufficient.

Conspiracy count as alleged in the indictment was sufficient to withstand both a general and special demurrer, and therefore trial counsel was not ineffective for failing to file either demurrer, because in the relevant clause alleging that the defendant did forcibly enter the residence and take methamphetamine and United States currency; the word "forcibly" modified both the verbs "enter" and "take"; meaning that the indictment plainly alleged that the defendants conspired to take the drugs and cash by force. As such, the defendant could not admit to all of the facts in this count of the indictment and still be innocent of conspiracy to commit robbery. *Stokes v. State*, 355 Ga. App. 565, 845 S.E.2d 305, 2020 Ga. App. LEXIS 353 (2020), cert. denied, No. S20C1425, 2021 Ga. LEXIS 58 (Ga. Feb. 1, 2021).

Defendant's indictment was constitutionally sufficient as Count 4 charged the defendant with felony murder for causing

the victim's death while committing conspiracy to violate the Georgia Controlled Substances Act (O.C.G.A. § 16-13-20 et seq.), and Count 7 charged the defendant with conspiracy to purchase marijuana in violation of the Georgia Controlled Substances Act, and laid out specific factual allegations supporting that charge; the indictment put the defendant on notice of the crimes charged and the factual allegations the defendant had to defend against; and the details of the predicate felony did not have to be specified in the felony murder count as it was enough that they were specified in the count charging the predicate felony. *Wilson v. State*, 315 Ga. 728, 883 S.E.2d 802, 2023 Ga. LEXIS 29 (2023).

Jury Charge

Requested jury instruction on proof needed for participation not required. — Because there was no meaningful difference between proof that the defendant “knowingly and intentionally” participated in the conspiracy and proof

that the defendant “knew the essential objectives of” the conspiracy and “armed with that knowledge...participated” in it, the defendant’s requested jury instruction regarding the proof needed to show the defendant’s participation in the conspiracy added no essential point of law to the existing instructions, so it was not error for the trial court to decline to give the instruction. *Wilson v. State*, 315 Ga. 728, 883 S.E.2d 802, 2023 Ga. LEXIS 29 (2023).

Evidence sufficient to support jury instruction on conspiracy. — Trial court did not err by instructing the jury on conspiracy over defendant’s objection because the evidence showed that defendant and a co-defendant confronted the victim together while the other co-defendants waited nearby in two separate cars, after defendant shot the victim the co-defendants left together with the victim’s car and cell phone, and defendant was together with or in contact with the co-defendants throughout the day of the crimes. *Bates v. State*, 317 Ga. 809, 896 S.E.2d 581, 2023 Ga. LEXIS 262 (2023).

16-4-8.1. Conviction of conspiracy even if crime completed.

JUDICIAL DECISIONS

Drug offenses should have merged because offense actually completed. — Trial court erred when it failed to merge the count for conspiracy to manufacture methamphetamine and the count for manufacturing methamphetamine because the verdict of guilt as to the completed crime precluded a finding of guilt on the conspiracy count. *Mitchell v. State*, 366 Ga. App. 854, 884 S.E.2d 535, 2023 Ga. App. LEXIS 92 (2023).

No conviction for conspiracy and completion of same crime. — Trial court erred sentencing appellant for

armed robbery because the armed robbery served as the underlying felony for the felony murder conviction; the offense of conspiracy to commit armed robbery should have been merged with the felony murder predicated on armed robbery count since a person cannot be convicted of both conspiracy to commit a crime and the completed crime; but, the aggravated assaults did not merge since the assaults were completed before the armed robbery. *Eleby v. State*, 319 Ga. 234, 903 S.E.2d 64, 2024 Ga. LEXIS 138 (2024).

CHAPTER 5

CRIMES AGAINST THE PERSON

Article 1

Homicide

- Sec.
16-5-3.1. Aggravated involuntary manslaughter for fentanyl overdose death.
16-5-5. Assisted suicide; notification of licensing board regarding violation.

Article 2

Assault and Battery

- 16-5-19. Definitions.
16-5-20. Simple assault.
16-5-21. Aggravated assault.
16-5-23. Simple battery.
16-5-23.1. Battery.
16-5-24. Aggravated battery.

Article 3

Kidnapping, False Imprisonment, and Related Offenses

- 16-5-40. Kidnapping.
16-5-46. Trafficking of persons for labor or sexual servitude.
16-5-47. Posting model notice with human trafficking hotline information in businesses and on internet.

Article 4

Reckless Conduct

- Sec.
16-5-60. Reckless conduct causing harm to or endangering the bodily safety of another; conduct by HIV infected persons.
16-5-61. Hazing.

Article 7

Stalking

- 16-5-94. Restraining orders; protective orders.
16-5-95. Violation of civil family violence order, dating violence order, or criminal family violence order.

Article 8

Protection of Elder Persons

- 16-5-100. (Effective until January 1, 2026.) Definitions.
16-5-100. (Effective January 1, 2026.) Definitions.
16-5-101. Neglect to a disabled adult, elder person, or resident.
16-5-102.1. Trafficking of a disabled adult, elder person, or resident; penalty.

ARTICLE 1
HOMICIDE

Law reviews. by Expanding Cooling Time,” see 54 Ga. L. Rev. 761 (2020).
For note, “Heating Up and Cooling Down: Modifying the Provocation Defense

RESEARCH REFERENCES

ALR. Homicide by Willfully Depriving Another of Sufficient Clothing or Shelter, 53 A.L.R.7th 2.
Homicide Constituting, or Involving Aspects of, “Depraved-Heart Murder,” 70 A.L.R.7th 2.

16-5-1. Murder; malice murder; felony murder; murder in the second degree.

JUDICIAL DECISIONS

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1. IN GENERAL
2. IMPLIED MALICE
3. PRESUMPTION AND BURDEN OF PROOF

DEFENSES

EVIDENCE OF MALICE

FELONY MURDER

1. IN GENERAL
2. UNDERLYING FELONY

JURY INSTRUCTIONS

DEATH PENALTY

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SENTENCE

APPLICATION

1. IN GENERAL
2. CHILDREN AS VICTIMS
3. THE ELDERLY AS VICTIMS
4. SPOUSES OR LOVERS AS VICTIMS

General Consideration

Constitutionality. — Defendant’s challenge to the constitutionality of the murder statute failed because the language of the statute placed all persons on notice that they commit murder by committing a felony that causes the death of another. *Davis v. State*, 306 Ga. 140, 829 S.E.2d 321, 2019 Ga. LEXIS 409 (2019).

Murder statute was not unconstitutional as applied to the defendant because fairness and considerations of prosecutorial discretion in charging co-conspirators who testify for the state were not considerations in determining whether the statute was unconstitutional as applied. *Davis v. State*, 306 Ga. 140, 829 S.E.2d 321, 2019 Ga. LEXIS 409 (2019).

Motion to withdraw guilty plea denied. — Trial court did not abuse the court’s discretion in denying the defendant’s motion to withdraw the defendant’s guilty plea; the defendant’s claim that the defendant was not advised on the record as to the mandatory minimum sentences for murder and felony murder be-

fore pleading guilty and that defense counsel told the defendant that the defendant was taking a 20-year sentence and might serve 15 years was belied by the record, although the words “mandatory minimum sentence” were not used. *Bradley v. State*, 305 Ga. 857, 828 S.E.2d 322, 2019 Ga. LEXIS 330 (2019).

Evidence sufficient to convict.

Murder defendant’s claim that there was an insufficient factual basis for the defendant’s guilty plea was belied by the state’s evidence that the defendant and others placed a food order at a vacant home with a plan to rob the driver; the delivery driver was shot and killed; the co-indictees stated that the defendant was the shooter; and the gun was found at the defendant’s home. *Oliver v. State*, 308 Ga. 652, 842 S.E.2d 847, 2020 Ga. LEXIS 335 (2020).

Defendant’s convictions for felony murder and related crimes were supported by sufficient evidence because defendant’s role as a co-conspirator and party to the crimes made defendant criminally responsible for the acts of the co-conspirators

General Consideration (Cont'd)

committed in furtherance of the conspiracy, including the shooting death of the victim, even if defendant did not intend for the victim to be shot. *Holloway v. State*, 320 Ga. 653, 911 S.E.2d 543, 2025 Ga. LEXIS 6 (2025).

Evidence was sufficient to support the codefendant's convictions for malice murder as the codefendant admitted to being at the scene of the shootings, was connected to one of the murder weapons through a statement to police, ballistics evidence, and the testimony of two witnesses, further text messages showed bragging about the murders after the fact, and one witness's testimony narrated how the leader ordered the codefendant and others to carry out the murders. *Henderson v. State*, 317 Ga. 66, 891 S.E.2d 884, 2023 Ga. LEXIS 179 (2023).

Indictment

Sufficiency of indictment for felony murder.

Defendant's indictment was constitutionally sufficient as Count 4 charged the defendant with felony murder for causing the victim's death while committing conspiracy to violate the Georgia Controlled Substances Act (O.C.G.A. § 16-13-20 et seq.), and Count 7 charged the defendant with conspiracy to purchase marijuana in violation of the Georgia Controlled Substances Act, and laid out specific factual allegations supporting that charge; the indictment put the defendant on notice of the crimes charged and the factual allegations the defendant had to defend against; and the details of the predicate felony did not have to be specified in the felony murder count as it was enough that they were specified in the count charging the predicate felony. *Wilson v. State*, 315 Ga. 728, 883 S.E.2d 802, 2023 Ga. LEXIS 29 (2023).

Defendant failed to show that trial counsel was ineffective for failing to generally demur to the felony murder count of the indictment after jeopardy attached because it would have been meritless, as defendant could not have admitted that he caused the victim's death while committing participation in criminal street

gang activity, a felony, and been innocent. *Wallace v. State*, 320 Ga. 272, 907 S.E.2d 657, 2024 Ga. LEXIS 233 (2024).

Count not subject to special demurrer despite alleging alternate methods of crime. — Trial court correctly determined that the felony murder count was not subject to a special demurrer on the ground of duplicity because, although it alleged alternate ways that the crime of felony murder was committed, i.e., during the commission of aggravated assault and/or during the commission of aggravated battery, such an allegation was proper under Georgia law. *Smith v. State*, 313 Ga. 752, 873 S.E.2d 142, 2022 Ga. LEXIS 145, cert. denied, 143 S. Ct. 216, 214 L. Ed. 2d 85, 2022 U.S. LEXIS 3954 (2022).

Intent and Malice

1. In General

Evidence of prior serious violent acts improperly admitted to show intent. — Appellant's convictions for felony murder, aggravated assault, and knife-possession offenses were reversed because the Georgia Supreme Court could not say that the trial court's erroneous admission of the voluminous evidence that the appellant had previously committed multiple serious violent acts did not contribute to the guilty verdicts that the jury returned. *Strong v. State*, 309 Ga. 295, 845 S.E.2d 653, 2020 Ga. LEXIS 467 (2020).

Sufficient evidence of malice. — Evidence was sufficient to support the defendant's conviction of malice murder because the defendant admitted that the defendant was in the driver's seat of the vehicle with the tinted windows when shots were fired from the driver's side window, killing the victim, the defendant admitted that a short time later the defendant fled from police, the police found the rifle from which the defendant's fingerprints were lifted discarded in the wooded area near the vehicle, the rifle was the only weapon found in or around the vehicle that could not be excluded as the weapon that fired the fatal shot, and the defendant's fingerprints and DNA placed the defendant in the vehicle. *Frazier v. State*, 309 Ga. 219, 845 S.E.2d 579, 2020 Ga. LEXIS 460 (2020).

2. Implied Malice

Leaving victim taped to chair sufficient to establish implied malice. —

Reckless disregard for human life that implied malice was established to support the malice murder conviction based on the evidence that showed that the defendant and a cohort broke into and ransacked the house and stole belongings while the victim was away and when the victim returned, the pair held the victim at gunpoint, taped the victim to a chair, and left, causing the victim's death. *Burney v. State*, 309 Ga. 273, 845 S.E.2d 625, 2020 Ga. LEXIS 469 (2020).

3. Presumption and Burden of Proof

State bears burden of proving malice beyond reasonable doubt. — Evidence was sufficient to sustain the defendant's malice murder conviction based on the jury hearing evidence authorizing the conclusion that defendant planned with others to rob the victim during a drug transaction and avoided arrest for a few weeks after the shooting when he was found hiding in a closet with the gun used to shoot the victim. *O'Neal v. State*, 316 Ga. 264, 888 S.E.2d 42, 2023 Ga. LEXIS 96 (2023).

Unlawful acts resulting in death which justify presumption of malice.

— Evidence was sufficient to support appellant's conviction for malice murder based on appellant intentionally shooting the victim 16 times and no voluntary manslaughter instruction was required because the victim's provocation of yelling and cursing at appellant and threatening to get a gun was insufficient to excite sudden passion. *Anderson v. State*, 319 Ga. 56, 901 S.E.2d 543, 2024 Ga. LEXIS 112 (2024).

Defenses

Defense of accident.

Evidence was sufficient to reject defendant's accident defense and to convict defendant of malice murder as defendant physically abused the victim, defendant's pregnant girlfriend, causing visible marks and bruises; the abuse increased and escalated over time, supporting an inference that defendant graduated from using

bodily physical force against the victim to harming the victim with a firearm; and the jury could have inferred that the shooting was intentional based on the expert testimony about the pistol's safety features, including a manual safety, a magazine safety, and a six-and-a-quarter pound trigger pull, which decreased the likelihood of an accidental discharge. *Jones v. State*, 314 Ga. 400, 877 S.E.2d 232, 2022 Ga. LEXIS 218 (2022).

Defense of self-defense.

Evidence was sufficient to support defendant's conviction of felony murder and to disprove his justification defenses of self-defense and defense of habitation because the jury could infer from the evidence that the victim was retreating unarmed when defendant fired the fatal shot, posing no threat. The ballistic and trajectory evidence supported the state's theory that defendant shot the victim from the porch as he was retreating. *Reddick v. State*, 321 Ga. 73, 911 S.E.2d 638, 2025 Ga. LEXIS 8 (2025).

Evidence of Malice

Defendant's actions demonstrated malice.

Evidence was sufficient to support the defendant's conviction of malice murder because the evidence authorized the jury to conclude that the defendant helped to restrain the victims while the cohort attacked and killed the victims as the medical examiner testified that it would have been very difficult for one person to have committed the crimes alone. Defendant also admitted that the defendant conspired with and assisted the cohort in robbing and killing the victims. *Felts v. State*, 311 Ga. 547, 858 S.E.2d 708, 2021 Ga. LEXIS 266 (2021).

Evidence was sufficient to support defendant's malice murder conviction because it showed that the victim was shot 15 times while running away, a car owned by defendant was located near the crime scene, witnesses saw defendant with a large gun prior to the murder, cell phone records showed that defendant was close to the scene at the time of the shooting, and defendant admitted to a friend that he had shot a man for stealing a dirt bike from him and asked him to hide his gun.

Evidence of Malice (Cont'd)

Jordan v. State, 313 Ga. 841, 874 S.E.2d 67, 2022 Ga. LEXIS 161 (2022).

Evidence was sufficient to support defendant's conviction of malice murder under O.C.G.A. § 16-5-1 because there was sufficient evidence for the jury to conclude that defendant fired the fatal bullet and thus that defendant's act of shooting at the van was the proximate cause of victim's death. *Morris v. State*, 317 Ga. 87, 891 S.E.2d 859, 2023 Ga. LEXIS 169 (2023).

Evidence was sufficient to support defendant's conviction of attempted murder because the record contained extensive evidence of defendant's prior intentional acts of violence against the victim and both the victim and defendant agreed that he waved a loaded and cocked weapon close to her head. *Thompson v. State*, 370 Ga. App. 359, 897 S.E.2d 505, 2024 Ga. App. LEXIS 20 (2024).

Evidence was sufficient for malice murder because defendant's beating and rape of the first victim while she was intoxicated on cocaine caused that victim's death, defendant's intent could be inferred from the condition the victim was found, and the cocaine intoxication did not break the chain of causation. *McCullum v. State*, 318 Ga. 485, 899 S.E.2d 171, 2024 Ga. LEXIS 68 (2024).

Evidence was sufficient for malice murder because testimony showed appellant deliberately shot the victim at close range based on the medical examiner's testimony that the victim was shot through the back of his neck from near contact range, and the testimony of two witnesses that appellant quickly fled the scene. *Pierce v. State*, 319 Ga. 846, 907 S.E.2d 281, 2024 Ga. LEXIS 212 (2024).

Defendant's conviction for malice murder was upheld because defendant's admission to intentionally shooting the deputy to help co-defendants escape, and the body camera footage showing defendant shooting the deputy multiple times before the deputy returned fire, reflected the abandoned and malignant heart required for malice murder. *Garcia-Solis v. State*, 320 Ga. 754, 911 S.E.2d 673, 2025 Ga. LEXIS 5 (2025).

Evidence sufficient to support conviction.

Evidence was sufficient to convict the defendant of malice murder as the defendant acted with at least implied malice when the defendant shot the victim because the defendant shot at an unarmed man who was driving away, following an argument over a distasteful but relatively insignificant encroachment on personal property; and the jury was entitled to reject the defendant's argument that the evidence supported a conclusion that the defendant was overcome with emotion incited by the victim's statements and fired at the victim as a result of a sudden, violent, and irresistible passion that was reasonable under the totality of the circumstances. *Williams v. State*, 306 Ga. 674, 832 S.E.2d 843, 2019 Ga. LEXIS 590 (2019).

Evidence was sufficient to convict the defendant of malice murder as the jury could conclude that the defendant drowned the victim, the defendant's son, with malicious intent as the defendant told several people that the victim would die that night; the defendant admitted beating the victim, holding the victim's feet beneath scalding water, and pressing the victim beneath the water twice for long periods of time; and the medical examiner testified that some of the bruises the victim sustained were consistent with someone forcefully holding the victim beneath the water. *Williams v. State*, 312 Ga. 386, 863 S.E.2d 44, 2021 Ga. LEXIS 604 (2021).

Evidence was sufficient to convict the defendant of malice murder and possession of a firearm by a convicted felon as a 2013 felony conviction for terroristic threats made the defendant's subsequent possession of a gun illegal; numerous witnesses identified the defendant as having shot the victim; while in the county jail, the defendant confessed to two other inmates that the defendant shot the victim, and the defendant told one inmate that the gun could be found with the rest of the defendant's possessions in the woods; and the two other surviving occupants of the car both testified that the defendant shot the victim, with the shooting happening at close range to the back of the victim's

head, a narrative supported by physical evidence. *Turner v. State*, 315 Ga. 274, 882 S.E.2d 241, 2022 Ga. LEXIS 324 (2022).

Evidence was sufficient to support defendant's conviction of malice murder because the jury was authorized to discredit defendant's self-serving assertion that defendant's wife's death was an accident and was not required to believe any portion of defendant's statements to defendant's sister-in-law that amounted to a denial of an intent to kill defendant's wife. The medical examiner's testimony showed that the wife was strangled by use of a chokehold for a long enough time to kill the wife. *Allaben v. State*, 315 Ga. 789, 885 S.E.2d 1, 2023 Ga. LEXIS 54 (2023).

Evidence that the defendant and the victim were drinking alcohol at the defendant's home and got into an argument, that, according to the defendant, the victim stabbed the defendant twice, and the defendant stabbed the victim 50 times, strangled the victim, and broke the victim's neck authorized the jury to find that the defendant formed the intent and malice necessary to convict the defendant of malice murder. *Whittaker v. State*, 317 Ga. 127, 891 S.E.2d 849, 2023 Ga. LEXIS 171 (2023).

Evidence was sufficient to support defendant's conviction of malice murder because testimony and forensic evidence showed that defendant shot the first victim with the same firearm that was used 25 minutes later to kill the second victim and was in defendant's vehicle after the victim's death, defendant's blood and DNA were found in multiple locations around the victim's house and on her body, and while testifying defendant did not deny causing the victim's death. *Pinkins v. State*, 319 Ga. 595, 905 S.E.2d 596, 2024 Ga. LEXIS 176 (2024).

Malice murder conviction for death of neglected parent. — Evidence was sufficient to support defendant's conviction of malice murder because the jury was authorized to conclude that defendant caused defendant's mother's death with malice by allowing the mother, a woman of advanced age under defendant's exclusive care, to lay immobile and untreated for such a prolonged period until

the mother died. The mother's stage-four bedsores and fused skin would not have happened overnight or suddenly and defendant allowed her mother's obvious medical condition to deteriorate for a prolonged period of time until the mother's death without ever seeking treatment or other intervention. *Ramirez v. State*, 318 Ga. 53, 897 S.E.2d 422, 2024 Ga. LEXIS 14 (2024).

Probative value of rap video not outweighed by prejudicial effect. —

Trial court abused the court's discretion admitting a portion of a rap music video into evidence at defendant's trial for malice murder because the video had little probative value since the defendant did not dispute presence at the nightclub or association with the rapper featured in the video, but it created a substantial danger of unfair prejudice by improperly portraying the defendant as having a propensity for violence. *Baker v. State*, 318 Ga. 431, 899 S.E.2d 139, 2024 Ga. LEXIS 64 (2024).

Felony Murder

1. In General

Parties to crime. — Evidence was sufficient to convict the defendant as a party to the crimes of felony murder and possession of a firearm during the commission of a felony in connection with the shooting death of one of the accomplices to an attempted armed robbery because the defendant was not just an innocent bystander as the defendant admitted that the defendant was with the accomplices before the shooting; the jury could have reasonably inferred that the defendant was the person whom two witnesses overheard in the background of a call encouraging the armed robbery; and the defendant admitted that the defendant accompanied the accomplices knowing that the buyer and the group the defendant was with planned to rob each other during a purported drug deal. *Frazier v. State*, 308 Ga. 450, 841 S.E.2d 692, 2020 Ga. LEXIS 231 (2020).

Evidence was sufficient to support defendant's conviction of felony murder as a party to the crime because phone records showed that defendant was associated

Felony Murder (Cont'd)**1. In General** (Cont'd)

with the other members of the group at the time of the “gang war” and shooting. Defendant also traveled with the group into rival gang territory, provided one of the guns used in the victim’s shooting, and drove the getaway car. *Wallace v. State*, 320 Ga. 272, 907 S.E.2d 657, 2024 Ga. LEXIS 233 (2024).

Evidence sufficient for felony murder as party to crime. — Evidence that an accomplice texted the defendant to come beat the victim, that the defendant then came to the house with a second accomplice (whom defendant knew to always carry a gun), that defendant and the second accomplice both engaged in a physical fight with the victim, and that defendant drove the second accomplice away after the second accomplice shot and killed the victim was sufficient to support defendant’s conviction for felony murder as a party to the crime. *Huber v. State*, 319 Ga. 78, 901 S.E.2d 149, 2024 Ga. LEXIS 99 (2024).

Jury resolves conflicts in evidence. — Evidence was sufficient for the jury to find that appellant committed felony murder because appellant’s threats against the victim were the proximate cause of the victim’s death, either by causing the victim to jump from the car in fear or by appellant pushing the victim from the car during the commission of aggravated assault. *Sinkfield v. State*, 318 Ga. 531, 899 S.E.2d 103, 2024 Ga. LEXIS 62 (2024).

Circumstantial evidence sufficient to sustain conviction in death of child. — Circumstantial evidence was sufficient to convict the defendant of malice murder in connection with the beating death of the victim, the defendant’s 10-month-old daughter, because, at the time the victim died, the victim had sustained numerous injuries in the days and hours leading up to the victim’s death; the defendant was the sole adult with the victim in the hours preceding the victim’s death; the jury heard expert testimony that the victim’s injuries were not consistent with a fall; and the defendant had made an incriminating statement in a letter to the victim’s mother while awaiting trial.

Walker v. State, 308 Ga. 33, 838 S.E.2d 792, 2020 Ga. LEXIS 97 (2020).

Evidence was sufficient to support conviction. — Defendant’s conviction for felony murder was supported by evidence that the defendant agreed to sell methamphetamine and possessed a handgun, which the defendant gave to the defendant’s cohort on the way to the drug sale; the two then robbed the two victims and shot at both victims, killing one; the two left the scene together, telephoned a senior gang member, and traveled to a gang safe house in Atlanta together. *Boyd v. State*, 306 Ga. 204, 830 S.E.2d 160, 2019 Ga. LEXIS 439 (2019).

Circumstantial evidence was sufficient to convict the defendant of felony murder predicated on criminal attempt to commit armed robbery because the victim was found dead from gunshot wounds; the victim’s wallet was missing when the victim was found; the suspect fled the scene in a small, silver sedan; the defendant’s co-indictee was driving a vehicle matching that description in the area at the time of the murder; and the defendant stated in a jailhouse telephone conversation that the defendant was involved in the week-long crime spree. *Perdomo v. State*, 307 Ga. 670, 837 S.E.2d 762, 2020 Ga. LEXIS 9 (2020).

Circumstantial evidence of the defendant’s contentious relationship with the victim, who lived in a cabin on the defendant’s property, that the victim was struck multiple times with a hatchet found in the defendant’s trailer, and that a gun found in the defendant’s hotel room was used to shoot the victim, supported the defendant’s felony murder conviction. *Eggleston v. State*, 309 Ga. 888, 848 S.E.2d 853, 2020 Ga. LEXIS 663 (2020).

Evidence that the defendant shot at the car while the victims were fleeing, and neither the defendant nor the defendant’s stepdaughter were in any danger or any imminent threat of harm at that point, was sufficient to support the defendant’s conviction for felony murder. *Gobert v. State*, 311 Ga. 305, 857 S.E.2d 647, 2021 Ga. LEXIS 154 (2021).

Evidence was sufficient to convict the defendant of felony murder predicated on aggravated assault as the defendant shot

the victim, a security guard, so that the defendant could steal copper from the recycling facility. *Tyler v. State*, 311 Ga. 727, 859 S.E.2d 73, 2021 Ga. LEXIS 292 (2021).

Evidence that the defendant drove a codefendant to the victim's residence, a shootout ensued, the men left the scene and returned the murder weapon to a third defendant, and the defendant confessed to a cousin that the defendant and the codefendant went to the victim's house to rob the victim and the victim died as a result of being shot was sufficient to support the defendant's convictions for felony murder and conspiracy to commit armed robbery. *McIntyre v. State*, 312 Ga. 531, 863 S.E.2d 166, 2021 Ga. LEXIS 622 (2021).

Evidence supported a felony murder conviction because a jury could have concluded the defendant intended to commit an assault against the victim using a deadly weapon and that the victim from being shot by the defendant, as the defendant admitted to the victim's friend that the defendant shot the victim and expert testimony from a firearms examiner established that the type of gun used either required force to pull the hammer back as a separate preparatory act before firing or required a greater degree of force against the trigger to both draw the hammer back and discharge the weapon, negating the claim of accident. *Bonner v. State*, 311 Ga. 466, 858 S.E.2d 496, 2021 Ga. LEXIS 269 (2021).

Evidence authorized a jury to conclude that the defendant committed felony murder and acted with the malicious intent to cause the victim bodily harm, which resulted in the victim's death, as it showed that the defendant was the only person in the motel room with the victim and the victim's godson when the victim was injured, and the child's statements established that the victim's injuries were the result of the defendant's violent attack. *Jones v. State*, 311 Ga. 455, 858 S.E.2d 462, 2021 Ga. LEXIS 270 (2021).

There was sufficient evidence to support the defendant's conviction for felony murder stemming from a shooting during a robbery, including evidence that the victim only developed the fatal blood clots

after the defendant shot the victim. *Harris v. State*, 313 Ga. 653, 872 S.E.2d 732, 2022 Ga. LEXIS 128 (2022).

Evidence was sufficient to support appellant's felony murder conviction because multiple witnesses identified appellant as the shooter, appellant confessed to a jailmate, and it was proper for the jury to infer that appellant had the intent to injure the victim violently after shooting the victim multiple times, including in the head. *Howard v. State*, 318 Ga. 681, 899 S.E.2d 669, 2024 Ga. LEXIS 76 (2024).

Evidence was sufficient to authorize the jury to find defendant guilty of felony murder and possession of a firearm during the commission of another crime beyond a reasonable doubt as either a direct participant or as a party to the crimes because it showed that after a verbal altercation with the victim, defendant engaged in a physical altercation with the victim before the shooting, and the victim's blood was found in defendant's car. *Stroud v. State*, 318 Ga. 744, 900 S.E.2d 619, 2024 Ga. LEXIS 89 (2024).

Verdicts not inconsistent.

Verdicts finding the defendant guilty of felony murder and homicide by vehicle in the first degree could not be classified as inconsistent or repugnant verdicts because the felony murder and homicide by vehicle verdicts consisted only of guilty verdicts, rather than a guilty verdict and a not guilty verdict. *Rutland v. State*, 315 Ga. 521, 883 S.E.2d 730, 2023 Ga. LEXIS 20 (2023).

Because the guilty verdicts on felony murder and homicide by vehicle in the first degree involved levels of mental culpability that were different in degree but not ones that could not legally exist simultaneously, the verdicts were neither inconsistent nor mutually exclusive. Furthermore, there was no error, plain or otherwise, in the trial court's failure to instruct the jury that it could not find the defendant guilty of both felony murder and homicide by vehicle in the first degree. *Rutland v. State*, 315 Ga. 521, 883 S.E.2d 730, 2023 Ga. LEXIS 20 (2023).

Requested jury instruction on proximate cause not required. — Trial court did not err by failing to give the defendant's requested jury instruction on

Felony Murder (Cont'd)**1. In General (Cont'd)**

proximate cause for felony murder because the jury was instructed that the jury could not convict the defendant of felony murder unless the jury found that the defendant was guilty of one of the charged predicate felonies; that the murder was “done in the commission of,” and “at least concurrent with” and “not collateral to,” the predicate felony; and that the predicate felony was related to the murder “in an actual and material sense.” Further, the supreme court’s clear precedent was that an instruction that a predicate felony for a felony murder had to itself be inherently dangerous was not required, even when requested. *Wilson v. State*, 315 Ga. 728, 883 S.E.2d 802, 2023 Ga. LEXIS 29 (2023).

No error in failing to charge on proximate cause. — Trial court did not plainly err by failing to instruct the jury on proximate cause because the court did instruct the jury that the defendant was indicted for felony murder for causing the victim’s death by cutting the victim with a knife and the trial court properly defined felony murder. *Campbell-Williams v. State*, 309 Ga. 585, 847 S.E.2d 583, 2020 Ga. LEXIS 586 (2020).

No error in failing to charge on intervening cause of death. — Trial court did not plainly err by failing to instruct the jury on an intervening cause of death based on the victim’s friend’s failure to bring the victim directly to the hospital because the instruction was not supported by the evidence because it was reasonably foreseeable that when the defendant stabbed the victim, the victim would die without immediate medical intervention. *Campbell-Williams v. State*, 309 Ga. 585, 847 S.E.2d 583, 2020 Ga. LEXIS 586 (2020).

2. Underlying Felony**Aggravated assault as underlying felony.**

Because the case law provided a defendant with an avenue to argue that a specific felony offense could not serve as a predicate to felony murder when such offense was neither inherently dangerous

nor life-threatening, but aggravated assault with a deadly weapon was the paradigmatic inherently dangerous felony, the defendant’s argument that the case law precluded the defendant’s felony murder conviction based on aggravated assault with a deadly weapon was meritless. *Eberhart v. State*, 307 Ga. 254, 835 S.E.2d 192, 2019 Ga. LEXIS 722 (2019).

Evidence was sufficient to support defendant’s convictions of felony murder predicated on aggravated assault based on her being a party to the crime because it showed that defendant and another woman connected with the victims through a dating website they used for prostitution, the two convicted felons met with them before they left to meet the victims, gave the woman a gun, and followed them to the meeting, cell phones used by the felons and defendant communicated with each other immediately before, during, and after the shootings, and the victim was killed by shots fired from a shotgun and a handgun. *Poole v. State*, 312 Ga. 515, 863 S.E.2d 93, 2021 Ga. LEXIS 630 (2021).

Evidence was sufficient to support defendant’s conviction for felony murder predicated on aggravated assault with a deadly weapon as a party to the crime because the evidence showed that the defendant was present with the co-defendants for the planning of the robbery, the defendant knew and called the victim, and the defendant followed the co-defendants to the area near the victim’s house while giving directions. *Collins v. State*, 312 Ga. 727, 864 S.E.2d 85, 2021 Ga. LEXIS 640 (2021).

Evidence was sufficient to support the defendant’s felony murder convictions predicated on aggravated assault and a rational jury could have rejected the testimony that the defendant claimed established provocation as, although the defendant and the defendant’s family members claimed that the defendant shot at the sedan only after seeing the passenger point a gun at the defendant and fire, the evidence showed that the defendant was the only person who possessed or shot a gun that night, as the defendant admitted firing 16 rounds at the sedan; all the ballistics evidence matched the defen-

dant's pistol; and no firearm or other weapon was found in the victims' car. *Jones v. State*, 314 Ga. 692, 878 S.E.2d 502, 2022 Ga. LEXIS 251 (2022).

Evidence was sufficient to support defendant's felony murder conviction predicated on aggravated assault because it showed that defendant and the victim got into an argument, the victim hit defendant with an umbrella, defendant retrieved his gun and loaded it, defendant told the victim to leave, defendant followed her outside with the gun, and shot and killed her. *Chambliss v. State*, 318 Ga. 161, 896 S.E.2d 469, 2023 Ga. LEXIS 254 (2023).

Aggravated assault committed by police sergeant as underlying felony.

— Evidence was sufficient to convict the defendant, a former police sergeant, of felony murder based on aggravated assault with a deadly weapon, specifically a TASER, because the medical examiner determined that the victim died from hypertensive cardiovascular disease exacerbated by physical exertion and conducted electrical stimulation from the application of the TASERs in drive-stun mode; and the state presented evidence that the repeated tasing of the victim in drive-stun mode over a span of about 20 minutes when the victim was exhausted from running and handcuffed not only inflicted intense physical pain, but also materially accelerated the victim's death minutes later. *Eberhart v. State*, 307 Ga. 254, 835 S.E.2d 192, 2019 Ga. LEXIS 722 (2019).

Attempt to commit robbery by force qualified as underlying felony.

— Evidence was sufficient to show defendants' participation in the attempted robbery during which the victim was killed based on the evidence showing that defendant 1 rolled up the window just before or as defendant 2 drove off, from which the jury could infer was an attempt to retain the victim's cash and cell phone that was contemporaneous with the use of force dragging the victim on down the road and shooting the victim for that purpose. *McCabe v. State*, 319 Ga. 275, 903 S.E.2d 78, 2024 Ga. LEXIS 135 (2024).

Conspiracy to commit armed robbery. — Evidence was sufficient to support defendant's conviction of felony murder

predicated on conspiracy to commit robbery and burglary because it was reasonable to foresee that the activities defendant and the co-conspirators were engaging in could lead to someone's death. Defendant and the co-conspirators made plans to steal guns from a stolen vehicle and sell them, when the plans were made defendant knew that the co-conspirators had committed crimes in the same area the night before making increased police involvement foreseeable, and when they embarked on the crimes they were traveling in a stolen car, wearing masks, gloves, and dark clothing, and two were carrying loaded firearms. *Clements v. State*, 317 Ga. 772, 896 S.E.2d 549, 2023 Ga. LEXIS 255 (2023).

Possession of firearm by convicted felon.

— Because the defendant's conduct, as a convicted felon, of manipulating a loaded handgun in close proximity to other people in the same room, including a child, pointing the gun at the victim's head at some point before the victim was shot, continuing to manipulate the gun after repeatedly being told to stop, and admittedly engaging in that conduct after smoking marijuana was inherently dangerous, the defendant was properly convicted of felony murder. *Moon v. State*, 311 Ga. 421, 858 S.E.2d 18, 2021 Ga. LEXIS 194 (2021).

Conviction of felony murder upheld.

— Evidence was sufficient to support defendant's conviction of felony murder based on armed robbery as a party to the crime because it showed that defendant and two other men planned to rob the victim on the pretext of buying marijuana, after the victim gave marijuana to one man defendant shot him multiple times, and they fled to Atlanta where they split the marijuana. *Perez v. State*, 316 Ga. 433, 888 S.E.2d 526, 2023 Ga. LEXIS 118 (2023).

Jury Instructions

Charge of accident warranted. — Trial court erred by failing to instruct the jury on accident as a defense to malice murder because defendant's testimony that the collision was an accident presented at least slight evidence to warrant an instruction, as he testified that he

Jury Instructions (Cont'd)

misjudged the turning radius of his car, he lost his focus on the victim as he checked for traffic as he turned, he turned his car to the right, away from the victim, before the collision, and he slammed on the brakes. *Schmitt v. State*, 318 Ga. 835, 901 S.E.2d 102, 2024 Ga. LEXIS 106 (2024).

Malaprop in jury instruction. — Trial court's malaprop in instructing the jury that the jury was authorized to convict the defendant on malice murder based on malice or forethought, rather than malice aforethought, was a singular occurrence, and the jury was otherwise properly and accurately charged on malice murder; and the jury was instructed that the state was required to prove every material allegation of the indictment — which included the language “malice aforethought” — and every essential element of the offenses charged therein. *Walker v. State*, 308 Ga. 33, 838 S.E.2d 792, 2020 Ga. LEXIS 97 (2020).

Jury instruction not plain error. — Even though the trial court erred by failing to instruct the jury that it was required to find that defendant acted with the intent to take the victim's life in order to find him guilty of felony murder as drafted and the separately charged predicate offense of aggravated assault with intent to murder, the error was not plain because defendant failed to show that it affected the outcome of the proceedings. A rational juror likely would have inferred that intent from the overwhelming circumstantial evidence, including forensic evidence concerning the repeated, overlapping, and severe injuries that the victim sustained as a result of being beaten over a very long period of time. *Burley v. State*, 316 Ga. 796, 888 S.E.2d 507, 2023 Ga. LEXIS 120 (2023).

Charge on party to crime proper.

With regard to defendant's convictions for felony murder and related crimes, the trial court did not commit plain error in omitting language concerning foreseeability and proximate causation from its jury instruction on conspiracy because the trial court adequately instructed the jury on the principles defendant contended were erroneously omitted. *Holloway v. State*,

320 Ga. 653, 911 S.E.2d 543, 2025 Ga. LEXIS 6 (2025).

Death Penalty

Sentence not disproportionate where defendant active party to murder. — Supreme Court of Georgia concluded that considering both the crime and the defendant, including the evidence of intellectual difficulties, the death sentence imposed was not disproportionate punishment within the meaning of Georgia law as the evidence showed that, after weeks of careful planning, the defendant ruthlessly executed the prolonged attack on and brutal murder of a former fiancée's son for the purpose of manipulating the former fiancée into resuming a relationship with the defendant. *Young v. State*, 312 Ga. 71, 860 S.E.2d 746, 2021 Ga. LEXIS 490 (2021), cert. denied, 142 S. Ct. 1206, 212 L. Ed. 2d 215, 2022 U.S. LEXIS 1302 (2022).

Georgia Supreme Court held there was no constitutional infirmity in the Georgia General Assembly's determination that the issue of whether a defendant is categorically exempt from the death penalty based on intellectual disability should be decided by a jury, rather than by the Supreme Court, subject only to the Supreme Court's review of the sufficiency of the evidence to support the jury's verdict. *Young v. State*, 312 Ga. 71, 860 S.E.2d 746, 2021 Ga. LEXIS 490 (2021), cert. denied, 142 S. Ct. 1206, 212 L. Ed. 2d 215, 2022 U.S. LEXIS 1302 (2022).

Rule of lenity did not apply in criminal attempt of murder. — Trial court did not err by not applying the rule of lenity in sentencing the defendant on criminal attempt to commit a felony, rather than on aggravated assault, because the statutory language and indictment showed that the two counts did not address the same criminal conduct as the criminal attempt (of murder) included the substantial step of pulling the trigger of the handgun aimed at the victim's head, which additional step was not required for the commission of aggravated assault. *Gonzalez v. State*, 352 Ga. App. 83, 833 S.E.2d 727, 2019 Ga. App. LEXIS 528 (2019).

Merger

No merger with cruelty to children.

— Trial court correctly sentenced the defendant on the conviction for cruelty to children by drowning as that conviction did not merge with the defendant's malice murder conviction because the two crimes contained mutually exclusive elements. *Williams v. State*, 312 Ga. 386, 863 S.E.2d 44, 2021 Ga. LEXIS 604 (2021).

Merger of lesser conviction into felony murder conviction. — Most reasonable understanding of the conviction for lesser included offenses statute as applied to attempted murder and aggravated battery is that the aggravated battery merges into the greater offense of attempted murder when the crimes are predicated upon the same conduct. The Georgia Supreme Court overrules *Hernandez v. State*, 317 Ga. App. 845 (2012), *Zamudio v. State*, 332 Ga. App. 37 (2015), and *Dobbs v. State*, 2020 Ga. App. Lexis 279 (2020), to the extent that those cases hold otherwise. *Priester v. State*, 309 Ga. 330, 845 S.E.2d 683, 2020 Ga. LEXIS 465 (2020).

No merger of felony murder and homicide by vehicle. — Appellant's convictions for felony murder and homicide by vehicle caused when fleeing police were upheld because felony murder and homicide by vehicle did not criminalize the same conduct as felony murder requires causing a death during the commission of a felony, while homicide by vehicle requires causing a death through a traffic violation. *Thomas v. State*, 317 Ga. 700, 895 S.E.2d 306, 2023 Ga. LEXIS 243 (2023).

Sentence

Juvenile defendant not entitled to jury determination of life without possibility of parole. — In light of the court's previous holdings that O.C.G.A. § 16-5-1 comported with the Sixth Amendment and *Apprendi*, a Georgia defendant convicted of murder committed when the defendant was a juvenile does not have a federal constitutional right under the Sixth Amendment to have a jury make the determination required by the Eighth Amendment of whether the

juvenile was irreparably corrupt or permanently incorrigible before the juvenile is sentenced to serve life without parole. *Raines v. State*, 309 Ga. 258, 845 S.E.2d 613, 2020 Ga. LEXIS 473 (2020), cert. denied, 141 S. Ct. 2676, 210 L. Ed. 2d 836, 2021 U.S. LEXIS 2720 (2021).

Life without parole sentence.

When the defendant was convicted of felony murder, the trial court did not improperly sentence the defendant to life without parole because a defendant convicted of murder was eligible for a sentence of life without parole, regardless of whether any aggravating factors were found; and the trial court was not limited to considering only those facts that the jury found were proven beyond a reasonable doubt. *Wilson v. State*, 315 Ga. 728, 883 S.E.2d 802, 2023 Ga. LEXIS 29 (2023).

Modified merger rule did not apply to felony murder conviction. — Trial court did not err by not sentencing defendant for voluntary manslaughter rather than felony murder based on armed robbery under the modified merger rule because the rule did not apply as defendant's felony murder conviction was based on an armed robbery that was independent of the killing itself. Although defendant's act of using a handgun to take marijuana from the victim proximately caused the victim's death, the evidence presented suggested that the act was not integral to the killing. *Perez v. State*, 316 Ga. 433, 888 S.E.2d 526, 2023 Ga. LEXIS 118 (2023).

Application

1. In General

Evidence sufficient to show skeletal remains were victim's remains. — Defendant's contention that the evidence was insufficient to support the convictions for malice murder and arson because the skeletal remains found were not sufficiently identified as the victim's remains failed because the forensic identification testimony of two experts authorized the jury to conclude that the skeletal remains were the victim's remains. *Pittman v. State*, 318 Ga. 819, 901 S.E.2d 90, 2024 Ga. LEXIS 103 (2024).

Application (Cont'd)
1. In General (Cont'd)

Evidence sufficient for murder conviction.

Evidence that the defendant and others went to the victim's home to rob the victim and armed with several guns and that the defendant bragged about the shooting was sufficient for the jury to determine that the defendant was guilty of malice murder. *Overstreet v. State*, 312 Ga. 565, 864 S.E.2d 14, 2021 Ga. LEXIS 645 (2021).

Defendant's conviction for murder was supported by testimony of a child who witnessed an argument between the defendant and the victim and the shooting, surveillance and body-camera video recordings, ballistic evidence, and evidence of the defendant's motive and efforts to destroy evidence. *Walker v. State*, 314 Ga. 390, 877 S.E.2d 197, 2022 Ga. LEXIS 212 (2022).

Evidence was sufficient to support defendant's conviction of malice murder because it showed that he was the last person seen with the victim, a witness saw defendant yelling and swearing at the victim, defendant's DNA was found inside the victim's vaginal area and underneath her finger nails, several witnesses saw defendant driving the victim's car, defendant stated he was present for the victim's murder and the disposal of her body but did not kill or touch her, and he lead an investigator to her body. *Greene v. State*, 316 Ga. 584, 889 S.E.2d 864, 2023 Ga. LEXIS 126 (2023).

Evidence was sufficient to support defendant's convictions of malice murder and possession of a firearm during the commission of a crime either as the shooter or as a party to the crimes because the morning after the victim was shot a witness told police that defendant shot the victim. In addition, the witness told police that defendant and the co-defendant went looking for the victim together after arguing with the victim, they left the scene together in the co-defendant's car after the victim was shot, and the victim's blood was found inside the co-defendant's car. *Milton v. State*, 318 Ga. 737, 900 S.E.2d 590, 2024 Ga. LEXIS 90 (2024).

There was sufficient evidence to support defendant's convictions for felony murder

under O.C.G.A. § 16-5-1(c), and possession of a firearm during the commission of a felony, where the evidence showed that the victim identified the shooter as "Buddah" before he died and a shell casing matching the size of bullet used in the shooting was found near the building next to the shooting. *Hooks v. State*, 318 Ga. 850, 901 S.E.2d 166, 2024 Ga. LEXIS 96 (2024).

Evidence was sufficient to support defendant's conviction of malice murder under O.C.G.A. § 16-5-1(a) because the evidence showed that defendant was left alone with the victims, when two witnesses returned to the house hours later defendant showed them the victims' bodies and said that he had shot them, and three additional witnesses testified that defendant later confessed to shooting and killing the victims. *Jones v. State*, 319 Ga. 758, 906 S.E.2d 699, 2024 Ga. LEXIS 201 (2024).

Evidence was sufficient to support defendant's convictions of malice murder, conspiracy to murder, possession of a firearm during the commission of a felony, and violation of the Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-5-1 et seq., because there was eye witness testimony that defendant and a co-defendant drove to the victim's apartment, called them to the car, and defendants shot the victims. The evidence also showed defendant was a high-ranking gang member. *Campbell v. State*, 320 Ga. 333, 907 S.E.2d 871, 2024 Ga. LEXIS 247 (2024).

Evidence that the fatal blunt-force trauma to the victim's abdomen, pancreas, liver, and intestine inflicted by the defendant's wife was a foreseeable consequence of the defendant leaving the victim in the wife's care and was sufficient to establish that the defendant's conduct was a legal cause of the victim's death and thus to support the conviction for second-degree murder. *Rosenbaum v. State*, 373 Ga. App. 417, 908 S.E.2d 672, 2024 Ga. App. LEXIS 447 (2024).

Evidence supported the defendant's conviction for malice murder, including evidence that the defendant and the victim had a tumultuous and, at times, violent relationship, the defendant offered

multiple, conflicting accounts of what had happened before the shooting and what the defendant's involvement was, and the jury heard from the state's blood-coagulation and crime-scene reconstruction expert that there was no evidence the victim shot herself. *Pounds v. State*, 320 Ga. 288, 908 S.E.2d 631, 2024 Ga. LEXIS 273 (2024).

Evidence was constitutionally sufficient to support the defendant's convictions for malice murder as the evidence included child witness testimony identifying the defendant and evidence that defendant's cellphone was at the scene. *Sharkey v. State*, 320 Ga. 477, 910 S.E.2d 216, 2024 Ga. LEXIS 289 (2024).

Steering vehicle as criminal attempt to commit murder. — In view of the circumstances of the chase, in which the codefendant leaned the codefendant's upper body out the window of the moving vehicle while shooting at the trooper, the jury could have concluded that the defendant assisted the codefendant by steering the vehicle and the jury was free to reject as unreasonable the hypothesis that the defendant was a mere passenger who did not assist the codefendant. *Best v. State*, 355 Ga. App. 881, 846 S.E.2d 157, 2020 Ga. App. LEXIS 400 (2020).

Evidence sufficient for malice murder as party to crime. — Evidence was sufficient to support defendant's convictions of malice murder as a party to the crime because defendant admitted to being present when the victim was shot, witnesses testified that defendant and the shooter were together most of the day, they were the last two people seen with the victim before the victim's body was found, defendant did not seek medical aid for the victim, and defendant left the scene with the shooter in the victim's vehicle. *Scoggins v. State*, 317 Ga. 832, 896 S.E.2d 476, 2023 Ga. LEXIS 266 (2023).

Evidence was sufficient to support defendant's conviction of malice murder as a party to the crime because defendant and the co-conspirator armed and masked themselves and committed a series of burglaries in which they stole ammunition and a large number of firearms, the next day they conspired with two others to

continue committing such crimes, defendant drove the stolen vehicle that night, defendant kept driving as an officer attempted to stop the vehicle, defendant ran away in the same direction as the co-conspirators, a co-conspirator testified that defendant was with the co-conspirator around the time of the shooting, defendant hid the stolen firearms the next day, and defendant was planning on selling them and keeping one stolen rifle. *Clements v. State*, 317 Ga. 772, 896 S.E.2d 549, 2023 Ga. LEXIS 255 (2023).

Evidence of events post murder supported conviction. — Evidence that the defendant was seen fleeing the scene of the shooting, the defendant's phone records placed the defendant in the vicinity of the victim's home on the night of the shooting, the defendant left town after the shooting, and the defendant and an accomplice wrote letters to each other in which they attempted to establish an exculpatory, coherent narrative of the night of the murder was sufficient to support the defendant's conviction for malice murder. *Miller v. State*, 312 Ga. 702, 864 S.E.2d 451, 2021 Ga. LEXIS 651 (2021).

Felony murder predicated on drug transaction.

Evidence was sufficient to convict the defendant of felony murder as the jury could find that the conspiracy to purchase marijuana proximately caused the victim's death because it was among the incidental, probable consequences of an illegal drug transaction that something might go wrong and someone might be killed. *Wilson v. State*, 315 Ga. 728, 883 S.E.2d 802, 2023 Ga. LEXIS 29 (2023).

2. Children as Victims

Evidence sufficient for murder of infant child.

Defendant's conviction for murder of an infant daughter was upheld as the state presented testimony that there was no evidence connecting anyone besides defendant to the child's death and defendant's suggestion that another kidnapped and killed the child as an act of revenge was impossible, given that the accused was in jail at the time the crime was committed. *McNabb v. State*, 2022 Ga.

Application (Cont'd)**2. Children as Victims (Cont'd)**

LEXIS 159, 872 S.E.2d 251, 313 Ga. 701 (2022).

Evidence sufficient for murder based on cruelty to children. — Evidence was sufficient to support the defendant's conviction for felony murder predicated on second-degree cruelty to children because the defendant admitted that the defendant escorted the walking, talking victim into his bedroom and he was alone with her before she was found limp and unresponsive. The medical experts testified to seeing numerous signs of abuse and that her head and mouth injuries were inflicted a short time prior to her arrival at the emergency room. *Hughs v. State*, 312 Ga. 606, 864 S.E.2d 59, 2021 Ga. LEXIS 647 (2021).

Defendant's challenge to the sufficiency of the evidence of causation as to the convictions for second-degree murder and second-degree child cruelty failed because the evidence authorized the jury to find that the defendant knew the mother was abusing the child, caused the girlfriend not to cooperate with the Department of Family and Children Services (DFCS) investigation, and that had the defendant not interfered to end the DFCS investigation, the mother's abuse would not have continued. *Melancon v. State*, 368 Ga. App. 340, 890 S.E.2d 113, 2023 Ga. App. LEXIS 317 (2023), vacated, 319 Ga. 741, 906 S.E.2d 725, 2024 Ga. LEXIS 198 (2024).

Death of a baby. — Evidence was insufficient to support defendant's conviction of second-degree murder for his ex-girlfriend's infliction of fatal head trauma on the victim, their nine-month-old daughter, because the evidence did not authorize a jury to conclude that defendant telling his current girlfriend not to file a report with the Division of Family and Children Services was either a cause in fact or legal cause of the victim's death two months later. *Melancon v. State*, 319 Ga. 741, 906 S.E.2d 725, 2024 Ga. LEXIS 198 (2024), *aff'd*, No. A23A0517, 2025 Ga. App. LEXIS 266 (Ga. Ct. App. June 23, 2025).

Terroristic threats. — Evidence was sufficient to convict the defendant of mak-

ing terroristic threats because the jury could infer that the defendant's threats of violence that the defendant was going to kill the child, the defendant's son, and that the victim was going to die that night were made to terrorize the child and that the statements were not merely poorly phrased promises of parental discipline; and there was evidence that the threats were made in anger, and witnesses testified that the victim was, in fact, terrified. *Williams v. State*, 312 Ga. 386, 863 S.E.2d 44, 2021 Ga. LEXIS 604 (2021).

Death of child left in car. — Evidence was sufficient to support the defendant's conviction as the jury could have concluded that the defendant did not forget that the child was in the car in the short time between leaving the restaurant and arriving at work and the jury could have found suspect the defendant's 30-second delay in the vehicle after parking at the defendant's office, visit to the car after lunch, failure to see or smell the child in the vehicle when the defendant returned after work, and the defendant's reactions after discovering that the child was dead, which several witnesses described as very odd or forced. *Harris v. State*, 314 Ga. 238, 875 S.E.2d 659, 2022 Ga. LEXIS 169 (2022).

Testimony from protective services investigator admitted. — Defendant's convictions for felony murder and other charges arising from the death of his daughter were upheld because based on the totality of the circumstances surrounding defendant's interview as reflected in the evidence, no basis existed for determining that the protective services investigator was acting as an agent for law enforcement in interviewing defendant as the uncontradicted evidence showed that the investigator was acting independently in the course of her work for the state agency and that she communicated with the police before the interview only to get permission to conduct that interview. *Boles v. State*, 316 Ga. 209, 887 S.E.2d 304, 2023 Ga. LEXIS 91 (2023).

3. The Elderly as Victims

Evidence sufficient for attempted murder of 82 year old. — Evidence was sufficient to support defendant's conviction

tion of criminal attempt to commit murder of an 82 year old individual because the evidence showed that the defendant expressed contempt for the victim from the moment the victim's care began, the defendant continually administered excessive doses of numerous sedating and narcotic medications to the victim, and inquired as to whether the victim had life insurance and then attempted to make funeral arrangements while the victim was still living. *Bonner v. State*, 369 Ga. App. 693, 894 S.E.2d 451, 2023 Ga. App. LEXIS 516 (2023).

4. Spouses or Lovers as Victims

Evidence sufficient for death of lover.

Evidence was sufficient to support the

defendant's malice murder conviction as a rational jury could find beyond a reasonable doubt that the defendant intended to cause the victim's death with malice based on the evidence of his threatening to kill the victim, hearing the victim's plan to end their relationship, the victim being shot in the head, the defendant's flight, and possession of the victim's belongings and the murder weapon. *Guyton v. State*, 321 Ga. 57, 912 S.E.2d 626, 2025 Ga. LEXIS 24 (2025).

RESEARCH REFERENCES

ALR.
Offense of Committing Murder In Aid of Racketeering (VICAR) in Drug Enterprise

under 18 U.S.C.A. § 1959, 47 A.L.R. Fed. 3d Art. 5.

16-5-2. Voluntary manslaughter.

JUDICIAL DECISIONS

ANALYSIS

PROVOCATION
DEFENSES
JURY CHARGE
APPLICATION

Provocation

Provocation must be such as to excite violent passion in a reasonable person.

Evidence was sufficient to support appellant's conviction for malice murder based on appellant intentionally shooting the victim sixteen times and no voluntary manslaughter instruction was required because the victim's provocation of yelling and cursing at appellant and threatening to get a gun was insufficient to excite sudden passion. *Anderson v. State*, 319 Ga. 56, 901 S.E.2d 543, 2024 Ga. LEXIS 112 (2024).

Defendant's testimony regarding prior rape irrelevant. — Defendant's

testimony that the defendant was raped at age 11 was barred because it was not relevant to the jury's determination regarding voluntary manslaughter; to support a claim of justification or self-defense as the defendant did not contend that the victim sexually abused the defendant as a child, and the defendant withdrew the requested charges on justification and self-defense; or to show the defendant's alleged subjective mental state in the absence of an insanity defense, which was withdrawn from consideration by the jury. Furthermore, the jury heard the defendant's testimony that the defendant feared both for the defendant's life and that the defendant was about to be raped, and the trial court did instruct the jury on

Provocation (Cont'd)

the definition of voluntary manslaughter. *Riggs v. State*, 306 Ga. 759, 833 S.E.2d 112, 2019 Ga. LEXIS 601 (2019).

Serious act of provocation not shown.

Evidence was sufficient to support the defendant's felony murder convictions predicated on aggravated assault and a rational jury could have rejected the testimony that the defendant claimed established provocation as, although the defendant and the defendant's family members claimed that the defendant shot at the sedan only after seeing the passenger point a gun at the defendant and fire, the evidence showed that the defendant was the only person who possessed or shot a gun that night, as the defendant admitted firing 16 rounds at the sedan; all the ballistics evidence matched the defendant's pistol; and no firearm or other weapon was found in the victims' car. *Jones v. State*, 314 Ga. 692, 878 S.E.2d 502, 2022 Ga. LEXIS 251 (2022).

Sudden passion not shown given evidence of strained relationship.

At the defendant's murder trial, trial counsel was not ineffective in failing to request an instruction on voluntary manslaughter based on evidence at trial that the defendant's relationship with the victim was strained and that the couple engaged in erratic behavior towards one another; such testimony was insufficient to show sudden passion. *Cochran v. State*, 305 Ga. 827, 828 S.E.2d 338, 2019 Ga. LEXIS 333 (2019).

Defenses

Self-defense. — Jury was authorized to conclude beyond a reasonable doubt that defendant was not justified in using deadly force to protect himself against the victim based on the evidence showing that defendant was trespassing on the family's property, the victim believed defendant was returning to steal more items, the victim was unarmed and walked with a cane, defendant beat the victim extensively, and shot the victim twice. *Hobbs v. State*, 369 Ga. App. 22, 891 S.E.2d 552, 2023 Ga. App. LEXIS 390 (2023).

Jury Charge**Absent request, failure to charge on manslaughter not error, etc.**

Appellant failed to show that the trial court erred by failing to charge the jury on voluntary manslaughter, much less that the trial court committed plain error, because appellant did not testify at trial, and testimony at trial described appellant as "chill" during the altercation and the threatening words that witnesses testified were used by the victim were still only words. *Wilkerson v. State*, 317 Ga. 242, 892 S.E.2d 737, 2023 Ga. LEXIS 188 (2023).

At least some evidence must support charge of voluntary manslaughter, etc.

Trial court did not err by denying defendant's request for a charge on voluntary manslaughter because there was not even slight evidence presented at trial of provocative conduct sufficient to warrant the giving of a voluntary manslaughter charge. *O'Neal v. State*, 316 Ga. 264, 888 S.E.2d 42, 2023 Ga. LEXIS 96 (2023).

No evidence was presented to show that anything occurred on the night of the shootings that rose to the level of the serious provocation necessary to support a voluntary manslaughter instruction as being tossed out of a nightclub after a disagreement about the cover charge would not provoke in a reasonable person a sudden, violent, and irresistible passion to shoot and kill the security guard. *Annunziata v. State*, 317 Ga. 175, 891 S.E.2d 814, 2023 Ga. LEXIS 164 (2023).

Absent evidence of requisite provocation, etc.

Trial court did not err in declining defendant's request for a voluntary manslaughter instruction as a lesser included offense of malice murder and felony murder predicated on aggravated assault because the fact that an uninvited guest approached defendant's door, knocked on the door, and then did not immediately comply with a request to leave was not conduct that would provoke in a reasonable person an irresistible passion to kill the unwanted guest. *Johnson v. State*, 313 Ga. 698, 873 S.E.2d 123, 2022 Ga. LEXIS 150 (2022).

Evidence held sufficient to authorize a charge on voluntary manslaughter.

— Trial court erred in failing to merge both defendants' convictions for voluntary manslaughter and aggravated assault with a deadly weapon because the indictments charged the defendants with felony murder by alleging that the defendants committed aggravated assault, but the court then charged the defendants with aggravated assault based on the exact same conduct; and, although the jury convicted the defendants of voluntary manslaughter as a lesser-included offense of felony murder, it, nevertheless, followed that the defendants' convictions for aggravated assault merged as a matter of fact into the defendants' convictions for voluntary manslaughter. *Hamlette v. State*, 353 Ga. App. 640, 839 S.E.2d 161, 2020 Ga. App. LEXIS 61 (2020).

Trial court did not plainly err by instructing the jury on voluntary manslaughter as a lesser-included offense of felony murder because such instruction was applicable to both defendants as the state presented evidence that immediately following a fight, in which both defendants were involved and in which the victim cut the second defendant, both defendants fired handguns at the victim. *Hamlette v. State*, 353 Ga. App. 640, 839 S.E.2d 161, 2020 Ga. App. LEXIS 61 (2020).

Failure to instruct on voluntary manslaughter not error.

Trial court did not plainly err by denying the defendant's request for a jury instruction on voluntary manslaughter as a lesser offense of murder because the evidence did not support such an instruction, as the defendant never testified that the defendant was angry or that the defendant had any other response showing that the defendant might have acted passionately, only that the defendant was scared and was defending himself and the co-defendant. *Collins v. State*, 312 Ga. 727, 864 S.E.2d 85, 2021 Ga. LEXIS 640 (2021).

Trial court did not err by refusing to instruct the jury on voluntary manslaughter as a lesser offense of murder because the evidence did not warrant such an instruction, as defendant never testified

that he was angry or inflamed by the victim's conduct just before the shooting, only that he was scared and defending himself and his family. Additionally, there was no other evidence that the shooting was the result of a sudden, violent, and irresistible passion. *Rayton v. State*, 314 Ga. 29, 875 S.E.2d 708, 2022 Ga. LEXIS 170 (2022).

Where the defendant was found guilty of breaking into the defendant's estranged wife's home, in violation of a pretrial bond condition, and shot and killed the wife, the evidence did not support a jury instruction on voluntary manslaughter as a lesser offense of murder because the defendant did not identify any evidence that the wife's allegedly provocative conduct of shooting the defendant actually engendered in the defendant a sudden, violent, and irresistible passion; and, even if the defendant did not break into the home, the defendant entered the home without permission and ignored the wife's demand that the defendant leave; and a reasonable person would not be provoked by the wife's use of force in defense of self and habitation. *Mobley v. State*, 314 Ga. 38, 875 S.E.2d 655, 2022 Ga. LEXIS 168 (2022).

In an action for malice murder, the trial court's failure to charge the jury on voluntary manslaughter and on mutual combat did not amount to plain error because the threatening and insulting words that the defendant testified were used by the victim, no matter how menacing or offensive they were to the defendant, were still only words, and were not enough to amount to serious provocation within the meaning of the voluntary manslaughter statute. *Rountree v. State*, 316 Ga. 691, 889 S.E.2d 803, 2023 Ga. LEXIS 135 (2023).

Trial court did not err by refusing to instruct the jury on voluntary manslaughter because the fact that the victim reached for defendant's arm in an effort to disarm defendant in response to defendant's pointing a gun at the victim and defendant's ex-wife showed, at most, that the victim "physically resisted" defendant's unlawful act, which was not the type of provocation which demanded a voluntary manslaughter charge. Nor was defendant entitled to a voluntary man-

Jury Charge (Cont'd)

slaughter instruction on the basis of adultery or sexual jealousy because none of the parties were married. *Kinlaw v. State*, 317 Ga. 414, 893 S.E.2d 712, 2023 Ga. LEXIS 218 (2023).

Trial court did not plainly err by declining to give a voluntary manslaughter instruction as a lesser offense of malice murder because the victim's pushing and shoving the defendant was not the type of serious provocation that would excite the passions of a reasonable person necessary for such an instruction. *Jivens v. State*, 317 Ga. 859, 896 S.E.2d 516, 2023 Ga. LEXIS 267 (2023).

Trial court did not err by refusing to charge the jury on voluntary manslaughter during defendant's murder trial because the fact that defendant and the victim, defendant's 15-year-old sister, argued prior to the stabbing about access to the bathroom, was not the type of provocation used to support voluntary manslaughter. Nor was the victim's act of knocking a clipboard and cell phone out of defendant's hand the kind of act that would excite the level of irresistible passion required, and there was no evidence that the victim possessed or used a weapon against defendant. *Henderson v. State*, 318 Ga. 752, 900 S.E.2d 596, 2024 Ga. LEXIS 86 (2024).

Trial court did not err by failing to instruct the jury on voluntary manslaughter during defendant's felony murder trial because there was not even slight evidence presented to support the charge, as defendant denied shooting the victim in the heat of passion or that he had lost his control, and testified that he shot the victim because he was scared for his life. *Ward v. State*, 318 Ga. 884, 901 S.E.2d 189, 2024 Ga. LEXIS 100 (2024).

Trial court did not err by failing to charge the jury on voluntary manslaughter because evidence that the victim entered defendant's home and fought with her did not show the type of circumstances that the court had found would excite such passion in a reasonable person to justify a voluntary manslaughter charge. *Williams v. State*, 320 Ga. 592, 910 S.E.2d 566, 2024 Ga. LEXIS 301 (2024).

Failure to instruct on voluntary manslaughter of officer not error. —

When the defendant was convicted of felony murder and other crimes in connection with the shooting death of the victim, the trial court erred in denying the defendant's request to charge the jury on voluntary manslaughter as the evidence was insufficient to warrant a charge on voluntary manslaughter because the defendant testified that, when the defendant heard the gunshots, the defendant fired the shots like a warning, and that, after hearing gunshots, the defendant removed the defendant's gun and fired two shots in the air; and, at best, that evidence showed that the defendant was attempting to repel an attack, not that the defendant was so angered that the defendant reacted passionately. *Williams v. State*, 306 Ga. 717, 832 S.E.2d 805, 2019 Ga. LEXIS 595 (2019).

When the evidence showed that after the deputies called out the defendant's name, the defendant stood up from a chair and immediately shot and killed a deputy and there was no evidence that the defendant knew the deputies, that they struggled or exchanged words, or that the deputies did anything to provoke the defendant, the evidence did not support an inference that the defendant was acting passionately in response to a serious provocation and, thus, the trial court did not err in refusing to charge on voluntary manslaughter. *Calmer v. State*, 309 Ga. 368, 846 S.E.2d 40, 2020 Ga. LEXIS 475 (2020).

In an action for malice murder and a possession of a firearm during a felony, even if the defendant reacted as a result of a sudden and violent passion, any error in failing to give a voluntary manslaughter charge was harmless because there was substantial evidence of the defendant's guilt, and it was highly probable that a jury instructed on voluntary manslaughter nonetheless would have rejected such a claim in the light of the trial evidence other than the defendant's self-serving story. *Heyward v. State*, 308 Ga. 570, 842 S.E.2d 293, 2020 Ga. LEXIS 284 (2020).

Trial court did not err in denying the defendant's request for a jury instruction on voluntary manslaughter because the

only evidence that the defendant cited to support such a charge was that the defendant became very angry when the victim called the defendant a name and there was no evidence whatsoever of provocation sufficient to excite the passions of a reasonable person that would have entitled the defendant to a charge on voluntary manslaughter. *Hudson v. State*, 308 Ga. 443, 841 S.E.2d 696, 2020 Ga. LEXIS 242 (2020).

Instruction on involuntary manslaughter unwarranted. — Trial court did not err in denying the defendant's request to charge on voluntary manslaughter as there was no evidence that the defendant acted as a result of a sudden, violent, and irresistible passion because the defendant's and the victim's argument about whether the victim had stolen money from the defendant was not a serious provocation; and words alone would not reduce a crime from murder to manslaughter. *Orr v. State*, 312 Ga. 317, 862 S.E.2d 513, 2021 Ga. LEXIS 588 (2021).

Defendant, who was charged with malice murder, was not entitled to an instruction on the lesser included offense of voluntary manslaughter, as there was no indication that the defendant was angry or inflamed by the victim's actions immediately before the shooting and there was no other evidence that the shooting was the result of a sudden, violent, and irresistible passion. *Hayes v. State*, 320 Ga. 505, 910 S.E.2d 198, 2024 Ga. LEXIS 297 (2024).

Instruction on voluntary manslaughter unwarranted. — Trial court did not commit plain error by failing to sua sponte charge the jury on voluntary manslaughter because the defendant testified adamantly that the defendant shot the victim in self-defense; and there was no evidence that the defendant acted solely as the result of a sudden, violent, and irresistible passion resulting from serious provocation. *Martin v. State*, 306 Ga. 538, 832 S.E.2d 402, 2019 Ga. LEXIS 529 (2019).

Trial counsel was not constitutionally ineffective in failing to request a jury instruction on voluntary manslaughter as a lesser offense of murder because a com-

petent attorney could have assessed that a voluntary manslaughter defense was either unavailable or weak as the evidence did not show, or only questionably showed, that the defendant had been seriously provoked by the victim; the evidence showed an opportunity for the defendant to cool down between the alleged provocation and the shooting; and a charge on voluntary manslaughter, if available, would have been inconsistent with the defense theory that another individual fired the fatal shots. *Vann v. State*, 311 Ga. 301, 857 S.E.2d 677, 2021 Ga. LEXIS 156 (2021).

Defendant was not prejudiced by trial counsel's failure to ask for a jury instruction on voluntary manslaughter as a lesser-included offense of felony murder because given the evidence at trial, that defendant and the victim had a long history of difficulties that culminated in a series of verbal and physical altercations on the day of the shooting, the jury was not likely to find that defendant experienced the kind of sudden and severe provocation that could reduce murder to voluntary manslaughter. *Heyward v. State*, 319 Ga. 588, 905 S.E.2d 590, 2024 Ga. LEXIS 163 (2024).

Voluntary manslaughter instruction unwarranted. — Defendant was not entitled to a jury instruction on voluntary manslaughter as the defendant was not entitled to the jury's consideration of a voluntary manslaughter verdict at all because there was no evidence that the victim ever engaged in or recounted to the defendant any sexual conduct with others, and the victim's statement that the victim wanted to end the victim's relationship with the defendant was insufficient provocation to support a voluntary manslaughter charge. *Rigsby v. State*, 306 Ga. 38, 829 S.E.2d 93, 2019 Ga. LEXIS 388 (2019).

Jury instruction on voluntary manslaughter was inappropriate as the defendant was not entitled to the jury's consideration of a voluntary manslaughter verdict at all because, even accepting the defendant's dubious assertion that slight evidence indicated that the victim attempted suicide, and even assuming that witnessing someone's suicide attempt

Jury Charge (Cont'd)

could — under some exceptional circumstances — provoke a reasonable person to kill the victim (rather than render the victim aid), there was no evidence that the circumstances in the defendant's case would have provoked a reasonable person to kill the victim. *Rigsby v. State*, 306 Ga. 38, 829 S.E.2d 93, 2019 Ga. LEXIS 388 (2019).

Defendant failed to show that trial counsel was ineffective for failing to request a jury charge on attempted voluntary manslaughter as a lesser included offense of attempted murder because the evidence did not support such a charge, as defendant pointed to no evidence showing that he reacted passionately when he assaulted the victim for several hours. Rather, he referenced only evidence showing that the couple had a turbulent relationship with prior altercations and that on the date in question the victim threw a key at him. *Newton v. State*, 370 Ga. App. 589, 898 S.E.2d 595, 2024 Ga. App. LEXIS 52 (2024).

Instruction allowed consideration of voluntary manslaughter. — Trial court did not plainly err by instructing the jury because, per the instructions, the jury could not find defendant guilty of murder without considering evidence of provocation or passion which might authorize a verdict of voluntary manslaughter. *Aeger v. State*, 356 Ga. App. 667, 848 S.E.2d 677, 2020 Ga. App. LEXIS 503 (2020).

Harmless error.

Even if the evidence warranted a jury instruction on voluntary manslaughter, any error in failing to give the requested instruction was harmless because, even if the jury had found that the victim's conduct in the shower area was enough to provoke a sudden, violent, and irresistible passion in a reasonable person, the evidence presented, including the defendant's own statements, showed that a significant period of time elapsed between the alleged provocation and the beating. *Hatney v. State*, 308 Ga. 438, 841 S.E.2d 702, 2020 Ga. LEXIS 244 (2020).

Assuming that the lead investigator's testimony about the direction in which

one of the bullets that struck the victim traveled was erroneously admitted, the error was harmless as the jury reasonably rejected the defendant's claims of self-defense and voluntary manslaughter because the evidence of the defendant's guilt showed that the defendant, who was jealous of the victim and had threatened to make the victim disappear, approached the victim, pulled out a gun, and fired four shots at the victim, who turned to run and pulled out a gun only after the victim had been shot; and the defendant did not contend that the prosecutor emphasized that testimony during closing argument. *Saxton v. State*, 313 Ga. 48, 867 S.E.2d 130, 2021 Ga. LEXIS 732 (2021), cert. denied, 142 S. Ct. 1461, 212 L. Ed. 2d 548, 2022 U.S. LEXIS 1805 (2022).

No error in failing to charge on mutual combat.

Because the homeowner's testimony supported an instruction on defense of self or others, not an instruction on mutual combat or voluntary manslaughter, trial counsel was not ineffective in declining to pursue instructions on mutual combat or voluntary manslaughter. *Bannister v. State*, 306 Ga. 289, 830 S.E.2d 79, 2019 Ga. LEXIS 437 (2019).

No ineffective assistance of counsel. — Defendant failed to show that trial counsel provided ineffective assistance by failing to request a jury instruction on the lesser offense of voluntary manslaughter because it was not patently unreasonable for trial counsel, rather than risk losing credibility, to make the strategic decision not to seek a voluntary manslaughter charge and to instead pursue only a defense that was consistent with defendant's claim that someone else killed the victim. *Outlaw v. State*, 311 Ga. 396, 858 S.E.2d 63, 2021 Ga. LEXIS 197 (2021).

Trial counsel was not ineffective for failing to request a jury instruction on the lesser offense of voluntary manslaughter because the defendant's trial attorneys testified that they concluded that the evidence did not support a voluntary manslaughter theory; lead counsel thought that pursuing a defense theory of not guilty by reason of insanity offered the best chance of success and worried that presenting a voluntary manslaughter

theory would water down the insanity defense; and co-counsel added that, when discussing possible defenses, the defendant said that the defendant did not want to put any blame on the victims. *Townsend v. State*, 312 Ga. 276, 862 S.E.2d 304, 2021 Ga. LEXIS 582 (2021).

Application

Evidence sufficient for voluntary manslaughter conviction.

Evidence was sufficient to convict the second defendant of voluntary manslaughter and aggravated assault because the second defendant, the first defendant, and some of their friends engaged in a heated argument with the victim that escalated into a physical altercation, in which the defendants knocked the victim to the ground; the victim escaped from the fight by pulling a knife and cutting the second defendant; and the second defendant and the first defendant pulled handguns and fired at the victim as the victim tried to walk away with three bullets striking and ultimately killing the victim. *Hamlette v. State*, 353 Ga. App. 640, 839 S.E.2d 161, 2020 Ga. App. LEXIS 61 (2020).

Evidence was sufficient to support the defendant's conviction of voluntary manslaughter because the jury was authorized to conclude from the evidence that the defendant was not justified in using deadly force to protect the defendant from the victim, who was intoxicated, unarmed, and outside of the locked bedroom. *Aeger v. State*, 356 Ga. App. 667, 848 S.E.2d 677, 2020 Ga. App. LEXIS 503 (2020).

Evidence that the defendant had a handgun, stood on the front porch, and pointed the gun toward a vehicle and fired several shots, one of which struck the victim who was not in the car, was sufficient to support the jury's guilty verdict on the offenses of voluntary manslaughter and aggravated assault under a theory of transferred intent. *Craw v. State*, 369 Ga. App. 231, 893 S.E.2d 134, 2023 Ga. App. LEXIS 433 (2023).

Jury found voluntary manslaughter, guilty verdict for felony murder should have been vacated. — Because there was no reason to believe that the jury actually found the defendant guilty of voluntary manslaughter and felony murder based on distinct conduct causing the victim's death, the trial court did not err in applying the case law to vacate the felony murder count and to sentence the defendant for voluntary manslaughter. *Gardhigh v. State*, 309 Ga. 153, 844 S.E.2d 821, 2020 Ga. LEXIS 448 (2020).

Evidence sufficient for malice murder, not voluntary manslaughter.

Jury was authorized to reject the theory that defendant acted as a result of a sudden, violent, and irresistible passion when he shot the two victims because the evidence showed that the victims, who were unarmed, did not engage in any provocation, as one victim was retreating from defendant's yard when defendant shot the victim, and the other victim was getting out of the car, presumably to check on the first victim. *Jackson v. State*, 315 Ga. 543, 883 S.E.2d 815, 2023 Ga. LEXIS 22 (2023).

RESEARCH REFERENCES

ALR.

Supreme Court jurisprudence on governmental use of excessive force as viola-

tion of constitutional or civil rights, 80 A.L.R. Fed. 3d 3.

16-5-3. Involuntary manslaughter.

JUDICIAL DECISIONS

ANALYSIS

JURY INSTRUCTIONS

APPLICATION GENERALLY

Jury Instructions

Instruction on involuntary manslaughter unwarranted. — Trial court did not commit plain error by failing to sua sponte charge the jury on involuntary manslaughter because the defendant admitted that the defendant shot the victim intentionally, albeit in self-defense. *Martin v. State*, 306 Ga. 538, 832 S.E.2d 402, 2019 Ga. LEXIS 529 (2019).

Because the defendant admitted to being a felon and possessing a gun, the defendant admitted to committing an unlawful act that was a felony, and the trial court did not err by refusing to instruct the jury on involuntary manslaughter. *Moon v. State*, 311 Ga. 421, 858 S.E.2d 18, 2021 Ga. LEXIS 194 (2021).

Jury instruction on the lesser-included offense of lawful act-unlawful manner involuntary manslaughter was properly denied as the evidence at trial showed that the child victim suffered severe blunt force trauma to the child's abdomen, resulting in lacerations to three separate organs, the injuries to any of one of which could have led to the child's death; and, if the defendant's actions rose to the level of causing the child's multiple, severe injuries, the defendant would not have been performing a lawful act because the defendant would have been performing an unlawful act, the crime of reckless conduct. *Acosta v. State*, 311 Ga. 320, 857 S.E.2d 701, 2021 Ga. LEXIS 150 (2021).

Trial court did not plainly err by not instructing the jury on felony involuntary manslaughter based on reckless conduct because striking the victim with the loaded gun was not merely misdemeanor reckless conduct, it was aggravated assault. *Chambliss v. State*, 318 Ga. 161, 896 S.E.2d 469, 2023 Ga. LEXIS 254 (2023).

Charge on involuntary manslaughter as lesser included offense. — In an action for felony murder and cruelty to children, the trial court erred by failing to charge the jury on the lesser included offense of involuntary manslaughter because there was some evidence that the defendant was guilty of the lesser offense, including that a nurse practitioner told the defendant the child needed to go to the emergency room and the defendant took

the child to the emergency room but refused treatment due to financial concerns, allowing a jury to conclude that the defendant endangered the child. *Castro-Moran v. State*, 356 Ga. App. 248, 845 S.E.2d 708, 2020 Ga. App. LEXIS 371 (2020).

Instruction on involuntary manslaughter unwarranted where self-defense asserted. — Trial court did not err in refusing to give the defendant's requested charge on involuntary manslaughter because all the evidence presented showed that the defendant intentionally shot the victim, and by the defendant's account, no crime happened because the defendant was shooting in self-defense. Therefore, the crimes were either committed as charged or not committed at all, and there was no evidence that the defendant was committing a non-felonious unlawful act. *Stepp-McCommons v. State*, 309 Ga. 400, 845 S.E.2d 643, 2020 Ga. LEXIS 471 (2020).

Application Generally

Reckless conduct as lesser included offense of aggravated assault. — Aggravated assault count of the indictment merged with the malice murder conviction, and the felony murder count, predicated in part on aggravated assault, was vacated by operation of law; thus, the claim of error that the trial court erred by refusing to charge the jury on reckless conduct as a lesser-included offense of aggravated assault was moot when the defendant was not convicted of aggravated assault. *McCluskey v. State*, 307 Ga. 740, 838 S.E.2d 270, 2020 Ga. LEXIS 51 (2020).

Involuntary manslaughter conviction based on methamphetamine. — Evidence that the defendant was involved in loading capsules with methamphetamine, one of which the defendant knew contained more of the drug than the others, that the decedent acted strangely after consuming the capsule with more drug in it, that the decedent went off into the woods, and the defendant and others left the area where the decedent disappeared without looking for the decedent and seeking medical attention was sufficient to support the conviction for invol-

tion of constitutional or civil rights, 80
A.L.R. Fed. 3d 3.

Supreme Court jurisprudence on governmental use of excessive force as viola-

section, the defendant’s knowledge of the chemical identity of the substance manufactured or sold shall not be an essential element of the offense, and the state shall not have the burden of proving that a defendant knew the chemical identity of such substance in order to be convicted of an offense under this Code section.

History.

Code 1981, § 16-5-3.1, enacted by Ga. L. 2024, p. 488, § 2/SB 465, effective April 30, 2024; Ga. L. 2025, p. 1029, § 16(1)/SB 153, effective July 1, 2025.

Effective date.

This Code section became effective April 30, 2024.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted “means” for “shall mean” in paragraph

(a)(3) and substituted “includes” for “shall include” in paragraph (a)(4); and, in subsection (c), substituted “ten years” for “10 years”.

Editor’s notes.

Ga. L. 2024, p. 488, § 1/SB 465, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Austin’s Law.’”

Ga. L. 2024, p. 465, § 4/SB 465, not codified by the General Assembly, makes this Code section applicable to offenses committed on or after April 30, 2024.

16-5-5. Assisted suicide; notification of licensing board regarding violation.

(a) As used in this Code section, the term:

(1) “Assists” means the act of physically helping or physically providing the means.

(2) “Health care provider” means any person licensed, certified, or registered under Chapter 9, 10A, 11, 11A, 26, 28, 30, 33, 34, 35, 39, or 44 of Title 43.

(3) “Suicide” means the intentional and willful termination of one’s own life.

(b) Any person with actual knowledge that a person intends to commit suicide who knowingly and willfully assists such person in the commission of such person’s suicide shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than ten years.

(c) The provisions of this Code section shall not apply to:

(1) Pursuant to a patient’s consent, any person prescribing, dispensing, or administering medications or medical procedures when such actions are calculated or intended to relieve or prevent such patient’s pain or discomfort but are not calculated or intended to cause such patient’s death, even if the medication or medical procedure may have the effect of hastening or increasing the risk of death;

(2) Pursuant to a patient’s consent, any person discontinuing, withholding, or withdrawing medications, medical procedures, nourishment, or hydration;

(3) Any person prescribing, dispensing, or administering medications or medical procedures pursuant to, without limitation, a living will, a durable power of attorney for health care, an advance directive for health care, a psychiatric advance directive, a Physician Orders for Life-Sustaining Treatment form pursuant to Code Section 31-1-14, or a consent pursuant to Code Section 29-4-18 or 31-9-2 when such actions are calculated or intended to relieve or prevent a patient's pain or discomfort but are not calculated or intended to cause such patient's death, even if the medication or medical procedure may have the effect of hastening or increasing the risk of death;

(4) Any person discontinuing, withholding, or withdrawing medications, medical procedures, nourishment, or hydration pursuant to, without limitation, a living will, a durable power of attorney for health care, an advance directive for health care, a psychiatric advance directive, a Physician Orders for Life-Sustaining Treatment form pursuant to Code Section 31-1-14, a consent pursuant to Code Section 29-4-18 or 31-9-2, or a written order not to resuscitate; or

(5) Any person advocating on behalf of a patient in accordance with this subsection.

(d) Within ten days of a conviction, a health care provider who is convicted of violating this Code section shall notify in writing the applicable licensing board for his or her licensure, certification, registration, or other authorization to conduct such health care provider's occupation. Upon being notified and notwithstanding any law, rule, or regulation to the contrary, the appropriate licensing board shall revoke the license, certification, registration, or other authorization to conduct such health care provider's occupation.

History.

Code 1981, § 16-5-5, enacted by Ga. L. 2012, p. 637, § 1/HB 1114; Ga. L. 2015, p. 305, § 3/SB 109; Ga. L. 2022, p. 611, § 2-2/HB 752.

Amendments.

The 2022 amendment, effective July 1, 2022, inserted "a psychiatric advance directive," in paragraphs (c)(3) and (c)(4).

Cross references.

Psychiatric advance directives, § 37-11-1 et seq.

Law reviews.

For article, "HB 752: Psychiatric Advance Directive Act," see 39 Ga. St. U.L. Rev. 191 (2022).

ARTICLE 2

ASSAULT AND BATTERY

16-5-19. Definitions.

As used in this article, the term:

(1) "Correctional officer" means any person who is authorized to

exercise the power of arrest and who is employed or appointed by the Department of Corrections or the State Board of Pardons and Paroles.

(2) “Emergency health worker” means hospital emergency department personnel and emergency medical services personnel.

(3) “Firefighter” shall have the same meaning as set forth in Code Section 25-4-2.

(3.1) “Healthcare worker” means any employee or independent contractor of a hospital or other healthcare facility licensed pursuant to Chapter 7 of Title 31.

(4) “Highway emergency response operator” means an individual employed by the Department of Transportation who operates a towing or recovery vehicle or highway maintenance vehicle.

(5) “Jail officer” means any person who is employed or appointed by a county or a municipality and who has the responsibility of supervising inmates who are confined in a municipal or county detention facility.

(6) “Juvenile correctional officer” means any person employed or appointed by the Department of Juvenile Justice who has the primary responsibility for the supervision and control of youth confined in its programs and facilities.

(7) “Officer of the court” means a judge, attorney, clerk of court, deputy clerk of court, court reporter, or court interpreter.

(8) “Probation officer” means a community supervision officer, county or Department of Juvenile Justice juvenile probation officer, or probation officer serving pursuant to Article 6 of Chapter 8 of Title 42.

(9) “Public safety officer” means peace officer, correctional officer, emergency health worker, firefighter, highway emergency response operator, jail officer, juvenile correctional officer, or probation officer.

(10) “Public transit vehicle” shall have the same meaning as set forth in Code Section 16-5-20.

(11) “Strangulation” means impeding the normal breathing or circulation of blood of another person by applying pressure to the throat or neck of such person or by obstructing the nose and mouth of such person.

(12) “Utility worker” means any employee of, including any person employed by or under contract with, an organization, entity, or company, whether a state created authority or privately, municipally, county, or cooperatively owned, that provides gas, heat, electricity,

water, telecommunications services, sewer services, cable or video services, internet services, or railroad services.

History.

Code 1981, § 16-5-19, enacted by Ga. L. 2017, p. 500, § 3-1/SB 160; Ga. L. 2023, p. 308, § 2/HB 383, effective July 1, 2023; Ga. L. 2024, p. 646, § 2/HB 1033, effective May 6, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, added paragraph (3.1). See Editor's notes for applicability.

The 2024 amendment, effective May 6, 2024, added paragraph (12). See Editor's notes for applicability.

Editor's notes.

Ga. L. 2023, p. 308, § 1/HB 383, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safer Hospitals Act.'"

Ga. L. 2023, p. 308, § 6/HB 383, not codified by the General Assembly, provides, in part, that the addition of paragraph (3.1) shall apply to all offenses committed on or after July 1, 2023.

Ga. L. 2024, p. 646, § 1/HB 1033, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Utility Worker Protection Act.'"

Ga. L. 2024, p. 646, § 8/HB 1033, not codified by the General Assembly, makes the amendments to this Code section applicable to all offenses committed on or after July 1, 2024.

JUDICIAL DECISIONS

Strangulation. — Defendant's actions met the definition of strangulation in O.C.G.A. § 16-5-19(11) and was sufficient to establish the aggravated assault violation by a preponderance of the evidence as the defendant's use of his hands to assault another person satisfied the statutory requirement of the use of "any object, device, or instrument" as required by O.C.G.A. § 16-5-21. *Murphy v. State*, 370 Ga. App. 738, 899 S.E.2d 307, 2024 Ga. App. LEXIS 81 (2024).

Victim's testimony that the defendant strangled her with his hands and the photo evidence of the victim's injuries were sufficient to support the aggravated assault conviction. However, the victim's testimony that she tried to call for help was insufficient to show she intended to call 911 or the police, as required for the

hindering an emergency phone call conviction, therefore, that conviction was reversed. *Fuller v. State*, 374 Ga. App. 432, 913 S.E.2d 66, 2025 Ga. App. LEXIS 66 (2025).

Evidence supported conviction. —

Even assuming that serious disfigurement required evidence that the victim's outward appearance was altered in some way, the evidence was sufficient to support the defendant's aggravated battery conviction as a reasonable juror might readily infer that two blows to the head with an ax, hard enough that the assailant initially believed the blows to be fatal, leaving the victim twitching, convulsing, or swaying, and able only to crawl, would cause a significant, outwardly visible head wound. *Byers v. State*, 311 Ga. 259, 857 S.E.2d 447, 2021 Ga. LEXIS 143 (2021).

16-5-20. Simple assault.

(a) A person commits the offense of simple assault when he or she either:

- (1) Attempts to commit a violent injury to the person of another; or
- (2) Commits an act which places another in reasonable apprehension of immediately receiving a violent injury.

(b) Except as provided in subsections (c) through (i) of this Code section, a person who commits the offense of simple assault shall be guilty of a misdemeanor.

(c) Any person who commits the offense of simple assault in a public transit vehicle or station shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature. As used in this Code section, the term “public transit vehicle” means a bus, van, or rail car used for the transportation of passengers within a system which receives a subsidy from tax revenues or is operated under a franchise contract with a county or municipality of this state.

(d) If the offense of simple assault is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons excluding siblings living or formerly living in the same household, the defendant shall be punished for a misdemeanor of a high and aggravated nature. In no event shall this subsection be applicable to corporal punishment administered by a parent or guardian to a child or administered by a person acting in loco parentis.

(e) Reserved.

(f) Any person who commits the offense of simple assault against an employee of a public school system of this state while such employee is engaged in official duties or on school property shall, upon conviction of such offense, be punished for a misdemeanor of a high and aggravated nature. As used in this Code section, the term “school property” shall include public school buses and stops for public school buses as designated by local school boards of education.

(g) Any person who commits the offense of simple assault against a female who is pregnant at the time of the offense shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

(h) Nothing in this Code section shall be construed to permit the prosecution of:

(1) Any person for conduct relating to an abortion for which the consent of the pregnant woman, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) Any person for any medical treatment of the pregnant woman or her unborn child; or

(3) Any woman with respect to her unborn child.

As used in this subsection, the term “unborn child” means a member of

the species *Homo sapiens* at any stage of development who is carried in the womb.

(i) Any person who commits the offense of simple assault upon a utility worker while such worker is acting within the course and scope of his or her employment or is performing official duties at the time of the offense shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

History.

Laws 1833, Cobb's 1851 Digest, p. 787.; Code 1863, §§ 4256, 4257; Code 1868, §§ 4291, 4292; Code 1873, §§ 4357, 4358; Code 1882, §§ 4357, 4358; Penal Code 1895, §§ 95, 96; Penal Code 1910, §§ 95, 96; Code 1933, §§ 26-1401, 26-1402; Code 1933, § 26-1301, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1991, p. 971, §§ 1, 2; Ga. L. 1999, p. 381, § 2; Ga. L. 1999, p. 562, § 2; Ga. L. 2004, p. 621, § 1; Ga. L. 2005, p. 60, § 16/HB 95; Ga. L. 2006, p. 643, § 1/SB 77; Ga. L. 2021, p. 384, § 1/HB 363; Ga. L. 2024, p. 646, § 3/HB 1033, effective May 6, 2024; Ga. L. 2025, p. 1029, § 16(2)/SB 153, effective July 1, 2025.

Amendments.

The 2021 amendment, effective July 1, 2021, substituted "Reserved." for the former provisions of subsection (e), which read: "Any person who commits the offense of simple assault against a person who is 65 years of age or older shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature."

The 2024 amendment, effective May 6, 2024, substituted "through (i)" for "through (h)" in subsection (b), and added subsection (i). See Editor's notes for applicability.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "As used in this Code section, the term" for "For purposes of this Code section," in subsections (c) and (f); substituted "As used in" for "For the purposes of" and substituted "*Homo sapiens*" for "*homo sapiens*" in the undesignated paragraph following paragraph (h)(3); and, in subsection (i), substituted "his or her" for "their".

Editor's notes.

Ga. L. 2024, p. 646, § 1/HB 1033, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Utility Worker Protection Act.'"

Ga. L. 2024, p. 646, § 8/HB 1033, not codified by the General Assembly, makes the amendments to this Code section applicable to all offenses committed on or after July 1, 2024.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
APPLICATION
NOT EXCESSIVE FORCE
JURY INSTRUCTION

General Consideration

Evidence did not require reversal.

Evidence was sufficient to support defendant's convictions of aggravated assault and reckless conduct because it showed that defendant was standing on

the bank of a river, in which people were fishing, firing weapons, he fired a loud shot that hit the water five or six feet from two victims, and defendant stated that the people fishing were stealing his fish. *Brewton v. State*, 370 Ga. App. 224, 896

General Consideration (Cont'd)

S.E.2d 133, 2023 Ga. App. LEXIS 558 (2023).

Application**Reasonable apprehension of violent injury.**

Evidence was sufficient to establish that the defendant was the driver of the vehicle in the incident involving the victim as the evidence showed that the defendant drove away with the sleeping victim and the defendant's DNA was present on the victim's vagina and cervix as well as the tampon the victim had been wearing showed that the defendant had sexual intercourse with the victim. *Rendon-Villasana v. State*, 360 Ga. App. 769, 861 S.E.2d 462, 2021 Ga. App. LEXIS 389 (2021).

Evidence was sufficient to support defendant's conviction of aggravated assault and the related charge of possession of a firearm during the commission of a felony because a victim testified that the victim saw defendant shoot two other victims, the victim overheard defendant's friend tell defendant to shoot the victim so there would be no witnesses, and several gunshots struck the vehicle close to where the victim was seated. *Jackson v. State*, 315 Ga. 543, 883 S.E.2d 815, 2023 Ga. LEXIS 22 (2023).

Evidence was insufficient to support defendant's conviction of simple assault because the victim testified that defendant reached defendant's hand out toward the victim, that defendant was angry when the victim refused to get into defendant's car, and that the victim was extremely scared during the incident. There was no evidence, however, that defendant made any threatening, physical gesture from which a factfinder could find a demonstration of violence. *Green v. State*, 371 Ga. App. 259, 899 S.E.2d 493, 2024 Ga. App. LEXIS 146 (2024), rev'd in part, 321 Ga. 204, 913 S.E.2d 621, 2025 Ga. LEXIS 49 (2025).

Deliberately driving stolen van toward deputies. — Sufficient evidence supported the defendant's conviction for aggravated assault on a law enforcement officer because the defendant drove the

stolen white van directly toward the deputies when they attempted to detain him, only missing them when they dove out of the way. *Miller v. State*, 351 Ga. App. 757, 833 S.E.2d 142, 2019 Ga. App. LEXIS 497 (2019).

Placing a burning object on a person's leg. — Sufficient evidence supported the defendant's conviction of aggravated assault based on the defendant lighting a girlfriend's notebook on fire and placing it on the girlfriend's leg, burning the girlfriend's pants but not injuring the body because the burning notebook was likely to cause serious injury even though no injury occurred. *Fraga v. State*, 371 Ga. App. 430, 900 S.E.2d 737, 2024 Ga. App. LEXIS 162 (2024).

Not Excessive Force

Evidence of previous crimes improperly admitted to show intent. — Appellant's convictions for felony murder, aggravated assault, and knife-possession offenses were reversed because the Georgia Supreme Court could not say that the trial court's erroneous admission of the voluminous evidence that the appellant had previously committed multiple serious violent acts did not contribute to the guilty verdicts that the jury returned. *Strong v. State*, 309 Ga. 295, 845 S.E.2d 653, 2020 Ga. LEXIS 467 (2020).

Evidence sufficient for simple assault of spouse. — Evidence that, during an argument, the defendant grabbed the defendant's spouse by the arms and threw the spouse to the ground, and then grabbed the back of the spouse's head, pushed the spouse down into the floor, and twisted the spouse's arm behind the spouse's back was sufficient to support the defendant's conviction for simple assault. *Pettis v. State*, 350 Ga. App. 421, 829 S.E.2d 613, 2019 Ga. App. LEXIS 313 (2019).

Evidence insufficient. — There was insufficient evidence to support a conviction of simple assault. Although the victim testified that the defendant, who had approached the victim in the defendant's vehicle, reached a hand out toward the victim and was angry when the victim refused to get into the car, and that the victim was extremely scared during the

incident, there was no evidence that the defendant made any threatening, physical gesture from which a factfinder could find a demonstration of violence. *Green v. State*, 371 Ga. App. 259, 899 S.E.2d 493, 2024 Ga. App. LEXIS 146 (2024), rev'd in part, 321 Ga. 204, 913 S.E.2d 621, 2025 Ga. LEXIS 49 (2025).

Evidence insufficient for conviction of juvenile. — Evidence did not support the adjudication of delinquency for simple assault because the officer testified that the defendant juvenile turned toward the officer while the officer's hand was on the defendant's back and that the defendant remained in the same location during the entire encounter; no reasonable fact finder could interpret the officer's use of the word "charge" to mean violently rushing toward the officer; and the officer's testimony did not show that the defendant's turning toward the officer caused the officer to apprehend immediately receiving a violent injury as the officer's testimony was that the officer apprehended that the officer might receive physical or bodily injury. *In the Interest of T. P.*, 356 Ga. App. 445, 847 S.E.2d 629, 2020 Ga. App. LEXIS 459 (2020).

Jury Instruction

Charge on simple assault not required.

Trial court did not err in denying the defendant's request for a charge on simple assault as a lesser included offense of aggravated assault because the defendant did not provide evidence that the defendant committed an assault in some way other than with a firearm and if the defendant did not assault the victims in some other way, then no simple assault occurred and the trial court was not required to charge on that offense. *Campbell v. State*, 359 Ga. App. 391, 858 S.E.2d 83, 2021 Ga. App. LEXIS 207 (2021).

In a case in which defendant was convicted of aggravated battery, counsel was not ineffective in failing to request that the trial court charge the jury on the lesser-included offense of simple battery as counsel testified that counsel and the defendant discussed simple battery as a possible lesser-included offense, but that the defendant was very vocal and very

adamant that the defendant wanted to claim self-defense; counsel explained that requesting an instruction on simple battery could have harmed the defendant's case because sometimes juries could not follow alternative theories; and counsel's decision to pursue an all or nothing defense was not patently unreasonable. *Wood v. State*, 366 Ga. App. 305, 882 S.E.2d 50, 2022 Ga. App. LEXIS 551 (2022).

In a case in which defendant was convicted of aggravated battery, the trial court did not plainly err in failing to charge the jury on simple assault as the defendant claimed self-defense; the undisputed evidence showed that the defendant struck the victim in the head with a bat cutting through to the victim's skull; and the question for the jury was whether the defendant was guilty of aggravated assault or whether the defendant was not guilty because the defendant's use of the bat was justified. *Wood v. State*, 366 Ga. App. 305, 882 S.E.2d 50, 2022 Ga. App. LEXIS 551 (2022).

Instruction on reckless conduct not warranted.

Trial court erred by holding that defense counsel was ineffective for failing to request a jury instruction on reckless conduct as a lesser included offense of aggravated assault because defendant was not entitled to such an instruction, as defendant's act of firing warning shots into the air to scare the victims constituted aggravated assault, not reckless conduct. *State v. Small*, 369 Ga. App. 824, 892 S.E.2d 193, 2023 Ga. App. LEXIS 410 (2023).

Charge on simple assault as element of aggravated assault. — Trial court's instruction on the aggravated assault with a deadly weapon charge was not erroneous as it included the elements for simple assault, and a complete instruction as to whether the defendant's vehicle was a deadly weapon. *Smith v. State*, 362 Ga. App. 610, 869 S.E.2d 554, 2022 Ga. App. LEXIS 70 (2022).

Reversible error in charging jury. — Trial court erred by failing to instruct the jury on accident as a defense to aggravated assault because defendant's testimony that the collision was an accident presented at least slight evidence to war-

Jury Instruction (Cont'd)

rant an instruction, as he testified that he misjudged the turning radius of his car, he lost his focus on the victim as he checked for traffic as he turned, he turned his car to the right, away from the victim, before the collision, and he slammed on the brakes. *Schmitt v. State*, 318 Ga. 835, 901 S.E.2d 102, 2024 Ga. LEXIS 106 (2024).

Proper jury charge. — Trial court did not plainly err by instructing the jury that a person committed simple assault when “he attempts to cause a violent injury to another person” because the court discerned no material difference between the instruction and this section. *Chambliss v. State*, 318 Ga. 161, 896 S.E.2d 469, 2023 Ga. LEXIS 254 (2023).

16-5-21. Aggravated assault.

(a) A person commits the offense of aggravated assault when he or she assaults:

(1) With intent to murder, to rape, or to rob;

(2) With a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury;

(3) With any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in strangulation; or

(4) Without legal justification by discharging a firearm from within a motor vehicle or after immediately exiting a vehicle toward a person, an occupied motor vehicle, or occupied building.

(b) Except as provided in subsections (c) through (m) of this Code section, a person convicted of the offense of aggravated assault shall be punished by imprisonment for not less than one nor more than 20 years.

(c)(1) A person who knowingly commits the offense of aggravated assault upon a public safety officer while he or she is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished as follows:

(A) When such assault occurs by the discharge of a firearm by a person who is at least 17 years of age, such person shall be punished by imprisonment for not less than ten nor more than 20 years and shall be sentenced to a mandatory minimum term of imprisonment of ten years and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court; provided, however, that in the court’s discretion, the court may depart from such mandatory minimum sentence when the prosecuting attorney and defendant have agreed to a sentence that is below such mandatory minimum;

(B) When such assault does not involve the discharge of a

firearm by a person who is at least 17 years of age, and does not involve only the use of the person's body, such person shall be punished by imprisonment for not less than five nor more than 20 years and, for persons who are at least 17 years of age, shall be sentenced to a mandatory minimum term of imprisonment of three years and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court; provided, however, that in the court's discretion, the court may depart from such mandatory minimum sentence when the prosecuting attorney and defendant have agreed to a sentence that is below such mandatory minimum; or

(C) When such assault occurs only involving the use of the person's body, by imprisonment for not less than five nor more than 20 years.

(2) A person convicted under this subsection shall be punished, in addition to any term of imprisonment imposed, by a fine as provided by law which shall be at least \$2,000.00. With respect to \$2,000.00 of the fine imposed, after distributing the surcharges and deductions required by Chapter 21 of Title 15, Code Sections 36-15-9 and 42-8-34, and Title 47, it shall be earmarked for the Georgia State Indemnification Fund for purposes of payment of indemnification for death or disability as provided for in Part 1 of Article 5 of Chapter 9 of Title 45.

(3) As used in this subsection, the term "firearm" means any handgun, rifle, shotgun, or similar device or weapon which will or can be converted to expel a projectile by the action of an explosive or electrical charge.

(d) Any person who commits the offense of aggravated assault against a person who is 65 years of age or older shall, upon conviction thereof, be punished by imprisonment for not less than three nor more than 20 years.

(e) Any person who commits the offense of aggravated assault in a public transit vehicle or station shall, upon conviction thereof, be punished by imprisonment for not less than three nor more than 20 years.

(f) Any person who commits the offense of aggravated assault upon a person in the course of violating Code Section 16-8-2 where the property that was the subject of the theft was a vehicle engaged in commercial transportation of cargo or any appurtenance thereto, including without limitation any such trailer, semitrailer, container, or other associated equipment, or the cargo being transported therein or thereon, shall upon conviction be punished by imprisonment for not less than five nor more than 20 years, a fine not less than \$50,000.00 nor more than

\$200,000.00, or both such fine and imprisonment. For purposes of this subsection, the term “vehicle” includes without limitation any railcar.

(g) Except as provided in subsection (c) of this Code section, a person convicted of an offense described in paragraph (4) of subsection (a) of this Code section shall be punished by imprisonment for not less than five nor more than 20 years.

(h) Any person who commits the offense of aggravated assault involving the use of a firearm upon a student or teacher or other school personnel within a school safety zone as defined in Code Section 16-11-127.1 shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(i) If the offense of aggravated assault is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons excluding siblings living or formerly living in the same household, the defendant shall be punished by imprisonment for not less than three nor more than 20 years.

(j)(1) Any person who commits the offense of aggravated assault with intent to rape against a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years.

(2)(A) As used in this paragraph, the term “sexual felony” shall mean a felony conviction of:

(i) Aggravated assault with the intent to rape in violation of subsection (a) of this Code section;

(ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who is under 14 years of age, except by a parent;

(iii) Trafficking an individual for sexual servitude in violation of Code Section 16-5-46;

(iv) Rape in violation of Code Section 16-6-1;

(v) Aggravated sodomy in violation of Code Section 16-6-2;

(vi) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;

(vii) Child molestation in violation of Code Section 16-6-4;

(viii) Aggravated child molestation in violation of Code Section 16-6-4;

(ix) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(x) Improper sexual contact by employee or agent in the first or second degree or improper sexual contact by a foster parent in the first or second degree in violation of Code Section 16-6-5.1, unless the punishment imposed was not subject to Code Section 17-10-6.2;

(xi) Incest in violation of Code Section 16-6-22;

(xii) Aggravated sexual battery in violation of Code Section 16-6-22.2; or

(xiii) Sexual exploitation of children in violation of Code Section 16-12-100.

(B) Any person having been previously convicted of a sexual felony who is convicted of the offense of aggravated assault with the intent to rape shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in paragraph (14) of subsection (a) of Code Section 42-8-35. Any person convicted under this paragraph shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(k) A person who knowingly commits the offense of aggravated assault upon an officer of the court while such officer is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(l) A person who commits the offense of aggravated assault upon an emergency health worker or healthcare worker while such worker is on a hospital campus, as such term is defined in Code Section 31-54-1, to perform official duties shall, upon conviction thereof, be punished by imprisonment for not less than three nor more than 20 years.

(m) Any person who commits the offense of aggravated assault upon a utility worker while such worker is acting within the course and scope of his or her employment or is performing official duties shall, upon conviction thereof, be punished by imprisonment for not less than three nor more than 20 years.

History.

Laws 1833, Cobb's 1851 Digest, pp. 787-789; Laws 1840, Cobb's 1851 Digest, p. 788.; Code 1863, §§ 4250, 4258, 4259, 4260; Ga. L. 1866, p. 151, § 1; Code 1868, §§ 4285, 4293, 4294, 4295; Code 1873, §§ 4351, 4359, 4360, 4361; Code 1882, §§ 4351, 4359, 4360, 4361; Penal Code 1895, §§ 97, 98, 99, 100; Penal Code 1910,

§§ 97, 98, 99, 100; Code 1933, §§ 26-1403, 26-1404, 26-1405, 26-1406; Code 1933, § 26-1302, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1976, p. 543, § 1; Ga. L. 1982, p. 1242, § 2; Ga. L. 1984, p. 900, § 1; Ga. L. 1985, p. 628, § 1; Ga. L. 1991, p. 971, §§ 3, 4; Ga. L. 1994, p. 1012, § 8; Ga. L. 1994, p. 1920, §§ 1, 2; Ga. L. 1996, p. 988, § 1; Ga. L. 1997, p. 1453, § 1; Ga.

L. 1999, p. 381, § 3; Ga. L. 2000, p. 1626, § 1; Ga. L. 2003, p. 140, § 16; Ga. L. 2004, p. 1072, § 1; Ga. L. 2006, p. 379, § 4/HB 1059; Ga. L. 2010, p. 999, § 1/HB 1002; Ga. L. 2011, p. 752, § 16/HB 142; Ga. L. 2014, p. 432, § 2-2/HB 826; Ga. L. 2014, p. 441, § 1/HB 911; Ga. L. 2014, p. 599, § 3-1/HB 60; Ga. L. 2015, p. 422, § 5-19/HB 310; Ga. L. 2016, p. 582, § 1/HB 979; Ga. L. 2017, p. 500, § 3-2/SB 160; Ga. L. 2023, p. 308, § 3/HB 383, effective July 1, 2023; Ga. L. 2023, p. 637, § 3-1/HB 188, effective May 4, 2023; Ga. L. 2024, p. 528, § 1-1/SB 421, effective July 1, 2024; Ga. L. 2024, p. 646, § 4/HB 1033, effective May 6, 2024; Ga. L. 2025, p. 1029, § 16(3)/SB 153, effective July 1, 2025.

Amendments.

The first 2023 amendment, effective July 1, 2023, substituted “(1) of this Code section” for “(k) of this Code section” in subsection (b) and added subsection (l). See Editor’s notes for applicability.

The second 2023 amendment, effective May 4, 2023, rewrote subsection (j), which read: “Any person who commits the offense of aggravated assault with intent to rape against a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years. Any person convicted under this subsection shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.” See Editor’s notes for applicability.

The first 2024 amendment, effective July 1, 2024, rewrote paragraph (a)(4), which read: “A person or persons without legal justification by discharging a firearm from within a motor vehicle toward a person or persons.”

The second 2024 amendment, effective May 6, 2024, substituted “through (m)” for “through (l)” in subsection (b); and

added subsection (m). See Editor’s notes for applicability.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted “his or her” for “their” in subsection (m).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2023, “healthcare” was substituted for “health care” in subsection (l).

Editor’s notes.

Ga. L. 2023, p. 308, § 1/HB 383, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Safer Hospitals Act.’”

Ga. L. 2023, p. 308, § 6/HB 383, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on or after July 1, 2023.

Ga. L. 2023, p. 637, § 1-1/HB 188, not codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘Mariam’s Law.’”

Ga. L. 2023, p. 637, § 7-1/HB 188, not codified by the General Assembly, provides, in part, that the punishment provisions of subsection (j) of this Code section shall apply to all offenses committed on and after July 1, 2023.

Ga. L. 2024, p. 646, § 1/HB 1033, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Utility Worker Protection Act.’”

Ga. L. 2024, p. 646, § 8/HB 1033, not codified by the General Assembly, makes subsections (b) and (m) of this Code section applicable to all offenses committed on or after July 1, 2024.

Law reviews.

For annual survey of criminal law, see 71 Mercer L. Rev. 967 (2020).

JUDICIAL DECISIONS

ANALYSIS

- GENERAL CONSIDERATION
- INCLUDED CRIMES
 - ASSAULT WITH DEADLY WEAPON
 - ASSAULT WITH GUN
 - ASSAULT WITH AUTOMOBILE
 - ASSAULT WITH HANDS, FISTS, OR OTHER BODY PARTS
 - ASSAULT WITH OTHER OBJECTS

ASSAULT WITH INTENT TO ROB
ASSAULT WITH INTENT TO RAPE
JURY INSTRUCTIONS

General Consideration

Sentencing in compliance with Armed Career Criminal Act. — Defendant had to be resentenced for violating 18 U.S.C. § 922(g)(1) since the defendant's conviction for aggravated assault with a deadly weapon, in violation of O.C.G.A. § 16-5-21(a)(2), did not qualify as a violent felony within the meaning of the Armed Career Criminal Act's elements clause, 18 U.S.C. § 924(e)(2)(B)(i). *United States v. Carter*, 7 F.4th 1039, 2021 U.S. App. LEXIS 22879 (11th Cir. 2021).

Failure to merge error. — Trial court erred by failing to merge all of the aggravated assault convictions into the armed robbery conviction because all of the aggravated assault convictions were based on the defendant's commission of an assault with a deadly weapon. *Irving v. State*, 351 Ga. App. 779, 833 S.E.2d 162, 2019 Ga. App. LEXIS 494 (2019).

Merger of family violence aggravated assault and battery prohibited. — Trial court did not err by failing to merge defendant's convictions for family violence aggravated assault and family violence battery because the record showed the initial act of strangulation had been completed by the time the struggle began, and the two acts were therefore separated by the deliberate interval of getting out of bed on opposite sides as opposed to a continuous tussle. *Santoro v. State*, 361 Ga. App. 546, 864 S.E.2d 719, 2021 Ga. App. LEXIS 511 (2021).

Evidence of previous crimes improperly admitted to show intent. — Appellant's convictions for felony murder, aggravated assault, and knife-possession offenses were reversed because the Georgia Supreme Court could not say that the trial court's erroneous admission of the voluminous evidence that the appellant had previously committed multiple serious violent acts did not contribute to the guilty verdicts that the jury returned. *Strong v. State*, 309 Ga. 295, 845 S.E.2d 653, 2020 Ga. LEXIS 467 (2020).

Merger appropriate. — Defendant's convictions for aggravated assault should

have merged into the conviction for attempted armed robbery. *Rice v. State*, 311 Ga. 620, 857 S.E.2d 230, 2021 Ga. LEXIS 130 (2021).

Merger with terroristic threats not appropriate. — Because the offense of terroristic threats was proven by the evidence that the defendant threatened to kill the victim, and the offense of aggravated assault was proven by the evidence that the defendant assaulted the victim with a knife by stabbing the victim, the two counts did not merge. *Batchelor v. State*, 358 Ga. App. 761, 856 S.E.2d 323, 2021 Ga. App. LEXIS 121 (2021).

Merger with voluntary manslaughter. — Trial court erred in failing to merge both defendants' convictions for voluntary manslaughter and aggravated assault with a deadly weapon because the indictments charged the defendants with felony murder by alleging that the defendants committed aggravated assault, but the court then charged the defendants with aggravated assault based on the exact same conduct; and, although the jury convicted the defendants of voluntary manslaughter as a lesser-included offense of felony murder, it, nevertheless, followed that the defendants' convictions for aggravated assault merged as a matter of fact into the defendants' convictions for voluntary manslaughter. *Hamlette v. State*, 353 Ga. App. 640, 839 S.E.2d 161, 2020 Ga. App. LEXIS 61 (2020).

Rule of lenity not applicable.

Trial court did not err by not applying the rule of lenity in sentencing the defendant on criminal attempt to commit a felony, rather than on aggravated assault, because the statutory language and indictment showed that the two counts did not address the same criminal conduct as the criminal attempt (of murder) included the substantial step of pulling the trigger of the handgun aimed at the victim's head, which additional step was not required for the commission of aggravated assault. *Gonzalez v. State*, 352 Ga. App. 83, 833 S.E.2d 727, 2019 Ga. App. LEXIS 528 (2019).

General Consideration (Cont'd)**Evidence sufficient for conviction.**

Evidence was sufficient to convict the defendant of aggravated assault of the victim with a deadly weapon and possession of a firearm during the commission of that crime because the victim testified that a passenger in a vehicle shot the victim; and the victim positively identified the defendant as the driver of the vehicle. *Perdomo v. State*, 307 Ga. 670, 837 S.E.2d 762, 2020 Ga. LEXIS 9 (2020).

Evidence was sufficient to convict the second defendant of voluntary manslaughter and aggravated assault with a deadly weapon because the second defendant, the first defendant, and some of their friends engaged in a heated argument with the victim that escalated into a physical altercation, in which the defendants knocked the victim to the ground; the victim escaped from the fight by pulling a knife and cutting the second defendant; and the second defendant and the first defendant pulled handguns and fired at the victim as the victim tried to walk away with three bullets striking and ultimately killing the victim. *Hamlette v. State*, 353 Ga. App. 640, 839 S.E.2d 161, 2020 Ga. App. LEXIS 61 (2020).

Evidence was sufficient to convict the defendant of aggravated assault because the aggravated assault statute, O.C.G.A. § 16-5-21, did not require that the defendant point a deadly weapon directly at the second victim to be guilty of aggravated assault against the victim, but merely that the defendant used the deadly weapon in such manner as to place another in reasonable apprehension of immediately receiving a violent injury; the second victim was in reasonable apprehension of immediately receiving a violent injury when the defendant pulled a gun on the first victim; and the jury was authorized to find the defendant guilty of aggravated assault of the second victim as a party to the crime. *Coates v. State*, 310 Ga. 94, 849 S.E.2d 435, 2020 Ga. LEXIS 733 (2020).

Evidence was sufficient to convict the defendant of aggravated assault of the second victim as the second victim was placed in reasonable apprehension of im-

mediately receiving a violent injury because the defendant harassed and taunted the first victim throughout the night; the second victim was scared by the defendant's threats; and the second victim ran for cover as soon as the defendant fired the weapon. *Garcia-Jarquin v. State*, 314 Ga. 555, 878 S.E.2d 200, 2022 Ga. LEXIS 240 (2022), overruled in part, *Hart v. State*, No. S25A0136, 2025 Ga. LEXIS 143 (Ga. June 24, 2025).

Evidence was sufficient to convict the defendant of armed robbery, aggravated assault, first degree home invasion, and possession of a firearm during the commission of a felony as the victim testified that the defendant entered the victim's home without permission, pointed a gun at the victim and the others in the home, and took their money. *Mahogany v. State*, 366 Ga. App. 750, 884 S.E.2d 141, 2023 Ga. App. LEXIS 76 (2023).

Evidence was sufficient to support defendant's conviction of aggravated assault because the admissible evidence supported a finding that defendant's belief that the victim, a naked, unarmed man in the midst of a mental health crisis, posed a threat of death or great bodily injury to him or that the victim was attempting to commit a forcible felony, was not reasonable. *Olsen v. State*, 371 Ga. App. 12, 899 S.E.2d 518, 2024 Ga. App. LEXIS 104 (2024).

Evidence was sufficient to support defendant's conviction of aggravated assault with a deadly weapon because the evidence showed that defendant unexpectedly emerged from a storage closet pointing a handgun and yelling at the victims, thereby causing one victim to flail her arms and attempt to get away. *Hall v. State*, 371 Ga. App. 606, 901 S.E.2d 743, 2024 Ga. App. LEXIS 189 (2024).

Evidence sufficient for conviction of aggravated assault with gun. — In an action for aggravated assault, testimony from a victim that the defendant shot a handgun toward the victim and others and testimony that the defendant had been texting a victim and caused the victim to be afraid that the defendant was coming to the victim's apartment and there would be a problem was sufficient for the jury to conclude that the defendant

was guilty as indicted. *Sullins v. State*, 350 Ga. App. 83, 828 S.E.2d 142, 2019 Ga. App. LEXIS 251 (2019).

Evidence was sufficient to convict the defendant of three counts of aggravated assault with a deadly weapon because, after verbal and physical altercations with the defendant's live-in girlfriend and the girlfriend's brother, the defendant fired several shots from a gun toward a departing car carrying the three aggravated assault victims named in the indictment — the defendant's girlfriend, the girlfriend's brother, and the girlfriend's mother; a bullet struck the car near where one of the victims was sitting; and a jury could find that the defendant intentionally fired the gun in the three victims' direction. *Bashir v. State*, 350 Ga. App. 852, 830 S.E.2d 353, 2019 Ga. App. LEXIS 372 (2019).

Evidence that the defendant fired several shots at the victim outside of the pool hall and that one of those shots struck the victim in the back was sufficient to support the defendant's conviction for aggravated assault. *Sherrod v. State*, 355 Ga. App. 441, 844 S.E.2d 508, 2020 Ga. App. LEXIS 330 (2020).

Aggravated assault, possession of firearm, and discharge of firearm sufficient to support felony murder conviction. — Evidence was sufficient to support defendant's felony murder conviction predicated on aggravated assault because it showed that defendant and the victim got into an argument, the victim hit defendant with an umbrella, defendant retrieved his gun and loaded it, defendant told the victim to leave, defendant followed her outside with the gun, and shot and killed her. *Chambliss v. State*, 318 Ga. 161, 896 S.E.2d 469, 2023 Ga. LEXIS 254 (2023).

Aggravated assault and felony murder. — Evidence was sufficient to convict the defendant of felony murder predicated on aggravated assault as the defendant shot the victim, a security guard, so that the defendant could steal copper from the recycling facility. *Tyler v. State*, 311 Ga. 727, 859 S.E.2d 73, 2021 Ga. LEXIS 292 (2021).

Evidence was sufficient to support the defendant's felony murder convictions

predicated on aggravated assault and a rational jury could have rejected the testimony that the defendant claimed established provocation as, although the defendant and the defendant's family members claimed that the defendant shot at the sedan only after seeing the passenger point a gun at the defendant and fire, the evidence showed that the defendant was the only person who possessed or shot a gun that night, as the defendant admitted firing 16 rounds at the sedan; all the ballistics evidence matched the defendant's pistol; and no firearm or other weapon was found in the victims' car. *Jones v. State*, 314 Ga. 692, 878 S.E.2d 502, 2022 Ga. LEXIS 251 (2022).

Sentencing.

In an aggravated assault case, the defendant was not entitled to a new trial because the trial court did not indicate that the court could not sentence the defendant to 20 years in prison as a recidivist, but, rather, the trial court clearly indicated that the court could sentence the defendant to 20 years in prison; and the colloquy clearly alerted the defendant that the consequences of refusing the state's plea offer could be harsher than the consequences of accepting the plea. *Crews v. State*, 356 Ga. App. 647, 848 S.E.2d 656, 2020 Ga. App. LEXIS 500 (2020).

Modification to within sentence range. — Trial court properly modified the defendant's sentence for aggravated assault from 25 years to 20 years as the original sentence exceeded the statutory maximum. *Clements v. State*, 321 Ga. 164, 913 S.E.2d 590, 2025 Ga. LEXIS 47 (2025).

Four consecutive 20-year sentences not excessive. — Trial court's imposition of four separate 20-year sentences upon the defendant for each of the four aggravated-assault convictions and ordering those sentences to be served consecutively was not excessive punishment because the 20-year sentence for each separate aggravated assault fell within the statutory range and the defendant failed to demonstrate that the punishment was so excessive in proportion to the offenses as to shock the conscience. *Miller v. State*, 351 Ga. App. 757, 833 S.E.2d 142, 2019 Ga. App. LEXIS 497 (2019).

General Consideration (Cont'd)**Sentence not void.**

Defendant's sentences of life imprisonment for armed robbery and 20 years' imprisonment for aggravated assault were within the statutory range and were not void. *Williams v. State*, 368 Ga. App. 678, 890 S.E.2d 65, 2023 Ga. App. LEXIS 295 (2023).

Indictment

Indictment sufficient to charge aggravated assault. — Indictment charging defendant with aggravated assault was sufficient, and therefore trial counsel was not ineffective for failing to file a general demurrer, because it tracked the statutory language, defendant admitted it pleaded the essential elements of the offense, and defendant could not admit the allegations and still be innocent of any crime even if the officer was not in the vehicle at the time of the crime. *Holtzclaw v. State*, 367 Ga. App. 687, 888 S.E.2d 214, 2023 Ga. App. LEXIS 207 (2023). Indictment was sufficient because it tracked the language of the aggravated assault statute and included the essential elements of the offense. It was unnecessary for the indictment to specify how simple assault was committed, as long as it set forth the aggravating aspect, which it did. *Galvez v. State*, 374 Ga. App. 457, 913 S.E.2d 80, 2025 Ga. App. LEXIS 71 (2025).

Included Crimes

Reckless conduct as lesser included offense of aggravated assault. — Trial court erred by limiting jury instruction on the lesser-included offense of reckless conduct to only one of the three counts of aggravated assault, but the error affected only the single aggravated assault conviction that was not merged into another conviction. *Brooks v. State*, 369 Ga. App. 450, 892 S.E.2d 400, 2023 Ga. App. LEXIS 413 (2023).

Assault with Deadly Weapon

Felony murder based on aggravated assault committed by police sergeant. — Evidence was sufficient to convict the defendant, a former police sergeant, of felony murder based on aggra-

vated assault with a deadly weapon, specifically a TASER, because the medical examiner determined that the victim died from hypertensive cardiovascular disease exacerbated by physical exertion and conducted electrical stimulation from the application of the TASERs in drive-stun mode; and the state presented evidence that the repeated tasing of the victim in drive-stun mode over a span of about 20 minutes when the victim was exhausted from running and handcuffed not only inflicted intense physical pain, but also materially accelerated the victim's death minutes later. *Eberhart v. State*, 307 Ga. 254, 835 S.E.2d 192, 2019 Ga. LEXIS 722 (2019).

Reasonable apprehension of violent injury on part of victim must be shown. — Evidence was sufficient to support the delinquency adjudication as the evidence showed that the defendant juvenile committed an aggravated assault because a butcher knife constituted a deadly weapon; the defendant placed the defendant's sister's boyfriend in reasonable apprehension of immediately receiving a violent injury as the defendant charged at the boyfriend with a butcher knife, forcing the boyfriend to quickly enter a vehicle and drive off; and the defendant placed the defendant's sister in reasonable apprehension of immediately receiving a violent injury as the defendant pushed and shoved the sister, told the sister that the defendant was going to beat the sister up, and charged at the sister with a butcher knife. In the Interest of J. H., 354 Ga. App. 253, 840 S.E.2d 633, 2020 Ga. App. LEXIS 151 (2020).

Evidence was sufficient to support defendant's conviction of aggravated assault because the victim was placed in reasonable apprehension of receiving a violent injury when he heard gunshots from behind him after seeing defendant with a gun and there was evidence that defendant was the shooter. *Harmon v. State*, 319 Ga. 259, 903 S.E.2d 28, 2024 Ga. LEXIS 133 (2024).

Proving that weapon is one likely to produce death. — Overwhelming evidence established that a handgun used to beat the victim several times in the head constituted a deadly weapon: the victim

had open, bleeding wounds; the victim's sister described the victim's head as being "split open" where the victim "could see inside and everything;" and at the hospital, the victim received numerous staples in the victim's head. *Gonzalez v. State*, 350 Ga. App. 297, 829 S.E.2d 385, 2019 Ga. App. LEXIS 288 (2019).

Assault with knife.

Sufficient evidence supported the appellant's convictions for burglary, cruelty to children, terroristic threats, and aggravated assault as neither parent gave the appellant permission to enter their home, the appellant was identified as the intruder who held a knife to the child's neck, and struggled with one parent as the appellant tried to remove the child from the home, and the appellant threatened to kill one of the children while holding a knife to the child's neck. *Cordova v. State*, 351 Ga. App. 652, 832 S.E.2d 465, 2019 Ga. App. LEXIS 461 (2019).

There was sufficient evidence to support the defendant's aggravated assault conviction where the responding officer retrieved a knife in the defendant's kitchen, which bore blood on both sides of the blade, and the jury also saw photographic evidence of an open laceration on the victim's throat, permitting an inference that the defendant assaulted the victim with the knife. *Echols v. State*, 361 Ga. App. 864, 865 S.E.2d 839, 2021 Ga. App. LEXIS 557 (2021).

Defendant's aggravated assault conviction was properly supported, as a rational trier of fact could have concluded that the defendant's use of a knife to resist arrest was a disproportionate use of force. *Johnson v. State*, 363 Ga. App. 12, 869 S.E.2d 177, 2022 Ga. App. LEXIS 63 (2022).

Defendant's convictions for rape, aggravated sodomy, battery, false imprisonment, and two counts of aggravated assault were supported by evidence that the defendant hit the victim, forcibly engaged in intercourse and ordered the victim to perform oral sex while holding a knife or scissors, and stood at the door of the hotel room so the victim could not leave. *Dunbar v. State*, 363 Ga. App. 869, 873 S.E.2d 247, 2022 Ga. App. LEXIS 240 (2022).

Evidence sufficient for conviction.

Evidence including the victim's testimony that, while they were married, the defendant put his hands around the victim's throat and choked the victim, testimony from the victim's doctor and nurse about the victim's visible neck injuries, photographs of the victim's injuries, and the defendant's admission to putting the defendant's hands around the victim's throat was sufficient for the jury to find the defendant guilty of aggravated assault (family violence). *Moore v. State*, 356 Ga. App. 752, 848 S.E.2d 910, 2020 Ga. App. LEXIS 518 (2020).

Presence with limited actions sufficient for aggravated assault with deadly weapon. — Evidence was sufficient to support the defendant's conviction for felony murder predicated on aggravated assault with a deadly weapon as a party to the crime because the evidence showed that the defendant was present with the co-defendants for the planning of the robbery, the defendant knew and called the victim, and the defendant followed the co-defendants to the area near the victim's house while giving directions. *Collins v. State*, 312 Ga. 727, 864 S.E.2d 85, 2021 Ga. LEXIS 640 (2021).

Sentencing for aggravated assault with deadly weapon. — Federal district court properly sentenced defendant to 86 months in prison for being a felon in possession of a firearm because the defendant's 2012 and 2016 Georgia convictions for aggravated assault and aggravated assault with a deadly weapon qualified as crimes of violence under the Sentencing Guidelines' enumerated-offenses clause, defendant did not object to the presentence investigation report, which included a description of the defendant's convictions and the fact that both included the use of a deadly weapon, the district court considered the Sentencing Guidelines Manual factors, and the sentence was six months below the bottom of the advisory guideline range. *United States v. Berry*, 808 Fed. Appx. 857, 2020 U.S. App. LEXIS 10505 (11th Cir. 2020).

Assault With Gun

Evidence sufficient for assault with gun.

Defendant's conviction for felony mur-

Assault With Gun (Cont'd)

der was supported by evidence that the defendant agreed to sell methamphetamine and possessed a handgun, which the defendant gave to the defendant's cohort on the way to the drug sale; the two then robbed the two victims and shot at both victims, killing one; the two left the scene together, telephoned a senior gang member, and traveled to a gang safe house in Atlanta together. *Boyd v. State*, 306 Ga. 204, 830 S.E.2d 160, 2019 Ga. LEXIS 439 (2019).

Since the jury heard evidence that the defendant fired multiple shots into the car where the assault victims were riding and that one of those shots hit the victim's leg, the evidence presented at trial was sufficient to support the jury's verdicts as to the aggravated assaults. *Gobert v. State*, 311 Ga. 305, 857 S.E.2d 647, 2021 Ga. LEXIS 154 (2021).

Evidence was sufficient to support defendant's conviction of aggravated assault and the related charge of possession of a firearm during the commission of a felony because a victim testified that the victim saw defendant shoot two other victims, the victim overheard defendant's friend tell defendant to shoot the victim so there would be no witnesses, and several gunshots struck the vehicle close to where the victim was seated. *Jackson v. State*, 315 Ga. 543, 883 S.E.2d 815, 2023 Ga. LEXIS 22 (2023).

Evidence that the defendant had a handgun, stood on the front porch, and pointed the gun toward a vehicle and fired several shots, one of which struck the victim who was not in the car, was sufficient to support the jury's guilty verdict on the offenses of voluntary manslaughter and aggravated assault under a theory of transferred intent. *Craw v. State*, 369 Ga. App. 231, 893 S.E.2d 134, 2023 Ga. App. LEXIS 433 (2023).

Evidence was sufficient to support defendant's convictions of aggravated assault and reckless conduct because it showed that defendant was standing on the bank of a river, in which people were fishing, firing weapons, he fired a loud shot that hit the water five or six feet from two victims, and defendant stated that the

people fishing were stealing his fish. *Brewton v. State*, 370 Ga. App. 224, 896 S.E.2d 133, 2023 Ga. App. LEXIS 558 (2023).

Steering vehicle sufficient for aggravated assault. — In view of the circumstances of the chase, in which the codefendant leaned the codefendant's upper body out the window of the moving vehicle while shooting at the trooper, the jury could have concluded that the defendant assisted the codefendant by steering the vehicle and the jury was free to reject as unreasonable the hypothesis that the defendant was a mere passenger who did not assist the codefendant. *Best v. State*, 355 Ga. App. 881, 846 S.E.2d 157, 2020 Ga. App. LEXIS 400 (2020).

Conviction as party to crime in assault with gun. — In the defendant's aggravated assault and false imprisonment trial arising out of the defendant's and the defendant's brother's beating of a marijuana dealer with a handgun, whether the defendant knew that the defendant's brother was going to steal the marijuana was not relevant; regardless of whether the defendant knew that the defendant's brother was going to steal the marijuana, the defendant actively participated in the false imprisonment and beating of the victim and was responsible as a party. *Gonzalez v. State*, 350 Ga. App. 297, 829 S.E.2d 385, 2019 Ga. App. LEXIS 288 (2019).

Evidence held sufficient.

In an action for aggravated battery, aggravated assault with a deadly weapon and possession of a firearm during a felony, there was sufficient evidence for the jury to determine that the defendant was the shooter, including testimony from the victims identifying the defendant and any inconsistency between that testimony and the victims' pretrial identifications was for the jury. *Smith v. State*, 354 Ga. App. 782, 841 S.E.2d 444, 2020 Ga. App. LEXIS 219 (2020).

Evidence that the defendant approached the victim with a handgun, pointed the gun at the victim while demanding money, and ultimately shot the victim was sufficient to support the defendant's convictions for armed robbery, criminal attempt to commit armed rob-

bery, aggravated assault, and possession of a firearm during the commission of a crime. *Cooke v. State*, 356 Ga. App. 679, 848 S.E.2d 693, 2020 Ga. App. LEXIS 509 (2020).

Assault With Automobile

Automobile can be a deadly weapon. — Evidence was sufficient to convict the defendant of aggravated assault as the defendant used a car as a deadly weapon because, while the victim attempted to exit the car, the defendant grabbed the victim's hair and held it while the moving car dragged the victim with it; the victim was dragged at least 3 to 5 feet before the defendant released the victim; and the jury could conclude that the defendant intentionally used the moving car as an instrument to drag the victim along the pavement, thereby inflicting serious injuries. *Brooks v. State*, 363 Ga. App. 768, 872 S.E.2d 751, 2022 Ga. App. LEXIS 217 (2022).

Deliberately driving stolen van toward deputies. — Sufficient evidence supported the defendant's conviction because the defendant drove the stolen white van directly toward the deputies when they attempted to detain him, only missing them when they dove out of the way. *Miller v. State*, 351 Ga. App. 757, 833 S.E.2d 142, 2019 Ga. App. LEXIS 497 (2019).

Sufficient evidence of aggravated assault on police officer. — There was sufficient evidence to support the defendant's conviction for aggravated assault on a peace officer, as prior to the collision, the defendant led officers on two separate high-speed chases, ignored strip spikes and the rolling roadblock, almost hit a government vehicle, purposely fishtailed the defendant's vehicle, failed to slow even as the defendant bore down on the deputy's vehicle, and then attempted to go around the second deputy's vehicle even after the collision. *Collins v. State*, 359 Ga. App. 338, 857 S.E.2d 515, 2021 Ga. App. LEXIS 193 (2021).

Assault With Hands, Fists, or Other Body Parts

Striking with closed fist. — Evidence was sufficient to authorize a rational trier

of fact to find beyond a reasonable doubt that the defendant committed aggravated assault and that such felony proximately caused the victim's death based on the testimony of two witnesses that showed that the defendant, without provocation, swung and hit the victim on the side of the head with a closed fist, and the medical examiner testified that the victim's cause of death was blunt force trauma to the head. *Redding v. State*, 309 Ga. 124, 844 S.E.2d 725, 2020 Ga. LEXIS 450 (2020).

Strangulation with hands. — There was sufficient evidence to support the defendant's conviction for aggravated assault as the victim testified that the defendant put the defendant's hands around the victim's neck, that the victim could not breathe, and that the pressure caused the victim to pass out, as well as to clench the victim's teeth so tightly that it broke one of the teeth on the victim's denture plate. Both the victim's son and the responding officer corroborated the victim's testimony, and the jury was able to view the photographs of the victim's neck. *Sutton v. State*, 354 Ga. App. 399, 841 S.E.2d 2, 2020 Ga. App. LEXIS 175 (2020).

Evidence that defendant choked an ex-girlfriend was sufficient to establish the aggravated assault violation by a preponderance of the evidence, but the trial court erred by revoking defendant's probation based on violations for which no evidence was presented at the hearing. *Murphy v. State*, 370 Ga. App. 738, 899 S.E.2d 307, 2024 Ga. App. LEXIS 81 (2024).

Evidence was sufficient to support defendant's conviction of family violence aggravated assault because the state introduced evidence that the victim was pretty sure defendant put his hands around her throat during the attack and that she reported "strangulation or choking" to the sexual assault nurse examiner the day after the attack. *Rutherford v. State*, 370 Ga. App. 873, 899 S.E.2d 457, 2024 Ga. App. LEXIS 103 (2024).

Fists and feet may be deadly weapons. — Evidence was sufficient to authorize a rational trier of fact to find the defendant guilty of aggravated assault beyond a reasonable doubt, as it included evidence that the defendant punched the victim in the head with a fist and kicked

Assault With Hands, Fists, or Other Body Parts (Cont'd)

the victim in the head. *Espinosa-Herrera v. State*, 361 Ga. App. 99, 863 S.E.2d 360, 2021 Ga. App. LEXIS 436 (2021).

Actual serious injuries not required.

Trial counsel was not ineffective as counsel did not call the defendant's family members and officers who saw the victim on the day of and a few days after the altercation to testify that the victim's injuries were not as severe as the victim claimed at trial as counsel already had pictures that counsel believed demonstrated that the victim's injuries were not severe, and counsel did not believe there was a strategic reason to present the additional evidence; and the defendant failed to demonstrate prejudice as aggravated assault did not require actual bodily injury. *Demeritte v. State*, 362 Ga. App. 543, 869 S.E.2d 514, 2022 Ga. App. LEXIS 66 (2022).

Evidence sufficient to show beating. — Victim's testimony that the defendant, with whom the victim lived, beat the victim in the back of the head and that the victim fell when the defendant struck the victim in the head the second time was sufficient to support the defendant's conviction for aggravated assault. *Martin v. State*, 361 Ga. App. 511, 864 S.E.2d 693, 2021 Ga. App. LEXIS 508 (2021).

Assault With Other Objects

Curling iron. — Defendant's conviction for aggravated assault was supported by evidence that the victim endured a brutal rape and attack in her own home in the middle of the night and that during the attack, the defendant dragged the victim up and down the stairs by the neck, arms, and hair, repeatedly telling the victim that the defendant was going to fuck her up, and the victim testified that the victim was really scared and crying when the defendant turned on a curling iron immediately after laying the victim down on the bed. *Freeman v. State*, 367 Ga. App. 57, 885 S.E.2d 27, 2023 Ga. App. LEXIS 110 (2023).

Placing a burning object on a person's leg. — Sufficient evidence supported the defendant's conviction of aggra-

vated assault based on the defendant lighting a girlfriend's notebook on fire and placing it on the girlfriend's leg, burning the girlfriend's pants but not injuring the body because the burning notebook was likely to cause serious injury even though no injury occurred. *Fraga v. State*, 371 Ga. App. 430, 900 S.E.2d 737, 2024 Ga. App. LEXIS 162 (2024).

Hot grease. — Appellant's conviction on two counts of aggravated assault was upheld because the jury reasonably concluded that the hot grease appellant threw on the victim qualified as an "object" under O.C.G.A. § 16-5-21(a)(2) based on the manner of use and injuries caused, even though grease was a viscous substance. *Harvey v. State*, 373 Ga. App. 59, 907 S.E.2d 352, 2024 Ga. App. LEXIS 386 (2024).

Stick. — Defendant's conviction for rape was supported by sufficient evidence based on the victim's testimony that the victim encountered the defendant twice during the same day and, after walking with the defendant several blocks, the defendant twice forced the victim to engage in sexual intercourse while threatening to beat the victim with a stick; contrary to the defendant's contention, corroborating evidence was not required to support a rape conviction. *Johnson v. State*, 361 Ga. App. 43, 861 S.E.2d 660, 2021 Ga. App. LEXIS 412 (2021).

Ten-pound wooden chair. — Juvenile's adjudication for aggravated assault on a peace officer was supported by evidence that, after disrupting a classroom and being escorted to the principal's office, the juvenile picked up a 10-pound wooden chair and threw the chair at the school resource officer, who testified the officer was apprehensive of injury and had to make an evasive move to avoid the chair. *In the Interest of I. H.*, 350 Ga. App. 394, 829 S.E.2d 437, 2019 Ga. App. LEXIS 307 (2019).

Taser. — Evidence was insufficient to sustain the defendant's conviction for aggravated assault on a peace officer because the officer testified that the officer, not the defendant, discharged the taser as they fought for its control, the officer admitted the defendant never had a hand on the grip of the taser and that the defen-

dant dropped it almost immediately upon possessing it, and there was no evidence that the defendant cycled the taser and, thus, no evidence the defendant did it intentionally. *Cruz v. State*, 364 Ga. App. 96, 874 S.E.2d 136, 2022 Ga. App. LEXIS 267 (2022).

Assault with Intent to Rob

Evidence sufficient for conviction of robbery and assault. — Sufficient evidence supported the defendant's convictions for armed robbery, aggravated assault, and possession of a firearm during commission of a felony, based on evidence that three taxi drivers were robbed and the telephone number used to call the taxis was registered to the defendant's mother, who allowed the defendant to use the phone, and an accomplice identified the defendant as the person with a gun. *Gay v. State*, 351 Ga. App. 811, 833 S.E.2d 305, 2019 Ga. App. LEXIS 496 (2019), cert. denied, No. S20C0264, 2020 Ga. LEXIS 317 (Ga. Apr. 20, 2020).

Evidence was sufficient to support the defendant's convictions of aggravated assault with the intent to rob because the defendant stated that the defendant and the cohort were looking for someone to rob, the defendant saw the cohort with a box cutter or screwdriver, the defendant saw the cohort attack the victims, and the defendant was standing nearby as a lookout when the cohort began attacking the victims. *Felts v. State*, 311 Ga. 547, 858 S.E.2d 708, 2021 Ga. LEXIS 266 (2021).

Assault with Intent to Rape

Distinguishing aggravated assault with intent to rape and aggravated assault by strangulation. — Trial court did not err imposing separate sentences for defendant's convictions for aggravated assault with intent to rape and aggravated assault by strangulation because the aggravated assaults were separate offenses under the required evidence test as the aggravated assault with intent to rape required proof of a fact, the intent to rape, that aggravated assault based on strangulation did not. *Wilkins v. State*, 369 Ga. App. 42, 892 S.E.2d 61, 2023 Ga. App. LEXIS 400 (2023).

Sufficient evidence to support the

aggravated assault conviction. — Victim's testimony that the defendant strangled the victim with his hands and the photo evidence of the victim's injuries were sufficient to support the aggravated assault conviction. However, the victim's testimony that she tried to call for help was insufficient to show she intended to call 911 or the police as required for the hindering of an emergency phone call conviction, therefore, that conviction was reversed. *Fuller v. State*, 374 Ga. App. 432, 913 S.E.2d 66, 2025 Ga. App. LEXIS 66 (2025).

Evidence sufficient for finding defendant guilty of assault with intent to rape. — Evidence was sufficient to establish that the defendant was the driver of the vehicle in the incident involving the victim as the evidence showed that the defendant drove away with the sleeping victim and the defendant's DNA was present on the victim's vagina and cervix as well as the tampon the victim had been wearing showed that the defendant had sexual intercourse with the victim. *Rendon-Villasana v. State*, 360 Ga. App. 769, 861 S.E.2d 462, 2021 Ga. App. LEXIS 389 (2021).

Evidence of prior difficulties between victim and defendant. — Trial court did not plainly err in admitting evidence of prior incidents of domestic abuse between the defendant and the victim as such evidence was probative to show the nature of their relationship and the defendant's potential motive. *Fuller v. State*, 374 Ga. App. 432, 913 S.E.2d 66, 2025 Ga. App. LEXIS 66 (2025).

Jury Instructions

Essential element of simple assault must be stated in jury instructions. —

Trial court's instruction on the aggravated assault with a deadly weapon charge was not erroneous as the charge included the elements for simple assault, and a complete instruction as to whether the defendant's vehicle was a deadly weapon. *Smith v. State*, 362 Ga. App. 610, 869 S.E.2d 554, 2022 Ga. App. LEXIS 70 (2022).

Failure to charge on injury by vehicle not error. — Because the alleged greater and lesser crimes needed proof of

Jury Instructions (Cont'd)

a fact not required by the other, the trial court properly refused to charge the jury on serious injury by vehicle as a lesser included offense of the aggravated assaults. *Rouse v. State*, 373 Ga. App. 838, 910 S.E.2d 245, 2024 Ga. App. LEXIS 488 (2024).

Instruction on reckless conduct charge not warranted. — Trial court erred by holding that defense counsel was ineffective for failing to request a jury instruction on reckless conduct as a lesser included offense of aggravated assault because defendant was not entitled to such an instruction, as defendant's act of firing warning shots into the air to scare the victims constituted aggravated assault, not reckless conduct. *State v. Small*, 369 Ga. App. 824, 892 S.E.2d 193, 2023 Ga. App. LEXIS 410 (2023).

Charge on misdemeanor battery, lesser included offense of aggravated assault.

Trial court erred by refusing to give the defendant's written request to charge the jury on misdemeanor battery as a lesser included offense of aggravated assault because the jury was authorized to believe that the defendant struck the victim, causing substantial physical harm or visible bodily harm, but that the defendant did not strike the victim with a deadly weapon; that the defendant's fists were not used in a fashion that was deadly; or that the defendant did not intend to use fists as a deadly weapon. *Dupree v. State*, 374 Ga. App. 421, 913 S.E.2d 41, 2025 Ga. App. LEXIS 65 (2025).

Charge on simple assault need not be given, etc.

In a case in which defendant was convicted of aggravated battery, counsel was not ineffective in failing to request that the trial court charge the jury on the lesser-included offense of simple battery as counsel testified that counsel and the defendant discussed simple battery as a possible lesser-included offense, but that the defendant was very vocal and very adamant that the defendant wanted to claim self-defense; counsel explained that requesting an instruction on simple battery could have harmed the defendant's

case because sometimes juries could not follow alternative theories; and counsel's decision to pursue an all or nothing defense was not patently unreasonable. *Wood v. State*, 366 Ga. App. 305, 882 S.E.2d 50, 2022 Ga. App. LEXIS 551 (2022).

In a case in which defendant was convicted of aggravated battery, the trial court did not plainly err in failing to charge the jury on simple assault as the defendant claimed self-defense; the undisputed evidence showed that the defendant struck the victim in the head with a bat cutting through to the victim's skull; and the question for the jury was whether the defendant was guilty of aggravated assault or whether the defendant was not guilty because the defendant's use of the bat was justified. *Wood v. State*, 366 Ga. App. 305, 882 S.E.2d 50, 2022 Ga. App. LEXIS 551 (2022).

Failure to charge jury on simple assault, etc.

Even if the trial court gave an incomplete charge on aggravated assault by failing to charge the jury on simple assault, the omission did not constitute plain error as the omission probably did not affect the outcome at trial because the defendant admitted to intentionally firing a gun in the victims' direction, which was conduct that constituted aggravated assault. *Bashir v. State*, 350 Ga. App. 852, 830 S.E.2d 353, 2019 Ga. App. LEXIS 372 (2019).

Jury charge on offensive weapon in aggravated assault. — Trial court did not err in failing to charge the jury on its duty to determine whether an offensive weapon was used for purposes of the aggravated assault charge, as the state alleged aggravated assault by requiring the use of any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in strangulation and, thus, there was no need to instruct the jury on hands as deadly weapons. *Turkia v. State*, 360 Ga. App. 890, 862 S.E.2d 559, 2021 Ga. App. LEXIS 415 (2021).

Charge on simple battery not required. — Trial court was not required to charge the jury on battery as a lesser included offense of aggravated assault be-

cause the indictment alleged assault with a deadly weapon and the evidence showed that an assault was committed with a deadly weapon and, thus, aggravated assault was proved beyond a reasonable doubt; furthermore, the evidence did not support a finding that the defendant committed a battery. *Jones v. State*, 358 Ga. App. 584, 855 S.E.2d 761, 2021 Ga. App. LEXIS 95 (2021).

Self-defense instruction not warranted. — When the defendant was convicted of two counts of aggravated assault and one count of aggravated battery, the trial court did not err in failing to instruct the jury on self-defense or justification as the defense’s theory of the case was that the victim caused the victim’s own injuries and the damage to the car by diving into the vehicle and punching the defendant; and the defendant did not testify that the defendant intentionally threatened or

used force in an attempt to defend the defendant’s self. *Smith v. State*, 362 Ga. App. 610, 869 S.E.2d 554, 2022 Ga. App. LEXIS 70 (2022).

Failure to charge on defenses error even if defendant refused to admit criminal conduct. — In the defendant’s aggravated assault trial, O.C.G.A. § 16-5-21(a)(2), based on the defendant’s aiming a BB rifle at two victims, the trial court erred in denying the defendant’s requested jury instructions on the defense of self and habitation on the basis that the defendant did not admit pointing the gun at the victims; if slight evidence supported the defenses, the charges should have been given. Defendant was not required to admit the elements of the crime in order to argue the defendant’s theory of defense. *McClure v. State*, 306 Ga. 856, 834 S.E.2d 96, 2019 Ga. LEXIS 643 (2019).

16-5-23. Simple battery.

(a) A person commits the offense of simple battery when he or she either:

(1) Intentionally makes physical contact of an insulting or provoking nature with the person of another; or

(2) Intentionally causes physical harm to another.

(b) Except as provided in subsections (c) through (j) of this Code section, a person convicted of the offense of simple battery shall be punished as for a misdemeanor.

(c) Any person who commits the offense of simple battery against a person who is 65 years of age or older or against a female who is pregnant at the time of the offense shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

(d) Any person who commits the offense of simple battery in a public transit vehicle or station shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature. As used in this Code section, the term “public transit vehicle” has the same meaning as in subsection (c) of Code Section 16-5-20.

(e) Any person who commits the offense of simple battery against a police officer, correction officer, or detention officer engaged in carrying out official duties shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

(f) If the offense of simple battery is committed between past or

present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons excluding siblings living or formerly living in the same household, the defendant shall be punished for a misdemeanor of a high and aggravated nature. In no event shall this subsection be applicable to corporal punishment administered by a parent or guardian to a child or administered by a person acting in loco parentis.

(g) Reserved.

(h) Any person who commits the offense of simple battery against a sports official while such sports official is officiating an amateur contest or while such sports official is on or exiting the property where he or she will officiate or has completed officiating an amateur contest shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature. For the purposes of this Code section, the term “sports official” means any person who officiates, umpires, or referees an amateur contest at the collegiate, elementary or secondary school, or recreational level.

(i) Any person who commits the offense of simple battery against an employee of a public school system of this state while such employee is engaged in official duties or on school property shall, upon conviction of such offense, be punished for a misdemeanor of a high and aggravated nature. As used in this Code section, the term “school property” includes public school buses and stops for public school buses as designated by local school boards of education.

(j) Any person who commits the offense of simple battery upon a utility worker while such worker is acting within the course and scope of his or her employment or is performing official duties at the time of the offense shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

History.

Laws 1833, Cobb’s 1851 Digest, p. 788.; Code 1863, § 4262; Code 1868, § 4297; Code 1873, § 4363; Code 1882, § 4363; Penal Code 1895, § 102; Penal Code 1910, § 102; Code 1933, § 26-1408; Code 1933, § 26-1304, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1987, p. 557, § 1; Ga. L. 1991, p. 971, §§ 5, 6; Ga. L. 1992, p. 2055, § 1; Ga. L. 1993, p. 91, § 16; Ga. L. 1997, p. 907, § 1; Ga. L. 1999, p. 381, § 4; Ga. L. 1999, p. 562, § 3; Ga. L. 2000, p. 16, § 1; Ga. L. 2004, p. 621, § 2; Ga. L. 2005, p. 60, § 16/HB 95; Ga. L. 2011, p. 227, § 3/SB 178; Ga. L. 2015, p. 203, § 3-2/SB 72; Ga. L. 2021, p. 384, § 2/HB 363; Ga. L. 2024,

p. 646, § 5/HB 1033, effective May 6, 2024; Ga. L. 2025, p. 1029, § 16(4)/SB 153, effective July 1, 2025.

Amendments.

The 2021 amendment, effective July 1, 2021, substituted “Reserved.” for the former provisions of subsection (g), which read: “A person who is an employee, agent, or volunteer at any facility licensed or required to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code Section 31-7-12.2, relating to assisted living communities, or Code Section 31-7-12, relating to personal care homes, or who is required to be licensed pursuant to Code Section 31-7-151 or 31-

7-173, relating to home health care and hospices, who commits the offense of simple battery against a person who is admitted to or receiving services from such facility, person, or entity shall be punished for a misdemeanor of a high and aggravated nature.”

The 2024 amendment, effective May 6, 2024, substituted “through (j)” for “through (i)” in subsection (b); and added subsection (j). See Editor’s notes for applicability.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted “As used in this Code section, the term” for “For purposes of this Code section,” in the second sentence in subsection (d); substi-

tuted “As used in this Code section, the term ‘school property’ includes” for “For purposes of this Code section, ‘school property’ shall include” in subsection (i); and substituted “his or her” for “their” in subsection (j).

Editor’s notes.

Ga. L. 2024, p. 646, § 1/HB 1033, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Utility Worker Protection Act.’”

Ga. L. 2024, p. 646, § 8/HB 1033, not codified by the General Assembly, makes the amendments to this Code section applicable to all offenses committed on or after July 1, 2024.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Evidence sufficient to support conviction.

Jury’s finding the defendant guilty of simple battery was supported by testimony from a nursing assistant that the slapping sound happened several times, was loud, that the defendant was facing the victim at the time of the slapping sound, that the nursing assistant saw the shadow of a hand move about the same time the sound was heard, and that the defendant appeared to be agitated and frustrated by the victim’s dirty hands and behavior. *Bailey v. State*, 355 Ga. App. 185, 843 S.E.2d 628, 2020 Ga. App. LEXIS 284 (2020).

Evidence was sufficient to support the defendant’s convictions for aggravated battery, felony obstruction of an officer, and simple battery where it showed that the defendant sucker punched a cellmate resulting in substantial bleeding and a broken jaw, and attacked a corrections officer, attempting to gouge out the officer’s eyes. *Stewart v. State*, 361 Ga. App.

636, 865 S.E.2d 237, 2021 Ga. App. LEXIS 526 (2021).

Evidence was sufficient to convict defendant of simple battery because defendant “swung on” and hit the victim in the face. *Merchant v. State*, 365 Ga. App. 42, 877 S.E.2d 361, 2022 Ga. App. LEXIS 377 (2022).

Including the direct testimony that the defendant grabbed the victim, ripping the victim’s shirt, the evidence at trial was sufficient to sustain the defendant’s conviction for simple battery. *Daniels v. State*, 372 Ga. App. 773, 906 S.E.2d 780, 2024 Ga. App. LEXIS 357 (2024).

Merger of offenses. — Two counts against the defendant, both alleging battery, did not merge because the state clearly alleged and proved two ways of committing the offense (intentionally causing visible bodily harm and intentionally causing substantial bodily harm), and that the defendant physically assaulted the victim on two separate occasions in two different locations. *Cameron v. State*, 358 Ga. App. 131, 854 S.E.2d 329, 2021 Ga. App. LEXIS 19 (2021).

16-5-23.1. Battery.

(a) A person commits the offense of battery when he or she intentionally causes substantial physical harm or visible bodily harm to another.

(b) As used in this Code section, the term “visible bodily harm” means bodily harm capable of being perceived by a person other than the victim and may include, but is not limited to, substantially blackened eyes, substantially swollen lips or other facial or body parts, or substantial bruises to body parts.

(c) Except as provided in subsections (d) through (l) of this Code section, a person who commits the offense of battery is guilty of a misdemeanor.

(d) Upon the second conviction for battery against the same victim, the defendant shall be punished by imprisonment for not less than ten days nor more than 12 months, by a fine not to exceed \$1,000.00, or both. The minimum sentence of ten days for a second offense shall not be suspended, probated, deferred, stayed, or withheld; provided, however, that it is within the authority and discretion of the sentencing judge to:

(1) Allow the sentence to be served on weekends by weekend confinement or during the nonworking hours of the defendant. A weekend shall commence and shall end in the discretion of the sentencing judge, and the nonworking hours of the defendant shall be determined in the discretion of the sentencing judge; or

(2) Suspend, probate, defer, stay, or withhold the minimum sentence where there exists clear and convincing evidence that imposition of the minimum sentence would either create an undue hardship upon the defendant or result in a failure of justice.

(e) Upon a third or subsequent conviction for battery against the same victim, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years. The minimum sentence provisions contained in subsection (d) of this Code section shall apply to sentences imposed pursuant to this subsection.

(f)(1) As used in this subsection, the term “household member” means past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household.

(2) If the offense of battery is committed between household members, it shall constitute the offense of family violence battery and shall be punished as follows:

(A) Upon a first conviction of family violence battery, the defendant shall be guilty of and punished for a misdemeanor; provided, however, that if the defendant has previously been convicted of a forcible felony committed between household members under the laws of this state, of the United States, including the laws of its territories, possessions, or dominions, or any of the several states, or of any foreign nation recognized by the United States, which if committed in this state would have constituted a forcible felony committed between household members, he or she shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years; and

(B) Upon a second or subsequent conviction of family violence battery against the same or another victim, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years.

(3) In no event shall this subsection be applicable to reasonable corporal punishment administered by parent to child.

(g) Any person who commits the offense of battery in a public transit vehicle or station shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature. As used in this Code section, the term “public transit vehicle” has the same meaning as in subsection (c) of Code Section 16-5-20.

(h) Any person who commits the offense of battery against a female who is pregnant at the time of the offense shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

(i) Any person who commits the offense of battery against a teacher or other school personnel engaged in the performance of official duties or while on school property shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years or a fine of not more than \$10,000.00, or both. As used in this Code section, the term “school property” includes public school buses and public school bus stops as designated by local school boards of education.

(j) Reserved.

(k) Any person who commits the offense of battery against a sports official while such sports official is officiating an amateur contest or while such sports official is on or exiting the property where he or she will officiate or has completed officiating an amateur contest shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature. For purposes of this Code section, the term “sports official” means any person who officiates, umpires, or referees an amateur contest at the collegiate, elementary or secondary school, or recreational level.

(l) Any person who commits the offense of battery upon a utility worker while such worker is acting within the course and scope of his or her employment or is performing official duties at the time of the offense shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

History.

Code 1981, § 16-5-23.1, enacted by Ga. L. 1987, p. 1010, § 1; Ga. L. 1991, p. 971, §§ 7, 8; Ga. L. 1996, p. 449, § 1; Ga. L. 1997, p. 907, § 2; Ga. L. 1997, p. 1064, § 9; Ga. L. 1998, p. 128, § 16; Ga. L. 1999, p. 562, § 4; Ga. L. 2000, p. 16, § 1; Ga. L. 2004, p. 621, § 3; Ga. L. 2011, p. 227, § 4/SB 178; Ga. L. 2016, p. 587, § 1/SB 193; Ga. L. 2019, p. 81, § 1/HB 424; Ga. L. 2021, p. 384, § 3/HB 363; Ga. L. 2024, p. 646, § 6/HB 1033, effective May 6, 2024; Ga. L. 2025, p. 1029, § 16(5)/SB 153, effective July 1, 2025.

Amendments.

The 2021 amendment, effective July 1, 2021, substituted “Reserved.” for the former provisions of subsection (j), which read: “A person who is an employee, agent, or volunteer at any facility licensed or required to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code Section 31-7-12.2, relating to assisted living communities, or Code Section 31-7-12, relating to personal care homes, or who is required to be licensed pursuant to Code Section 31-7-151 or 31-7-173, relating to home health care and hospices, who commits the offense of battery against a person who is admitted to or receiving services from such facility, person, or entity shall, upon conviction thereof, be punished by imprisonment for

not less than one nor more than five years, or a fine of not more than \$2,000.00, or both.”

The 2024 amendment, effective May 6, 2024, substituted “through (l)” for “through (k)” in subsection (c); and added subsection (l). See Editor’s notes for applicability.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted “As used in this Code section, the term” for “For purposes of this Code section,” in the second sentence in subsection (g); substituted “As used in this Code section, the term ‘school property’ includes” for “For purposes of this Code section, ‘school property’ shall include” in subsection (i); and substituted “his or her” for “their” in subsection (l).

Editor’s notes.

Ga. L. 2024, p. 646, § 1/HB 1033, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Utility Worker Protection Act.’”

Ga. L. 2024, p. 646, § 8/HB 1033, not codified by the General Assembly, makes the amendments to this Code section applicable to all offenses committed on or after July 1, 2024.

Law reviews.

For article, “Immigration Law,” see 74 Mercer L. Rev. 1465 (2023).

JUDICIAL DECISIONS

Living in same household. — Victim’s affirmative testimony that the defendant and the victim lived together was sufficient to a support a finding that they were persons living or formerly living in the same household for purposes of the defendant’s convictions for family violence battery and aggravated stalking. *Butler v. State*, 354 Ga. App. 473, 841 S.E.2d 162, 2020 Ga. App. LEXIS 203 (2020).

Misdemeanor battery merged with felony elder abuse. — Misdemeanor

battery count should have merged with the felony elder abuse count for sentencing because both required the state to prove that the defendant caused physical pain to the victim by dragging or throwing the victim down the stairs, while the elder abuse charge also required proof that the victim was 65 years or older. *Huber v. State*, 368 Ga. App. 401, 890 S.E.2d 271, 2023 Ga. App. LEXIS 335 (2023).

Separate battery offenses did not merge. — Two counts against the defen-

dant, both alleging battery, did not merge because the state clearly alleged and proved two ways of committing the offense (intentionally causing visible bodily harm and intentionally causing substantial bodily harm), and that the defendant physically assaulted the victim on two separate occasions in two different locations. *Cameron v. State*, 358 Ga. App. 131, 854 S.E.2d 329, 2021 Ga. App. LEXIS 19 (2021).

Merger of family violence aggravated battery and family violence aggravated assault. — Trial court did not err by failing to merge defendant's convictions for family violence aggravated assault and family violence battery because the record showed the initial act of strangulation had been completed by the time the struggle began, and the two acts were therefore separated by the deliberate interval of getting out of bed on opposite sides as opposed to a continuous tussle. *Santoro v. State*, 361 Ga. App. 546, 864 S.E.2d 719, 2021 Ga. App. LEXIS 511 (2021).

Indictment sufficient.

Trial court did not err by denying defendant's motion for a directed verdict on the battery charges because defendant's argument for a distinction between the use of defendant's fists, which was not mentioned in the indictment, and using defendant's hands to push the jailers would result in an improper and overly technical application of the fatal variance rule. *Penix v. State*, 367 Ga. App. 765, 888 S.E.2d 352, 2023 Ga. App. LEXIS 228 (2023).

Family violence battery.

Victim's testimony that the defendant struck the victim across the side of the face, a nurse's testimony that there was visible bruising and redness to the victim's cheek, an emergency room doctor's testimony that those visible injuries would be consistent with being struck by a hand, and photographs of the injuries were introduced at trial was sufficient to convict the defendant of battery (family violence). *Moore v. State*, 356 Ga. App. 752, 848 S.E.2d 910, 2020 Ga. App. LEXIS 518 (2020).

Contrary to defendant's claim, there was sufficient evidence to support her

conviction for battery (family violence) as the deputy testified she was dispatched to respond to a dispute among family members and defendant's other son testified that the incident involved his sister, brother and mom. *Guerra v. State*, 373 Ga. App. 774, 908 S.E.2d 704, 2024 Ga. App. LEXIS 455 (2024).

Evidence was sufficient, etc.

Defendant's convictions for rape, aggravated sodomy, battery, false imprisonment, and two counts of aggravated assault were supported by evidence that the defendant hit the victim, forcibly engaged in intercourse and ordered the victim to perform oral sex while holding a knife or scissors, and stood at the door of the hotel room so the victim could not leave. *Dunbar v. State*, 363 Ga. App. 869, 873 S.E.2d 247, 2022 Ga. App. LEXIS 240 (2022).

Evidence was sufficient to support conviction.

Victim's testimony that the defendant punched the victim in the nose and repeatedly struck the victim, along with physical evidence of blood and other injuries to the victim's body, provided sufficient evidence to support the defendant's battery conviction beyond a reasonable doubt. *Jones v. State*, 354 Ga. App. 568, 841 S.E.2d 112, 2020 Ga. App. LEXIS 197 (2020).

Physician's testimony that the victim's nose was busted and a video of the bloodied victim was sufficient to support the defendant's conviction for battery. *Watkins v. State*, 361 Ga. App. 55, 862 S.E.2d 720, 2021 Ga. App. LEXIS 428 (2021).

Striking daughter and causing her to fall. — Evidence was sufficient to sustain the jury's verdict of guilty on the charge of family violence battery for intentionally causing visible bodily harm to the victim as a result of the defendant striking the victim, the defendant's daughter, and causing the daughter to fall. *Holloman v. State*, 360 Ga. App. 812, 861 S.E.2d 644, 2021 Ga. App. LEXIS 397 (2021).

Charging jury as to lesser included offenses. — Trial court was not required to charge the jury on battery as a lesser included offense of aggravated assault be-

cause the indictment alleged assault with a deadly weapon and the evidence showed that an assault was committed with a deadly weapon and, thus, aggravated assault was proved beyond a reasonable doubt; furthermore, the evidence did not support a finding that the defendant committed a battery. *Jones v. State*, 358 Ga. App. 584, 855 S.E.2d 761, 2021 Ga. App. LEXIS 95 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 16-5-23.1 are offenses for which fingerprinting is required. 2019 Op. Att’y Gen. No. 19-3.

16-5-24. Aggravated battery.

(a) A person commits the offense of aggravated battery when he or she maliciously causes bodily harm to another by depriving him or her of a member of his or her body, by rendering a member of his or her body useless, or by seriously disfiguring his or her body or a member thereof.

(b) Except as provided in subsections (c) through (i) of this Code section, a person convicted of the offense of aggravated battery shall be punished by imprisonment for not less than one nor more than 20 years.

(c)(1) A person who knowingly commits the offense of aggravated battery upon a public safety officer while the public safety officer is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than ten nor more than 20 years; provided, however, that for persons who are at least 17 years of age, a mandatory minimum term of imprisonment of three years shall be imposed and no portion of the mandatory minimum sentence shall be suspended, stayed, probated, deferred, or otherwise withheld by the sentencing court; provided, however, that in the court’s discretion, the court may depart from such mandatory minimum sentence when the prosecuting attorney and defendant have agreed to a sentence that is below such mandatory minimum.

(2) A person convicted under this subsection shall be punished, in addition to any term of imprisonment imposed, by a fine as provided by law which shall be at least \$2,000.00. With respect to \$2,000.00 of the fine imposed, after distributing the surcharges and deductions required by Chapter 21 of Title 15, Code Sections 36-15-9 and 42-8-34, and Title 47, it shall be earmarked for the Georgia State Indemnification Fund for purposes of payment of indemnification for death or disability as provided for in Part 1 of Article 5 of Chapter 9 of Title 45.

(d) Any person who commits the offense of aggravated battery against a person who is 65 years of age or older shall, upon conviction

thereof, be punished by imprisonment for not less than five nor more than 20 years.

(e) Any person who commits the offense of aggravated battery in a public transit vehicle or station shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(f) Any person who commits the offense of aggravated battery upon a student or teacher or other school personnel within a school safety zone as defined in Code Section 16-11-127.1 shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(g) If the offense of aggravated battery is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons excluding siblings living or formerly living in the same household, the defendant shall be punished by imprisonment for not less than three nor more than 20 years.

(h) A person who commits the offense of aggravated battery upon an emergency health worker or healthcare worker while such worker is on a hospital campus, as such term is defined in Code Section 31-54-1, to perform official duties shall, upon conviction thereof, be punished by imprisonment for not less than three nor more than 20 years.

(i) Any person who commits the offense of aggravated battery upon a utility worker while such worker is acting within the course and scope of his or her employment or is performing official duties at the time of the offense shall, upon conviction thereof, be punished by imprisonment for not less than three nor more than 20 years.

History.

Laws 1833, Cobb's 1851 Digest, pp. 786, 787.; Code 1863, § 4238; Code 1868, § 4273; Code 1873, § 4339; Code 1882, § 4339; Penal Code 1895, § 83; Penal Code 1910, § 83; Code 1933, § 26-1201; Code 1933, § 26-1305, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1976, p. 543, § 2; Ga. L. 1982, p. 3, § 16; Ga. L. 1984, p. 900, § 2; Ga. L. 1985, p. 628, § 2; Ga. L. 1991, p. 971, §§ 9, 10; Ga. L. 1994, p. 1012, § 9; Ga. L. 1996, p. 988, § 2; Ga. L. 1997, p. 1453, § 1; Ga. L. 1999, p. 381, § 5; Ga. L. 2000, p. 1626, § 2; Ga. L. 2003, p. 140, § 16; Ga. L. 2014, p. 432, § 2-3/HB 826; Ga. L. 2014, p. 599, § 3-2/HB 60; Ga. L. 2016, p. 582, § 2/HB 979; Ga. L. 2017,

p. 500, § 3-3/SB 160; Ga. L. 2023, p. 308, § 4/HB 383, effective July 1, 2023; Ga. L. 2024, p. 646, § 7/HB 1033, effective May 6, 2024; Ga. L. 2025, p. 1029, § 16(6)/SB 153, effective July 1, 2025.

Amendments.

The 2023 amendment, effective July 1, 2023, substituted "(h) of this Code section" for "(g) of this Code section" in subsection (b) and added subsection (h). See Editor's notes for applicability.

The 2024 amendment, effective May 6, 2024, substituted "through (i)" for "through (h)" in subsection (b); and added subsection (i). See Editor's notes for applicability.

The 2025 amendment, effective July

1, 2025, part of an Act to revise, modernize, and correct the Code, substituted “his or her” for “their” in subsection (i).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2023, “healthcare” was substituted for “health care” in subsection (h).

Editor’s notes.

Ga. L. 2023, p. 308, § 1/HB 383, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Safer Hospitals Act.’”

Ga. L. 2023, p. 308, § 6/HB 383, not codified by the General Assembly,

provides, in part, that the amendment of this Code section shall apply to all offenses committed on or after July 1, 2023.

Ga. L. 2024, p. 646, § 1/HB 1033, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Utility Worker Protection Act.’”

Ga. L. 2024, p. 646, § 8/HB 1033, not codified by the General Assembly, makes the amendments to this Code section applicable to all offenses committed on or after July 1, 2024.

JUDICIAL DECISIONS

ANALYSIS

“SERIOUS DISFIGUREMENT”

APPLICATION

JURY INSTRUCTIONS

“Serious Disfigurement”

“Serious disfigurement” supported by x-ray. — Court of appeals has not precluded a holding that serious internal injuries, which can be visible through such means as x-ray, cannot support a conviction for aggravated battery. *Weaver v. State*, 351 Ga. App. 167, 830 S.E.2d 618, 2019 Ga. App. LEXIS 420 (2019), cert. denied, No. S19C1502, 2020 Ga. LEXIS 113 (Ga. Feb. 10, 2020).

“Serious disfigurement”. — For purposes of aggravated battery, serious injuries and documented medical damage to internal organs can be sufficient to show serious disfigurement. There is no authority holding that, to constitute serious disfigurement for purposes of aggravated battery, a victim’s injuries must be actually visible from the outside of a person’s body. *Weaver v. State*, 351 Ga. App. 167, 830 S.E.2d 618, 2019 Ga. App. LEXIS 420 (2019), cert. denied, No. S19C1502, 2020 Ga. LEXIS 113 (Ga. Feb. 10, 2020).

For purposes of aggravated battery, “serious disfigurement” may be proven when serious damage or injury occurred to a person’s body or a part of a person’s body, which affected the appearance of the body or body part. *Weaver v. State*, 351 Ga. App. 167, 830 S.E.2d 618, 2019 Ga. App. LEXIS 420 (2019), cert. denied, No.

S19C1502, 2020 Ga. LEXIS 113 (Ga. Feb. 10, 2020).

Being shot in buttocks and thigh supported disfigurement. — State proved that the victim was seriously disfigured and, therefore, the defendant’s conviction of aggravated battery was upheld because the evidence showed that after the assailant shot the victim in the buttocks and thighs, the victim bled as the victim limped back into the restaurant and fell to the floor, the victim was taken to the hospital by an ambulance, x-rays showed bullet fragments embedded near the gunshot wounds, and the victim could not lie on the victim’s back due to the wounds. *Johnson v. State*, 312 Ga. 481, 863 S.E.2d 137, 2021 Ga. LEXIS 625 (2021).

Aggravated battery conviction merged into the malice murder conviction, etc.

Most reasonable understanding of the conviction for lesser included offenses statute as applied to attempted murder and aggravated battery is that the aggravated battery merges into the greater offense of attempted murder when the crimes are predicated upon the same conduct. The Georgia Supreme Court overrules *Hernandez v. State*, 317 Ga. App. 845 (2012), *Zamudio v. State*, 332 Ga. App.

37 (2015), and *Dobbs v. State*, 2020 Ga. App. Lexis 279 (2020), to the extent that those cases hold otherwise. *Priester v. State*, 309 Ga. 330, 845 S.E.2d 683, 2020 Ga. LEXIS 465 (2020).

Merger of felony obstruction with aggravated battery. — Because injuring another's ankle amounted to doing violence, the defendant's convictions for felony obstruction merged into aggravated battery; thus, the defendant was entitled to resentencing. *Cooper v. State*, 350 Ga. App. 365, 829 S.E.2d 433, 2019 Ga. App. LEXIS 304 (2019).

Application

Factual issue of serious disfigurement for jury. — Trial court did not err by denying defendant's motion for a directed verdict as to the aggravated battery charge because the victim testified that his leg was scarred as a result of the shooting, he suffered permanent nerve damage, and the injury affected the way he walked. *Priester v. State*, 317 Ga. 477, 893 S.E.2d 751, 2023 Ga. LEXIS 224 (2023).

Evidence authorized finding of serious disfigurement.

There was sufficient evidence to support the defendant's conviction for aggravated battery, as the victim testified that defendant pushed the victim into the fire barrel without provocation, and as a result, the victim's skin began to melt off of the victim's stomach and the victim had two skin grafts to treat the injuries. *Perry v. State*, 366 Ga. App. 341, 883 S.E.2d 27, 2023 Ga. App. LEXIS 5 (2023).

Sufficient injury to warrant conviction for aggravated battery.

There was sufficient evidence to support the defendant's conviction for aggravated battery, as the evidence authorized the jury to find that the defendant caused bodily harm to the victim by rendering the victim's arm useless by fracturing the victim's collarbone. *Watkins v. State*, 361 Ga. App. 55, 862 S.E.2d 720, 2021 Ga. App. LEXIS 428 (2021).

Including the testimony that the victim's mother observed the defendant hit the victim and slam the victim to the floor and the testimony of the victim's emergency room physician that the impact

broke the victim's jaw, the evidence at trial was sufficient to sustain the defendant's conviction for aggravated battery. *Little v. State*, 372 Ga. App. 836, 906 S.E.2d 899, 2024 Ga. App. LEXIS 370 (2024).

Evidence that the victims suffered breaks to an arm and a leg, that the wife would grab the victims' arms and twist them and drag the victims up and down the stairs by their arms, and that the defendant applied pain relief cream on the victim's arm was sufficient to support the convictions for aggravated battery and first-degree child cruelty. *Rosenbaum v. State*, 373 Ga. App. 417, 908 S.E.2d 672, 2024 Ga. App. LEXIS 447 (2024).

Evidence, including the testimony of the victim and the other eyewitnesses about the stabbing, the bar surveillance video, and the photographs of the victim's knife wounds, was sufficient to enable a rational jury to find the defendant guilty beyond a reasonable doubt of committing aggravated battery by stabbing the victim with the knife. *Owens v. State*, 374 Ga. App. 56, 911 S.E.2d 330, 2025 Ga. App. LEXIS 4 (2025).

Evidence of previous crimes improperly admitted to show intent. — Appellant's convictions for felony murder, aggravated assault, and knife-possession offenses were reversed because the Georgia Supreme Court could not say that the trial court's erroneous admission of the voluminous evidence that the appellant had previously committed multiple serious violent acts did not contribute to the guilty verdicts that the jury returned. *Strong v. State*, 309 Ga. 295, 845 S.E.2d 653, 2020 Ga. LEXIS 467 (2020).

Evidence sufficient to support conviction.

Jury's verdict finding the defendant guilty of first degree cruelty to children and aggravated battery was not unsupported because an expert testified that the injuries suffered by the defendant's baby were caused by some type of trauma to the body; at trial, the defendant offered no alternative hypothesis for the injuries; and, to the extent that the defendant offered on appeal the alternative hypothesis that the defendant's mother could have injured the baby, the jury was en-

Application (Cont'd)

titled to reject that hypothesis as unreasonable as the parties entered a stipulation that law enforcement had ruled out the defendant's mother as a suspect, and that stipulation was read to the jury. *Weaver v. State*, 351 Ga. App. 167, 830 S.E.2d 618, 2019 Ga. App. LEXIS 420 (2019), cert. denied, No. S19C1502, 2020 Ga. LEXIS 113 (Ga. Feb. 10, 2020).

Jury's verdict finding the defendant guilty of first degree cruelty to children and aggravated battery was not unsupported because an expert testified that the injuries suffered by the defendant's baby were caused by some type of trauma to the body and that they were most consistent with at least two different instances of child physical abuse; at trial, the defendant offered no alternative hypothesis for the injuries; and the jury specifically considered whether the defendant's boyfriend could have injured the baby when the jury addressed the charges against the boyfriend, finding the boyfriend not guilty on all counts. *Weaver v. State*, 351 Ga. App. 167, 830 S.E.2d 618, 2019 Ga. App. LEXIS 420 (2019), cert. denied, No. S19C1502, 2020 Ga. LEXIS 113 (Ga. Feb. 10, 2020).

In an action for aggravated battery, aggravated assault with a deadly weapon and possession of a firearm during a felony, there was sufficient evidence for the jury to determine that the defendant was the shooter, including testimony from the victims identifying the defendant and any inconsistency between that testimony and the victims' pretrial identifications was for the jury. *Smith v. State*, 354 Ga. App. 782, 841 S.E.2d 444, 2020 Ga. App. LEXIS 219 (2020).

Convictions for burglary, rape, and aggravated battery were supported by sufficient evidence as the record showed that seminal fluid and the defendant's DNA were found in the victim's underwear, the defendant's alibi did not check out when police attempted to verify the alibi, and it was undisputed that the defendant had knowledge of how to enter the house through a broken door without a key, having previously been in a relationship with the victim's daughter. *McEady v.*

State, 355 Ga. App. 820, 846 S.E.2d 94, 2020 Ga. App. LEXIS 395 (2020).

Aggravated battery conviction was supported by the victim's testimony that the victim's nose was broken, the victim could not breathe through the nose after the defendant attacked the victim, and a medical procedure, which the victim had not undergone, was required to repair the victim's nose. *Echols v. State*, 361 Ga. App. 864, 865 S.E.2d 839, 2021 Ga. App. LEXIS 557 (2021).

Defendant's convictions for family violence aggravated battery and cruelty to children were upheld because the circumstantial evidence was sufficient as the jury reasonably inferred that defendant inflicted the injuries during periods defendant had sole custody of the child and defendant's marijuana use was intrinsic evidence necessary to complete the story of indifference toward seeking medical care for the child's serious injuries. *McCloud v. State*, 371 Ga. App. 480, 901 S.E.2d 315, 2024 Ga. App. LEXIS 174 (2024).

Self defense in family violence rejected. — Jury was authorized to find that the defendant was not acting in self-defense when the defendant strangled the victim and punched the victim's face because the victim testified that the victim was unconscious and awoke to find the defendant punching the victim and that the defendant had the knife first, and the evidence showed that the defendant had strangled the victim to the point of unconsciousness, punched and spit on the victim, threatened the victim with a knife, and was reaching for a bow and arrow before the victim took up the knife to stab the defendant. *Freeman v. State*, 365 Ga. App. 332, 878 S.E.2d 578, 2022 Ga. App. LEXIS 440 (2022).

Jury Instructions

Instructions to jury. — Trial court did not commit plain error when it instructed the jury on aggravated assault, even though it omitted the first paragraph of the pattern instruction, because, considering the instruction as a whole, the jury was adequately informed that defendant committed aggravated assault when defendant assaulted another person with a

deadly weapon. *Johnson v. State*, 312 Ga. 481, 863 S.E.2d 137, 2021 Ga. LEXIS 625 (2021).

Self-defense instruction not warranted. — When the defendant was convicted of two counts of aggravated assault and one count of aggravated battery, the trial court did not err in failing to instruct the jury on self-defense or justification as the defense’s theory of the case was that

the victim caused the victim’s own injuries and the damage to the car by diving into the vehicle and punching the defendant; and the defendant did not testify that the defendant intentionally threatened or used force in an attempt to defend the defendant’s self. *Smith v. State*, 362 Ga. App. 610, 869 S.E.2d 554, 2022 Ga. App. LEXIS 70 (2022).

ARTICLE 3

KIDNAPPING, FALSE IMPRISONMENT, AND RELATED OFFENSES

Law reviews.

For note, “Uncovering the ‘Hidden Crime’ of Human Trafficking by Empow-

ering Individuals to Respond,” see 36 Ga. St. U.L. Rev. 1173 (2020).

16-5-40. Kidnapping.

(a) A person commits the offense of kidnapping when such person abducts or steals away another person without lawful authority or warrant and holds such other person against his or her will.

(b)(1) For the offense of kidnapping to occur, slight movement shall be sufficient; provided, however, that any such slight movement of another person which occurs while in the commission of any other offense shall not constitute the offense of kidnapping if such movement is merely incidental to such other offense.

(2) Movement shall not be considered merely incidental to another offense if it:

(A) Conceals or isolates the victim;

(B) Makes the commission of the other offense substantially easier;

(C) Lessens the risk of detection; or

(D) Is for the purpose of avoiding apprehension.

(c) The offense of kidnapping shall be considered a separate offense and shall not merge with any other offense.

(d) A person convicted of the offense of kidnapping shall be punished by:

(1) Imprisonment for not less than ten nor more than 20 years if the kidnapping involved a victim who was 14 years of age or older;

(2) Imprisonment for life or by a split sentence that is a term of

imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life, if the kidnapping involved a victim who is under 14 years of age;

(2.1)(A) As used in this paragraph, the term “sexual felony” shall have the same meaning as set forth in paragraph (2) of subsection (j) of Code Section 16-5-21.

(B) Any person having been previously convicted of a sexual felony who is convicted of the offense of kidnapping which involves a victim who is under 14 years of age, except by a parent, shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in paragraph (14) of subsection (a) of Code Section 42-8-35;

(3) Life imprisonment or death if the kidnapping was for ransom;
or

(4) Life imprisonment or death if the person kidnapped received bodily injury.

(e) Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

(f) The offense of kidnapping is declared to be a continuous offense, and venue may be in any county where the accused exercises dominion or control over the person of another.

History.

Laws 1833, Cobb’s 1851 Digest, p. 788.; Code 1863, §§ 4266, 4267; Code 1868, §§ 4301, 4302; Code 1873, §§ 4367, 4368; Ga. L. 1876, p. 39, § 1; Ga. L. 1880-81, p. 74, § 1; Code 1882, §§ 4367, 4368; Penal Code 1895, §§ 109, 110; Penal Code 1910, §§ 109, 110; Code 1933, §§ 26-1601, 26-1602, 26-1603; Ga. L. 1937, p. 489, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 99, § 1; Code 1933, § 26-1311, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1982, p. 970, § 1; Ga. L. 1994, p. 1959, § 4; Ga. L. 2006, p. 379, § 5/HB 1059; Ga. L. 2009, p. 331, § 1/HB 575; Ga. L. 2023, p. 637, § 3-2/HB 188, effective May 4, 2023.

Amendments.

The 2023 amendment, effective May 4, 2023, substituted “under 14 years of age” for “less than 14 years of age” in paragraph (d)(2) and added paragraph

(d)(2.1). See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2023, p. 637, § 1-1/HB 188, not codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘Mariam’s Law.’”

Ga. L. 2023, p. 637, § 7-1/HB 188, not codified by the General Assembly, provides, in part, that the punishment provisions of paragraph (d)(2.1) of this Code section shall apply to all offenses committed on and after July 1, 2023.

Law reviews.

For article, “The Thirteenth Amendment and Human Trafficking: Lessons & Limitations,” see 36 Ga. St. U.L. Rev. 1005 (2020).

For article, “Preventing Trafficking Through New Global Governance Over Labor Migration,” see 36 Ga. St. U.L. Rev. 1027 (2020).

For article, “The Public Health Approach to Human Trafficking Prevention,” see 36 Ga. St. U.L. Rev. 1059 (2020).

JUDICIAL DECISIONS

ANALYSIS

JURY INSTRUCTIONS APPLICATION

Jury Instructions

Jury sufficiently instructed on essential element of “bodily injury”.

Even though the verdict form indicated that the jury found the defendant guilty of kidnapping, the trial court nevertheless properly sentenced the defendant for kidnapping with bodily injury as although the pre-printed verdict form did not give the jury the option to choose, the indictment alleged kidnapping resulting in bodily injury to the victim, and the trial court also instructed the jury on the elements of kidnapping with bodily injury. *Robinson v. State*, 353 Ga. App. 420, 838 S.E.2d 92, 2020 Ga. App. LEXIS 13 (2020).

Application

Asportation separate from burglary. — Sufficient evidence supported the appellant’s conviction for burglary because the state adduced evidence that the appellant entered the victim’s house without authority and with the intent to commit a theft; thus, the crime of burglary, as alleged in the indictment, was complete as soon as the appellant entered the victim’s house and before the appellant forced the victim from the living room into another room. *Jefferson v. State*, 360 Ga. App. 869, 862 S.E.2d 346, 2021 Ga. App. LEXIS 410 (2021).

Evidence was sufficient to sustain defendant’s conviction for attempt to kidnap, etc.

Evidence was sufficient to support defendant’s conviction of attempted kidnapping because defendant’s overt act of seeking to lure the minor victim into defendant’s car by falsely claiming that the victim’s father, whom defendant referenced by name, needed the victim and opening the car door and reaching out

toward the victim as encouragement to get into the vehicle with defendant constituted a substantial step toward the commission of the crime of kidnapping. *Green v. State*, 371 Ga. App. 259, 899 S.E.2d 493, 2024 Ga. App. LEXIS 146 (2024), rev’d in part, 321 Ga. 204, 913 S.E.2d 621, 2025 Ga. LEXIS 49 (2025).

There was sufficient evidence to support a conviction of criminal attempt to commit kidnapping when the defendant, a stranger to the victim and to the victim’s parent, pulled up beside the victim in the defendant’s vehicle, falsely told the victim that the parent, whom the defendant called by name, needed the victim, opened the car door, and reached out to encourage the victim to get into the vehicle, and when the parent testified that during the two days before the incident, the parent’s mail had been ripped open and left inside the mailbox. *Green v. State*, 371 Ga. App. 259, 899 S.E.2d 493, 2024 Ga. App. LEXIS 146 (2024), rev’d in part, 321 Ga. 204, 913 S.E.2d 621, 2025 Ga. LEXIS 49 (2025).

Evidence sufficient to support conviction.

Evidence was sufficient to convict the defendant of kidnapping because the defendant’s act of forcing the second victim to enter the card room and open the back door allowed a co-defendant to enter and help the defendant complete the robbery by gathering cash while the defendant held the patrons at gunpoint; and that forced movement also prevented the second victim from calling 911 or running to a neighbor’s house for help, which mitigated the risk that the defendant would be detected and apprehended by law enforcement. *Rich v. State*, 307 Ga. 757, 838 S.E.2d 255, 2020 Ga. LEXIS 58 (2020).

By following the commands of the defendant, the movement of the second vic-

Application (Cont'd)

tim made the commission of the robbery substantially easier, thus allowing the defendant and an accomplice to complete the robbery and, thus, the evidence was sufficient for the jury to find that the second victim was kidnapped as alleged. *Ali v. State*, 353 Ga. App. 582, 838 S.E.2d 899, 2020 Ga. App. LEXIS 48 (2020).

Evidence that the defendant forced the first victim at gunpoint to move from the front of the store to the break room to open the store's safe, making the armed robbery easier, and further movement to the back corner of the room with instructions to remain silent and stay down was sufficient to sustain the asportation element of the kidnapping conviction. *Ali v. State*, 353 Ga. App. 582, 838 S.E.2d 899, 2020 Ga. App. LEXIS 48 (2020).

Since the movement of the victim was not merely incidental to the armed robbery, but served to make the commission of the crime substantially easier by concealing and isolating the victim and giving the assailants greater control, the evidence was sufficient to allow reasonable jurors to conclude that the movement of the victim was not merely incidental to the robbery and to support the defendant's conviction for kidnapping. *Leslie v. State*, 355 Ga. App. 244, 842 S.E.2d 550, 2020 Ga. App. LEXIS 262 (2020), cert. denied, No. S20C1345, 2021 Ga. LEXIS 38 (Ga. Jan. 11, 2021).

The evidence presented at trial was sufficient to find the defendant guilty beyond a reasonable doubt of the charged offense of kidnapping based on the girlfriend's testimony that the defendant forced her into the defendant's car and held the girlfriend there against her will as the defendant drove from Gwinnett County to DeKalb County. *Sims v. State*, 360 Ga. App. 886, 862 S.E.2d 556, 2021 Ga. App. LEXIS 413 (2021).

Evidence was sufficient to support the defendant's conviction of kidnapping with bodily injury because the defendant's statements to the police indicated that the movement of the victims occurred before the defendant's cohort brandished a screwdriver, box cutter, or other weapon at the victims and physically attacked the

victims after the victims reached the woods, ultimately killing the victims, and the movement of the victims was not an inherent or necessary part of the commission of the offense of aggravated assault with intent to rob or murder of the victims. *Felts v. State*, 311 Ga. 547, 858 S.E.2d 708, 2021 Ga. LEXIS 266 (2021).

Evidence was sufficient to establish that the defendant was the driver of the vehicle in the incident involving the victim as the evidence showed that the defendant drove away with the sleeping victim and the defendant's DNA was present on the victim's vagina and cervix as well as the tampon the victim had been wearing showed that the defendant had sexual intercourse with the victim. *Rendon-Villasana v. State*, 360 Ga. App. 769, 861 S.E.2d 462, 2021 Ga. App. LEXIS 389 (2021).

There was sufficient evidence to sustain the defendant's conviction for kidnapping with bodily injury because the incident began with the defendant's announcing an intention to move the victim and then physically moving the victim, which resulted in injury to the victim. *Burrell v. State*, 363 Ga. App. 491, 870 S.E.2d 918, 2022 Ga. App. LEXIS 178 (2022).

Evidence was sufficient to support defendant's conviction for kidnapping with bodily injury under O.C.G.A. § 16-5-40(a) because the victim testified that after defendant came up behind her with a knife, he told her they were going inside, and he picked her up and dragged her five to ten feet. *Burrell v. State*, 363 Ga. App. 491, 870 S.E.2d 918, 2022 Ga. App. LEXIS 178 (2022).

Evidence that the defendant removed the victim from the bunk bed to another room was sufficient to support the defendant's conviction for kidnapping because it lessened the risk that the defendant's assault of the victim would be witnessed and, thus, was not merely incidental to the rape. *Hicks v. State*, 366 Ga. App. 599, 884 S.E.2d 16, 2023 Ga. App. LEXIS 52 (2023).

Evidence was sufficient to support defendant's convictions of kidnapping because the evidence showed that in both incidents defendant dragged the victim against the victim's will away from the

apartment building toward another building and wooded area near the complex. *Williams v. State*, 367 Ga. App. 485, 887 S.E.2d 344, 2023 Ga. App. LEXIS 176 (2023).

Sufficient evidence supported defendant's kidnapping conviction because it showed that he pulled the victim, who was standing outside, into his apartment, where he assaulted her for hours. *Newton v. State*, 370 Ga. App. 589, 898 S.E.2d 595, 2024 Ga. App. LEXIS 52 (2024).

Defendant's conviction for kidnapping was supported by evidence that defendant and the others moved the robbery victim to the safe's location as such movement was not merely incidental to any other charged offense and thus supported the asportation element of the kidnapping offense. *Gordon v. State*, 373 Ga. App. 592, 908 S.E.2d 297, 2024 Ga. App. LEXIS 431 (2024).

Forcing victims to leave their hotel room at gunpoint. — Evidence supported the defendant's kidnapping convictions under O.C.G.A. § 16-5-40(a) based on the defendant's conduct in entering the victims' motel room, demanding money the victims owed the defendant for drugs,

threatening the victims' lives, and cocking a handgun and pressing the handgun against one victim's eye, whereupon the victims agreed to go with the defendant panhandling against the victims' will and only to avoid being killed. *Hill v. State*, 310 Ga. 180, 850 S.E.2d 110, 2020 Ga. LEXIS 750 (2020).

Asportation sufficient. — Evidence that the defendant forced the cab driver at gunpoint to move from an open parking lot, where they might have been observed by passerby or other apartment residents, and into an apartment was sufficient to prove the asportation element of kidnapping, as the movement was not an inherent part of the armed robbery and lessened the risk that the robbery would be detected. *Thomas v. State*, 355 Ga. App. 111, 843 S.E.2d 1, 2020 Ga. App. LEXIS 267 (2020).

Evidence that the victim was forced to strip and moved outside behind the store, where the victim was ordered to lie down while the robbers fled was sufficient to prove the asportation element of kidnapping. *Fuller v. State*, 363 Ga. App. 217, 871 S.E.2d 79, 2022 Ga. App. LEXIS 141 (2022).

16-5-41. False imprisonment.

JUDICIAL DECISIONS

ANALYSIS

APPLICATION SENTENCE

Application

False imprisonment occurring during rape. — In a case wherein defendant was conviction for rape, aggravated assault, and other crimes, the evidence supported the false imprisonment conviction because the victim testified being afraid to leave. *Davis v. State*, 370 Ga. App. 439, 896 S.E.2d 612, 2023 Ga. App. LEXIS 568 (2023).

Evidence sufficient to support conviction.

Evidence was sufficient to convict the defendant of false imprisonment because the victim testified that the defendant shoved the victim onto the bed when the

victim attempted to leave the defendant's bedroom and tied the victim's hands. *Nguyen v. State*, 351 Ga. App. 509, 831 S.E.2d 213, 2019 Ga. App. LEXIS 443 (2019), cert. dismissed, No. S20C0488, 2020 Ga. LEXIS 402 (Ga. May 18, 2020).

Defendant's convictions for rape, aggravated sodomy, battery, false imprisonment, and two counts of aggravated assault were supported by evidence that the defendant hit the victim, forcibly engaged in intercourse and ordered the victim to perform oral sex while holding a knife or scissors, and stood at the door of the hotel room so the victim could not leave. *Dunbar v. State*, 363 Ga. App. 869, 873

Application (Cont'd)

S.E.2d 247, 2022 Ga. App. LEXIS 240 (2022).

There was clearly sufficient evidence to support the defendant's conviction for false imprisonment because the victim testified that defendant tied her hands and kept her in the bedroom, and that he subsequently prevented her from leaving the living room. *Wilkey v. State*, 368 Ga. App. 238, 889 S.E.2d 427, 2023 Ga. App. LEXIS 290 (2023).

Conviction as party to crime. — In the defendant's aggravated assault and false imprisonment trial arising out of the defendant's and the defendant's brother's beating of a marijuana dealer with a handgun, whether the defendant knew that the defendant's brother was going to steal the marijuana was not relevant; regardless of whether the defendant knew that the defendant's brother was going to steal the marijuana, the defendant actively participated in the false imprison-

ment and beating of the victim and was responsible as a party. *Gonzalez v. State*, 350 Ga. App. 297, 829 S.E.2d 385, 2019 Ga. App. LEXIS 288 (2019).

Sentence

Sentence was proper. — Trial court did not err in denying the defendant's motion to vacate, void, or correct an illegal sentence several years after the defendant's sentence was imposed because the alleged errors in the defendant's case clearly went to the validity of the judgment of conviction entered on the defendant's guilty plea, not the validity of the defendant's sentence; Georgia law authorized the concurrent sentences of 10 years in prison for false imprisonment, and 20 years, with 13 years to be served in prison and the remainder on probation, for trafficking of persons for sexual servitude. *Jones v. State Two Cases*, 354 Ga. App. 29, 840 S.E.2d 117, 2020 Ga. App. LEXIS 109 (2020).

16-5-44.1. Hijacking a motor vehicle.

JUDICIAL DECISIONS

Convictions for highjacking vehicle and theft by receiving mutually exclusive. — Jury returned verdicts that were legally and logically irreconcilable when the jury found the defendant guilty of hijacking a motor vehicle, necessarily finding that the defendant was the principal thief of the motor vehicle, and also finding the defendant guilty of theft by receiving for retaining the same motor vehicle, finding that the defendant was not the principal thief of that vehicle. Accordingly, the defendant's convictions on those two counts were mutually exclusive. *Middleton v. State*, 309 Ga. 337, 846 S.E.2d 73, 2020 Ga. LEXIS 476 (2020).

Occupancy of vehicle not required. — Trial court properly denied the defendant's motion for a directed verdict with regard to the convictions of armed robbery and hijacking a motor vehicle because the evidence supported the jury's finding that the defendant took the victim's car after pointing a gun at the victim and the fact that the victim fled to a nearby hiding

place from where the police were called did not negate that the victim's vehicle was taken from the victim's presence by force and violence. *Merritt v. State*, 353 Ga. App. 374, 837 S.E.2d 521, 2020 Ga. App. LEXIS 1 (2020).

Evidence sufficient for conviction. — Evidence that the defendant and others lured the victim to an isolated location with the intention of taking items of value from the defendant, used one or more firearms to confront the victim, and took possession of the victim's vehicle was sufficient for the jury to conclude that the defendant was guilty of hijacking a motor vehicle. *Davis v. State*, 306 Ga. 594, 832 S.E.2d 341, 2019 Ga. LEXIS 508 (2019).

Evidence was sufficient to support the verdicts of attempted hijacking a motor vehicle and attempted armed robbery, as the jury could have found that the act of demanding the victim's keys and wallet, even if the victim ultimately failed to do so, constituted an attempt to obtain the motor vehicle and attempt to rob the vic-

tim of the wallet. *Richardson v. State*, 373 Ga. App. 252, 908 S.E.2d 234, 2024 Ga. App. LEXIS 415 (2024).

16-5-45. Interference with custody.

JUDICIAL DECISIONS

Limited action did not interfere with custody. — Trial court properly denied the defendant's motion for new trial as to one count of interference with custody of a minor, but the convictions on the remaining three counts had to be reversed because only one of the counts of interference with custody of a minor established that the defendant interfered with the child's grandmother exercising the right to lawful custody since picking the child up from school did not interfere with the grandmother's right to custody. *Owens v. State*, 353 Ga. App. 848, 840 S.E.2d 70, 2020 Ga. App. LEXIS 96 (2020).

Misapprehension as to age is not excuse. — Defendant's judgment of conviction for interstate interference with

custody was upheld because defendant's reliance on the reasonable hypothesis rule that defendant was unaware of the child's age failed since such rule only applied when the evidence was entirely circumstantial and the victim's testimony provided direct evidence that defendant knew the age of the victim. *Myers v. State*, 370 Ga. App. 643, 898 S.E.2d 834, 2024 Ga. App. LEXIS 68 (2024).

Registration as sex offender not required. — Sex offender registration was improperly ordered against defendant because the victim of the custody interference crime was not a minor. *Myers v. State*, 370 Ga. App. 643, 898 S.E.2d 834, 2024 Ga. App. LEXIS 68 (2024).

16-5-46. Trafficking of persons for labor or sexual servitude.

(a) As used in this Code section, the term:

(1) "Coercion" means:

(A) Causing or threatening to cause bodily harm to any individual, physically restraining or confining any individual, or threatening to physically restrain or confine any individual;

(B) Exposing or threatening to expose any fact or information or disseminating or threatening to disseminate any fact or information that would tend to subject an individual to criminal or immigration proceedings, hatred, contempt, or ridicule;

(C) Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any individual;

(D) Providing a controlled substance to such individual for the purpose of compelling such individual to engage in labor or sexual servitude against his or her will; or

(E) Causing or threatening to cause financial harm to any individual or using financial control over any individual.

(2) “Controlled substance” shall have the same meaning as set forth in Code Section 16-13-21.

(3) “Deception” means:

(A) Creating or confirming another’s impression of an existing fact or past event which is false and which the accused knows or believes to be false;

(B) Maintaining the status or condition of an individual arising from a pledge by such individual of his or her personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing an individual from acquiring information pertinent to the disposition of such debt; or

(C) Promising benefits or the performance of services which the accused does not intend to deliver or perform or knows will not be delivered or performed. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this Code section.

(4) “Developmental disability” shall have the same meaning as set forth in Code Section 37-1-1.

(5) “Labor servitude” means work or service of economic or financial value which is performed or provided by another individual and is induced or obtained by coercion or deception.

(5.1) “Peace officer” shall have the same meaning as provided for in subparagraph (A) of paragraph (8) of Code Section 35-8-2.

(6) “Performance” shall have the same meaning as set forth in Code Section 16-12-100.

(7) “Sexually explicit conduct” shall have the same meaning as set forth in Code Section 16-12-100.

(8) “Sexual servitude” means any sexually explicit conduct or performance involving sexually explicit conduct for which anything of value is directly or indirectly given, promised to, or received by any individual, which conduct is induced or obtained:

(A) By coercion or deception;

(B) From an individual who is under the age of 18 years;

(C) From an individual whom the accused believes to be under the age of 18 years;

(D) From an individual who has a developmental disability; or

(E) From an individual whom the accused believes to have a developmental disability.

(b) A person commits the offense of trafficking a person for labor servitude when that person knowingly subjects another person to or maintains another person in labor servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of labor servitude.

(c) A person commits the offense of trafficking an individual for sexual servitude when that person knowingly:

(1) Subjects an individual to or maintains an individual in sexual servitude;

(2) Recruits, entices, harbors, transports, provides, solicits, patronizes, or obtains by any means an individual for the purpose of sexual servitude; or

(3) Benefits financially or by receiving anything of value from the sexual servitude of another.

(d) The age of consent for sexual activity or the accused's lack of knowledge of the age or developmental disability of the individual being trafficked shall not constitute a defense in a prosecution for a violation of this Code section.

(e) The sexual history or history of commercial sexual activity of a person alleged to have been trafficked or such person's connection by blood or marriage to an accused in the case or to anyone involved in such person's trafficking shall be excluded from evidence if the court finds at a hearing outside the presence of the jury that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

(f)(1) Except as provided in paragraph (2) of this subsection, any person who commits the offense of trafficking an individual for labor servitude or sexual servitude shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than ten nor more than 20 years and a fine not to exceed \$100,000.00.

(2) Any person who commits the offense of trafficking an individual for labor servitude or sexual servitude against an individual who is under 18 years of age or if the offense is committed against an individual who has a developmental disability, the person shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than 25 nor more than 50 years or life imprisonment and a fine not to exceed \$100,000.00.

(3)(A) As used in this paragraph, the term "sexual felony" shall have the same meaning as set forth in paragraph (2) of subsection (j) of Code Section 16-5-21.

(B) Any person having been previously convicted of a sexual felony who is convicted of the offense of trafficking of persons for sexual servitude shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in paragraph (14) of subsection (a) of Code Section 42-8-35.

(g)(1) As used in this subsection, the terms “civil forfeiture proceedings,” “proceeds,” and “property” shall have the same meanings as set forth in Code Section 9-16-2.

(2) Any property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of this Code section and any proceeds are declared to be contraband and no person shall have a property right in them.

(3) Any property subject to forfeiture pursuant to paragraph (2) of this subsection shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9.

(4) The Attorney General shall be specifically authorized to commence civil forfeiture proceedings under this Code section.

(h)(1) Prosecuting attorneys and the Attorney General shall have concurrent authority to prosecute any criminal cases arising under the provisions of this Code section and to perform any duty that necessarily appertains thereto.

(2) For purposes of investigating offenses or criminal cases arising under the provisions of this Code section, the Attorney General shall have the authority to employ peace officers who shall be authorized to execute all powers of a peace officer.

(i) Each violation of this Code section shall constitute a separate offense and shall not merge with any other offense.

(j) A corporation may be prosecuted under this Code section for an act or omission constituting a crime under this Code section only if an agent of the corporation performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of his or her employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.

(k) The sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this Code section shall not constitute a defense to prosecution

under this Code section; provided, however, that Code Section 16-3-25 may still provide an absolute defense.

(l) Any individual who knowingly uses a commercial motor vehicle while committing the offense of trafficking a person for labor or sexual servitude in violation of this Code section shall also be punished by the revocation of the defendant's commercial driver's license and disqualification from driving a commercial motor vehicle for life in accordance with Code Section 40-5-151.

History.

Code 1981, § 16-5-46, enacted by Ga. L. 2006, p. 105, § 3/SB 529; Ga. L. 2011, p. 217, § 1/HB 200; Ga. L. 2015, p. 693, § 2-2/HB 233; Ga. L. 2016, p. 377, § 1/HB 770; Ga. L. 2017, p. 489, § 1/HB 341; Ga. L. 2017, p. 774, § 16/HB 323; Ga. L. 2018, p. 628, § 1/HB 732; Ga. L. 2019, p. 74, § 1-5/SB 158; Ga. L. 2019, p. 81, § 2/HB 424; Ga. L. 2020, p. 29, § 1/SB 394; Ga. L. 2020, p. 240, § 1/HB 823; Ga. L. 2023, p. 637, § 3-3/HB 188, effective May 4, 2023.

Amendments.

The first 2020 amendment, effective July 1, 2020, added paragraph (a)(5.1) and, in subsection (h), designated the existing provisions as paragraph (h)(1) and added paragraph (h)(2). The second 2020 amendment, effective July 21, 2020, added subsection (l). See the Editor's notes for applicability.

The 2023 amendment, effective May 4, 2023, added paragraph (f)(3). See Editor's notes for applicability.

Cross references.

Education awareness program on human trafficking, § 20-2-142.

Editor's notes.

Ga. L. 2020, p. 240, § 3/HB 823, not codified by the General Assembly, provides that the addition of subsection (l) shall apply to offenses committed on or after July 21, 2020.

Ga. L. 2023, p. 637, § 1-1/HB 188, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Mariam's Law.'"

Ga. L. 2023, p. 637, § 7-1/HB 188, not codified by the General Assembly, provides, in part, that the addition of paragraph (f)(3) applies to all offenses committed on and after July 1, 2023.

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Georgia St. U.L. Rev. 63 (2019).

For article, "SB 33: Civil Cause of Action Against Human Traffickers," see 38 Ga. St. U.L. Rev. 241 (2021).

For article, "HB 1134: Amendments to the Georgia Street Gang Terrorism and Prevention Act," see 39 Georgia St. U.L. Rev. 21 (2022).

JUDICIAL DECISIONS

Convictions did not merge. — Trial counsel was not ineffective for failing to request that the counts for child cruelty and trafficking of person for sexual servitude merge because O.C.G.A. § 16-5-46(i) specifically stated that each such violation was a separate offense and would not merge with any other offense. *Moore v. State*, 354 Ga. App. 145, 840 S.E.2d 519, 2020 Ga. App. LEXIS 128 (2020).

No plain error in instructing jury. — Trial court did not plainly err in instructing the jury as to trafficking persons for sexual servitude because the court

informed the jury that the defendant was indicted for trafficking of persons for sexual servitude, instructed the jury that the indictment and the plea formed the issues to be decided, properly instructed the jury that the jury could only find defendant guilty if the jury found beyond a reasonable doubt that the defendant committed the charged offenses as alleged in the indictment, and gave a copy of the indictment to the jury to use during deliberations. *Baggett v. State*, 367 Ga. App. 851, 888 S.E.2d 636, 2023 Ga. App. LEXIS 246 (2023).

Sentence was proper. — Trial court did not err in denying the defendant’s motion to vacate, void, or correct an illegal sentence several years after the defendant’s sentence was imposed because the alleged errors in the defendant’s case clearly went to the validity of the judgment of conviction entered on the defendant’s guilty plea, not the validity of the defendant’s sentence; Georgia law authorized the concurrent sentences of 10 years in prison for false imprisonment, and 20 years, with 13 years to be served in prison and the remainder on probation, for trafficking of persons for sexual servitude. *Jones v. State Two Cases*, 354 Ga. App. 29, 840 S.E.2d 117, 2020 Ga. App. LEXIS 109 (2020).

Error in vacating trafficking count. — Trial court erred in vacating the first trafficking count and instead convicting and sentencing the defendant for pandering because the defendant did more than just solicit the victim for sex, as required for the pandering offense, in that the defendant recruited the 16-year-old victim and had sex with the victim. *State v. Stillman*, 372 Ga. App. 330, 904 S.E.2d 379, 2024 Ga. App. LEXIS 297 (2024).

Evidence sufficient for conviction. Defendant’s conviction for trafficking was supported by evidence that the defendant used coercion to subject the victim to sexual servitude by engaging in sexual activity with people for money in order to live with the defendant. *Moore v. State*, 354 Ga. App. 145, 840 S.E.2d 519, 2020 Ga. App. LEXIS 128 (2020).

Evidence showing that the defendant assisted the co-defendant in forcing the victim to perform sexual acts for money, telling the victim that the victim had to make the men they solicited “want it,” and taking the victim to places to engage in sexual acts sufficiently supported the defendant’s convictions on the charges of trafficking of persons for sexual servitude

and cruelty to children in the second degree. *Robertson v. State*, 359 Ga. App. 326, 857 S.E.2d 485, 2021 Ga. App. LEXIS 190 (2021).

Jury was authorized to find beyond a reasonable doubt that the defendant committed the indicted offense of trafficking an individual for sexual servitude because the defendant used a prostitution website to knowingly solicit a girl whom the defendant believed to be under the age of 18 years for the purposes of sexual intercourse and oral sex in exchange for money. *Brailsford v. State*, 366 Ga. App. 331, 882 S.E.2d 648, 2023 Ga. App. LEXIS 1 (2023).

Evidence was sufficient to support defendant’s conviction of knowingly providing the victim for the purpose of sexual servitude because it established that defendant’s phone number was listed on the various ads placed to advertise the victim’s services, defendant paid for and provided the room where the victim performed the sexual acts, defendant spoke with the potential customers and called the victim to let her know which sexual act she was to perform, and the victim admitted to giving some of the money she earned to defendant. *Burnette v. State*, 368 Ga. App. 184, 889 S.E.2d 373, 2023 Ga. App. LEXIS 277 (2023).

There was sufficient evidence to support the defendant’s conviction for trafficking persons for sexual servitude where, rather than provide the alleged 14-year-old girl with money to help the girl out of the group home, the defendant convinced the girl to come to Atlanta to be the defendant’s live in maid with benefits, the defendant’s pet, and the defendant’s slave, who would do domestic chores, give the defendant massages, and do sexual stuff, and in return the defendant would save the girl from all the “crazy people” out there. *Boone v. State*, 371 Ga. App. 207, 899 S.E.2d 811, 2024 Ga. App. LEXIS 136 (2024).

RESEARCH REFERENCES

U.L.A.

Uniform Act on Prevention of and Remedies for Human Trafficking, § 3 et seq.

AL.R.

Offense of Human Trafficking of Minor under State Laws, 77 A.L.R.7th 3.

Offense of human trafficking of minor under state laws, 77 A.L.R.7th 3.

Offense of human trafficking of minor under state laws, 77 A.L.R.7th 3.

Am. Jur. Trials.

Litigation of Criminal Prosecutions for Human Trafficking, 165 Am. Jur. Trials 313.

16-5-47. Posting model notice with human trafficking hotline information in businesses and on internet.

(a) As used in this Code section, the term:

(1) “Adult entertainment establishment” means any place of business or commercial establishment wherein:

(A) The entertainment or activity therein consists of nude or substantially nude persons dancing with or without music or engaged in movements of a sexual nature or movements simulating sexual intercourse, oral copulation, sodomy, or masturbation;

(B) The patron directly or indirectly is charged a fee or required to make a purchase in order to view entertainment or activity which consists of persons exhibiting or modeling lingerie or similar undergarments; or

(C) The patron directly or indirectly is charged a fee to engage in personal contact by employees, devices, or equipment, or by personnel provided by the establishment.

Such term shall include, but shall not be limited to, bathhouses, lingerie modeling studios, and related or similar activities. Such term shall not include businesses or commercial establishments which have as their sole purpose the improvement of health and physical fitness through special equipment and facilities, rather than entertainment.

(2) “Agricultural products” means raising, growing, harvesting, or storing crops; feeding, breeding, or managing livestock, equine, or poultry; producing or storing feed for use in the production of livestock, including, but not limited to, cattle, calves, swine, hogs, goats, sheep, equine, and rabbits, or for use in the production of poultry, including, but not limited to, chickens, hens, ratites, and turkeys; producing plants, trees, Christmas trees, fowl, equine, or animals; or producing aquacultural, horticultural, viticultural, silvicultural, grass sod, dairy, livestock, poultry, egg, and apiarian products.

(3) “Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(3.1) “Body art studio” shall have the same meaning as set forth in paragraph (3) of Code Section 31-40-1.

(3.2) “Convenience store” means a retail establishment which offers for sale packaged or unprepared food and grocery items for consumption off the premises and may sell fuel products, household items, or tobacco products. This shall not include establishments that offer for sale more than 20 different cuts of refrigerated meats or more than 50 types of whole produce.

(4) “Day hauler” means any person who is employed by a farm labor contractor to transport, or who for a fee transports, by motor vehicle, workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person; provided, however, that such term shall not include a person who produces agricultural products.

(5) “Farm labor contractor” means any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to such persons; provided, however, that such term shall not include a person who produces agricultural products.

(5.1) “Government building with public access” means a building or portion of a building owned or leased by a government entity.

(5.2) “Government entity” means an office, agency, authority, department, commission, board, body, division, instrumentality, or institution of the executive, legislative, or judicial branch of the state government and any county, municipal corporation, or consolidated government within this state.

(6) “Hotel” means any hotel, inn, or other establishment which offers overnight accommodations to the public for hire.

(6.1) “Manufacturing facility” means any facility that manufactures finished products; provided that more than 300 individuals are employed at such facility.

(7) “Massage therapist” means a person licensed pursuant to Chapter 24A of Title 43.

(8) “Primary airport” shall have the same meaning as set forth in 49 U.S.C. Section 47102(16).

(9) “Substantially nude” means dressed in a manner so as to display any portion of the female breast below the top of the areola or displaying any portion of any person’s pubic hair, anus, cleft of the buttocks, vulva, or genitals.

(10) “Truck stop” means a privately owned and operated facility that provides food, fuel, shower or other sanitary facilities, and lawful overnight truck parking.

(b) Effective September 15, 2013, the following businesses and other establishments shall post the notice described in subsection (c) of this Code section, or a substantially similar notice, in English, Spanish, and any other language deemed appropriate by the director of the Georgia Bureau of Investigation, in each public restroom for the business or establishment and either in a conspicuous place near the public entrance of the business or establishment or in another conspicuous location in clear view of the public and employees where similar notices are customarily posted:

- (1) Adult entertainment establishments;
- (2) Bars;
- (3) Primary airports;
- (4) Passenger rail or light rail stations;
- (5) Bus stations;
- (6) Truck stops;
- (7) Emergency rooms within general acute care hospitals;
- (8) Urgent care centers;
- (9) Farm labor contractors and day haulers;
- (10) Privately operated job recruitment centers;
- (11) Safety rest areas located along interstate highways in this state;
- (12) Hotels;
- (13) Businesses and establishments that offer massage or body-work services by a massage therapist or a person who is not a massage therapist;
- (14) Government buildings; provided, however, that in the case of leased property, this paragraph shall only apply to public restrooms that are a part of such lease for exclusive use by the government entity;
- (15) Convenience stores;

- (16) Body art studios;
- (17) Manufacturing facilities; and
- (18) Medical offices.

(c) The Georgia Bureau of Investigation shall develop a model notice that is available for download from its Internet website. Such notice shall be at least 8 1/2 inches by 11 inches in size and printed in a 16 point font in English, Spanish, and any other language deemed appropriate by the director of the Georgia Bureau of Investigation. Such model notice shall provide information giving individuals a method to contact the National Human Trafficking Hotline and the Statewide Georgia Hotline for Domestic Minor Trafficking.

(c.1) Every government entity shall, on the homepage of its website, provide an identified hyperlink to the model notice that is on the Georgia Bureau of Investigation website as provided for in subsection (c) of this Code section.

(d)(1) A law enforcement officer shall notify, in writing, any business or establishment that has failed to comply with this Code section that it has failed to comply with the requirements of this Code section and if it does not correct the violation within 30 days from the date of receipt of the notice, the owner of such business or establishment shall be charged with a violation of this Code section and upon conviction shall be guilty of the misdemeanor offense of failure to post the National Human Trafficking Resource Center hotline number and shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00; but the provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against an owner for conviction thereof. Upon a second or subsequent conviction, the owner shall be guilty of a high and aggravated misdemeanor and shall be punished by a fine of not less than \$1,000.00 nor more than \$5,000.00. The notice required by this subsection may be hand delivered to the noncomplying business or establishment or mailed to it at the address of such business or establishment.

(2) This subsection shall not apply to government entities.

History.

Code 1981, § 16-5-47, enacted by Ga. L. 2013, p. 620, § 1/HB 141; Ga. L. 2017, p. 417, § 4-1/SB 104; Ga. L. 2017, p. 489, § 2/HB 341; Ga. L. 2023, p. 13, § 1/SB 42, effective July 1, 2023; Ga. L. 2024, p. 418, § 1/SB 370, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, in paragraph (d)(1), substituted “and shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00” for “and may be punished by a fine of not more than \$500.00” in the first sentence

and substituted “by a fine of not less than \$1,000.00 nor more than \$5,000.00” for “a fine not to exceed \$5,000.00” in the second sentence.

The 2024 amendment, effective July 1, 2024, added paragraphs (a)(3.1), (a)(3.2), and (a)(6.1); in paragraph (b)(13), inserted “a massage therapist or” near the middle, and deleted “and” from the end; substituted a semicolon for a period at the end of paragraph (b)(14); and added paragraphs (b)(15) through (b)(18).

Editor’s notes.

Ga. L. 2024, p. 418, § 1/SB 370, which amended this Code section, purported to add two new paragraphs in subsection (a) but actually added three.

Law reviews.

For article, “The Thirteenth Amendment and Human Trafficking: Lessons & Limitations,” see 36 Ga. St. U.L. Rev. 1005 (2020).

For article, “Preventing Trafficking Through New Global Governance Over Labor Migration,” see 36 Ga. St. U.L. Rev. 1027 (2020).

For article, “The Public Health Approach to Human Trafficking Prevention,” see 36 Ga. St. U.L. Rev. 1059 (2020).

For article, “Medical-Legal Collaboration and Community Partnerships: Prioritizing Prevention of Human Trafficking in Federally Qualified Health Centers,” see 36 Ga. St. U.L. Rev. 1075 (2020).

For article, “Understanding Risk and Prevention in Midwestern Antitrafficking Efforts: Service Providers’ Perspectives,” see 36 Ga. St. U.L. Rev. 1105 (2020).

For article, “Toward Trauma-Informed Professional Practices: What Legal Advocates and Journalists Can Learn from Each Other and Survivors of Human Trafficking,” see 36 Ga. St. U.L. Rev. 1129 (2020).

For article, “The Limits and Possibilities of Data-Driven Antitrafficking Efforts,” see 36 Ga. St. U.L. Rev. 1147 (2020).

For note, “Uncovering the ‘Hidden Crime’ of Human Trafficking by Empowering Individuals to Respond,” see 36 Ga. St. U.L. Rev. 1173 (2020).

RESEARCH REFERENCES

U.L.A.

Uniform Act on Prevention of and Remedies for Human Trafficking, § 19 et seq.

ARTICLE 4

RECKLESS CONDUCT

Law reviews.

For article, “SB 85: Mandatory Report-

ing of Hazing-Related Violations,” see 38 Ga. St. U.L. Rev. 1 (2021).

16-5-60. Reckless conduct causing harm to or endangering the bodily safety of another; conduct by HIV infected persons.

(a)(1) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(2) As used in this Code section, the term “person living with HIV” means a person who has a confirmed positive HIV test, whether or not that person has AIDS, or who has been clinically diagnosed as having AIDS.

(b)(1) As used in this subsection, the terms “independent activity,”

“legal custodian,” and “neglect” shall have the same meaning as provided in Code Section 15-11-2.

(2) A person who causes bodily harm to or endangers the bodily safety of another person by consciously disregarding a substantial and unjustifiable risk that his or her act or omission will cause harm or endanger the safety of the other person and the disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation is guilty of a misdemeanor; provided, however, that it shall not be a violation of this subsection for a legal custodian to permit a child to engage in one or more independent activities unless doing so constitutes neglect.

(c) A person living with HIV who:

(1) Knowingly engages in a sexual act with the intent to transmit HIV and does not disclose his or her status as being a person living with HIV to the other person prior to that sexual act when such act has a significant risk of transmission based on current scientifically supported levels of risk of transmission; provided, however, that this paragraph shall not apply to a person living with HIV who is forced into a sexual act against his or her will; or

(2) Offers or consents to perform with another person a sexual act for money with the intent to transmit HIV without disclosing his or her status as being a person living with HIV to that other person prior to offering or consenting to perform the sexual act when such act has a significant risk of transmission based on current scientifically supported levels of risk of transmission, is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than five years.

History.

Code 1933, § 26-2910, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1988, p. 1799, § 3; Ga. L. 2003, p. 306, § 1; Ga. L. 2022, p. 663, § 2/SB 164; Ga. L. 2025, p. 718, § 2/SB 110, effective July 1, 2025.

Amendments.

The 2022 amendment, effective July 1, 2022, designated the existing provisions of subsection (a) as paragraph (a)(1); added paragraph (a)(2); inserted “or her” in the middle of subsection (b); rewrote subsection (c); and deleted subsection (d), which read:

“(d) A person who is an HIV infected person or hepatitis infected person and who, after obtaining knowledge of being infected with HIV or hepatitis, commits an assault with the intent to transmit HIV or hepatitis, using his or her body

fluids (blood, semen, or vaginal secretions), saliva, urine, or feces upon:

“(1) A peace officer while the peace officer is engaged in the performance of his or her official duties or on account of the peace officer’s performance of his or her official duties; or

“(2) A correctional officer while the correctional officer is engaged in the performance of his or her official duties or on account of the correctional officer’s performance of his or her official duties

“is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years.”

The 2025 amendment, effective July 1, 2025, added paragraph (b)(1), designated the existing provisions of subsection (b) as paragraph (b)(2), and added the

proviso at the end of paragraph (b)(2). See Editor's notes for applicability.

Editor's notes.

Ga. L. 2025, p. 718, § 13/SB 110, not codified by the General Assembly, provides, in part, that the amendment of subsection (b) shall apply to offenses committed on or after July 1, 2025.

Law reviews.

For note, "HIV No Longer a Death Sentence But Still a Life Sentence: The Constitutionality of HIV Criminalization Under the Eighth Amendment," see 56 Ga. L. Rev. 1189 (2022).

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

JURY INSTRUCTIONS

Application

Evidence sufficient to convict.

Evidence that following an argument on the basketball court at a local park, the defendant aimed a handgun at the victim and then fired shots into the air as the defendant was driving away was sufficient to support the defendant's conviction of reckless conduct as a lesser-included offense of aggravated assault. *Sherrod v. State*, 355 Ga. App. 441, 844 S.E.2d 508, 2020 Ga. App. LEXIS 330 (2020).

Sexually transmitted disease. — In an action for reckless conduct, the trial court did not err in concluding that O.C.G.A. § 16-5-60(b) could apply to the potential transmission of gonorrhea which the General Assembly elsewhere declared to be contagious, infectious, communicable, and dangerous to the public health, as there was testimony that gonorrhea was a sexually transmitted disease for which the juvenile had recently been treated and that the juvenile placed an object used orally by others — i.e., a toothbrush or toothbrushes — into the juvenile's vagina. *In the Interest of A. A.*, 362 Ga. App. 426, 868 S.E.2d 812, 2022 Ga. App. LEXIS 41 (2022).

Verdicts not mutually exclusive.

Because the conduct underlying the charges against the defendant was the defendant's failure to provide healthcare for the victim, intentionally by willfully depriving the victim of healthcare, which served as the felony underlying the count of felony murder, and negligently by dis-

regarding a substantial and unjustifiable risk and grossly deviating from the standard of care in the count of reckless conduct, which served as the unlawful act underlying the charge of involuntary manslaughter, the crimes could have been accomplished by the same conduct, but with a different level of mens rea, and the verdicts returned by the jury finding the defendant guilty of all four counts were not mutually exclusive. *Booth v. State*, 311 Ga. 374, 858 S.E.2d 39, 2021 Ga. LEXIS 195 (2021).

Jury Instructions

Reckless conduct as lesser included offense of aggravated assault.

— Aggravated assault count of the indictment merged with the malice murder conviction, and the felony murder count, predicated in part on aggravated assault, was vacated by operation of law; thus, the claim of error that the trial court erred by refusing to charge the jury on reckless conduct as a lesser-included offense of aggravated assault was moot when the defendant was not convicted of aggravated assault. *McCluskey v. State*, 307 Ga. 740, 838 S.E.2d 270, 2020 Ga. LEXIS 51 (2020).

Trial court erred by limiting jury instruction on the lesser-included offense of reckless conduct to only one of the three counts of aggravated assault, but the error affected only the single aggravated assault conviction that was not merged into another conviction. *Brooks v. State*, 369 Ga. App. 450, 892 S.E.2d 400, 2023 Ga. App. LEXIS 413 (2023).

Jury Instructions (Cont'd)

Refusal to instruct on reckless conduct. — When the defendant was convicted of malice murder, the trial court did not err in failing to instruct the jury on the lesser-included offense of reckless conduct

as there was no evidence that dropping the victim's body into the brush pile caused the victim's death as the defendant inflicted the fatal injuries before the victim was moved. *Collett v. State*, 305 Ga. 853, 828 S.E.2d 362, 2019 Ga. LEXIS 331 (2019).

16-5-61. Hazing.

(a) As used in this Code section, the term:

(1) “Haze” or “hazing” means to subject a student to an activity which endangers or is likely to endanger the physical health of a student or coerces the student through the use of social or physical pressure to consume any food, liquid, alcohol, drug, or other substance which subjects the student to a likely risk of vomiting, intoxication, or unconsciousness regardless of a student’s willingness to participate in such activity.

(2) “School” means any unit of the University System of Georgia, any unit of the Technical College System of Georgia, or any private postsecondary school, college, or university in this state.

(3) “School organization” means any association, corporation, order, club, society, fraternity, sorority, athletic team, or a group living together which has students or alumni as its principal members, including local affiliate organizations.

(4) “Student” means any person enrolled or prospectively enrolled in a school in this state.

(b) It shall be unlawful for any person to haze any student in connection with or as a condition or precondition of gaining acceptance, membership, office, or other status in a school organization.

(c) Any person who violates this Code section shall be guilty of a misdemeanor of a high and aggravated nature.

History.

Code 1981, § 16-5-61, enacted by Ga. L. 1988, p. 694, § 1; Ga. L. 1990, p. 1690, § 1; Ga. L. 2021, p. 206, § 2/SB 85.

Amendments.

The 2021 amendment, effective July 1, 2021, rewrote subsection (a).

Cross references.

Establishment of school policies and mandatory reporting of hazing, § 20-1-30.

Editor’s notes.

Ga. L. 2021, p. 206, § 1/SB 85, not codified by the General Assembly, provided: “This Act shall be known and may be cited as the ‘Max Gruver Act.’”

Law reviews.

For article, “SB 85: Mandatory Reporting of Hazing-Related Violations,” see 38 Ga. St. U.L. Rev. 1 (2021).

ARTICLE 5
CRUELTY TO CHILDREN

16-5-70. Cruelty to children.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

APPLICATION

MERGER WITH OTHER OFFENSES

JURY INSTRUCTIONS

PROCEDURAL ISSUES

General Consideration

Rule of lenity did not apply. — Trial court did not err by not applying the rule of lenity in sentencing the defendant on cruelty to children in the first degree, rather than in the third degree as a review of the statute and the indictment revealed that the counts did not address the same criminal conduct as first degree required proof of malice and suffering of excessive mental pain, while third degree required only that the perpetrator do an act with knowledge that a minor child was present and can see or hear the act. *Gonzalez v. State*, 352 Ga. App. 83, 833 S.E.2d 727, 2019 Ga. App. LEXIS 528 (2019).

Application

Sufficient evidence of malice.

Evidence was legally sufficient to authorize a rational trier of fact to find sufficient malice to find defendant guilty beyond a reasonable doubt of first degree cruelty to children, as it showed that defendant placed the victim, his niece, on the bed, pulled down her pants, and licked her vagina and laid on top of the victim, touched her vagina with his fingers, and placed his penis on her vagina. *Shropshire v. State*, 365 Ga. App. 653, 878 S.E.2d 562, 2022 Ga. App. LEXIS 486 (2022), vacated in part, 318 Ga. 14, 896 S.E.2d 541, 2023 Ga. LEXIS 265 (2023), vacated in part, reaff'd, 371 Ga. App. 686, 902 S.E.2d 677, 2024 Ga. App. LEXIS 202 (2024).

Evidence was sufficient to prove that defendant acted with the requisite malice to support her convictions of first-degree

cruelty to children because it showed that after having spent the nighttime hours awake with the defendant, the victim, a seven-week old baby, had numerous injuries, a medical expert testified that the injuries would have caused the victim to experience pain that would have been visible to defendant, and rather than seeking medical care, defendant and her boyfriend impeded the efforts of the victim's caregiver and family members to take her to the hospital. *Mabala v. State*, 369 Ga. App. 634, 894 S.E.2d 209, 2023 Ga. App. LEXIS 509 (2023).

Sufficient evidence supported defendant's conviction for first-degree child cruelty based on the injuries to the girlfriend's two-year-old son, including brain trauma, bruising, and burns; defendant's malicious failure to take the victim to the hospital for 30 minutes even though the victim was unconscious; and the injuries caused permanent disabilities to the child. *Tamayo v. State*, 371 Ga. App. 494, 901 S.E.2d 310, 2024 Ga. App. LEXIS 172 (2024).

Insufficient evidence that grandson heard grandfather murder grandmother. — Ambiguous statement from the grandson that "something just told" the grandson to go downstairs, without more, did not establish that the grandson heard the act of the defendant murdering the defendant's spouse to constitute the underlying offense of cruelty to children; thus, that conviction could not be sustained on appeal. *McCluskey v. State*, 307 Ga. 740, 838 S.E.2d 270, 2020 Ga. LEXIS 51 (2020).

Application (Cont'd)

Cruel or excessive physical or mental pain. — Evidence was sufficient to convict the defendant of cruelty to children as the jury could infer from the evidence that the defendant's acts caused the victim, defendant's son, excessive physical and mental pain, as the defendant admitted beating the victim, holding the victim's feet beneath scalding water, and pressing the victim beneath the water twice for long periods of time; and the defendant's acts were unreasonable and unjustified. *Williams v. State*, 312 Ga. 386, 863 S.E.2d 44, 2021 Ga. LEXIS 604 (2021).

Failure to procure medical treatment. — Evidence was sufficient to support the defendant's conviction for cruelty to children in the first degree based on the defendant hitting the defendant's two year old child on the head and instead of seeking medical care or reporting the child's injury to any authority, the defendant moved the child to a bedroom, placed the child's body in the attic, and pressured the mother, the defendant's wife, to obtain money for bus tickets and fled the country. *Vasquez v. State*, 306 Ga. 216, 830 S.E.2d 143, 2019 Ga. LEXIS 433 (2019).

Defendant's convictions for family violence aggravated battery and cruelty to children were upheld because the circumstantial evidence was sufficient as the jury reasonably inferred that defendant inflicted the injuries during periods defendant had sole custody of the child and defendant's marijuana use was intrinsic evidence necessary to complete the story of indifference toward seeking medical care for the child's serious injuries. *McCloud v. State*, 371 Ga. App. 480, 901 S.E.2d 315, 2024 Ga. App. LEXIS 174 (2024).

Insufficient care of injuries.

Evidence that the victims suffered breaks to an arm and a leg, that the wife would grab the victims' arms and twist them and drag the victims up and down the stairs by their arms, and that the defendant applied pain relief cream to on victim's arm was sufficient to support the convictions for aggravated battery and first-degree child cruelty. *Rosenbaum v.*

State, 373 Ga. App. 417, 908 S.E.2d 672, 2024 Ga. App. LEXIS 447 (2024).

Malnourished child. — Evidence authorized a rational trier of fact to find that, given the oldest child's double black eyes, as well as the dire condition of the victims who were underweight compared to the defendant mother's healthy condition, the mother's intention was willful such that the mother's convictions for cruelty to children in the first degree were proper. *Brown v. State*, 356 Ga. App. 516, 848 S.E.2d 126, 2020 Ga. App. LEXIS 478 (2020).

Evidence sufficient for murder of infant child. — Defendant's conviction for murder was upheld on appeal because the evidence established that the only possible perpetrators of the fatal abdominal trauma to the child were defendant or the mother and the expert opinion evidence established that the death would have occurred within 45 minutes after the abdominal trauma and likely sooner than that and the mother had already gone to work and the neighbor who drove the child and the defendant to the hospital testified that the child was still alive. *Wilson v. State*, 308 Ga. 306, 840 S.E.2d 370, 2020 Ga. LEXIS 170 (2020).

Felony murder conviction predicated on second-degree cruelty to children upheld. — Evidence was sufficient to support defendant's conviction for felony murder predicated on second-degree cruelty to children because the defendant admitted that the defendant escorted the walking, talking victim into the defendant's bedroom and the defendant was alone with the child before the child was found limp and unresponsive. The medical experts testified to seeing numerous signs of abuse and that the child's head and mouth injuries were inflicted a short time prior to the child's arrival at the emergency room. *Hughs v. State*, 312 Ga. 606, 864 S.E.2d 59, 2021 Ga. LEXIS 647 (2021).

Child left in car. — Evidence was sufficient to support the defendant's conviction as the jury could have concluded that the defendant did not forget that the child was in the car in the short time between leaving the restaurant and arriving at work and the jury could have found

suspect the defendant's 30-second delay in the vehicle after parking at his office, visit to the car after lunch, failure to see or smell the child in the vehicle when the defendant returned after work, and the defendant's reactions after discovering that the child was dead, which several witnesses described as very odd or forced. *Harris v. State*, 314 Ga. 238, 875 S.E.2d 659, 2022 Ga. LEXIS 169 (2022).

Leaving very young child alone on couch. — Evidence was sufficient to convict the defendant of second-degree cruelty to children because the defendant's failure to secure the very young victim before leaving the victim on a couch for 15 minutes while the defendant used the bathroom exposed the victim to an obvious risk of injury of being smothered by couch cushions; and the defendant's actions showed the defendant's reckless disregard for the victim's safety. *Scott v. State*, 307 Ga. 37, 834 S.E.2d 88, 2019 Ga. LEXIS 635 (2019).

Evidence sufficient for conviction.

Evidence was sufficient to convict the defendant of the remaining counts of aggravated child molestation, child molestation, attempted child molestation, and cruelty to children, not included in Count 3, based on the video-recordings of the children's forensic interviews; testimony about the children's various disclosures; the children's testimony; and the neighbors' testimony that the neighbors observed bruises and other injuries on the children, and saw the defendant kick one of the children. *Shepherd v. State*, 353 Ga. App. 228, 836 S.E.2d 221, 2019 Ga. App. LEXIS 678 (2019).

Sufficient evidence supported the appellant's convictions for burglary, cruelty to children, terroristic threats, and aggravated assault as neither parent gave the appellant permission to enter their home, the appellant was identified as the intruder who held a knife to the child's neck, and struggled with one parent as the appellant tried to remove the child from the home, and the appellant threatened to kill one of the children while holding a knife to their neck. *Cordova v. State*, 351 Ga. App. 652, 832 S.E.2d 465, 2019 Ga. App. LEXIS 461 (2019).

Although the evidence did not show exactly how the victim's fatal injuries

were inflicted, the evidence was sufficient to support the defendant's murder and child cruelty convictions, as the father said consistently that the father was out by the car at the time the injuries occurred, whereas the defendant admitted to being alone in the room with the victim and changed the defendant's story several times, each time giving an account that was dubious in light of the physical and medical evidence. *Long v. State*, 309 Ga. 721, 848 S.E.2d 91, 2020 Ga. LEXIS 609 (2020).

Evidence showing that the defendant assisted the co-defendant in forcing the victim to perform sexual acts for money, telling the victim that the victim had to make the men they solicited "want it," and taking the victim to places to engage in sexual acts sufficiently supported the defendant's convictions on the charges of trafficking of persons for sexual servitude and cruelty to children in the second degree. *Robertson v. State*, 359 Ga. App. 326, 857 S.E.2d 485, 2021 Ga. App. LEXIS 190 (2021).

Defendant's conviction for cruelty to children was supported by sufficient evidence, as the evidence enabled a rational trier of fact to infer that the children at least heard the shooting and to conclude beyond a reasonable doubt that defendant was guilty of cruelty to children in the third degree. *State v. Owens*, 312 Ga. 212, 862 S.E.2d 125, 2021 Ga. LEXIS 567 (2021).

Evidence was sufficient to convict the defendant of cruelty to children in the first degree as there was no requirement to prove that the defendant had knowledge that the first victim was under the age of 18. *Flakes v. State*, 365 Ga. App. 97, 877 S.E.2d 635, 2022 Ga. App. LEXIS 388 (2022).

Where the victim testified to feeling scared and confused, was diagnosed with post-traumatic stress disorder, anxiety, and depression, and the victim's psychologist testified that the victim exhibited fear and dissociation when discussing the incident, the evidence was sufficient to support the defendant's conviction for cruelty to children in the first degree. *Shropshire v. State*, 365 Ga. App. 653, 878 S.E.2d 562, 2022 Ga. App. LEXIS 486 (2022), vacated

Application (Cont'd)

in part, 318 Ga. 14, 896 S.E.2d 541, 2023 Ga. LEXIS 265 (2023), vacated in part, reaff'd, 371 Ga. App. 686, 902 S.E.2d 677, 2024 Ga. App. LEXIS 202 (2024).

Attempted suicide in front of a child. — Sufficient evidence supported the defendant's conviction for cruelty to children because the defendant's attempted suicide by hanging in front of a girlfriend's young daughter, causing the daughter distress, was done willfully and wantonly with awareness that the suicide attempt would likely cause the daughter mental distress. *Fraga v. State*, 371 Ga. App. 430, 900 S.E.2d 737, 2024 Ga. App. LEXIS 162 (2024).

Violating family violence order. — Sufficient evidence supported defendant's conviction for violating a family violence order as the jury could reasonably infer the order was issued in relation to the defendant's earlier family violence arrests, and defendant violated a criminal family violence order by returning to the girlfriend's home. *Fraga v. State*, 371 Ga. App. 430, 900 S.E.2d 737, 2024 Ga. App. LEXIS 162 (2024).

Merger with Other Offenses

Unit of prosecution analysis required. — Defendant's sentences on two counts of first degree child cruelty were vacated because the order entered showed that the trial court neither engaged in the unit of prosecution analysis nor considered whether circumstances existed such that the unit of prosecution analysis did not need to be performed; as a result, resentencing was required. *McDaniel v. State*, 360 Ga. App. 194, 860 S.E.2d 806, 2021 Ga. App. LEXIS 320 (2021).

No merger with malice murder. — Trial court correctly sentenced the defendant on the conviction for cruelty to children by drowning as that conviction did not merge with the defendant's malice murder conviction because the two crimes contained mutually exclusive elements.

Williams v. State, 312 Ga. 386, 863 S.E.2d 44, 2021 Ga. LEXIS 604 (2021).

Conviction for cruelty to children did not merge with the rape conviction, etc.

Trial court properly declined to merge the rape and cruelty to children offenses because evidence that the defendant used tape to silence the victim as the victim cried during the abuse and that the defendant caused injury and scarring to the victim's anus that made going to the bathroom painful was required for the latter conviction. *Hambrick v. State*, 353 Ga. App. 666, 839 S.E.2d 664, 2020 Ga. App. LEXIS 31 (2020), cert. denied, No. S20C0935, 2020 Ga. LEXIS 806 (Ga. Sept. 28, 2020).

Multiple cruelty to children charges merged.

Three of defendant's nine convictions of cruelty to children should have merged into other counts because they could have occurred at the same time as other acts of cruelty. There was insufficient evidence from which to conclude that the victim's subdural hemorrhage did not occur at the same time as the skull fracture, the court could not say that the extensive bruising on the victim's body was not inflicted at the same time as the other acts of cruelty, and there was insufficient evidence to conclude that the victim's tibia fracture was inflicted independently from her femur fracture. *Mabala v. State*, 369 Ga. App. 634, 894 S.E.2d 209, 2023 Ga. App. LEXIS 509 (2023).

Multiple convictions for cruelty to children. — Defendant's child-cruelty convictions did not merge because the convictions under different subsections each required proof of a different fact, and the convictions based on confinement in different locations did not merge because one crime was complete before the commission of a subsequent crime. *Franklin v. State*, 351 Ga. App. 539, 831 S.E.2d 186, 2019 Ga. App. LEXIS 431 (2019), cert. denied, No. S19C1590, 2020 Ga. LEXIS 107 (Ga. Feb. 10, 2020).

Trial court did not err in failing to merge the five counts of cruelty to children for sentencing purposes because defendant was charged with five counts with the separate acts being identified as hitting, placing a towel over the child's mouth and nose, holding the child's face against a chair cushion, choking, and throwing the child into a crib, and the court could not say that the distinct acts merged as it would depend on facts that were not in the record. *Ray v. State*, 359 Ga. App. 637, 859 S.E.2d 793, 2021 Ga. App. LEXIS 255 (2021).

Jury Instructions

Jury instruction on statute of limitation. — Trial counsel was ineffective in failing to request a jury instruction on the statute of limitation with regard to the child-cruelty charge because in the indictment

the state did not allege that the statute of limitation for child cruelty was tolled based on the victim being under the age of 16; thus, such proof was inadmissible at trial. *Slack v. State*, 354 Ga. App. 727, 841 S.E.2d 231, 2020 Ga. App. LEXIS 215 (2020).

Procedural Issues

General demurrer properly denied.

— Trial court did not err in failing to grant a general demurrer to the first-degree child cruelty count because defendant did not preserve the argument challenging the substance of that count since defendant did not file a timely general demurrer or motion in arrest of judgment. *Tamayo v. State*, 371 Ga. App. 494, 901 S.E.2d 310, 2024 Ga. App. LEXIS 172 (2024).

RESEARCH REFERENCES

ALR.

“Injurious Environment” in Child Neglect Situations, 88 A.L.R.7th 5.

16-5-71. Tattooing.

RESEARCH REFERENCES

ALR.

Liability for Negligence for Body Piercings and Tattoos, 92 A.L.R.7th 7.

ARTICLE 6

FETICIDE

16-5-80. Feticide; voluntary manslaughter of an unborn child; penalties.

JUDICIAL DECISIONS

Jury instructions. — Trial court did not plainly err by instructing the jury on attempted feticide because any alleged error was cured by the trial court sending the indictment with the jurors for deliberations

and instructing the jury that the indictment stated the exact offenses charged. *Newton v. State*, 370 Ga. App. 589, 898 S.E.2d 595, 2024 Ga. App. LEXIS 52 (2024).

ARTICLE 7
STALKING

RESEARCH REFERENCES

ALR.

Attorney’s fees under stalking statutes, 77 A.L.R.7th 8.

RESEARCH REFERENCES

ALR.

Attorney’s Fees Under Stalking Statutes, 77 A.L.R.7th 8.

16-5-90. Stalking; psychological evaluation.

Cross references.

Stalking between militia members, § 38-2-1006.1.

JUDICIAL DECISIONS

Probable cause to arrest prevented malicious prosecution recovery. — In plaintiff’s § 1983 action for malicious prosecution against detective, the district court properly ruled the detective was entitled to qualified immunity because the detective’s warrant application established probable cause to arrest the plaintiff for aggravated stalking in violation of O.C.G.A. § 16-5-91(a). The warrant application established that the protective order prohibited the plaintiff from contacting the plaintiff’s spouse and the plaintiff violated the order when the plaintiff sent the plaintiff’s spouse’s photograph through their computer network account without the spouse’s consent; the application also established that the plaintiff contacted the spouse to harass the spouse and intimidate the spouse by communicating implicitly that their hostilities would continue. *Kinnemore v. Cochran*, No. 21-11360, 2021 U.S. App. LEXIS 34058 (11th Cir. Nov. 17, 2021).

Sufficiency of indictment. — Trial court’s grant of the defendant’s motion in arrest of judgment was reversed because the indictment sufficiently stated the offense of aggravated stalking in the language of the statute and by plainly stating the nature of the offense, the defendant could not admit the facts alleged and still be

innocent. The court also found that the failure to allege in the indictment a place other than the defendant’s residence where the offense occurred was an affirmative defense that need not be negated in the indictment. *State v. Walker*, 375 Ga. App. 288, 913 S.E.2d 83, 2025 Ga. App. LEXIS 69 (2025).

Harassing and intimidating conduct required. — Trial court did not abuse its discretion in finding a pattern of harassing and intimidating conduct justifying a protective order against defendant because defendant was petitioner’s neighbor, had screamed at petitioner, her mother, visitors and contractors on multiple occasions, and petitioner testified she did not feel safe to go outside. *Hayward v. Wisner*, 369 Ga. App. 100, 892 S.E.2d 398, 2023 Ga. App. LEXIS 412 (2023).

Use of same evidence in two prosecutions was double jeopardy. — Defendant was prosecuted twice for stalking when the state, with a few exceptions, relied on almost exactly the same evidence to prove the defendant’s alleged harassing and intimidating course of conduct at the trials for the stalking and aggravated stalking, with only the additional evidence concerning violation of the no-contact order and an encounter with the victim’s family

during the second trial. *Ward v. State*, 351 Ga. App. 490, 831 S.E.2d 199, 2019 Ga. App. LEXIS 434 (2019), cert. denied, No. S20C0004, 2020 Ga. LEXIS 192 (Ga. Mar. 13, 2020).

Evidence of victim's fear for safety insufficient. — Evidence was insufficient to show that appellant committed stalking, and therefore the trial court abused its discretion by granting appellee's petition for a protective order, because the evidence did not show that appellant placed appellee in reasonable fear for appellee's safety. Appellant's open records request inquiring into whether appellee was the city manager or the mayor's advisor could not have put appellee in reasonable fear for appellee's safety, and appellee testified that appellant did not threaten or harm appellee and that appellant left city hall after learning that appellee was present. *Gibson-Wright v. Smith*, 370 Ga. App. 860, 896 S.E.2d 907, 2024 Ga. App. LEXIS 6 (2024).

Evidence sufficient for protective order. — There was sufficient evidence to support the trial court's entry of a stalking protective order against the respondent since the trial court heard evidence regarding several instances in which the respondent engaged in harassing or intimidating conduct against the petitioner such as when the respondent followed the petitioner and the petitioner's children home from school, when the respondent was seen near the petitioner's home after the tires on the petitioner's car were slashed, and when the respondent contacted the children's school without permission. *Oliver v. Field*,

353 Ga. App. 891, 840 S.E.2d 124, 2020 Ga. App. LEXIS 105 (2020).

Evidence insufficient for protective order.

Because the paternal grandmother's act of contacting the children after the mother directed the grandmother not to contact the mother or the mother's family did not constitute a pattern of harassing and intimidating behavior against the mother, it did not constitute stalking and the trial court abused its discretion in granting the stalking protective order. *Golias v. Boyce*, 367 Ga. App. 831, 888 S.E.2d 628, 2023 Ga. App. LEXIS 242 (2023).

Evidence was insufficient to support the Stalking Three Year Protective Order against the appellant because an element of stalking was not established where the appellant admittedly posted to Facebook commentary about the appellee, the Chair of the Henry County Board of Commissioners, (and associated individuals), but the record failed for the most part to show that the commentary was directed specifically to the appellee as opposed to the public. *Calhoun v. Harrell*, 372 Ga. App. 308, 904 S.E.2d 383, 2024 Ga. App. LEXIS 295 (2024).

Protective orders.

Trial court erred by imposing, as part of defendant's sentence, a permanent restraining order as a condition of probation, because, while a permanent restraining order was authorized under O.C.G.A. § 16-5-90, that provision applied only to defendants convicted of stalking or aggravated stalking and defendant was convicted of neither crime. *Tilman v. State*, 369 Ga. App. 81, 892 S.E.2d 181, 2023 Ga. App. LEXIS 406 (2023).

16-5-91. Aggravated stalking.

JUDICIAL DECISIONS

Double jeopardy. — Defendant was prosecuted twice for stalking when the state, with a few exceptions, relied on almost exactly the same evidence to prove the defendant's alleged harassing and intimidating course of conduct at the trials for stalking and aggravated stalking, with only the additional evidence concerning violation of the no-contact order and an encounter with the victim's family during the sec-

ond trial. *Ward v. State*, 351 Ga. App. 490, 831 S.E.2d 199, 2019 Ga. App. LEXIS 434 (2019), cert. denied, No. S20C0004, 2020 Ga. LEXIS 192 (Ga. Mar. 13, 2020).

Sufficiency of indictment. — There was no error on the face of the indictment because the indictment set out that the defendant's postcard and letter violated the aggravated stalking statutes, in that the defendant sent the postcard and letter

in violation of a no contact order and, thus, the defendant was on reasonable notice of the crime charged, aggravated stalking, and the manner in which the crime was committed — sending the postcard and letter in violation of a court order. *Carlton v. State*, 356 Ga. App. 1, 846 S.E.2d 175, 2020 Ga. App. LEXIS 401 (2020).

Trial court's grant of the defendant's motion in arrest of judgment was reversed because the indictment sufficiently stated the offense of aggravated stalking in the language of the statute and by plainly stating the nature of the offense, the defendant could not admit the facts alleged and still be innocent. The court also found that the "other than the residence of the defendant" phrase was an exception or affirmative defense that need not be negated in the indictment. *State v. Walker*, 375 Ga. App. 288, 913 S.E.2d 83, 2025 Ga. App. LEXIS 69 (2025).

Living in same household. — Victim's affirmative testimony that the defendant and the victim lived together was sufficient to support a finding that they were persons living or formerly living in the same household for purposes of the defendant's convictions for family violence battery and aggravated stalking. *Butler v. State*, 354 Ga. App. 473, 841 S.E.2d 162, 2020 Ga. App. LEXIS 203 (2020).

Defendant's own home. — Defendant's motion for directed verdict as to one of the aggravated stalking counts was improperly denied as the defendant could not be convicted of aggravated stalking at the defendant's own residence. *Fincher v. State*, 363 Ga. App. 439, 870 S.E.2d 833, 2022 Ga. App. LEXIS 147 (2022).

Venue properly established. — Evidence was sufficient to establish venue for the second charge of aggravated stalking as one of the victim's ex-boyfriend, to whose house that victim escaped from the defendant, received multiple telephone calls threatening the ex-boyfriend and that victim; and, although neither party contended that the ex-boyfriend's house was located in the county where the defendant was indicted, the jury could properly infer that the defendant was located at the defendant's home in the county where the defendant was indicted when

the defendant placed the phone calls. *Fincher v. State*, 363 Ga. App. 439, 870 S.E.2d 833, 2022 Ga. App. LEXIS 147 (2022).

Liability of detective for malicious prosecution of stalking. — In plaintiff's § 1983 action for malicious prosecution against detective, the district court properly ruled that the detective was entitled to qualified immunity because the detective's warrant application established probable cause to arrest the plaintiff for aggravated stalking in violation of O.C.G.A. § 16-5-91(a). The warrant application established that the protective order prohibited the plaintiff from contacting the plaintiff's spouse and the plaintiff violated the order when the plaintiff sent the plaintiff's spouse's photograph through their computer network account without the spouse's consent. *Kinnemore v. Cochran*, No. 21-11360, 2021 U.S. App. LEXIS 34058 (11th Cir. Nov. 17, 2021).

Evidence sufficient for conviction.

Evidence that the defendant repeatedly tried to get messages to the defendant's children, including the defendant's own phone number, in violation of court orders was sufficient to support the aggravated stalking conviction. *Carlton v. State*, 356 Ga. App. 1, 846 S.E.2d 175, 2020 Ga. App. LEXIS 401 (2020).

In an action for aggravated stalking, although the defendant denied going to the victims' house with an intent to harass or intimidate the victims, the jury did not have to find the defendant's purportedly legitimate reason for being at the victims' house credible, and in determining whether the defendant exhibited a pattern of harassing and intimidating behavior, the jury was authorized to consider prior behavior toward the victims, including calls and the letters the defendant sent directly and through third parties. *Frilando v. State*, 360 Ga. App. 50, 858 S.E.2d 525, 2021 Ga. App. LEXIS 189 (2021).

Evidence that the defendant was served notice of the protective order, including two sheriff's entry of service documents indicating that the defendant was personally served with the petition and summons prior to the hearing, was sufficient

to support the defendant's aggravated stalking conviction. *Branch v. State*, 361 Ga. App. 86, 863 S.E.2d 349, 2021 Ga. App. LEXIS 437 (2021).

State presented sufficient evidence to support the defendant's aggravated stalking conviction, including evidence of the defendant's harassing and intimidating behavior for over a decade, as well as evidence that the victim was in reasonable fear for the victim's safety based upon the defendant's past conduct in actually causing physical harm to the victim and threatening the victim with physical harm after locating the victim in Georgia. *Oliver v. State*, 364 Ga. App. 828, 876 S.E.2d 34, 2022 Ga. App. LEXIS 344 (2022).

Evidence that the defendant's wife was present when the defendant was presented with the temporary protective order (TPO) and translated the TPO to the defendant and that the defendant acknowledged that contacting the victim could be a criminal act was sufficient to support the defendant's conviction for aggravated stalking. *Hong v. State*, 366 Ga.

App. 476, 883 S.E.2d 426, 2023 Ga. App. LEXIS 29 (2023).

Evidence was sufficient to support defendant's conviction of aggravated stalking because his divorce decree incorporated a permanent restraining order and the evidence showed that he was aware of the decree and its contents. Defendant's co-indictee testified that defendant attempted to visit his ex-wife at home under cover of night while dressed in all black but was spooked by a dog barking and seeing a cop car. *Kinlaw v. State*, 317 Ga. 414, 893 S.E.2d 712, 2023 Ga. LEXIS 218 (2023).

No fatal variance between indictment and evidence. — There was no fatal variance between the aggravated stalking charges and the proof as the state presented evidence that the defendant was subject to a no-contact provision in the deprivation order as well as evidence that the juvenile court denied requests by the defendant for visitation. *Carlton v. State*, 356 Ga. App. 1, 846 S.E.2d 175, 2020 Ga. App. LEXIS 401 (2020).

16-5-94. Restraining orders; protective orders.

(a) A person who is not a minor who alleges stalking by another person may seek a restraining order by filing a petition alleging conduct constituting stalking as defined in Code Section 16-5-90. A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.

(b) Jurisdiction for such a petition shall be the same as for family violence petitions as set out in Code Section 19-13-2.

(c) Upon the filing of a verified petition in which the petitioner alleges with specific facts that probable cause exists to establish that stalking by the respondent has occurred in the past and may occur in the future, the court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor of the household from stalking. If the court issues an ex parte order, a copy of the order shall be immediately furnished to the petitioner.

(d) The court may grant a protective order on a temporary or permanent basis or approve a consent agreement to bring about a cessation of conduct constituting stalking. The court shall not have the authority to issue or approve mutual protective orders unless the respondent has filed a verified petition as a counter petition pursuant to subsection (c) of this Code section no later than three days, not

including Saturdays, Sundays, and legal holidays, prior to the hearing. Orders or agreements may:

- (1) Direct a party to refrain from such conduct;
- (2) Order a party to refrain from harassing or interfering with the other;
- (3) Award costs and attorney’s fees to either party; and
- (4) Order either or all parties to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of stalking.

(e) The provisions of subsections (c), (d), and (e) of Code Section 19-13-3, subsections (b), (c), and (d) of Code Section 19-13-4, and Code Section 19-13-5, relating to family violence petitions, shall apply to petitions filed pursuant to this Code section, except that the clerk of court may provide forms for petitions and pleadings to persons alleging conduct constituting stalking and to any other person designated by the superior court pursuant to this Code section as authorized to advise persons alleging conduct constituting stalking on filling out and filing such petitions and pleadings.

History.

Code 1981, § 16-5-94, enacted by Ga. L. 1998, p. 885, § 3; Ga. L. 1999, p. 81, § 16; Ga. L. 2021, p. 658, § 1/HB 231; Ga. L. 2023, p. 415, § 1/HB 302, effective July 1, 2023; Ga. L. 2024, p. 698, § 1/SB 324, effective July 1, 2024.

Amendments.

The 2021 amendment, effective July 1, 2021, substituted “subsections (c), (d), and (e)” for “subsections (c) and (d)” near the beginning of subsection (e).

The 2023 amendment, effective July 1, 2023, inserted “on a temporary or permanent basis” in the first sentence of subsection (d).

The 2024 amendment, effective July 1, 2024, added the second sentence in subsection (d).

Law reviews.

For article with annual survey on domestic relations, see 73 Mercer L. Rev. 89 (2021).

JUDICIAL DECISIONS

Protective order upheld. — Evidence supported the conclusion that respondent engaged in a pattern of harassing and intimidating conduct directed toward the petitioner as the petitioner testified that the respondent’s perseverance, the purported subpoena, and the creation of email and Facebook accounts in the petitioner’s name frightened the petitioner and, thus, the trial court did not abuse the court’s discretion in converting the 12-month protective order to a three-year permanent protective order. *Swearngin v.*

Rowell, 356 Ga. App. 67, 846 S.E.2d 263, 2020 Ga. App. LEXIS 417 (2020).

Trial court did not abuse its discretion in finding a pattern of harassing and intimidating conduct justifying a protective order against defendant because defendant was petitioner’s neighbor, had screamed at petitioner, her mother, visitors and contractors on multiple occasions, and petitioner testified she did not feel safe to go outside. *Hayward v. Wisner*, 369 Ga. App. 100, 892 S.E.2d 398, 2023 Ga. App. LEXIS 412 (2023).

Evidence insufficient for protective order. — Trial court abused its discretion by granting appellee a stalking protective order because appellee failed to present any evidence that appellant's actions placed appellee in reasonable fear for his safety. Appellee alleged that appellant surreptitiously installed a tracking device on appellee's vehicle, but appellee failed to offer any testimony concerning the effect of appellant's alleged actions and the parties testified that there had been no issue prior to the encounter in the skating rink parking lot. *Everett v. Parker*, 370 Ga.

App. 828, 899 S.E.2d 355, 2024 Ga. App. LEXIS 91 (2024).

Factual basis for attorney's fee award must be stated. — Statutory basis for an award of \$700 attorney's fees against a stalker who consented to a protective order could only be O.C.G.A. § 16-5-94(d)(3); however, remand was required for an explanation of the underlying factual basis for the award as well as the actual costs and reasonableness of those fees. *Brooks v. Hayden*, 355 Ga. App. 171, 843 S.E.2d 594, 2020 Ga. App. LEXIS 281 (2020).

RESEARCH REFERENCES

ALR.

Attorney's fees under stalking statutes, 77 A.L.R.7th 8.

16-5-95. Violation of civil family violence order, dating violence order, or criminal family violence order.

(a) As used in this Code section, the term:

(1) "Civil family violence order" means any temporary protective order or permanent protective order issued pursuant to Article 1 of Chapter 13 of Title 19 or Chapter 13A of Title 19.

(2) "Criminal family violence order" means:

(A) Any order of pretrial release issued as a result of an arrest for an act of family violence; or

(B) Any order for probation issued as a result of a conviction or plea of guilty, nolo contendere, or first offender to an act of family violence.

(3) "Dating violence" means the occurrence of one or more of the following acts between persons through whom a current pregnancy has developed or who are currently, or within the last 12 months were, in a dating relationship as defined in paragraph (1) of Code Section 19-13A-1:

(A) Any felony; or

(B) Commission of the offenses of simple battery, battery, simple assault, or stalking.

(4) "Dating violence order" means any temporary protective order or permanent protective order issued pursuant to Chapter 13A of Title 19.

(5) “Family violence” means the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household:

(A) Any felony; or

(B) Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.

The term “family violence” shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention.

(b) A person commits the offense of violating a civil family violence order or dating violence order or criminal family violence order when such person knowingly and in a nonviolent manner violates the terms of such order issued against that person, which:

(1) Excludes, evicts, or excludes and evicts the person from a residence or household;

(2) Directs the person to stay away from a residence, workplace, or school;

(3) Restrains the person from approaching within a specified distance of another person; or

(4) Restricts the person from having any contact, direct or indirect, by telephone, pager, facsimile, email, or any other means of communication with another person, except as specified in such order.

(c) Any person convicted of a violation of subsection (b) of this Code section shall be guilty of a misdemeanor.

(d) Nothing contained in this Code section shall prohibit a prosecution for the offense of stalking or aggravated stalking that arose out of the same course of conduct; provided, however, that, for purposes of sentencing, a violation of this Code section shall be merged with a violation of any provision of Code Section 16-5-90 or 16-5-91 that arose out of the same course of conduct.

History.

Code 1981, § 16-5-95, enacted by Ga. L. 2003, p. 652, § 1; Ga. L. 2013, p. 667, § 1/SB 86; Ga. L. 2024, p. 698, § 2/SB 324, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, added “or Chapter 13A of Title 19” at the end of paragraph (a)(1); added para-

graphs (a)(3) and (a)(4); redesignated former paragraph (a)(3) as paragraph (a)(5); rewrote paragraph (a)(5), which read: “‘Family violence’ shall have the same meaning as set forth in Code Section 19-13-1.”; inserted “order or dating violence” in subsection (b); and substituted “email” for “e-mail” in paragraph (b)(4).

Editor's notes.

Ga. L. 2024, p 698, § 2/SB 324, did not

engross the paragraph (a)(5) designation in the amendment of this Code section.

ARTICLE 8

PROTECTION OF ELDER PERSONS

16-5-100. (Effective until January 1, 2026.) Definitions.

As used in this article, the term:

(0.1) “Abuse of access” means the illegal taking of resources belonging to a disabled adult or elder person when access to the resources was obtained due to the disabled adult’s or elder person’s mental or physical incapacity.

(1) “Alzheimer’s disease” means a progressive, degenerative disease or condition that attacks the brain and results in impaired memory, thinking, and behavior.

(2) “Dementia” means:

(A) An irreversible global loss of cognitive function causing evident intellectual impairment which always includes memory loss, without alteration of state of consciousness, as diagnosed by a physician, and is severe enough to interfere with work or social activities, or both, and to require at least intermittent care or supervision; or

(B) The comatose state of an adult resulting from any head injury.

(3) “Disabled adult” means a person 18 years of age or older who is mentally or physically incapacitated or has Alzheimer’s disease or dementia.

(4) “Elder person” means a person 65 years of age or older.

(5) “Essential services” means social, medical, psychiatric, or legal services necessary to safeguard a disabled adult’s, elder person’s, or resident’s rights and resources and to maintain the physical and mental well-being of such person. Such services may include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, and protection from health and safety hazards.

(6) “Exploit” means illegally or improperly using a disabled adult or elder person or that person’s resources through undue influence, coercion, harassment, duress, deception, false representation, false pretense, abuse of access, or other similar means for one’s own or another person’s profit or advantage.

(7) “Long-term care facility” means any skilled nursing facility, intermediate care home, assisted living community, community living arrangement, or personal care home subject to regulation and licensure by the Department of Community Health.

(7.1) “Mentally or physically incapacitated” means an impairment which substantially affects an individual’s ability to:

(A) Provide personal protection;

(B) Provide necessities, including but not limited to food, shelter, clothing, medical, or other health care;

(C) Carry out the activities of daily living; or

(D) Manage his or her resources.

(8) “Resident” means any person who is receiving treatment or care in any long-term care facility.

(9) “Sexual abuse” means the coercion for the purpose of self-gratification by a guardian or other person supervising the welfare or having immediate charge, control, or custody of a disabled adult, elder person, or resident to engage in any of the following conduct:

(A) Lewd exhibition of the genitals or pubic area of any person;

(B) Flagellation or torture by or upon a person who is unclothed or partially unclothed;

(C) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is unclothed or partially clothed unless physical restraint is medically indicated;

(D) Physical contact in an act of sexual stimulation or gratification with any person’s unclothed genitals, pubic area, or buttocks or with a female’s nude breasts;

(E) Defecation or urination for the purpose of sexual stimulation of the viewer; or

(F) Penetration of the vagina or rectum by any object except when done as part of a recognized medical or nursing procedure.

History.

Code 1981, § 16-5-100, enacted by Ga. L. 2013, p. 524, § 1-1/HB 78; Ga. L. 2015, p. 598, § 1-1/HB 72; Ga. L. 2019, p. 81, § 3/HB 424; Ga. L. 2021, p. 384, § 4/HB 363.

Delayed effective date.

Code Section 16-5-100 is set out twice in this Code. This version is effective until

January 1, 2026. For version effective January 1, 2026, see the following version.

Amendments.

The 2021 amendment, effective July 1, 2021, added paragraph (0.1); and, in paragraph (6), inserted “abuse of access,” in the middle, and deleted “, including, but not limited to, the illegal taking of resources belonging to a disabled adult or

elder person when access to the resources was obtained due to the disabled adult's or

elder person's mental or physical incapacity" at the end.

JUDICIAL DECISIONS

Disabled adult not shown. — While the state presented evidence that the victim had a mental illness and an intellectual disability, had a mental health counselor, completed the ninth grade, and was in special needs classes while in school, the state presented no evidence that any impairment substantially affected the victim's ability to provide personal protection, to provide necessities, to carry out the activities of daily living, or to manage the victim's resources and, thus, the evidence was not sufficient to support the conviction for exploitation and intimidation of a disabled adult. *Dupree v. State*, 374 Ga. App. 421, 913 S.E.2d 41, 2025 Ga. App. LEXIS 65 (2025).

Exploitation shown. — Evidence supported the defendant's convictions for neglect, abuse, and exploitation of three disabled men that the defendant kept locked in the defendant's mother's basement with no sheets, a poorly functioning toilet, and an uncarpeted concrete floor,

O.C.G.A. §§ 31-7-12.1, 16-5-101, 16-5-102; however, as charged, the abuse by deprivation convictions should have been merged with the neglect convictions. Exploitation was shown by the defendant's use of one man's government assistance check for the defendant's own purposes. *Hawkins v. State*, 350 Ga. App. 862, 830 S.E.2d 301, 2019 Ga. App. LEXIS 377 (2019).

Evidence sufficient. — Evidence was sufficient to convict defendant of Count 7 alleging elder exploitation as the defendant worked as a live-in caretaker for the victim, a woman in her late seventies who had suffered a stroke; and the defendant took a check made payable to the victim, deposited the check into the defendant's own bank account, and did not make a cash withdrawal, even though the defendant testified the defendant gave cash to the victim. *Bell v. State*, 362 Ga. App. 631, 869 S.E.2d 576, 2022 Ga. App. LEXIS 72 (2022).

16-5-100. (Effective January 1, 2026.) Definitions.

As used in this article, the term:

(0.1) "Abuse of access" means the illegal taking of resources belonging to a disabled adult or elder person when access to the resources was obtained due to the disabled adult's or elder person's mental or physical incapacity.

(1) "Alzheimer's disease" means a progressive, degenerative disease or condition that attacks the brain and results in impaired memory, thinking, and behavior.

(2) "Dementia" means:

(A) An irreversible global loss of cognitive function causing evident intellectual impairment which always includes memory loss, without alteration of state of consciousness, as diagnosed by a physician, and is severe enough to interfere with work or social activities, or both, and to require at least intermittent care or supervision; or

(B) The comatose state of an adult resulting from any head injury.

(3) “Disabled adult” means a person 18 years of age or older who is mentally or physically incapacitated or has Alzheimer’s disease or dementia.

(4) “Elder person” means a person 65 years of age or older.

(5) “Essential services” means social, medical, psychiatric, or legal services necessary to safeguard a disabled adult’s, elder person’s, or resident’s rights and resources and to maintain the physical and mental well-being of such person. Such services may include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, and protection from health and safety hazards.

(6) “Exploit” means illegally or improperly using a disabled adult or elder person or that person’s resources through undue influence, coercion, harassment, duress, deception, false representation, false pretense, abuse of access, or other similar means for one’s own or another person’s profit or advantage.

(7) “Long-term care facility” means any skilled nursing facility, intermediate care home, assisted living community, or personal care home subject to regulation and licensure by the Department of Community Health and any community living arrangement licensed by the Department of Behavioral Health and Developmental Disabilities pursuant to Article 1 of Chapter 13 of Title 37.

(7.1) “Mentally or physically incapacitated” means an impairment which substantially affects an individual’s ability to:

(A) Provide personal protection;

(B) Provide necessities, including but not limited to food, shelter, clothing, medical, or other health care;

(C) Carry out the activities of daily living; or

(D) Manage his or her resources.

(8) “Resident” means any person who is receiving treatment or care in any long-term care facility.

(9) “Sexual abuse” means the coercion for the purpose of self-gratification by a guardian or other person supervising the welfare or having immediate charge, control, or custody of a disabled adult, elder person, or resident to engage in any of the following conduct:

(A) Lewd exhibition of the genitals or pubic area of any person;

(B) Flagellation or torture by or upon a person who is unclothed or partially unclothed;

(C) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is unclothed or partially clothed unless physical restraint is medically indicated;

(D) Physical contact in an act of sexual stimulation or gratification with any person's unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

(E) Defecation or urination for the purpose of sexual stimulation of the viewer; or

(F) Penetration of the vagina or rectum by any object except when done as part of a recognized medical or nursing procedure.

History.

Code 1981, § 16-5-100, enacted by Ga. L. 2013, p. 524, § 1-1/HB 78; Ga. L. 2015, p. 598, § 1-1/HB 72; Ga. L. 2019, p. 81, § 3/HB 424; Ga. L. 2021, p. 384, § 4/HB 363; Ga. L. 2025, p. 177, § 3-8/HB 584, effective January 1, 2026.

Delayed effective date.

Code Section 16-5-100 is set out twice in this Code. This version is effective January 1, 2026. For version effective until January 1, 2026, see the preceding version.

Amendments.

The 2025 amendment, effective January 1, 2026, substituted “assisted living

community, or personal care home subject to regulation and licensure by the Department of Community Health and any community living arrangement licensed by the Department of Behavioral Health and Developmental Disabilities pursuant to Article 1 of Chapter 13 of Title 37.” for “assisted living community, community living arrangement, or personal care home subject to regulation and licensure by the Department of Community Health” in paragraph (7).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2025, an extra period was removed at the end of paragraph (7).

16-5-101. Neglect to a disabled adult, elder person, or resident.

(a) A guardian or other person supervising the welfare of or having immediate charge, control, or custody of a disabled adult, elder person, or resident commits the offense of neglect to a disabled adult, elder person, or resident when the person willfully deprives a disabled adult, elder person, or resident of health care, shelter, or necessary sustenance to the extent that the health or well-being of such person is jeopardized.

(b) The provisions of this Code section shall not apply to a physician nor any person acting under a physician's direction nor to a hospital, hospice, or long-term care facility, nor any agent or employee thereof who is in good faith acting within the scope of his or her employment or agency or who is acting in good faith in accordance with a living will, a durable power of attorney for health care, an advance directive for health care, a psychiatric advance directive, a Physician Orders for Life-Sustaining Treatment form pursuant to Code Section 31-1-14, an order not to resuscitate, or the instructions of the patient or the patient's lawful surrogate decision maker, nor shall the provisions of this Code section require any physician, any institution licensed in

accordance with Chapter 7 of Title 31, or any employee or agent thereof to provide essential services or shelter to any person in the absence of another legal obligation to do so.

(c) The provisions of this Code section shall not apply to a guardian or other person supervising the welfare of or having immediate charge, control, or custody of a disabled adult, elder person, or resident who in good faith provides treatment by spiritual means alone through prayer for the person’s physical or mental condition, in lieu of medical treatment, in accordance with the practices of and written notarized consent of the person.

(d) A person who commits the offense of neglect to a disabled adult, elder person, or resident of a long-term care facility, upon conviction, shall be punished by imprisonment for not less than one nor more than 20 years, a fine of not more than \$50,000.00, or both.

History.

Code 1981, § 16-5-100, enacted by Ga. L. 2000, p. 1085, § 2; Ga. L. 2002, p. 648, § 1; Ga. L. 2007, p. 133, § 6/HB 24; Code 1981, § 16-5-101, as redesignated by Ga. L. 2013, p. 524, § 1-1/HB 78; Ga. L. 2015, p. 305, § 4/SB 109; Ga. L. 2022, p. 611, § 2-3/HB 752.

Amendments.

The 2022 amendment, effective July 1, 2022, inserted “a psychiatric advance

directive,” near the middle of subsection (b).

Cross references.

Psychiatric advance directives, § 37-11-1 et seq.

Law reviews.

For article, “HB 752: Psychiatric Advance Directive Act,” see 39 Ga. St. U.L. Rev. 191 (2022).

JUDICIAL DECISIONS

Verdicts not mutually exclusive. —

Because the conduct underlying the charges against the defendant was the defendant’s failure to provide healthcare for the victim, intentionally by willfully depriving the victim of healthcare, which served as the felony underlying the count of felony murder, and negligently by disregarding a substantial and unjustifiable risk and grossly deviating from the standard of care in the count of reckless conduct, which served as the unlawful act underlying the charge of involuntary manslaughter, the crimes could have been accomplished by the same conduct, but with a different level of mens rea, and the verdicts returned by the jury finding the defendant guilty of all four counts were not mutually exclusive. *Booth v. State*, 311 Ga. 374, 858 S.E.2d 39, 2021 Ga. LEXIS 195 (2021).

Sufficient evidence. — Evidence sup-

ported the defendant’s convictions for neglect, abuse, and exploitation of three disabled men that the defendant kept locked in the defendant’s mother’s basement with no sheets, a poorly functioning toilet, and an uncarpeted concrete floor, *O.C.G.A. §§ 31-7-12.1, 16-5-101, 16-5-102*; however, as charged, the abuse by deprivation convictions should have been merged with the neglect convictions. Exploitation was shown by the defendant’s use of one man’s government assistance check for the defendant’s own purposes. *Hawkins v. State*, 350 Ga. App. 862, 830 S.E.2d 301, 2019 Ga. App. LEXIS 377 (2019).

Evidence was sufficient to support defendant’s conviction for neglect of an elder person by failing to provide water and food to the victim because it showed that in the time leading up to the victim’s hospital admission, the victim’s lips were

unusually “dry and cracked” and that the only hydration the victim had received was from a sponge being placed on the victim’s lips. Medical professionals testified that the victim “was very dehydrated”

when the victim arrived at the hospital and required medical treatment for the condition. *Bonner v. State*, 369 Ga. App. 693, 894 S.E.2d 451, 2023 Ga. App. LEXIS 516 (2023).

16-5-102. Exploitation and intimidation of disabled adults, elder persons, and residents; obstruction of investigation.

JUDICIAL DECISIONS

Knowledge that victim disabled not relevant. — Trial court did not err in concluding that the portion of O.C.G.A. § 16-5-102(a) that formed the basis for the charged offense did not require the state to prove that the defendant knew the victim was disabled when defendant attacked the victim. *Cawthon v. State*, 350 Ga. App. 741, 830 S.E.2d 270, 2019 Ga. App. LEXIS 367 (2019).

Victim’s inability to provide for oneself and manage the victim’s financial resources combined with the victim’s low IQ score constituted sufficient evidence to support the jury’s conclusion that the victim was mentally or physically incapacitated during the relevant time period and, thus, to support the defendant’s conviction for abuse of a disabled adult. *Cawthon v. State*, 350 Ga. App. 741, 830 S.E.2d 270, 2019 Ga. App. LEXIS 367 (2019).

Evidence sufficient. — Evidence was sufficient to convict defendant of Count 7 alleging elder exploitation as the defendant worked as a live-in caretaker for the victim, a woman in her late seventies who had suffered a stroke; and the defendant took a check made payable to the victim, deposited the check into the defendant’s own bank account, and did not make a cash withdrawal, even though the defendant testified the defendant gave cash to the victim. *Bell v. State*, 362 Ga. App. 631, 869 S.E.2d 576, 2022 Ga. App. LEXIS 72 (2022).

Misdemeanor battery merged with felony elder abuse. — Misdemeanor battery count should have merged with the felony elder abuse count for sentencing because both required the state to prove that the defendant caused physical pain to the victim by dragging or throwing

the victim down the stairs, while the elder abuse charge also required proof that the victim was 65 years or older. *Huber v. State*, 368 Ga. App. 401, 890 S.E.2d 271, 2023 Ga. App. LEXIS 335 (2023).

Merger with neglect. — Evidence supported the defendant’s convictions for neglect, abuse, and exploitation of three disabled men that the defendant kept locked in the defendant’s mother’s basement with no sheets, a poorly functioning toilet, and an uncarpeted concrete floor. O.C.G.A. §§ 31-7-12.1, 16-5-101, 16-5-102; however, as charged, the abuse by deprivation convictions should have been merged with the neglect convictions. Exploitation was shown by the defendant’s use of one man’s government assistance check for the defendant’s own purposes. *Hawkins v. State*, 350 Ga. App. 862, 830 S.E.2d 301, 2019 Ga. App. LEXIS 377 (2019).

Theft is a separate offense. — Defendant’s claim that the defendant was entitled to a new trial because the convictions for theft by taking and exploitation and intimidation of a disabled adult, elder person, or resident were mutually exclusive failed because the convictions at issue were legally and logically capable of existing simultaneously. *Poole v. State*, 370 Ga. App. 244, 896 S.E.2d 602, 2023 Ga. App. LEXIS 566 (2023).

Convictions did not merge. — Defendant’s 44 convictions for exploitation of an elder person did not merge for sentencing purposes because the plain language of O.C.G.A. § 16-5-102 provided that if a defendant engaged in a single course of conduct in which defendant both exploits an elder person and willfully deprives that person of essential services, the defendant

committed distinct offenses and may be punished for each offense. Taylor v. State, 374 Ga. App. 126, 911 S.E.2d 684, 2025 Ga. App. LEXIS 14 (2025).

16-5-102.1. Trafficking of a disabled adult, elder person, or resident; penalty.

(a) As used in this Code section, the term:

(1) “Coercion” means:

(A) Causing or threatening to cause bodily harm to any disabled adult, elder person, or resident; physically restraining or confining any disabled adult, elder person, or resident; or threatening to physically restrain or confine any disabled adult, elder person, or resident;

(B) Exposing or threatening to expose any fact or information, or disseminating or threatening to disseminate any fact or information, that would tend to subject a disabled adult, elder person, or resident to criminal or immigration proceedings, hatred, contempt, or ridicule;

(C) Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of a disabled adult, elder person, or resident;

(D) Providing a controlled substance to a disabled adult, elder person, or resident for the purpose of compelling him or her to engage in an action against his or her will; or

(E) Causing or threatening to cause financial harm to a disabled adult, elder person, or resident or using financial control over a disabled adult, elder person, or resident.

(2) “Controlled substance” shall have the same meaning as set forth in Code Section 16-13-21.

(3) “Deception” means:

(A) Creating or confirming another person’s impression of an existing fact or past event which is false and which the accused knows or believes to be false;

(B) Maintaining the status or condition of a disabled adult, elder person, or resident arising from a pledge by such disabled adult, elder person, or resident of his or her personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a disabled adult, elder person, or resident from acquiring information pertinent to the disposition of such debt; or

(C) Promising benefits or the performance of services which the accused does not intend to deliver or perform or knows will not be delivered or performed.

(4) “Exploitation” means illegally or improperly using a disabled adult, elder person, or resident or such individual’s resources through undue influence, harassment, duress, false representation, false pretense, or other similar means for one’s own or another person’s profit or advantage.

(5) “Isolation” means preventing a disabled adult, elder person, or resident from having contact with his or her friends or family, a welfare agency, law enforcement officers, health providers, or other individuals or entities without the knowledge of such disabled adult, elder person, or resident or against his or her wishes.

(b) A person commits the offense of trafficking a disabled adult, elder person, or resident when such person, through deception, coercion, exploitation, or isolation, knowingly recruits, harbors, transports, provides, or obtains by any means a disabled adult, elder person, or resident for the purpose of appropriating the resources of such disabled adult, elder person, or resident for one’s own or another person’s benefit.

(c) Any person who violates subsection (b) of this Code section shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than 20 years, a fine not to exceed \$100,000.00, or both.

(d) Each violation of subsection (b) of this Code section shall constitute a separate offense and shall not merge with any other offense.

(e) Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this Code section.

(f) This Code section shall not apply to a physician nor any person acting under a physician’s direction nor to a hospital, hospice, or long-term care facility, nor any agent or employee thereof who is in good faith acting within the scope of his or her employment or agency or who is acting in good faith in accordance with a living will, a durable power of attorney for health care, an advance directive for health care, a psychiatric advance directive, a Physician Orders for Life-Sustaining Treatment form pursuant to Code Section 31-1-14, an order not to resuscitate, or the instructions of the patient or the patient’s lawful surrogate decision maker.

History.

Code 1981, § 16-5-102.1, enacted by Ga.

L. 2018, p. 608, § 1/HB 803; Ga. L. 2022, p. 611, § 2-4/HB 752.

Amendments.
The 2022 amendment, effective July 1, 2022, inserted “a psychiatric advance directive,” near the middle of subsection (b).

Law reviews.
For article, “HB 752: Psychiatric Advance Directive Act,” see 39 Ga. St. U.L. Rev. 191 (2022).

CHAPTER 6

SEXUAL OFFENSES

Sec.		Sec.	
16-6-1.	Rape.		parent; consent not a defense; penalty.
16-6-2.	Sodomy; aggravated sodomy; medical expenses.	16-6-13.	Penalties for violating Code Sections 16-6-9 through 16-6-12.
16-6-3.	Statutory rape.	16-6-22.	Incest.
16-6-4.	Child molestation; aggravated child molestation.	16-6-22.1.	Sexual battery; consent.
16-6-5.	Enticing a child for indecent purposes.	16-6-22.2.	Aggravated sexual battery; consent.
16-6-5.1.	Improper sexual contact by employee, agent, or foster		

Law reviews.
For article, “Sex Crimes in the 21st Century: Human Trafficking, Pornography, and Prostitution Church, State and Sex Crimes: What Place for Traditional Sexual Morality in Modern Liberal Societies?,” see 68 Emory L.J. 837 (2019).
For article, “Sex Crimes in the 21st Century: Human Trafficking, Pornogra-

phy, and Prostitution the Problems with Pornography Regulation: Lessons from History,” see 68 Emory L.J. 867 (2019).
For article, “Sex Crimes in the 21st Century: Human Trafficking, Pornography, and Prostitution Changing Faces: Morphed Child Pornography Images and the First Amendment,” see 68 Emory L.J. 909 (2019).

RESEARCH REFERENCES

U.L.A.
Uniform Act on Prevention of and Remedies for Human Trafficking, § 1 et seq.

ALR.
State Law Liability and Relief for “Revenge Porn,” 54 A.L.R.7th 2.

Gender Bias on Part of Judge or Arbitrator, 55 A.L.R.7th 2.

16-6-1. Rape.

- (a) A person commits the offense of rape when he has carnal knowledge of:
- (1) A female forcibly and against her will; or
- (2) A female who is less than ten years of age.

Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ. The fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape.

(b) A person convicted of the offense of rape shall be punished by death, by imprisonment for life without parole, by imprisonment for life, or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life. Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

(c) When evidence relating to an allegation of rape is collected in the course of a medical examination of the person who is the victim of the alleged crime, the Georgia Crime Victims Emergency Fund, as provided for in Chapter 15 of Title 17, shall be responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence.

(d)(1) As used in this subsection, the term “sexual felony” shall have the same meaning as set forth in paragraph (2) of subsection (j) of Code Section 16-5-21.

(2) Any person having been previously convicted of a sexual felony who is convicted of the offense of rape shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in paragraph (14) of subsection (a) of Code Section 42-8-35.

History.

Laws 1833, Cobb’s 1851 Digest, p. 787.; Code 1863, §§ 4248, 4249; Ga. L. 1866, p. 151, § 1; Code 1868, §§ 4283, 4284; Code 1873, §§ 4349, 4350; Code 1882, §§ 4349, 4350; Penal Code 1895, §§ 93, 94; Penal Code 1910, §§ 93, 94; Code 1933, §§ 26-1301, 26-1302; Ga. L. 1960, p. 266, § 1; Code 1933, § 26-2001, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1978, p. 3, § 1; Ga. L. 1994, p. 1959, § 5; Ga. L. 1996, p. 1115, § 1; Ga. L. 1997, p. 6, § 2; Ga. L. 1999, p. 666, § 1; Ga. L. 2006, p. 379, § 8/HB 1059; Ga. L. 2011, p. 214, § 1/HB 503; Ga. L. 2023, p. 637, § 3-4/HB 188, effective May 4, 2023.

Amendments.

The 2023 amendment, effective May 4, 2023, added subsection (d). See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2023, p. 637, § 1-1/HB 188, not codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘Mariam’s Law.’”

Ga. L. 2023, p. 637, § 7-1/HB 188, not codified by the General Assembly, provides, in part, that the punishment provisions of subsection (d) shall apply to all offenses committed on and after July 1, 2023.

Law reviews.

For article, “The Costs of Changing Our Minds,” see 69 Emory L.J. 75 (2019).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
MERGER AND OTHER OFFENSES
JURY INSTRUCTIONS
SUFFICIENCY OF EVIDENCE
SENTENCE

General Consideration

Extent of penetration. — Penetration of the female sex organ by the male sex organ is a required element of the offense of rape, O.C.G.A. § 16-6-1. But the necessary penetration need only be slight; it is not necessary that the vagina shall be entered, but an entering of the anterior of the organ is sufficient. Thus, when the defendant “rubbed his penis around [her] vagina” and the victim answered affirmatively when the prosecutor asked if the defendant put his penis “on [her] vagina”, the evidence was sufficient to convict the defendant of rape. *Smith v. State*, 361 Ga. App. 436, 864 S.E.2d 645, 2021 Ga. App. LEXIS 497 (2021).

Merger and Other Offenses

Merger of rape and sexual battery. — Defendant’s sexual battery conviction did not merge with the defendant’s rape conviction because sexual battery required proof of a fact, that defendant intentionally touched the breasts of the victim, that rape did not, and the sexual battery charge required proof that the victim was under 16, which was not required to prove rape. *Peterman v. State*, 373 Ga. App. 847, 909 S.E.2d 466, 2024 Ga. App. LEXIS 476 (2024).

Conviction for cruelty to children did not merge with the rape conviction, etc.

Trial court properly declined to merge the rape and cruelty to children offenses because evidence that the defendant used tape to silence the victim as the victim cried during the abuse and that the defendant caused injury and scarring to the victim’s anus that made going to the bathroom painful was required for the latter conviction. *Hambrick v. State*, 353 Ga. App. 666, 839 S.E.2d 664, 2020 Ga. App.

LEXIS 31 (2020), cert. denied, No. S20C0935, 2020 Ga. LEXIS 806 (Ga. Sept. 28, 2020).

Aggravated assault merged with rape. — Because the defendant’s conviction for aggravated assault with intent to rape was established by proof of the same or less than all the facts required to establish the conviction for attempted rape, the former merged into the latter under the required evidence test. *Gibson v. State*, 363 Ga. App. 296, 870 S.E.2d 884, 2022 Ga. App. LEXIS 161 (2022).

Merger of rape and incest.

Defendant’s rape and incest convictions did not merge because rape required the state to prove that defendant lacked consent, which was not an element of incest, and to establish incest the state had to prove that the victim was of a certain relation to defendant which was not an element of rape. *Peterman v. State*, 373 Ga. App. 847, 909 S.E.2d 466, 2024 Ga. App. LEXIS 476 (2024).

Jury Instructions

Jury instruction on sexual battery not warranted. — After the defendant was convicted of two counts of rape, the defendant could not show that the defendant was harmed when the trial court failed to notify trial counsel of the court’s ruling on the sexual-battery charge before closing arguments, much less plain error, because the defendant could not be found guilty of rape or sexual battery if the jury believed the defense that the defendant had consensual sex with the victims and the victims fabricated the rape allegations; and an argument that the defendant was guilty of sexual battery instead of rape would have been in direct conflict with the defendant’s own theory of defense. *Seals v. State*, 350 Ga. App. 787, 830 S.E.2d 315, 2019 Ga. App. LEXIS 374 (2019).

Charge proper.

Trial court did not plainly err by instructing the jury on constructive force because the instruction set forth a correct statement of law that is consistent with years of precedent and defendant did not show that the trial court's instruction was an obvious error beyond reasonable dispute. *Arroyo v. State*, 372 Ga. App. 366, 903 S.E.2d 712, 2024 Ga. App. LEXIS 245 (2024).

No plain error found. — Sequential charge on rape and sexual battery was not improper and did not constitute plain error as the evidence did not support a sexual-battery conviction; and there was no language in the challenged instruction on rape and sexual battery suggesting that the jury was required to reach a unanimous verdict as to rape before considering the lesser-included offense of sexual battery. *Seals v. State*, 350 Ga. App. 787, 830 S.E.2d 315, 2019 Ga. App. LEXIS 374 (2019).

Sufficiency of Evidence**Proof of force.**

Victim's testimony that the victim woke up on her stomach and felt the defendant's penis penetrating the victim's vagina, the victim told the defendant "no" and "stop," and the victim was afraid and felt like the victim could not fight, move, or get away because the defendant was sitting on top of the victim was sufficient to support defendant's conviction for rape. *Kim v. State*, 366 Ga. App. 516, 883 S.E.2d 536, 2023 Ga. App. LEXIS 35 (2023).

Evidence was sufficient for the first victim's rape because defendant was the last person seen with that victim when alive, defendant's sperm was present, and the victim's condition was consistent with rape rather than consensual sex. *McCullum v. State*, 318 Ga. 485, 899 S.E.2d 171, 2024 Ga. LEXIS 68 (2024).

Evidence sufficient to show lack of consent of 13 year old victim. — Testimony of the victim, who was 13 years old, that the victim cried and was scared and the defendant threatened the victim before assaulting the victim was sufficient to show lack of consent for purposes of proving rape. *Hicks v. State*, 366 Ga. App. 599,

884 S.E.2d 16, 2023 Ga. App. LEXIS 52 (2023).

DNA evidence properly admitted.

— Evidence was sufficient to establish that the defendant was the driver of the vehicle in the incident involving the victim as the evidence showed that the defendant drove away with the sleeping victim and the defendant's DNA was present on the victim's vagina and cervix as well as the tampon the victim had been wearing showed that the defendant had sexual intercourse with the victim. *Rendon-Villasana v. State*, 360 Ga. App. 769, 861 S.E.2d 462, 2021 Ga. App. LEXIS 389 (2021).

Sufficient evidence to authorize conviction.

Convictions for burglary, rape, and aggravated battery were supported by sufficient evidence as the record showed that seminal fluid and the defendant's DNA were found in the victim's underwear, the defendant's alibi did not check out when police attempted to verify the alibi, and it was undisputed that the defendant had knowledge of how to enter the house through a broken door without a key, having previously been in a relationship with the victim's daughter. *McEady v. State*, 355 Ga. App. 820, 846 S.E.2d 94, 2020 Ga. App. LEXIS 395 (2020).

Since only minimal evidence was required to prove force against the child victim, the evidence was sufficient to prove defendant guilty of rape when the evidence showed the 49-year-old defendant lived with the victim and the victim's mother, entered the child's bedroom while the child was in bed and when no one else was home, and performed sex acts upon the child. *Oates v. State*, 355 Ga. App. 301, 844 S.E.2d 239, 2020 Ga. App. LEXIS 304 (2020).

There was sufficient evidence to support the defendant's rape convictions because each of the three victims testified that the defendant forced them to have sex against the victims' will, including testimony that the defendant held one victim down and stuffed a cell phone down the victim's throat and then raped the victim. *Pauley v. State Two Cases*, 355 Ga. App. 47, 842 S.E.2d 499, 2020 Ga. App. LEXIS 251 (2020).

Sufficiency of Evidence (Cont'd)

Because there was other evidence of the defendant's guilt, the jury was entitled to reject the defendant's testimony as false and treat the testimony as substantive evidence of the defendant's own guilt, and the evidence was sufficient to support the jury's determination that the victim did not consent to sexual intercourse with the defendant. *Davis v. State*, 353 Ga. App. 651, 839 S.E.2d 184, 2020 Ga. App. LEXIS 62 (2020).

Victim's testimony about the burning in the victim's vagina, coupled with the testimony of the Sexual Assault Nurse Examiner that the underwear the victim had been wearing were torn in the crotch, were sufficient for a rational trier of fact to find the defendant guilty of rape beyond a reasonable doubt. *Bryant v. State*, 354 Ga. App. 603, 839 S.E.2d 680, 2020 Ga. App. LEXIS 36 (2020).

Victim's testimony that the defendant, while holding a firearm, told the victim to lie on the victim's stomach in the bed and proceeded to rape the victim was sufficient to support the defendant's rape conviction as it carried a strong implication that intercourse had occurred. *Bass v. State*, 356 Ga. App. 862, 849 S.E.2d 718, 2020 Ga. App. LEXIS 545 (2020).

Defendant's conviction for rape was supported by sufficient evidence based on the victim's testimony that the victim encountered the defendant twice during the same day and, after walking with the defendant several blocks, the defendant twice forced the victim to engage in sexual intercourse while threatening to beat the victim with a stick; contrary to the defendant's contention, corroborating evidence was not required to support a rape conviction. *Johnson v. State*, 361 Ga. App. 43, 861 S.E.2d 660, 2021 Ga. App. LEXIS 412 (2021).

Evidence that the defendant chased the adult victim down some stairs, caught the adult victim, and forcibly had sexual intercourse with the adult victim, and that the defendant pulled the child victim's head toward the defendant's penis was sufficient to support the defendant's convictions for rape and child molestation. *Bernal v. State*, 362 Ga. App. 108, 866

S.E.2d 642, 2021 Ga. App. LEXIS 567 (2021).

Defendant's convictions for aggravated sexual battery, rape, child molestation, and incest, for acts committed against the defendant's niece, were supported by testimony of the victim's extreme behaviors consistent with childhood trauma and anxiety, and testimony about the victim's disclosure to the victim's adoptive mother that the defendant had sexually abused the victim and threatened to hurt the victim if the victim told anyone. *McNeil v. State*, 363 Ga. App. 548, 871 S.E.2d 303, 2022 Ga. App. LEXIS 163 (2022).

Evidence that the defendant twice placed the defendant's mouth on the victim's vagina and twice placed the defendant's penis inside the victim's vagina without the victim's consent, and put fingers on the victim's vagina was sufficient to support the defendant's convictions for rape, aggravated sodomy, aggravated child molestation, incest, enticing a child for indecent purposes, and child molestation. *Curgil v. State*, 363 Ga. App. 355, 871 S.E.2d 322, 2022 Ga. App. LEXIS 166 (2022).

Defendant's convictions for rape, aggravated sodomy, battery, false imprisonment, and two counts of aggravated assault were supported by evidence that the defendant hit the victim, forcibly engaged in intercourse and ordered the victim to perform oral sex while holding a knife or scissors, and stood at the door of the hotel room so the victim could not leave. *Dunbar v. State*, 363 Ga. App. 869, 873 S.E.2d 247, 2022 Ga. App. LEXIS 240 (2022).

There was sufficient evidence for a jury to find the defendant guilty of rape beyond a reasonable doubt where the victim testified at trial that the defendant forcibly had intercourse with the victim without the victim's consent, the victim made an immediate outcry after the rape, and there was DNA evidence connecting the defendant to the crime. *White v. State*, 365 Ga. App. 149, 877 S.E.2d 694, 2022 Ga. App. LEXIS 402 (2022).

There was sufficient evidence to support the defendant's convictions for rape and incest, including the victim's testimony that the defendant, who was the victim's

father, tried to penetrate inside the victim's vagina and the presence of a very large amount of DNA and sperm cells inside the victim's vagina matched the defendant's DNA. *Wright v. State*, 365 Ga. App. 288, 878 S.E.2d 137, 2022 Ga. App. LEXIS 432 (2022).

Evidence was sufficient to support defendant's convictions of rape and malice murder because it authorized the jury to reasonably infer that defendant had sex with the victim against her will just before he strangled and killed her. In the motel room, the victim was discovered with the strap of her purse around her neck and defendant's DNA was found. *Kimbrow v. State*, 317 Ga. 442, 893 S.E.2d 678, 2023 Ga. LEXIS 223 (2023).

Evidence was sufficient to support defendant's conviction of rape because the victim testified that she had sex with defendant so that he would stop hitting her and DNA evidence tied defendant to the crime. *Rutherford v. State*, 370 Ga. App. 873, 899 S.E.2d 457, 2024 Ga. App. LEXIS 103 (2024).

Evidence was sufficient to support defendant's rape conviction because the evidence constituted more than mere intoxication and was sufficient for the jury to find lack of consent and constructive force based on the victim's heavy intoxication. The evidence showed that the victim drank heavily prior to the incident, she had no memory of meeting defendant, going to the hotel with him, or having sex with him, and she was taken to the hospital by ambulance for acute alcohol intoxication. *Arroyo v. State*, 372 Ga. App. 366, 903 S.E.2d 712, 2024 Ga. App. LEXIS 245 (2024).

Evidence sufficient to support conviction. — Victim's testimony that the defendant entered the victim's apartment without permission and forced the victim to engage in oral and vaginal intercourse against the victim's will and testimony that the victim was clearly distraught after the attack was sufficient to sustain convictions for rape and aggravated sodomy. *Cross v. State*, 354 Ga. App. 355, 839 S.E.2d 265, 2020 Ga. App. LEXIS 82

(2020), cert. denied, No. S20C1227, 2020 Ga. LEXIS 855 (Ga. Nov. 16, 2020).

Evidence was sufficient to convict the defendant of rape as the defendant had carnal knowledge of the victim because the victim testified that the defendant put himself inside the victim. *Nguyen v. State*, 351 Ga. App. 509, 831 S.E.2d 213, 2019 Ga. App. LEXIS 443 (2019), cert. dismissed, No. S20C0488, 2020 Ga. LEXIS 402 (Ga. May 18, 2020).

Feeling threatened by accomplice.

— Defendant's claim that the evidence was insufficient to support his conviction for rape because the evidence showed that the defendant committed the crime under duress and out of fear that the accomplice would hurt the defendant otherwise lacked merit because there was evidence that the defendant had sexual intercourse with the victim forcibly and against the victim's will and the jury could have reasonably inferred that the defendant was not justified in raping the victim because the defendant felt threatened by the accomplice. *Wells v. State*, 371 Ga. App. 440, 900 S.E.2d 746, 2024 Ga. App. LEXIS 164 (2024).

Sentence

Illegal sentence. — Defendant's conviction for life with 25 years in confinement was void because the sentence was not statutorily permitted. *Upton v. State*, 350 Ga. App. 535, 829 S.E.2d 791, 2019 Ga. App. LEXIS 337 (2019), overruled in part, *Bolish v. State*, 365 Ga. App. 855, 880 S.E.2d 345, 2022 Ga. App. LEXIS 507 (2022).

Sentence not excessive. — Defendant's motion to vacate was properly denied because each one of the contested sentences for three sexual offenses fell within the statutory range of punishment for those charges; and, the appellate court was left with no doubt that the defendant's punishment for each sexual offense amounted to split sentence comprised of a 25-year term of imprisonment, followed by probation for life, which sentencing was expressly contemplated by relevant statutory provisions. *Bolish v. State*, 365 Ga. App. 855, 880 S.E.2d 345, 2022 Ga. App. LEXIS 507 (2022).

16-6-2. Sodomy; aggravated sodomy; medical expenses.

(a)(1) A person commits the offense of sodomy when he or she performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another.

(2) A person commits the offense of aggravated sodomy when he or she commits sodomy with force and against the will of the other person or when he or she commits sodomy with a person who is less than ten years of age. The fact that the person allegedly sodomized is the spouse of a defendant shall not be a defense to a charge of aggravated sodomy.

(b)(1) Except as provided in subsection (d) of this Code section, a person convicted of the offense of sodomy shall be punished by imprisonment for not less than one nor more than 20 years and shall be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(2) A person convicted of the offense of aggravated sodomy shall be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life. Any person convicted under this Code section of the offense of aggravated sodomy shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

(c) When evidence relating to an allegation of aggravated sodomy is collected in the course of a medical examination of the person who is the victim of the alleged crime, the Georgia Crime Victims Emergency Fund, as provided for in Chapter 15 of Title 17, shall be financially responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence.

(d) If the victim is at least 13 but less than 16 years of age and the person convicted of sodomy is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(e)(1) As used in this subsection, the term “sexual felony” shall have the same meaning as set forth in paragraph (2) of subsection (j) of Code Section 16-5-21.

(2) Any person having been previously convicted of a sexual felony who is convicted of the felony offense of aggravated sodomy shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring

as set forth in paragraph (14) of subsection (a) of Code Section 42-8-35.

History.

Laws 1833, Cobb's 1851 Digest, p. 787.; Code 1863, §§ 4251, 4252; Code 1868, §§ 4286, 4287; Code 1873, §§ 4352, 4353; Code 1882, §§ 4352, 4353; Penal Code 1895, §§ 382, 383; Penal Code 1910, §§ 373, 374; Code 1933, §§ 26-5901, 26-5902; Ga. L. 1949, p. 275, § 1; Code 1933, § 26-2002, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1994, p. 1959, § 7; Ga. L. 1996, p. 1115, § 2; Ga. L. 1997, p. 6, § 3; Ga. L. 2000, p. 1346, § 1; Ga. L. 2006, p. 379, § 9/HB 1059; Ga. L. 2011, p. 214, § 2/HB 503; Ga. L. 2023, p. 637, § 3-5/HB 188, effective May 4, 2023.

Amendments.

The 2023 amendment, effective May 4, 2023, added subsection (e). See Editor's notes for applicability.

Editor's notes.

Ga. L. 2023, p. 637, § 1-1/HB 188, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Mariam's Law.'"

Ga. L. 2023, p. 637, § 7-1/HB 188, not codified by the General Assembly, provides, in part, that the punishment provisions of subsection (e) shall apply to all offenses committed on and after July 1, 2023.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
AGGRAVATED SODOMY
CHILDREN AS VICTIMS
SENTENCE

General Consideration

Sexual intercourse not act of sodomy. — Defendant's conviction for aggravated child molestation was vacated because on appeal the state conceded that sexual intercourse was not an act of sodomy and, therefore, Count 6 as drawn in the indictment did not constitute the crime of aggravated child molestation and could not stand. *Mosby v. State*, 353 Ga. App. 744, 839 S.E.2d 237, 2020 Ga. App. LEXIS 75 (2020).

Aggravated Sodomy

No fatal variance between indictment and trial evidence. — Defendant's claim that there was a fatal variance as to the charge for aggravated sodomy against a victim lacked merit because the evidence was sufficient to show that the defendant committed aggravated sodomy in at least one of the ways alleged in the indictment. *Bass v. State*, 356 Ga. App. 862, 849 S.E.2d 718, 2020 Ga. App. LEXIS 545 (2020).

Use of tramadol in committing ag-

gravated sodomy. — Testimony from two victims that the victims felt "dizzy," "woozy," and generally out of it after consuming drinks provided by the defendant, one victim's testimony that the victim awoke with the defendant on top of the victim and was unable to move to resist the defendant's sexual acts, and testing of the second victim's urine showing tramadol, the consumption of which, along with alcohol, can lead to sedation and blackouts, was sufficient to support the defendant's aggravated sodomy convictions. *Jones v. State*, 354 Ga. App. 568, 841 S.E.2d 112, 2020 Ga. App. LEXIS 197 (2020).

Evidence sufficient for conviction.

Victim's testimony that the defendant entered the victim's apartment without permission and forced the victim to engage in oral and vaginal intercourse against the victim's will and testimony that the victim was clearly distraught after the attack was sufficient to sustain convictions for rape and aggravated sodomy. *Cross v. State*, 354 Ga. App. 355, 839 S.E.2d 265, 2020 Ga. App. LEXIS 82

Aggravated Sodomy (Cont'd)

(2020), cert. denied, No. S20C1227, 2020 Ga. LEXIS 855 (Ga. Nov. 16, 2020).

Evidence was sufficient to convict the defendant of aggravated child molestation, aggravated sodomy, and enticing a child for indecent purposes because two of the victims were nine years old at the time of their outcries and the third victim was eight years old at the time of that victim's outcry; the defendant's mother occasionally watched the victims while their father was at work, sometimes over night; the defendant would bring the victims into the defendant's bedroom, where the defendant would force the children to perform oral sex upon the defendant and anally penetrated the children with the defendant's sex organ; and the defendant threatened to hurt the children if the children told anyone about the abuse. *Stodghill v. State*, 351 Ga. App. 744, 832 S.E.2d 891, 2019 Ga. App. LEXIS 486 (2019).

Since the evidence permitted the jury to conclude that the defendant surreptitiously gave the victim a drug with the intent of rendering the victim incapable of resisting the defendant's sexual advances, it was sufficient to establish the force required for the defendant's conviction for aggravated sodomy. *Hartman v. State*, 358 Ga. App. 663, 856 S.E.2d 39, 2021 Ga. App. LEXIS 111 (2021).

Evidence that the defendant twice placed the defendant's mouth on the victim's vagina and twice placed the defendant's penis inside the victim's vagina without the victim's consent, and put fingers on the victim's vagina was sufficient to support the defendant's convictions for rape, aggravated sodomy, aggravated child molestation, incest, enticing a child for indecent purposes, and child molestation. *Curgil v. State*, 363 Ga. App. 355, 871 S.E.2d 322, 2022 Ga. App. LEXIS 166 (2022).

Defendant's convictions for rape, aggravated sodomy, battery, false imprisonment, and two counts of aggravated assault were supported by evidence that the defendant hit the victim, forcibly engaged in intercourse and ordered the victim to perform oral sex while holding a knife or

scissors, and stood at the door of the hotel room so the victim could not leave. *Dunbar v. State*, 363 Ga. App. 869, 873 S.E.2d 247, 2022 Ga. App. LEXIS 240 (2022).

Defendant's two aggravated sodomy convictions were supported by the victim's testimony that the victim woke up being choked by the defendant's penis in the victim's mouth while the defendant held the victim's hair, pushed the victim's head down on the defendant's penis, and prevented the victim from moving her head away, and that the defendant placed his mouth on the victim's vagina without the victim's consent. *Kim v. State*, 366 Ga. App. 516, 883 S.E.2d 536, 2023 Ga. App. LEXIS 35 (2023).

Evidence was sufficient to authorize the jury to find that the defendant committed the offenses of aggravated sodomy and child molestation as charged in the indictment because the testimony of the victim, who was ten years old at the time of trial, alone was sufficient. *Burnett v. State*, 367 Ga. App. 285, 884 S.E.2d 587, 2023 Ga. App. LEXIS 105 (2023), cert. denied, 144 S. Ct. 2620, 219 L. Ed. 2d 1262, 2024 U.S. LEXIS 2456 (2024).

Insufficient evidence of force. —

State failed to prove by a preponderance of the evidence that the defendant committed aggravated sodomy because the element of physical force was not shown by evidence that the victim's pants were unzipped and pulled down without the victim's consent and while the victim was asleep. However, a preponderance of the evidence showed that the defendant committed the lesser included offense of sodomy, which did not require a showing of force. *Thurmond v. State*, 353 Ga. App. 506, 838 S.E.2d 592, 2020 Ga. App. LEXIS 28 (2020).

Sufficient evidence of force. —

There was sufficient evidence to support a finding of force for purposes of the defendant's conviction for aggravated sodomy, including evidence that the defendant gave the victim, the defendant's 17-year-old nephew, alcohol and an unknown drug with the intent of rendering the victim incapable of resisting the defendant's sexual advances. *Handley v. State*, 352 Ga. App. 106, 834 S.E.2d 114, 2019

Ga. App. LEXIS 535 (2019), cert. denied, No. S20C0366, 2020 Ga. LEXIS 385 (Ga. May 18, 2020).

convictions. *Jones v. State*, 354 Ga. App. 568, 841 S.E.2d 112, 2020 Ga. App. LEXIS 197 (2020).

Children as Victims

No merger of sodomy and child molestation cases. — Trial court properly did not merge the defendant's aggravated sodomy and aggravated child molestation convictions because O.C.G.A. § 16-1-7(a) did not apply since there was evidence of two separate incidents of oral sodomy. *Hamby v. State*, 358 Ga. App. 105, 853 S.E.2d 874, 2021 Ga. App. LEXIS 11 (2021).

Evidence sufficient for sodomy conviction. — Victim's testimony that the defendant forcibly rubbed the defendant's penis on the victim's lips and mouth was sufficient to support the defendant's conviction for aggravated sodomy. *Bell v. State*, 352 Ga. App. 802, 835 S.E.2d 697, 2019 Ga. App. LEXIS 632 (2019).

Testimony from three victims that the defendant performed at least one nonconsensual act in which the defendant's mouth touched the victim's penis was sufficient to support the defendant's sodomy

Sentence

Illegal sentence. — Defendant's conviction for life with 25 years in confinement was void because it was not statutorily permitted. *Upton v. State*, 350 Ga. App. 535, 829 S.E.2d 791, 2019 Ga. App. LEXIS 337 (2019), overruled in part, *Bolish v. State*, 365 Ga. App. 855, 880 S.E.2d 345, 2022 Ga. App. LEXIS 507 (2022).

Sentence not excessive. — Defendant's motion to vacate was properly denied because each one of the contested sentences for three sexual offenses fell within the statutory range of punishment for those charges; and, the appellate court was left with no doubt that the defendant's punishment for each sexual offense amounted to a split sentence comprised of 25-year term of imprisonment, followed by probation for life, which sentencing was expressly contemplated by the relevant statutory provisions. *Bolish v. State*, 365 Ga. App. 855, 880 S.E.2d 345, 2022 Ga. App. LEXIS 507 (2022).

16-6-3. Statutory rape.

(a) A person commits the offense of statutory rape when he or she engages in sexual intercourse with any person under the age of 16 years and not his or her spouse, provided that no conviction shall be had for this offense on the unsupported testimony of the victim.

(b) Except as provided in subsection (c) of this Code section, a person convicted of the offense of statutory rape shall be punished by imprisonment for not less than one nor more than 20 years; provided, however, that if the person so convicted is 21 years of age or older, such person shall be punished by imprisonment for not less than ten nor more than 20 years. Any person convicted under this subsection of the offense of statutory rape shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(c) If the victim is at least 14 but less than 16 years of age and the person convicted of statutory rape is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor.

(d)(1) As used in this subsection, the term "sexual felony" shall have

the same meaning as set forth in paragraph (2) of subsection (j) of Code Section 16-5-21.

(2) Any person having been previously convicted of a sexual felony who is convicted of the felony offense of statutory rape when the individual convicted was 21 years of age or older, shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in paragraph (14) of subsection (a) of Code Section 42-8-35.

History.

Ga. L. 1918, p. 259, §§ 1, 2; Code 1933, §§ 26-1303, 26-1304; Code 1933, § 26-2018, enacted by Ga. L. 1968, p. 715, § 1; Ga. L. 1995, p. 957, § 3; Ga. L. 1996, p. 871, § 1; Ga. L. 1996, p. 1115, § 3; Ga. L. 2006, p. 379, § 10/HB 1059; Ga. L. 2023, p. 637, § 3-6/HB 188, effective May 4, 2023.

Amendments.

The 2023 amendment, effective May 4, 2023, added subsection (d). See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2023, p. 637, § 1-1/HB 188, not

codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘Mariam’s Law.’”

Ga. L. 2023, p. 637, § 7-1/HB 188, not codified by the General Assembly, provides, in part, that the punishment provisions of subsection (d) shall apply to all offenses committed on and after July 1, 2023.

Law reviews.

For annual survey on criminal law, see 71 Mercer L. Rev. 69 (2019).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

EVIDENCE

MERGER WITH OTHER OFFENSES

General Consideration

Sentence for juveniles committing sexual battery. — Because the evidence established that the juvenile’s act of sexual battery was committed against the victim, who was under the age of 16, felony punishment under O.C.G.A. § 16-6-22.1(d) was required and the juvenile was not entitled to an adjudication for statutory rape as if the Georgia legislature intended to provide more lenient treatment for teenagers who commit sexual battery against another minor, the legislature could have amended the statute. In the Interest of P. T., 353 Ga. App. 511, 838 S.E.2d 596, 2020 Ga. App. LEXIS 29 (2020).

Failure to impose a “split sen-

tence”. — Corrected sentence remained void because the trial court failed to impose a split sentence on the statutory rape and child molestation charges because those offenses were subject to the split sentence requirements, which required split sentences for each count. When the trial court resentenced the defendant in 2018, the court was still required to impose a split sentence on each count as required by the statute in effect at the time the defendant committed the crimes. *Martinez-Chavez v. State*, 352 Ga. App. 142, 834 S.E.2d 139, 2019 Ga. App. LEXIS 539 (2019).

Evidence

Corroborating evidence. — There was sufficient evidence to show that the

defendant had sex with the alleged victim rather than the victim's older sister, including the victim's testimony the defendant had sex with the victim, which was corroborated by phone calls and text messages to the victim's phone from the defendant's phone number, and the defendant's admission to having sex with a girl named "Brandy," which was the name associated with the victim's ads for services. *Brown v. State*, 362 Ga. App. 377, 868 S.E.2d 493, 2022 Ga. App. LEXIS 38 (2022).

There was sufficient corroborating evidence to support the defendant's conviction for statutory rape where the victim's friend testified that the defendant picked the victim up in the middle of the night from the friend's home and the victim returned with blood-stained pants, establishing that the victim was suffering vaginal bleeding. *Quantanilla-Solis v. State*, 367 Ga. App. 397, 885 S.E.2d 323, 2023 Ga. App. LEXIS 138 (2023).

Sufficient evidence. — Victim's testimony that the victim had sexual intercourse with the defendant, testimony from the victim's father about the victim's disclosure to the father, and that the defendant confessed to police that the defendant had sexual intercourse with the victim was sufficient to support the defendant's conviction for statutory rape. *Tucker v. State*, 355 Ga. App. 796, 845

S.E.2d 759, 2020 Ga. App. LEXIS 384 (2020).

Evidence was sufficient to convict the defendant of statutory rape as the defendant engaged in sexual intercourse with the 12-year-old victim; and the evidence corroborated the victim's testimony regarding the rape, including evidence that the victim reported the rape to the victim's therapist and mother following the victim's suicide attempt, that the victim was withdrawn and disturbed when medical providers tried to examine the victim after the rape outcry, and that the victim accurately described the inside of the defendant's home. *Nguyen v. State*, 351 Ga. App. 509, 831 S.E.2d 213, 2019 Ga. App. LEXIS 443 (2019), cert. dismissed, No. S20C0488, 2020 Ga. LEXIS 402 (Ga. May 18, 2020).

Merger with Other Offenses

Child molestation. — Trial court did not err in failing to merge the child molestation and statutory rape convictions because the child molestation conviction was based on the defendant touching the victim's back and vaginal area, while the statutory rape conviction was based on the defendant engaging in sexual intercourse with the victim. *Wilson v. State*, 354 Ga. App. 64, 840 S.E.2d 601, 2020 Ga. App. LEXIS 120 (2020), *aff'd*, 312 Ga. 174, 860 S.E.2d 485, 2021 Ga. LEXIS 481 (2021).

RESEARCH REFERENCES

ALR.

Romeo and Juliet Laws Addressing Close-in-Age Underage Sexual Offense

Situations and Sexual Offender Registration Exemptions, 81 A.L.R.7th 2.

16-6-4. Child molestation; aggravated child molestation.

(a) A person commits the offense of child molestation when such person:

(1) Does an immoral or indecent act to or in the presence of or with any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person; or

(2) By means of an electronic device, transmits images of a person engaging in, inducing, or otherwise participating in an immoral or indecent act to a child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person.

(a.1) For purposes of this Code section, when a person does an immoral or indecent act involving touching of any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of the child or the person, and such person touches such child in multiple areas of such child's body, the touching of each area shall constitute a separate offense of child molestation.

(b)(1) Except as provided in paragraph (2) of this subsection, a person convicted of a first offense of child molestation shall be punished by imprisonment for not less than five nor more than 20 years and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.2 and 17-10-7. Upon a defendant being incarcerated on a conviction for a first offense, the Department of Corrections shall provide counseling to such defendant. Except as provided in paragraph (2) of this subsection, upon a second or subsequent conviction of an offense of child molestation, the defendant shall be punished by imprisonment for not less than ten years nor more than 30 years or by imprisonment for life and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.2 and 17-10-7; provided, however, that prior to trial, a defendant shall be given notice, in writing, that the state intends to seek a punishment of life imprisonment.

(2) If the victim is at least 14 but less than 16 years of age and the person convicted of child molestation is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(c) A person commits the offense of aggravated child molestation when such person commits an offense of child molestation which act physically injures the child or involves an act of sodomy.

(d)(1) Except as provided in paragraph (2) of this subsection, a person convicted of the offense of aggravated child molestation shall be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life, and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

(2) A person convicted of the offense of aggravated child molestation when:

(A) The victim is at least 13 but less than 16 years of age;

(B) The person convicted of aggravated child molestation is 18 years of age or younger and is no more than four years older than the victim; and

(C) The basis of the charge of aggravated child molestation involves an act of sodomy

shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.1.

(e) A person shall be subject to prosecution in this state pursuant to Code Section 17-2-1 for any conduct made unlawful by paragraph (2) of subsection (a) of this Code section which the person engages in while:

(1) Either within or outside of this state if, by such conduct, the person commits a violation of paragraph (2) of subsection (a) of this Code section which involves a child who resides in this state; or

(2) Within this state if, by such conduct, the person commits a violation of paragraph (2) of subsection (a) of this Code section which involves a child who resides within or outside this state.

(f)(1) As used in this subsection, the term “sexual felony” shall have the same meaning as set forth in paragraph (2) of subsection (j) of Code Section 16-5-21.

(2) Except as provided in paragraph (2) of subsection (b) of this Code section, any person having been previously convicted of a sexual felony who is convicted of the felony offense of child molestation or aggravated child molestation shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in paragraph (14) of subsection (a) of Code Section 42-8-35.

History.

Ga. L. 1950, p. 387, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 408, § 1; Code 1933, § 26-2019, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1984, p. 685, § 1; Ga. L. 1984, p. 1495, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1987, p. 617, § 1; Ga. L. 1992, p. 6, § 16; Ga. L. 1993, p. 715, § 1; Ga. L. 1994, p. 1959, § 6; Ga. L. 1995, p. 957, § 4; Ga. L. 1997, p. 1578, § 1; Ga. L. 2006, p. 379, § 11/HB 1059; Ga. L. 2009, p. 729, § 1/HB 123; Ga. L. 2022, p. 104, § 1/HB 1188; Ga. L. 2023, p. 637, § 3-7/HB 188, effective May 4, 2023.

Amendments.

The 2022 amendment, effective July 1, 2022, substituted “an immoral” for “any immoral” in paragraphs (a)(1) and (a)(2), and added subsection (a.1).

The 2023 amendment, effective May 4, 2023, added subsection (f). See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2023, p. 637, § 1-1/HB 188, not codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘Mariam’s Law.’”

Ga. L. 2023, p. 637, § 7-1/HB 188, not codified by the General Assembly, provides, in part, that the punishment provisions of subsection (f) shall apply to all offenses committed on and after July 1, 2023.

Law reviews.

For note, “The Double-Side of Deep-fakes: Obstacles and Assets in the Fight Against Child Pornography,” see 56 Ga. L. Rev. 865 (2023).

JUDICIAL DECISIONS

ANALYSIS

- GENERAL CONSIDERATION
- INDICTMENT
- SUFFICIENCY OF EVIDENCE
- MERGING WITH OTHER OFFENSES
- JURY ISSUES AND INSTRUCTIONS
- SENTENCE

General Consideration

Statute not vague. — Defendant’s claim that O.C.G.A. § 16-6-4(c) was void for vagueness failed because a person of common intelligence would understand that an act of child molestation that results in the pregnancy of a 14 year old girl could, at the least, cause the victim to sustain physical injury in the event of a painful and traumatic childbirth. *Daddario v. State*, 307 Ga. 179, 835 S.E.2d 181, 2019 Ga. App. LEXIS 723 (2019).

Verbal request sufficient for aggravated sexual battery. — State was not required to prove that the victim actually touched the defendant’s penis as the indictment alleged only that the defendant asked the victim to touch the defendant’s penis, and the act required for child molestation under O.C.G.A. § 16-6-4(a) may be merely verbal. *Smith v. State*, 361 Ga. App. 436, 864 S.E.2d 645, 2021 Ga. App. LEXIS 497 (2021).

Venue. — Evidence was sufficient to prove venue was proper in Coweta County as the child molestation occurred at the defendant’s house; and it was for the jury, as factfinder, to determine whether to credit the victim’s testimony that the victim thought the defendant’s house was in Coweta County. *Boyd v. State*, 351 Ga. App. 469, 829 S.E.2d 163, 2019 Ga. App. LEXIS 265 (2019).

Motions to suppress. — Defendant’s motion to suppress evidence found on the defendant’s computer was properly denied as the affidavit was sufficient to establish probable cause to search the defendant’s computer because, although the affidavit did not specify that the victim was under 16 years old, which was the age of the victim required to constitute child molestation, the affidavit consistently referred

to the victim as a minor; and, according to the affidavit, the victim specifically stated that the victim saw at least one picture on the defendant’s computer of a naked male who appeared to be underage. *Hutcheson v. State*, 361 Ga. App. 890, 864 S.E.2d 106, 2021 Ga. App. LEXIS 401 (2021).

Sufficiency of the evidence. — Evidence was insufficient to support the defendant’s conviction for child molestation because a rational trier of fact could have concluded that the defendant’s act of kissing the victim’s neck while sleeping in the victim’s bed was immoral or indecent and intended to arouse the defendant’s sexual desires. *Pavlov v. State*, 362 Ga. App. 831, 870 S.E.2d 449, 2022 Ga. App. LEXIS 109 (2022).

Defendant’s convictions for aggravated sexual battery, rape, child molestation, and incest, for acts committed against the defendant’s niece, were supported by testimony of the victim’s extreme behaviors consistent with childhood trauma and anxiety, and testimony about the victim’s disclosure to the victim’s adoptive mother that the defendant had sexually abused the victim and threatened to hurt the victim if the victim told anyone. *McNeil v. State*, 363 Ga. App. 548, 871 S.E.2d 303, 2022 Ga. App. LEXIS 163 (2022).

Evidence that the defendant twice placed the defendant’s mouth on the victim’s vagina and twice placed the defendant’s penis inside the victim’s vagina without the victim’s consent, and put fingers on the victim’s vagina was sufficient to support the defendant’s convictions for rape, aggravated sodomy, aggravated child molestation, incest, enticing a child for indecent purposes, and child molestation. *Curgil v. State*, 363 Ga. App. 355, 871 S.E.2d 322, 2022 Ga. App. LEXIS 166 (2022).

Indictment

Indictment defective.

Defendant's demurrer to the attempted child molestation count was improperly overruled because the charge indicted the defendant for having a conversation with an undercover officer posing as a 14-year-old female and not for attempting to commit any actual physical touching or otherwise attempting to commit an indecent act to or in the presence of or with a minor; and a sexually explicit phone conversation between a defendant and child was not sufficient to establish child molestation. *Yeamans v. State*, 366 Ga. App. 780, 884 S.E.2d 380, 2023 Ga. App. LEXIS 80 (2023).

Sufficiency of Evidence

Victim's testimony alone is sufficient to sustain conviction under O.C.G.A. § 16-6-4.

Testimony from the victim that the defendant touched the victim, that the defendant touched the victim's chest, and that the defendant used the defendant's hand and mouth and evidence in the form of the victim's forensic interview that the defendant touched the victim's vaginal area with the defendant's hand was sufficient to find the defendant guilty of child molestation and sexual battery. *Reyes v. State*, 356 Ga. App. 346, 847 S.E.2d 25, 2020 Ga. App. LEXIS 443 (2020).

Victim's testimony that the defendant touched the victim's vagina, buttocks, and breasts was sufficient to support the defendant's convictions for child molestation. *Ramirez-Ortiz v. State*, 361 Ga. App. 577, 865 S.E.2d 206, 2021 Ga. App. LEXIS 532 (2021).

Evidence was sufficient to authorize the jury to find that the defendant committed the offenses of aggravated sodomy and child molestation as charged in the indictment because the testimony of the victim, who was ten years old at the time of trial, alone was sufficient. *Burnett v. State*, 367 Ga. App. 285, 884 S.E.2d 587, 2023 Ga. App. LEXIS 105 (2023), cert. denied, 144 S. Ct. 2620, 219 L. Ed. 2d 1262, 2024 U.S. LEXIS 2456 (2024).

There was sufficient evidence to support the defendant's child molestation conviction

where the jury viewed a recording of the victim's forensic interview in which the victim stated that the defendant touched the victim's private part. *Allen v. State*, 368 Ga. App. 554, 890 S.E.2d 479, 2023 Ga. App. LEXIS 351 (2023).

Trial court did not err denying defendant's motion for a directed verdict of acquittal because the victim's testimony alone was sufficient to establish the elements of the child molestation and the jury was authorized to consider, as substantive evidence of defendant's guilt, the victim's out-of-court statements about the sexual abuse that the victim made in the recorded forensic interview and to the sheriff's deputy in the body camera recording. *Brantley v. State*, 370 Ga. App. 757, 899 S.E.2d 284, 2024 Ga. App. LEXIS 84 (2024).

Trial court properly denied defendant's motion for a new trial because the evidence of the testimony of the 15-year-old victim of defendant's acts of learning the victim's brother was not in the house, returning and confronting the victim while exiting the shower, and forcing the victim to engage in intercourse while holding the victim down on a bed was sufficient for a jury to find defendant guilty of child molestation under O.C.G.A. § 16-6-4(a)(1). *Williams v. State*, 371 Ga. App. 257, 900 S.E.2d 102, 2024 Ga. App. LEXIS 145 (2024).

Victims' testimony alone was sufficient to support the defendant's convictions for aggravated child molestation, incest, and child molestation and it was corroborated by other witnesses and videotaped forensic interviews of the victims, in which the victims reiterated their allegations regarding the defendant's actions. *Brock v. State*, 373 Ga. App. 832, 910 S.E.2d 253, 2024 Ga. App. LEXIS 490 (2024).

Victimized by stepparent.

Evidence was sufficient to convict the defendant of incest and child molestation as the victim testified that the victim had sexual intercourse several times with the defendant, the victim's stepfather; and the SANE nurse testified regarding the injuries to the victim's hymen. *Hughes v. State*, 365 Ga. App. 448, 878 S.E.2d 791, 2022 Ga. App. LEXIS 453 (2022).

Sexual abuse by grandparent.

Trial court did not abuse the court's discretion in admitting testimony regard-

Sufficiency of Evidence (Cont'd)

ing the appellant's prior acts of sexual assault because that evidence was relevant to the appellant's intent, identity, and propensity and three other family members testified that the appellant engaged in the same conduct of rubbing their genitals and inserting the defendant's finger into their vaginas when the witnesses were the same age as the victim, which testimony was relevant to show the appellant's propensity and that it was the appellant who molested the victim. *Dixon v. State*, 350 Ga. App. 211, 828 S.E.2d 427, 2019 Ga. App. LEXIS 274 (2019).

With regard to defendant's convictions for the sexual abuse of three granddaughters, the evidence was sufficient to sustain all of defendant's convictions based on testimony from one of the victim's that defendant laying on top of the victim made it hard to breath and the extensive evidence of defendant's propensity to molest young girls who were family members or otherwise in defendant's care. *Whitfield v. State*, 370 Ga. App. 720, 899 S.E.2d 259, 2024 Ga. App. LEXIS 76 (2024).

Touching child's vagina. — Evidence was sufficient to support the defendant's convictions of child molestation and sexual battery because the state presented evidence that the defendant touched the child victim's vagina with his finger, and, when confronted, provided conflicting accounts of how the incident occurred. *Hewett v. State*, 2024 Ga. App. LEXIS 169 (April 26, 2024).

Masturbating in front of victim. — Defendant's convictions on three counts of child molestation were upheld because that the defendant unbuttoned the victim's pants while masturbating in front of the victim was sufficient for the jury to infer that the defendant intended to arouse and satisfy the defendant's sexual desires. *Cantrell v. State*, 360 Ga. App. 862, 862 S.E.2d 329, 2021 Ga. App. LEXIS 408 (2021).

Evidence was sufficient to support defendant's conviction of child molestation because the state did not need to prove that defendant's arousal did not have to be due to the presence of the child and the

evidence authorized the jury to find that defendant masturbated in the presence of the child. Defendant and the child were within three feet of each other in the same jail visitation area separated only by transparent plexiglass and they were visible to each other while defendant masturbated. *Clark v. State*, 370 Ga. App. 430, 897 S.E.2d 645, 2024 Ga. App. LEXIS 30 (2024).

Defendant viewing child masturbating included. — Trial court did not err in denying the defendant a general demurrer as to count nine of the indictment as to allowing a child victim to masturbate in front of the defendant because O.C.G.A. § 16-6-4(a)(1) has been interpreted to include the act of observing a child engaging in sexual conduct without touching the child. *Marshall v. State*, 361 Ga. App. 357, 864 S.E.2d 469, 2021 Ga. App. LEXIS 488 (2021).

Attempted child molestation.

Conviction of criminal attempt to commit child molestation and to entice a child upheld; the defendant had sexual contact with his daughters when they were children, with one of the daughters giving birth to two of his children, he touched the victim (his 10-year-old granddaughter) inappropriately, and he gave her a note asking to lie in bed with her and caress her. *Shaum v. State*, 355 Ga. App. 513, 844 S.E.2d 863, 2020 Ga. App. LEXIS 343 (2020).

Defendant's claim that the acts the third child described did not inherently show an intent to molest and, without more, did not show any substantial step toward sexual molestation failed because the jury clearly believed the victim's testimony that the defendant aggressively touched the victim's chest and arms and attempted to pull down the victim's pants, such that the victim fought to protect himself, indicating that the defendant had taken a substantial step toward molesting the child. *Alvarado v. State*, 360 Ga. App. 113, 860 S.E.2d 886, 2021 Ga. App. LEXIS 315 (2021).

Evidence of the defendant's extensive communications expressing a desire to engage in oral sex after learning the girl was only 14 and the decision to travel to an established meeting location for the

purpose of engaging in the planned encounter provided sufficient evidence of a substantial step to sustain the defendant's conviction for attempted aggravated child molestation. *Brailsford v. State*, 366 Ga. App. 331, 882 S.E.2d 648, 2023 Ga. App. LEXIS 1 (2023).

Trial court did not err in denying the defendant's general demurrer as to the indictment's criminal attempt to commit child molestation charge because, although the indictment did not explicitly state the defendant's travel to Forsyth County was a substantial step toward the commission of the crime, it was necessarily inferred by the allegation that the defendant committed the crime when the defendant drove to Forsyth County to meet an individual under 16, for the purpose of committing a sexual act with that individual, with the intent to arouse and satisfy the defendant's sexual desires. *Stinson v. State*, 370 Ga. App. 603, 898 S.E.2d 612, 2024 Ga. App. LEXIS 63 (2024).

Admissibility of evidence of similar or connected offenses against children. — Where the defendant was convicted of four counts of child molestation and two counts of enticing a child for indecent purposes, the trial court did not err in allowing into evidence 13 images of child pornography that were recovered from the defendant's computer as the images demonstrated that the defendant had a sexual interest in boys around the age of the victims in the current case. *Hutcheson v. State*, 361 Ga. App. 890, 864 S.E.2d 106, 2021 Ga. App. LEXIS 401 (2021).

Evidence that the defendant chased the adult victim down some stairs, caught the adult victim, and forcibly had sexual intercourse with the adult victim, and that the defendant pulled the child victim's head toward the defendant's penis was sufficient to support the defendant's convictions for rape and child molestation. *Bernal v. State*, 362 Ga. App. 108, 866 S.E.2d 642, 2021 Ga. App. LEXIS 567 (2021).

Evidence was sufficient for the jury to find a defendant guilty of child molestation, etc.

Evidence was sufficient to support the defendant's conviction for aggravated

child molestation, including evidence that the defendant's act of sexual intercourse with the defendant's 14 year old daughter caused the daughter to endure circumstances of childbirth so painful and traumatic to her body that a jury could conclude that the daughter was physically injured and evidence that the daughter suffered severe vaginal tearing and life-threatening blood loss during childbirth and six-weeks of pain requiring medication. *Daddario v. State*, 307 Ga. 179, 835 S.E.2d 181, 2019 Ga. LEXIS 723 (2019).

Victim's testimony that, on the night in question, the victim woke up to find the defendant sitting on the victim's bed and rubbing the victim's buttocks and testimony from the victim's mother that the mother walked into the victim's bedroom and saw the defendant with the defendant's hand in the victim's pants was sufficient to support the defendant's conviction for child molestation. *Gathers v. State*, 355 Ga. App. 761, 844 S.E.2d 882, 2020 Ga. App. LEXIS 347 (2020), cert. denied, No. S20C1467, 2021 Ga. LEXIS 100 (Ga. Mar. 1, 2021).

Testimony from the victim's mother that the victim told the mother that when the victim and the defendant were in the mother's room, the defendant showed the victim the defendant's "no-no", placed the victim's hand on it, and wouldn't let it go until the victim promised not to tell the mother, and testimony from the forensic psychologist who interviewed the victim that the victim told the psychologist the defendant made the victim slowly rub the defendant's penis was sufficient to convict the defendant of child molestation. *Allison v. State*, 356 Ga. App. 256, 846 S.E.2d 222, 2020 Ga. App. LEXIS 408 (2020).

There was sufficient evidence of aggravated child molestation and incest, based on the defendant's act of sodomy, including testimony that the defendant, the victim's stepfather, tried to place the defendant's penis in the victim's mouth and the child fought the defendant off and the defendant's recorded admission to having the victim "go down on" the defendant once or twice, as well as the defendant's statement that the victim didn't like it and it didn't last long. *Miranda v. State*, 354 Ga. App. 777, 841 S.E.2d 440, 2020 Ga. App. LEXIS 220 (2020).

Sufficiency of Evidence (Cont'd)

Evidence that the defendant chased the adult victim down some stairs, caught the adult victim, and forcibly had sexual intercourse with the adult victim, and that the defendant pulled the child victim's head toward the defendant's penis was sufficient to support the defendant's convictions for rape and child molestation. *Bernal v. State*, 362 Ga. App. 108, 866 S.E.2d 642, 2021 Ga. App. LEXIS 567 (2021).

Evidence of child molestation.

Victim's testimony that the defendant, the victim's father, touched the victim's "wrong spot," as recounted to the victim's mother and a program manager during a forensic interview was sufficient to support the defendant's conviction for child molestation. *Chitwood v. State*, 352 Ga. App. 218, 834 S.E.2d 334, 2019 Ga. App. LEXIS 551 (2019).

Evidence at trial was sufficient to support the defendant's conviction for child molestation regardless of whether the victim saw the defendant's genitals because the jury was authorized to infer the defendant's intent to arouse or gratify sexual desires from the act of exposure to a child, the attempt to isolate the victim from the other children in order to conceal the act, and the direction to the victim to look down. *McMurria v. State*, 359 Ga. App. 558, 859 S.E.2d 530, 2021 Ga. App. LEXIS 238 (2021).

The victims' mother's testimony, along with the victim's forensic interview and testimony by the nurse examiner and the forensic interviewer, was sufficient to sustain the aggravated child molestation convictions. *Green v. State*, 359 Ga. App. 845, 860 S.E.2d 140, 2021 Ga. App. LEXIS 296 (2021).

Forensic interviewer's testimony that the victim disclosed in a second interview that the defendant had touched the victim's vaginal area and buttocks and the victim's testimony that everything the victim told the forensic interviewer in the second interview was true were sufficient to support the defendant's convictions for child molestation. *Miller v. State*, 368 Ga. App. 879, 891 S.E.2d 444, 2023 Ga. App. LEXIS 382 (2023).

Evidence sufficient for conviction.

Evidence was sufficient to convict the defendant of two counts of child molestation as, prior to the rape, the defendant pulled down the victim's pants, raised the victim's shirt, kissed the victim's chest area, and touched the victim's vagina with the defendant's hand. *Nguyen v. State*, 351 Ga. App. 509, 831 S.E.2d 213, 2019 Ga. App. LEXIS 443 (2019), cert. dismissed, No. S20C0488, 2020 Ga. LEXIS 402 (Ga. May 18, 2020).

Evidence was sufficient to convict the defendant of aggravated child molestation, aggravated sodomy, and enticing a child for indecent purposes because two of the victims were nine years old at the time of their outcries and the third victim was eight years old at the time of that victim's outcry; the defendant's mother occasionally watched the victims while their father was at work, sometimes over night; the defendant would bring the victims into the defendant's bedroom, where the defendant would force the children to perform oral sex upon the defendant and anally penetrated the children with the defendant's sex organ; and the defendant threatened to hurt the children if the children told anyone about the abuse. *Stodghill v. State*, 351 Ga. App. 744, 832 S.E.2d 891, 2019 Ga. App. LEXIS 486 (2019).

Testimony from the victim's mother that the victim disclosed that the defendant had put the defendant's hands in the front and rear, that it had hurt, and that the defendant had told the victim they could not go home until her smell on the defendant's hands went away was sufficient for a rational trier of fact to find that the defendant committed child molestation and sexual battery. *Hogg v. State*, 356 Ga. App. 11, 846 S.E.2d 183, 2020 Ga. App. LEXIS 406 (2020).

Evidence, including the victim's testimony as to the defendant's actions and testimony of the sexual assault nurse regarding the laceration on the victim's vagina, was sufficient for the jury to find the defendant guilty beyond a reasonable doubt of child molestation for touching the victim's buttocks and aggravated child molestation for inserting the defendant's fingers into the victim's vagina and hurt-

ing the victim. *Buwee v. State*, 359 Ga. App. 321, 857 S.E.2d 498, 2021 Ga. App. LEXIS 188 (2021).

There was sufficient evidence to support the defendant's convictions for child molestation since the victim testified in detail about the occurrences alleged in the indictment and the victim's testimony was corroborated by testimony from the victim's mother regarding the victim's outcry to the mother. *Ary v. State*, 359 Ga. App. 563, 859 S.E.2d 535, 2021 Ga. App. LEXIS 239 (2021).

Evidence that the defendant propositioned a third victim and explained an oral sex position to the middle-school-aged girl supported a conviction for child molestation. *McCurdy v. State*, 359 Ga. App. 885, 860 S.E.2d 172, 2021 Ga. App. LEXIS 300 (2021).

Victim's testimony in a forensic interview that the defendant had touched and licked the victim on the victim's "girl part" was sufficient to support the defendant's convictions for child molestation and aggravated child molestation. *McCurdy v. State*, 359 Ga. App. 885, 860 S.E.2d 172, 2021 Ga. App. LEXIS 300 (2021).

Video recordings showing a man rubbing his penis on the labia and then forcing his penis into the vagina of a sleeping or unconscious young girl who was identified at trial by her mother, his placing his tongue on the labia and inside the vagina of the girl, and his masturbating while he fondled the buttocks and vagina of the girl supported the defendant's convictions for rape, aggravated child molestation, and child molestation against that victim. *McCurdy v. State*, 359 Ga. App. 885, 860 S.E.2d 172, 2021 Ga. App. LEXIS 300 (2021).

Evidence that the defendant was present at the locations where the sexual encounters between the victim and the men occurred, had knowledge that the encounters were to take place and approved of them, and encouraged and facilitated the encounters by, among other things, posting the Backpage.com advertisements, arranging the encounters with the men, and driving the victim to the locations was sufficient for a rational jury to find the defendant guilty as a party to the crimes of aggravated child molesta-

tion and child molestation. *Clemmons v. State*, 361 Ga. App. 666, 865 S.E.2d 274, 2021 Ga. App. LEXIS 535 (2021).

Evidence insufficient for conviction.

Defendant's conviction for aggravated child molestation was vacated because on appeal, the state conceded that sexual intercourse was not an act of sodomy and, therefore, Count 6 as drawn in the indictment did not constitute the crime of aggravated child molestation and could not stand. *Mosby v. State*, 353 Ga. App. 744, 839 S.E.2d 237, 2020 Ga. App. LEXIS 75 (2020).

Evidence was insufficient to prove Count 4 of the indictment, alleging that the defendant committed the offense of child molestation by touching the vaginal area of one of the children with the defendant's hand because the child testified at trial that the defendant had tried to touch the child's vaginal area, but never actually did so as the child moved the defendant's hand. *Espinosa v. State*, 352 Ga. App. 698, 834 S.E.2d 558, 2019 Ga. App. LEXIS 652 (2019).

Evidence was insufficient to convict the defendant of aggravated child molestation by placing the defendant's mouth on the defendant's daughter's genital area because the daughter testified that the defendant tried to touch the daughter's genital area with the defendant's mouth, but nothing in the daughter's testimony or forensic interview revealed that the defendant actually placed the defendant's mouth there. *Shepherd v. State*, 353 Ga. App. 228, 836 S.E.2d 221, 2019 Ga. App. LEXIS 678 (2019).

Evidence was insufficient to support one count of child molestation, which alleged that the defendant used the defendant's hands to grab the victim's buttocks and rub the victim's vagina and buttocks, because the victim's testimony indicated that the encounter that formed the basis for that count did not involve the use of the defendant's hands and the court declined the state's request to infer that sex was commonly preceded by foreplay. *Butler v. State*, 352 Ga. App. 579, 835 S.E.2d 389, 2019 Ga. App. LEXIS 606 (2019), cert. denied, No. S20C0640, 2020 Ga. LEXIS 500 (Ga. June 29, 2020).

Sufficiency of Evidence (Cont'd)

Because there was no evidence that the defendant touched one victim's vaginal area, the defendant's conviction for child molestation involving that victim could not stand. *Espinosa v. State*, 352 Ga. App. 698, 834 S.E.2d 558, 2019 Ga. App. LEXIS 652 (2019).

Evidence sufficient for conviction of aggravated child molestation, etc.

Evidence was sufficient to convict the defendant of the remaining counts of aggravated child molestation, child molestation, attempted child molestation, and cruelty to children, not included in Count 3, based on the video-recordings of the children's forensic interviews; testimony about the children's various disclosures; the children's testimony; and the neighbors' testimony that the neighbors observed bruises and other injuries on the children, and saw the defendant kick one of the children. *Shepherd v. State*, 353 Ga. App. 228, 836 S.E.2d 221, 2019 Ga. App. LEXIS 678 (2019).

Merging With Other Offenses

Multiple touches does not mean multiple prosecutions. — Defendant's conduct, as outlined in three counts of the indictment alleging that the defendant touched three different areas of the victim's body constituted a single unit of prosecution for which the defendant was subject to only one conviction and sentence because the General Assembly did not, by clear and unambiguous language, provide that multiple touches to a victim, during a single uninterrupted course of conduct, authorized multiple prosecutions and convictions for separate acts of child molestation. *Scott v. State*, 356 Ga. App. 152, 846 S.E.2d 241, 2020 Ga. App. LEXIS 416 (2020), superseded by statute as stated in *Shropshire v. State*, 371 Ga. App. 686, 902 S.E.2d 677, 2024 Ga. App. LEXIS 202 (2024).

Child molestation and sexual battery.

Evidence was sufficient to support defendant's convictions of child molestation and sexual battery because the state presented evidence that defendant touched the child victim's vagina with his finger,

and, when confronted, provided conflicting accounts of how the incident occurred. *Hewett v. State*, 371 Ga. App. 455, 901 S.E.2d 208, 2024 Ga. App. LEXIS 169 (2024).

Trial court did not err by failing to rule that defendant's convictions were mutually exclusive because sexual battery required proof of a fact that the offense of child molestation does not, lack of consent. Additionally, the offense of child molestation required proof of a fact that the offense of sexual battery does not, the intent to arouse or satisfy the sexual desires of either the child or the person. *Hewett v. State*, 371 Ga. App. 455, 901 S.E.2d 208, 2024 Ga. App. LEXIS 169 (2024).

Merger of child molestation counts.

— When the defendant was convicted of four counts of child molestation, the court of appeals erred in evaluating the defendant's claim that three of the child molestation counts should have been merged together using the "required evidence" test because the defendant was convicted of multiple counts of the same crime, and the court of appeals should have used the applicable unit-of-prosecution analysis to determine whether the three child molestation counts merged. *Scott v. State*, 306 Ga. 507, 832 S.E.2d 426, 2019 Ga. LEXIS 525 (2019).

Trial court did not err in failing to merge counts five and six charging the defendant with child molestation as a jury could have concluded that the abuse alleged in those counts were discrete, separate offenses occurring over a period of years, rather than during a single course of conduct taking place over a relatively short period of time, because the victim testified that the abuse lasted from when the victim was in sixth grade until the victim was a sophomore in high school. *Carr v. State*, 363 Ga. App. 35, 870 S.E.2d 531, 2022 Ga. App. LEXIS 122 (2022).

Court of Appeals erred in applying a unit-of-prosecution analysis rather than a required evidence analysis in determining whether defendant's child molestation counts merged into his aggravated child molestation conviction because a required evidence analysis, rather than a unit-of-prosecution analysis, should be applied

when considering whether different crimes merged. *State v. Shropshire*, 318 Ga. 14, 896 S.E.2d 541, 2023 Ga. LEXIS 265 (2023).

Merger not warranted in child molestation and statutory rape. — Trial court did not err in failing to merge the child molestation and statutory rape convictions because the child molestation conviction was based on the defendant touching the victim's back and vaginal area, while the statutory rape conviction was based on the defendant engaging in sexual intercourse with the victim. *Wilson v. State*, 354 Ga. App. 64, 840 S.E.2d 601, 2020 Ga. App. LEXIS 120 (2020), *aff'd*, 312 Ga. 174, 860 S.E.2d 485, 2021 Ga. LEXIS 481 (2021).

Jury Issues and Instructions

Charge to jury.

Trial court did not commit plain error in instructing the jury on criminal attempt to commit child molestation because it instructed the jury that the indictment and the plea formed the issues to be decided, it explicitly instructed the jury that it could only find defendant guilty if it found beyond a reasonable doubt that he committed the charged offenses as alleged in the indictment, which required finding that defendant believed the undercover officer to be a 14-year-old child. In addition, the trial court gave a copy of the indictment to the jury to review during its deliberation. *Baggett v. State*, 367 Ga. App. 851, 888 S.E.2d 636, 2023 Ga. App. LEXIS 246 (2023).

Because defendant was more than four years older than the victim at the time the molestation took place, the trial court correctly determined that there was no slight evidence to support the requested lesser misdemeanor aggravated child molestation charge and defendant failed to show that trial counsel could have properly objected to the trial court's ruling, and, thus, failed to establish that trial counsel acted deficiently. *Buenrostro v. State*, 370 Ga. App. 659, 897 S.E.2d 626, 2024 Ga. App. LEXIS 32 (2024).

Allen charge. — Defendant's convictions on numerous child-sex offenses was upheld because the fact that the defendant was not acquitted of any of the

charged offenses was not enough to establish that the trial court abused the court's discretion in giving the Allen charge. *Marshall v. State*, 361 Ga. App. 357, 864 S.E.2d 469, 2021 Ga. App. LEXIS 488 (2021).

Instructions sufficient to inform jury of specific intent. — Sufficient evidence supported jury's determination that defendant had requisite intent to molest as evidence showed defendant committed acts while alone with girls, defendant continued trying to penetrate one of them despite victim's complaint of pain, and defendant kept video recordings of acts on phone even after girlfriend discovered one. *Johnson v. State*, 367 Ga. App. 344, 886 S.E.2d 5, 2023 Ga. App. LEXIS 155 (2023).

Charge tracking entire statute not error. — Any error in the trial court's charging the entire aggravated child molestation statute was not harmful because there was no reasonable possibility that the jury was misled and convicted the defendant of aggravated child molestation for causing physical injury not alleged in the indictment. *Stevens v. State*, 356 Ga. App. 847, 847 S.E.2d 649, 2020 Ga. App. LEXIS 493 (2020), *cert. denied*, No. S21C0336, 2021 Ga. LEXIS 389 (Ga. May 3, 2021).

Instruction on lesser included offenses. — Trial court did not err in refusing to give a jury instruction on sexual battery as a lesser-included offense of child molestation because the defendant pointed to no evidence demonstrating that a touch occurred without the necessary intent for child molestation as the state presented evidence suggesting that the defendant asked the victim, a child under the age of 16 years, to be the defendant's girlfriend, would sometimes touch the victim after the victim got out of the shower, engaged in tongue-kissing with the victim, and had the victim touch the defendant's penis; and the evidence demonstrated either that the indicted crime or no crime at all occurred. *Solis-Macias v. State*, 356 Ga. App. 561, 848 S.E.2d 180, 2020 Ga. App. LEXIS 490 (2020), *cert. denied*, No. S21C0218, 2021 Ga. LEXIS 380 (Ga. Apr. 19, 2021).

There was no plain error in the trial court's charge to the jury, etc.

Jury Issues and Instructions (Cont'd)

Trial court's failure to include the word "indecent" in the jury instruction on child molestation did not amount to plain error because the word was included in the written copy of the charge that the jury was given for deliberations and the defendant failed to show the error likely affected the outcome of the trial. *Oates v. State*, 355 Ga. App. 301, 844 S.E.2d 239, 2020 Ga. App. LEXIS 304 (2020).

Jury instruction on statute of limitation. — Trial counsel was ineffective in failing to request a jury instruction on the statute of limitation with regard to the child-cruelty charge because in the indictment the state did not allege that the statute of limitation for child cruelty was tolled based on the victim being under the age of 16; thus, such proof was inadmissible at trial. *Slack v. State*, 354 Ga. App. 727, 841 S.E.2d 231, 2020 Ga. App. LEXIS 215 (2020).

Sentence

Required notice for life sentence provided. — Contrary to defendant's claim, the state provided the notice required before imposing life imprisonment for the child molestation count. *Bryson v. State*, 369 Ga. App. 560, 894 S.E.2d 120, 2023 Ga. App. LEXIS 492 (2023).

Prior conviction from other state could be used to support sentence. —

Trial court did not err in denying the defendant's motion to modify a sentence for child molestation because O.C.G.A. § 16-6-4(b)(1), did not limit the convictions to Georgia convictions and the defendant's Minnesota conviction, previously held to be an offense amounting to aggravated child molestation, made the instant conviction for child molestation a second conviction and subjected the defendant to imprisonment for not less than ten years nor more than 30 years or by imprisonment for life. *Moffitt v. State*, 359 Ga. App. 261, 857 S.E.2d 264, 2021 Ga. App. LEXIS 172 (2021).

Split sentences. — Trial court's denial of the defendant's motion to vacate sentences for child molestation, aggravated child molestation, and incest was upheld

because to apply the split-sentencing provisions to pre-2006 law would require the court to re-write applicable statutes to make them subject to statutory provisions that did not even exist at the time the statutes were enacted, which the court was prohibited to do without contravening the plain meaning of the statutory text. *Bryson v. State*, 350 Ga. App. 206, 828 S.E.2d 450, 2019 Ga. App. LEXIS 277 (2019).

Corrected sentence remained void because the trial court failed to impose a split sentence on the statutory rape and child molestation charges because those offenses were subject to the split sentence requirements, which required split sentences for each count. When the trial court resentenced the defendant in 2018, the court was still required to impose a split sentence on each count as required by the statute in effect at the time the defendant committed the crimes. *Martinez-Chavez v. State*, 352 Ga. App. 142, 834 S.E.2d 139, 2019 Ga. App. LEXIS 539 (2019).

Trial court properly amended its original sentencing order because it was void in that it failed to comply with the split sentence requirement. *Pavlov v. State*, 362 Ga. App. 831, 870 S.E.2d 449, 2022 Ga. App. LEXIS 109 (2022).

Sentence violated minimum sentencing requirements.

Following defendant's guilty plea to two counts of child molestation, the orally pronounced sentence of 10 years probation was not void because the state failed to present evidence at the plea/sentencing hearing that the crime involved transporting the victim, which prohibited a downward deviation from the mandatory minimum sentence, thus, increasing defendant's sentence after having begun to serve the orally pronounced sentence would violate defendant's protection against double jeopardy. *Maddox v. State*, 374 Ga. App. 736, 913 S.E.2d 856, 2025 Ga. App. LEXIS 112 (2025).

Sentence violated defendant's right to equal protection. — Because the defendant was similarly situated to persons receiving misdemeanor sentences for aggravated child molestation against a 13-year-old victim and because the higher age threshold for misdemeanor child mo-

lestation bore no reasonable relation to a proper legislative purpose, the sentencing scheme for child molestation, as applied to the defendant, violated the defendant's right to equal protection under the Fourteenth Amendment to the United States Constitution. *Regan v. State*, 317 Ga. 612, 894 S.E.2d 584, 2023 Ga. LEXIS 235 (2023).

Enhancement could not be based on multiple convictions under same indictment. — Enhanced sentences on two counts were unauthorized because the enhancement could not be based on multiple convictions under the same indictment. *Allen v. State*, 368 Ga. App. 554, 890 S.E.2d 479, 2023 Ga. App. LEXIS 351 (2023).

Sentences should have been merged. — Trial court erred by not merging the defendant's aggravated child molestation and two child molestation convictions into a single conviction because the evidence presented at trial, including the victim's testimony, showed that the

touching occurred in a single, uninterrupted incident. *Shropshire v. State*, 365 Ga. App. 653, 878 S.E.2d 562, 2022 Ga. App. LEXIS 486 (2022), vacated in part, 318 Ga. 14, 896 S.E.2d 541, 2023 Ga. LEXIS 265 (2023), vacated in part, reaff'd, 371 Ga. App. 686, 902 S.E.2d 677, 2024 Ga. App. LEXIS 202 (2024).

Sentencing of juvenile for sexual battery. — Because the evidence established that the juvenile's act of sexual battery was committed against the victim, who was under the age of 16 years, felony punishment under O.C.G.A. § 16-6-22.1(d) was required and the juvenile was not entitled to a delinquency adjudication for child abuse since if the Georgia legislature intended to provide more lenient treatment for teenagers who commit sexual battery against another minor, the legislature could have amended the statute. In the Interest of P. T., 353 Ga. App. 511, 838 S.E.2d 596, 2020 Ga. App. LEXIS 29 (2020).

RESEARCH REFERENCES

ALR.

Necessity of Expert Testimony on

Grooming Behavior Involving Sexual Conduct with Child, 53 A.L.R.7th 3.

16-6-5. Enticing a child for indecent purposes.

(a) A person commits the offense of enticing a child for indecent purposes when he or she solicits, entices, or takes any child under the age of 16 years to any place whatsoever for the purpose of child molestation or indecent acts.

(b) Except as provided in subsection (c) of this Code section, a person convicted of the offense of enticing a child for indecent purposes shall be punished by imprisonment for not less than ten nor more than 30 years. Any person convicted under this Code section of the offense of enticing a child for indecent purposes shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(c) If the victim is at least 14 but less than 16 years of age and the person convicted of enticing a child for indecent purposes is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(d)(1) As used in this subsection, the term "sexual felony" shall have

the same meaning as set forth in paragraph (2) of subsection (j) of Code Section 16-5-21.

(2) Any person having been previously convicted of a sexual felony who is convicted of the felony offense of enticing a child for indecent purposes shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in paragraph (14) of subsection (a) of Code Section 42-8-35.

History.

Ga. L. 1950, p. 387, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 408, § 2; Code 1933, § 26-2020, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1984, p. 1495, § 2; Ga. L. 1992, p. 6, § 16; Ga. L. 1992, p. 2131, § 1; Ga. L. 1995, p. 957, § 5; Ga. L. 2006, p. 379, § 12/HB 1059; Ga. L. 2023, p. 637, § 3-8/HB 188, effective May 4, 2023.

Amendments.

The 2023 amendment, effective May 4, 2023, added subsection (d). See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2023, p. 637, § 1-1/HB 188, not codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘Mariam’s Law.’”

Ga. L. 2023, p. 637, § 7-1/HB 188, not codified by the General Assembly, provides, in part, that the punishment provisions of subsection (d) shall apply to all offenses committed on and after July 1, 2023.

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

Application

Enticement and intended motivation must be shown.

Defendant’s convictions for criminal attempt of enticing a child for indecent purposes were reversed because the state failed to present any evidence to show that an act of indecency or child molestation was the intended motivation behind the defendant’s apparent attempts to entice the victims into the defendant’s vehicle when the defendant drove by the alleged victims or asked one to put their bike in the truck. *Phillips v. State*, 354 Ga. App. 88, 840 S.E.2d 165, 2020 Ga. App. LEXIS 123 (2020), cert. denied, No. S20C1235, 2020 Ga. LEXIS 891 (Ga. Nov. 2, 2020).

Evidence was insufficient to support defendant’s conviction of attempting to entice the minor victim to enter defendant’s vehicle to commit indecent acts because

the victim denied that defendant said anything about wanting to take the victim somewhere else to try to have relations with the victim or anything similar. *Green v. State*, 371 Ga. App. 259, 899 S.E.2d 493, 2024 Ga. App. LEXIS 146 (2024), rev’d in part, 321 Ga. 204, 913 S.E.2d 621, 2025 Ga. LEXIS 49 (2025).

Evidence was sufficient to support defendant’s conviction of enticing a child for indecent purposes because the defendant enticed the victim to meet with the defendant through the defendant’s attention, texts, telephone calls, and gifts, and the text messages between defendant and the victim provided ample evidence from which the jury could infer that defendant had a present intent to commit an indecent act or child molestation when the defendant enticed the victim to get into the defendant’s car in a secluded area. *Bryan v. State*, 371 Ga. App. 769, 903

S.E.2d 160, 2024 Ga. App. LEXIS 217 (2024).

Evidence of similar prior incident admissible.

When the defendant was convicted of incest and child molestation, the trial court did not err by admitting other acts evidence because attempted enticement of a child for indecent purposes could be accomplished where the defendant engaged in sexually explicit communications with a person the defendant believed to be under the age of 16 and arranged to meet the purported child; and the fact the defendant had attempted to meet another purported teenage victim to have sexual intercourse was highly probative of the defendant's motive. *Hughes v. State*, 365 Ga. App. 448, 878 S.E.2d 791, 2022 Ga. App. LEXIS 453 (2022).

Evidence that defendant made unwanted, sexually suggestive comments to adults was relevant evidence of whether defendant's later solicitation, enticement, or taking of a minor was done for the purpose of child molestation or indecent acts as they were made close in time and under similar circumstances of trying to lure the victims into a car through deception and the comments had some tendency to make it more probable that defendant's enticement of the minor was done for a sexual purpose. *State v. Green*, 321 Ga. 204, 913 S.E.2d 621, 2025 Ga. LEXIS 49 (2025).

Attempt to entice child for immoral purposes. — Conviction of criminal attempt to commit child molestation and to entice a child upheld; the defendant had sexual contact with his daughters when they were children, with one of the daughters giving birth to two of his children, he touched the victim (his 10-year-old granddaughter) inappropriately, and he gave her a note asking to lie in bed with her and caress her. *Shaum v. State*, 355 Ga. App. 513, 844 S.E.2d 863, 2020 Ga. App. LEXIS 343 (2020).

Admission of computer pornography in child sexual crimes. — After the defendant was convicted of four counts of child molestation and two counts of enticing a child for indecent purposes, the trial court did not err in allowing into evidence 13 images of child pornography that were

recovered from the defendant's computer as the images demonstrated that the defendant had a sexual interest in boys around the age of the victims in the current case. *Hutcheson v. State*, 361 Ga. App. 890, 864 S.E.2d 106, 2021 Ga. App. LEXIS 401 (2021).

Evidence sufficient for conviction.

— Evidence was sufficient to convict the defendant of aggravated child molestation, aggravated sodomy, and enticing a child for indecent purposes because two of the victims were nine years old at the time of their outcries and the third victim was eight years old at the time of that victim's outcry; the defendant's mother occasionally watched the victims while their father was at work, sometimes over night; the defendant would bring the victims into the defendant's bedroom, where the defendant would force the children to perform oral sex upon the defendant and anally penetrated the children with the defendant's sex organ; and the defendant threatened to hurt the children if the children told anyone about the abuse. *Stodghill v. State*, 351 Ga. App. 744, 832 S.E.2d 891, 2019 Ga. App. LEXIS 486 (2019).

Conviction for enticing a child for indecent purposes was supported by sufficient evidence as the evidence authorized the jury to find that the defendant enticed the four-year-old victim to the victim's mother's bedroom with the intention to engage in child molestation as established by the defendant's subsequent act of placing the victim's hand on the defendant's penis. Calling the victim from the couch into the mother's bedroom was sufficient evidence of asportation. *Allison v. State*, 356 Ga. App. 256, 846 S.E.2d 222, 2020 Ga. App. LEXIS 408 (2020).

Subsequent act of statutory rape was sufficient evidence that the defendant intended to engage in sexual activity with the victim when the defendant told the victim to come over and then paid for and sent an Uber to the victim's house to bring the victim to the defendant. Moreover, the victim testified that on the previous occasion the victim went to the defendant's house, they kissed, and the defendant testified that the last time the victim came over, they had sex. *Stone v. State*, 358 Ga.

Application (Cont'd)

App. 98, 853 S.E.2d 682, 2021 Ga. App. LEXIS 8 (2021).

There was sufficient evidence to support the defendant's convictions for enticing a child for indecent purposes and aggravated child molestation where the victim testified that, when the victim was 11 years old, the defendant began making the victim touch the defendant's penis, the defendant made the victim perform oral sex on multiple occasions, and the defendant instructed the victim to move from the couch to the floor so the defendant could molest the victim, showing required asportation. *Reid v. State*, 361 Ga. App. 617, 865 S.E.2d 245, 2021 Ga. App. LEXIS 527 (2021).

Evidence that the defendant twice placed the defendant's mouth on the victim's vagina and twice placed the defendant's penis inside the victim's vagina without the victim's consent, and put fin-

gers on the victim's vagina was sufficient to support the defendant's convictions for rape, aggravated sodomy, aggravated child molestation, incest, enticing a child for indecent purposes, and child molestation. *Curgil v. State*, 363 Ga. App. 355, 871 S.E.2d 322, 2022 Ga. App. LEXIS 166 (2022).

Evidence insufficient for conviction of enticing minor child. — There was insufficient evidence that the defendant, who tried to get the victim to get inside the defendant's vehicle by falsely telling the victim that the victim's parent needed the victim, attempted to entice the victim for indecent purposes, as the defendant did not say anything of a sexual nature, and the defendant's suggestive comments to a drugstore employee earlier that same day were directed to another adult. *Green v. State*, 371 Ga. App. 259, 899 S.E.2d 493, 2024 Ga. App. LEXIS 146 (2024), rev'd in part, 321 Ga. 204, 913 S.E.2d 621, 2025 Ga. LEXIS 49 (2025).

RESEARCH REFERENCES**ALR.**

Offense of human trafficking of minor under state laws, 77 A.L.R.7th 3.

16-6-5.1. Improper sexual contact by employee, agent, or foster parent; consent not a defense; penalty.

(a) As used in this Code section, the term:

(1) "Agent" means an individual authorized to act on behalf of another, with or without compensation.

(1.1) "Child-placing agency" shall have the same meaning as set forth in Code Section 49-5-3.

(2) "Child welfare and youth services" shall have the same meaning as set forth in Code Section 49-5-3.

(3) "Disability" shall have the same meaning as set forth in Code Section 37-1-1.

(4) "Employee" means an individual who works for salary, wages, or other remuneration for an employer or sole proprietor.

(4.1) "Foster care home" means a private home used by a child-placing agency which has been approved by the child-placing agency to provide 24 hour care, lodging, supervision, and maintenance for

one or more children or a private home which has been approved and is directly supervised by the Department of Human Services to provide 24 hour care, lodging, supervision, and maintenance for one or more children.

(4.2) “Foster parent” means the person or persons who provide care, lodging, supervision, and maintenance for one or more children in a foster care home used by a child-placing agency or in a foster care home approved and directly supervised by the Department of Human Services.

(5) “Intimate parts” means the genital area, groin, inner thighs, buttocks, or breasts of a person.

(5.1) “Person in a position of trust” means an individual with whom a parent, guardian, or other person standing in loco parentis of a minor has entered into an agreement entrusting such individual with the responsibility of education and supervision of such minor; provided, however, that no such status shall exist when the terms of the agreement have been satisfied or terminated and the minor is no longer under the supervision of such individual.

(6) “Psychotherapy” means the professional treatment or counseling of a mental or emotional illness, symptom, or condition.

(7) “School” means any educational institution, public or private, providing elementary or secondary education to children at any level, kindergarten through twelfth grade, or the equivalent thereof if grade divisions are not used, including extracurricular programs of such institution.

(8) “Sensitive care facility” means any facility licensed or required to be licensed under Code Section 31-7-3, 31-7-12, or 31-7-12.2 or who is required to be licensed pursuant to Code Section 31-7-151 or 31-7-173.

(9) “Sexual contact” means any contact involving the intimate parts of either person for the purpose of sexual gratification of either person.

(10) “Sexually explicit conduct” shall have the same meaning as set forth in Code Section 16-12-100.

(11) “Sole proprietor” means an individual who is an owner or operator of a program or facility rendering services or housing to another as a condition of such other person’s probation or parole.

(b) An employee or agent commits the offense of improper sexual contact by employee or agent in the first degree when such employee or agent knowingly engages in sexually explicit conduct with another person whom such employee or agent knows or reasonably should have known is contemporaneously:

(1) Enrolled as a student at a school of which he or she is an employee or agent;

(2) Under probation, parole, a program or within a facility as a condition of probation or parole, accountability court, or pretrial diversion supervision of the office or court of which he or she is an employee or agent;

(3) Being detained by or is in the custody of any law enforcement agency of which he or she is an employee or agent;

(4) A patient in or at a hospital of which he or she is an employee or agent;

(5) In the custody of a correctional facility, juvenile detention facility, facility providing services to a person with a disability, or a facility providing child welfare and youth services of which he or she is an employee or agent;

(6) The subject of such employee or agent's actual or purported psychotherapy treatment or counseling; or

(7) Admitted for care at a sensitive care facility of which he or she is an employee or agent.

(b.1) A person commits the offense of improper sexual contact by a foster parent in the first degree when he or she is a foster parent and knowingly engages in sexually explicit conduct with his or her current foster child.

(b.2) A person commits the offense of improper sexual contact by a person in a position of trust in the first degree when a person in a position of trust engages in sexually explicit conduct with a minor for whom he or she has entered into an agreement entrusting him or her with the responsibility of education and supervision of such minor.

(c) A person commits the offense of improper sexual contact by employee or agent in the second degree when such employee or agent knowingly engages in sexual contact, excluding sexually explicit conduct, with another person whom such employee or agent knows or reasonably should have known is contemporaneously:

(1) Enrolled as a student at a school of which he or she is an employee or agent;

(2) Under probation, parole, a program or within a facility as a condition of probation or parole, accountability court, or pretrial diversion supervision of the office or court of which he or she is an employee or agent;

(3) Being detained by or is in the custody of a law enforcement agency of which he or she is an employee or agent;

(4) A patient in or at a hospital of which he or she is an employee or agent;

(5) In the custody of a correctional facility, juvenile detention facility, facility providing services to a person with a disability, or facility providing child welfare and youth services of which he or she is an employee or agent;

(6) The subject of such employee or agent's actual or purported psychotherapy treatment or counseling; or

(7) Admitted for care at a sensitive care facility of which he or she is an employee or agent.

(c.1) A person commits the offense of improper sexual contact by a foster parent in the second degree when he or she is a foster parent and knowingly engages in sexual contact, excluding sexually explicit conduct, with his or her current foster child.

(c.2) A person commits the offense of improper sexual contact by a person in a position of trust in the second degree when a person in a position of trust engages in sexual contact, excluding sexually explicit conduct, with a minor for whom he or she has entered into an agreement entrusting him or her with the responsibility of education and supervision of such minor.

(d) Consent of the victim shall not be a defense to a prosecution under this Code section.

(e)(1) This Code section shall not apply to sexually explicit conduct or sexual contact between individuals lawfully married to each other.

(2) This Code section shall not apply to a student who is enrolled at the same school as the victim.

(f) A person convicted of improper sexual contact by employee or agent in the first degree, improper sexual contact by a person in a position of trust in the first degree, or improper sexual contact by a foster parent in the first degree shall be punished by imprisonment for not less than one nor more than 25 years and by a fine not to exceed \$100,000.00; provided, however, that:

(1) Except as provided in paragraph (2) of this subsection, any person convicted of the offense of improper sexual contact by employee or agent, improper sexual contact by a person in a position of trust in the first degree, or improper sexual contact by a foster parent with a child under the age of 16 years shall be punished by imprisonment for not less than ten nor more than 30 years and a fine not to exceed \$100,000.00 and shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2; and

(2)(A) If at the time of the offense the victim of the offense is at

least 14 years of age but less than 21 years of age and the person is 21 years of age or younger and is no more than 48 months older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(B) If at the time of the offense the victim of the offense is under the age of 16 and the act physically injures the victim or involves an act of sodomy, the offense shall be punished by imprisonment for not less than 25 nor more than 50 years and a fine not to exceed \$100,000.00 and shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(g) A person convicted of improper sexual contact by employee or agent in the second degree, improper sexual contact by a person in a position of trust in the second degree, or improper sexual contact by a foster parent in the second degree shall be punished as for a misdemeanor of a high and aggravated nature and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2; provided, however, that:

(1) Except as provided in paragraphs (2) and (3) of this subsection, any person convicted of the offense of improper sexual contact by employee or agent in the second degree, improper sexual contact by a person in a position of trust in the second degree, or improper sexual contact by a foster parent in the second degree with a child under the age of 16 years shall be punished by imprisonment for not less than five nor more than 25 years and by a fine not to exceed \$25,000.00 and shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2;

(2) If at the time of the offense the victim of the offense is at least 14 years of age but less than 21 years of age and the person is 21 years of age or younger and is no more than 48 months older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2; and

(3) Except as provided in paragraph (2) of this subsection, upon a second or subsequent conviction of the offense of improper sexual contact by employee or agent in the second degree, improper sexual contact by a person in a position of trust in the second degree, or improper sexual contact by a foster parent in the second degree, the person shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than five years and shall be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(h)(1) As used in this subsection, the term “sexual felony” shall have

the same meaning as set forth in paragraph (2) of subsection (j) of Code Section 16-5-21.

(2) Except as provided in paragraph (3) of subsection (g) of this Code section, any person having been previously convicted of a sexual felony who is convicted of the felony offense of improper sexual contact by employee, agent, or foster parent in the first or second degree, shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in paragraph (14) of subsection (a) of Code Section 42-8-35.

History.

Code 1981, § 16-6-5.1, enacted by Ga. L. 1983, p. 721, § 1; Ga. L. 1990, p. 1003, § 1; Ga. L. 1991, p. 1108, § 1; Ga. L. 1992, p. 6, § 16; Ga. L. 1992, p. 1940, § 1; Ga. L. 1999, p. 562, § 5; Ga. L. 2006, p. 379, § 13/HB 1059; Ga. L. 2010, p. 168, § 2/HB 571; Ga. L. 2011, p. 227, § 5/SB 178; Ga. L. 2015, p. 422, § 5-20/HB 310; Ga. L. 2016, p. 864, § 16/HB 737; Ga. L. 2019, p. 912, § 1/SB 9; Ga. L. 2020, p. 245, § 1/HB 911; Ga. L. 2021, p. 384, § 6/HB 363; Ga. L. 2021, p. 516, § 1/SB 117; Ga. L. 2022, p. 352, § 16/HB 1428; Ga. L. 2023, p. 637, § 3-9/HB 188, effective May 4, 2023.

Amendments.

The 2020 amendment, effective January 1, 2021, added paragraphs (a)(1.1), (a)(4.1), and (a)(4.2); added subsections (b.1) and (c.1); inserted “or improper sexual contact by a foster parent in the first degree” in subsection (f); inserted “or improper sexual contact by a foster parent” in the middle of paragraph (f)(1); and inserted “or improper sexual contact by a foster parent in the second degree” in subsection (g) and paragraphs (g)(1) and (g)(3).

The first 2021 amendment, effective July 1, 2021, added “or sole proprietor” at the end of paragraph (a)(4); added paragraph (a)(11); inserted “a program or within a facility as a condition of probation or parole, accountability court,” in paragraphs (b)(2) and (c)(2).

The second 2021 amendment, effective July 1, 2021, added paragraph (a)(5.1) and subsections (b.2) and (c.2); in subsection (f), inserted “, improper sexual con-

tact by a person in a position of trust in the first degree,” and substituted “25 years and by a fine not to exceed \$100,000.00; provided” for “25 years or by a fine not to exceed \$100,000.00, or both; provided”; in paragraph (f)(1), inserted “, improper sexual contact by a person in a position of trust in the first degree,” and substituted “10 nor more than 30 years and a fine not to exceed \$100,000.00 and shall” for “25 nor more than 50 years or a fine not to exceed \$100,000.00, or both, and shall”; designated the existing provisions of paragraph (f)(2) as subparagraph (f)(2)(A); added subparagraph (f)(2)(B); inserted “, improper sexual contact by a person in a position of trust in the second degree,” in subsection (g) and in paragraphs (g)(1) and (g)(3); and substituted “25 years and by a fine not to exceed \$25,000.00 and shall” for “25 years or by a fine not to exceed \$25,000.00, or both, and shall” near the end of paragraph (g)(1).

The 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, in paragraph (f)(1), substituted “by employee or agent, improper sexual contact by a person in a position of trust in the first degree” for “by employee, improper sexual contact by a person in a position of trust in the first degree, or agent” and “ten” for “10”.

The 2023 amendment, effective May 4, 2023, added subsection (h). See Editor’s notes for applicability.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2020, “Department of Human Services” was substituted for “Department of Human Resources” at the end of paragraph (a)(4.2).

Editor’s notes.

Ga. L. 2023, p. 637, § 1-1/HB 188, not codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘Mariam’s Law.’”

Ga. L. 2023, p. 637, § 7-1/HB 188, not

codified by the General Assembly, provides, in part, that the punishment provisions of subsection (h) shall apply to all offenses committed on and after July 1, 2023.

JUDICIAL DECISIONS

Indictment failed to charge essential elements. — Indictment against defendant failed to charge the essential elements of O.C.G.A. § 16-6-5.1 because the indictment did not allege that defendant was a person in a position of trust, nor did the indictment allege that defendant had entered into an agreement entrusting defendant with the victim’s supervision and education. *State v. Crumpton*, 369 Ga. App. 403, 893 S.E.2d 816, 2023 Ga. App. LEXIS 470 (2023).

Electronic transmission of photograph. — Because the indictment charged defendant with a crime pursuant to O.C.G.A. § 16-6-5.1, the trial court erred by granting the general demurrer because the plain language of the statute did not limit the offense to those actions conducted when the victim and perpetrator were in one another’s physical

presence and, therefore, such an exhibition could occur, as alleged in the instant case, via electronic transmission of a photograph. *State v. Crumpton*, 369 Ga. App. 403, 893 S.E.2d 816, 2023 Ga. App. LEXIS 470 (2023).

Evidence sufficient for conviction. — Evidence was sufficient to support the defendant’s conviction for sexual assault of a student, because the technical college was a school and the defendant was a teacher in that the defendant did the sorts of things that teachers typically do, including instructing students in the classroom and on the road, grading tests, evaluating students’ driving performance, training other instructors, and was a certified driving instructor. *Huggins v. State*, 362 Ga. App. 450, 868 S.E.2d 840, 2022 Ga. App. LEXIS 45 (2022).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 16-6-5.1 are offenses for which fingerprinting is required. 2019 Op. Att’y Gen. No. 19-3.

Misdemeanor offenses arising under O.C.G.A. § 16-6-5.1 are offenses for which those charged are to be fingerprinted. 2020 Op. Att’y Gen. No. 20-4.

16-6-8. Public indecency.

JUDICIAL DECISIONS

Evidence sufficient to support conviction. — Trial court did not err by denying defendant’s motion for directed verdict of acquittal on the public indecency charge because while the witness did not directly see defendant’s sexual organs, the jury could reasonably infer

from the witness’s testimony that defendant’s sexual organs were exposed while defendant was defecating and urinating in public. *Onyeka v. State*, 374 Ga. App. 504, 913 S.E.2d 377, 2025 Ga. App. LEXIS 81 (2025).

16-6-9. Prostitution.**Law reviews.**

For article on the 2019 amendment of

this Code section, see 36 Georgia St. U.L. Rev. 63 (2019).

16-6-12. Pandering.**JUDICIAL DECISIONS****Defendant did more than pander. —**

Trial court erred in vacating the first trafficking count and instead convicting and sentencing the defendant for pandering because the defendant did more than just solicit the victim for sex, as required

for the pandering offense, in that the defendant recruited the 16-year-old victim and had sex with the victim. *State v. Stillman*, 372 Ga. App. 330, 904 S.E.2d 379, 2024 Ga. App. LEXIS 297 (2024).

16-6-13. Penalties for violating Code Sections 16-6-9 through 16-6-12.

(a) Except as otherwise provided in subsection (b) of this Code section, a person convicted of violating:

(1) Code Section 16-6-10 shall be punished as for a misdemeanor of a high and aggravated nature, and at the sole discretion of the judge, all but 24 hours of any term of imprisonment imposed may be suspended, stayed, or probated;

(2) Code Section 16-6-9 shall be punished as for a misdemeanor;

(3) Code Section 16-6-11 for a:

(A) First offense shall be punished as for a misdemeanor of a high and aggravated nature, and at the sole discretion of the judge, all but 72 hours of any term of imprisonment imposed may be suspended, stayed, or probated; and

(B) Second or subsequent offense shall be guilty of a felony and shall be punished by a term of imprisonment of not less than one year nor more than ten years; or

(4) Code Section 16-6-12 for a:

(A) First offense shall be punished as for a misdemeanor of a high and aggravated nature, and at the sole discretion of the judge, all but 72 hours of any term of imprisonment imposed may be suspended, stayed, or probated; and

(B) Second or subsequent offense shall be guilty of a felony and shall be punished by a term of imprisonment of not less than one year nor more than ten years.

(b) Reserved.

(c)(1) The clerk of the court in which a person is convicted of pandering shall cause to be published a notice of conviction for each such person convicted. Such notices of conviction shall be published in the manner of legal notices in the legal organ of the county in which such person resides or, in the case of nonresidents, in the legal organ of the county in which the person was convicted. Such notice of conviction shall be one column wide by two inches long and shall contain the photograph taken by the arresting law enforcement agency at the time of arrest, name, and address of the convicted person and the date, time, place of arrest, and disposition of the case and shall be published once in the legal organ of the appropriate county in the second week following such conviction or as soon thereafter as publication may be made.

(2) The convicted person for which a notice of conviction is published pursuant to this subsection shall be assessed the cost of publication of such notice and such assessment shall be imposed at the time of conviction in addition to any other fine imposed pursuant to this Code section.

(3) The clerk of the court, the publisher of any legal organ which publishes a notice of conviction, and any other person involved in the publication of an erroneous notice of conviction shall be immune from civil or criminal liability for such erroneous publication, provided such publication was made in good faith.

(d) In addition to any other penalty authorized under subsections (a) and (b) of this Code section, a person convicted of an offense enumerated in Code Sections 16-6-9 through 16-6-12 shall be fined \$2,500.00 if such offense was committed within 1,000 feet of any school building, school grounds, public place of worship, or playground or recreation center which is used primarily by persons under the age of 17 years.

History.

Code 1933, § 26-2015, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1970, p. 236, § 4; Ga. L. 1988, p. 1797, § 2; Ga. L. 1992, p. 6, § 16; Ga. L. 1998, p. 1301, § 2; Ga. L. 2001, p. 92, § 4; Ga. L. 2003, p. 878, § 1.1; Ga. L. 2011, p. 217, § 2/HB 200; Ga. L. 2017, p. 489, § 3/HB 341; Ga. L. 2019, p. 73, § 1/HB 281; Ga. L. 2019, p. 74, § 1-7/SB 158; Ga. L. 2025, p. 697, § 1/SB 42, effective May 14, 2025.

Amendments.

The 2025 amendment, effective May 14, 2025, substituted “Reserved.” for the former provisions of subsection (b).

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Georgia St. U.L. Rev. 63 (2019).

RESEARCH REFERENCES

ALR.

Offense of human trafficking of minor under state laws, 77 A.L.R.7th 3.

16-6-14. [Reserved] Pandering by compulsion.**Law reviews.**

For article on the 2019 repeal of this

Code section, see 36 Ga. St. U.L. Rev. 63 (2019).

16-6-22. Incest.

(a) A person commits the offense of incest when such person engages in sexual intercourse or sodomy, as such term is defined in Code Section 16-6-2, with a person whom he or she knows he or she is related to by blood, by adoption, or by marriage as follows:

- (1) Father and child or stepchild;
- (2) Mother and child or stepchild;
- (3) Siblings of the whole blood or of the half blood or by virtue of adoption;
- (4) Grandparent and grandchild of the whole blood or of the half blood or by virtue of adoption;
- (5) Aunt and niece or nephew of the whole blood or of the half blood or by virtue of adoption; or
- (6) Uncle and niece or nephew of the whole blood or of the half blood or by virtue of adoption.

(b) A person convicted of the offense of incest shall be punished by imprisonment for not less than ten nor more than 30 years; provided, however, that any person convicted of the offense of incest under this subsection with a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years. Any person convicted under this Code section of the offense of incest shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(c)(1) As used in this subsection, the term “sexual felony” shall have the same meaning as set forth in paragraph (2) of subsection (j) of Code Section 16-5-21.

(2) Any person having been previously convicted of a sexual felony who is convicted of the offense of incest shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in paragraph (14) of subsection (a) of Code Section 42-8-35.

History.

Laws 1833, Cobb’s 1851 Digest, p. 814.; Code 1863, § 4418; Code 1868, § 4459; Code 1873, § 4533; Code 1882, § 4533;

Ga. L. 1886, p. 30, § 1; Penal Code 1895, § 380; Penal Code 1910, § 371; Ga. L. 1916, p. 51, § 1; Code 1933, § 26-5701; Code 1933, § 26-2006, enacted by Ga. L.

1968, p. 1249, § 1; Ga. L. 2006, p. 379, § 14/HB 1059; Ga. L. 2010, p. 168, § 3/HB 571; Ga. L. 2015, p. 203, § 1-1/SB 72; Ga. L. 2023, p. 637, § 3-10/HB 188, effective May 4, 2023; Ga. L. 2024, p. 622, § 2/SB 335, effective July 1, 2024.

Amendments.

The 2023 amendment, effective May 4, 2023, added subsection (c). See Editor’s notes for applicability.

The 2024 amendment, effective July 1, 2024, substituted “by blood, by adoption,” for “either by blood” near the beginning of subsection (a); and added “or by virtue of adoption” at the end of paragraphs (a)(3), (a)(4), (a)(5), and (a)(6).

Editor’s notes.

Ga. L. 2023, p. 637, § 1-1/HB 188, not codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘Mariam’s Law.’”

Ga. L. 2023, p. 637, § 7-1/HB 188, not codified by the General Assembly, provides, in part, that the punishment provisions of subsection (c) shall apply to all offenses committed on and after July 1, 2023.

Ga. L. 2024, p. 622, § 1/SB 335, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Safeguarding Adopted Children from Sexual Violence Act.’”

JUDICIAL DECISIONS

ANALYSIS

- GENERAL CONSIDERATION
- RELATIONSHIPS
- EVIDENCE
- RELATIONSHIP WITH OTHER CRIMES
- SENTENCE

General Consideration

Harmless error on age as jury issue. — Because the evidence demonstrating that the victim was under the age of 14 at the time the incest was committed was uncontested and was overwhelming, any error in not submitting the issue of the victim’s age to the jury was harmless and the trial court did not err in imposing an enhanced sentence on the incest count. *Rodriguez v. State*, 355 Ga. App. 122, 843 S.E.2d 9, 2020 Ga. App. LEXIS 270 (2020).

Relationships

Father and daughter. — Victim’s testimony that the defendant was the victim’s biological father and the defendant’s reference to the victim as his daughter and to her children as the defendant’s grandchildren permitted the jury to conclude that the defendant was related to the victim by blood, as required to support the conviction for incest. *McNeal v. State*, 363 Ga. App. 417, 867 S.E.2d 824, 2022 Ga. App. LEXIS 5 (2022).

Jury instructions. — Trial court did not plainly err in the court’s jury instructions on the incest charge as the charge

properly included the required scienter element that the defendant knew the victim was the defendant’s relative. *Peterman v. State*, 373 Ga. App. 847, 909 S.E.2d 466, 2024 Ga. App. LEXIS 476 (2024).

Evidence

Corroboration of incestuous acts is not required, etc.

Trial court did not err in denying the defendant’s motion for directed verdict on the incest count, as testimony about the defendant’s paternity did not need to be corroborated. *Peterman v. State*, 373 Ga. App. 847, 909 S.E.2d 466, 2024 Ga. App. LEXIS 476 (2024).

Victim’s testimony sufficient. — Sufficient evidence supported the defendant’s convictions for incest with the defendant’s daughter both before and after the victim was 14 years old based on the testimony of the victim, which was corroborated with testimony from the victim’s sister, brother, and mother. *Torres v. State*, 353 Ga. App. 470, 838 S.E.2d 137, 2020 Ga. App. LEXIS 25 (2020).

Victims’ testimony alone was sufficient to support the defendant’s convictions for

aggravated child molestation, incest, and child molestation and it was corroborated by other witnesses and videotaped forensic interviews of the victims, in which the victims reiterated their allegations regarding the defendant's actions. *Brock v. State*, 373 Ga. App. 832, 910 S.E.2d 253, 2024 Ga. App. LEXIS 490 (2024).

Evidence insufficient since sexual intercourse did not include sodomy.

— Since “sexual intercourse” did not include sodomy, the evidence presented at trial was insufficient to show that defendant committed incest as that crime was defined in 2001, and that conviction had to be reversed. *Shropshire v. State*, 365 Ga. App. 653, 878 S.E.2d 562, 2022 Ga. App. LEXIS 486 (2022), vacated in part, 318 Ga. 14, 896 S.E.2d 541, 2023 Ga. LEXIS 265 (2023), vacated in part, reaff'd, 371 Ga. App. 686, 902 S.E.2d 677, 2024 Ga. App. LEXIS 202 (2024).

Evidence held sufficient to convict.

There was sufficient evidence of aggravated child molestation and incest, based on the defendant's act of sodomy, including testimony that the defendant, the victim's stepfather, tried to place the defendant's penis in the victim's mouth and the child fought the defendant off and the defendant's recorded admission to having the victim “go down on” the defendant once or twice, as well as the defendant's statement that the victim didn't like it and it didn't last long. *Miranda v. State*, 354 Ga. App. 777, 841 S.E.2d 440, 2020 Ga. App. LEXIS 220 (2020).

Defendant's convictions for aggravated sexual battery, rape, child molestation, and incest, for acts committed against the defendant's niece, were supported by testimony of the victim's extreme behaviors consistent with childhood trauma and anxiety, and testimony about the victim's disclosure to the victim's adoptive mother that the defendant had sexually abused the victim and threatened to hurt the victim if the victim told anyone. *McNeil v. State*, 363 Ga. App. 548, 871 S.E.2d 303, 2022 Ga. App. LEXIS 163 (2022).

Evidence that the defendant twice placed the defendant's mouth on the victim's vagina and twice placed the defendant's penis inside the victim's vagina without the victim's consent, and put fin-

gers on the victim's vagina was sufficient to support the defendant's convictions for rape, aggravated sodomy, aggravated child molestation, incest, enticing a child for indecent purposes, and child molestation. *Curgil v. State*, 363 Ga. App. 355, 871 S.E.2d 322, 2022 Ga. App. LEXIS 166 (2022).

There was sufficient evidence to support the defendant's convictions for rape and incest, including the victim's testimony that the defendant, who was the victim's father, tried to penetrate inside the victim's vagina and the presence of a very large amount of DNA and sperm cells inside the victim's vagina matched the defendant's DNA. *Wright v. State*, 365 Ga. App. 288, 878 S.E.2d 137, 2022 Ga. App. LEXIS 432 (2022).

Evidence was sufficient to convict the defendant of incest and child molestation as the victim testified that the victim had sexual intercourse several times with the defendant, the victim's stepfather; and the SANE nurse testified regarding the injuries to the victim's hymen. *Hughes v. State*, 365 Ga. App. 448, 878 S.E.2d 791, 2022 Ga. App. LEXIS 453 (2022).

Evidence was sufficient to support the defendant's conviction for incest, based on the testimony of multiple witnesses that the defendant was the victim's biological father. *Peterman v. State*, 373 Ga. App. 847, 909 S.E.2d 466, 2024 Ga. App. LEXIS 476 (2024).

Relationship With Other Crimes

No merger with rape.

Defendant's rape and incest convictions did not merge because rape required the state to prove that defendant lacked consent, which was not an element of incest, and to establish incest the state had to prove that the victim was of a certain relation to defendant which was not an element of rape. *Peterman v. State*, 373 Ga. App. 847, 909 S.E.2d 466, 2024 Ga. App. LEXIS 476 (2024).

Sentence

Merger of offenses. — Pairs of counts of incest alleging sodomy and intercourse did not merge because one occurred before the victim was age 14 and one occurred after, and there were different penalties

Sentence (Cont'd)

State, 353 Ga. App. 470, 838 S.E.2d 137,
2020 Ga. App. LEXIS 25 (2020).

according to the victim’s age. Torres v.

16-6-22.1. Sexual battery; consent.

(a) For the purposes of this Code section, the term “intimate parts” means the primary genital area, anus, groin, inner thighs, or buttocks of a male or female and the breasts of a female.

(b) A person commits the offense of sexual battery when he or she intentionally makes physical contact with the intimate parts of the body of another person without the consent of that person.

(c) Except as otherwise provided in this Code section, a person convicted of the offense of sexual battery shall be punished as for a misdemeanor of a high and aggravated nature.

(d) A person convicted of the offense of sexual battery against any child under the age of 16 years shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(e) Upon a second or subsequent conviction under subsection (b) of this Code section, a person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years and, in addition, shall be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(f) When the alleged victim is under the age of 16 years and the conduct is for the purpose of sexual arousal on the part of the alleged offender or alleged victim, consent of the alleged victim shall not be a defense to a prosecution under this Code section; provided, however, that if at the time of the offense the alleged victim is at least 13 but less than 16 years of age and the accused is 18 years of age or younger and no more than 48 months older than the alleged victim, this subsection shall not be applicable.

History.

Code 1981, § 16-6-22.1, enacted by Ga.
L. 1990, p. 1003, § 2; Ga. L. 2003, p. 573,
§ 1.1; Ga. L. 2006, p. 379, § 15/HB 1059;
Ga. L. 2021, p. 80, § 1/HB 258.

Amendments.

The 2021 amendment, effective July
1, 2021, added subsection (f).

JUDICIAL DECISIONS

ANALYSIS

APPLICATION
JURY INSTRUCTIONS
SENTENCE

Application

No merger with rape. — Defendant's sexual battery conviction did not merge with his rape conviction because sexual battery required proof of a fact, that defendant intentionally touched the breasts of the victim, that rape did not, and the sexual battery charge required proof that the victim was under 16, which was not required to prove rape. *Peterman v. State*, 373 Ga. App. 847, 909 S.E.2d 466, 2024 Ga. App. LEXIS 476 (2024).

Evidence sufficient for conviction of sexual battery by tutor. — Defendant's claim that there was insufficient evidence to support the sexual battery conviction lacked merit because no rational juror could have found that the state failed to prove a lack of consent since the victim was only eight years old, the touching of the victim's private part had no benign or non-sexual purpose, and the defendant was in a position of authority as the victim's tutor. *Nembhard v. State*, 360 Ga. App. 568, 859 S.E.2d 118, 2021 Ga. App. LEXIS 259 (2021).

Sexual battery conviction upheld when victim said no. — Victim's testimony that the defendant started to touch the victim's breasts and stuff and the victim tried to resist and kept telling the defendant "no" was sufficient to support the sexual battery conviction. *McNeal v. State*, 363 Ga. App. 417, 867 S.E.2d 824, 2022 Ga. App. LEXIS 5 (2022).

Evidence insufficient for delinquency adjudication. — Because the evidence established that the juvenile's act of sexual battery was committed against the victim, who was under the age of 16 years, felony punishment under O.C.G.A. § 16-6-22.1(d) was required and the juvenile was not entitled to a delinquency adjudication for misdemeanor sexual battery under § 16-6-22.1(c) since if the Georgia legislature intended to provide more lenient treatment for teenagers who commit sexual battery against another minor, the legislature could have amended the statute and the appellate court refused to usurp the role of the legislature. *In the Interest of P. T.*, 353 Ga. App. 511, 838 S.E.2d 596, 2020 Ga. App. LEXIS 29 (2020).

Evidence sufficient for conviction.

— After three victims each testified that the defendant had physical contact with their penis without their consent, and the evidence supported a finding that the defendant acted with intent in doing so, that and other evidence at trial was sufficient to affirm the defendant's convictions for sexual battery. *Jones v. State*, 354 Ga. App. 568, 841 S.E.2d 112, 2020 Ga. App. LEXIS 197 (2020).

Evidence that, without the victim's permission, the defendant put the defendant's hands between the victim's legs, then moved them over the victim's buttocks and breasts and said, "if I wanted to I could get you there" was sufficient to support the defendant's conviction for felony sexual battery. *Jones v. State*, 307 Ga. 505, 837 S.E.2d 288, 2019 Ga. LEXIS 833 (2019).

Testimony from the victim that the defendant touched the victim, that the defendant touched the victim's chest, and that the defendant used the defendant's hand and mouth and evidence in the form of the victim's forensic interview that the defendant touched the victim's vaginal area with the defendant's hand was sufficient to find the defendant guilty of child molestation and sexual battery. *Reyes v. State*, 356 Ga. App. 346, 847 S.E.2d 25, 2020 Ga. App. LEXIS 443 (2020).

Testimony of adult witnesses about similar offenses. — Trial court did not abuse the court's discretion in admitting testimony regarding the appellant's prior acts of sexual assault because that evidence was relevant to the appellant's intent, identity, and propensity and three other family members testified that the appellant engaged in the same conduct of rubbing their genitals and inserting the defendant's finger into their vaginas when the witnesses were the same age as the victim, which testimony was relevant to show the appellant's propensity and that it was the appellant who molested the victim. *Dixon v. State*, 350 Ga. App. 211, 828 S.E.2d 427, 2019 Ga. App. LEXIS 274 (2019).

Jury Instructions

Charge on sexual battery not warranted. — Since the evidence presented to the jury offered the choice between the

Jury Instructions (Cont'd)

completed crime or no crime, the trial court was not required to charge on sexual battery as a lesser offense of child molestation. *Hahn v. State*, 356 Ga. App. 79, 846 S.E.2d 258, 2020 Ga. App. LEXIS 413 (2020), cert. denied, No. S20C1540, 2021 Ga. LEXIS 176 (Ga. Mar. 15, 2021), cert. denied, 142 S. Ct. 287, 211 L. Ed. 2d 133, 2021 U.S. LEXIS 4377 (2021).

Trial court did not err in refusing to give a jury instruction on sexual battery as a lesser-included offense of child molestation because the defendant pointed to no evidence demonstrating that a touch occurred without the necessary intent for child molestation as the state presented evidence suggesting that the defendant asked the victim, a child under the age of 16 years, to be the defendant's girlfriend, would sometimes touch the victim after the victim got out of the shower, engaged in tongue-kissing with the victim, and had the victim touch the defendant's penis; and the evidence demonstrated either that the indicted crime or no crime at all occurred. *Solis-Macias v. State*, 356 Ga. App. 561, 848 S.E.2d 180, 2020 Ga. App. LEXIS 490 (2020), cert. denied, No. S21C0218, 2021 Ga. LEXIS 380 (Ga. Apr. 19, 2021).

Trial court did not err denying defendant's request to charge the jury on sexual battery as a lesser included offense of child molestation as defendant did not defend the case on the ground that defendant touched the victim without intent; rather, defendant pursued the all or nothing defense that the victim made up the entire story and such circumstances did not support a charge on sexual battery as a lesser included offense of child molestation. *Brantley v. State*, 370 Ga. App. 757, 899 S.E.2d 284, 2024 Ga. App. LEXIS 84 (2024).

Sequential charge on rape and sexual battery was not improper and did not constitute plain error as the evidence did not support a sexual-battery conviction; and there was no language in the challenged instruction on rape and sexual battery suggesting that the jury was required to reach a unanimous verdict as to rape before considering the

lesser-included offense of sexual battery. *Seals v. State*, 350 Ga. App. 787, 830 S.E.2d 315, 2019 Ga. App. LEXIS 374 (2019).

After the defendant was convicted of two counts of rape, the defendant could not show that the defendant was harmed when the trial court failed to notify trial counsel of the court's ruling on the sexual-battery charge before closing arguments, much less plain error, because the defendant could not be found guilty of rape or sexual battery if the jury believed the defense that the defendant had consensual sex with the victims and the victims fabricated the rape allegations; and an argument that the defendant was guilty of sexual battery instead of rape would have been in direct conflict with the defendant's own theory of defense. *Seals v. State*, 350 Ga. App. 787, 830 S.E.2d 315, 2019 Ga. App. LEXIS 374 (2019).

Jury instruction error not plain error. — Defendant's conviction for aggravated sexual battery was reinstated because the jury instruction error did not constitute plain error as if the jury had been instructed that the state had to prove lack of consent, no rational juror could have concluded, based on the record presented at trial, that the state failed to prove that element in the case since the victim was the defendant's four-year-old granddaughter. *State v. Williams*, 308 Ga. 228, 838 S.E.2d 764, 2020 Ga. LEXIS 85 (2020).

Sentence

Sentence was proper. — Imposition of three concurrent five-year probated sentences as a first offender was not grossly disproportionate to the gravity of the offense of felony sexual battery and, thus, the defendant's claim that the sentence amounted to cruel and unusual punishment failed. *Jones v. State*, 307 Ga. 505, 837 S.E.2d 288, 2019 Ga. LEXIS 833 (2019).

Merger of multiple counts of sexual battery. — Interpreting O.C.G.A. § 16-6-22.1 in favor of the defendant, as the court had to, the court held that this Code section provided for a single unit of prosecution, such that the defendant could not be convicted or sentenced for

multiple sexual-battery offenses committed during an uninterrupted course of conduct. Carr v. State, 363 Ga. App. 35, 870 S.E.2d 531, 2022 Ga. App. LEXIS 122 (2022).

When counts nine and ten of the indictment charged the defendant with committing sexual battery on the victim in the same manner alleged in counts seven and eight, respectively, except the counts alleged that the sexual abuse occurred the next day, on January 1, 2016, those counts should have been merged as the separate allegations of sexual battery allegedly occurred on the same day, and the victim did not testify regarding the length of time that elapsed between the defendant touching the victim's breasts and the defendant touching the victim's vagina, and it was unclear whether those criminal acts occurred during a single interaction. Carr v. State, 363 Ga. App. 35, 870 S.E.2d 531, 2022 Ga. App. LEXIS 122 (2022).

Single unit of prosecution. — Counts seven and eight charging the defendant

with committing sexual battery by making physical contact with the victim's breasts and vagina on or about December 31, 2015 should have been merged as the state failed to present any evidence as to how much time elapsed between the criminal acts, and whether the acts occurred during the same interaction with the victim. Carr v. State, 363 Ga. App. 35, 870 S.E.2d 531, 2022 Ga. App. LEXIS 122 (2022).

Merger required with child molestation counts. — Defendant's conviction and sentence for sexual battery were vacated because the state conceded that Counts 1 and 2 of the February 2013 indictment were predicated on the same act of touching the victim's breast and vagina; therefore, the convictions on those counts should have merged with the child molestation counts for sentencing purposes. Mosby v. State, 353 Ga. App. 744, 839 S.E.2d 237, 2020 Ga. App. LEXIS 75 (2020).

RESEARCH REFERENCES

ALR.

Romeo and Juliet Laws Addressing Close-in-Age Underage Sexual Offense

Situations and Sexual Offender Registration Exemptions, 81 A.L.R.7th 2.

16-6-22.2. Aggravated sexual battery; consent.

(a) For the purposes of this Code section, the term “foreign object” means any article or instrument other than the sexual organ of a person.

(b) A person commits the offense of aggravated sexual battery when he or she intentionally penetrates with a foreign object the sexual organ or anus of another person without the consent of that person.

(c) A person convicted of the offense of aggravated sexual battery shall be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life, and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

(d) When the alleged victim is under the age of 16 years and the conduct is for the purpose of sexual arousal on the part of the alleged offender or alleged victim, consent of the alleged victim shall not be a defense to a prosecution under this Code section; provided, however,

that if at the time of the offense the alleged victim is at least 13 but less than 16 years of age and the accused is 18 years of age or younger and no more than 48 months older than the alleged victim, this subsection shall not be applicable.

(e)(1) As used in this subsection, the term “sexual felony” shall have the same meaning as set forth in paragraph (2) of subsection (j) of Code Section 16-5-21.

(2) Any person having been previously convicted of a sexual felony who is convicted of the offense of aggravated sexual battery shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in paragraph (14) of subsection (a) of Code Section 42-8-35.

History.

Code 1981, § 16-6-22.2, enacted by Ga. L. 1990, p. 1003, § 2; Ga. L. 1994, p. 1959, § 8; Ga. L. 2006, p. 379, § 16/HB 1059; Ga. L. 2021, p. 80, § 2/HB 258; Ga. L. 2023, p. 637, § 3-11/HB 188, effective May 4, 2023.

Amendments.

The 2021 amendment, effective July 1, 2021, added subsection (d).

The 2023 amendment, effective May 4, 2023, added subsection (e). See Editor’s notes for applicability.

Cross references.

Sexual assault hearsay evidence for

mentally incapacitated persons age 17 or older, § 24-8-827.

Editor’s notes.

Ga. L. 2023, p. 637, § 1-1/HB 188, not codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘Mariam’s Law.’”

Ga. L. 2023, p. 637, § 7-1/HB 188, not codified by the General Assembly, provides, in part, that the punishment provisions of subsection (e) shall apply to all offenses committed on and after July 1, 2023.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
APPLICATION
JURY INSTRUCTIONS
SENTENCE

General Consideration

Impact of victim’s intoxication or inability to consent. — Under Georgia’s well-established case law, when a victim is intoxicated, drugged, or mentally incompetent and the victim’s will is temporarily lost from intoxication or unconsciousness arising from the use of drugs or other cause, the victim is physically or mentally unable to give consent to the act of sexual intercourse; there is no reason why that

same logic should not apply to sexual battery. *Johnson v. State*, 351 Ga. App. 690, 832 S.E.2d 676, 2019 Ga. App. LEXIS 476 (2019).

Penetration with tongue sufficient.

— Based on the evidence presented, including the DNA results, testimony that the victim was incapacitated due to sleep and alcohol consumption, and the defendant’s statement, the jury was authorized to conclude that the defendant committed

aggravated sexual battery on the victim by placing the defendant's tongue, a foreign object, in the victim's vagina without the victim's consent. *Davis v. State*, 357 Ga. App. 720, 848 S.E.2d 173, 2020 Ga. App. LEXIS 491 (2020), cert. denied, No. S21C0513, 2021 Ga. LEXIS 428 (Ga. June 1, 2021).

Application

Admissibility of evidence of similar offenses. — Trial court did not abuse the court's discretion in admitting testimony regarding the appellant's prior acts of sexual assault because that evidence was relevant to the appellant's intent, identity, and propensity and three other family members testified that the appellant engaged in the same conduct of rubbing their genitals and inserting the defendant's finger into their vaginas when the witnesses were the same age as the victim, which testimony was relevant to show the appellant's propensity and that it was the appellant who molested the victim. *Dixon v. State*, 350 Ga. App. 211, 828 S.E.2d 427, 2019 Ga. App. LEXIS 274 (2019).

Verbal request sufficient for aggravated sexual battery. — State was not required to prove that the victim actually touched the defendant's penis as the indictment alleged only that the defendant asked the victim to touch the defendant's penis, and the act required for child molestation under O.C.G.A. § 16-6-4(a) may be merely verbal. *Smith v. State*, 361 Ga. App. 436, 864 S.E.2d 645, 2021 Ga. App. LEXIS 497 (2021).

Victim's will to consent lost. — Appellant's conviction for aggravated sexual battery was affirmed because the state presented sufficient evidence by which the jury was authorized to conclude that the victim was intoxicated to the point the victim's will was temporarily lost; indeed, the victim vomited, required assistance to walk, and lost consciousness. *Johnson v. State*, 351 Ga. App. 690, 832 S.E.2d 676, 2019 Ga. App. LEXIS 476 (2019).

Evidence sufficient for conviction.

Testimony from the defendant's wife that the victim, their daughter, told the wife that the defendant had hurt the victim by touching the victim's vagina, which

the victim referred to as the "wrong spot," and testimony by a nurse specializing in sexual assault cases that there was significant redness inside and outside the labia majora and minor which was indicative of assault was sufficient to support the defendant's aggravated sexual battery conviction. *Chitwood v. State*, 352 Ga. App. 218, 834 S.E.2d 334, 2019 Ga. App. LEXIS 551 (2019).

Defendant's conviction for aggravated battery was supported by the victim's testimony that the defendant forced the victim into the sleeper cabin of a truck and inserted a screwdriver into the victim's anus even though the victim told the defendant that the victim did not want to have sex with the defendant and it hurt. *Pauley v. State Two Cases*, 355 Ga. App. 47, 842 S.E.2d 499, 2020 Ga. App. LEXIS 251 (2020).

Testimony from the victim's mother that the victim disclosed that the defendant had put the defendant's hands in the front and rear, that it had hurt, and that the defendant had told the victim they could not go home until her smell on the defendant's hands went away was sufficient for a rational trier of fact to find that the defendant committed child molestation and sexual battery. *Hogg v. State*, 356 Ga. App. 11, 846 S.E.2d 183, 2020 Ga. App. LEXIS 406 (2020).

Defendant's convictions for aggravated sexual battery, rape, child molestation, and incest, for acts committed against the defendant's niece, were supported by testimony of the victim's extreme behaviors consistent with childhood trauma and anxiety, and testimony about the victim's disclosure to the victim's adoptive mother that the defendant had sexually abused the victim and threatened to hurt the victim if the victim told anyone. *McNeil v. State*, 363 Ga. App. 548, 871 S.E.2d 303, 2022 Ga. App. LEXIS 163 (2022).

Jury Instructions

Instruction on underage consent. — Although the trial court's instruction on underage consent was clearly erroneous when coupled with the charge on aggravated sexual battery, there was no plain error because it was hard to fathom any context in which a child impaired by the

Jury Instructions (Cont'd)

large amount of alcohol and drugs the victim consumed would have the capacity to consent to the alleged conduct. *Whipkey v. State*, 367 Ga. App. 73, 885 S.E.2d 57, 2023 Ga. App. LEXIS 115 (2023).

Jury instruction on consent not based on definition of crime at time committed. — Trial court erred by instructing the jury that consent of the victim is not a defense to aggravated sexual battery because it used an amended definition of the crime rather than the statutory definition of the crime at the time the crime was committed. *Padilla-Garcia v. State*, 372 Ga. App. 9, 903 S.E.2d 680, 2024 Ga. App. LEXIS 241 (2024).

Jury instruction not plain error. — Defendant’s conviction for aggravated sexual battery was reinstated because the jury instruction error did not constitute plain error as even if the jury had been instructed that the state had to prove lack of consent, no rational juror could have concluded, based on the record presented at trial, that the state failed to prove that element in the case since the victim was the defendant’s four-year-old granddaughter. *State v. Williams*, 308 Ga. 228, 838 S.E.2d 764, 2020 Ga. LEXIS 85 (2020).

While the trial court’s instruction, which acted to relieve the state of the state’s burden of proving lack of consent, was erroneous, it was not likely that the

error affected the outcome of the proceedings because, despite the erroneous instruction concerning the victim’s “legal” capacity to consent, there was ample evidence from which the jury could have concluded that the victim did not consent to the sexual contact, including the sexual act specifically underlying the aggravated sexual assault charge. *Croft v. State*, 358 Ga. App. 380, 855 S.E.2d 396, 2021 Ga. App. LEXIS 67 (2021).

Sentence

Sentence not excessive.

Defendant’s motion to vacate was properly denied because each one of contested sentences for three sexual offenses fell within statutory range of punishment for those charges; and, appellate court was left with no doubt that defendant’s punishment for each sexual offense amounted to split sentence comprised of 25-year term of imprisonment, followed by probation for life, which sentencing was expressly contemplated by relevant statutory provisions. *Bolish v. State*, 365 Ga. App. 855, 880 S.E.2d 345, 2022 Ga. App. LEXIS 507 (2022).

Illegal sentence. — Defendant’s conviction for life with 25 years in confinement was void because the sentence was not statutorily permitted. *Upton v. State*, 350 Ga. App. 535, 829 S.E.2d 791, 2019 Ga. App. LEXIS 337 (2019), overruled in part, *Bolish v. State*, 365 Ga. App. 855, 880 S.E.2d 345, 2022 Ga. App. LEXIS 507 (2022).