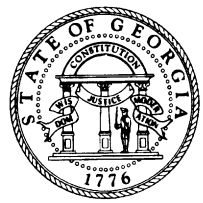
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With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission
The Office of Legislative Counsel
and
The Editorial Staff of LexisNexis®



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Title 16. Crimes and Offenses
(Chapters 12 through 17)

Including Acts of the 2024 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

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THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 3rd day of June, in the year of our Lord Two Thousand and Twenty-Four and of the Independence of the United States of America the Two Hundred and Forty-Eighth.

Brad Raffensperger

Brad Raffensperger, Secretary of State

Preface

This volume cumulates and replaces the 2018 edition of Volume 14B of the Official Code of Georgia Annotated, as supplemented by the 2023 Cumulative Supplement. The 2018 Volume 14B and its 2023 Supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Title 16 (Chapters 12 through 17) by the General Assembly through the 2024 Regular and Extraordinary Sessions. This volume also contains case annotations reflecting decisions posted to LexisNexis® through May 19, 2024. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; John Marshall Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated and the Official Compilation of the Rules and Regulations of the State of Georgia.

This volume retains amendment notes and effective date notes for Acts passed during the 2022, 2023, and 2024 Regular and Extraordinary Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2022 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Penalty for maintenance of nuisance tending to injure health of citizens or corrupt public morals, § 41-1-6.

Occupying rooms in roadhouses or similar establishments for immoral purposes, false registration in such establishments, § 43-21-61.

Law reviews.

For article, "Misdemeanor Sentencing in Georgia," see 7 Ga. St. B.J. 8 (2001).

For article, "New Challenges for the Georgia General Assembly: Survey of Child Endangerment Statutes," see 7 Ga. St. B. J. 8 (2001).

For article on the 2014 amendment of this article, see 31 Georgia St. U.L. Rev. 47 (2014).

16-12-1. Contributing to the delinquency or dependency of a minor.

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

(1) "Delinquent act" means a delinquent act as defined in Code Section 15-11-2.

(2) "Felony" means any act which constitutes a felony under the laws of this state, the laws of any other state of the United States, or the laws of the United States.

(3) "Minor" means any individual who is under the age of 17 years who is alleged to have committed a delinquent act or any individual under the age of 18 years.

(4) "Serious injury" means an injury involving a broken bone, the loss of a member of the body, the loss of use of a member of the body, the substantial disfigurement of the body or of a member of the body, an injury which is life threatening, or any sexual abuse of a child under 16 years of age by means of an act described in subparagraph (a)(4)(A), (a)(4)(G), or (a)(4)(I) of Code Section 16-12-100.

(5) "Service provider" means an entity that is registered with the Department of Human Services pursuant to Article 7 of Chapter 5 of Title 49 or a child welfare agency as defined in Code Section 49-5-12 or agent or employee acting on behalf of such entity or child welfare agency.

(b) A person commits the offense of contributing to the delinquency or dependency of a minor or causing a child to be a child in need of services when such person:

(1) Knowingly and willfully encourages, causes, abets, connives, or aids a minor in committing a delinquent act;

(2) Knowingly and willfully encourages, causes, abets, connives, or aids a minor in committing an act which would cause such minor

to be a child in need of services as such term is defined in Code Section 15-11-2; provided, however, that this paragraph shall not apply to a service provider that notifies the minor's parent, guardian, or legal custodian of the minor's location and general state of well-being as soon as possible but not later than 72 hours after the minor's acceptance of services; provided, further, that such notification shall not be required if:

(A) The service provider has reasonable cause to believe that the minor has been abused or neglected and makes a child abuse report pursuant to Code Section 19-7-5;

(B) The minor will not disclose the name of the minor's parent, guardian, or legal custodian, and the Division of Family and Children Services within the Department of Human Services is notified within 72 hours of the minor's acceptance of services; or

(C) The minor's parent, guardian, or legal custodian cannot be reached, and the Division of Family and Children Services within the Department of Human Services is notified within 72 hours of the minor's acceptance of services;

(3) Willfully commits an act or acts or willfully fails to act when such act or omission would cause a minor to be adjudicated to be a dependent child as such term is defined in Code Section 15-11-2;

(4) Knowingly and willfully hires, solicits, engages, contracts with, conspires with, encourages, abets, or directs any minor to commit any felony which encompasses force or violence as an element of the offense or delinquent act which would constitute a felony which encompasses force or violence as an element of the offense if committed by an adult;

(5) Knowingly and willfully provides to a minor any firearm as defined in Code Section 16-11-127.1, any dangerous weapon as defined in Code Section 16-11-121, or any hazardous object as defined in Code Section 20-2-751 to commit any felony which encompasses force or violence as an element of the offense or delinquent act which would constitute a felony which encompasses force or violence as an element of the offense if committed by an adult; or

(6) Knowingly and willfully hires, solicits, engages, contracts with, conspires with, encourages, abets, or directs any minor to commit any smash and grab burglary which would constitute a felony if committed by an adult.

(c) It shall not be a defense to the offense provided for in this Code section that the minor has not been formally adjudged to have committed a delinquent act or has not been adjudged to be a dependent child or a child in need of services.

(d) A person convicted pursuant to paragraph (1) or (2) of subsection (b) of this Code section shall be punished as follows:

(1) Upon conviction of the first or second offense, the defendant shall be guilty of a misdemeanor and shall be fined not more than $1,000.00 or shall be imprisoned for not more than 12 months, or both fined and imprisoned; and

(2) Upon the conviction of the third or subsequent offense, the defendant shall be guilty of a felony and shall be fined not less than $1,000.00 nor more than $5,000.00 or shall be imprisoned for not less than one year nor more than three years, or both fined and imprisoned.

(d.1) A person convicted pursuant to paragraph (3) of subsection (b) of this Code section shall be punished as follows:

(1) Upon conviction of an offense which resulted in the serious injury or death of a child, without regard to whether such offense was a first, second, third, or subsequent offense, the defendant shall be guilty of a felony and shall be punished as provided in subsection (e) of this Code section;

(2) Upon conviction of an offense which does not result in the serious injury or death of a child and which is the first conviction, the defendant shall be guilty of a misdemeanor and shall be fined not more than $1,000.00 or shall be imprisoned for not more than 12 months, or both fined and imprisoned;

(3) Upon conviction of an offense which does not result in the serious injury or death of a child and which is the second conviction, the defendant shall be guilty of a high and aggravated misdemeanor and shall be fined not less than $1,000.00 nor more than $5,000.00 or shall be imprisoned for not less than one year, or both fined and imprisoned; and

(4) Upon the conviction of an offense which does not result in the serious injury or death of a child and which is the third or subsequent conviction, the defendant shall be guilty of a felony and shall be fined not less than $10,000.00 or shall be imprisoned for not less than one year nor more than five years, or both fined and imprisoned.

(e) A person convicted pursuant to paragraph (4), (5), or (6) of subsection (b) or paragraph (1) of subsection (d.1) of this Code section shall be guilty of a felony and punished as follows:

(1) Upon conviction of the first offense, the defendant shall be imprisoned for not less than one nor more than ten years; and

(2) Upon conviction of the second or subsequent offense, the defendant shall be imprisoned for not less than three years nor more than 20 years.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 321, § 1; Ga. L. 1982, p. 968, § 1; Ga. L. 1994, p. 1158, § 1; Ga. L. 1995, p. 10, § 16; Ga. L. 1996, p. 273, § 1; Ga. L. 1999, p. 232, § 1; Ga. L. 2004, p. 57, § 5; Ga. L. 2010, p. 1147, § 7/HB 1104; Ga. L. 2011, p. 470, § 3/SB 94; Ga. L. 2013, p. 294, § 4-12/HB 242; Ga. L. 2014, p. 432, § 2-7/HB 826; Ga. L. 2014, p. 599, § 3-3/HB 60.

Cross references.

Sale or purchase of alcoholic beverages to, by, or for underage persons, § 3-3-23 et seq.

Furnishing alcoholic beverages to minor children; gambling with minor children, § 51-1-18.

Editor's notes.

Ga. L. 1996, p. 273, § 3, not codified by the General Assembly, provides for severability.

Ga. L. 2004, p. 57, § 6, not codified by the General Assembly, provides that the amendment by that Act shall apply to all crimes which occur on or after July 1, 2004.

Ga. L. 2011, p. 470, § 1/SB 94, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Runaway Youth Safety Act.'"

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Ga. L. 2014, p. 599, § 1-1/HB 60, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safe Carry Protection Act.'"

Law reviews.

For note on the 1994 amendment of this Code section, see 11 Georgia St. U.L. Rev. 117 (1994).

For review of 1996 offenses against public health and morals legislation, see 13 Georgia St. U.L. Rev. 116 (1996).

For note on 1999 amendment to this Code section, see 16 Georgia St. U.L. Rev. 81 (1999).

For article, "Criminal Law," see 53 Mercer L. Rev. 209 (2001).

For article on 2004 amendment of this Code section, see 21 Georgia St. U.L. Rev. 45 (2004).

For article on the 2014 amendment of this Code section, see 31 Georgia St. U.L. Rev. 47 (2014).

JUDICIAL DECISIONS

Editor's notes. — Many of the cases noted below were decided prior to the 1994 amendment of subsection (d).

Statute is not unconstitutionally vague. — O.C.G.A. § 16-12-1(b)(2), even strictly construed, provided adequate notice to a person of common understanding that leaving a three-year-old child with a violent third party who had previously beaten the child and who was under the influence of methamphetamine and then locking the child in a bathroom instead of promptly seeking medical attention for the multiple skull fractures inflicted on the child by the third party was prohibited conduct. Bagby v. State, 274 Ga. 222, 552 S.E.2d 807, 2001 Ga. LEXIS 623 (2001).

Term "knowingly" required the state to prove that defendant knew the minor was under the age of 17 years. Brown v. State, 233 Ga. App. 195, 504 S.E.2d 35, 1998 Ga. App. LEXIS 928 (1998).

Required allegations in accusation. — Accusation under provisions making it a misdemeanor to do any act which the defendant knew or should have known would produce, promote, or contribute to conditions rendering a child delinquent or neglected must allege that the child is

delinquent or neglected. Walker v. State, 104 Ga. App. 595, 122 S.E.2d 486, 1961 Ga. App. LEXIS 746 (1961).

To constitute a valid indictment, it is necessary to allege that accused has so acted and affected a delinquent or neglected child or children. Dabney v. State, 143 Ga. App. 655, 239 S.E.2d 698, 1977 Ga. App. LEXIS 2449 (1977).

Accusation insufficient as to date of offense. — Accusation that alleged contributing to the delinquency of a minor and electronically furnishing obscene material to a minor within a two and a half month time frame was subject to a demurrer because the state gave no explanation as to why an investigating officer was unable to ascertain the dates of the offenses from the victim's computer. State v. Meeks, 309 Ga. App. 855, 711 S.E.2d 403, 2011 Ga. App. LEXIS 469 (2011).

Proof of delinquency required. — Even though, under O.C.G.A. § 16-12-1(b)(1), the state was not required to show that the minor was formally adjudicated delinquent, it was required to allege and prove that the victims had committed delinquent acts. Schlomer v. State, 247 Ga. App. 257, 543 S.E.2d 472, 2000 Ga. App. LEXIS 1460 (2000).

When a child is neglected. — Child may be neglected either when the child is not provided with necessaries or where by reason of parents' improvidence and neglect the child is placed in unfit surroundings or exposed to unfit, immoral, and depraved influences, not conducive to the child's health, morals or well-being. Walker v. State, 104 Ga. App. 595, 122 S.E.2d 486, 1961 Ga. App. LEXIS 746 (1961).

Evidence held sufficient for conviction. — See Eckman v. State, 201 Ga. App. 879, 413 S.E.2d 221, 1991 Ga. App. LEXIS 1616 (1991); Bazin v. State, 299 Ga. App. 875, 683 S.E.2d 917, 2009 Ga. App. LEXIS 1015 (2009).

Evidence that while in defendants' care a child suffered a fractured arm for which defendants refused to seek medical treatment and were evasive about explaining, although circumstantial, was sufficient to support convictions for child cruelty and contributing to the deprivation of a minor. Thompson v. State, 262 Ga. App. 17, 585 S.E.2d 125, 2003 Ga. App. LEXIS 815 (2003).

Given evidence that the defendant's two young children were left unattended, resulting in one going outside in near freezing weather without the proper clothing, causing that child's body temperature to drop two degrees and suffer mild hypothermia, the defendant's two convictions for contributing to the deprivation of a minor were upheld on appeal. Ellis v. State, 283 Ga. App. 808, 642 S.E.2d 869, 2007 Ga. App. LEXIS 207 (2007).

There was sufficient evidence to support the defendant's conviction of contributing to the delinquency of a minor where there was evidence that the defendant knew that juveniles were drinking alcohol at a party held at the defendant's house by the defendant's child. It was not necessary that the defendant personally furnish the alcohol, and the jury was not required to accept the defendant's story that the defendant denied permission for the party and slept without being aware that the party was going on. Beckom v. State, 286 Ga. App. 38, 648 S.E.2d 656, 2007 Ga. App. LEXIS 671 (2007).

Evidence that a minor was in a park with the defendant, that the minor registered positive on an alcosensor, that the minor was observed reaching into a bag containing beer as the minor sat on a park bench, that the defendant's breath smelled of alcohol, and that the defendant observed the minor drinking beer in the park, was sufficient to allow the conclusion that the defendant had at least connived in the minor's possession and consumption of alcohol. Boyd v. State, 314 Ga. App. 883, 726 S.E.2d 135, 2012 Ga. App. LEXIS 298 (2012).

Evidence, taken together, authorized the jury to find that the defendant was guilty of burglary and contributed to the delinquency of a minor as the victim's neighbor identified the defendant as the person the neighbor saw standing on an air conditioner unit while beating on the victim's kitchen window, the point of entry for the burglary was that window and, just minutes after the neighbor saw the defendant at the window, the victim ob-

served the defendant and a child walking away from the victim's residence carrying an item that was taken during the burglary. Williams v. State, 320 Ga. App. 831, 740 S.E.2d 766, 2013 Ga. App. LEXIS 287 (2013).

Evidence was sufficient to convict the defendant of pimping a person under the age of 18, contributing to the delinquency of a minor, and trafficking a person for sexual servitude because the copies of the birth certificate and social security card found in the victim's purse showed that the victim was under the age of 18; and an employee of the youth residence, from which the victim had recently run away, verified the victim's identity and that the victim was 16 years old. Mackey v. State, 342 Ga. App. 791, 805 S.E.2d 596, 2017 Ga. App. LEXIS 413 (2017).

Evidence held insufficient for conviction. — Evidence was insufficient to support the defendant's conviction for felony contributing to the dependence of a minor because there was no evidence that the infant victim's death was a reasonably foreseeable consequence of the defendant's drug use or drug use in the home by defendant's boyfriend or others, or that it was reasonably foreseeable that the boyfriend would commit a violent crime that resulted in the victim's death by blunt force injuries. Bell v. State, 317 Ga. 519, 893 S.E.2d 918, 2023 Ga. LEXIS 232 (2023).

Delinquency of a minor is not lesser included offense of child molestation. — After the defendant allegedly had intercourse with a 14-year-old, the trial court did not err in failing to give a lesser included offense instruction regarding delinquency of a minor in violation of O.C.G.A. § 16-12-1(b)(1) in addition to the court's instructions on child molestation in violation of O.C.G.A. § 16-6-4(a). Delinquency of a minor was not a lesser included offense of child molestation as proof of one offense would not have served to prevent a conviction on the other pursuant to O.C.G.A. § 16-1-6 because the offenses shared no essential elements and were directed to different acts. Slack v. State, 265 Ga. App. 306, 593 S.E.2d 664, 2004 Ga. App. LEXIS 1 (2004).

Children left alone for less than an hour. — Evidence that the defendant's children under the age of five were left alone for less than an hour while the children were sleeping was insufficient to support a conviction for contributing to the deprivation of a minor because persons of ordinary understanding might not conclude such an action deprived the children of needs essential to their well-being. Adams v. State, 340 Ga. App. 1, 795 S.E.2d 330, 2016 Ga. App. LEXIS 700 (2016).

Improper punishment. — In sentencing defendant on conviction of two counts of endangering a child, the court erred in imposing sentences of 12 months on the first count, consecutive to defendant's 12-month sentence for driving under the influence, and, on the second count, 12 months' probation consecutive to the sentence on the first count. Guest v. State, 229 Ga. App. 627, 494 S.E.2d 523, 1997 Ga. App. LEXIS 1410 (1997), cert. denied, No. S98C0542, 1998 Ga. LEXIS 394 (Ga. Mar. 6, 1998).

Sentence appropriate. — There was no showing that the defendant's sentences for enticing a minor for indecent purposes, statutory rape, and contributing to the delinquency of a minor were vindictively enhanced in violation of Ga. Unif. Super. Ct. R. 33.6(B) after the defendant was allowed to revoke a guilty plea because, inter alia, the trial judge found that an enhanced sentence was warranted based on material differences between the facts presented regarding the nature of the crimes during the plea hearing and the trial; the concurrent sentences of 15 years to serve for enticing a minor for indecent purposes and statutory rape, plus 12 concurrent months for contributing to the delinquency of a minor were within statutory limits and valid. There was no absolute constitutional bar to imposing a more severe sentence upon re-sentencing. Hawes v. State, 298 Ga. App. 461, 680 S.E.2d 513, 2009 Ga. App. LEXIS 693 (2009), cert. denied, No. S09C1769, 2010 Ga. LEXIS 15 (Ga. Jan. 12, 2010).

Defendant failed to demonstrate that the defendant's sentence of ten years for cruelty to children in the second degree, O.C.G.A. § 16-5-70(c), and contributing to the deprivation of a minor, O.C.G.A. § 16-12-1(b)(3), were unlawful because the trial court found that the defendant's

defense was based upon lies and asserted in bad faith; the sentences were within the statutory limits for each of the crimes for which the defendant was convicted pursuant to O.C.G.A. §§ 16-5-70(e)(2) and 16-12-1(b). Staib v. State, 309 Ga. App. 785, 711 S.E.2d 362, 2011 Ga. App. LEXIS 450 (2011).

Merger with DUI conviction prohibited. — Despite the defendant's contrary contention, the trial court did not err in failing to merge a DUI conviction with a conviction for endangering a child by DUI, for the purposes of prosecution and sentence, as O.C.G.A. § 40-6-391(l) specifically prohibited merger, and O.C.G.A. § 16-12-1(d) provided independent provisions for punishment. Slayton v. State, 281 Ga. App. 650, 637 S.E.2d 67, 2006 Ga. App. LEXIS 1192 (2006).

Deprivation of a minor conviction did not merge with cruelty to children conviction. — Trial court did not err in failing to merge the defendant's misdemeanor convictions for contributing to the deprivation of a minor, O.C.G.A. § 16-12-1(b)(3), with the defendant's corresponding felony convictions for cruelty to children in the second degree, O.C.G.A. § 16-5-70(c), pursuant to the "required evidence" test, the offenses did not merge as a matter of law. The offenses of cruelty to children in the second degree and contributing to the deprivation of a minor each have at least one essential element that the other does not: causing the child cruel or excessive physical or mental pain and wilfully failing to provide the child with the proper care necessary for his or her health, respectively. Staib v. State, 309 Ga. App. 785, 711 S.E.2d 362, 2011 Ga. App. LEXIS 450 (2011).

Deprivation statute cannot be used as predicate offense for felony murder. — After looking at both the plain language of the statutes, as well as the sequence of their adoption, the felony deprivation statute could not be used as a predicate offense for felony murder as the clear language of O.C.G.A. § 16-12-1(d.1)(1) and (e) specifically criminalizes the death of a minor resulting from an accused's contribution to the deprivation or delinquency of that child, whereas felony murder criminalizes general felony conduct resulting in death of another. Williams v. State, 299 Ga. 632, 791 S.E.2d 55, 2016 Ga. LEXIS 575 (2016).

Trial court's denial of the appellant's demurrer to count one of the indictment was reversed because the plain language of O.C.G.A. § 16-12-1 establishes that the felony deprivation statute cannot be used as a predicate offense for felony murder. Williams v. State, 299 Ga. 632, 791 S.E.2d 55, 2016 Ga. LEXIS 575 (2016).

Rule of lenity did not apply to multiple convictions. — In a criminal trial on charges that the defendant allowed the repeated rapes of the defendant's 11-year-old child, the rule of lenity did not require that the defendant's felony convictions for being a party to rape and cruelty to children should be subsumed by the misdemeanor conviction for contributing to the deprivation of children because different facts were necessary to prove the offenses; the rape conviction required proof under O.C.G.A. §§ 16-2-20 and 16-6-1(a)(1) that the defendant took affirmative steps to aid the rapist, the cruelty to children conviction required proof under O.C.G.A. § 16-5-70(b) that the defendant caused excessive mental pain to the child, and the conviction for contributing to the deprivation of a minor required proof under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. § 15-11-107) and O.C.G.A. § 16-12-1(b)(3) that the defendant failed to provide the child with proper care necessary for the child's health, which the state proved by showing that the defendant failed to seek prenatal care for the child even though the defendant knew that the child was pregnant. Johnson v. State, 283 Ga. App. 99, 640 S.E.2d 644, 2006 Ga. App. LEXIS 1509 (2006), cert. denied, No. S07C0596, 2007 Ga. LEXIS 278 (Ga. Mar. 26, 2007).

Trial court did not err in failing to apply the rule of lenity and sentencing the defendant for the misdemeanor convictions of contributing to the deprivation of a minor, O.C.G.A. § 16-12-1(b)(3), instead of for the felony charges of cruelty to children, O.C.G.A. § 16-5-70(c), because the rule of lenity did not apply since

different facts were required to prove cruelty to children and contributing to the deprivation of a minor; the defendant's conviction for contributing to the deprivation of a minor required proof that the defendant failed to provide the children with the proper care necessary for the children's health. Staib v. State, 309 Ga. App. 785, 711 S.E.2d 362, 2011 Ga. App. LEXIS 450 (2011).

RESEARCH REFERENCES

Am. Jur. 2d.

47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 20, 41, 47.

C.J.S.

43 C.J.S., Infants, §§ 198, 199.

ALR.

Acts in connection with marriage of infant below marriageable age as contributing to delinquency, 68 A.L.R.2d 745.

Criminal liability for contributing to delinquency of minor as affected by the fact that minor has not become a delinquent, 18 A.L.R.3d 824.

Mens rea or guilty intent as necessary element of offense of contributing to delinquency or dependency of minor, 31 A.L.R.3d 848.

Giving, selling, or prescribing dangerous drugs as contributing to the delinquency of a minor, 36 A.L.R.3d 1292.

16-12-1.1. Child, family, or group-care facility operators prohibited from employing or housing persons with certain past criminal violations.

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

(1) "Facility" means any child care learning center, family child care learning home, group-care facility, or similar facility at which any child who is not a member of an operator's family is received for pay for supervision and care, without transfer of legal custody, for fewer than 24 hours per day.

(2) "Operator" means any person who applies for or holds a permit or license to operate a facility.

(b) Unless otherwise authorized as provided in Code Section 20-1A-43, it shall be unlawful for any operator of a facility to knowingly have any person reside at, be domiciled at, or be employed at any such facility if such person has been convicted of or has entered a plea of guilty or nolo contendere to or has been adjudicated a delinquent for:

(1) A violation of Code Section 16-4-1, relating to criminal attempt, when the crime attempted is any of the crimes specified in paragraphs (2) through (10) of this subsection;

(2) A violation of Code Section 16-5-23.1, relating to battery, when the victim at the time of such offense was a minor;

(3) A violation of any provision of Chapter 6 of this title, relating to sexual offenses, when the victim at the time of such offense was a minor;

(4) A violation of Code Section 16-12-1, relating to contributing to the delinquency of a minor;

(5) A violation of Code Section 16-5-1;

(6) A violation of Code Section 16-5-2, relating to voluntary manslaughter;

(7) A violation of Code Section 16-6-2, relating to aggravated sodomy;

(8) A violation of Code Section 16-6-3, relating to rape;

(9) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery; or

(10) A violation of Code Section 16-8-41, relating to armed robbery, if committed with a firearm.

(c) Any person violating subsection (b) of this Code section shall be guilty of a misdemeanor.

History.
Code 1981, § 16-12-1.1, enacted by Ga. L. 1997, p. 713, § 1; Ga. L. 2013, p. 135, § 12/HB 354; Ga. L. 2013, p. 285, § 1/HB 350; Ga. L. 2014, p. 444, § 2-7/HB 271; Ga. L. 2015, p. 965, § 3/HB 401.
Cross references.
Community Services for the Developmentally Disabled, § 37-5-1 et seq.
Day-Care Centers for the Developmentally Disabled, § 37-6-1 et seq.
Law reviews.
For article commenting on the enactment of this Code section, see 14 Georgia St. U.L. Rev. 76 (1997).

16-12-2. Smoking in public places.

(a) A person smoking tobacco in violation of Chapter 12A of Title 31 shall be guilty of a misdemeanor and, if convicted, shall be punished by a fine of not less than $100.00 nor more than $500.00.

(b) This Code section shall be cumulative to and shall not prohibit the enactment of any other general and local laws, rules and regulations of state or local agencies, and local ordinances prohibiting smoking which are more restrictive than this Code section.

History.
Code 1933, § 26-9910, enacted by Ga. L. 1975, p. 45, § 1; Ga. L. 1982, p. 3, § 16; Ga. L. 1994, p. 650, § 3; Ga. L. 2005, p. 60, § 16/HB 95; Ga. L. 2005, p. 1184, § 1/SB 90.
Cross references.
Master settlement agreement on tobacco, §§ 10-13-1 et seq., 10-13A-1 et seq.
Prohibited acts, § 16-12-171.
Code Commission notes.
The amendment of this Code section by Ga. L. 2005, p. 60, § 16(7), irreconcilably conflicted with and was treated as superseded by Ga. L. 2005, p. 1184, § 1. See County of Butts v. Strahan, 151 Ga. 417 (1921).
Law reviews.
For note on the 1994 amendment of this Code section, see 11 Georgia St. U.L. Rev. 126 (1994).

For article, "Misdemeanor Sentencing in Georgia," see 7 Ga. St. B.J. 8 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — O.C.G.A. § 16-12-2 is an offense for which those charged with a violation are to be fingerprinted. 2006 Op. Att'y Gen. No. 2006-2.

RESEARCH REFERENCES

ALR.

Constitutionality of anti-cigarette legislation, 20 A.L.R. 926.

Validity, construction, and application of nonsmoking regulations, 65 A.L.R.4th 1205.

Secondary smoke as battery, 46 A.L.R.5th 813.

16-12-3. Suspension of gas or electrical service for nonpayment on appliances provided by or repaired by utility company.

(a) It shall be unlawful for any gas or electric utility company or electric membership corporation to cut off or suspend gas or electric service in any residence because the resident has failed to pay for or has failed to make timely payments for any appliance purchased from or any appliance repaired by such company or corporation. Payments received from a resident shall be first applied to the service, unless otherwise specified by the resident at the time of payment.

(b) Any company or corporation or any agent or employee thereof acting within the scope of his authority knowingly violating subsection (a) of this Code section shall be guilty of a misdemeanor.

History.

Ga. L. 1975, p. 849, § 1.

Cross references.

Sales of goods or services under retail installments contracts, § 10-1-1 et seq.

RESEARCH REFERENCES

ALR.

Duty of public utility to notify patron in advance of temporary suspension of service, 52 A.L.R. 1078.

Duty of gas company as regards precautions to be taken upon or after discontinuing service to premises, 13 A.L.R.2d 1396.

Right of public utility to deny service at one address because of failure to pay for past service rendered at another, 73 A.L.R.3d 1292.

16-12-4. Cruelty to animals.

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

(1) "Animal" shall not include any fish nor shall such term include any pest that might be exterminated or removed from a business, residence, or other structure.

(2) "Malice" means:

(A) An actual intent, which may be shown by the circumstances connected to the act, to cause the particular harm produced without justification or excuse; or

(B) The wanton and willful doing of an act with an awareness of a plain and strong likelihood that a particular harm may result.

(b) A person commits the offense of cruelty to animals when he or she:

(1) Causes physical pain, suffering, or death to an animal by any unjustifiable act or omission; or

(2) Having intentionally exercised custody, control, possession, or ownership of an animal, fails to provide to such animal adequate food, water, sanitary conditions, or ventilation that is consistent with what a reasonable person of ordinary knowledge would believe is the normal requirement and feeding habit for such animal's size, species, breed, age, and physical condition.

(c) Any person convicted of the offense of cruelty to animals shall be guilty of a misdemeanor; provided, however, that any person who has had a prior adjudication of guilt for the offense of cruelty to animals or aggravated cruelty to animals, or an adjudication of guilt for the commission of an offense under the laws of any other state, territory, possession, or dominion of the United States, or of any foreign nation recognized by the United States, which would constitute the offense of cruelty to animals or aggravated cruelty to animals if committed in this state, including an adjudication of a juvenile for the commission of an act, whether committed in this state or in any other state, territory, possession, or dominion of the United States, or any foreign nation recognized by the United States, which if committed by an adult would constitute the offense of cruelty to animals or aggravated cruelty to animals, upon the second or subsequent conviction of cruelty to animals shall be guilty of a misdemeanor of a high and aggravated nature.

(d) A person commits the offense of aggravated cruelty to animals when he or she:

(1) Maliciously causes the death of an animal;

(2) Maliciously causes physical harm to an animal by depriving it of a member of its body, by rendering a part of such animal's body useless, or by seriously disfiguring such animal's body or a member thereof;

(3) Maliciously tortures an animal by the infliction of or subjection to severe or prolonged physical pain;

(4) Maliciously administers poison to an animal, or exposes an animal to any poisonous substance, with the intent that the substance be taken or swallowed by the animal; or

(5) Having intentionally exercised custody, control, possession, or ownership of an animal, maliciously fails to provide to such animal adequate food, water, sanitary conditions, or ventilation that is consistent with what a reasonable person of ordinary knowledge would believe is the normal requirement and feeding habit for such animal's size, species, breed, age, and physical condition to the extent that the death of such animal results or a member of its body is rendered useless or is seriously disfigured.

(e) Any person convicted of the offense of aggravated cruelty to animals shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years, a fine not to exceed $15,000.00, or both; provided, however, that any person who has had a prior adjudication of guilt for the offense of aggravated cruelty to animals, or an adjudication of guilt for the commission of an offense under the laws of any other state, territory, possession, or dominion of the United States, or of any foreign nation recognized by the United States, which would constitute the offense of aggravated cruelty to animals if committed in this state, including an adjudication of a juvenile for the commission of an act, whether committed in this state or in any other state, territory, possession, or dominion of the United States, or any foreign nation recognized by the United States, which if committed by an adult would constitute the offense of aggravated cruelty to animals, upon the second or subsequent conviction of aggravated cruelty to animals shall be punished by imprisonment for not less than one nor more than ten years, a fine not to exceed $100,000.00, or both.

(f) Before sentencing a defendant for any conviction under this Code section, the sentencing judge may require psychological evaluation of the offender and shall consider the entire criminal record of the offender.

(g) The provisions of this Code section shall not be construed as prohibiting conduct which is otherwise permitted under the laws of this state or of the United States, including, but not limited to, agricultural, animal husbandry, butchering, food processing, marketing, scientific research, training, medical, zoological, exhibition, competitive, hunting, trapping, fishing, wildlife management, or pest control practices or the authorized practice of veterinary medicine nor to limit in any way the authority or duty of the Department of Agriculture, Department of

Natural Resources, any county board of health, any law enforcement officer, dog, animal, or rabies control officer, humane society, veterinarian, or private landowner protecting his or her property.

(h)(1) In addition to justification and excuse as provided in Article 2 of Chapter 3 of this title, a person shall be justified in injuring or killing an animal when and to the extent that he or she reasonably believes that such act is necessary to defend against an imminent threat of injury or damage to any person, other animal, or property.

(2) A person shall not be justified in injuring or killing an animal under the circumstances set forth in paragraph (1) of this subsection when:

(A) The person being threatened is attempting to commit, committing, or fleeing after the commission or attempted commission of a crime;

(B) The person or other animal being threatened is attempting to commit or committing a trespass or other tortious interference with property; or

(C) The animal being threatened is not lawfully on the property where the threat is occurring.

(3) The method used to injure or kill an animal under the circumstances set forth in paragraph (1) of this subsection shall be designed to be as humane as is possible under the circumstances. A person who humanely injures or kills an animal under the circumstances indicated in this subsection shall incur no civil liability or criminal responsibility for such injury or death.

History.

Code 1933, § 26-2802, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1992, p. 1654, § 1; Ga. L. 2000, p. 754, § 12; Ga. L. 2014, p. 492, § 1/HB 863.

Cross references.

Investigation prior to charges of cruelty to animals in animal husbandry, § 4-1-7.

Permitting livestock to run at large or stray, § 4-3-3.

Cruelty to dogs and killing dogs, § 4-8-5.

Regulation of pet dealers and operators of kennels, stables, or animal shelters, § 4-11-1 et seq.

Abandonment of domesticated animal, § 4-11-15.1.

Humane handling and care of wild animals, § 27-5-6.

Editor's notes.

Ga. L. 2000, p. 754, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Animal Protection Act of 2000.'"

Law reviews.

For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

For article, "Misdemeanor Sentencing in Georgia," see 7 Ga. St. B.J. 8 (2001).

For comment, "The Abuse of Animals as a Method of Domestic Violence: The Need for Criminalization," see 63 Emory L.J. 1163 (2014).

For annual survey of criminal law, see 67 Mercer L. Rev. 31 (2015).

For article, "What Zombies Can Teach Law Students: Popular Text Inclusion in Law and Literature," see 66 Mercer L. Rev. 729 (2015).

For note, "Puppies, Puppies, Puppies: Why Georgia Should 'Adopt' a Progressive

Puppy Lemon Law and Engage in Much-Needed Statutory Reform," see 55 Ga. L. Rev. 431 (2020).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 16-12-4 was not unconstitutionally vague; subsection (b) clearly explained when a person would be liable for cruelty to animals, while former paragraphs (f)(1) and (2) explained that killing or wounding an animal could be justified under some circumstances if the killing was "humane," or done in such a way as to demonstrate compassion for the animal (see now O.C.G.A. § 16-12-4(h)(1), (2) and (3)). In the Interest of C.B., 286 Ga. 173, 686 S.E.2d 124, 2009 Ga. LEXIS 688 (2009).

Dogfighting provision in § 16-12-37 constitutional. — While O.C.G.A. § 16-12-4 makes it a misdemeanor for anyone to subject any animal to cruel treatment, O.C.G.A. § 16-12-37 ($5,000.00 fine, with optional year in prison, for dogfighting) does not violate equal protection, because the legislature acted within its discretion in mandating that those who participate in a dogfight organization for sport or gaming purposes should be dealt with more harshly. Hargrove v. State, 253 Ga. 450, 321 S.E.2d 104, 1984 Ga. LEXIS 955 (1984).

O.C.G.A. § 16-12-4 does not limit offense to killing animals; it is enough to cause them unjustifiable suffering. Smith v. State, 160 Ga. App. 26, 285 S.E.2d 749, 1981 Ga. App. LEXIS 2860 (1981).

Malice, wilfulness and intent are not elements of the offense of cruelty to animals. Miller v. State, 179 Ga. App. 217, 345 S.E.2d 909, 1986 Ga. App. LEXIS 2606 (1986); Cox v. State, 216 Ga. App. 86, 453 S.E.2d 471, 1995 Ga. App. LEXIS 25 (1995), cert. denied, No. S95C0771, 1995 Ga. LEXIS 669 (Ga. Apr. 18, 1995).

Motive for inflicting injury and justification are for jury consideration. — Motive of defendant in inflicting injury upon animal, and whether the motive was justifiable under circumstances, are generally questions for solution by jury. Rushin v. State, 154 Ga. App. 41, 267 S.E.2d 473, 1980 Ga. App. LEXIS 2036 (1980).

Ownership of property or animals not material element. — Neither ownership of the property on which the animals are found nor ownership of the animals is a material element of the offense of cruelty to animals. Tiller v. State, 218 Ga. App. 418, 461 S.E.2d 572, 1995 Ga. App. LEXIS 751 (1995).

Test is whether injury inflicted upon animal was, under circumstances, justifiable. Rushin v. State, 154 Ga. App. 41, 267 S.E.2d 473, 1980 Ga. App. LEXIS 2036 (1980).

Former Code 1933, § 26-2802 (see now O.C.G.A. § 16-12-4) includes fowls as animals, and cruelty to a gamecock therefore is proscribed conduct. Brackett v. State, 142 Ga. App. 601, 236 S.E.2d 689, 1977 Ga. App. LEXIS 1415 (1977).

Cockfighting is effectively prohibited by former Code 1933, § 26-2802 (see now O.C.G.A. § 16-12-4). Brackett v. State, 142 Ga. App. 601, 236 S.E.2d 689, 1977 Ga. App. LEXIS 1415 (1977).

Accusation sufficient. — Accusation charging a defendant with causing the unjustifiable physical pain or suffering of a dog by failing to provide adequate food or water or medical care was sufficient to charge the defendant with cruelty to animals pursuant to O.C.G.A. § 16-12-4. Ford v. State, 306 Ga. App. 606, 703 S.E.2d 71, 2010 Ga. App. LEXIS 1002 (2010).

Seizure of malnourished and mistreated animals. — Because sufficient exigent circumstances existed to authorize a sheriff's deputy to enter the defendant's backyard and seize a number of animals the officer observed were malnourished and mistreated, and given the harsh weather conditions and impending holiday, obtaining a warrant would have been unreasonable, the defendant's motions to suppress and in limine seeking to preclude admission of

the evidence seized were properly denied. Moreover, the evidence seized after the defendant's lawful arrest, and observed in plain view by the officer upon being allowed to enter the defendant's residence was also properly admitted. Morgan v. State, 289 Ga. App. 209, 656 S.E.2d 857, 2008 Ga. App. LEXIS 38 (2008).

Jury instructions. — There was no plain error in the trial court's charge to the jury that no criminal liability would attach if the defendant killed a neighbor's dog in order to protect livestock because the trial court's charge on animal cruelty, as a whole, was consistent with the language of O.C.G.A. § 16-12-4, and it adequately explained to the jury that a person was not prohibited from killing an animal if necessary to protect his or her person or property or that of another. Futch v. State, 314 Ga. App. 294, 723 S.E.2d 714, 2012 Ga. App. LEXIS 181 (2012).

Facts warranting conviction. — When evidence shows that defendants had exclusive control and possession of certain property on which certain animals were found, and since many of the animals were dead under circumstances indicating that death resulted from lack of food and water, and since some of the animals involved were alive when found but were so seriously malnourished and ill that the animals were put to death by the state, the inescapable conclusion to be drawn from such evidence is that defendants abandoned living animals without food or water, thereby causing unjustifiable physical pain, suffering, or death. Smith v. State, 160 Ga. App. 26, 285 S.E.2d 749, 1981 Ga. App. LEXIS 2860 (1981).

When cockfighting was staged on the defendant's property on which an arena and bleachers were erected, the defendant was collecting the admission fees, and gamecocks with spurs and other fighting equipment were found on the premises, the evidence was sufficient to show that the defendants were involved in the operation of organizing a cockfight and were guilty of both cruelty to animals and commercial gambling. Morgan v. State, 195 Ga. App. 52, 392 S.E.2d 715, 1990 Ga. App. LEXIS 419 (1990), cert. denied, No. S90C0870, 1990 Ga. LEXIS 686 (Ga. Apr. 12, 1990).

Circumstantial evidence, including testimony of witnesses who heard an injured dog yelping and howling and saw it running away, saw defendant standing with a rifle in defendant's hand, and found the dog with a gunshot wound in its ear, was sufficient to support defendant's conviction. Willis v. State, 201 Ga. App. 182, 410 S.E.2d 377, 1991 Ga. App. LEXIS 1255 (1991).

When the evidence showed without question that defendant was responsible for the care and feeding of horses, necessary elements of the offense of cruelty to animals were proved by the state's establishment that the horses were neglected and were suffering. Tiller v. State, 218 Ga. App. 418, 461 S.E.2d 572, 1995 Ga. App. LEXIS 751 (1995).

Evidence was sufficient to support finding of guilt for cruelty to animals by aiding and encouraging a cock fight in violation of O.C.G.A. § 16-12-4. Chaney v. State, 232 Ga. App. 297, 500 S.E.2d 416, 1998 Ga. App. LEXIS 656 (1998).

Evidence was sufficient to support a conviction for cruelty to animals as: (1) the defendant owned 16 pit bull dogs and one boxer which were found living in defendant's backyard in 30 degree weather, with inadequate shelter, and with more than one inch of water and mud covering the yard; and (2) there was strong circumstantial evidence that defendant bred the dogs for fighting. Stephens v. State, 247 Ga. App. 719, 545 S.E.2d 325, 2001 Ga. App. LEXIS 96 (2001).

Evidence that a sheriff's deputy and a livestock inspector found cows confined without water or feed in a small pen on property defendant and defendant's spouse owned, and that the animals appeared to be suffering because they had no food or water, was sufficient to sustain defendant's conviction for violating O.C.G.A. § 16-12-4(b) even though the state did not prove willful neglect. Cotton v. State, 263 Ga. App. 843, 589 S.E.2d 610, 2003 Ga. App. LEXIS 1347 (2003), cert. denied, No. S04C0496, 2004 Ga. LEXIS 145 (Ga. Feb. 16, 2004).

Defendant's conviction for aggravated cruelty to animals was supported by evi-

dence that the defendant was aware of the presence of at least one dog before setting the residence on fire. Lonon v. State, 348 Ga. App. 527, 823 S.E.2d 842, 2019 Ga. App. LEXIS 43 (2019).

Direct evidence supported conviction. — Evidence was sufficient to establish that the defendant killed a neighbor's dog without justification because the defendant had previously told the neighbor that the defendant shot and killed the dog; pursuant to former O.C.G.A. § 24-1-1(3), those prior admissions were direct evidence that the defendant killed the dog. Futch v. State, 314 Ga. App. 294, 723 S.E.2d 714, 2012 Ga. App. LEXIS 181 (2012).

Circumstantial evidence supported conviction. — Circumstantial evidence was sufficient to support the defendant's conviction for cruelty to animals in violation of O.C.G.A. § 16-12-4(b) for killing a neighbor's dog because there was evidence that the defendant had a proclivity to kill dogs on the defendant's property, the defendant killed a dog around the time frame that the neighbor's dog went missing, and the neighbor's dog never expressed any aggressive behavior towards other animals. Futch v. State, 314 Ga. App. 294, 723 S.E.2d 714, 2012 Ga. App. LEXIS 181 (2012).

Defendant was properly convicted for arson in the second degree and cruelty to animals, where the essential elements of each of the crimes differed, and the state carried its burden of proving the distinct elements of each crime. Motes v. State, 189 Ga. App. 430, 375 S.E.2d 893, 1988 Ga. App. LEXIS 1424 (1988).

Merger. — Two counts of aggravated cruelty to animals should have been merged as the injuries to the dog's jaw and hip occurred as part of a single transaction, without a deliberate interval separating the blows. Rozier v. State, 365 Ga. App. 178, 877 S.E.2d 855, 2022 Ga. App. LEXIS 410 (2022).

Facts supporting entry of plea. — There was a sufficient factual basis under Ga. Unif. Super. Ct. R. 33.9 to support the defendant's nolo contendere plea to two counts of animal cruelty, in violation of O.C.G.A. § 16-12-4(b), based on a statement at the plea hearing from the defendant's counsel that due to the defendant's medical conditions of degenerative joint disease and diabetes, the defendant was unable to care for the large number of animals on the property alone. Johnson v. State, 282 Ga. App. 464, 638 S.E.2d 873, 2006 Ga. App. LEXIS 1422 (2006).

Conditions of negotiated plea agreement unappealable. — Defendant's entry of a nolo contendere plea to two counts of animal cruelty, in violation of O.C.G.A. § 16-12-4(b), and the defendant's acceptance of the conditions of the negotiated plea agreement in open court which included restrictions on the number and type of animals that the defendant could own and the time limit within which animals on the defendant's property were to be relocated, constituted a waiver of the right to challenge the issue of the conditions of the sentence on appeal. Johnson v. State, 282 Ga. App. 464, 638 S.E.2d 873, 2006 Ga. App. LEXIS 1422 (2006).

Procedure for county's recoupment of costs for impoundment of dogs. — Dog owners were not entitled to notice pursuant to O.C.G.A. § 4-11-9.4 because the county sought recoupment of the county's costs of impounding the dogs under O.C.G.A. § 4-11-9.8(a) as part of an investigation of the owners' violations of the animal cruelty statute, O.C.G.A. § 16-12-4. Bramblett v. Habersham County, 346 Ga. App. 511, 816 S.E.2d 446, 2018 Ga. App. LEXIS 399 (2018).

OPINIONS OF THE ATTORNEY GENERAL

Cockfighting. — Cockfighting constitutes cruelty to animals and is not exempt from prosecution under the guise of "scientific research" by virtue of the fact that blood or tissue samples are taken from some birds and sent to a laboratory for disease testing. 2003 Op. Att'y Gen. No. 2003-7.

RESEARCH REFERENCES

Am. Jur. 2d.
4 Am. Jur. 2d, Animals, §§ 23 et seq., 27 et seq., 31 et seq.
C.J.S.
3B C.J.S., Animals, § 198 et seq.
ALR.
What is "infamous" offense within constitutional or statutory provision in relation to presentment or indictment by grand jury, 24 A.L.R. 1002.
Constitutionality of statute to prevent cruelty in trapping animals, 79 A.L.R. 1308.
Indefiniteness of penal statute or ordinance relating to cruelty, similar offenses, against animals, 144 A.L.R. 1041.
Civil liability of landowner for killing or injuring trespassing dog, 15 A.L.R.2d 578.
Law as to cats, 73 A.L.R.2d 1032; 8 A.L.R.4th 1287; 55 A.L.R.4th 1080; 68 A.L.R.4th 823.
What constitutes statutory offense of cruelty to animals, 82 A.L.R.2d 794.
Measure, elements, and amount of damages for killing or injuring cat, 8 A.L.R.4th 1287.
Applicability of state animal cruelty statute to medical or scientific experimentation employing animals, 42 A.L.R.4th 860.
What constitutes offense of cruelty to animals—modern cases, 6 A.L.R.5th 733.
Validity, construction, and application of criminal statutes and ordinances to prosecution for dogfighting, 68 A.L.R.6th 115.
Validity, construction, and application of statutes and ordinances to prosecution for cockfighting, 69 A.L.R.6th 207.
Construction and application of Horse Protection Act of 1970 (15 USCS § 1821 et seq.), 131 A.L.R. Fed. 363.
Animal Abuse or Cruelty as Constituting Crime of Domestic Violence, 86 A.L.R.7th 3.

16-12-5. Tattooing.

(a) As used in this Code section, the term "tattoo" means to mark or color the skin of any person by pricking in, inserting, or implanting pigments, except when performed by a physician licensed as such pursuant to Chapter 34 of Title 43.

(b) It shall be unlawful for any person to tattoo the body of any person within any area within one inch of the nearest part of the eye socket of such person. Any person who violates this Code section shall be guilty of a misdemeanor.

History.
Code 1981, § 16-12-5, enacted by Ga. L. 1990, p. 1866, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required for violation of section. — Violation of O.C.G.A. § 16-12-5 is not, at this time, designated as an offense for which those charged with a violation are to be fingerprinted. 1990 Op. Att'y Gen. No. 90-22.

RESEARCH REFERENCES

ALR.
Liability for Negligence for Body Piercings and Tattoos, 92 A.L.R.7th 7.

ARTICLE 2

GAMBLING AND RELATED OFFENSES

Cross references.
Lotteries, Ga. Const. 1983, Art. I, Sec. II, Para. VIII.
Annual permit fee for coin operated amusements, § 50-27-78.
Administrative rules and regulations.
Nonprofit BINGO Games, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Bureau of Investigation, Rule 92-2-.01 et seq.
Law reviews.
For note, "Why Georgia Should Get Off the Bench and Profit from the Inevitability of Sports Betting," see 36 Georgia St. U.L. Rev. 845 (2020).

RESEARCH REFERENCES

ALR.
Validity, construction, and application of statutes or ordinances involved in prosecutions for possession of bookmaking paraphernalia, 51 A.L.R.4th 796.
Private contests and lotteries: entrants' rights and remedies, 64 A.L.R.4th 1021.

PART 1

GAMBLING

Law reviews.
For comment on Marchetti v. United States, 390 U.S. 39, 88 S. Ct. 697, 19 L. Ed. 2d 889 (1968), applying Fifth Amendment privilege to disclosure of gambling income, see 19 Mercer L. Rev. 433 (1968).

OPINIONS OF THE ATTORNEY GENERAL

So-called sweepstakes and other promotional contest schemes of a lottery-like nature are illegal. 1972 Op. Att'y Gen. No. U72-69.

RESEARCH REFERENCES

Am. Jur. Proof of Facts.
Enforcement of Casino Gambling Debts, 71 POF3d 193.
Enforcement of International Gambling Debts, 87 POF3d 347.
ALR.
Retaking of money lost at gambling as robbery or larceny, 42 A.L.R. 741; 116 A.L.R. 997.
Racing as a game within statute, 45 A.L.R. 998.
Margin transactions or dealings in futures as within constitution or statutes providing for recovery back of money paid on gaming consideration, 49 A.L.R. 1085.
Legality of scheme purporting a purchase and sale of horses or dogs in connection with racing exhibitions, 79 A.L.R. 576.
Rights and remedies in respect of money in gambling machine or other receptacle, used in connection with gam-

bling, seized by public authorities, 79 A.L.R. 1007.

Construction and application of statutes permitting specified forms of betting, 117 A.L.R. 828.

Winner's rights and remedies in respect of pari-mutuel and similar legalized betting systems, 165 A.L.R. 838.

Action to recover money or property lost and paid through gambling as affected by statute of limitations, 22 A.L.R.2d 1390.

Entrapment to commit offense with respect to gambling or lotteries, 31 A.L.R.2d 1212.

Right to recover money lent for gambling purposes, 53 A.L.R.2d 345.

Participation in gambling activities as bar to action for personal injury or death, 77 A.L.R.2d 961.

Criminal conspiracies as to gambling, 91 A.L.R.2d 1148.

What constitutes such discriminatory prosecution or enforcement of laws as to provide valid defense in state criminal proceedings, 95 A.L.R.3d 280.

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon, 98 A.L.R.3d 694.

Admissibility of expert testimony as to modus operandi of crime - modern cases, 31 A.L.R. 4th 798.

State lotteries: actions by ticketholders against state or contractor for state, 40 A.L.R.4th 662.

Validity, construction, and application of statutes or ordinances involved in prosecutions for transmission of wagers or wagering information related to bookmaking, 53 A.L.R.4th 801.

Private contests and lotteries: entrants' rights and remedies, 64 A.L.R.4th 1021.

Validity, construction, and application of statute or ordinance prohibiting or regulating use or occupancy of premises for bookmaking or pool selling, 82 A.L.R.4th 356.

16-12-20. Definitions.

As used in this part, the term:

(1) "Bet" means an agreement that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value. A bet does not include:

(A) Contracts of indemnity or guaranty or life, health, property, or accident insurance; or

(B) An offer of a prize, award, or compensation to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in such contest.

(2) "Gambling device" means:

(A) Any contrivance which for a consideration affords the player an opportunity to obtain money or other thing of value, the award of which is determined by chance even though accompanied by some skill, whether or not the prize is automatically paid by contrivance;

(B) Any slot machine or any simulation or variation thereof;

(C) Any matchup or lineup game machine or device, operated for any consideration, in which two or more numerals, symbols, letters, or icons align in a winning combination on one or more

lines vertically, horizontally, diagonally, or otherwise, without assistance by the player. Use of skill stops shall not be considered assistance by the player; or

(D) Any video game machine or device, operated for any consideration, for the play of poker, blackjack, any other card game, or keno or any simulation or variation of any of the foregoing, including, but not limited to, any game in which numerals, numbers, or any pictures, representations, or symbols are used as an equivalent or substitute for cards in the conduct of such game.

Any item described in subparagraph (B), (C), or (D) of this paragraph shall be a prohibited gambling device subject to and prohibited by this part, notwithstanding any inference to the contrary in any other law of this state.

(3) "Gambling place" means any real estate, building, room, tent, vehicle, boat, or other property whatsoever, one of the principal uses of which is the making or settling of bets; the receiving, holding, recording, or forwarding of bets or offers to bet; or the conducting of a lottery or the playing of gambling devices.

(4) "Lottery" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win such prize, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or by some other name. Except as otherwise provided in Code Section 16-12-35, a lottery shall also include the payment of cash or other consideration or the payment for merchandise or services and the option to participate in or play, even if others can participate or play for free, a no skill game or to participate for cash, other consideration, other evidence of winnings, or other noncash prizes by lot or in a finite pool on a computer, mechanical device, or electronic device whereby the player is able to win a cash or noncash prize, other consideration, or other evidence of winnings. A lottery shall also include the organization of chain letter or pyramid clubs as provided in Code Section 16-12-38. A lottery shall not mean a:

(A) Promotional giveaway or contest which conforms with the qualifications of a lawful promotion specified in paragraph (16) of subsection (b) of Code Section 10-1-393;

(B) Scheme whereby a business gives away prizes to persons selected by lot if such prizes are made on the following conditions:

(i) Such prizes are conducted as advertising and promotional undertakings in good faith solely for the purpose of advertising the goods, wares, and merchandise of such business;

(ii) No person to be eligible to receive such prize shall be required to:

(I) Pay any tangible consideration to the operator of such business in the form of money or other property or thing of value;

(II) Purchase any goods, wares, merchandise, or anything of value from such business; or

(III) Be present or be asked to participate in a seminar, sales presentation, or any other presentation, by whatever name denominated, in order to win such prizes; and

(iii) The prizes awarded shall be noncash prizes and cannot be awarded based upon the playing of a game on a computer, mechanical device, or electronic device at a place of business in this state;

(C) Raffle authorized under Code Section 16-12-22.1;

(D) National or regional promotion, contest, or sweepstakes conducted by any corporation or wholly owned subsidiary or valid franchise of such corporation, either directly or through another entity, provided that, at the time of such promotion, contest, or sweepstakes, such corporation:

(i) Is registered under the federal Securities Exchange Act of 1934; and

(ii) Has total assets of not less than $100 million; or

(E) Savings promotion raffle that conforms with the requirements of Code Section 7-1-239.10.

The provisions of this part shall not be applicable to games offered by the Georgia Lottery Corporation pursuant to Chapter 27 of Title 50.

History.

Code 1933, § 26-2701, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1975, p. 1072, § 2; Ga. L. 1982, p. 1661, § 3; Ga. L. 1985, p. 437, § 1; Ga. L. 1986, p. 1313, § 3; Ga. L. 1987, p. 1386, § 3; Ga. L. 1995, p. 832, § 1; Ga. 2001, Ex. Sess., p. 312, § 1; Ga. L. 2012, p. 1136, § 2/SB 431; Ga. L. 2019, p. 736, § 2/HB 193.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1988, in paragraph (4) a period was added at the end of the second sentence and a comma was added following "presentation" the second time it appeared in division (4)(B)(ii)(III).

Editor's notes.

Ga. L. 2001, Ex. Sess., p. 312, § 4, not codified by the General Assembly, provides that: "This Act is not intended to, and should not be construed to, affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be prohibited by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall not be permitted by this Act."

Ga. L. 2001, Ex. Sess., p. 312, § 5, not codified by the General Assembly, provides that: "During the period beginning January 1, 2002, and ending June 30, 2002, it shall not be unlawful to possess in this state a machine or device described in subparagraph (B), (C), or (D) of paragraph (2) of Code Section 16-12-20, if: (1) Such machine is not in use; (2) Such machine is in transit to a storage facility or in a storage facility, which said storage facility is a secured facility and no part of same is accessible by anyone other than employees of said facility or employees of the owner of said machine; and (3) Such machine is not located in a place which is open to the public and is not located in a private club."

Ga. L. 2012, p. 1136, § 4/SB 431, not codified by the General Assembly, provides, in part, that this Code section shall apply to conduct that occurs on and after May 2, 2012. It is not the intention of this Act to abate any prosecution undertaken for conduct occurring under the law in effect prior to such date, and any offense committed before May 2, 2012, shall be prosecuted and punished under the statutes in effect at the time the offense was committed.

Law reviews.

For comment on Boyd v. Piggly Wiggly S., Inc., 115 Ga. App. 628, 155 S.E.2d 630 (1967), see 2 Ga. L. Rev. 132 (1967).

For note discussing organized crime in Georgia with respect to the application of state gambling laws, and suggesting proposals for combatting organized crime, see 7 Ga. St. B.J. 124 (1970).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Penal Code 1895, § 406, former Penal Code 1910, §§ 397 and 398, and former Code 1933, §§ 26-6501 and 26-6502, as they read prior to revision of this title by Ga. L. 1968, p. 1249, are included in the annotations for this Code section.

Applying the "actual use" test to case concerning confiscation of gambling equipment, evidence was not sufficient to subject the equipment to confiscation where it was not shown that it was actually used for gambling. Monte Carlo Parties, Ltd. v. Webb, 253 Ga. 508, 322 S.E.2d 246, 1984 Ga. LEXIS 1009 (1984).

It was error to use the functional use test to find that video poker game machines were gambling devices. To reason that a machine is a gambling device merely because it mimics a card game that "historically" had been used for gambling is much the same as saying the machine is a gambling device because it could be used for gambling purposes, whether it is actually so used or not. This is the functional use test rejected in Monte Carlo Parties, Ltd. v. Webb, 253 Ga. 508, 322 S.E.2d 246 (1984). Webb v. City of Rossville, 198 Ga. App. 294, 401 S.E.2d 312, 1991 Ga. App. LEXIS 28 (1991), superseded by statute as stated in State v. Old South Amusements, Inc., 275 Ga. 274, 564 S.E.2d 710, 2002 Ga. LEXIS 449 (2002).

One may be acquitted of gambling but convicted of operating a gambling house. — Gambling is one thing and operating a gambling house is a kindred but entirely different thing and different evidence is required to convict of these separate offenses. No absurdity or repugnancy is created by acquittal of gambling and conviction of operating a gambling house. McGahee v. State, 133 Ga. App. 964, 213 S.E.2d 91, 1975 Ga. App. LEXIS 2350 (1975).

In a lottery, there must be union of consideration, chance, and prize. Barker v. State, 56 Ga. App. 705, 193 S.E. 605, 1937 Ga. App. LEXIS 208 (1937) (decided under former Code 1933, §§ 26-6501, 26-6502); Harrington v. State, 97 Ga. App. 315, 103 S.E.2d 126, 1958 Ga. App. LEXIS 766 (1958) (decided under former Code 1933, §§ 26-6501, 26-6502); Boyd v. Piggly Wiggly S., Inc., 115 Ga. App. 628, 155 S.E.2d 630, 1967 Ga. App. LEXIS 1194 (1967), superseded by statute as stated in Talley v. Mathis, 212 Ga. App. 330, 441 S.E.2d 854, 1994

Ga. App. LEXIS 235 (1994) (for comment, see 2 Ga. L. Rev. 132 (1967)) (decided under former Code 1933, § 26-6501).

Three essentials of a lottery are consideration, prize, and chance. Equitable Loan & Sec. Co. v. Waring, 117 Ga. 599, 44 S.E. 320, 1903 Ga. LEXIS 301 (1903), superseded by statute as stated in Williams v. Studstill, 251 Ga. 466, 306 S.E.2d 633, 1983 Ga. LEXIS 798 (1983); Sparkman v. State, 209 Ga. App. 763, 434 S.E.2d 564, 1993 Ga. App. LEXIS 986 (1993), cert. denied, No. S93C1811, 1993 Ga. LEXIS 1080 (Ga. Nov. 4, 1993) (decided under former Penal Code 1895, § 406).

It matters not that value of thing hazarded is small or infinitesimal. — "Lottery" imports a scheme or device for hazarding of money or other thing of value by chance. It matters not that value of thing hazarded is small or infinitesimal if in fact it does have some value. AAA Amusements, Inc. v. State, 106 Ga. App. 663, 127 S.E.2d 919, 1962 Ga. App. LEXIS 804 (1962) (decided under former Code 1933, §§ 26-6501, 26-6502).

When only priority of payment is determined by chance, scheme does not constitute lottery. Equitable Loan & Sec. Co. v. Waring, 117 Ga. 599, 44 S.E. 320, 1903 Ga. LEXIS 301 (1903), superseded by statute as stated in Williams v. Studstill, 251 Ga. 466, 306 S.E.2d 633, 1983 Ga. LEXIS 798 (1983) (decided under former Penal Code 1895, § 406).

Gift enterprise defined. — Gift enterprise is a sporting artifice by which, for example a merchant or tradesman sells wares for their market value, but, by way of inducement, gives to each purchaser a ticket which entitles the purchaser to a chance to win certain prizes, to be determined after the manner of a lottery. Barker v. State, 56 Ga. App. 705, 193 S.E. 605, 1937 Ga. App. LEXIS 208 (1937) (decided under former Code 1933, § 26-6501).

For definitions of "chance," "similar scheme," and "gift enterprise," see Russell v. Equitable & Sec. Co., 129 Ga. 154, 58 S.E. 881, 1907 Ga. LEXIS 324 (1907) (decided under former Penal Code 1895, § 406).

Punchboard constituting gambling device. — See Hobbs v. K. & S. Sales Co., 35 Ga. App. 226, 132 S.E. 775, 1926 Ga. App. LEXIS 651 (1926) (decided under former Penal Code 1910, § 397).

Slot machines are not for amusement when played for something of value. — An apparatus known as a slot machine, by which a person depositing money therein may, by chance, get directly or indirectly money or articles or value worth either more or less than money deposited, falls within purview of former Code 1933, §§ 26-6501, 26-6502, and cannot be treated as one kept only for amusement. Childs v. State, 70 Ga. App. 99, 27 S.E.2d 470, 1943 Ga. App. LEXIS 255 (1943) (decided under former Code 1933, §§ 26-6501, 26-6502).

Possession of machines designed for gambling purposes. — Possession of machines designed for gambling purposes is illegal under the Georgia Video Poker Act of 2001, O.C.G.A. § 16-12-20 et seq. Jones v. State, 276 Ga. App. 810, 625 S.E.2d 4, 2005 Ga. App. LEXIS 1236 (2005), cert. denied, No. S06C0809, 2006 Ga. LEXIS 327 (Ga. Apr. 25, 2006).

One may be guilty of operating a gambling house without participating in actual gambling. Miller v. State, 48 Ga. App. 786, 173 S.E. 491, 1934 Ga. App. LEXIS 193 (1934) (decided under former Code 1933, §§ 26-6501, 26-6502).

"Gambling devices." — Trial court did not err in allowing the witnesses in defendant's trial for possession of illegal gambling machines to testify that the machines were "gambling devices," as the jury had to determine whether defendant sold a machine that detectives testified was set up for gambling to a witness, who then sold the machine to the detectives, and whether that machine was illegal under O.C.G.A. § 16-12-20(2); describing the machines the detectives seized as "gambling machines" did not answer those questions. Jones v. State, 276 Ga. App. 810, 625 S.E.2d 4, 2005 Ga. App. LEXIS 1236 (2005), cert. denied, No. S06C0809, 2006 Ga. LEXIS 327 (Ga. Apr. 25, 2006).

Actions converted amusement machines into gambling devices. — Judgment approving forfeiture was affirmed because by giving players cash and lottery tickets as rewards for winning games on the amusement machines, the

gas station employees effectively converted the machines into gambling devices under O.C.G.A. § 16-12-32(b)(4), which clearly violated the gambling laws of Georgia prohibiting cash payouts for winning games on machines when the winnings are determined by chance even if the games involve an element of skill. Patel v. State of Ga., 341 Ga. App. 419, 801 S.E.2d 551, 2017 Ga. App. LEXIS 214 (2017), cert. dismissed, No. S17C1777, 2017 Ga. LEXIS 903 (Ga. Oct. 16, 2017).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 26-6501 and 26-6502 are included in the annotations for this Code section.

Electronic slot machines are gambling devices per se; the slot machines are contraband; the slot machines can be seized and destroyed as contraband; possession of such devices is a crime; no demonstration of operation of any such device is necessary antecedent to the machine's seizure, nor is any demonstration necessary to establish basis of criminal prosecution for possession of that device. 1971 Op. Att'y Gen. No. 71-167.

Fund-raising activities constituting gambling. — Certain fund-raising activities, often for charitable purposes and generally designated as "Las Vegas Night" or "Casino Night," constitute gambling or commercial gambling and the equipment used at these activities is gambling paraphernalia. 1983 Op. Att'y Gen. No. 83-48.

Pinball machines operated for amusement and not gaming or gambling are legal. — Keeping, maintaining or employing of slot machines is a misdemeanor, however, keeping, maintaining or employing of pinball machines is not illegal where they are operated for purpose of amusement and no gaming or gambling is connected with their operation. 1945-47 Ga. Op. Att'y Gen. 104 (decided under former Code 1933, § 26-6502).

Only if a coin-operated game can register more than fifteen free replays and has a "trip switch" allowing games to be erased other than by reactivating the machine for additional plays is the device a prohibited gambling device; if such a game is for bona fide amusement purposes only, it is legal. However, the transfer of anything of value in exchange for a free replay on any coin operated device, whether or not the device constitutes a gambling device per se, is illegal. 1990 Op. Att'y Gen. No. 90-15.

Video slot machine which involves no skill in the machine's operation and offers a ticket for a value of up to $5.00 in merchandise is a "gambling device". 1996 Op. Att'y Gen. No. U96-18.

Operation of a sweepstakes where a player can determine if the player has the "winning number" by calling a "dial-it" number is a "lottery," as that term is defined by O.C.G.A. § 16-12-20. 1984 Op. Att'y Gen. No. 84-83.

Gift-enterprise and sweepstake schemes constitute lotteries, and are prohibited in Georgia. 1973 Op. Att'y Gen. No. U73-115.

Bonuses or rebates to customers who provide for additional sales of produce are not lotteries. 1962 Ga. Op. Att'y Gen. 447 (decided under former Code 1933, § 26-6501).

RESEARCH REFERENCES

Am. Jur. 2d.

38 Am. Jur. 2d, Gambling, § 1 et seq.

C.J.S.

38 C.J.S., Gaming, §§ 1, 2, 12 et seq., 152 et seq.

ALR.

Loan or investment association as a lottery, 28 A.L.R. 1311.

Scheme by which award depends upon votes as a lottery, 41 A.L.R. 1484.

Scheme for advertising or stimulating legitimate business as a lottery, 48 A.L.R. 1115; 57 A.L.R. 424; 103 A.L.R. 866; 109 A.L.R. 709; 113 A.L.R. 1121.

Slot vending machine as gambling device, 81 A.L.R. 177.

Coin-operated or slot machines as lottery, 101 A.L.R. 1126.

"Numbers (or number) game" or "policy game" as a lottery, 105 A.L.R. 305.

Constitutionality of statute prohibiting giving of premiums or trading stamps with purchases of commodities, 124 A.L.R. 341; 133 A.L.R. 1087.

Slot machine within prohibitory statute or ordinance as limited to gambling device, 132 A.L.R. 1004.

What are games of chance, games of skill, and mixed games of chance and skill, 135 A.L.R. 104.

Punchboard as a lottery, 163 A.L.R. 1279.

Coin-operated pinball machine or similar device, played for amusement only or confining reward to privilege of free replays, as prohibited or permitted by anti-gambling laws, 89 A.L.R.2d 815.

Bridge as within gambling laws, 97 A.L.R.2d 1420.

Paraphernalia or appliances used for recording gambling transactions or receiving or furnishing gambling information as gaming "devices" within criminal statute or ordinance, 1 A.L.R.3d 726.

Validity of pyramid distribution plan, 54 A.L.R.3d 217.

Validity of statute or ordinance prohibiting or regulating bookmaking or pool selling, 80 A.L.R.4th 1079.

Right to recover money lent for gambling purposes, 74 A.L.R.5th 369.

16-12-21. Gambling.

(a) A person commits the offense of gambling when he:

(1) Makes a bet upon the partial or final result of any game or contest or upon the performance of any participant in such game or contest;

(2) Makes a bet upon the result of any political nomination, appointment, or election or upon the degree of success of any nominee, appointee, or candidate; or

(3) Plays and bets for money or other thing of value at any game played with cards, dice, or balls.

(b) A person who commits the offense of gambling shall be guilty of a misdemeanor.

History.

Laws 1847, Cobb's 1851 Digest, pp. 819, 820.; Ga. L. 1859, p. 59, § 1; Code 1863, § 4425; Ga. L. 1865-66, p. 233, § 2; Code 1868, § 4466; Code 1873, § 4541; Code 1882, § 4541; Penal Code 1895, § 401; Penal Code 1910, § 392; Code 1933, § 26-6404; Code 1933, § 26-2702, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1970, p. 690, § 1.

Cross references.

Void status of gambling contracts, § 13-8-3.

Operation of bona fide coin operated amusement machine businesses, § 50-27-70 et seq.

Parent's right of action against person playing and betting at game of chance with minor child for money or other value, § 51-1-18.

Law reviews.

For note discussing organized crime in Georgia with respect to the application of state gambling laws, and suggesting proposals for combatting organized crime, see 7 Ga. St. B.J. 124 (1970).

For article, "Misdemeanor Sentencing in Georgia," see 7 Ga. St. B.J. 8 (2001).

JUDICIAL DECISIONS

Former Penal Code 1895, § 401 (see now O.C.G.A. § 16-12-21) apparently was designed to prevent gambling of any nature. Fleming v. State, 125 Ga. 17, 53 S.E. 579, 1906 Ga. LEXIS 16 (1906).

Gambling obligations unenforceable. — Gambling transactions contravene public policy of Georgia and constitute obligations unenforceable in its courts. Gulf Collateral, Inc. v. Morgan, 415 F. Supp. 319, 1976 U.S. Dist. LEXIS 14512 (S.D. Ga. 1976).

One may be acquitted of gambling but convicted of operating a gambling house. — Gambling is one thing and operating a gambling house is a kindred but entirely different thing; and different evidence is required to convict of these separate offenses. No absurdity or repugnancy is created by acquittal of gambling and conviction of operating a gambling house. McGahee v. State, 133 Ga. App. 964, 213 S.E.2d 91, 1975 Ga. App. LEXIS 2350 (1975).

Game may be one of chance or skill for stakes. Fleming v. State, 125 Ga. 17, 53 S.E. 579, 1906 Ga. LEXIS 16 (1906).

It is not necessary that money be the stake. Alexander v. City of Atlanta, 13 Ga. App. 354, 79 S.E. 177, 1913 Ga. App. LEXIS 152 (1913).

Evidence sufficient for conviction. — Evidence of gambling devices and expert testimony on the purpose of dogfighting was sufficient to support a conviction. Hargrove v. State, 253 Ga. 450, 321 S.E.2d 104, 1984 Ga. LEXIS 955 (1984).

Evidence that defendant was 400 miles from defendant's home shortly after dawn in a remote area of the state where dogfighting and gambling were taking place, that defendant was apprehended directly next to a pit where dogfighting was underway, and that the defendant was arrested with $899 on defendant's person was sufficient for a rational trier of fact to conclude that defendant was guilty of allowing dogfighting to take place and gambling. Barton v. State, 253 Ga. 478, 322 S.E.2d 54, 1984 Ga. LEXIS 989 (1984).

Evidence insufficient for conviction. — When the state offered no evidence linking defendants to the area where dogfighting and gambling were taking place, but only showed that they were "brought back" from an undetermined place by an unidentified officer and searched next to the dog pit, evidence was insufficient to support convictions for dogfighting and gambling. Barton v. State, 253 Ga. 478, 322 S.E.2d 54, 1984 Ga. LEXIS 989 (1984).

Recovery in tort for personal injuries sustained while gambling. — Generally, participation in gambling activities does not prevent recovery in tort for personal injuries in absence of causal relation between illegal act and injuries sustained. Johnson v. Thompson, 111 Ga. App. 654, 143 S.E.2d 51, 1965 Ga. App. LEXIS 1055 (1965).

Sentence enhancement inapplicable. — Enhancement under U.S. Sentencing Guidelines Manual § 2T1.1(b)(1) was not applied for purposes of calculating defendant's sentence for tax evasion; although gambling was a crime under O.C.G.A. § 16-12-21, defendant's statement that the defendant failed to pay taxes on some poker winnings, even if such winnings were considered by the jury in acquitting defendant of racketeering and bribery charges, was not sufficient to find by a preponderance of the evidence that defendant received more than $10,000 in any given year from unlawful gambling. United States v. Campbell, No. 1:04-CR-0424-RWS, 2006 U.S. Dist. LEXIS 96565 (N.D. Ga. June 15, 2006), aff'd, 491 F.3d 1306, 2007 U.S. App. LEXIS 16722 (11th Cir. 2007).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 26-6501 26-6502 are included in the annotations for this Code section.

Fund-raising activities

constituting gambling. — Certain fund-raising activities, often for charitable purposes and generally designated as "Las Vegas Night" or "Casino Night," constitute gambling or commercial gambling and the equipment used at these activities is gambling paraphernalia. 1983 Op. Att'y Gen. No. 83-48.

Magazine advertising contests are not per se illegal, but are illegal if they violate the lottery law. 1970 Op. Att'y Gen. No. U79-123.

If an individual signs the individual's name to an entry blank with a number on it and returns it to the magazine that is conducting a contest, the individual is not in violation of lottery or gift enterprise scheme statutes. 1969 Op. Att'y Gen. No. 69-58.

Conducting a raffle in this state violated former Code 1933, §§ 26-6501 and 26-6502 prohibiting lotteries regardless of how worthy the cause. 1969 Op. Att'y Gen. No. 69-37 (decided under former Code 1933, §§ 26-6501 and 26-6502)

RESEARCH REFERENCES

Am. Jur. 2d.

38 Am. Jur. 2d, Gambling, §§ 1 et seq., 111 et seq.

C.J.S.

38 C.J.S., Gaming, § 135 et seq.

ALR.

Each bet or play at gaming on a single occasion, as constituting a distinct offense, 35 A.L.R. 89.

Constitutionality of statutes forbidding or regulating dissemination of betting odds or other gambling information, 47 A.L.R. 1135.

Punchboard as a lottery, 163 A.L.R. 1279.

Rights of owner of stolen money as against one who won it in gambling transaction from thief, 44 A.L.R.2d 1242.

Bridge as within gambling laws, 97 A.L.R.2d 1420.

Validity and construction of statute exempting gambling operations carried on by religious, charitable, or other nonprofit organizations from general prohibitions against gambling, 42 A.L.R.3d 663.

Construction and application of state or municipal enactments relating to policy or numbers games, 70 A.L.R.3d 897.

Validity, construction, and application of statute or ordinance prohibiting or regulating use or occupancy of premises for bookmaking or pool selling, 82 A.L.R.4th 356.

16-12-22. Commercial gambling.

(a) A person commits the offense of commercial gambling when he intentionally does any of the following acts:

(1) Operates or participates in the earnings of a gambling place;

(2) Receives, records, or forwards a bet or offer to bet;

(3) For gain, becomes a custodian of anything of value bet or offered to be bet;

(4) Contracts to have or give himself or another the option to buy or sell or contracts to buy or sell at a future time any gain or other commodity whatsoever or any stock or security of any company, when it is at the time of making such contract intended by both parties thereto that the contract to buy or sell, the option whenever exercised or the contract resulting therefrom, shall be settled not by the receipt

or delivery of such property but by the payment only of differences in prices thereof;

(5) Sells chances upon the partial or final result of or upon the margin of victory in any game or contest or upon the performance of any participant in any game or contest or upon the result of any political nomination, appointment, or election or upon the degree of success of any nominee, appointee, or candidate;

(6) Sets up or promotes any lottery, sells or offers to sell, or knowingly possesses for transfer or transfers any card, stub, ticket, check, or other device designed to serve as evidence of participation in any lottery; or

(7) Conducts, advertises, operates, sets up, or promotes a bingo game without having a valid license to operate a bingo game as provided by law.

(b) A person who commits the offense of commercial gambling 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 or by a fine not to exceed $20,000.00, or both.

History.

Code 1933, § 26-2703, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1970, p. 236, § 6; Ga. L. 1977, p. 747, § 1; Ga. L. 1978, p. 851, § 1.

Law reviews.

For comment on Boyd v. Piggly Wiggly S., Inc., 115 Ga. App. 628, 155 S.E.2d 630 (1967), see 2 Ga. L. Rev. 132 (1967).

For note discussing organized crime in Georgia with respect to the application of state gambling laws, and suggesting proposals for combatting organized crime, see 7 Ga. St. B.J. 124 (1970).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Penal Code 1895, §§ 406 and 408, former Penal Code 1910, §§ 397 and 398, and former Code 1933, §§ 26-6501 and 26-6502, as they read prior to revision of the title by Ga. L. 1968, p. 1249, all of which sections dealt with operation of lotteries are included in the annotations for this Code section.

Purpose of former provisions was to suppress lotteries by making it an offense to maintain or carry on one, or to do any of the several acts entering into conduct of such business; and the section was framed, doubtless, with a view to reaching all persons who might carry on, or participate in carrying on, the forbidden enterprise. Morrow v. State, 62 Ga. App. 718, 9 S.E.2d 699, 1940 Ga. App. LEXIS 415 (1940) (decided under former Code 1933, §§ 26-6501, 26-6502); Goodrum v. State, 69 Ga. App. 373, 25 S.E.2d 585, 1943 Ga. App. LEXIS 84 (1943) (decided under former Code 1933, §§ 26-6501, 26-6502); Walker v. State, 69 Ga. App. 375, 25 S.E.2d 587, 1943 Ga. App. LEXIS 85 (1943) (decided under former Code 1933, §§ 26-6501, 26-6502); Britton v. State, 69 Ga. App. 868, 27 S.E.2d 100, 1943 Ga. App. LEXIS 201 (1943) (decided under former Code 1933, §§ 26-6501, 26-6502); Jackson v. State, 71 Ga. App. 138, 30 S.E.2d 354, 1944 Ga. App. LEXIS 297 (1944) (decided under former Code 1933, §§ 26-6501, 26-6502); Fountain v. State, 71 Ga. App. 191, 30 S.E.2d 359, 1944 Ga. App. LEXIS 312 (1944) (decided under former Code 1933, §§ 26-6501, 26-6502); Callahan v. State, 71 Ga. App. 302, 30

S.E.2d 782, 1944 Ga. App. LEXIS 343 (1944) (decided under former Code 1933, §§ 26-6501, 26-6502); Davis v. State, 72 Ga. App. 428, 33 S.E.2d 747, 1945 Ga. App. LEXIS 598 (1945) (decided under former Code 1933, §§ 26-6501, 26-6502); Anderson v. State, 72 Ga. App. 510, 34 S.E.2d 458, 1945 Ga. App. LEXIS 624 (1945) (decided under former Code 1933, §§ 26-6501, 26-6502); Huff v. State, 81 Ga. App. 461, 59 S.E.2d 43, 1950 Ga. App. LEXIS 915 (1950) (decided under former Code 1933, §§ 26-6501, 26-6502).

Relationship with federal Travel Act. — When the defendant allegedly provided account numbers to a sports book agent and attempted to collect the agent's gambling debt, the defendant's motion for judgment of acquittal was granted as to a Travel Act, 18 U.S.C. § 1952, count because the government failed to demonstrate an underlying unlawful activity under O.C.G.A. § 16-12-22 since there was no indication that the agent intended or attempted to share in the defendant's or the sports book's earnings. United States v. Corrar, 512 F. Supp. 2d 1280, 2007 U.S. Dist. LEXIS 4786 (N.D. Ga. 2007).

Anyone participating in design and execution of a lottery is a criminal. Goodrum v. State, 69 Ga. App. 373, 25 S.E.2d 585, 1943 Ga. App. LEXIS 84 (1943) (decided under former Code 1933, §§ 26-6501, 26-6502); Britton v. State, 69 Ga. App. 868, 27 S.E.2d 100, 1943 Ga. App. LEXIS 201 (1943) (decided under former Code 1933, §§ 26-6501, 26-6502); Fountain v. State, 71 Ga. App. 191, 30 S.E.2d 359, 1944 Ga. App. LEXIS 312 (1944) (decided under former Code 1933, §§ 26-6501, 26-6502); West v. State, 74 Ga. App. 453, 40 S.E.2d 156, 1946 Ga. App. LEXIS 566 (1946) (decided under former Code 1933, §§ 26-6501, 26-6502).

Purchasers of lottery tickets are not punished. Roney v. Crawford, 135 Ga. 1, 68 S.E. 701, 1910 Ga. LEXIS 383 (1910) (decided under former Penal Code 1895, §§ 406, 408).

Test of a lottery is in the lottery's working rather than in the lottery's wording. Boyd v. Piggly Wiggly S., Inc., 115 Ga. App. 628, 155 S.E.2d 630, 1967 Ga. App. LEXIS 1194 (1967), superseded by statute as stated in Talley v. Mathis, 212 Ga. App. 330, 441 S.E.2d 854, 1994 Ga. App. LEXIS 235 (1994) (commented on in 2 Ga. L. Rev. 132 (1967)) (decided under former Code 1933, §§ 26-6501, 26-6502).

Possession of gambling devices and equipment and operating a gambling place are separate offenses. — Although arising from same transaction, offenses of possession of gambling devices and equipment, and commercial gambling by operating a gambling place, are separate and distinct. Baxter v. State, 134 Ga. App. 286, 214 S.E.2d 578, 1975 Ga. App. LEXIS 1990, cert. denied, 423 U.S. 895, 96 S. Ct. 194, 46 L. Ed. 2d 127, 1975 U.S. LEXIS 2956 (1975).

Georgia need not recognize and enforce another state's laws deemed obnoxious to the state's public policy. Gulf Collateral, Inc. v. Morgan, 415 F. Supp. 319, 1976 U.S. Dist. LEXIS 14512 (S.D. Ga. 1976).

Gambling obligations unenforceable. — Gambling transactions contravene public policy of Georgia and constitute obligations unenforceable in the state's courts. Gulf Collateral, Inc. v. Morgan, 415 F. Supp. 319, 1976 U.S. Dist. LEXIS 14512 (S.D. Ga. 1976).

Merely observing cash and parlay cards in defendant's bedroom in multiple-occupancy building was not sufficient to establish that the goods were found in defendant's possession, especially when the lone witness indicated no knowledge of where the evidence was found. Bing v. State, 178 Ga. App. 288, 342 S.E.2d 762, 1986 Ga. App. LEXIS 2518 (1986).

Consideration may be found although not required by promoter's rules. — Consideration as an ingredient of a prohibited lottery or gift enterprise is shown when there is present, in actual working of sales promotion scheme, a class of persons who, in addition to receiving or being entitled to chances on prizes, supply consideration for all chances in bulk by purchasing whatever promoter is selling, whether purchasers were required to do so or not under wording of the promoter's rules. Boyd v.

Piggly Wiggly S., Inc., 115 Ga. App. 628, 155 S.E.2d 630, 1967 Ga. App. LEXIS 1194 (1967), superseded by statute as stated in Talley v. Mathis, 212 Ga. App. 330, 441 S.E.2d 854, 1994 Ga. App. LEXIS 235 (1994) (commented on in 2 Ga. L. Rev. 132 (1967)) (decided under former Code 1933, §§ 26-6501, 26-6502).

Amusement and entertainment as thing of value. — Amusement and entertainment (consisting of a displayed horoscope or fortune) is usually and generally recognized as a thing of value within meaning of former Penal Code 1910, §§ 397, 398. Jenner v. State, 173 Ga. 86, 159 S.E. 564, 1931 Ga. LEXIS 268 (1931) (decided under former Penal Code 1910, §§ 397, 398).

Fact that skill or proficiency might enter into operation of machine makes no difference. Any scheme or device operated by a person by which one participating therein might either lose money invested or get more than one's money's worth, the operator retaining the money so lost, is a scheme or device for hazarding of money. Sparks v. State, 48 Ga. App. 498, 173 S.E. 216, 1934 Ga. App. LEXIS 111 (1934) (decided under former Code 1933, §§ 26-6501, 26-6502); Lewis v. State, 55 Ga. App. 159, 189 S.E. 566, 1937 Ga. App. LEXIS 18 (1937) (decided under former Code 1933, §§ 26-6501, 26-6502).

"Closed participation" gift enterprise schemes are illegal. — It is well settled in this state that a "closed participation" gift enterprise scheme — that is, one which is open only to patrons purchasing goods, services or whatever promoter is trying to push by scheme — is illegal and contrary to public policy. Boyd v. Piggly Wiggly S., Inc., 115 Ga. App. 628, 155 S.E.2d 630, 1967 Ga. App. LEXIS 1194 (1967), superseded by statute as stated in Talley v. Mathis, 212 Ga. App. 330, 441 S.E.2d 854, 1994 Ga. App. LEXIS 235 (1994) (commented on in 2 Ga. L. Rev. 132 (1967)) (decided under former Code 1933, §§ 26-6501, 26-6502).

Meaning of "participation." — Regarding the phrase "participate in the earnings of a gambling place" in O.C.G.A. § 16-12-22(a)(1), participating in earnings could require that the participant actually receive the earnings of the business, and earnings are things, not acts or processes, and thus the best reading of "participates" is not "to take part in something" but to "partake," which can mean "share in" or "receive a portion"; the intent of the phrase is to foreclose a defense by a mischievous investor who bankrolls a commercial gambling operation but then claims, when faced with prosecution, that the investor did not "operate" the enterprise. United States v. Corrar, 512 F. Supp. 2d 1280, 2007 U.S. Dist. LEXIS 4786 (N.D. Ga. 2007).

Wagering on batting results at baseball game is a game of chance. — As between members of a baseball team, they may be engaged in a contest of skill, but as to spectators who wager upon outcome of particular batting results, it is, a game of chance. Grant v. State, 75 Ga. App. 784, 44 S.E.2d 513, 1947 Ga. App. LEXIS 641 (1947) (decided under former Code 1933, §§ 26-6501, 26-6502).

"Gift enterprise" defined. — A "gift enterprise" is a sporting artifice by which, for example a merchant or tradesman sells wares for their market value, but, by way of inducement, gives to each purchaser a ticket which entitles the purchaser to a chance to win certain prizes, to be determined after manner of a lottery. Barker v. State, 56 Ga. App. 705, 193 S.E. 605, 1937 Ga. App. LEXIS 208 (1937) (decided under former Code 1933, §§ 26-6501, 26-6502).

Acting as a pick-up man is an act entering into conduct of lottery business. Anderson v. State, 72 Ga. App. 510, 34 S.E.2d 458, 1945 Ga. App. LEXIS 624 (1945) (decided under former Code 1933, §§ 26-6501, 26-6502).

Picking up lottery tickets as an integral part of organization engaged in lottery. Ransom v. State, 55 Ga. App. 292, 189 S.E. 924, 1937 Ga. App. LEXIS 77 (1937) (decided under former Code 1933, §§ 26-6501, 26-6502).

Intentional doing of prohibited act suffices, although defendant did not know it was illegal. — That defendant was ignorant of fact that defendant was violating the law does not relieve defendant of criminal intent if defendant intended to do the prohibited act of carrying on a "clearinghouse" for

hazarding of money. Wilson v. State, 57 Ga. App. 839, 197 S.E. 48, 1938 Ga. App. LEXIS 414 (1938) (decided under former Code 1933, §§ 26-6501, 26-6502).

Where defendant's lottery operation covers several counties, each county has jurisdiction over defendant for trial, regardless of defendant's activities in other counties. Lunsford v. State, 60 Ga. App. 537, 4 S.E.2d 112, 1939 Ga. App. LEXIS 75 (1939) (decided under former Code 1933, §§ 26-6501, 26-6502).

Indictment must name kind of lottery. — When terms used in Code are generic, as is the word "lottery" (there being an unlimited variety of games of chance which fall under this general head) it is not sufficient that in indictment charge offense in same generic terms as in definition, but it must state particular offense intended to be charged, and an indictment which fails to name the kind of lottery or manner of operation of scheme or device charged to be a lottery is defective in that the indictment does not sufficiently apprise the defendant of offense charged. President v. State, 83 Ga. App. 731, 64 S.E.2d 596, 1951 Ga. App. LEXIS 949 (1951) (decided under former Code 1933, §§ 26-6501, 26-6502).

Presumption of ownership of lottery paraphernalia. — When lottery paraphernalia was found in the home of the defendant, presumption was that the defendant owned the paraphernalia. Stovall v. State, 68 Ga. App. 27, 21 S.E.2d 914, 1942 Ga. App. LEXIS 22 (1942) (decided under former Code 1933, §§ 26-6501, 26-6502); Mills v. State, 71 Ga. App. 353, 30 S.E.2d 824, 1944 Ga. App. LEXIS 366 (1944) (decided under former Code 1933, §§ 26-6501, 26-6502).

Presumption of ownership is rebuttable. Stovall v. State, 68 Ga. App. 27, 21 S.E.2d 914, 1942 Ga. App. LEXIS 22 (1942) (decided under former Code 1933, §§ 26-6501, 26-6502).

One seeking recovery under sales promotion scheme awarding prizes by chance must show legality. — First burden which must be borne by a litigant seeking to enforce rights allegedly acquired in a sales promotion scheme whereby prizes are awarded by chance is that of showing that scheme is not illegal and contrary to public policy, for courts will not lend their aid in settling of disputes grounded in prohibited lotteries or gift enterprises. Boyd v. Piggly Wiggly S., Inc., 115 Ga. App. 628, 155 S.E.2d 630 (1967), commented on in 2 Ga. L. Rev. 132 (1967) (decided under former Code 1933, §§ 26-6501, 26-6502).

Forfeiture of gambling devices. — Trial court did not err in issuing interlocutory injunctions and continuing receiverships over store property seized pursuant to O.C.G.A. § 16-14-7 based on alleged video gambling activity in violation of O.C.G.A. § 16-12-22 and racketeering activity under former paragraphs (8) and (9) O.C.G.A. § 16-14-3. Remand was required, however, for consideration of whether the forfeitures were excessive fines in violation of U.S. Const., amend. VIII. Patel v. State, 289 Ga. 479, 713 S.E.2d 381, 2011 Ga. LEXIS 548 (2011).

Evidence sufficient for conviction. — When cockfighting was staged on the defendant's property on which an arena and bleachers were erected, the defendant was collecting the admission fees, and gamecocks with spurs and other fighting equipment were found on the premises, the evidence was sufficient to show that the defendants were involved in the operation of organizing a cockfight and were guilty of both cruelty to animals and commercial gambling. Morgan v. State, 195 Ga. App. 52, 392 S.E.2d 715, 1990 Ga. App. LEXIS 419 (1990), cert. denied, No. S90C0870, 1990 Ga. LEXIS 686 (Ga. Apr. 12, 1990).

Evidence that the defendants operated a lottery based upon wagers and bets placed on a three-digit number selected from a closing figure of the New York Stock Exchange was sufficient to establish commercial gambling within the meaning of O.C.G.A. § 16-12-22, although the alleged activity did not include pool from which prizes were distributed. Sparkman v. State, 209 Ga. App. 763, 434 S.E.2d 564, 1993 Ga. App. LEXIS 986 (1993), cert. denied, No. S93C1811, 1993 Ga. LEXIS 1080 (Ga. Nov. 4, 1993).

Evidence insufficient for conviction. — See Whatley v. State, 189 Ga. App. 173, 375 S.E.2d 245, 1988 Ga. App. LEXIS 1322 (1988).

Evidence was insufficient to support the defendant's convictions of commercial gambling, possession of a gambling device, and keeping a gambling place because the seized machines were coin operated amusement machines (COAMs), as there was no evidence that the defendant tampered with the COAMs or otherwise did anything to remove the element of player skill and the state's evidence at most showed that the COAMs malfunctioned in some way to allow the police officer to win without nudging the wheels. Bartlett v. State, 351 Ga. App. 476, 829 S.E.2d 187, 2019 Ga. App. LEXIS 394 (2019), cert. denied, No. S20C0008, 2020 Ga. LEXIS 254 (Ga. Mar. 26, 2020).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 26-6403, 26-6501, 26-6502, 26-6507 and 26-6508, as they read prior to revision of the title by Ga. L. 1968, p. 1249, are included in the annotations for this Code section.

Fund raising activities constituting commercial gambling. — Certain fund raising activities, often for charitable purposes and generally designated as "Las Vegas Night" or "Casino Night," constitute gambling or commercial gambling and the equipment used at these activities is gambling paraphernalia. 1983 Op. Att'y Gen. No. 83-48.

Operation of a sweepstakes where a player can determine if the player has the "winning number" by calling a "dial-it" number constitutes commercial gambling by setting up and promoting a lottery in violation of O.C.G.A. § 16-12-22. 1984 Op. Att'y Gen. No. 84-83.

Sale of puts and calls does not constitute establishment and promotion of lottery. 1971 Op. Att'y Gen. No. 71-115.

Any game or device for hazarding money or other thing of value is unlawful in Georgia. 1948-49 Ga. Op. Att'y Gen. 73 (decided under former Code 1933, §§ 26-6403, 26-6502).

Lottery, gift enterprises, or any similar schemes are completely and strictly forbidden and prohibited by the laws of Georgia and any person participating therein is guilty of an illegal and unlawful act. 1948-49 Ga. Op. Att'y Gen. 73 (decided under former Code 1933, §§ 26-6501, 26-6502).

Under Georgia law, "a promotional drawing" would be illegal. 1957 Ga. Op. Att'y Gen. 86 (decided under former Code 1933, § 26-6501).

Drawings for giving away merchandise for less than full purchase price as lottery. — Operating of suit club whereby drawings are held and suits awarded to winner without payment of full purchase price constitutes a lottery. 1948-49 Ga. Op. Att'y Gen. 492 (decided under former Code 1933, § 26-6502).

"Beano," a card game of chance and scheme for hazarding of money is a lottery. 1957 Ga. Op. Att'y Gen. 84 (decided under former Code 1933, §§ 26-6501, 26-6502).

Offering of door prizes partakes of nature of a lottery and as such prohibited. 1948-49 Ga. Op. Att'y Gen. 76 (decided under former Code 1933, §§ 26-6501, 26-6502).

Selling tickets for a dance and chance of winning a prize is unlawful. — Selling of tickets for a dance or any other purpose, and chance of winning an automobile or any other thing for a prize, upon purchase of ticket, would come within meaning of prohibited acts, and therefore be in violation of Georgia law as applied to lottery, gift enterprises and similar scheme. 1948-49 Ga. Op. Att'y Gen. 73 (decided under former Code 1933, §§ 26-6501, 26-6502).

Slot machines as purely gambling devices are illegal in Georgia. 1948-49 Ga. Op. Att'y Gen. 75 (decided under former Code 1933, § 26-6502).

Pinball machines operated for amusement and not gaming or gambling are legal. — Keeping, maintaining or employing of slot machines is a misdemeanor, however, keeping, maintaining or employing of

pinball machines is not illegal where they are operated for purpose of amusement and no gaming or gambling is connected with their operation. 1945-47 Ga. Op. Att'y Gen. 104 (decided under former Code 1933, § 26-6502).

Issuance of license to operate slot machine. — County commissioners are without authority to issue licenses to operate slot machines. 1957 Ga. Op. Att'y Gen. 35 (decided under former Code 1933, § 26-6502).

Issuance of such a license does not protect operator from prosecution for violating lottery laws. 1957 Ga. Op. Att'y Gen. 35 (decided under former Code 1933, § 26-6502).

It is illegal to transport gambling devices within this state in intrastate commerce; however, this state does not attempt to exercise jurisdiction over transportation of gambling devices in interstate commerce. 1960-61 Ga. Op. Att'y Gen. 113 (decided under former Code 1933, §§ 26-6502, 26-6507, 26-6508).

Fingerprinting not required. — Offenses arising from a violation of O.C.G.A. § 16-12-22 are not offenses for which fingerprinting is required. 2020 Op. Att'y Gen. No. 20-1.

RESEARCH REFERENCES

Am. Jur. 2d.

38 Am. Jur. 2d, Gambling, § 26 et seq.

ALR.

Each bet or play at gaming on a single occasion, as constituting a distinct offense, 35 A.L.R. 89.

Scheme by which award depends upon votes as a lottery, 41 A.L.R. 1484.

Constitutionality of statutes forbidding or regulating dissemination of betting odds or other gambling information, 47 A.L.R. 1135.

Scheme for advertising or stimulating legitimate business as a lottery, 103 A.L.R. 866; 109 A.L.R. 709; 113 A.L.R. 1121.

Constitutionality of statute prohibiting giving of premiums or trading stamps with purchases of commodities, 124 A.L.R. 341; 133 A.L.R. 1087.

Punchboard as a lottery, 163 A.L.R. 1279.

Bridge as within gambling laws, 97 A.L.R.2d 1420.

Promotion schemes of retail stores as criminal offense under antigambling law, 29 A.L.R.3d 888.

Construction and application of state or municipal enactments relating to policy or numbers games, 70 A.L.R.3d 897.

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon, 98 A.L.R.3d 694.

Validity, construction, and application of statute or ordinance prohibiting or regulating use of messenger services to place wagers in pari-mutuel pool, 78 A.L.R.4th 483.

Validity, construction, and application of statute or ordinance prohibiting or regulating use or occupancy of premises for bookmaking or pool selling, 82 A.L.R.4th 356.

Construction and application of statute or ordinance prohibiting or regulating bookmaking or pool selling, 84 A.L.R.4th 740.

16-12-22.1. Raffles operated by nonprofit, tax-exempt organizations.

(a) It is the intention of the General Assembly that only nonprofit, tax-exempt churches, schools, civic organizations, or related support groups; nonprofit organizations qualified under Section 501(c) of the Internal Revenue Code, as amended; or bona fide nonprofit organizations approved by the sheriff, which are properly licensed pursuant to this Code section shall be allowed to operate raffles.

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

(1) "Nonprofit, tax-exempt organization" means churches, schools, civic organizations, or related support groups; nonprofit organizations qualified under Section 501(c) of the Internal Revenue Code, as amended; or bona fide nonprofit organizations approved by the sheriff.

(2) "Operate," "operated," or "operating" means the direction, supervision, management, operation, control, or guidance of activity.

(3) "Raffle" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win such prize. Such term shall also include door prizes which are awarded to persons attending meetings or activities provided that the cost of admission to such meetings or activities does not exceed the usual cost of similar activities where such prizes are not awarded.

(4) "Sheriff" means the sheriff of the county in which the nonprofit tax-exempt organization is located.

(c) Any other law to the contrary notwithstanding, no nonprofit, tax-exempt organization shall be permitted to operate a raffle until the sheriff issues a license to the organization authorizing it to do so. The license described in this subsection is in addition to and not in lieu of any other licenses which may be required by this state or any political subdivision thereof, and no raffle shall be operated until such time as all requisite licenses have been obtained. In the event a nonprofit, tax-exempt organization desires to conduct a raffle in more than one county, such organization shall not be required to obtain a license under this Code section in each county in which such raffle is to be conducted and shall only be required to obtain such license from the sheriff of the county in which the state headquarters of such organization are located.

(d)(1) Any nonprofit, tax-exempt organization desiring to obtain a license to operate raffles shall make application to the sheriff on forms prescribed by the sheriff. The sheriff may require the payment of an annual fee not to exceed $100.00. No license shall be issued to any nonprofit, tax-exempt organization unless the organization has been in existence for 24 months immediately prior to the issuance of the license. The license will expire at 12:00 Midnight on December 31 following the granting of the license. Renewal applications for each calendar year shall be filed with the sheriff prior to January 1 of each year and shall be on a form prescribed by the sheriff.

(2) Each application for a license and each application for renewal of a license shall contain the following information:

(A) The name and home address of the applicant and, if the applicant is a corporation, association, or other similar legal entity, the names and home addresses of each of the officers of the organization as well as the names and addresses of the directors, or other persons similarly situated, of the organization;

(B) The names and home addresses of each of the persons who will be operating, advertising, or promoting the raffle;

(C) The names and home addresses of any persons, organizations, or other legal entities that will act as surety for the applicant or to which the applicant is financially indebted or to which any financial obligation is owed by the applicant;

(D) A determination letter from the Internal Revenue Service certifying that the applicant is an organization exempt under federal tax law;

(E) A statement affirming that the applicant is exempt under the income tax laws of this state under Code Section 48-7-25;

(F) The location at which the applicant will conduct the raffles and, if the premises on which the raffles are to be conducted is to be leased, a copy of the lease or rental agreement; and

(G) A statement showing the convictions, if any, for criminal offenses other than minor traffic offenses of each of the persons listed in subparagraphs (A), (B), and (C) of this paragraph.

(3) The sheriff shall refuse to grant a raffle license to any applicant who fails to provide fully the information required by this Code section.

(4) When a nonprofit, tax-exempt organization which operates or intends to operate raffles for residents and patients of a retirement home, nursing home, or hospital operated by that organization at which gross receipts are or will be limited to $100.00 or less during each raffle and pays or will pay prizes having a value of $100.00 or less during each raffle, then, notwithstanding any other provision of this Code section or any rule or regulation promulgated by the sheriff pursuant to the provisions of subsection (l) of this Code section, neither the applicant nor any of the persons whose names and addresses are required under subparagraphs (A) and (B) of paragraph (2) of this subsection shall be required to submit or provide fingerprints or photographs as a condition of being granted a license.

(e)(1) The sheriff shall have the specific authority to suspend or revoke any license for any violation of this Code section. Any licensee accused of violating any provision of this Code section shall be entitled, unless waived, to a hearing on the matter of the alleged

violation conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(2) By making application for a license under this Code section, every applicant consents that the sheriff, as well as any of his agents, together with any prosecuting attorney, as well as any of his agents, may come upon the premises of any licensee or upon any premises on which any licensee is conducting a raffle for the purpose of examining the accounts and records of the licensee to determine if a violation of this Code section has occurred.

(f) The sheriff shall, upon the request of any prosecuting attorney or such prosecuting attorney's designee, certify the status of any organization as to that organization's exemption from payment of state income taxes as a nonprofit organization. The sheriff shall also upon request issue a certificate indicating whether any particular organization holds a currently valid license to operate a raffle. Such certificates properly executed shall be admissible in evidence in any prosecution, and Code Section 48-7-60, relative to the disclosure of income tax information, shall not apply to the furnishing of such certificate.

(g) Notwithstanding the other provisions of this Code section, the sheriff, upon receiving written evidence of the bona fide nonprofit, tax-exempt status of the applicant organization, shall be authorized to issue a special limited license to a nonprofit, tax-exempt organization which will allow it to operate up to three raffles during a calendar year. In such cases, the sheriff shall waive the application and license fee provided for in subsection (d) of this Code section and the annual report provided for in subsection (j) of this Code section.

(h) Raffles shall be operated only on premises owned by the nonprofit, tax-exempt organization operating the raffle, on property leased by the nonprofit, tax-exempt organization and used regularly by that organization for purposes other than the operation of a raffle, or on property leased by the nonprofit, tax-exempt organization operating the raffle from another nonprofit, tax-exempt organization.

(i) No person under the age of 18 years shall be permitted to play any raffle conducted pursuant to any license issued under this Code section unless accompanied by an adult.

(j) On or before April 15 of each year, every nonprofit, tax-exempt organization engaged in operating raffles shall file with the sheriff a report disclosing all receipts and expenditures relating to the operation of raffles in the previous year. The report shall be in addition to all other reports required by law. The report shall be prepared and signed by a certified public accountant competent to prepare such a report and shall be deemed a public record subject to public inspection.

(k)(1) A licensee that conducts or operates a raffle shall maintain the

following records for at least three years from the date on which the raffle is conducted:

(A) An itemized list of the gross receipts for each raffle;

(B) An itemized list of all expenses other than prizes that are incurred in the conducting of the raffle as well as the name of each person to whom the expenses are paid and a receipt for all of the expenses;

(C) A list of all prizes awarded during the raffle and the name and address of all persons who are winners of prizes of $50.00 or more in value;

(D) An itemized list of the recipients other than the licensee of the proceeds of the raffle, including the name and address of each recipient to whom such funds are distributed; and

(E) A record of the number of persons who participate in any raffle conducted by the licensee.

(2) A licensee shall:

(A) Own all the equipment used to conduct a raffle or lease such equipment from an organization that is also licensed to conduct a raffle;

(B) Display its raffle license conspicuously at the location where the raffle is conducted;

(C) Conduct raffles only as specified in the licensee's application; and

(D) Not conduct more than one raffle during any one calendar day.

(3) No nonprofit, tax-exempt organization shall enter into any contract with any individual, firm, association, or corporation to have such individual, firm, association, or corporation operate raffles or concessions on behalf of the nonprofit, tax-exempt organization.

(4) A nonprofit, tax-exempt organization shall not lend its name nor allow its identity to be used by any individual, firm, association, or corporation in the operating or advertising of a raffle in which said nonprofit, tax-exempt organization is not directly and solely operating the raffle.

(5) No person shall pay consulting fees to any person for any services performed in relation to the operation or conduct of a raffle.

(6) A person who is a member of more than one nonprofit, tax-exempt organization shall be permitted to participate in the raffle operations of only two organizations of which such person is a

member; provided, however, that such person shall not receive more than $30.00 per day for assisting in the conduct of raffles regardless of whether such person assists both organizations in the same day.

(l) The sheriff is authorized to promulgate rules and regulations which the sheriff deems necessary for the proper administration and enforcement of this Code section which are not in conflict with any provision of this Code section.

(m) Any person who operates a raffle without a valid license issued by the sheriff as provided in this Code section commits the offense of commercial gambling as defined in Code Section 16-12-22 and, upon conviction thereof, shall be punished accordingly. Any person who knowingly aids, abets, or otherwise assists in the operation of a raffle for which a license has not been obtained as provided in this Code section similarly commits the offense of commercial gambling. Any person who violates any other provision of this Code section shall be guilty of a misdemeanor of a high and aggravated nature. Any person who commits any such violation after having previously been convicted of any violations of this Code section 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 or by a fine not to exceed $10,000.00, or both.

History.

Code 1981, § 16-12-22.1, enacted by Ga. L. 1995, p. 832, § 2; Ga. L. 1996, p. 794, §§ 1, 2; Ga. L. 2005, p. 1030, § 14/SB 55; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2008, p. 898, § 1/HB 1151.

Cross references.

Resale of tickets by original purchaser; charitable organizations, § 43-4B-29.

Liability of persons serving charitable organizations and public entities while acting in good faith, § 51-1-20.

Editor's notes.

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

16-12-23. Keeping a gambling place.

(a) A person who knowingly permits any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control to be used as a gambling place or who rents or lets any such property with a view or expectation that it be so used commits the offense of keeping a gambling place.

(b) A person who commits the offense of keeping a gambling place shall be guilty of a misdemeanor of a high and aggravated nature.

History.

Laws 1833, Cobb's 1851 Digest, p. 815.; Code 1863, § 4423; Ga. L. 1865-66, p. 233, § 2; Code 1868, § 4464; Code 1873, § 4538; Code 1882, § 4538; Ga. L. 1884-85, p. 59, § 1; Penal Code 1895, § 398; Penal Code 1910, §§ 389, 390; Code 1933, §§ 26-6401, 26-6402; Code 1933, § 26-

2704, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1970, p. 236, § 7.

Law reviews.

For note discussing organized crime in Georgia with respect to the application of state gambling laws, and suggesting proposals for combatting organized crime, see 7 Ga. St. B.J. 124 (1970).

JUDICIAL DECISIONS

Purpose of section. — Former Penal Code 1895, § 398 (see now O.C.G.A. § 16-12-23) was designed to prevent corruption of morals and is aimed against houses encouraging gambling. Thrower v. State, 117 Ga. 753, 45 S.E. 126, 1903 Ga. LEXIS 327 (1903).

In prohibiting a gaming house or a gaming place, it is intended to prevent the maintenance of a place at which persons gather for purpose of hazarding and betting money, whether subject matter of a single bet is or is not made penal. Gullatt v. State ex rel. Collins, 169 Ga. 538, 150 S.E. 825, 1929 Ga. LEXIS 398 (1929); Friedman v. State, 64 Ga. App. 405, 13 S.E.2d 467, 1941 Ga. App. LEXIS 78 (1941).

Section is aimed only at place. — Keeping of a gaming house or gaming place was a separate, well-defined offense, and entirely independent of criminality of betting carried on therein. Former Penal Code 1910, §§ 389, 390 (see now O.C.G.A. § 16-12-23) was aimed at the place, not at players, not at game, nor at subject matter of wager. Gullatt v. State ex rel. Collins, 169 Ga. 538, 150 S.E. 825, 1929 Ga. LEXIS 398 (1929).

Maintenance of a gaming house or a gaming place is a public nuisance. Gullatt v. State ex rel. Collins, 169 Ga. 538, 150 S.E. 825, 1929 Ga. LEXIS 398 (1929).

"Place" defined. Thrower v. City of Atlanta, 124 Ga. 1, 52 S.E. 76, 1905 Ga. LEXIS 623 (1905).

One may be acquitted of gambling yet convicted of operating a gambling house. — Gambling is one thing and operating a gambling house is a kindred but entirely different thing; and different evidence is required to convict of these separate offenses. No absurdity or repugnancy is created by acquittal of gambling and conviction of operating a gambling house. McGahee v. State, 133 Ga. App. 964, 213 S.E.2d 91, 1975 Ga. App. LEXIS 2350 (1975).

One may be guilty of operating a gambling house without participating in actual gambling. Miller v. State, 48 Ga. App. 786, 173 S.E. 491, 1934 Ga. App. LEXIS 193 (1934).

Proof of defendant's mental state may be inferred. Rivers v. State, 118 Ga. 42, 44 S.E. 859, 1903 Ga. LEXIS 429 (1903); Bashinski v. State, 122 Ga. 164, 50 S.E. 54, 1905 Ga. LEXIS 139 (1905); Bashinski v. State, 123 Ga. 508, 51 S.E. 499, 1905 Ga. LEXIS 523 (1905).

Attendant circumstances may show true character of house. Bell v. State, 92 Ga. 49, 18 S.E. 186, 1893 Ga. LEXIS 13 (1893); Bluhakis v. State, 18 Ga. App. 112, 88 S.E. 911, 1916 Ga. App. LEXIS 153 (1916).

Proof of single act of gaming is insufficient. White v. State, 115 Ga. 570, 41 S.E. 986, 1902 Ga. LEXIS 474 (1902).

Purpose for permitting game is immaterial. Alexander v. City of Atlanta, 13 Ga. App. 354, 79 S.E. 177, 1913 Ga. App. LEXIS 152 (1913).

Betting on a horse race is gaming. Gullatt v. State ex rel. Collins, 169 Ga. 538, 150 S.E. 825, 1929 Ga. LEXIS 398 (1929).

Betting on a dog fight is gaming. Gullatt v. State ex rel. Collins, 169 Ga. 538, 150 S.E. 825, 1929 Ga. LEXIS 398 (1929).

House or place for purpose of permitting gaming on dog races is a gaming house. Gullatt v. State ex rel. Collins, 169 Ga. 538, 150 S.E. 825, 1929 Ga. LEXIS 398 (1929).

Bucket shop as violation of former Penal Code 1895, § 398 (see now O.C.G.A. § 16-12-23). Anderson v. State, 2 Ga. App. 1, 58 S.E. 401, 1907 Ga. App. LEXIS 261 (1907).

House where race horse bets placed violated former Penal Code 1895 (see

now O.C.G.A. § 16-12-23). Thrower v. State, 117 Ga. 753, 45 S.E. 126, 1903 Ga. LEXIS 327 (1903).

One greeting people as people enter gaming house violates section. — When one is indicted for operation of a gaming house, a misdemeanor, and the state's evidence discloses operation of a large gambling establishment having numbers of employees, a statement made by the defendant that the defendant was a greeter, working in the club to greet folks coming in amounts to a confession of guilt of the crime charged. Richards v. State, 56 Ga. App. 377, 192 S.E. 632, 1937 Ga. App. LEXIS 361 (1937).

Liability of wife residing in gambling house. — See Bell v. State, 92 Ga. 49, 18 S.E. 186, 1893 Ga. LEXIS 13 (1893).

Evidence insufficient for conviction. — Evidence was insufficient to support the defendant's convictions of commercial gambling, possession of a gambling device, and keeping a gambling place because the seized machines were coin operated amusement machines (COAMs), as there was no evidence that the defendant tampered with the COAMs or otherwise did anything to remove the element of player skill and the state's evidence at most showed that the COAMs malfunctioned in some way to allow the police officer to win without nudging the wheels. Bartlett v. State, 351 Ga. App. 476, 829 S.E.2d 187, 2019 Ga. App. LEXIS 394 (2019), cert. denied, No. S20C0008, 2020 Ga. LEXIS 254 (Ga. Mar. 26, 2020).

RESEARCH REFERENCES

Am. Jur. 2d.

24 Am. Jur. 2d, Disorderly Houses, § 1 et seq. 38 Am. Jur. 2d, Gambling, § 146 et seq.

C.J.S.

38 C.J.S., Gaming, § 155 et seq.

ALR.

Connection with place where gaming is carried on which will render one guilty as keeper thereof, 15 A.L.R. 1202.

Punchboard as a lottery, 163 A.L.R. 1279.

Gambling in private residence as prohibited or permitted by anti-gambling laws, 27 A.L.R.3d 1074.

16-12-24. Possession, manufacture, or transfer of gambling device or parts; possession of antique slot machines.

(a) A person who knowingly owns, manufactures, transfers commercially, or possesses any device which he knows is designed for gambling purposes or anything which he knows is designed as a subassembly or essential part of such device is guilty of a misdemeanor of a high and aggravated nature.

(b)(1) As used in this subsection, the term:

(A) "Antique slot machine" means a coin operated, nonelectronic mechanical gambling device that pays off according to the matching of symbols on wheels spun by a handle and was manufactured in its entirety, except for identical replacement parts, prior to January 1, 1950.

(B) "Conviction" includes a plea of nolo contendere to a felony.

(2) It shall be a defense to any action or prosecution under this

Code section for possession of a gambling device that the device is an antique slot machine and that said device was not being used for gambling; provided, however, the defense shall not be available to any person who has been convicted of a felony in this or any other state or under federal law and provided, further, that this defense shall not be available if the antique slot machine is on the premises of a private or public club or in an establishment where alcoholic beverages are sold.

(3) Any antique slot machine seized as a result of a violation of this Code section shall be contraband and subject to seizure and destruction as provided in Code Section 16-12-32. An antique slot machine seized for a violation of this Code section shall not be destroyed, altered, or sold until the owner has been afforded a reasonable opportunity to present evidence that the device was not operated for unlawful gambling or in violation of this Code section. If the court determines that the device is an antique slot machine and was not operated or possessed in violation of this or any other Code section, such device shall be returned to its owner.

History.

Code 1933, § 26-2707, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1969, p. 857, §§ 1, 2; Ga. L. 1970, p. 236, § 9; Ga. L. 1985, p. 888, § 1; Ga. L. 2015, p. 693, § 2-12/HB 233.

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For note discussing organized crime in Georgia with respect to the application of state gambling laws, and suggesting proposals for combatting organized crime, see 7 Ga. St. B.J. 124 (1970).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 26-6502, as it read prior to revision of the title by Ga. L. 1968, p. 1249, are included in the annotations for this Code section.

Possession of gambling devices and equipment and operating a gambling place are separate offenses. — Although arising from the same transaction, offenses of possession of gambling devices and equipment, and commercial gambling by operating a gambling place, are separate and distinct. Baxter v. State, 134 Ga. App. 286, 214 S.E.2d 578, 1975 Ga. App. LEXIS 1990, cert. denied, 423 U.S. 895, 96 S. Ct. 194, 46 L. Ed. 2d 127, 1975 U.S. LEXIS 2956 (1975).

Slot machine as gambling device. — An apparatus, known as a "slot machine," by which a person depositing money therein may, by chance, get directly or indirectly money or articles of value worth either more or less than the money deposited, falls within the purview of former Code 1933, § 26-6502, and cannot be treated as one kept only for amusement. Elder v. Camp, 193 Ga. 320,

18 S.E.2d 622, 1942 Ga. LEXIS 393 (1942) (decided under former Code 1933, § 26-6502).

Showing possession of gambling device without also showing actual operation. — Mere keeping of device for hazarding of money being prohibited by law, and a device so kept being contraband, it is unnecessary in showing illegality of the device, to allege and prove a further violation of law by its actual operation. Elder v. Camp, 193 Ga. 320, 18 S.E.2d 622, 1942 Ga. LEXIS 393 (1942) (decided under former Code 1933, § 26-6502).

Mere keeping of a device for hazarding of money being prohibited by law, and a device so kept being contraband, it is unnecessary, in showing illegality of the device, to allege and prove a further violation of law by its actual operation. Miller v. State, 94 Ga. App. 259, 94 S.E.2d 120, 1956 Ga. App. LEXIS 520 (1956) (decided under former Code 1933, § 26-6502).

Search warrant was based on probable cause because Clayton County investigators purchased an illegal video poker machine from a subject in Clayton County, who said that the machine was obtained from a particular address in DeKalb County, and both DeKalb and Clayton investigators observed "several other illegal video poker machines" at that address; while the investigators could not tell from looking at the machines whether the machines were legal or not, the test was only whether the evidence established a fair probability that contraband would be found. Jones v. State, 276 Ga. App. 810, 625 S.E.2d 4, 2005 Ga. App. LEXIS 1236 (2005), cert. denied, No. S06C0809, 2006 Ga. LEXIS 327 (Ga. Apr. 25, 2006).

Owner of seized gambling articles cannot bring action in trover. — When a sheriff finds articles kept for the purpose of gambling, an action of trover by the owner against the sheriff for their recovery will not lie, since courts are created for the upholding of law and of morals, and will decline to allow their processes to be used to further maintenance of crimes and public evils, by assisting or protecting such an owner in recovering the implements of crime or illegal paraphernalia. Elder v. Camp, 193 Ga. 320, 18 S.E.2d 622, 1942 Ga. LEXIS 393 (1942) (decided under former Code 1933, § 26-6502).

Evidence insufficient for conviction. — Evidence was insufficient to support the defendant's convictions of commercial gambling, possession of a gambling device, and keeping a gambling place because the seized machines were coin operated amusement machines (COAMs), as there was no evidence that the defendant tampered with the COAMs or otherwise did anything to remove the element of player skill and the state's evidence at most showed that the COAMs malfunctioned in some way to allow the police officer to win without nudging the wheels. Bartlett v. State, 351 Ga. App. 476, 829 S.E.2d 187, 2019 Ga. App. LEXIS 394 (2019), cert. denied, No. S20C0008, 2020 Ga. LEXIS 254 (Ga. Mar. 26, 2020).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 26-6502 are included in the annotations for this Code section.

Gambling in vessel beyond state's three-mile limit. — The 1992 amendments to the Johnson Act (15 U.S.C. § 1175) have preempted O.C.G.A. § 16-12-24's prohibition on the possession of gambling devices as applied to foreign or U.S. registered vessels where all gambling activities take place beyond the state's three-mile territorial limits, where the gambling devices remain on board when the vessel is in a Georgia port. 1992 Op. Att'y Gen. No. U92-20.

Electronic slot machines are gambling devices per se; they are contraband; they can be seized and destroyed as contraband; possession of such devices is a crime; no demonstration of operation of any such device is necessary antecedent to its seizure, nor is any demonstration necessary to establish basis of criminal prosecution for possession of said device. 1971 Op. Att'y Gen. No. 71-167.

Electronic games that are entirely games of chance are gambling devices per se. Electronic games which are not games of skill, and which are worthless except as games of chance, are gambling devices per se, and ownership, manufacture, transfer commercially, or possession of such devices within this state is prohibited. 1970 Op. Att'y Gen. No. U70-202.

RESEARCH REFERENCES

Am. Jur. 2d.

38 Am. Jur. 2d, Gambling, § 71 et seq.

C.J.S.

38 C.J.S., Gaming, §§ 160, 161 et seq.

ALR.

Coin-operated or slot machines as lottery, 101 A.L.R. 1126.

Possession of gambling device as offense not requiring showing that device was used for gambling or kept for gambling purposes, 162 A.L.R. 1188.

Punchboard as a lottery, 163 A.L.R. 1279.

Paraphernalia or appliances used for recording gambling transactions or receiving or furnishing gambling information as gaming "devices" within criminal statute or ordinance, 1 A.L.R.3d 726.

Validity of criminal legislation making possession of gambling or lottery devices or paraphernalia presumptive or prima facie evidence of other incriminating facts, 17 A.L.R.3d 491.

Construction and application of state or municipal enactments relating to policy or numbers games, 70 A.L.R.3d 897.

16-12-25. Solicitation of another to gamble with intent to defraud or deceive.

(a) Any person who solicits another person to commit any of the following acts with the intent to defraud or deceive such person on or adjacent to the premises of any business operated for pecuniary gain 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:

(1) Keeps, maintains, employs, or carries on a game for the hazarding of money or other thing of value;

(2) Permits the playing for money or other thing of value of a game or device for the hazarding of money or other thing of value;

(3) Keeps or employs a device or equipment for the purpose of carrying on or operating a game or device for the hazarding of money or other thing of value;

(4) Permits the betting or wagering of money or other thing of value;

(5) Sells or offers to sell to a person a ticket number or combination or chance or anything representing a chance in a lottery or other similar scheme;

(6) Keeps, maintains, employs, or carries on a lottery or scheme or device for the hazarding of money or other thing of value;

(7) Keeps, maintains, or employs a lottery ticket, lottery book,

lottery ribbon, or other article used in keeping, maintaining, or carrying on a lottery or other scheme, game, or device for the hazarding of money or other thing of value;

(8) Solicits a person to engage in a game or to operate a device for the hazarding of money or other thing of value; or

(9) Solicits a person to engage in a lottery or other scheme or device for the hazarding of money or other thing of value.

(b) This Code section is cumulative of and supplemental to any laws making any of the activities prohibited by this Code section unlawful and punishable as a misdemeanor; and nothing in this Code section shall be construed to repeal, amend, alter, or supersede any such laws.

History.
Ga. L. 1968, p. 1198, §§ 1, 2.

RESEARCH REFERENCES

C.J.S.
38 C.J.S., Gaming, § 178.
ALR.
Criminal conspiracies as to gambling, 91 A.L.R.2d 1148.
Gambling in private residence as prohibited or permitted by anti-gambling laws, 27 A.L.R.3d 1074.

16-12-26. Advertising commercial gambling.

(a) A person who knowingly prints, publishes, or advertises any lottery or other scheme for commercial gambling or who knowingly prints or publishes any lottery ticket, policy ticket, or other similar device designed to serve as evidence of participation in a lottery commits the offense of advertising commercial gambling.

(b) A person who commits the offense of advertising commercial gambling shall be guilty of a misdemeanor of a high and aggravated nature.

History.
Code 1933, § 26-2705, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1970, p. 236, § 8.
Cross references.
Constitutional guarantee of free speech and press, U.S. Const., amend. 1, Ga. Const. 1983, Art. I, Sec. I, Para. V.
Law reviews.
For note discussing organized crime in Georgia with respect to the application of state gambling laws, and suggesting proposals for combatting organized crime, see 7 Ga. St. B.J. 124 (1970).

OPINIONS OF THE ATTORNEY GENERAL

Continued advertisement of a sweepstakes where a player can determine if the player has the "winning number" by calling a "dial-it" number

constitutes advertising commercial gambling in violation of O.C.G.A. § 16-12-26. 1984 Op. Att'y Gen. No. 84-83.

RESEARCH REFERENCES

ALR.

Paraphernalia or appliances used for recording gambling transactions or receiving or furnishing gambling information as gaming "devices" within criminal statute or ordinance, 1 A.L.R.3d 726.

Promotion schemes of retail stores as criminal offense under antigambling law, 29 A.L.R.3d 888.

Construction and application of state or municipal enactments relating to policy or numbers games, 70 A.L.R.3d 879.

16-12-27. Advertisement or solicitation for participation in lotteries.

(a) It shall be unlawful for any person, partnership, firm, corporation, or other entity to sell, distribute, televise, broadcast, or disseminate any advertisement, television or radio commercial, or any book, magazine, periodical, newspaper, or other written or printed matter containing an advertisement or solicitation for participation in any lottery declared to be unlawful by the laws of this state unless such advertisement, commercial, or solicitation contains or includes the words "void in Georgia" printed or spoken so as to be clearly legible or audible to persons viewing or hearing such advertisement, commercial, or solicitation.

(b) Any person, partnership, firm, corporation, or other entity violating subsection (a) of this Code section shall be guilty of a misdemeanor.

History.

Ga. L. 1889, p. 187, § 1; Penal Code 1895, § 410; Penal Code 1910, § 401; Code 1933, § 26-6504; Code 1933, § 26-2705.1, enacted by Ga. L. 1975, p. 1072, § 1.

Cross references.

Constitutional guarantee of free speech and press, U.S. Const., amend. 1, Ga. Const. 1983, Art. I, Sec. I, Para. V.

OPINIONS OF THE ATTORNEY GENERAL

Continued advertisement and solicitation for participation in a sweepstakes where a player can determine if the player has the "winning number" by calling a "dial-it" number constitutes solicitation for participation in lotteries in violation of O.C.G.A. § 16-12-27. 1984 Op. Att'y Gen. No. 84-83.

RESEARCH REFERENCES

ALR.

Punchboard as a lottery, 163 A.L.R. 1279.

Validity of pyramid distribution plan, 54 A.L.R.3d 217.

16-12-28. Communicating gambling information.

(a) A person who knowingly communicates information as to bets, betting odds, or changes in betting odds or who knowingly installs or maintains equipment for the transmission or receipt of such information with the intent to further gambling commits the offense of communicating gambling information.

(b) A person who commits the offense of communicating gambling information, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years or by a fine not to exceed $5,000.00, or both.

History.
Code 1933, § 26-2706, enacted by Ga. L. 1968, p. 1249, § 1.

Cross references.
Constitutional guarantee of free speech and press, U.S. Const., amend. 1, Ga. Const. 1983, Art. I, Sec. I, Para. V.

Law reviews.
For note discussing organized crime in Georgia with respect to the application of state gambling laws, and suggesting proposals for combatting organized crime, see 7 Ga. St. B.J. 124 (1970).

For article, "A Comprehensive Analysis of Georgia RICO," see 9 Georgia St. U.L. Rev. 537 (1993).

RESEARCH REFERENCES

Am. Jur. 2d.
38 Am. Jur. 2d, Gambling, § 101 et seq.

C.J.S.
38 C.J.S., Gaming, § 182.

ALR.
Paraphernalia or appliances used for recording gambling transactions or receiving or furnishing gambling information as gaming "devices" within criminal statute or ordinance, 1 A.L.R.3d 726.

Right or duty to refuse telephone, telegraph, or other wire service in aid of illegal gambling operations, 30 A.L.R.3d 1143.

Validity, construction, and application of statute or ordinance prohibiting or regulating use of messenger services to place wagers in pari-mutuel pool, 78 A.L.R.4th 483.

16-12-29. Competent witnesses.

On the trial of any person for violating Code Section 16-12-21, 16-12-22, 16-12-23, or 16-12-24, any other person who may have played and bet at the same time or table shall be a competent witness.

History.
Laws 1833, Cobb's 1851 Digest, pp. 815, 816.; Code 1863, § 4428; Code 1868, § 4469; Code 1873, § 4545; Code 1882, § 4545; Penal Code 1895, § 404; Penal Code 1910, § 395; Code 1933, § 26-6407; Code 1933, § 26-9907, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1969, p. 857, § 15.

Cross references.
Competency of witnesses generally, § 24-6-601 et seq.

Law reviews.
For note discussing organized crime in Georgia with respect to the application of state gambling laws, and suggesting proposals for combatting organized crime, see 7 Ga. St. B.J. 124 (1970).

16-12-30. [Reserved] Seizure and destruction of gambling devices.

History.
Code 1933, § 26-2708, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1969, p. 857, § 13; Ga. L. 1985, p. 888, § 2; repealed by Ga. L. 2015, p. 693, § 2-13/HB 233, effective July 1, 2015.
Editor's notes.
Ga. L. 2015, p. 693, § 2-13/HB 233 repealed and reserved this Code section, effective July 1, 2015.
Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."
Law reviews.
For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

16-12-31. [Reserved] Seizure and disposition of funds or other things of value used for gambling.

History.
Ga. L. 1968, p. 1249, § 1; repealed by Ga. L. 1982, p. 2325, § 1, effective November 1, 1982.
Editor's notes.
For present comparable provisions, see Code Section 16-12-32.
Ga. L. 2013, p. 141, § 16/HB 79, reserved the designation of this Code section, effective April 24, 2013.

16-12-32. Civil forfeiture.

(a) As used in this Code section, the terms "proceeds," "property," and "United States" shall have the same meanings as set forth in Code Section 9-16-2, and "enterprise" means any person, sole proprietorship, partnership, corporation, trust, association, or other legal entity created under the laws the United States or any foreign nation or a group of individuals associated in fact although not a legal entity and includes illicit as well as licit enterprises and governmental as well as other entities.

(b) The following are declared to be contraband, and no person shall have a property right in them:

(1) Every gambling device except antique slot machines as provided for in subsection (b) of Code Section 16-12-24;

(2) Any property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of this article and any proceeds;

(3) Any property located in this state which was, directly or indirectly, used or intended for use in any manner to facilitate a violation of this article or of the laws of the United States relating to gambling and any proceeds;

(4) Any interest, security, claim, or property or contractual right of any kind affording a source of influence over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of in violation of this article or any of the laws of the United States relating to gambling and any proceeds; and

(5) Any property found in close proximity to any gambling device or other property subject to forfeiture under this Code section.

(c) Any property declared as contraband pursuant to subsection (b) of this Code section shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9.

History.

Code 1981, § 16-12-32, enacted by Ga. L. 2015, p. 693, § 2-14/HB 233.

Editor's notes.

This Code section formerly pertained to seizure and disposition of property used in or derived from violation of this article. The former Code section was based on Ga. L. 1945, p. 351, § 2; Code 1933, §§ 26-2709, 26-2710, enacted by Ga. L. 1968, p. 1249, § 1; Code 1981, §§ 16-12-31, 16-12-32; Ga. L. 1982, p. 2325, § 1; Ga. L. 1983, p. 3, § 13; Ga. L. 1990, p. 587, § 1, and was repealed by Ga. L. 2015, p. 693, § 2-14/HB 233, effective July 1, 2015.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article, "Criminal Forfeiture: An Appropriate Solution to the Civil Forfeiture Debate," see 10 Georgia St. U.L. Rev. 241 (1994).

For article on the 2015 enactment of this Code section, see 32 Georgia St. U. L. Rev. 1 (2015).

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Constitutionality. — O.C.G.A. § 16-12-32(b) was not unconstitutionally vague as applied to gambling club patrons whose funds were seized when police raided a club. Izzo v. State, 257 Ga. 109, 356 S.E.2d 204, 1987 Ga. LEXIS 758 (1987).

Cash admittedly from gambling. — An individual's uncorroborated admission to a police officer that cash the individual voluntarily took from the individual's pocket the individual had earned gambling was sufficient to support forfeiture. Hall v. State, 226 Ga. App. 486, 486 S.E.2d 710, 1997 Ga. App. LEXIS 669 (1997).

Failure to prove that seizure was reported within time period allowed by statute. — Trial court erred in ordering a forfeiture because the state did not prove that the seizure of money used in commercial gambling was reported to the district attorney within the time period allowed by former O.C.G.A. § 16-12-32(d); as the state failed to present evidence of the notice date, there was no evidence that the state complied with former O.C.G.A. § 16-12-32(d). Ridley v. State, 253 Ga. App. 896, 560 S.E.2d 769, 2002 Ga. App. LEXIS 238 (2002).

Prior conviction not required. — Showing that the owner or user of the property sought to be condemned was convicted of a crime is not required. Defendant should not be faced with the Hobson's choice of leaving the petition unanswered, thereby conceding the condemnation by default, or answering and having the defendant's first offender record used against the defendant. Jones v. State, 212 Ga. App. 682, 442 S.E.2d 880,

1994 Ga. App. LEXIS 392 (1994), cert. dismissed, No. S94C1150, 1994 Ga. LEXIS 795 (Ga. June 27, 1994).

Van used to transport fighting dogs may be condemned. — Van used to transport two fighting dogs to the scene of dogfights and which was thus used to facilitate a dogfight in violation of O.C.G.A. § 16-12-37 may be condemned as provided in O.C.G.A. § 16-12-32. Macon Auto Cleaners v. State, 175 Ga. App. 13, 332 S.E.2d 324, 1985 Ga. App. LEXIS 2001 (1985).

Gas station employees paying out cash and lottery tickets. — Judgment approving forfeiture was affirmed because by giving players cash and lottery tickets as rewards for winning games on the amusement machines, the gas station employees effectively converted the machines into gambling devices under O.C.G.A. § 16-12-32(b)(4), which clearly violated the gambling laws of Georgia prohibiting cash payouts for winning games on machines when the winnings are determined by chance even if the games involve an element of skill. Patel v. State of Ga., 341 Ga. App. 419, 801 S.E.2d 551, 2017 Ga. App. LEXIS 214 (2017), cert. dismissed, No. S17C1777, 2017 Ga. LEXIS 903 (Ga. Oct. 16, 2017).

Determining if penalty is proportionate to offense. — In determining whether forfeiture of property was constitutionally permissible, the court failed to address whether the harshness of the penalty was proportional to the gravity of the offense giving rise to the forfeiture; therefore, remand was required for determination of that issue. Mayes v. State, 230 Ga. App. 172, 495 S.E.2d 640, 1998 Ga. App. LEXIS 71 (1998).

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Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 26-6507 and 26-6508 are included in the annotations for this Code section.

Manufacturing gambling devices. — If gambling devices are contraband when transported, it follows logically that they may not be manufactured; thus, companies manufacturing gambling devices may not be established in the State of Georgia. 1963-65 Ga. Op. Att'y Gen. 319 (decided under former Code 1933, § 26-6507).

It is illegal to transport gambling devices within this state in intrastate commerce; however, this state does not attempt to exercise jurisdiction over the transportation of gambling devices in interstate commerce. 1960-61 Ga. Op. Att'y Gen. 113 (decided under former Code 1933, §§ 26-6507, 26-6508).

Office of the district attorney is not a "law enforcement agency" within the meaning of O.C.G.A. § 16-12-32(h)(1). 1985 Op. Att'y Gen. No. U85-22.

RESEARCH REFERENCES

Am. Jur. 2d.

16A Am. Jur. 2d, Constitutional Law, §§ 350, 390, 507. 38 Am. Jur. 2d, Gambling, § 133 et seq. 68 Am. Jur. 2d, Searches and Seizures, § 320 et seq.

C.J.S.

38 C.J.S., Gaming, § 113 et seq.

ALR.

Right to jury trial in case of seizure of property alleged to be illegally used, 17 A.L.R. 568; 50 A.L.R. 97.

Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 A.L.R.3d 473.

16-12-33. Bribery of a contestant.

A person who gives, offers, or promises any reward, money, or other

thing of value to anyone who participates or expects to participate in any amateur or professional athletic contest, sporting event, or exhibition or to any coach, trainer, manager or official in such athletic contest, sporting event, or exhibition with intent to influence such person to lose, try to lose, or cause to be lost or to affect the margin of victory or defeat in such athletic contest, sporting event, or exhibition commits the offense of bribery of a contestant and, upon conviction thereof, shall be punished by a fine of not less than $1,000.00 nor more than $5,000.00 or by imprisonment for not less than one nor more than five years, or both.

History.
Ga. L. 1947, p. 1139, § 2; Ga. L. 1952, p. 303, § 1; Code 1933, § 26-2711, enacted by Ga. L. 1968, p. 1249, § 1.

Law reviews.
For article, "A Comprehensive Analysis of Georgia RICO," see 9 Georgia St. U.L. Rev. 537 (1993).

RESEARCH REFERENCES

Am. Jur. 2d.
12 Am. Jur. 2d, Bribery, § 15.

ALR.
Admissibility, in prosecution for bribery or accepting bribes, of evidence tending to show the commission of other bribery or acceptance of bribe, 20 A.L.R.2d 1012.

Bribery in athletic contests, 49 A.L.R.2d 1234.

Recovery of money paid, or property transferred, as a bribe, 60 A.L.R.2d 1273.

16-12-34. Soliciting or accepting a bribe to influence outcome of athletic contests, sporting events, or exhibitions.

A person participating or expecting to participate or any coach, trainer, manager, or official in any amateur or professional athletic contest, sporting event, or exhibition who solicits or accepts any reward, money, or other thing of value with the intent, understanding, or agreement that it influence him to lose, try to lose, or cause to be lost or to limit the margin of victory or defeat in such athletic contest, sporting event, or exhibition by failing to exert his best efforts or to exercise his best judgment commits the offense of soliciting or accepting a bribe and, upon conviction thereof, shall be punished by a fine of not less than $1,000.00 nor more than $5,000.00 or by imprisonment for not less than one nor more than five years, or both.

History.
Ga. L. 1947, p. 1139, § 3; Ga. L. 1952, p. 303, § 1; Code 1933, § 26-2712, enacted by Ga. L. 1968, p. 1249, § 1.

Law reviews.
For article, "A Comprehensive Analysis of Georgia RICO," see 9 Georgia St. U.L. Rev. 537 (1993).

RESEARCH REFERENCES

Am. Jur. 2d.
12 Am. Jur. 2d, Bribery, § 15.
ALR.
Bribery in athletic contests, 49 A.L.R.2d 1234.
Recovery in tort for wrongful interference with chance to win game, sporting event, or contest, 85 A.L.R.4th 1048.

16-12-35. Applicability of part; penalty for violation.

(a) As used in this Code section, the term "some skill" means any presence of the following factors, alone or in combination with one another:

(1) A learned power of doing a thing competently;

(2) A particular craft, art, ability, strategy, or tactic;

(3) A developed or acquired aptitude or ability;

(4) A coordinated set of actions, including, but not limited to, eye-hand coordination;

(5) Dexterity, fluency, or coordination in the execution of learned physical or mental tasks or both;

(6) Technical proficiency or expertise;

(7) Development or implementation of strategy or tactics in order to achieve a goal; or

(8) Knowledge of the means or methods of accomplishing a task.

The term some skill refers to a particular craft, coordinated effort, art, ability, strategy, or tactic employed by the player to affect in some way the outcome of the game played on a bona fide coin operated amusement machine as defined in paragraph (2) of subsection (b) of Code Section 50-27-70. If a player can take no action to affect the outcome of the game, the bona fide coin operated amusement machine does not meet the "some skill" requirement of this Code section.

(b) Nothing in this part shall apply to a coin operated game or device designed and manufactured for bona fide amusement purposes only which may by application of some skill entitle the player to earn replays of the game or device at no additional cost and to discharge the accumulated free replays only by reactivating the game or device for each accumulated free replay or by reactivating the game or device for a portion or all of the accumulated free plays in a single play. This subsection shall not apply, however, to any game or device classified by the United States government as requiring a federal gaming tax stamp under applicable provisions of the Internal Revenue Code or any item described as a gambling device in subparagraph (B), (C), or (D) of paragraph (2) of Code Section 16-12-20.

(c)(1) Nothing in this part shall apply to a crane game machine or device meeting the requirements of paragraph (2) of this subsection.

(2) A crane game machine or device acceptable for the purposes of paragraph (1) of this subsection shall meet the following requirements:

(A) The machine or device must be designed and manufactured only for bona fide amusement purposes and must involve at least some skill in its operation;

(B) The machine or device must reward a winning player exclusively with free replays or merchandise contained within the machine itself and such merchandise must be limited to noncash merchandise, prizes, toys, gift certificates, or novelties, each of which has a wholesale value not exceeding $5.00. A player may be rewarded with both free replays and noncash merchandise, prizes, toys, or novelties for a single play of the game or device as provided in this Code section;

(C) The player of the machine or device must be able to control the timing of the use of the claw or grasping device to attempt to pick up or grasp a prize, toy, or novelty;

(D) The player of the machine or device must be made aware of the total time which the machine or device allows during a game for the player to maneuver the claw or grasping device into a position to attempt to pick up or grasp a prize, toy, or novelty;

(E) The claw or grasping device must not be of a size, design, or shape that prohibits picking up or grasping a prize, toy, or novelty contained within the machine or device; and

(F) The machine or device must not be classified by the United States government as requiring a federal gaming stamp under applicable provisions of the Internal Revenue Code.

(d)(1) Nothing in this part shall apply to a coin operated game or device designed and manufactured only for bona fide amusement purposes which involves some skill in its operation if it rewards the player exclusively with:

(A) Free replays;

(B) Merchandise limited to noncash merchandise, prizes, toys, gift certificates, or novelties, each of which has a wholesale value of not more than $5.00 received for a single play of the game or device;

(C) Points, tokens, vouchers, tickets, or other evidence of winnings which may be exchanged for rewards set out in sub-

paragraph (A) of this paragraph or subparagraph (B) of this paragraph or a combination of rewards set out in subparagraph (A) and subparagraph (B) of this paragraph; or

(D) Any combination of rewards set out in two or more of subparagraph (A), (B), or (C) of this paragraph.

This subsection shall not apply, however, to any game or device classified by the United States government as requiring a federal gaming stamp under applicable provisions of the Internal Revenue Code or any item described as a gambling device in subparagraph (B), (C), or (D) of paragraph (2) of Code Section 16-12-20.

(2) A player of bona fide coin operated amusement games or devices described in paragraph (1) of this subsection may accumulate winnings for the successful play of such bona fide coin operated amusement games or devices through tokens, vouchers, points, or tickets. Points may be accrued on the machine or device. A player may carry over points on one play to subsequent plays. A player may redeem accumulated tokens, vouchers, or tickets for noncash merchandise, prizes, toys, gift certificates, or novelties so long as the amount of tokens, vouchers, or tickets received does not exceed $5.00 for a single play.

(e) Any person who gives to any other person money for free replays on coin operated games or devices described in subsection (b), (c), or (d) of this Code section shall be guilty of a misdemeanor.

(f) Any person owning or possessing an amusement game or device described in subsection (c) or (d) of this Code section or any person employed by or acting on behalf of any such person who gives to any other person money for any noncash merchandise, prize, toy, gift certificate, or novelty received as a reward in playing any such amusement game or device shall be guilty of a misdemeanor.

(g) Any person owning or possessing an amusement game or device described in subsection (b), (c), or (d) of this Code section or any person employed by or acting on behalf of any such person who gives to any other person money as a reward for the successful play or winning of any such amusement game or device shall be guilty of a misdemeanor of a high and aggravated nature.

(g.1) Any location owner or location operator or person employed by a location owner or location operator who violates subsection (h) or (i) of this Code section for the second separate offense shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one nor more than five years, a fine not to exceed $25,000.00, or both, as well as loss of location license and all other state licenses.

(h) Any gift certificates, tokens, vouchers, tickets, or other evidence of winnings awarded under subsection (c) or (d) of this Code section

must be redeemable only at the premises on which the game or device is located. It shall be unlawful for any person to provide to any other person as a reward for play on any such game or device any gift certificate, token, voucher, ticket, or other evidence of winning which is redeemable or exchangeable for any thing of value at any other premises. It shall be unlawful for any person at any premises other than those on which the game or device is located to give any thing of value to any other person for any gift certificate, token, voucher, ticket, or other evidence of winning received by such other person from play on such game or device. Any person who violates this subsection shall be guilty of a misdemeanor of a high and aggravated nature. This subsection shall not apply to any ticket or product of the Georgia Lottery Corporation.

(i) The merchandise, prizes, toys, gift certificates, novelties, or rewards which may be awarded under subsection (c) or (d) of this Code section may not include or be redeemable or exchangeable for any firearms, alcohol, or tobacco. Any person who violates this subsection shall be guilty of a misdemeanor of a high and aggravated nature.

(j) Any other laws to the contrary notwithstanding, this part shall not be applicable to the manufacturing, processing, selling, possessing, or transporting of any printed materials, equipment, devices, or other materials used or designated for use in a legally authorized lottery nor shall it be applicable to the manufacturing, processing, selling, possessing, or transporting of any gaming equipment, devices, or other materials used or designated for use only in jurisdictions in which the use of such items is legal. This part shall in no way prohibit communications between persons in this state and persons involved with such legal lotteries or gaming devices relative to such printed materials, equipment, devices, or other materials or prohibit demonstrations of same within this state.

(k) Any person, location owner, or location operator who places, provides, or displays a bona fide coin operated amusement machine and offers it to play for consideration in Georgia in an establishment for which the location owner or location operator is not licensed or in a private residence shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one nor more than five years, a fine not to exceed $25,000.00, or both.

History.

Code 1933, § 26-2713, enacted by Ga. L. 1976, p. 1158, § 1; Ga. L. 1978, p. 1779, § 1; Ga. L. 1985, p. 886, § 1; Ga. L. 1991, p. 1396, § 1; Ga. L. 1991, p. 1398, § 1; Ga. L. 1992, p. 1489, § 1; Ga. L. 1996, p. 309, § 1; Ga. L. 1997, p. 689, § 1; Ga. L. 1998, p. 563, § 1; Ga. L. 1999, p. 1224, § 1; Ga. L. 2001, Ex. Sess., p. 312, § 2; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2013, p. 37, § 2-1/HB 487; Ga. L. 2018, p. 1112, § 16/SB 365.

Cross references.

Limitation on percent of monthly gross retail receipts derived from Class B machines, § 50-27-84.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1996, a semicolon was substituted for a period at the end of subparagraph (c)(2)(B).

Pursuant to Code Section 28-9-5, in 1999, "subparagraph" was substituted for "subparagraphs" in subparagraph (d)(1)(D) and "subsection" was substituted for "subsections" in subsection (e).

Editor's notes.

Ga. L. 2001, Ex. Sess., p. 312, § 4, not codified by the General Assembly, provides that: "This Act is not intended to, and should not be construed to, affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be prohibited by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall not be permitted by this Act."

Ga. L. 2001, Ex. Sess., p. 312, § 5, not codified by the General Assembly, provides that: "During the period beginning January 1, 2002, and ending June 30, 2002, it shall not be unlawful to possess in this state a machine or device described in subparagraph (B), (C), or (D) of paragraph (2) of Code Section 16-12-20, if: (1) Such machine is not in use; (2) Such machine is in transit to a storage facility or in a storage facility, which said storage facility is a secured facility and no part of same is accessible by anyone other than employees of said facility or employees of the owner of said machine; and (3) Such machine is not located in a place which is open to the public and is not located in a private club."

Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited."

U.S. Code.

The provisions of the Internal Revenue Code related to the wagering tax stamp are codified at 26 U.S.C. § 4901.

JUDICIAL DECISIONS

O.C.G.A. § 16-12-35 decriminalizes certain pinball machines because they are no longer to be considered as gambling devices. Total Vending Servs., Inc. v. Gwinnett County, 157 Ga. App. 28, 276 S.E.2d 89, 1981 Ga. App. LEXIS 1704 (1981).

State statutes preempted city's ordinance. — Conviction and fine against a convenience store operator for violating a city ordinance that prohibited certain retailers of packaged alcoholic beverages from allowing coin operated amusement machines (COAMs) on the same premises was reversed because the state's COAM Laws, O.C.G.A. §§ 16-12-35 and 50-27-70, et seq., preempted the city's ordinance at least insofar as the ordinance applied to COAMs as defined by the state statutes. Gebrekidan v. City of Clarkston, 298 Ga. 651, 784 S.E.2d 373, 2016 Ga. LEXIS 238 (2016).

O.C.G.A. § 16-12-35 deals with pinball machines in isolated context of criminal gambling laws of Georgia. Total Vending Servs., Inc. v. Gwinnett County, 157 Ga. App. 28, 276 S.E.2d 89, 1981 Ga. App. LEXIS 1704 (1981).

Gambling device. — In Georgia,

O.C.G.A. § 16-12-35 (d)(2) did not require success in every single play of the game in order for a player to carry over and redeem points accumulated during an earlier successful play of the machine or device. As such, the trial court did not err by using the long-established common meaning of the term "slot machine," i.e., an apparatus by which a person depositing money therein could, by chance, get directly or indirectly money or articles of value worth either more or less than the money deposited. Ultra Telecom, Inc. v. State, 288 Ga. 65, 701 S.E.2d 144, 2010 Ga. LEXIS 641 (2010), aff'd, 308 Ga. App. 493, 708 S.E.2d 13, 2011 Ga. App. LEXIS 109 (2011).

Skill in operation of machine. — There was no evidence that any of the gambling machines seized for civil forfeiture proceedings from stores involved some skill in the machine's operation as required under O.C.G.A. § 16-12-35(d)(1); the sole evidence was that a player simply pressed a button to play these machines. Patel v. State, 289 Ga. 479, 713 S.E.2d 381, 2011 Ga. LEXIS 548 (2011).

Evidence was insufficient to support the defendant's convictions of commercial gambling, possession of a gambling device, and keeping a gambling place because the seized machines were coin operated amusement machines (COAMs), as there was no evidence that the defendant tampered with the COAMs or otherwise did anything to remove the element of player skill and the state's evidence at most showed that the COAMs malfunctioned in some way to allow the police officer to win without nudging the wheels. Bartlett v. State, 351 Ga. App. 476, 829 S.E.2d 187, 2019 Ga. App. LEXIS 394 (2019), cert. denied, No. S20C0008, 2020 Ga. LEXIS 254 (Ga. Mar. 26, 2020).

Statute did not void preexisting contracts. — In a suit for tortious interference with contractual relations, the trial court erred by granting partial summary judgment against the owners of coin-operated amusement machines because O.C.G.A. § 50-27-70 et seq. did not void preexisting contracts and it was error to interpret the statute otherwise. All Star, Inc. v. Ga. Atlanta Amusements, LLC, 332 Ga. App. 1, 770 S.E.2d 22, 2015 Ga. App. LEXIS 206 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Coin-operated games. — Only if a coin-operated game can register more than fifteen free replays and has a "trip switch" allowing games to be erased other than by reactivating the machine for additional plays is the device a prohibited gambling device; if such a game is for bona fide amusement purposes only, it is legal. However, the transfer of anything of value in exchange for a free replay on any coin operated device, whether or not the device constitutes a gambling device per se, is illegal. 1990 Op. Att'y Gen. No. 90-15 (decided prior to 1996 amendment).

Video slot machine which involves no skill in the machine's operation and offers a ticket for a value of up to $5.00 in merchandise is a "gambling device". 1996 Op. Att'y Gen. No. U96-18.

RESEARCH REFERENCES

Am. Jur. 2d.

38 Am. Jur. 2d, Gambling, §§ 1 et seq., 133 et seq.

ALR.

Coin-operated or slot machine other than slot vending machine which may be played for amusement only or which confines winner's reward to privilege of additional play or other form of amusement, as within anti-gambling provisions, 148 A.L.R. 879; 89 A.L.R.2d 815.

Coin-operated pinball machine or similar device, played for amusement only or confining reward to privilege of free replays, as prohibited or permitted by anti-gambling laws, 89 A.L.R.2d 815.

16-12-36. Lawful promotional and giveaway contests.

(a) A promotional or giveaway contest which conforms with the qualifications of a lawful promotion specified in paragraph (16) of subsection (b) of Code Section 10-1-393 shall not be a lottery.

(b) Except as provided in subsection (a) of this Code section, all promotions or promotional contests involving an element of chance in the distribution of prizes, gifts, awards, or other items which otherwise meet the definition of a "lottery" in this article shall be included within the definition of the term "lottery" for purposes of this article, unless specifically exempted by some other statute or law.

History.
Code 1933, § 26-2714, enacted by Ga. L. 1982, p. 1661, § 2; Code 1981, § 16-12-36, enacted by Ga. L. 1982, p. 1661, § 4; Ga. L. 1983, p. 3, § 13; Ga. L. 1986, p. 1313, § 4.

Cross references.
Fair Business Practices Act, § 10-1-390 et seq.

16-12-37. Dogfighting.

(a) As used in this Code section, the term "dog" means any domestic canine.

(b) Any person who:

(1) Owns, possesses, trains, transports, or sells any dog with the intent that such dog shall be engaged in fighting with another dog;

(2) For amusement or gain, causes any dog to fight with another dog or for amusement or gain, causes any dogs to injure each other;

(3) Wagers money or anything of value on the result of such dogfighting;

(4) Knowingly permits any act in violation of paragraph (1) or (2) of this subsection on any premises under the ownership or control of such person or knowingly aids or abets any such act; or

(5) Knowingly promotes or advertises an exhibition of fighting with another dog

shall be guilty of a felony and, upon the first conviction thereof, shall be punished by imprisonment of not less than one nor more than five years, a fine of not less than $5,000.00, or both such fine and imprisonment. On a second or subsequent conviction, such person shall be punished by imprisonment of not less than one nor more than ten years, a fine of not less than $15,000.00, or both such fine and imprisonment. Each act or omission in violation of this subsection shall constitute a separate offense.

(c) Any person who is knowingly present only as a spectator at any place for the fighting of dogs shall, upon a first conviction thereof, be guilty of a misdemeanor of a high and aggravated nature. On a second conviction, such person shall be guilty of a felony and shall be punished by imprisonment of not less than one nor more than five years, a fine of not less than $5,000.00, or both such fine and imprisonment. On a third or subsequent conviction, such person shall be punished by imprisonment of not less than one nor more than ten years, a fine of not less than $15,000.00, or both such fine and imprisonment. Each act in violation of this subsection shall constitute a separate offense.

(d) Any dog subject to fighting may be impounded pursuant to the provisions of Code Sections 4-11-9.2 through 4-11-9.6.

(e) This Code section shall not prohibit, impede, or otherwise interfere with animal husbandry, training techniques, competition, events, shows, or practices not otherwise specifically prohibited by law and shall not apply to the following activities:

(1) Owning, using, breeding, training, or equipping any animal to pursue, take, hunt, or recover wildlife or any animal lawfully hunted under Title 27 or participating in hunting or fishing in accordance with the provisions of Title 27 and rules and regulations promulgated pursuant thereto as such rules and regulations existed on the date specified in Code Section 27-1-39;

(2) Owning, using, breeding, training, or equipping dogs to work livestock for agricultural purposes in accordance with the rules and regulations of the Commissioner of Agriculture as such rules and regulations existed on January 1, 2008;

(3) Owning, using, breeding, training, or equipping dogs for law enforcement purposes; or

(4) Owning, using, breeding, training, or equipping any animal to control damage from nuisance or pest species in and around structures or agricultural operations.

History.

Code 1933, § 26-2714, enacted by Ga. L. 1982, p. 2214, § 1; Code 1981, § 16-12-36, enacted by Ga. L. 1982, p. 2214, § 2; Code 1981, § 16-12-37, as redesignated by Ga. L. 1983, p. 3, § 13; Ga. L. 2008, p. 114, § 1-1/HB 301.

Law reviews.

For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

For comment, "The Abuse of Animals as a Method of Domestic Violence: The Need for Criminalization," see 63 Emory L.J. 1163 (2014).

JUDICIAL DECISIONS

Section constitutional. — O.C.G.A. § 16-12-37, which outlaws knowing and active participation in a dogfight, infringes on no constitutionally protected conduct and is constitutionally valid. Moody v. State, 253 Ga. 456, 320 S.E.2d 545, 1984 Ga. LEXIS 954 (1984).

O.C.G.A. § 16-12-37, which does not make unlawful the mere allowing of a dogfight to occur, but which prohibits one from causing or allowing a dog to fight another dog for a particular purpose (i.e., sport or gambling), the term "allow" encompassing knowledge and consent, is sufficiently definite to put those of common intelligence on notice that knowing participation in a dogfighting event is prohibited. Hargrove v. State, 253 Ga. 450, 321 S.E.2d 104, 1984 Ga. LEXIS 955 (1984).

While O.C.G.A. § 16-12-4 makes it a misdemeanor for anyone to subject any animal to cruel treatment, O.C.G.A. § 16-12-37 does not violate equal protection, because the legislature acted within its discretion in mandating that those who participate in a dogfight organization for sport or gaming purposes should be dealt with more harshly. Hargrove v. State, 253 Ga. 450, 321 S.E.2d 104, 1984 Ga. LEXIS 955 (1984).

Van used to transport fighting dogs may be condemned under § 16-12-32. — Van used to transport two fighting dogs to the scene of dogfights and which was thus used to facilitate a dogfight in violation of O.C.G.A. § 16-12-37, may be condemned as provided in O.C.G.A. § 16-12-32. Macon Auto Cleaners v. State, 175 Ga. App. 13, 332 S.E.2d 324, 1985 Ga. App. LEXIS 2001 (1985).

Evidence sufficient for conviction. — Evidence that defendant was four hundred miles from defendant's home shortly after dawn in a remote area of the state where dogfighting and gambling were taking place, that defendant was apprehended directly next to a pit where dogfighting was underway, and that defendant was arrested with $899 on defendant's person was sufficient for a rational trier of fact to conclude that defendant was guilty of allowing dogfighting to take place and gambling. Barton v. State, 253 Ga. 478, 322 S.E.2d 54, 1984 Ga. LEXIS 989 (1984).

Evidence insufficient for conviction. — When the state offered no evidence linking defendants to the area where dogfighting and gambling were taking place, but only showed that the defendants were "brought back" from an undetermined place by an unidentified officer and searched next to the dog pit, evidence was insufficient to support convictions for dogfighting and gambling. Barton v. State, 253 Ga. 478, 322 S.E.2d 54, 1984 Ga. LEXIS 989 (1984).

Penalty provision constitutional. — A $5,000.00 fine and an optional one year in prison does not amount to cruel and unusual punishment for those convicted of dogfighting in this state. Hargrove v. State, 253 Ga. 450, 321 S.E.2d 104, 1984 Ga. LEXIS 955 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Offenses arising under O.C.G.A. § 16-12-37(c) are designated as offenses for which those charged are to be fingerprinted. 2009 Op. Att'y Gen. No. 2009-1.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of criminal statutes and ordinances to prosecution for dogfighting, 68 A.L.R.6th 115.

16-12-38. Pyramid promotional schemes; exceptions; penalties.

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

(1) "Compensation" means a payment of any money, thing of value, or financial benefit.

(2) "Consideration" means the payment of cash or the purchase of goods, services, or intangible property, and does not include the purchase of goods or services furnished at cost to be used in making sales and not for resale, or time and effort spent in pursuit of sales or recruiting activities.

(3) "Inventory" includes both goods and services, including company produced promotional materials, sales aids, and sales kits that the plan or operation requires independent salespersons to purchase.

(4) "Inventory loading" means that the plan or operation requires or encourages its independent salespersons to purchase inventory in an amount which unreasonably exceeds that which the salesperson can expect to resell for ultimate consumption or to use or consume in a reasonable time period.

(5) "Participant" means a person who joins a plan or operation.

(6) "Person" means an individual, a corporation, a partnership, or any association or unincorporated organization.

(7) "Promote" means to contrive, prepare, establish, plan, operate, advertise, or to otherwise induce or attempt to induce another person to be a participant.

(8) "Pyramid promotional scheme" means any plan or operation in which a participant gives consideration for the right to receive compensation that is derived primarily from the recruitment of other persons as participants into the plan or operation rather than from the sale of goods, services, or intangible property to participants or by participants to others.

(b)(1) No person may establish, promote, operate, or participate in any pyramid promotional scheme. A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan does not change the identity of the plan as a pyramid promotional scheme. It is not a defense under this subsection that a person, on giving consideration, obtains goods, services, or intangible property in addition to the right to receive compensation.

(2) Nothing in this Code section may be construed to prohibit a plan or operation, or to define a plan or operation as a pyramid promotional scheme, based on the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale so

long as the plan or operation does not promote or induce inventory loading and complies with the cancellation requirements of subsection (d) of Code Section 10-1-415.

(3) Any person who participates in a pyramid promotional scheme shall be guilty of a misdemeanor of a high and aggravated nature. Any person who establishes, promotes, or operates a pyramid promotional scheme 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.

(4) Nothing in this Code section shall be construed so as to include a "multilevel distribution company," as defined in paragraph (6) of Code Section 10-1-410, which is operating in compliance with Part 3 of Article 15 of Chapter 1 of Title 10.

History.
Code 1981, § 16-12-38, enacted by Ga. L. 1985, p. 437, § 2; Ga. L. 1988, p. 1868, § 3; Ga. L. 1992, p. 6, § 16; Ga. L. 2005, p. 657, § 1/SB 141; Ga. L. 2012, p. 775, § 16/HB 942.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — O.C.G.A. § 16-12-38 is an offense for which those charged with a violation are to be fingerprinted. 2006 Op. Att'y Gen. No. 2006-2.

Part 2

Bingo

Cross references.
Bingo games, Ga. Const. 1983, Art. I, Sec. II, Para. VIII.

Administrative rules and regulations.
Nonprofit BINGO Games, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Bureau of Investigation, Rule 92-2-.01 et seq.

JUDICIAL DECISIONS

Georgia Constitution does not preclude regulation of bingo by the legislature. — Restriction on operation of nonprofit bingo games indicates an intent to permit only small, nonprofessional bingo operations in which virtually all profits accrue to nonprofit groups and provision for public reports of financial affairs of organizations running nonprofit bingo operations indicates that the legislature wanted to obtain information about these operations for purpose of enacting legislation to prevent abuses. St. John's Melkite Catholic Church v. Commissioner of Revenue, 240 Ga. 733, 242 S.E.2d 108, 1978 Ga. LEXIS 816 (1978).

Legislature may reasonably regulate legal bingo to prevent commercialization of operations, to prevent unnecessary diversion of bingo profits from coffers of nonprofit organizations, and otherwise to promote public welfare consistent with the intent of Ga. L. 1977, p. 1164. St. John's Melkite Catholic Church v. Commissioner of Revenue, 240 Ga. 733, 242 S.E.2d 108, 1978 Ga. LEXIS 816 (1978).

RESEARCH REFERENCES

Am. Jur. 2d.
38 Am. Jur. 2d, Gambling, §§ 21, 37.
C.J.S.
38 C.J.S., Gaming, §§ 10, 141 et seq.
ALR.
Constitutionality of statute which affirmatively permits certain forms of betting or gambling, 85 A.L.R. 622.

16-12-50. Legislative intent.

It is the intention of the General Assembly that, except for recreational bingo, only nonprofit, tax-exempt organizations which are properly licensed pursuant to this part shall be allowed to operate bingo games.

History.
Ga. L. 1977, p. 1164, § 8; Ga. L. 1978, p. 853, § 6; Ga. L. 1993, p. 535, § 1.
Cross references.
Tax-exempt corporations and organizations, § 48-7-25.

16-12-51. Definitions.

As used in this part, the term:

(1) "Bingo game" or "nonprofit bingo game" means a game of chance played on cards with numbered squares in which counters or indicators are placed on numbers chosen by lot and won by covering a previously specified number or order of numbered squares. A bingo game may be played manually or with an electronic or computer device that stores the numbers from a player's card or cards, tracks the numbers chosen by lot when such numbers are entered by the player, and notifies the player of a winning combination; provided, however, that the numbers chosen by lot shall be chosen by a natural person who is physically located on the premises or property described in Code Section 16-12-57 on which the game is operated. Such words, terms, or phrases, as used in this paragraph, shall be strictly construed to include only the series of acts generally defined as bingo and shall exclude all other activity.

(2) "Bingo session" means a time period during which bingo games are played.

(3) "Nonprofit, tax-exempt organization" means an organization, association, corporation, or other legal entity which has been determined by the federal Internal Revenue Service to be exempt from taxation under federal tax law and which is exempt from taxation under the income tax laws of this state under Code Section 48-7-25; which is organized or incorporated in this state or authorized to do business in this state; and which uses the proceeds from any bingo games conducted by such organization solely within this state.

(4) "Operate," "operated," or "operating" means the direction, supervision, management, operation, control, or guidance of activity.

(5) "Recreational bingo" means a bingo session operated by any person or entity at no charge to participants in which the prizes for each bingo game during the bingo session shall be noncash prizes and the total of such prizes for each such game shall not exceed the amount established pursuant to regulations established by the Secretary of State. No such noncash prize awarded in recreational bingo shall be exchanged or redeemed for money or for any other prize with a value in excess of the amount established pursuant to regulations established by the Secretary of State. Recreational bingo shall also include a bingo session operated by a nonprofit, tax-exempt licensed operator of bingo games at no charge to participants in which the participants are senior citizens attending a function at a facility of the tax-exempt licensed organization or are residents of nursing homes, retirement homes, senior centers, or hospitals and in which the prizes for each bingo game during the bingo session shall be nominal cash prizes not to exceed $5.00 for any single prize and the total of such prizes for each such game shall not exceed the amount established pursuant to regulations established by the Secretary of State. Recreational bingo shall also include a bingo session operated by an employer with ten or more full-time employees for the purposes of providing a safe workplace incentive and in which the prizes are determined by the employer; provided, however, that no monetary consideration is required by any participant other than the employer and the employer expressly prohibits any monetary consideration from any employee. Recreational bingo shall not be considered a lottery as defined in paragraph (4) of Code Section 16-12-20 or a form of gambling as defined in Code Section 16-12-21.

History.

Ga. L. 1977, p. 1164, § 1; Ga. L. 1978, p. 853, § 1; Ga. L. 1980, p. 422, § 1; Ga. L. 1993, p. 535, § 2; Ga. L. 1994, p. 490, § 1; Ga. L. 1994, p. 1002, § 1; Ga. L. 2003, p. 411, § 1; Ga. L. 2006, p. 339, § 1/SB 545; Ga. L. 2008, p. 898, § 2/HB 1151; Ga. L. 2016, p. 256, § 1/SB 316; Ga. L. 2021, p. 394, § 1/HB 410.

Editor's notes.

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

16-12-52. License required to operate bingo game; recreational bingo exception.

(a) Any other law to the contrary notwithstanding except for subsection (b) of this Code section, no nonprofit, tax-exempt organization shall be permitted to operate a bingo game until the Secretary of State issues a license to the organization authorizing it to do so. In the event of any controversy concerning whether or not certain activity constitutes bingo for which a license may be issued, the decision of the Secretary of State shall control. The license described in this Code section is in

addition to and not in lieu of any other licenses which may be required by this state or any political subdivision thereof, and no bingo game shall be operated until such time as all requisite licenses have been obtained.

(b) Recreational bingo is a nonprofit bingo game or a bingo game operated by an employer with ten or more full-time employees for the purpose of providing a safe workplace incentive and shall not be subject to the licensing requirements and regulations provided in this part applicable to bingo games not considered recreational bingo and operated by nonprofit, tax-exempt organizations.

History.
Ga. L. 1977, p. 1164, § 2; Ga. L. 1980, p. 422, § 2; Ga. L. 1993, p. 535, § 3; Ga. L. 1994, p. 490, § 2; Ga. L. 1994, p. 1002, § 2; Ga. L. 2021, p. 394, § 2/HB 410.

JUDICIAL DECISIONS

Georgia Constitution does not preclude imposition of license requirement. St. John's Melkite Catholic Church v. Commissioner of Revenue, 240 Ga. 733, 242 S.E.2d 108, 1978 Ga. LEXIS 816 (1978).

Licensing requirement does not unreasonably burden right to operate bingo games. — Since licensing requirement does not unreasonably burden right to operate bingo games by placing unreasonable restrictions on granting of licenses, there is no conflict between Ga. L. 1977, p. 1164, § 2 and Ga. Const. 1976, Art. I, Sec. II, Para. XI (see now Ga. Const. 1983, Art. I, Sec. II, Para. VIII). St. John's Melkite Catholic Church v. Commissioner of Revenue, 240 Ga. 733, 242 S.E.2d 108, 1978 Ga. LEXIS 816 (1978).

16-12-53. Licensing procedure; fee; renewal.

(a) Any nonprofit, tax-exempt organization desiring to obtain a license to operate bingo games shall make application to the Secretary of State on forms prescribed by the Secretary of State and shall pay an annual fee of $100.00. No license shall be issued to any nonprofit, tax-exempt organization unless the organization has been in existence for 12 months immediately prior to the issuance of the license. The license will expire at 12:00 Midnight on December 31 following the granting of the license. Renewal applications for each calendar year shall be filed with the Secretary of State prior to January 1 of each year and shall be on a form prescribed by the Secretary of State.

(b) Each application for a license and each application for renewal of a license shall contain the following information:

(1) The name and home address of the applicant and, if the applicant is a corporation, association, or other similar legal entity, the names and home addresses of each of the officers of the organization as well as the names and addresses of the directors, or other persons similarly situated, of the organization;

(2) The names and home addresses of each of the persons who will be operating, advertising, or promoting the bingo game;

(3) The names and home addresses of any persons, organizations, or other legal entities that will act as surety for the applicant or to which the applicant is financially indebted or to which any financial obligation is owed by the applicant;

(4) A determination letter from the Internal Revenue Service certifying that the applicant is an organization exempt under federal tax law;

(5) A statement affirming that the applicant is exempt under the income tax laws of this state under Code Section 48-7-25;

(6) The location at which the applicant will conduct the bingo games and, if the premises on which the games are to be conducted is to be leased, a copy of the lease or rental agreement;

(7) A statement showing the convictions, if any, for criminal offenses other than minor traffic offenses of each of the persons listed in paragraphs (1), (2), and (3) of this subsection; and

(8) Any other necessary and reasonable information which the Secretary of State may require.

(c) The Secretary of State shall refuse to grant a bingo license to any applicant who fails to provide fully the information required by this Code section.

(d) When a nonprofit, tax-exempt organization which operates or intends to operate bingo games for residents and patients of a retirement home, nursing home, or hospital operated by that organization at which gross receipts are or will be limited to $100.00 or less during each bingo session and pays or will pay prizes having a value of $100.00 or less during each bingo session, then, notwithstanding any other provision of this part or any rule or regulation promulgated by the Secretary of State pursuant to the provisions of Code Section 16-12-61, neither the applicant nor any of the persons whose names and addresses are required under paragraphs (1) and (2) of subsection (b) of this Code section shall be required to submit or provide fingerprints or photographs as a condition of being granted a license.

(e) If the Secretary of State determines that an organization has one or more auxiliaries, the members of any such auxiliary may assist in such organization's bingo operations, even if such auxiliary holds a license under this part, and the members of the main organization may assist in the bingo operations of any such licensed auxiliary.

History. Ga. L. 1977, p. 1164, § 3; Ga. L. 1978, p. 853, § 2; Ga. L. 1980, p. 422, §§ 3, 4; Ga. L. 1985, p. 149, § 16; Ga. L. 1990, p. 1944,

§ 1; Ga. L. 1991, p. 1113, § 1; Ga. L. 2001, p. 1036, § 1; Ga. L. 2004, p. 749, § 1; Ga. L. 2008, p. 898, § 3/HB 1151; Ga. L. 2021, p. 394, § 3/HB 410.

Editor's notes.

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Law reviews.

For note on the 2001 amendment of this Code section, see 18 Georgia St. U.L. Rev. 30 (2001).

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State has legitimate interest in imposing filing fee to offset expenses, in processing required reports, and there is no explicit prohibition of this in the Constitution. Accordingly, the fee is valid, since it does not burden exercise of right to operate bingo games so as to make their operation unreasonably difficult. St. John's Melkite Catholic Church v. Commissioner of Revenue, 240 Ga. 733, 242 S.E.2d 108, 1978 Ga. LEXIS 816 (1978).

16-12-54. Revocation of licenses; access to premises by law enforcement agencies.

(a) The Secretary of State shall have the specific authority to suspend or revoke any license for any violation of this part or for any violation of any rule or regulation promulgated under this part. Any licensee accused of violating any provision of this part or of any rule or regulation promulgated hereunder shall be entitled, unless waived, to a hearing on the matter of the alleged violation conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(b) By making application for a license under this part, every applicant consents that the Secretary of State, as well as any of his or her agents, together with any prosecuting attorney, as well as any of his or her agents, may come upon the premises of any licensee or upon any premises on which any licensee is conducting a bingo game for the purpose of examining the accounts and records of the licensee to determine if a violation of this part has occurred.

History.

Ga. L. 1977, p. 1164, § 2; Ga. L. 1978, p. 853, § 5; Ga. L. 1980, p. 422, §§ 7, 8; Ga. L. 2021, p. 394, § 4/HB 410.

16-12-55. Certification of tax-exempt status of organization; issuance of certificate of licensure.

The Secretary of State shall upon the request of any prosecuting attorney or his or her designee certify the status of any organization as to that organization's exemption from payment of state income taxes as a nonprofit organization. The Secretary of State shall also upon request issue a certificate indicating whether any particular organization holds a currently valid license to operate a bingo game. Code Section 48-7-60,

relative to the disclosure of income tax information, shall not apply to the furnishing of such certificate.

History.
Ga. L. 1978, p. 853, § 3; Ga. L. 1980, p. 422, § 5; Ga. L. 2011, p. 99, § 26/HB 24; Ga. L. 2021, p. 394, § 5/HB 410.
Editor's notes.
Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.
Law reviews.
For article on the 2011 amendment of this Code section, see 28 Georgia St. U.L. Rev. 1 (2011).

16-12-56. Issuance of annual one-day license to nonprofit, tax-exempt school; application.

Notwithstanding the other provisions of this part, the Secretary of State upon receiving written application therefor shall be authorized to issue a one-time license to a nonprofit, tax-exempt school which will allow it to operate a bingo game one day annually. In such cases, the Secretary of State shall have the power to waive the license fee provided for in Code Section 16-12-53, to waive the annual report provided for in Code Section 16-12-59, and otherwise promulgate rules and regulations to carry out this Code section.

History.
Ga. L. 1977, p. 1164, § 11; Ga. L. 1980, p. 422, § 11; Ga. L. 2021, p. 394, § 6/HB 410.

16-12-57. Restrictions as to ownership of premises utilized.

Bingo games shall be operated only on premises owned by the nonprofit, tax-exempt organization operating the bingo game, on property leased by the nonprofit, tax-exempt organization and used regularly by that organization for purposes other than the operation of a bingo game, or on property leased by the nonprofit, tax-exempt organization operating the bingo game from another nonprofit, tax-exempt organization.

History.
Ga. L. 1977, p. 1164, § 4.

JUDICIAL DECISIONS

Intent of Constitutional provision. — Georgia Constitution is not intended to authorize full-time, professional bingo operations. Rather, it is intended to allow only nonprofit organizations to benefit from bingo, and to extent bingo proceeds are diverted from nonprofit groups this intent has been frustrated. St. John's Melkite Catholic Church v. Commissioner of Revenue, 240 Ga. 733, 242 S.E.2d 108, 1978 Ga. LEXIS 816 (1978).

Constitutionality of classification of types of premises. — Classification of types of premises based on whether owner is a nonprofit organization or not is based on a rational distinction which serves to further the purposes of Ga. L. 1977, p. 1164, § 4 (see now O.C.G.A. § 16-12-57).

This is not a denial of equal protection or due process, and whether or not distinctions drawn in section are imperfectly related to goals desired does not make section invalid. St. John's Melkite Catholic Church v. Commissioner of Revenue, 240 Ga. 733, 242 S.E.2d 108, 1978 Ga. LEXIS 816 (1978).

When nonprofit group may operate bingo game on premises rented from profit-making corporation. — Only if nonprofit group regularly uses premises for purposes other than bingo can group rent premises from profit-making corporation, or an individual. St. John's Melkite Catholic Church v. Commissioner of Revenue, 240 Ga. 733, 242 S.E.2d 108, 1978 Ga. LEXIS 816 (1978).

16-12-58. Age restrictions.

No person under the age of 18 years shall be permitted to play any game or games of bingo conducted pursuant to any license issued under this part unless accompanied by an adult. No person under the age of 18 years shall be permitted to conduct or assist in the conducting of any game of bingo conducted pursuant to any license issued under this part.

History.
Ga. L. 1977, p. 1164, § 5.

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Provisions of Ga. L. 1977, p. 1164, § 5 (see now O.C.G.A. § 16-12-58) are valid because power of state to regulate activities of minors is broader than police power to regulate conduct of adults. St. John's Melkite Catholic Church v. Commissioner of Revenue, 240 Ga. 733, 242 S.E.2d 108, 1978 Ga. LEXIS 816 (1978).

16-12-59. Annual report to be filed with the Secretary of State.

On or before April 15 of each year, every nonprofit, tax-exempt organization engaged in operating bingo games shall file with the Secretary of State a report disclosing all receipts and expenditures relating to the operation of bingo games in the previous year. The report shall be in addition to all other reports required by law. The report shall be prepared and signed by a certified public accountant competent to prepare such a report and shall be deemed a public record subject to public inspection.

History.
Ga. L. 1977, p. 1164, § 6; Ga. L. 1980, p. 422, § 6; Ga. L. 2005, p. 1030, § 15/SB 55; Ga. L. 2021, p. 394, § 7/HB 410.

16-12-60. Rules and regulations.

(a) A licensee that conducts or operates a bingo session shall maintain the following records for at least three years from the date on which the bingo session is conducted:

(1) An itemized list of the gross receipts for each session;

(2) An itemized list of all expenses other than prizes that are incurred in the conducting of the bingo session as well as the name of each person to whom the expenses are paid and a receipt for all of the expenses;

(3) A list of all prizes awarded during the bingo session and the name and address of all persons who are winners of prizes of $50.00 or more in value;

(4) An itemized list of the recipients other than the licensee of the proceeds of the bingo game, including the name and address of each recipient to whom such funds are distributed; and

(5) A record of the number of persons who participate in any bingo session conducted by the licensee.

(b) A licensee shall:

(1) Own all the equipment used to conduct a bingo game or lease such equipment;

(2) Display its bingo license conspicuously at the location where the bingo game is conducted;

(3) Conduct bingo games only at the single location specified in the licensee's application; and

(4) Not conduct more than one bingo session during any one calendar day, which session shall not exceed five hours.

(c) No nonprofit, tax-exempt organization shall enter into any contract with any individual, firm, association, or corporation to have such individual, firm, association, or corporation operate bingo games or concessions on behalf of the nonprofit, tax-exempt organization.

(d) A nonprofit, tax-exempt organization shall not lend its name nor allow its identity to be used by any individual, firm, association, or corporation in the operating or advertising of a bingo game in which said nonprofit, tax-exempt organization is not directly and solely operating the bingo game.

(e) It shall be unlawful for two or more nonprofit, tax-exempt organizations which are properly licensed pursuant to this part to operate bingo games jointly or to operate bingo games upon the same premises during any 18 hour period.

(f) It shall be unlawful to award prizes in excess of $3,000.00 in cash or gifts of equivalent value during any calendar week. It shall be unlawful to exceed such limitation at any combination of locations operated by a single licensee or such licensee's agents or employees. It shall be unlawful for two or more licensees to pyramid the valuation of prizes in such manner as to exceed the limitation contained in this Code

section. The term "equivalent value" shall mean the fair market value of the gift on the date the gift is given as the prize in a bingo game.

(g) No person or organization by whatever name or composition thereof shall take any salary, expense money, or fees for the operation of any bingo game, except that not more than $30.00 per day may be paid to one or more individuals for assisting in the conduct of such games on such day.

(h) No person shall pay consulting fees to any person for any services performed in relation to the operation or conduct of a bingo game.

(i) A person who is a member of more than one nonprofit, tax-exempt organization shall be permitted to participate in the bingo operations of only two organizations of which such person is a member; provided, however, that such person shall not receive more than $30.00 per day for assisting in the conduct of bingo games regardless of whether such person assists both organizations in the same day.

History.

Ga. L. 1977, p. 1164, § 8; Ga. L. 1978, p. 853, §§ 4, 6, 6A, 6B, 7; Ga. L. 1979, p. 1265, § 1; Ga. L. 1986, p. 511, §§ 1, 2; Ga. L. 2001, p. 1036, § 1; Ga. L. 2003, p. 335, § 1; Ga. L. 2003, p. 411, § 2; Ga. L. 2016, p. 256, § 2/SB 316.

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Intent of Constitutional provision. — Georgia Constitution is not intended to authorize full-time, professional bingo operations. Rather, the amendment is intended to allow only nonprofit organizations to benefit from bingo, and to extent bingo proceeds are diverted from nonprofit groups this intent has been frustrated. St. John's Melkite Catholic Church v. Commissioner of Revenue, 240 Ga. 733, 242 S.E.2d 108, 1978 Ga. LEXIS 816 (1978).

Subsection (d) does not deny any right to legitimate uses of names or identities. — Provisions prohibiting lending of organization's name to individual firm, association, or corporation which is not a nonprofit organization in a situation which will result in false or misleading promotions or advertisements, or promotions, or advertisements of unlawful bingo games, and does not deny any right to legitimate uses of names or identities. St. John's Melkite Catholic Church v. Commissioner of Revenue, 240 Ga. 733, 242 S.E.2d 108, 1978 Ga. LEXIS 816 (1978).

The 18-hour restriction serves to prevent establishment of full-time bingo parlors by limiting amount of use any premises receive. This is consistent with Ga. Const. 1976, Art. I, Sec. II, Para. XI (see now Ga. Const. 1983, Art. I, Sec. II, Para. VIII), the "bingo amendment," and does not deny equal protection, since it treats all organizations equally. Fact that game played by another organization prevents second group from playing for 18 hours does not treat second group differently, because the earlier group had to comply with the same restriction. St. John's Melkite Catholic Church v. Commissioner of Revenue, 240 Ga. 733, 242 S.E.2d 108, 1978 Ga. LEXIS 816 (1978).

Last sentence of subsection (f) merely sets forth accurate statement of meaning of "equivalent value" as used in this subsection and in Ga. Const. 1976, Art. I, Sec. II, Para. XI (see now Ga. Const. 1983, Art. I, Sec. II, Para. VIII). St. John's Melkite Catholic Church v. Commissioner of Revenue, 240 Ga. 733, 242 S.E.2d 108, 1978 Ga. LEXIS 816 (1978).

16-12-61. Promulgation of necessary rules and regulations by Secretary of State authorized.

The Secretary of State is authorized to promulgate rules and regulations which he or she deems necessary for the proper administration and enforcement of this part.

History.
Ga. L. 1977, p. 1164, § 9; Ga. L. 1980, p. 422, § 9; Ga. L. 2021, p. 394, § 8/HB 410.

16-12-62. Penalties.

Any person who operates a bingo game for which a license is required without a valid license issued by the Secretary of State as provided in this part commits the offense of commercial gambling as defined in Code Section 16-12-22 and, upon conviction thereof, shall be punished accordingly. Any person who knowingly aids, abets, or otherwise assists in the operation of a bingo game for which a license is required and has not been obtained as provided in this part similarly commits the offense of commercial gambling. Any person who violates any other provision of this part, including the provisions relating to recreational bingo, shall be guilty of a misdemeanor of a high and aggravated nature. Any person who commits any such violation after having previously been convicted of any violations of this part 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 or by a fine not to exceed $10,000.00, or both.

History.
Ga. L. 1977, p. 1164, § 10; Ga. L. 1980, p. 422, § 10; Ga. L. 1993, p. 535, § 4; Ga. L. 2021, p. 394, § 9/HB 410.

16-12-63. Transfer of regulatory authority over bingo; procedure and regulation.

(a) The Secretary of State shall succeed to all rules, regulations, policies, procedures, and pending and finalized administrative orders of the director of the Georgia Bureau of Investigation applicable to regulation of bingo games and recreational bingo under this part which are in effect on June 30, 2021. Such rules, regulations, policies, procedures, and orders shall remain in effect until amended, repealed, superseded, or nullified by the Secretary of State.

(b) All valid agreements, contracts, licenses, permits, certificates, and similar authorizations previously issued by the director of the Georgia Bureau of Investigation with respect to any function transferred to the Secretary of State under this part shall continue in effect until the same expire by their terms unless they are suspended, revoked, or otherwise made ineffective, as provided by law.

(c) Effective July 1, 2021, the Secretary of State shall carry out all of the functions and obligations and exercise all of the powers provided in this part which were formerly held by the director of the Georgia Bureau of Investigation. All records in possession of the director of the Georgia Bureau of Investigation which are exclusively used for the regulation of bingo games and recreational bingo under this part shall be transferred to the Secretary of State on July 1, 2021.

History.
Code 1981, § 16-12-63, enacted by Ga. L. 2021, p. 394, § 10/HB 410.

ARTICLE 3

OBSCENITY AND RELATED OFFENSES

Cross references.
Power of counties and municipalities to enact ordinances which have effect of restricting adult bookstores and adult movie houses to areas zoned for commercial or industrial purposes, § 36-60-3.

Use of telephone communications for obscene, threatening, or other purposes, § 46-5-21.

Use of telephone to transmit obscene, lewd, or other communications for commercial purposes, § 46-5-22.

Law reviews.
For article discussing history of Georgia's written obscenity statutes from the 1860's to the late 1960's, see 19 Mercer L. Rev. 287 (1968).

For comment discussing the constitutional standard for judging obscenity, in light of Miller v. California, 413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed. 2d 419 (1973), see 10 Ga. St. B.J. 327 (1973).

For article discussing obscenity laws and their conflict with U.S. Const., Amend. 1, see 8 Ga. L. Rev. 291 (1974).

For article, "Misdemeanor Sentencing in Georgia," see 7 Ga. St. B.J. 8 (2001).

For article, "Sex In and Out of Intimacy," see 59 Emory L.J. 809 (2010).

For article, "Evil Angel Eulogy: Reflections on the Passing of the Obscenity Defense in Copyright," see 20 J. Intell. Prop. L. 209 (2013).

JUDICIAL DECISIONS

Definition of obscenity set forth in former Code 1933, § 26-2101 et seq. was applicable to all sections dealing with same question. Jenkins v. State, 230 Ga. 726, 199 S.E.2d 183, 1973 Ga. LEXIS 1046 (1973), rev'd, 418 U.S. 153, 94 S. Ct. 2750, 41 L. Ed. 2d 642, 1974 U.S. LEXIS 85 (1974) (see O.C.G.A. Art. 3, Ch. 12, T. 16).

Possession of obscene material in privacy of home. — State's power to regulate obscenity does not extend to mere possession in privacy of own home. Warshaw v. Eastman Kodak Co., 148 Ga. App. 670, 252 S.E.2d 182, 1979 Ga. App. LEXIS 1602 (1979).

Right to privately possess obscene materials does not presuppose corollary constitutional right of unregulated access. Warshaw v. Eastman Kodak Co., 148 Ga. App. 670, 252 S.E.2d 182, 1979 Ga. App. LEXIS 1602 (1979).

It would be against public policy to return obscene material to owner. Warshaw v. Eastman Kodak Co., 148 Ga. App. 670, 252 S.E.2d 182, 1979 Ga. App. LEXIS 1602 (1979).

RESEARCH REFERENCES

ALR.

Publications of a scientific, educational or instructive character regarding sex relations as within statutes relating to obscene or immoral publications, 76 A.L.R. 1099.

Power of municipality in respect of inspection and censorship of motion-picture films, 126 A.L.R. 1363.

Entrapment to commit offense against obscenity laws, 77 A.L.R.2d 792.

Modern concept of obscenity, 5 A.L.R.3d 1158.

Validity of procedures designed to protect the public against obscenity, 5 A.L.R.3d 1214; 93 A.L.R.3d 297.

Exhibition of obscene motion pictures as nuisance, 50 A.L.R.3d 969.

What constitutes such discriminatory prosecution or enforcement of laws as to provide valid defense in state criminal proceedings, 95 A.L.R.3d 280.

In personam or territorial jurisdiction of state court in connection with obscenity prosecution of author, actor, photographer, publisher, distributor, or other party whose acts were performed outside the state, 16 A.L.R.4th 1318.

Processor's right to refuse to process or return film or video tape of obscene subject, 18 A.L.R.4th 1326.

Validity and application of statute exempting nonmanagerial, nonfinancially interested employees from obscenity prosecution, 35 A.L.R.4th 1237.

Part 1

General Provisions

Law reviews.

For article, "Sex In and Out of Intimacy," see 59 Emory L.J. 809 (2010).

16-12-80. Obscene material; distribution; penalty.

(a) A person commits the offense of distributing obscene material when he sells, lends, rents, leases, gives, advertises, publishes, exhibits, or otherwise disseminates to any person any obscene material of any description, knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so, provided that the word "knowing," as used in this Code section, shall be deemed to be either actual or constructive knowledge of the obscene contents of the subject matter; and a person has constructive knowledge of the obscene contents if he has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the material; provided, however, that the character and reputation of the individual charged with an offense under this law, and, if a commercial dissemination of obscene material is involved, the character and reputation of the business establishment involved may be placed in evidence by the defendant on the question of intent to violate this law. Undeveloped photographs, molds, printing plates, and the like shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

(b) Material is obscene if:

(1) To the average person, applying contemporary community standards, taken as a whole, it predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex, or excretion;

(2) The material taken as a whole lacks serious literary, artistic, political, or scientific value; and

(3) The material depicts or describes, in a patently offensive way, sexual conduct specifically defined in subparagraphs (A) through (E) of this paragraph:

(A) Acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated;

(B) Acts of masturbation;

(C) Acts involving excretory functions or lewd exhibition of the genitals;

(D) Acts of bestiality or the fondling of sex organs of animals; or

(E) Sexual acts of flagellation, torture, or other violence indicating a sadomasochistic sexual relationship.

(c) Any device designed or marketed as useful primarily for the stimulation of human genital organs is obscene material under this Code section.

(d) Material not otherwise obscene may be obscene under this Code section if the distribution thereof, the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of their prurient appeal.

(e) It is an affirmative defense under this Code section that dissemination of the material was restricted to:

(1) A person associated with an institution of higher learning, either as a member of the faculty or a matriculated student, teaching or pursuing a course of study related to such material; or

(2) A person whose receipt of such material was authorized in writing by a licensed medical practitioner or psychiatrist.

(f) A person who commits the offense of distributing obscene material shall be guilty of a misdemeanor of a high and aggravated nature.

History.
Ga. L. 1878-79, p. 163, § 1; Code 1882, § 4537a; Penal Code 1895, § 394; Penal Code 1910, § 385; Code 1933, § 26-6301; Ga. L. 1935, p. 158, § 1; Ga. L. 1941, p. 358, § 1; Ga. L. 1956, p. 801, § 1; Ga. L. 1963, p. 78, § 1; Code 1933, § 26-2101, enacted by Ga. L. 1968, p. 1249, § 1; Ga.

L. 1971, p. 344, § 1; Ga. L. 1975, p. 498, §§ 1, 2; Ga. L. 1992, p. 6, § 16; Ga. L. 1996, p. 6, § 16.

Cross references.

Constitutional guarantee of free speech and press, Ga. Const. 1983, Art. I, Sec. I, Para. V.

Law reviews.

For comment on Stanley v. Georgia, 394 U.S. 557, 89 S. Ct. 1243, 22 L. Ed. 2d 542 (1969) as to constitutional protection of private possession of obscene material, see 21 Mercer L. Rev. 337 (1969).

For article surveying developments in Georgia constitutional law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 51 (1981).

For article, "Sex In and Out of Intimacy," see 59 Emory L.J. 809 (2010).

For note, "Defending Against a Charge of Obscenity in the Internet Age: How Google Searches Can Illuminate Miller's 'Contemporary Community Standards,'" see 26 Georgia St. U. L. Rev. 1029 (2010).

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Analysis

General Consideration
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3. Determination of Number of Offenses Committed

General Consideration

Construction. — Because O.C.G.A. § 16-12-80 prohibited a person from disseminating obscene material of any description, and the definition of obscene material made no reference to a minor, distributing obscene materials was not a crime against the person of a minor child within the plain meaning of former O.C.G.A.§ 24-9-23(b) (see now O.C.G.A. § 24-5-503). Peck v. State, 300 Ga. App. 375, 685 S.E.2d 367, 2009 Ga. App. LEXIS 1171 (2009).

States have power to determine that public exhibition of obscene materials is harmful. — States have power to make morally neutral judgment that public exhibition of obscene material, or commerce in such material, has tendency to injure community as a whole, to endanger public safety, or to jeopardize states' right to maintain a decent society. Paris Adult Theatre I v. Slaton, 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446, 1973 U.S. LEXIS 19 (1973).

State's broad power to regulate obscenity does not extend to mere possession by individual in privacy of the individual's own home. Gable v. Jenkins, 309 F. Supp. 998, 1969 U.S. Dist. LEXIS 13744 (D. Ga. 1969), aff'd, 397 U.S. 592, 90 S. Ct. 1351, 25 L. Ed. 2d 595, 1970 U.S. LEXIS 2072 (1970).

Former Code 1933, § 26-2101 (see now O.C.G.A. § 16-12-80) was designed to reach only "hardcore pornography" and was outside of the protection of U.S. Const., amend. 1. Slaton v. Paris Adult Theatre I, 231 Ga. 312, 201 S.E.2d 456, 1973 Ga. LEXIS 686 (1973), cert. denied, 418 U.S. 939, 94 S. Ct. 3227, 41 L. Ed. 2d 1173, 1974 U.S. LEXIS 2194 (1974).

Section is aimed at patently offensive, "hard core" sexual conduct. — No one will be subject to prosecution for the sale or exposure of obscene materials unless these materials depict or describe patently offensive "hard core" sexual conduct. Jenkins v. Georgia, 418 U.S. 153,

94 S. Ct. 2750, 41 L. Ed. 2d 642, 1974 U.S. LEXIS 85 (1974).

Extent of permitted regulation. — State regulation of obscenity must conform to procedures ensuring against curtailment of constitutionally protected expression, which is often separated from obscenity only by a dim and uncertain line. Central Agency, Inc. v. Brown, 306 F. Supp. 502, 1969 U.S. Dist. LEXIS 8799 (N.D. Ga. 1969).

O.C.G.A. § 16-12-80 is not preempted by the federal Medical Device Amendments of 1976, 21 U.S.C. § 360c et seq., as the statute does not impose any requirements relating to the safety or effectiveness of sexual devices but, rather, relates to public morality and the distribution of obscene material. This That And The Other Gift And Tobacco, Inc. v. Cobb County, 285 F.3d 1319, 2002 U.S. App. LEXIS 4307 (11th Cir. 2002).

Constitutional Issues

Private possession of obscene materials is protected under U.S. Const., amends. 1 and 14. Gable v. Jenkins, 309 F. Supp. 998, 1969 U.S. Dist. LEXIS 13744 (D. Ga. 1969), aff'd, 397 U.S. 592, 90 S. Ct. 1351, 25 L. Ed. 2d 595, 1970 U.S. LEXIS 2072 (1970).

Motel owner's interest in providing obscene films to guests at the owner's motel in the privacy of the guest's own rooms was not protected by the First Amendment, notwithstanding the possibility that the people receiving the objects of the owner's commerce might be shielded from state regulation in the guest's use of the obscene materials. Majmundar v. Veline, 256 Ga. 8, 342 S.E.2d 682, 1986 Ga. LEXIS 682 (1986).

Constitutional right to possess obscene material does not imply rights to purchase or distribute it. — Former Code 1933, § 26-2101 (see now O.C.G.A. § 16-12-80) was not violative of U.S. Const., amends. 1, 4, 5, 9 and 14 on the ground that the constitutional right to mere possession of obscene material necessarily implies the right to purchase such material and, hence, the right of others to distribute the material. Walter v. State, 131 Ga. App. 667, 206 S.E.2d 662, 1974 Ga. App. LEXIS 1512 (1974); Playmate Cinema, Inc. v. State, 154 Ga. App. 871, 269 S.E.2d 883, 1980 Ga. App. LEXIS 2425, 1980 Ga. App. LEXIS 3242 (1980)

Commerce in obscene material is unprotected by any constitutional doctrine of privacy. — States have a legitimate interest in regulating commerce in obscene material and in regulating exhibition of obscene material in places of public accommodation, including so-called "adult" theaters from which minors are excluded. Paris Adult Theatre I v. Slaton, 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446, 1973 U.S. LEXIS 19 (1973).

Obscenity is not within the protected pale of U.S. Const., amends. 1, 14. Gable v. Jenkins, 309 F. Supp. 998, 1969 U.S. Dist. LEXIS 13744 (D. Ga. 1969), aff'd, 397 U.S. 592, 90 S. Ct. 1351, 25 L. Ed. 2d 595, 1970 U.S. LEXIS 2072 (1970).

Implicit in history of U.S. Const., amend. 1 is rejection of obscenity as utterly without redeeming social importance. Evans Theatre Corp. v. Slaton, 227 Ga. 377, 180 S.E.2d 712, 1971 Ga. LEXIS 710, cert. denied, 404 U.S. 950, 92 S. Ct. 281, 30 L. Ed. 2d 267, 1971 U.S. LEXIS 659 (1971).

Obscenity is not protected by free speech clause of U.S. Const., amend. 1, and may be regulated by the state. Slaton v. Paris Adult Theatre I, 231 Ga. 312, 201 S.E.2d 456, 1973 Ga. LEXIS 686 (1973), cert. denied, 418 U.S. 939, 94 S. Ct. 3227, 41 L. Ed. 2d 1173, 1974 U.S. LEXIS 2194 (1974); S.S.W. Corp. v. Slaton, 231 Ga. 734, 204 S.E.2d 155, 1974 Ga. LEXIS 1208 (1974).

Films portraying hard core sexual conduct, for its own sake, not protected speech. — When defendant's films amounted to nothing more than a public portrayal of hard core sexual conduct for its own sake, and for the ensuing commercial gain, the films were not protected by U.S. Const., amend. 1 and were obscene within the definition of former Code 1933, § 26-2101(b) (see now O.C.G.A. § 16-12-80(b)). Clayton v. State, 149 Ga. App. 374, 254 S.E.2d 495, 1979 Ga. App. LEXIS 1856 (1979).

Devices which are within the definition of O.C.G.A. § 16-12-80(c) are not

Constitutional Issues (Cont'd)

protected expressions under either the First Amendment of the U.S. Constitution or the free speech clause of the Georgia Constitution. Morrison v. State, 272 Ga. 129, 526 S.E.2d 336, 2000 Ga. LEXIS 91 (2000).

Constitutionality of section. — See Dyke v. State, 232 Ga. 817, 209 S.E.2d 166, 1974 Ga. LEXIS 1098 (1974), cert. denied, 421 U.S. 952, 95 S. Ct. 1687, 44 L. Ed. 2d 106, 1975 U.S. LEXIS 1521 (1975); Pierce v. State, 239 Ga. 844, 239 S.E.2d 28, 1977 Ga. LEXIS 1353 (1977), transferred, 145 Ga. App. 680, 244 S.E.2d 589, 1978 Ga. App. LEXIS 2085 (1978).

Constitutionality of O.C.G.A. § 16-12-80(a) and (c) has been upheld. Williams v. State, 157 Ga. App. 494, 277 S.E.2d 781, 1981 Ga. App. LEXIS 1880 (1981).

Constitutionality of former Code 1933, § 26-2101 (see now O.C.G.A. § 16-12-80) has been finally and conclusively determined. Dobbs v. State, 145 Ga. App. 14, 243 S.E.2d 275, 1978 Ga. App. LEXIS 1841, cert. denied, 439 U.S. 899, 99 S. Ct. 265, 58 L. Ed. 2d 248, 1978 U.S. LEXIS 3399 (1978).

Former Code 1933, § 26-2101 (see now O.C.G.A. § 16-12-80) was constitutional. S.S.W. Corp. v. Slaton, 231 Ga. 734, 204 S.E.2d 155, 1974 Ga. LEXIS 1208 (1974); Wood v. State, 144 Ga. App. 236, 240 S.E.2d 743, 1977 Ga. App. LEXIS 2652 (1977), cert. denied, 439 U.S. 899, 99 S. Ct. 265, 58 L. Ed. 2d 247, 1978 U.S. LEXIS 3397 (1978); Showcase Cinemas, Inc. v. State, 156 Ga. App. 225, 274 S.E.2d 578, 1980 Ga. App. LEXIS 3008 (1980), cert. dismissed, 451 U.S. 934, 101 S. Ct. 2037, 68 L. Ed. 2d 343, 1981 U.S. LEXIS 1817 (1981).

Former Code 1933, § 26-2101 (see now O.C.G.A. § 16-12-80) was not unconstitutionally vague. Walter v. State, 131 Ga. App. 667, 206 S.E.2d 662, 1974 Ga. App. LEXIS 1512 (1974); This That And The Other Gift And Tobacco, Inc. v. Cobb County, 285 F.3d 1319, 2002 U.S. App. LEXIS 4307 (11th Cir. 2002).

Former Code 1933, § 26-2101 was not overly broad or vague in definition. Slaton v. Paris Adult Theatre I, 231 Ga. 312, 201 S.E.2d 456, 1973 Ga. LEXIS 686 (1973), cert. denied, 418 U.S. 939, 94 S. Ct. 3227, 41 L. Ed. 2d 1173, 1974 U.S. LEXIS 2194 (1974).

Former Code 1933, § 26-2101 (see now O.C.G.A. § 16-12-80) was not violative of U.S. Const., amend. 1. Brown v. State, 156 Ga. App. 201, 274 S.E.2d 572, 1980 Ga. App. LEXIS 2999 (1980).

Advertising ban violates First Amendment. — Advertising ban on sexual devices found in O.C.G.A. § 16-12-80 violates the First Amendment as: (1) an advertisement targeting lawful consumers would not necessarily be misleading simply because certain persons encountering the advertisement could not lawfully purchase such devices, and an explanation of those persons entitled to purchase such devices would not need to be lengthy and complex; and (2) the ban is more extensive than necessary. This That And The Other Gift And Tobacco, Inc. v. Cobb County, 285 F.3d 1319, 2002 U.S. App. LEXIS 4307 (11th Cir. 2002).

When a prior appellate panel decided that O.C.G.A. § 16-12-80 banned all advertising of the sexual devices in issue in violation of the First Amendment, the district court on remand violated the law-of-the-case doctrine when the court revisited the issue of whether the statute violated the plaintiffs' First Amendment rights and granted the defendants summary judgment. This That & the Other Gift & Tobacco, Inc. v. Cobb County, 439 F.3d 1275, 2006 U.S. App. LEXIS 3577 (11th Cir. 2006).

Former Code 1933, § 26-2101 (see now O.C.G.A. § 16-12-80) did not violate U.S. Const., amends. 1 and 14. Gable v. Jenkins, 309 F. Supp. 998, 1969 U.S. Dist. LEXIS 13744 (D. Ga. 1969), aff'd, 397 U.S. 592, 90 S. Ct. 1351, 25 L. Ed. 2d 595, 1970 U.S. LEXIS 2072 (1970); Paris Adult Theatre I v. Slaton, 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446, 1973 U.S. LEXIS 19 (1973); Flynt v. State, 153 Ga. App. 232, 264 S.E.2d 669, 1980 Ga. App. LEXIS 1762, cert. denied, 449 U.S. 888, 101 S. Ct. 245, 66 L. Ed. 2d 114, 1980 U.S. LEXIS 3413 (1980).

Expression outside defined area is constitutionally protected expression. — Any statute or ordinance

which seeks to impose criminal or civil sanctions for exercise of expression that is not obscene cannot withstand proper constitutional attack for overbreadth. Sanders v. State, 231 Ga. 608, 203 S.E.2d 153, 1974 Ga. LEXIS 1160 (1974).

Former Code 1933, § 26-2101 (see now O.C.G.A. § 16-12-80) was not unconstitutional as overbroad, arbitrary, or capricious that the statute constituted an unreasonable invasion of an adult's or married couple's right of sexual privacy, or that no necessity or rational basis appeared for the total prohibition of these types of devices. Hostetler v. State, 145 Ga. App. 55, 243 S.E.2d 256, 1978 Ga. App. LEXIS 1860, cert. denied, 439 U.S. 947, 99 S. Ct. 341, 58 L. Ed. 2d 339, 1978 U.S. LEXIS 3683 (1978); Whisenhunt v. State, 156 Ga. App. 583, 275 S.E.2d 82, 1980 Ga. App. LEXIS 3130 (1980).

Former Code 1933, § 26-2101(c) (see now O.C.G.A. § 16-12-80(c)) was not unconstitutional for vagueness and overbreadth. Sewell v. State, 238 Ga. 495, 233 S.E.2d 187, 1977 Ga. LEXIS 1071 (1977).

Former Code 1933, § 26-2101 (see now O.C.G.A. § 16-12-80) did not violate constitutional requirement of scienter. Northcutt v. State, 157 Ga. App. 762, 278 S.E.2d 702, 1981 Ga. App. LEXIS 2007 (1981).

When charge on constructive knowledge was in exact language of O.C.G.A. § 16-12-80 and did not place greater burden on appellant than knowledge of contents of materials appellant distributed in prosecution for distribution of obscene materials, the charge did not violate constitutional scienter requirement. Mason v. State, 159 Ga. App. 755, 285 S.E.2d 91, 1981 Ga. App. LEXIS 2742 (1981).

Constructive knowledge, as defined in former Code 1933, § 26-2101(a) (see now O.C.G.A. § 16-12-80(a)), did not violate constitutional standards. Wood v. State, 144 Ga. App. 236, 240 S.E.2d 743, 1977 Ga. App. LEXIS 2652 (1977), cert. denied, 439 U.S. 899, 99 S. Ct. 265, 58 L. Ed. 2d 247, 1978 U.S. LEXIS 3397 (1978).

Charge on constructive knowledge does not violate constitutional requirements of scienter. Paperback Book Mart, Inc. v. State, 148 Ga. App. 377, 251 S.E.2d 396, 1978 Ga. App. LEXIS 3165 (1978).

Constitutional attack upon former Code 1933, § 26-2101 that constructive knowledge as found therein was a violation of constitutional requirements as to scienter was not meritorious. Showcase Cinemas, Inc. v. State, 156 Ga. App. 225, 274 S.E.2d 578, 1980 Ga. App. LEXIS 3008 (1980), cert. dismissed, 451 U.S. 934, 101 S. Ct. 2037, 68 L. Ed. 2d 343, 1981 U.S. LEXIS 1817 (1981).

Preseizure Adversary Hearing

Absence of constitutionally sufficient warrant. — Arrest and seizure of obscene materials without constitutionally sufficient warrant is unreasonable and evidence is not admissible. Wood v. State, 144 Ga. App. 236, 240 S.E.2d 743, 1977 Ga. App. LEXIS 2652 (1977), cert. denied, 439 U.S. 899, 99 S. Ct. 265, 58 L. Ed. 2d 247, 1978 U.S. LEXIS 3397 (1978).

Requiring adversary hearing before seizure of materials relates merely to competency of evidence in obscenity prosecution and does not bar prosecution based on other legally obtained evidence. Matter seized illegally, i.e., without a hearing, must be returned. Gable v. Jenkins, 309 F. Supp. 998, 1969 U.S. Dist. LEXIS 13744 (D. Ga. 1969), aff'd, 397 U.S. 592, 90 S. Ct. 1351, 25 L. Ed. 2d 595, 1970 U.S. LEXIS 2072 (1970).

Prosecution or threat thereof before adversary determination of obscenity constitutes unconstitutional burden upon freedom of expression. Sokolic v. Ryan, 304 F. Supp. 213, 1969 U.S. Dist. LEXIS 12532 (S.D. Ga. 1969).

Any criminal prosecution prior to adversary hearing is violative of U.S. Const., amend. 1. Sokolic v. Ryan, 304 F. Supp. 213, 1969 U.S. Dist. LEXIS 12532 (S.D. Ga. 1969).

Unconstitutional system of prior restraint with respect to certain men's magazines was engaged in by local law enforcement authorities where such authorities did not obtain warrant from neutral and detached magistrate based upon threshold determination of obscenity before making series of arrests of dealers

Preseizure Adversary Hearing (Cont'd)

and distributors on charges that their dealings in such magazines violated obscenity laws. Penthouse Int'l, Ltd. v. McAuliffe, 436 F. Supp. 1241, 1977 U.S. Dist. LEXIS 14307 (N.D. Ga. 1977), aff'd in part and rev'd in part, 610 F.2d 1353, 1980 U.S. App. LEXIS 20758 (5th Cir. 1980).

Unlawful warrantless arrest without seizure of materials does not constitute prior restraint. — There is no prior restraint of freedom of expression by any unlawful state-initiated or state-enforced restraint where a warrantless arrest is made but no obscene materials are seized. Wood v. State, 144 Ga. App. 236, 240 S.E.2d 743, 1977 Ga. App. LEXIS 2652 (1977), cert. denied, 439 U.S. 899, 99 S. Ct. 265, 58 L. Ed. 2d 247, 1978 U.S. LEXIS 3397 (1978).

Adversary judicial hearing on question of obscenity is prerequisite to seizure of materials. — It is illegal for officers to seize a movie film unless and until there has been held a prior adversary judicial hearing upon question of obscenity. The Supreme Court has decided that lest the nonobscene and constitutionally protected be suppressed it is better that some judicial officer determine that challenged matter is obscene before its seizure. Gable v. Jenkins, 309 F. Supp. 998, 1969 U.S. Dist. LEXIS 13744 (D. Ga. 1969), aff'd, 397 U.S. 592, 90 S. Ct. 1351, 25 L. Ed. 2d 595, 1970 U.S. LEXIS 2072 (1970).

One procedural protection afforded publications regardless of eventual evaluation or characterization of same is requirement that materials may not be seized prior to judicially conducted adversary proceeding in which same is found in fact to be obscene. Sokolic v. Ryan, 304 F. Supp. 213, 1969 U.S. Dist. LEXIS 12532 (S.D. Ga. 1969).

Before a seizure of alleged obscene material can be made, an adversary hearing on question of its obscenity must first be had. Central Agency, Inc. v. Brown, 306 F. Supp. 502, 1969 U.S. Dist. LEXIS 8799 (N.D. Ga. 1969); Peachtree News Co. v. Slaton, 226 Ga. 471, 175 S.E.2d 539, 1970 Ga. LEXIS 567 (1970), aff'd, 401 U.S. 985, 91 S. Ct. 1220, 28 L. Ed. 2d 525, 1971 U.S. LEXIS 2559 (1971).

Determination of obscenity is prerequisite to revocation of business license. — Just as there can be no massive seizure of allegedly obscene materials for destruction without a prior adversary type hearing and determination of obscenity, there can be no valid revocation of a business license for having exhibited an obscene film without such prior hearing and determination. 106 Forsyth Corp. v. Bishop, 362 F. Supp. 1389, 1972 U.S. Dist. LEXIS 15272 (M.D. Ga. 1972), aff'd, 482 F.2d 280, 1973 U.S. App. LEXIS 8695 (5th Cir. 1973).

Adversary hearing not required prior to instituting of criminal action as to purchased materials. Gornto v. McDougall, 336 F. Supp. 1372, 1972 U.S. Dist. LEXIS 15321 (S.D. Ga. 1972).

Distinction between seizure of materials and purchase by prosecuting attorney. — There is a vast distinction in requiring an adversary hearing for a determination of obscenity before seizure of books, and requiring such hearing when books were not seized but were procured by purchase from dealer by prosecuting attorney and are in the prosecutor's possession. Peachtree News Co. v. Slaton, 226 Ga. 471, 175 S.E.2d 539, 1970 Ga. LEXIS 567 (1970), aff'd, 401 U.S. 985, 91 S. Ct. 1220, 28 L. Ed. 2d 525, 1971 U.S. LEXIS 2559 (1971).

Community Standard

Material must substantially exceed limits of candor set by contemporary community standards. — U.S. Const., amend. 14 does not permit conviction on obscenity charges unless work complained of is found substantially to exceed limits of candor set by contemporary community standards. Flynt v. State, 153 Ga. App. 232, 264 S.E.2d 669, 1980 Ga. App. LEXIS 1762, cert. denied, 449 U.S. 888, 101 S. Ct. 245, 66 L. Ed. 2d 114, 1980 U.S. LEXIS 3413 (1980).

Court cannot rebuff all efforts to enlighten the jury as to community standards. — While a state is not precluded from regarding trier of fact as

the embodiment of community standards competent to judge a challenged work against those standards, it is not privileged to rebuff all efforts to enlighten or persuade the trier. Flynt v. State, 153 Ga. App. 232, 264 S.E.2d 669, 1980 Ga. App. LEXIS 1762, cert. denied, 449 U.S. 888, 101 S. Ct. 245, 66 L. Ed. 2d 114, 1980 U.S. LEXIS 3413 (1980).

Determination of community standards is not based merely upon what is appropriate for children. Dumas v. State, 131 Ga. App. 79, 205 S.E.2d 119, 1974 Ga. App. LEXIS 1336 (1974).

Jurors judging contemporary community standards according to their own communities. — It is constitutionally permissible to permit juries to rely on understanding of community from which they came as to contemporary community standards, and states have considerable latitude in framing statutes under this element. A state may choose to define an obscenity offense in terms of contemporary community standards without further specification, or it may choose to define standards in more precise geographic terms. Jenkins v. Georgia, 418 U.S. 153, 94 S. Ct. 2750, 41 L. Ed. 2d 642, 1974 U.S. LEXIS 85 (1974).

Jurors to consider evidence in light of standards of community. — Jurors represent average members of their own community and, as triers of fact are charged with responsibility of making determination of whether material is obscene, guided by evidence presented by their individual and collective awareness of standards and norms of their community. Gornto v. State, 227 Ga. 46, 178 S.E.2d 894, 1970 Ga. LEXIS 394 (1970), cert. denied, 402 U.S. 933, 91 S. Ct. 1525, 28 L. Ed. 2d 868, 1971 U.S. LEXIS 2325 (1971).

Local community standard applied. — Standard to be applied is not what may or may not have been held to be obscene in other jurisdictions, but what is acceptable in local community. Gornto v. State, 227 Ga. 46, 178 S.E.2d 894, 1970 Ga. LEXIS 394 (1970), cert. denied, 402 U.S. 933, 91 S. Ct. 1525, 28 L. Ed. 2d 868, 1971 U.S. LEXIS 2325 (1971).

Juries can consider state or local community standards in lieu of national standards. Jenkins v. State, 230 Ga. 726, 199 S.E.2d 183, 1973 Ga. LEXIS 1046 (1973), rev'd, 418 U.S. 153, 94 S. Ct. 2750, 41 L. Ed. 2d 642, 1974 U.S. LEXIS 85 (1974).

Community by which standards for obscenity are gauged is the State of Georgia rather than nation-wide community or any smaller unit of the state. Dumas v. State, 131 Ga. App. 79, 205 S.E.2d 119, 1974 Ga. App. LEXIS 1336 (1974).

Specification of what "community" not required in instruction. — Trial court's charge to jury to apply "community standards" in determining whether material was obscene, without specifying what "community" was proper. Lee v. State, 214 Ga. App. 164, 447 S.E.2d 323, 1994 Ga. App. LEXIS 820 (1994), cert. denied, No. S94C1831, 1994 Ga. LEXIS 1177 (Ga. Dec. 2, 1994).

Use of word "approved" in course of defining phrase "community standards" is proper. 2150 Stewart Ave., Inc. v. State, 173 Ga. App. 407, 326 S.E.2d 579, 1985 Ga. App. LEXIS 1561 (1985).

Definition of community standard for jury. — Instructing jury that "community standards" is defined in terms of what an average person in the community would approve of, as opposed to tolerate, does not constitute harmful or reversible error in prosecution for distributing obscene materials. 134 Baker St., Inc. v. State, 172 Ga. App. 738, 324 S.E.2d 575, 1984 Ga. App. LEXIS 3087 (1984).

Use of accept in jury instructions. — In instructions on community standard, use of word "acceptance" rather than "tolerance" is not harmful error. Brown v. State, 156 Ga. App. 201, 274 S.E.2d 572, 1980 Ga. App. LEXIS 2999 (1980); Williams v. State, 157 Ga. App. 494, 277 S.E.2d 781, 1981 Ga. App. LEXIS 1880 (1981).

Comparative Evidence

Rationale behind admission of comparative evidence in an obscenity case is to allow defendant the opportunity to attempt to persuade trier of fact that challenged material does not exceed contemporary community standards, as rep-

Comparative Evidence (Cont'd)

resented by comparable material and against which challenged material is judged. Flynt v. State, 153 Ga. App. 232, 264 S.E.2d 669, 1980 Ga. App. LEXIS 1762, cert. denied, 449 U.S. 888, 101 S. Ct. 245, 66 L. Ed. 2d 114, 1980 U.S. LEXIS 3413 (1980).

Evidence of mere availability of similar materials is insufficient. — Evidence of mere availability of similar materials is not by itself sufficiently probative of community standards to be admissible in absence of proof that material enjoys a reasonable degree of community acceptance. Flynt v. State, 153 Ga. App. 232, 264 S.E.2d 669, 1980 Ga. App. LEXIS 1762, cert. denied, 449 U.S. 888, 101 S. Ct. 245, 66 L. Ed. 2d 114, 1980 U.S. LEXIS 3413 (1980).

Defendant must show reasonable degree of community acceptance. — Predicate for conclusion that disputed piece of material is acceptable under contemporary community standards, as shown by proffered other matter already in unquestioned circulation, must be that the two types of matter are similar, and as another part of defendants foundation defendant must show a reasonable degree of community acceptance of works like defendant's own. Flynt v. State, 153 Ga. App. 232, 264 S.E.2d 669, 1980 Ga. App. LEXIS 1762, cert. denied, 449 U.S. 888, 101 S. Ct. 245, 66 L. Ed. 2d 114, 1980 U.S. LEXIS 3413 (1980).

Sales figures may be used to satisfy community acceptance foundational requirement. Flynt v. State, 153 Ga. App. 232, 264 S.E.2d 669, 1980 Ga. App. LEXIS 1762, cert. denied, 449 U.S. 888, 101 S. Ct. 245, 66 L. Ed. 2d 114, 1980 U.S. LEXIS 3413 (1980).

Comparative evidence must be proffered as a whole to satisfy defendant's burden of demonstrating that comparable evidence is similar to defendant's challenged material. Flynt v. State, 153 Ga. App. 232, 264 S.E.2d 669, 1980 Ga. App. LEXIS 1762, cert. denied, 449 U.S. 888, 101 S. Ct. 245, 66 L. Ed. 2d 114, 1980 U.S. LEXIS 3413 (1980).

Injunctive Relief

Threat to property interest permits injunction against investigation and prosecution. — Motel owner's showing that the owner depended upon income from movie rentals in making the decision to purchase the motel and in sustaining the business established a sufficient threat to a property interest to permit an injunction of an investigation and any prosecution under the state obscenity statute. Majmundar v. Veline, 256 Ga. 8, 342 S.E.2d 682, 1986 Ga. LEXIS 682 (1986).

Exhibition of film falling within definition of former Code 1933, § 26-2101 (see now O.C.G.A. § 16-12-80) can be enjoined. S.S.W. Corp. v. Slaton, 231 Ga. 734, 204 S.E.2d 155, 1974 Ga. LEXIS 1208 (1974).

Exhibition of obscene materials may be enjoined in civil proceeding. — Former Code 1933, § 26-2101 (see now O.C.G.A. § 16-12-80) defined a criminal offense, but the exhibition of materials found to be obscene as defined by that section may be enjoined in a civil proceeding under Georgia case law. Paris Adult Theatre I v. Slaton, 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446, 1973 U.S. LEXIS 19 (1973).

Temporary injunction hearings to restrain film showings need not follow procedures of final hearings determining rights. — Mere temporary injunction hearings to determine whether a temporary injunction should be issued restraining showing of a film need not be surrounded with formalities of procedure that must attend hearings finally determining rights. Walter v. Slaton, 227 Ga. 676, 182 S.E.2d 464, 1971 Ga. LEXIS 815, cert. denied, 404 U.S. 1003, 92 S. Ct. 560, 30 L. Ed. 2d 557, 1971 U.S. LEXIS 212 (1971).

Interlocutory judicial determination of obscenity not equivalent of probable cause that material may be obscene. S.S.W. Corp. v. Slaton, 231 Ga. 734, 204 S.E.2d 155, 1974 Ga. LEXIS 1208 (1974).

Prompt determination of free speech issues. — Interlocutory judicial restraint with respect to a claim under

U.S. Const., amend. 1 should be followed as promptly as is practicable by final judicial determination of such constitutional issues. S.S.W. Corp. v. Slaton, 231 Ga. 734, 204 S.E.2d 155, 1974 Ga. LEXIS 1208 (1974).

Temporary injunctions should be limited. — When, after viewing film, superior court judge finds probable cause that film is obscene and enjoins defendant from exhibiting or showing film in public within jurisdiction of court, injunction feature of order should be limited so as to provide that it shall continue only "until further order of court." Walter v. Slaton, 227 Ga. 676, 182 S.E.2d 464, 1971 Ga. LEXIS 815, cert. denied, 404 U.S. 1003, 92 S. Ct. 560, 30 L. Ed. 2d 557, 1971 U.S. LEXIS 212 (1971).

Granting continuance on temporary injunction hearings is within judge's discretion. — Whether to grant continuance on hearing to determine whether temporary injunction should be issued restraining the showing of a film is within trial judge's sound legal discretion, and in absence of clear showing that the judge abused judicial discretion in this regard it will not be controlled. Walter v. Slaton, 227 Ga. 676, 182 S.E.2d 464, 1971 Ga. LEXIS 815, cert. denied, 404 U.S. 1003, 92 S. Ct. 560, 30 L. Ed. 2d 557, 1971 U.S. LEXIS 212 (1971).

Injunction impermissible to suppress distribution of literature on basis of previous publications. — Injunction is impermissible and unconstitutional when the injunction operates not to redress alleged private wrongs but to suppress, on basis of previous publications, distributions of literature of any kind. Sanders v. State, 231 Ga. 608, 203 S.E.2d 153, 1974 Ga. LEXIS 1160 (1974).

Application

1. In General

Particular issue of a self-styled "magazine for men" fell within O.C.G.A. § 16-12-80 in that: (1) it contained a large number of photographs of women in various degrees of nudity, depicting sexual conduct and lewd exhibition in a patently offensive way; (2) the magazine's overwhelming effect, obviously planned, was to create sexual excitement and stimulation, predominantly appealing, as a whole, to the prurient interest, even though there were items that concerned topics other than sex; and (3) the magazine, taken as a whole, had no serious literary, artistic, political, or scientific value, although there may have been some slight literary, artistic, and political value to a small number of items. Penthouse Int'l, Ltd. v. Webb, 594 F. Supp. 1186, 1984 U.S. Dist. LEXIS 23591 (N.D. Ga. 1984).

Evidence was sufficient to justify conviction of possession of obscene material with intent to disseminate where defendant offered to "take over" an adult bookstore after clerk was arrested for selling obscene magazine, and the defendant was employed by the store in a supervisory capacity. Kervin v. State, 172 Ga. App. 478, 323 S.E.2d 643, 1984 Ga. App. LEXIS 3065 (1984).

Exhibition of obscene film to consenting adults is a crime. Evans Theatre Corp. v. Slaton, 227 Ga. 377, 180 S.E.2d 712, 1971 Ga. LEXIS 710, cert. denied, 404 U.S. 950, 92 S. Ct. 281, 30 L. Ed. 2d 267, 1971 U.S. LEXIS 659 (1971).

Obscene, pornographic films not constitutionally immune from state regulation because exhibited for consenting adults only. Paris Adult Theatre I v. Slaton, 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446, 1973 U.S. LEXIS 19 (1973).

Juries do not have unbridled discretion in determining what is patently offensive. Jenkins v. Georgia, 418 U.S. 153, 94 S. Ct. 2750, 41 L. Ed. 2d 642, 1974 U.S. LEXIS 85 (1974).

An otherwise obscene film cannot be constitutionally salvaged by adding to it a vague moral which is superimposed on predominant theme of film which is an appeal to a prurient interest in sex. Dyke v. State, 232 Ga. 817, 209 S.E.2d 166, 1974 Ga. LEXIS 1098 (1974), cert. denied, 421 U.S. 952, 95 S. Ct. 1687, 44 L. Ed. 2d 106, 1975 U.S. LEXIS 1521 (1975).

Distinction between act involving exhibition of genitals that is lewd and one that is not. — See Penthouse Int'l, Ltd. v. McAuliffe, 610 F.2d 1353, 1980 U.S.

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

App. LEXIS 20758 (5th Cir.), cert. dismissed, 447 U.S. 931, 100 S. Ct. 3031, 65 L. Ed. 2d 1131, 1980 U.S. LEXIS 2411 (1980).

Devices prohibited under subsection (c) subject to seizure without warrant. — When sexually oriented materials offered for sale and seized were obviously for primary purpose of stimulation of human genital organs in violation of subsection (c) and the materials were in plain view to officers in a lawful position to view and see the materials, no warrant was necessary to make a lawful seizure. Ball v. State, 149 Ga. App. 270, 253 S.E.2d 886, 1979 Ga. App. LEXIS 1814 (1979).

Officer cannot make initial determination concerning obscenity of publication. — Ability to conduct warrantless arrest for offense committed in officer's presence contemplates officer's ability to determine that an offense has actually been committed; officer was incorrect in the officer's belief that the officer or the officer's agents may properly make initial determination concerning obscenity of a publication and that the officer may make a warrantless arrest if the officer determines that the subject matter of a publication is obscene. Penthouse Int'l, Ltd. v. McAuliffe, 610 F.2d 1353, 1980 U.S. App. LEXIS 20758 (5th Cir.), cert. dismissed, 447 U.S. 931, 100 S. Ct. 3031, 65 L. Ed. 2d 1131, 1980 U.S. LEXIS 2411 (1980).

Additional charge regarding "tendency to excite lustful thoughts." — In view of trial court's charge instructing jury that in order for the jury to find materials in question obscene the jury must first determine that magazines met criteria set forth in subsection (b), the court's additional instruction that material "which appeals to prurient interest is material which has a tendency to excite lustful thoughts," even if error, would not be harmful. Bohin v. State, 156 Ga. App. 206, 274 S.E.2d 592, 1980 Ga. App. LEXIS 3001 (1980).

When crime of distributing obscene materials is completed. — Crime of distributing obscene materials is completed when a person intentionally distributes any material classified as obscene, knowing the obscene nature of that material. Trotti v. State, 144 Ga. App. 648, 242 S.E.2d 270, 1978 Ga. App. LEXIS 1723, cert. denied, 439 U.S. 1051, 99 S. Ct. 733, 58 L. Ed. 2d 712, 1978 U.S. LEXIS 4282 (1978).

Defendant's knowledge is question for jury. — Whether or not the defendant has "knowledge of facts which would put a reasonable and prudent man on notice as to the suspect nature of the material" is a question generally for the jury. Day v. State, 190 Ga. App. 580, 379 S.E.2d 548, 1989 Ga. App. LEXIS 307, cert. vacated on other grounds, 259 Ga. 454, 385 S.E.2d 412, 1989 Ga. LEXIS 336 (1989).

Extent of knowledge necessary under former Code 1933, § 26-2101 (see now O.C.G.A. § 16-12-80) was knowledge of facts which would put a reasonable and prudent man on notice as to suspect nature of material. Hess v. State, 146 Ga. App. 874, 247 S.E.2d 546, 1978 Ga. App. LEXIS 2578 (1978).

Applicable test is not whether accused actually knew devices were obscene, but whether the accused has knowledge of facts which would put a reasonable and prudent man on notice as to suspect nature of the material. Underwood v. State, 144 Ga. App. 684, 242 S.E.2d 339, 1978 Ga. App. LEXIS 1748 (1978); Dorsey v. State, 188 Ga. App. 695, 374 S.E.2d 102, 1988 Ga. App. LEXIS 1178 (1988).

Charge on constructive knowledge not burden shifting where magazine cover makes contents obvious. — In trial of case involving distribution of obscene material, charge by court on constructive knowledge is not subject to complaint that the charge shifts burden of proof and relieves the state of proving every essential element of a crime in violation of U.S. Const., amends. 1, 14, since the front cover of the magazine would put anyone on notice as to the magazine's contents. Spry v. State, 156 Ga. App. 74, 274 S.E.2d 2, 1980 Ga. App. LEXIS 2884 (1980).

Evidence to warranting "Ginzburg pandering instruction." — Government need not offer extensive evidence of methods of production,

editorial goals, if any, or methods of operation in order for evidence to be sufficient to trigger the "Ginzburg pandering instruction." Whisenhunt v. State, 156 Ga. App. 583, 275 S.E.2d 82, 1980 Ga. App. LEXIS 3130 (1980).

Federal court will not interfere with pending state case by requiring release of contraband. — When allegedly obscene films and projectors are seized as evidence of a violation of former Code 1933, § 26-2101 (see now O.C.G.A. § 16-12-80), and case was pending in state courts, federal courts will not interfere with pending case by requiring release of contraband as an unconstitutional seizure. G & E Bus. Servs., Inc. v. McAuliffe, 480 F. Supp. 239, 1979 U.S. Dist. LEXIS 8418 (N.D. Ga. 1979).

Expert testimony where materials themselves are available for inspection. — It is no longer necessary in cases where alleged obscene materials themselves are available for inspection by finder of fact that expert testimony be produced on behalf of prosecution. Dumas v. State, 131 Ga. App. 79, 205 S.E.2d 119, 1974 Ga. App. LEXIS 1336 (1974).

2. Considerations in Determining Obscenity

Test for obscenity is whether or not to average person, applying contemporary community standards, dominant theme of material taken as a whole appeals to prurient interest. Feldschneider v. State, 127 Ga. App. 745, 195 S.E.2d 184, 1972 Ga. App. LEXIS 1012 (1972).

Three tests must be satisfied before written materials can be held to be obscene; these are: (1) that dominant theme of material taken as a whole appeals to prurient interest in sex; (2) that material is patently offensive because it affronts contemporary community standards relating to description or representations of sexual matters; and (3) that the material is utterly without redeeming social value. Feldschneider v. State, 127 Ga. App. 745, 195 S.E.2d 184, 1972 Ga. App. LEXIS 1012 (1972); Gornto v. McDougall, 336 F. Supp. 1372, 1972 U.S. Dist. LEXIS 15321 (S.D. Ga. 1972).

Obscene material is material which deals with sex in a manner appealing to prurient interest. Whisenhunt v. State, 156 Ga. App. 583, 275 S.E.2d 82, 1980 Ga. App. LEXIS 3130 (1980).

"Abnormal" interest in sex is more inclusive than "prurient" interest in sex. — In prosecution for distributing obscene materials, trial court's instruction equating prurient interest with abnormal interest in sex did not present appropriate standard for review of allegedly obscene materials, in that abnormal interest is more inclusive than prurient interest. Northcutt v. State, 157 Ga. App. 762, 278 S.E.2d 702, 1981 Ga. App. LEXIS 2007 (1981).

Material which appeals to prurient interest is material having a tendency to excite lustful thoughts. Whisenhunt v. State, 156 Ga. App. 583, 275 S.E.2d 82, 1980 Ga. App. LEXIS 3130 (1980). But see Bohin v. State, 156 Ga. App. 206, 274 S.E.2d 592, 1980 Ga. App. LEXIS 3001 (1980).

Publications to be viewed as a whole. — County district attorneys must consider magazines and other printed material as a whole. Penthouse Int'l, Ltd. v. McAuliffe, 454 F. Supp. 289, 1978 U.S. Dist. LEXIS 16732 (N.D. Ga. 1978).

In determining obscenity or nonobscenity of magazines, they must be taken as a whole. Flynt v. State, 153 Ga. App. 232, 264 S.E.2d 669, 1980 Ga. App. LEXIS 1762, cert. denied, 449 U.S. 888, 101 S. Ct. 245, 66 L. Ed. 2d 114, 1980 U.S. LEXIS 3413 (1980).

Nudity alone is not enough to make material legally obscene. Jenkins v. Georgia, 418 U.S. 153, 94 S. Ct. 2750, 41 L. Ed. 2d 642, 1974 U.S. LEXIS 85 (1974).

Depiction of nudity and sex is not per se obscene. Flynt v. State, 153 Ga. App. 232, 264 S.E.2d 669, 1980 Ga. App. LEXIS 1762, cert. denied, 449 U.S. 888, 101 S. Ct. 245, 66 L. Ed. 2d 114, 1980 U.S. LEXIS 3413 (1980).

When magazine depicted group sexual activity, "prurient interest" standard applied without any other evidence. — In prosecution for distributing obscene material, when the magazine depicted two women and a man engaging in sexual activity, the "prurient interest" standard did not have to be considered with regard to its appeal to a

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2. Considerations in Determining Obscenity (Cont'd)

"bizarre deviant group," and the jury could adequately apply the standard without any evidence designed to guide the jury in applying the standard. 134 Baker St., Inc. v. State, 172 Ga. App. 738, 324 S.E.2d 575, 1984 Ga. App. LEXIS 3087 (1984).

Jury may consider setting in which publication was presented to public, and view publications against a background of commercial exploitation of erotica solely for sake of their prurient appeal. Whisenhunt v. State, 156 Ga. App. 583, 275 S.E.2d 82, 1980 Ga. App. LEXIS 3130 (1980).

Instruction evaluating societal worth of work. — Trial court was not required to charge the jury as to the proper procedure for evaluating the societal value of a work beyond charging the language contained in O.C.G.A. § 16-12-80(b). Lee v. State, 214 Ga. App. 164, 447 S.E.2d 323, 1994 Ga. App. LEXIS 820 (1994), cert. denied, No. S94C1831, 1994 Ga. LEXIS 1177 (Ga. Dec. 2, 1994).

Methods of creation, promotion, or dissemination are relevant in determining whether materials are obscene. Whisenhunt v. State, 156 Ga. App. 583, 275 S.E.2d 82, 1980 Ga. App. LEXIS 3130 (1980).

Evidence of pandering to prurient interest in creation, promotion or dissemination of material is relevant in determining whether the material is obscene. Showcase Cinemas, Inc. v. State, 156 Ga. App. 225, 274 S.E.2d 578, 1980 Ga. App. LEXIS 3008 (1980), cert. dismissed, 451 U.S. 934, 101 S. Ct. 2037, 68 L. Ed. 2d 343, 1981 U.S. LEXIS 1817 (1981).

Jury can find material obscene if the jury finds the material was pandered, that is, the distribution was a "commercial exploitation of erotica solely for the sake of their prurient appeal". This phrase has come to be known as the "Ginzburg pandering instruction". Whisenhunt v. State, 156 Ga. App. 583, 275 S.E.2d 82, 1980 Ga. App. LEXIS 3130 (1980).

Method of commercial dissemination may warrant finding of obscenity. — In a close case where there is a valid argument of the existence of some slight social value of a literary, historical, artistic, or technical nature, a finding of obscenity will not be made even though the book is found to possess requisite prurient appeal and to be patently offensive unless there is also clear evidence that material has passed threshold of permitted exposure in that its commercial dissemination amounts to pandering, or it is made available to juveniles, or it becomes impossible for unwilling individual to avoid exposure. Fishman v. State, 128 Ga. App. 505, 197 S.E.2d 467, 1973 Ga. App. LEXIS 1532 (1973).

Expert testimony is not necessary to prove obscenity of sexual devices; nevertheless, the Court of Appeals has recognized the use of witnesses to testify that certain devices are designed primarily for stimulation of genital organs. Williams v. State, 157 Ga. App. 494, 277 S.E.2d 781, 1981 Ga. App. LEXIS 1880 (1981).

3. Determination of Number of Offenses Committed

Single sale of two obscene magazines as one offense. — Single sale of two obscene magazines made by one seller to one buyer in one transaction at same time and place is only one offense. Adult Bookmart, Inc. v. State, 152 Ga. App. 838, 264 S.E.2d 273, 1979 Ga. App. LEXIS 3100 (1979), cert. denied, 449 U.S. 886, 101 S. Ct. 240, 66 L. Ed. 2d 111, 1980 U.S. LEXIS 3396 (1980).

Each showing of obscene film constitutes a separate offense. — Double jeopardy rights are not denied when defendant is convicted of multiple offenses for numerous showings of an obscene film. A separate offense occurs each time the obscene film is shown. Dyke v. State, 232 Ga. 817, 209 S.E.2d 166, 1974 Ga. LEXIS 1098 (1974), cert. denied, 421

U.S. 952, 95 S. Ct. 1687, 44 L. Ed. 2d 106, 1975 U.S. LEXIS 1521 (1975).

Each showing of each film in coin-operated booths constitutes separate violation. — When allegedly obscene films seized by investigators were shown either in separate booths or two films to a booth, the booths were coin-operated and required that a number of coins be deposited before full length of a particular film could be viewed, each showing of each film constituted a separate and distinct violation. G & E Bus. Servs., Inc. v. State, 156 Ga. App. 391, 274 S.E.2d 644, 1980 Ga. App. LEXIS 2994 (1980).

Single, uninterrupted, continuous showing of multiple films as part of single exhibition constitutes one offense. Maxwell v. State, 152 Ga. App. 776, 264 S.E.2d 254, 1979 Ga. App. LEXIS 3082 (1979), cert. denied, 449 U.S. 889, 101 S. Ct. 245, 66 L. Ed. 2d 114, 1980 U.S. LEXIS 3417 (1980); G & E Bus. Servs., Inc. v. State, 156 Ga. App. 391, 274 S.E.2d 644, 1980 Ga. App. LEXIS 2994 (1980).

Continuing sales on intermittent basis constitute single scheme. — When purpose and intent of entire operation is the continuing sale of pornographic material, whether sales are made on a minute-by-minute basis, a day-by-day basis, or on an intermittent basis, this type of operation is similar to a "fence" who deals in trafficking of stolen goods. Such receiver and seller of stolen goods deals with whomever and wherever the opportunity presents itself, on an intermittent basis, to carry out a singular purpose and plan. These continuing sales, on an intermittent basis, constitute a single scheme or plan for purpose of single prosecution. Whisenhunt v. State, 156 Ga. App. 583, 275 S.E.2d 82, 1980 Ga. App. LEXIS 3130 (1980).

Sales of two magazines at different times on same date to same buyer constitutes two offenses. Stancil v. State, 155 Ga. App. 731, 272 S.E.2d 511, 1980 Ga. App. LEXIS 2765 (1980), cert. denied, 451 U.S. 975, 101 S. Ct. 2058, 68 L. Ed. 2d 357, 1981 U.S. LEXIS 2004 (1981).

RESEARCH REFERENCES

Am. Jur. 2d.

50 Am. Jur. 2d, Lewdness, Indecency, and Obscenity, §§ 4 et seq., 33.

C.J.S.

67 C.J.S., Obscenity, § 1 et seq.

ALR.

Exclusion from evidence of parts of a publication, or mail matter, other than those charged to be obscene, or oral testimony relating to purpose or effect of publication as a whole, 69 A.L.R. 644.

Constitutional guaranties of freedom of speech and of the press as applied to statutes and ordinances providing for licensing or otherwise regulating distribution of printed matter or solicitation of subscriptions therefor, 127 A.L.R. 962.

Modern concept of obscenity, 5 A.L.R.3d 1158.

Admissibility of evidence of public-opinion polls or surveys in obscenity prosecutions on issue whether materials in question are obscene, 59 A.L.R.5th 749.

Constitutionality of state statutes banning distribution of sexual devices, 94 A.L.R.5th 497.

16-12-81. Distribution of material depicting nudity or sexual conduct; penalty.

(a) A person commits the offense of distributing material depicting nudity or sexual conduct when he sends unsolicited through the mail or otherwise unsolicited causes to be delivered material depicting nudity or sexual conduct to any person or residence or office unless there is

imprinted upon the envelope or container of such material in not less than eight-point boldface type the following notice:

"Notice — The material contained herein depicts nudity or sexual conduct. If the viewing of such material could be offensive to the addressee, this container should not be opened but returned to the sender."

(b) As used within this Code section, the term:

(1) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering or the depiction of covered male genitals in a discernibly turgid state.

(2) "Sexual conduct" means acts of masturbation, homosexuality, sodomy, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breast.

(c) A person who commits the offense of distributing material depicting nudity or sexual conduct, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than three years or by a fine not to exceed $10,000.00, or both.

History.

Code 1933, § 26-2102, enacted by Ga. L. 1970, p. 173, § 1.

Cross references.

Constitutional guarantee of free speech and press, U.S. Const., amend. 1, Ga. Const. 1983, Art. I, Sec. I, Para. V.

Law reviews.

For comment on a nuisance abatement statute applied to authorize prior restraint on exhibition of unnamed films, in the future as violative of the federal Constitution in Universal Amusement Co. v. Vance, 587 F.2d 159 (5th Cir. 1978), probable jurisdiction noted, 442 U.S. 928, 99 S. Ct. 2857, 61 L. Ed. 2d 295 (1979), aff'd, 445 U.S. 308, 100 S. Ct. 1156, 63 L. Ed. 2d 413 (1980), see 13 Ga. L. Rev. 1076 (1979).

JUDICIAL DECISIONS

Act alleged not prohibited. — Trial court erred in denying defendant's general demurrer, because the act alleged in the indictment, the sending of a nude image of defendant's genitals from his cell phone to the victim's cell phone, was not prohibited by O.C.G.A. § 16-12-81, which was limited to tangible material that had a tangible envelope or container. Warren v. State, 294 Ga. 589, 755 S.E.2d 171, 2014 Ga. LEXIS 127 (2014).

RESEARCH REFERENCES

Am. Jur. 2d.

50 Am. Jur. 2d, Lewdness, Indecency and Obscenity, §§ 11 et seq., 16 et seq.

ALR.

Exclusion from evidence of parts of a publication, or mail matter, other than those charged to be obscene, or oral testimony relating to purpose or effect of publication as a whole, 69 A.L.R. 644.

What amounts to an obscene play or book within prohibition statute, 81 A.L.R. 801.

Constitutional guaranties of freedom of speech and of the press as applied to

statutes and ordinances providing for licensing or otherwise regulating distribution of printed matter or solicitation of subscriptions therefor, 127 A.L.R. 962.

Modern concept of obscenity, 5 A.L.R.3d 1158.

Constitutionality of state statutes banning distribution of sexual devices, 94 A.L.R.5th 497.

16-12-82. Public nuisances.

The use of any premises in violation of any of the provisions of this part shall constitute a public nuisance.

History.

Code 1933, § 26-2103, enacted by Ga. L. 1971, p. 344, § 2.

Cross references.

Definition of public nuisance, § 41-1-2.

Procedure for abatement of houses of prostitution, buildings used for purposes of lewdness, solicitation of sodomy, § 41-3-1 et seq.

JUDICIAL DECISIONS

Expression outside defined area is constitutionally protected expression. — Any statute or ordinance which seeks to impose criminal or civil sanctions for exercise of expression that is not obscene cannot withstand a proper constitutional attack for overbreadth. Sanders v. State, 231 Ga. 608, 203 S.E.2d 153, 1974 Ga. LEXIS 1160 (1974).

Suppressing distribution of literature on basis of previous publications. — An injunction is impermissible and unconstitutional where it operates not to redress alleged private wrongs but to suppress, on the basis of previous publications, distributions of literature of any kind. Sanders v. State, 231 Ga. 608, 203 S.E.2d 153, 1974 Ga. LEXIS 1160 (1974).

One obscene book on premises of bookstore does not make entire store obscene. Sanders v. State, 231 Ga. 608, 203 S.E.2d 153, 1974 Ga. LEXIS 1160 (1974).

Padlocking premises based on sale of single obscene publication constitutes prior restraint. — Former Code 1933, § 26-2103 (see now O.C.G.A. § 16-12-82) was an unconstitutional prior restraint when construed and applied to authorize padlocking of premises on grounds that sale of single obscene publication rendered premises a nuisance. 660 Lindbergh, Inc. v. City of Atlanta, 492 F. Supp. 511, 1980 U.S. Dist. LEXIS 12297 (N.D. Ga. 1980).

Closing portion of business after finding violations of this article not prior restraint. — Court's ordering closure of portion of business under nuisance statute after finding instances of lewdness, public indecency, solicitation of sodomy, and sodomy, does not constitute a prior restraint on plaintiffs' rights under U.S. Const., amend. 1. 660 Lindbergh, Inc. v. City of Atlanta, 492 F. Supp. 511, 1980 U.S. Dist. LEXIS 12297 (N.D. Ga. 1980).

RESEARCH REFERENCES

ALR.

Modern concept of obscenity, 5 A.L.R.3d 1158.

Exhibition of obscene motion pictures as nuisance, 50 A.L.R.3d 969.

Pornoshops or similar places disseminating obscene materials as nuisance, 58 A.L.R.3d 1134.

Validity and application of statute authorizing forfeiture of use or closure of

real property from which obscene materials have been disseminated or exhibited, 25 A.L.R.4th 395.

Admissibility of evidence of public-opinion polls or surveys in obscenity prosecutions on issue whether materials in question are obscene, 59 A.L.R.5th 749.

16-12-83. Contraband.

Any materials declared to be obscene by this part and advertisements for such materials are declared to be contraband.

History.
Code 1933, § 26-2104, enacted by Ga. L. 1971, p. 344, § 3.

JUDICIAL DECISIONS

Obscene materials are not contraband per se since mere possession of obscene materials is not illegal. Warshaw v. Eastman Kodak Co., 148 Ga. App. 670, 252 S.E.2d 182, 1979 Ga. App. LEXIS 1602 (1979).

Materials become contraband when they are declared obscene by a fact finder or through a pre-seizure adversary hearing. Lee v. City of Rome, 866 F. Supp. 545, 1994 U.S. Dist. LEXIS 15053 (N.D. Ga. 1994).

Forfeiture of nonobscene materials improper. — Trial court erred in ordering forfeiture of five videocassette recorders used to copy pornographic videotapes because the videotapes are not inherently illegal. The General Assembly did not include in the contraband statute any other properties which might be seized or used as evidence in the prosecution of a charge of distributing obscene materials. This express provision indicates by silence that no others were intended to be swept into the net. Seaman v. State, 196 Ga. App. 634, 396 S.E.2d 525, 1990 Ga. App. LEXIS 996 (1990).

Proof necessary for return of seized material. — Defendant in trover action for return of allegedly obscene material must show it was contraband. Warshaw v. Eastman Kodak Co., 148 Ga. App. 670, 252 S.E.2d 182, 1979 Ga. App. LEXIS 1602 (1979).

RESEARCH REFERENCES

ALR.

Constitutional guaranties of freedom of speech and of the press as applied to statutes and ordinances providing for licensing or otherwise regulating distribution of printed matter or solicitation of subscriptions therefor, 127 A.L.R. 962.

Modern concept of obscenity, 5 A.L.R.3d 1158.

16-12-84. [Reserved] Public indecency in plays, nightclub acts, and motion pictures.

History.
Code 1933, § 26-2105, enacted by Ga. L. 1971, p. 344, § 4; repealed by Ga. L. 1981, p. 915, § 1, effective April 9, 1981.

Editor's notes.
Ga. L. 2013, p. 141, § 16/HB 79, reserved the designation of this Code section, effective April 24, 2013.

16-12-85. Display of restricted film previews to general audiences.

(a) It shall be unlawful for any motion picture theater owner, operator, or projectionist to display to the audience within the theater scenes from a film to be shown at the theater at some future time when the viewing of that film from which the scenes are taken is restricted to adults or requires minors to be accompanied by a parent or guardian. Scenes of such restricted films may be shown within a theater if the audience has been similarly restricted as to viewing age and conditions.

(b) This Code section shall not apply to motion pictures which are not rated as to viewing audience nor to the first display of a preview trailer from any motion picture.

(c) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1973, p. 508, §§ 1-3; Ga. L. 1983, p. 3, § 13.

Part 2

Offenses Related to Minors Generally

16-12-100. Sexual exploitation of children; reporting violation; civil forfeiture; penalties.

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

(1) "Minor" means any person under the age of 18 years.

(2) "Performance" means any play, dance, or exhibit to be shown to or viewed by an audience.

(3) "Producing" means producing, directing, manufacturing, issuing, or publishing.

(4) "Sexually explicit conduct" means actual or simulated:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

(H) Defecation or urination for the purpose of sexual stimulation of the viewer; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

(5) "Visual medium" means any film, photograph, negative, slide, magazine, or other visual medium.

(b)(1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of any performance.

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute a visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange a medium which provides information as to where any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct can be found or purchased.

(7) It is unlawful for any person knowingly to bring or cause to be brought into this state a material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(8) It is unlawful for any person knowingly to possess or control a material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(b.1) For any violation of paragraph (5), (6), (7), or (8) of subsection (b) of this Code section involving multiple visual mediums, mediums, or materials, each visual medium, medium, or material connected to such violation shall constitute a separate offense.

(b.2) It shall not constitute a defense in a prosecution for a violation of this Code section that prior to or during the accused's creation, reproduction, publishing, promotion, selling, distributing, giving, exhibiting, possessing with the intent to sell or distribute, bringing or causing to be brought into this state, or possession or control of such visual medium that such visual medium was created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

(c) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the Georgia Bureau of Investigation or the law enforcement agency for the county in which such matter is submitted. Any person participating in the making of a report or causing a report to be made pursuant to this subsection or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, providing such participation pursuant to this subsection is made in good faith.

(d) The provisions of subsection (b) of this Code section shall not apply to:

(1) The activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses;

(2) Legitimate medical, scientific, or educational activities; or

(3) Any person who creates or possesses a visual medium depicting only himself or herself engaged in sexually explicit conduct.

(e)(1) As used in this subsection, the terms "proceeds" and "property" shall have the same meaning as set forth in Code Section 9-16-2.

(2) Any property which is, directly or indirectly, used or intended to be used 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.

(f)(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years and by a fine of not more than $100,000.00; provided, however, that, if the person so convicted is a member of the immediate family of the victim, no fine shall be imposed. Any person punished as provided in this paragraph shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(2) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

(3) Any person who violates paragraph (1), (5), (7), or (8) of subsection (b) of this Code section shall be guilty of a misdemeanor if:

(A) The minor depicted was at least 14 years of age at the time the visual medium was created;

(B) The visual medium was created with the permission of the minor depicted; and

(C) The defendant was 18 years of age or younger at the time of the offense and:

(i) The defendant's violation of such paragraphs did not involve the distribution of such visual medium to another person; or

(ii) In the court's discretion, and when the prosecuting attorney and the defendant have agreed, if the defendant's violation of such paragraphs involved the distribution of such visual medium to another person but such distribution was not for the purpose of:

(I) Harassing, intimidating, or embarrassing the minor depicted; or

(II) For any commercial purpose.

(g)(1) As used in this subsection, the term "sexual felony" shall have the same meaning as set forth in Code Section 16-5-21.

(2) Any person having been previously convicted of a sexual felony who is convicted of the felony offense of sexual exploitation of children 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. 1978, p. 2193, § 1; Ga. L. 1983, p. 1437, § 1; Ga. L. 1987, p. 1164, § 1; Ga. L. 1988, p. 11, §§ 1, 2; Ga. L. 1991, p. 886, § 3; Ga. L. 1995, p. 957, § 6; Ga. L. 1996, p. 6, § 16; Ga. L. 2003, p. 573, § 2; Ga. L. 2013, p. 663, § 1/HB 156; Ga. L. 2015, p. 693, § 2-15/HB 233; Ga. L. 2017, p. 489, § 4/HB 341; Ga. L. 2022, p. 104, § 2/HB 1188; Ga. L. 2023, p. 637, § 3-13/HB 188, effective May 4, 2023; Ga. L. 2024, p. 424, § 1/HB 993, effective July 1, 2024; Ga. L. 2024, p. 1052, § 3(1)/SB 448, effective July 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, substituted "a visual" for "any visual" in paragraph (b)(5), "a medium" for "any medium" in paragraph (b)(6), "a material" for "any material" in paragraphs (b)(7) and (b)(8), and added subsection (b.1).

The 2023 amendment, effective May 4, 2023, added subsection (g). See Editor's notes for applicability.

The first 2024 amendment, effective July 1, 2024, added subsection (b.2).

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (f)(1).

Cross references.

Selling, apprenticing persons under age 12 for indecent, obscene, or immoral exhibition, practice, or purpose, § 39-2-17.

Employment of minors as actors, or performers in motion pictures, theatrical productions, generally, § 39-2-18.

Editor's notes.

Ga. L. 1991, p. 886, § 4, not codified by the General Assembly, provides: "(a) The repeal, or repeal and reenactment, of the provisions of Code Section 16-13-49 by this Act shall not abate any cause of action which arose at any previous time under the provisions of said Code section prior to the effective date of this Act. Furthermore, no action for forfeiture shall be abated as a result of the provisions of this Act, and any and every such action or cause of action shall continue, subject only to the applicable statute of limitations.

"(b) No property shall be subject to forfeiture pursuant to this Act where the act or omission which makes such property subject to forfeiture occurred prior to the effective date of this Act unless such property was subject to forfeiture under the laws of this state at the time such act or omission occurred."

Ga. L. 1995, p. 957, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Child Protection Act of 1995' ."

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

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 this Act shall apply to all offenses committed on and after July 1, 2023."

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Georgia St. U. L. Rev. 84 (2003).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

For comment, "Mandatory Child Abuse Reporting Laws in Georgia: Strengthening Protection for Georgia's Children," see 31 Georgia St. U.L. Rev. 643 (2015).

For article, "Inconsistencies in Georgia's Sex-Crime Statutes Teach Teens that Sexting is Worse than Sex," see 67 Mercer L. Rev. 405 (2016).

For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017).

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

JUDICIAL DECISIONS

Analysis

General Considerations
Application
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General Considerations

Constitutionality. — Term "depict a minor" being construed narrowly, O.C.G.A. § 16-12-100 is not unconstitutional. Aman v. State, 261 Ga. 669, 409 S.E.2d 645, 1991 Ga. LEXIS 831 (1991).

Enactment of a state statute affecting an area of the law that is not addressed by the federal statute concerning child pornography law (18 U.S.C. § 2251) does not violate the Supremacy Clause of the United States Constitution. Aman v. State, 261 Ga. 669, 409 S.E.2d 645, 1991 Ga. LEXIS 831 (1991).

For purposes of equal protection analysis, defendant was not similarly situated to defendants who were charged with other crimes against children and was not subject to disparate treatment because O.C.G.A. § 16-12-100 criminalizes conduct involving all children under the age of 18 years, whereas other crimes against children specify a lower age threshold, and in certain instances, implicate only unmarried victims. Reed v. State, 264 Ga. 466, 448 S.E.2d 189, 1994 Ga. LEXIS 770 (1994).

Because the defendant never requested access to the materials seized from the defendant's home for the purpose of preparing for trial, wherein the defendant was charged with sexual exploitation of children, in violation of O.C.G.A. § 16-12-100(b)(8), the defendant lacked standing to assert that O.C.G.A. § 16-12-100(d) was unconstitutional due to the exemptions allowed therein; the defendant was unable to show that the statute adversely impacted the defendant's rights. Tennille v. State, 279 Ga. 884, 622 S.E.2d 346, 2005 Ga. LEXIS 848 (2005).

Despite being time-barred, the defendant's constitutional challenge to O.C.G.A. § 16-12-100(d) lacked merit as the photographs at issue were made available by the state for inspection, the defense was offered a mirror image of defendant's hard drive, and counsel never requested a copy of defendant's digital camera card. Daly v. State, 285 Ga. App. 808, 648 S.E.2d 90, 2007 Ga. App. LEXIS 602 (2007), cert. denied, No. S07C1603, 2007 Ga. LEXIS 659 (Ga. Sept. 10, 2007), cert. denied, 553 U.S. 1039, 128 S. Ct. 2441, 171 L. Ed. 2d 241, 2008 U.S. LEXIS 3945 (2008).

"Depict a minor" construed. — Statutory term "depict a minor" must be understood as limited to any photographic representation that was made of a human being who at that time was a minor and was "engaged in any sexually explicit conduct," as defined by O.C.G.A. § 16-12-100. Aman v. State, 261 Ga. 669, 409 S.E.2d 645, 1991 Ga. LEXIS 831 (1991).

Terms genitals and pubic area in O.C.G.A. § 16-12-100(a)(4)(D), as to exploitation of children, do not include buttocks or breasts. Weyer v. State, 333 Ga. App. 706, 776 S.E.2d 304, 2015 Ga. App. LEXIS 504 (2015).

"Visual medium" construed. — Motion to quash charge of sexual exploitation of children was error as "visual medium," as used in O.C.G.A. § 16-12-100, encompassed digital images of child pornography sent via computer and was thus prohibited conduct. State v. Brown, 250 Ga. App. 376, 551 S.E.2d 773, 2001 Ga. App. LEXIS 767 (2001).

Conviction on each and every image possessed permitted. — Plain language of O.C.G.A. § 16-12-100(b)(8), when read in the statute's entirety, allowed for a charge and conviction on each and every image the defendant possessed. State v. Williams, 347 Ga. App.

183, 818 S.E.2d 256, 2018 Ga. App. LEXIS 480 (2018), aff'd, 307 Ga. 778, 838 S.E.2d 235, 2020 Ga. LEXIS 50 (2020).

Simultaneous possession of multiple items of visual media. — Georgia Supreme Court concludes that O.C.G.A. § 16-12-100(b) was unambiguous and permitted only one prosecution and conviction for the simultaneous possession of multiple items of visual media. The offense was the possession of any prohibited "visual medium" at all, whether one or 100. Edvalson v. State, 310 Ga. 7, 849 S.E.2d 204, 2020 Ga. LEXIS 672 (2020).

Venue. — Evidence was sufficient to prove venue was proper in Coweta County for purposes of the sexual exploitation charge because the defendant possessed the image of the victim's genitals in Coweta County as the defendant lived in Coweta County during the time the image was on the defendant's cellular phone. Boyd v. State, 351 Ga. App. 469, 829 S.E.2d 163, 2019 Ga. App. LEXIS 265 (2019).

Requirements for immunity. — To be entitled to immunity under O.C.G.A. § 16-12-100(d), two requirements must be satisfied. First, the person asserting immunity must be a member of a law enforcement or prosecution agency. Second, the otherwise illegal conduct must have occurred when that person was acting in their official capacity to investigate and/or prosecute a violation of O.C.G.A. § 16-12-100. Maddox v. State, 346 Ga. App. 674, 816 S.E.2d 796, 2018 Ga. App. LEXIS 427 (2018).

Application

Probable cause. — Deputy sheriff was entitled to qualified immunity on the arrestee's 42 U.S.C. § 1983 Fourth Amendment claim because the deputy sheriff had at least arguable probable cause to arrest the arrestee because the deputy sheriff applied for an arrest warrant for sexual exploitation of children, O.C.G.A. § 16-12-100; when the totality of the circumstances was viewed objectively, a reasonable officer in the deputy sheriff's position could have believed that the deputy had probable cause to arrest the arrestee based on: (1) the investigations conducted by both the school technology specialists and the sheriff's office specialist; (2) the images found on the computers used by the arrestee; (3) an interview with the school technology staff; and (4) the doctor's statement that some of the individuals depicted in the images appeared to be under the age of eighteen years. Rockel v. Watkins, 673 F. Supp. 2d 1356, 2009 U.S. Dist. LEXIS 109692 (M.D. Ga. 2009).

Trial court did not err in denying the defendant's motion to suppress evidence seized from a search warrant authorizing entry into the defendant's home because the affidavit submitted in support of the warrant provided a sufficient basis for the magistrate to make a practical, commonsense decision that there was a fair probability that evidence of sexual exploitation of children would be found at the defendant's residence; the National Center for Missing and Exploited Children forwarded the information it received from a security specialist employed by the host of the website to the Georgia Bureau of Investigation (GBI), and the affidavit of a special agent with the GBI set forth facts that showed both the reliability and basis of knowledge of the specialist. James v. State, 312 Ga. App. 130, 717 S.E.2d 713, 2011 Ga. App. LEXIS 904 (2011), cert. denied, No. S12C0347, 2012 Ga. LEXIS 227 (Ga. Feb. 27, 2012).

No fatal variance in indictment. — There was no fatal variance between the indictment and the evidence based on the fact that the indictment alleged that the defendant knowingly possessed a photograph depicting a minor engaged in sexually explicit contact while the evidence showed it was a digital image as the indictment sufficiently apprised the defendant of the charge. Moon v. State, 335 Ga. App. 642, 782 S.E.2d 699, 2016 Ga. App. LEXIS 53 (2016), cert. denied, No. S16C0951, 2016 Ga. LEXIS 478 (Ga. Sept. 6, 2016).

Offenses did not merge. — Trial court properly refused to merge a defendant's convictions as the offenses of aggravated child molestation and sexual exploitation of children were separate legal offenses and did not merge as a matter of law; the offenses did not merge as a matter of fact

Application (Cont'd)

as: (1) the defendant was charged with five separate acts of aggravated child molestation, each of which was based on different facts; (2) the 35 convictions of sexual exploitation of children were based on the distinct actions of the defendant creating 32 separate sexually explicit photographic or video images and distributing three other sexually explicit images over the Internet; and (3) the defendant's creation of sexually explicit images of several of the sex acts that constituted the basis for the aggravated child molestation charges were separate actions warranting a separate charge and conviction as the offenses of aggravated child molestation were completed separately and independently of the defendant photographing or videotaping the acts. Walthall v. State, 281 Ga. App. 434, 636 S.E.2d 126, 2006 Ga. App. LEXIS 1121 (2006).

Offenses should have merged. — Trial court erred in failing to merge the defendant's convictions for possession with intent to distribute images depicting a minor engaged in sexually explicit conduct into a single count, and the court of appeals erred in affirming that decision, because "any" in the phrase "any visual medium" had to be interpreted as a quantitative term, implying no specific quantity and having no limit; and the offense was the possession of any prohibited "visual medium" at all, whether one or 100; accordingly, the supreme court concluded that O.C.G.A. § 16-12-100(b)(5) was unambiguous and permitted only one prosecution and conviction for the simultaneous possession of multiple items of "visual media". Edvalson v. State, 310 Ga. 7, 849 S.E.2d 204, 2020 Ga. LEXIS 672 (2020).

No expectation of privacy in subscriber information voluntarily conveyed to Internet provider. — Trial court properly denied the defendant's motion to suppress identifying Internet subscriber information obtained by police pursuant to an administrative subpoena issued under O.C.G.A. § 16-9-108(a) because the defendant lacked standing to challenge the search of the defendant's Internet provider (IP) for identifying information since O.C.G.A. § 16-9-109(b) did not grant a defendant a reasonable expectation of privacy in subscriber information voluntarily conveyed to the IP. Courtney v. State, 340 Ga. App. 496, 797 S.E.2d 496, 2017 Ga. App. LEXIS 56 (2017), cert. denied, No. S17C1315, 2017 Ga. LEXIS 649 (Ga. Aug. 14, 2017).

Suppression of computer evidence not warranted. — Warrantless seizure of two computers in a defendant's home was authorized by exigent circumstances, specifically, the objectively reasonable concern that the defendant threatened to destroy computer images of child pornography, images that were vulnerable to quick destruction, irreplaceable, and essential to proving that a crime had been committed. Hesrick v. State, 308 Ga. App. 363, 707 S.E.2d 574, 2011 Ga. App. LEXIS 189 (2011).

Trial court did not err finding defendant consented to search of bag and all contents, including digital information contained on laptop, and that consent was never withdrawn as record showed defendant knew that sergeant was searching for photographs of children and defendant gave permission to check bag, which contained laptop. Winslow v. State, 315 Ga. 133, 880 S.E.2d 530, 2022 Ga. LEXIS 297 (2022).

Certain surreptitious photos not within statute. — Surreptitious photos of the genitals of clothed children, visible due to the angle of the camera and the children's open legs, was not within the precise language of O.C.G.A. § 16-12-100(b)(5). Craft v. State, 252 Ga. App. 834, 558 S.E.2d 18, 2001 Ga. App. LEXIS 1432 (2001), cert. denied, No. S02C0654, 2002 Ga. LEXIS 418 (Ga. May 13, 2002), cert. denied, 537 U.S. 1025, 123 S. Ct. 537, 154 L. Ed. 2d 437, 2002 U.S. LEXIS 8433 (2002).

Admission of photographs showing the victims naked in a bath tub was upheld since the photographs were relevant to show that defendant's interest in the victims was sexual in nature. Phillips v. State, 269 Ga. App. 619, 604 S.E.2d 520, 2004 Ga. App. LEXIS 844 (2004).

USB drive with digital photos sufficient for conviction. — Evidence was sufficient to convict the defendant of

five counts of sexual exploitation of children beyond a reasonable doubt because the evidence was more than sufficient to exclude every reasonable hypothesis that someone other than the defendant possessed a USB drive when the defendant stayed at a hotel since a forensic computer specialist testified that the date and time imprinted on a photograph taken from a digital camera was recorded from the digital camera's date and time feature; given the specialist's testimony, coupled with the fact that the defendant possessed several computers, a digital camera, and another USB drive in the defendant's home in Arkansas, a rational trier of fact could find that the defendant took defendant's own photograph from the defendant's home in Arkansas with the defendant's digital camera, saved those photographs to the USB drive, took the USB drive with the defendant to Georgia, where the defendant stayed at the hotel, and inadvertently left the USB drive on the fifth floor of the hotel, and the jury could also conclude that the defendant knowingly possessed material depicting minors engaged in sexually explicit conduct in light of evidence that sexually explicit images of children were saved to the USB drive within seconds of the time two photographs of the defendant were saved to such drive. Hunt v. State, 303 Ga. App. 855, 695 S.E.2d 53, 2010 Ga. App. LEXIS 345 (2010), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Admission of a videotape of defendant masturbating and sexually explicit magazines was upheld because they showed defendant's lustful disposition toward the unlawful sexual activity with which defendant was charged. Phillips v. State, 269 Ga. App. 619, 604 S.E.2d 520, 2004 Ga. App. LEXIS 844 (2004).

Trial court did not err in allowing the jury to view videos of child pornography that were allegedly downloaded by the defendant because the videos presented were clearly directly relevant to the specific offenses of sexual exploitation charged and the trial court limited the videos' prejudicial impact by significantly restricting the state's use of the videos that were themselves the subject of the charges against the defendant. Beaver v. State, 330 Ga. App. 496, 767 S.E.2d 503, 2014 Ga. App. LEXIS 839 (2014).

Admission of DVDs. — Defendant's conviction for sexual exploitation of children in violation of O.C.G.A. § 16-12-100(b)(8) was affirmed because the jury viewed DVDs of the movie files found on the defendant's computer and in the defendant's home, which depicted small children, who were "clearly prepubescent" and was authorized to conclude that the children were under the age of 18. Henderson v. State, 320 Ga. App. 553, 740 S.E.2d 280, 2013 Ga. App. LEXIS 234 (2013).

Attempted sexual exploitation. — Indictment charging defendant with attempted sexual exploitation of children properly alleged that defendant took a substantial step toward the commission of the crime by making arrangements to meet the victim for the purpose of violating the statute and by proceeding to the meeting place. Dennard v. State, 243 Ga. App. 868, 534 S.E.2d 182, 2000 Ga. App. LEXIS 547 (2000), cert. denied, No. S00C1515, 2000 Ga. LEXIS 839 (Ga. Oct. 27, 2000).

Trial court did not err in concluding that the victim, who subsequently married the defendant, could be compelled to testify against the defendant with regard to the charge of sexual exploitation of children because that charge qualified as a crime against the person of a minor based upon the public policy expressed in former O.C.G.A. § 24-9-23(b) (see now O.C.G.A. § 24-5-503), the particular pictures involved in the case, and the specific subsection with which the defendant was charged, O.C.G.A. § 16-12-100(b)(8); the pictures in the defendant's possession showed the victim personally engaged in sexually explicit conduct. Peck v. State, 300 Ga. App. 375, 685 S.E.2d 367, 2009 Ga. App. LEXIS 1171 (2009).

Evidence sufficient to support conviction. — Defendants' convictions of sexual exploitation of children were supported by evidence that they had taken turns photographing each other as

Application (Cont'd)

they engaged in sexual intercourse with the victim, who was under 18 years of age at the time, and it was not necessary for the state either to produce the photographs in question or otherwise to prove that the camera had been working properly. Moua v. State, 200 Ga. App. 49, 406 S.E.2d 557, 1991 Ga. App. LEXIS 745 (1991).

Defendant was properly convicted of four counts of sexual exploitation of children where there was evidence that defendant's minor daughter had shaved her pubic area and the position of her body in photographs presented a question for jury determination as to whether the photographs depicted a lewd exhibition of the minor's pubic area. These facts constituted adequate evidence to present for jury determination whether defendant's exhibition of photographs was accomplished with intent to sell. Unden v. State, 218 Ga. App. 463, 462 S.E.2d 408, 1995 Ga. App. LEXIS 758 (1995), cert. denied, No. S96C0090, 1996 Ga. LEXIS 192 (Ga. Jan. 5, 1996).

Evidence that the minor did not drive a motor vehicle in defendant's presence, and that defendant was aware of the girlish handwriting and phraseology displayed on a greeting card she sent to him and of her appearance and demeanor was sufficient to prove that defendant knew the minor was under 18 years of age. Phagan v. State, 268 Ga. 272, 486 S.E.2d 876.

Evidence was sufficient to convict the defendant on two counts of sexual exploitation of children for having taken nude photographs of defendant's two sons. Loveless v. State, 245 Ga. App. 555, 538 S.E.2d 464, 2000 Ga. App. LEXIS 1008 (2000).

Evidence sufficiently supported defendant's conviction for 12 counts of sexual exploitation of children, in violation of O.C.G.A. § 16-12-100(b)(8), because a consent search led to discovery of home-produced photographs of nude young females on defendant's computer; whether evidence of equal access was sufficient to rebut an inference of possession was a matter for the trier of fact. Tennille v. State, 279 Ga. 884, 622 S.E.2d 346, 2005 Ga. LEXIS 848 (2005).

Defendant's convictions for aggravated child molestation and sexual exploitation of children were supported by the evidence based on the testimony of two minor victims that the victims engaged in numerous acts of oral and anal sex with the defendant, their identification of themselves in numerous photographs and several videos taken from the defendant's computer files, which depicted the victims engaging in sexually explicit conduct, and the sexually explicit photographs and video recordings. Walthall v. State, 281 Ga. App. 434, 636 S.E.2d 126, 2006 Ga. App. LEXIS 1121 (2006).

Evidence was sufficient to convict a defendant of sexually exploiting children (O.C.G.A. § 16-12-100(b)(8)) as pictures of the defendant and minors engaged in sexually explicit conduct were on a compact disk found in a vehicle in which the defendant had been riding, and some of the same pornographic images were on a computer disk found in the defendant's home. Thus, the state did not rely solely on the defendant's ownership of the home to prove possession of the pornography. Clewis v. State, 293 Ga. App. 412, 667 S.E.2d 158, 2008 Ga. App. LEXIS 952 (2008).

Evidence was sufficient to sustain a defendant's conviction for knowing possession of child pornography under O.C.G.A. § 16-12-100(b)(8) because a technician who reviewed a CD and computer from the defendant's home testified that somebody had deliberately copied sexually explicit images to the CD, and police recovered the defendant's thumb print from the CD containing child pornography. Dickerson v. State, 304 Ga. App. 762, 697 S.E.2d 874, 2010 Ga. App. LEXIS 606 (2010).

Evidence was sufficient to convict a defendant for the sexual exploitation of children as the evidence indicated that files containing child pornography had not come to be on the defendant's computer in some passive way, and the defendant admitted that the defendant shared files on the Internet using certain file sharing programs, including the program used to download the images of child pornography. Haynes v. State, 317 Ga. App. 400, 731 S.E.2d 83, 2012 Ga. App. LEXIS 716 (2012).

Defendant's conviction on 21 counts of sexual exploitation of a minor, in violation of O.C.G.A. § 16-12-100(b)(8), was supported by sufficient evidence based on the photographs on a compact disc containing pictures of young girls exhibited nude on stage in the lewd exhibition of the girls' genitals. Scarborough v. State, 317 Ga. App. 523, 731 S.E.2d 396, 2012 Ga. App. LEXIS 753 (2012).

When an investigator searched the recreational vehicle pursuant to the warrant and found a defendant's computer, which was the same computer which the investigator's Internet investigation showed was sharing child pornography files, and contained the video files used as evidence, the evidence was sufficient to find the defendant committed sexual exploitation of children in violation of O.C.G.A. § 16-12-100(b)(8). Hines v. State, 317 Ga. App. 541, 731 S.E.2d 782, 2012 Ga. App. LEXIS 763 (2012).

Evidence was sufficient to convict the defendant of 20 counts of sexual exploitation of children because the defendant knowingly possessed or controlled pornographic images of children as the child pornography images found in the cache folder on the defendant's computer had all been intentionally accessed on the date the officer observed the defendant with the computer; the officer observed the images on the defendant's computer and watched as the defendant attempted to close and minimize the pornographic images of children; and the images were not generated in a passive way in pop-up windows. Sorg v. State, 324 Ga. App. 595, 751 S.E.2d 196, 2013 Ga. App. LEXIS 991 (2013).

Evidence was sufficient to convict the defendant of 15 counts of sexual exploitation of children based on the child pornography found on a girlfriend's computer because a Georgia Bureau of Investigation expert in computer forensics explained that there was no evidence that a virus had downloaded any of the illegal files, and that there was no evidence that anyone had hacked into the computer; the defendant's mother, the defendant's girlfriend, and the defendant's girlfriend's mother and brothers testified that they did not download the illegal files onto the computer; and the downloads began just one month after the defendant moved in with the girlfriend and only on days when the defendant was not incarcerated. Beaver v. State, 330 Ga. App. 496, 767 S.E.2d 503, 2014 Ga. App. LEXIS 839 (2014).

Evidence that images of the defendant's step-daughter were found on the defendant's computer and hidden on the defendant's phone was sufficient to prove that the defendant knowingly possessed the images. Gerbert v. State, 339 Ga. App. 164, 793 S.E.2d 131, 2016 Ga. App. LEXIS 599 (2016).

Evidence tying the defendant to the flash drive containing the child pornography images, including that the evidence was found in the defendant's garage in the same location as the defendant's cell phone, was sufficient to support the defendant's conviction for 14 counts of sexual exploitation of children. Nix v. State, 354 Ga. App. 47, 839 S.E.2d 687, 2020 Ga. App. LEXIS 55 (2020), cert. denied, No. S20C1171, 2020 Ga. LEXIS 887 (Ga. Nov. 2, 2020).

Evidence that an officer observed the defendant viewing child pornography on a cell phone in a car of which the defendant was the sole occupant, and that after being granted consent to search the vehicle, the officer found the cell phone with child pornography on the screen in the exact place the officer observed the defendant attempt to conceal it was sufficient to support the conviction for sexual exploitation of children. State v. Palacio-Gregorio, 361 Ga. App. 339, 862 S.E.2d 605, 2021 Ga. App. LEXIS 452 (2021).

Evidence was sufficient to convict the defendant of one count of sexual exploitation of a child because, although the state did not provide any evidence of the individuals' ages other than the photograph itself, the appellate court reviewed the image at issue and concluded that the individuals in the image were not so mature that something beyond mere chain of custody evidence was required to establish that they were younger than 18 years; and the defendant possessed and controlled the image as the image was downloaded to a laptop, the defendant admitted

Application (Cont'd)

that the defendant used the laptop and referred to it as "his" during the defendant's arrest, and the jury apparently rejected the equal access defense when it returned a guilty verdict. Cunningham v. State, 365 Ga. App. 669, 879 S.E.2d 860, 2022 Ga. App. LEXIS 492 (2022).

Possession of photographs sufficient. — Sufficient evidence supported the appellant's conviction for exploitation of children based upon all of the text messages and other evidence adduced at trial that the appellant sought nude photographs that would show all the intimate areas of the victims' bodies, including their genitals and pubic areas and that the appellant's intended motivation was to obtain photographs of the victims engaged in sexually explicit conduct as that phrase is defined by the statute. Weyer v. State, 333 Ga. App. 706, 776 S.E.2d 304, 2015 Ga. App. LEXIS 504 (2015).

Conviction for conspiring to commit sexual exploitation of a child through possessing photographs of the lewd exhibition of a child's genitals was supported by testimony that the defendant conspired with another to generate the photos for use in an escort business's Craiglist ads as corroborated by the victim in the photos. Ferguson v. State, 335 Ga. App. 862, 783 S.E.2d 380, 2016 Ga. App. LEXIS 99 (2016).

Evidence sufficient when images viewed on computer. — Evidence was sufficient to sustain the defendant's 20 convictions for sexual exploitation of children because the child pornography images on the defendant's computer had all been intentionally accessed on the date the officer observed the defendant viewing the images on the defendant's computer, and the images were not pop-up images that the defendant had not intentionally viewed. Sorg v. State, 324 Ga. App. 595, 751 S.E.2d 196, 2013 Ga. App. LEXIS 991 (2013).

Severance of exploitation counts from molestation, battery counts not required. — Because a case charged in two indictments, one for child molestation and aggravated sexual battery against a defendant's daughter and one for the defendant's possession of digital and print materials depicting a minor engaged in sexually explicit conduct in violation of O.C.G.A. § 16-12-100(b)(8), was not so complex as to impair the jury's ability to distinguish the evidence and apply the law intelligently to the counts as joined, the trial court did not abuse the court's discretion in denying the defendant's motion to sever. Dickerson v. State, 304 Ga. App. 762, 697 S.E.2d 874, 2010 Ga. App. LEXIS 606 (2010).

Evidence was insufficient to warrant a conviction under O.C.G.A. § 16-12-100(b)(8) since there was no evidence that the defendant, who entered a bedroom while the codefendant photographed young girls in the nude, knowingly possessed or controlled the picture which the codefendant took of the girls. Conejo v. State, 189 Ga. App. 14, 374 S.E.2d 826, 1988 Ga. App. LEXIS 1272 (1988).

Because the mere existence of pornographic images in the cache files of an individual's computer was insufficient to constitute knowing possession of those materials, absent proof that the individual either: (1) took some affirmative act to save or download those images to the computer; or (2) had knowledge that the computer automatically saved those files, the evidence could not support the defendant's convictions for knowing possession of child pornography under O.C.G.A. § 16-12-100(b)(8). Barton v. State, 286 Ga. App. 49, 648 S.E.2d 660, 2007 Ga. App. LEXIS 688 (2007), cert. denied, No. S07C1655, 2007 Ga. LEXIS 622 (Ga. Sept. 10, 2007).

Defendant's conviction for sexual exploitation as to an unrelated victim had to be reversed because there was no evidence that the defendant knew that the image, taken by the subject of the photo when the subject was 17 years old, depicted a minor. Gerbert v. State, 339 Ga. App. 164, 793 S.E.2d 131, 2016 Ga. App. LEXIS 599 (2016).

Evidence insufficient to support conviction. — Photographs of a minor child or children who are wearing short pants or swim trunks, sitting down with legs open with the child's genitals

partially or completely observable; nor photos of children playing outside in various stages of nudity because they were swimming; nor photographs depicting sleeping minor children whose genitals are partially exposed; nor a photo of a partially nude minor child climbing a wall constitute a violation of O.C.G.A. § 16-12-100. Craft v. State, 252 Ga. App. 834, 558 S.E.2d 18, 2001 Ga. App. LEXIS 1432 (2001), cert. denied, No. S02C0654, 2002 Ga. LEXIS 418 (Ga. May 13, 2002), cert. denied, 537 U.S. 1025, 123 S. Ct. 537, 154 L. Ed. 2d 437, 2002 U.S. LEXIS 8433 (2002).

When the state failed to present evidence that defendant used the victim for the purpose of producing any visual medium depicting any sexually explicit conduct, the evidence was insufficient to support conviction for sexual exploitation. Phillips v. State, 269 Ga. App. 619, 604 S.E.2d 520, 2004 Ga. App. LEXIS 844 (2004).

State failed to establish 10 of 12 counts of misdemeanor sexual exploitation of children, O.C.G.A. § 16-12-100(b)(8), because the individuals in the photos were either not fully visible or were so mature that more evidence was required to show that the individuals were under 18, and thus the state failed to establish that the photos possessed by defendant depicted minors; the evidence was sufficient on the two remaining counts for the jury to find that defendant possessed the computer disks containing the photos, and the fact of the subjects' minority was evident without expert testimony or other evidence. Abernathy v. State, 278 Ga. App. 574, 630 S.E.2d 421, 2006 Ga. App. LEXIS 380 (2006), cert. denied, No. S06C1377, 2006 Ga. LEXIS 693 (Ga. Sept. 8, 2006).

Evidence was insufficient to show that the defendant knew that the victim was under 18 years of age; the victim was not on trial, the defendant testified that the victim told the defendant that the victim was 22 years old, and photos showing the defendant and the victim did not show beyond a reasonable doubt that the victim was under age. Berry v. State, 281 Ga. App. 424, 636 S.E.2d 150, 2006 Ga. App. LEXIS 1127 (2006).

Because the state failed to prove that the defendant ever possessed or controlled the pornographic images on the tablet at issue, the evidence was not sufficient to support the defendant's conviction for sexual exploitation of a child. Lindley v. State, 345 Ga. App. 637, 814 S.E.2d 784, 2018 Ga. App. LEXIS 257 (2018).

Defendant's conviction for criminal attempt to commit sexual exploitation of children was reversed because the defendant's request for a picture of the alleged 14-year-old girl's body was not a request for a nude photo and when the girl sent a photograph in which the girl was fully clothed, the defendant did not ask for one that was more explicit or revealing. Boone v. State, 371 Ga. App. 207, 899 S.E.2d 811, 2024 Ga. App. LEXIS 136 (2024).

Court not constrained to view evidence as a whole. — Court is not constrained to view as a whole evidence pertaining to the sexual portrayal of children. Craft v. State, 252 Ga. App. 834, 558 S.E.2d 18, 2001 Ga. App. LEXIS 1432 (2001), cert. denied, No. S02C0654, 2002 Ga. LEXIS 418 (Ga. May 13, 2002), cert. denied, 537 U.S. 1025, 123 S. Ct. 537, 154 L. Ed. 2d 437, 2002 U.S. LEXIS 8433 (2002).

Intended motivation for enticement sufficient. — Conviction for enticement of a child for indecent purposes under O.C.G.A. § 16-6-5(a) need not be based upon evidence that an act of indecency or child molestation was accomplished or even attempted, but instead is based upon some evidence that an act of indecency or child molestation was the intended motivation for the enticement. Weyer v. State, 333 Ga. App. 706, 776 S.E.2d 304, 2015 Ga. App. LEXIS 504 (2015).

Production of tape of sexual assault in civil suit was not criminalized. — In a civil premises liability action arising from a sexual assault on a minor in which a manager sought production of a videotape of the assault made by the assailants, O.C.G.A. § 16-12-100(b)(5) did not criminalize the act of producing the tape in response to a court order or a request for discovery, and the trial court erred in holding otherwise. Alexander

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Props. Group, Inc. v. Doe, 280 Ga. 306, 626 S.E.2d 497, 2006 Ga. LEXIS 116 (2006).

Jury Instructions

Charge to jury. — In a prosecution for sexual exploitation of children, the trial court's failure to include in the court's charge the statutory definition of "sexually explicit conduct" was not error. Rice v. State, 243 Ga. App. 143, 531 S.E.2d 182, 2000 Ga. App. LEXIS 340 (2000), cert. denied, No. S00C1327, 2000 Ga. LEXIS 709 (Ga. Sept. 29, 2000).

Declining access to dictionary on definition of "entice". — Trial court properly denied the appellant's motion for a new trial because the appellant failed to prove that the trial court committed any error in the court's fashioning of a supplemental instruction to the jury regarding the definition of "entice" and, thus, the first prong of the test for plain error was not satisfied and it was in the trial court's discretion in declining the juror's request for access to a dictionary during deliberations. Weyer v. State, 333 Ga. App. 706, 776 S.E.2d 304, 2015 Ga. App. LEXIS 504 (2015).

Sentencing

Sentence term of 220 years to serve upheld but chemical castration not authorized. — Trial court properly sentenced defendant to 220 years to serve, followed by 20 years of probation, on 24 counts of sexual exploitation of a child as such a sentence was within the statutory parameters and did not shock the appellate court's conscious in light of the crimes committed and, in fact, defendant was actually spared serving the maximum amount of prison time authorized by O.C.G.A. § 16-12-100(g)(1). However, the trial court erred by ordering defendant to undergo chemical castration under O.C.G.A. § 16-6-4(d)(2) since such punishment was only for defendants convicted of child molestation. Bennett v. State, 292 Ga. App. 382, 665 S.E.2d 365, 2008 Ga. App. LEXIS 700 (2008).

Considering relevant similar transaction when sentencing. — Trial court properly refused to deviate from the mandatory minimum sentence for child molestation under O.C.G.A. § 17-10-6.2(c)(1)(C) because the court found the defendant's conviction for sexual exploitation of children was a relevant similar transaction and the phrase relevant similar transaction under § 17-10-6.2(c)(1)(C) included a conviction for a sexual offense charged within the same indictment as the offense for which a deviation from the mandatory minimum sentence was considered. Evans v. State, 334 Ga. App. 104, 778 S.E.2d 360, 2015 Ga. App. LEXIS 580 (2015), aff'd, 300 Ga. 271, 794 S.E.2d 40, 2016 Ga. LEXIS 773 (2016).

Mandatory minimum sentence improper. — Trial court erred in determining that the court was without discretion to deviate from the minimum sentencing requirements of O.C.G.A. § 17-10-6.2(b), and the court of appeals erred in affirming that ruling because the defendants were charged with possession of material in violation of O.C.G.A. § 16-12-100(b)(8) and, therefore, it would have to be shown that the child victims in the images that were stored in the defendants' computers were physically restrained at the same time that the defendants possessed the offending material in order for O.C.G.A. § 17-10-6.2(c)(1)(F) to exclude the trial court from having the sentencing discretion set forth in O.C.G.A. § 17-10-6.2(c)(1), but no such evidence existed; O.C.G.A. § 17-10-6.2(c)(1)(F) precludes the trial court from exercising sentencing discretion when the victim was physically restrained during the commission of the offense, and the use of the words "during the commission of the offense" in O.C.G.A. § 17-10-6.2(c)(1)(F) must be given effect. Hedden v. State, 288 Ga. 871, 708 S.E.2d 287, 2011 Ga. LEXIS 252 (2011).

Downward departure proper. — State's contention that the defendant's previous acts of viewing pornography on a cell phone app should have been treated as relevant similar transactions so as to divest the trial court of the court's discretion to downwardly deviate from the mandatory minimum sentence was rejected because the state presented scant

evidence about the defendant's previous conduct other than to show when the defendant first started using the app and the trial court gave sound reasons why the court rejected the state's assertion. State v. McCauley, 353 Ga. App. 94, 834 S.E.2d 567, 2019 Ga. App. LEXIS 504 (2019).

Conditions of bond to prevent Internet access upheld. — Defendant charged with possession of child pornography was not entitled to pretrial habeas corpus based on the trial court's modification of the defendant's conditions of bond to prevent the defendant from having access to children, images of children, and the Internet for the purpose of obtaining child pornography. Edvalson v. State, 298 Ga. 626, 783 S.E.2d 603, 2016 Ga. LEXIS 204 (2016).

Sentences should have merged. — Defendant's convictions for 55 counts of sexual exploitation of a minor should have merged because the sentences were based on the simultaneous possession of multiple visual media. McCurdy v. State, 359 Ga. App. 885, 860 S.E.2d 172, 2021 Ga. App. LEXIS 300 (2021).

Merger of convictions required. — Convictions and sentences for the 25 counts of sexual exploitation had to be vacated and the case remanded for the trial court to merge the convictions into a single conviction because only one prosecution and conviction was permitted for the simultaneous possession of multiple material. Macky v. State, 360 Ga. App. 189, 860 S.E.2d 863, 2021 Ga. App. LEXIS 322 (2021).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of statutes regulating sexual performance by child, 21 A.L.R.4th 239; 42 A.L.R.5th 291.

Admissibility of expert testimony as to criminal defendant's propensity toward sexual deviation, 42 A.L.R.4th 937.

Validity, construction, and application of state statutes prohibiting child luring as applied to cases involving luring of child by means of verbal or other nonelectronic communications, 33 A.L.R.6th 373.

Construction and application of United States Sentencing Guideline § 2G2.1 et seq., pertaining to child pornography, 145 A.L.R. Fed. 481.

16-12-100.1. Electronically furnishing obscene material to minors.

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

(1) "Bulletin board system" means a computer data and file service that is accessed wirelessly or by physical connection to store and transmit information.

(2) "CD-ROM" means a compact disc with read only memory which has the capacity to store audio, video, and written materials and is used by computers to reveal the above-said material.

(3) "Electronically furnishes" means:

(A) To make available by electronic storage device, including floppy disks and other magnetic storage devices, or by CD-ROM; or

(B) To make available by allowing access to information stored

in a computer, including making material available by operating a computer bulletin board system.

(4) "Harmful to minors" means that quality of description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(A) Taken as a whole, predominantly appeals to the prurient, shameful, or morbid interest of minors;

(B) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(C) Is, when taken as a whole, lacking in serious literary, artistic, political, or scientific value for minors.

(5) "Minor" means an unmarried person younger than 18 years of age.

(6) "Sadomasochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(7) "Sexual conduct" means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas, or buttocks of the human male or female or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(8) "Sexual excitement" means the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation.

(b) A person commits the crime of electronically furnishing obscene materials to minors if:

(1) Knowing or having good reason to know the character of the material furnished, the person electronically furnishes to an individual whom the person knows or should have known is a minor:

(A) Any picture, photograph, drawing, or similar visual representation or image of a person or portion of a human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or

(B) Any written or aural matter that contains material of the nature described in subparagraph (A) of this paragraph or contains explicit verbal descriptions or narrative accounts of sexual conduct, sexual excitement, or sadomasochistic abuse;

(2) The offensive portions of the material electronically furnished to the minor are not merely an incidental part of an otherwise nonoffending whole;

(3) The material furnished to the minor, taken as a whole, lacks serious literary, artistic, political, or scientific value; and

(4) The material furnished to the minor, taken as a whole, is harmful to minors in that it appeals to and incites prurient interest.

(c) Except as provided in subsection (d) of this Code section, any person who violates this Code section shall be guilty of a misdemeanor of a high and aggravated nature.

(d) Any person who violates this Code section shall be guilty of a misdemeanor if:

(1) At the time of the offense, the minor receiving the obscene materials was at least 14 years of age;

(2) The receipt of the materials was with the permission of the minor; and

(3) The defendant was 18 years of age or younger.

History.

Code 1981, § 16-12-100.1, enacted by Ga. L. 1993, p. 735, § 1; Ga. L. 2013, p. 663, § 2/HB 156.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, "system" was substituted for "systems" in paragraph (a)(1).

Law reviews.

For note on 1993 enactment of this Code section, see 10 Georgia St. U.L. Rev. 104 (1993).

For article, "'Sexting' to Minors in a Rapidly Evolving Digital Age: Frix v. State Establishes the Applicability of Georgia's Obscenity Statutes to Text Messages," see 61 Mercer L. Rev. 1283 (2010).

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Age of victim. — Because the vast majority of high school students are under the age of 18 in November of a school year, the jury could have reasonably concluded that the victim was under 18 at the time of the crime. Wetzel v. State, 298 Ga. 20, 779 S.E.2d 263, 2015 Ga. LEXIS 790 (2015).

Accusation insufficient as to date of offense. — Accusation that alleged contributing to the delinquency of a minor and electronically furnishing obscene material to a minor within a two and a half month time frame was subject to a demurrer because the state gave no explanation as to why an investigating officer was unable to ascertain the dates of the offenses from the victim's computer. State v. Meeks, 309 Ga. App. 855, 711 S.E.2d 403, 2011 Ga. App. LEXIS 469 (2011).

Text messages do not qualify. — Sending a text message over a cellular phone does not meet the definition of "electronically furnishes" set forth in O.C.G.A. § 16-12-100.1(a)(3)(B) as to allowing access to information stored in a computer. Frix v. State, 298 Ga. App. 538, 680 S.E.2d 582, 2009 Ga. App. LEXIS 734 (2009).

Required registration as sex offender. — Detective erroneously promised during an interview that a defendant would not be charged with an offense that required sex offender

registration because a conviction for electronically furnishing obscene material to a minor under O.C.G.A. § 16-12-100.1 would require registration as a sex offender under O.C.G.A. § 42-1-12(e)(2); prior to the erroneous promise, the defendant's confession was voluntarily made under former O.C.G.A. § 24-3-50 (see now O.C.G.A. § 24-8-824) as the confession was made without the slightest hope of benefit. State v. Lee, 295 Ga. App. 49, 670 S.E.2d 879, 2008 Ga. App. LEXIS 1352 (2008).

"Including" expanded, not limited, ways material could be made available. — Term "including", as used in O.C.G.A. § 16-12-100.1(a)(3)(B), expanded, rather than limited, the ways by which obscene material could be made available to minors by allowing access to information stored in a computer. Wetzel v. State, 298 Ga. 20, 779 S.E.2d 263, 2015 Ga. LEXIS 790 (2015).

16-12-100.2. Computer or electronic pornography and child exploitation prevention.

(a) This Code section shall be known and may be cited as the "Computer or Electronic Pornography and Child Exploitation Prevention Act of 2007."

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

(1) "Child" means any person under the age of 16 years.

(2) "Electronic device" means any device used for the purpose of communicating with a child for sexual purposes or any device used to visually depict a child engaged in sexually explicit conduct, store any image or audio of a child engaged in sexually explicit conduct, or transmit any audio or visual image of a child for sexual purposes. Such term may include, but shall not be limited to, a computer, cellular phone, thumb drive, video game system, or any other electronic device that can be used in furtherance of exploiting a child for sexual purposes;

(3) "Identifiable child" means a person:

(A) Who was a child at the time the visual depiction was created, adapted, or modified or whose image as a child was used in creating, adapting, or modifying the visual depiction; and

(B) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature or by electronic or scientific means as may be available.

The term shall not be construed to require proof of the actual identity of the child.

(4) "Sadomasochistic abuse" has the same meaning as provided in Code Section 16-12-100.1.

(5) "Sexual conduct" has the same meaning as provided in Code Section 16-12-100.1.

(6) "Sexual excitement" has the same meaning as provided in Code Section 16-12-100.1.

(7) "Sexually explicit nudity" has the same meaning as provided in Code Section 16-12-102.

(8) "Visual depiction" means any image and includes undeveloped film and video tape and data stored on computer disk or by electronic means which is capable of conversion into a visual image or which has been created, adapted, or modified to show an identifiable child engaged in sexually explicit conduct.

(c)(1) A person commits the offense of computer or electronic pornography if such person intentionally or willfully:

(A) Compiles, enters into, or transmits by computer or other electronic device;

(B) Makes, prints, publishes, or reproduces by other computer or other electronic device;

(C) Causes or allows to be entered into or transmitted by computer or other electronic device; or

(D) Buys, sells, receives, exchanges, or disseminates

any notice, statement, or advertisement, or any child's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with an identifiable child or the visual depiction of such conduct.

(2) Except as provided in paragraphs (3) and (4) of this subsection, any person convicted of violating paragraph (1) of this subsection shall be punished by a fine of not more than $10,000.00 and by imprisonment for not less than one nor more than 20 years.

(3) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor if:

(A) At the time of the offense, any identifiable child visually depicted was at least 14 years of age when the visual depiction was created;

(B) The visual depiction was created with the permission of such child;

(C) The defendant possessed the visual depiction with the permission of such child; and

(D) The defendant was 18 years of age or younger at the time of the offense and:

(i) The defendant did not distribute the visual depiction to another person; or

(ii) In the court's discretion, and when the prosecuting attorney and the defendant have agreed, if the defendant's violation involved the distribution of such visual depiction to another person but such distribution was not for the purpose of:

(I) Harassing, intimidating, or embarrassing the minor depicted; or

(II) For any commercial purpose.

(4) The prohibition contained in paragraph (1) of this subsection shall not apply to any person who creates or possesses a visual depiction of only himself or herself.

(d)(1) It shall be unlawful for any person intentionally or willfully to utilize a computer wireless service or internet service, including, but not limited to, a local bulletin board service, internet chat room, email, instant messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child, another person believed by such person to be a child, any person having custody or control of a child, or another person believed by such person to have custody or control of a child to commit any illegal act by, with, or against a child as described in Code Section 16-6-2, relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency, or to engage in any conduct that by its nature is an unlawful sexual offense against a child.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years and by a fine of not more than $25,000.00; provided, however, that, if at the time of the offense the victim was at least 14 years of age and the defendant was 18 years of age or younger, then the defendant shall be guilty of a misdemeanor.

(e)(1) A person commits the offense of obscene internet contact with a child if he or she has contact with someone he or she knows to be a child or with someone he or she believes to be a child via a computer wireless service or internet service, including, but not limited to, a

local bulletin board service, internet chat room, email, or instant messaging service, and the contact involves any matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that is intended to arouse or satisfy the sexual desire of either the child or the person, provided that no conviction shall be had for a violation of this subsection on the unsupported testimony of a child.

(2) Any person who violates paragraph (1) of this subsection 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 or by a fine of not more than $10,000.00; provided, however, that, if at the time of the offense the victim was at least 14 years of age and the defendant was 18 years of age or younger, then the defendant shall be guilty of a misdemeanor.

(f)(1) It shall be unlawful for any owner or operator of a computer online service, internet service, local bulletin board service, or other electronic device that is in the business of providing a service that may be used to sexually exploit a child to intentionally or willfully to permit a subscriber to utilize the service to commit a violation of this Code section, knowing that such person intended to utilize such service to violate this Code section. No owner or operator of a public computer online service, internet service, local bulletin board service, or other electronic device that is in the business of providing a service that may be used to sexually exploit a child shall be held liable on account of any action taken in good faith in providing the aforementioned services.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor of a high and aggravated nature.

(g) 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.

(h) A person is subject to prosecution in this state pursuant to Code Section 17-2-1, relating to jurisdiction over crimes and persons charged with commission of crimes generally, for any conduct made unlawful by 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 this Code section which involves a child who resides in this state or another person believed by such person to be a child residing in this state; or

(2) Within this state if, by such conduct, the person commits a violation of this Code section which involves a child who resides

within or outside this state or another person believed by such person to be a child residing within or outside this state.

(i) Any violation of this Code section shall constitute a separate offense.

History.

Code 1981, § 16-12-100.2, enacted by Ga. L. 1999, p. 232, § 2; Ga. L. 2003, p. 140, § 16; Ga. L. 2003, p. 573, § 3; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2007, p. 283, § 2/SB 98; Ga. L. 2013, p. 663, § 3/HB 156; Ga. L. 2016, p. 864, § 16/HB 737; Ga. L. 2024, p. 1052, § 3(2)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised capitalization and punctuation in paragraphs (d)(1), (d)(2), (e)(1), (e)(2), and (f)(1); and substituted "email" for "e-mail" in paragraphs (d)(1) and (e)(1).

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Georgia St. U. L. Rev. 84 (2003).

For article, "Revenge Pornography and First Amendment Exceptions," see 65 Emory L.J. 661 (2016).

For article, "Sex Crimes in the 21st Century: Human Trafficking, Pornography, 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).

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

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Analysis

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General Considerations

Statute was not unconstitutionally overbroad. — O.C.G.A. § 16-12-100.2(e)(1), obscene Internet contact with a child, did not effect a real and substantial constraint upon constitutionally protected expression and therefore did not violate the First Amendment's free speech guarantee; the word "contact" was modified by the phrase "that is intended to arouse or satisfy the sexual desire of either the child or the person," rendering it unlikely that innocuous communications would violate the statute. Scott v. State, 299 Ga. 568, 788 S.E.2d 468, 2016 Ga. LEXIS 460 (2016), cert. denied, 580 U.S. 1197, 137 S. Ct. 1328, 197 L. Ed. 2d 517, 2017 U.S. LEXIS 1961 (2017).

Offenses prior to effective date. — To the extent that a defendant's conduct before the effective date of O.C.G.A. § 16-12-100.2 violated criminal statutes already in existence, there is no indication that the legislature intended to prevent prosecution under such statutes simply because the defendant utilized a computer in the commission of the crime. Dennard v. State, 243 Ga. App. 868, 534 S.E.2d 182, 2000 Ga. App. LEXIS 547 (2000), cert. denied, No. S00C1515, 2000 Ga. LEXIS 839 (Ga. Oct. 27, 2000).

Venue. — Use of computer online services in one county in the State of Georgia, even though the user is in another county, is sufficient to prove venue under O.C.G.A. § 16-12-100.2. Selfe v. State, 290 Ga. App. 857, 660 S.E.2d 727, 2008 Ga. App. LEXIS 98 (2008), cert. denied, No. S08C0956, 2008 Ga. LEXIS 493 (Ga. June 2, 2008), overruled in part, Gordon v. State, 334 Ga.

App. 633, 780 S.E.2d 376, 2015 Ga. App. LEXIS 700 (2015).

State not required to prove violation of statutes identified. — Contrary to the defendant's claim, a violation of one of the other statutes named in O.C.G.A. § 16-12-100.2(d)(1) was not required to effectively charge a crime under the statute. Wetzel v. State, 298 Ga. 20, 779 S.E.2d 263, 2015 Ga. LEXIS 790 (2015).

Direct communication is not requirement. — Georgia Supreme Court holds that direct communication is not required for a conviction under O.C.G.A. § 16-12-100.2(d)(1) as solicitation of a child to commit the acts prohibited may be conducted through an adult intermediary who is believed to be in a position of trust or authority with respect to the child. State v. Cosmo, 295 Ga. 76, 757 S.E.2d 819, 2014 Ga. LEXIS 290 (2014).

Proof defendant knew victim's age not required. — For purposes of O.C.G.A. § 16-12-100.2, the state was not required to present proof that the defendant knew the victim was under 16 at the time of the act and the trial court correctly denied the defendant a directed verdict on that basis. Wetzel v. State, 298 Ga. 20, 779 S.E.2d 263, 2015 Ga. LEXIS 790 (2015).

Jurisdiction established for computer child exploitation offense. — State had jurisdiction to prosecute the defendant for computer child exploitation because the evidence showed that after being told that the person the defendant thought was a 14-year-old girl lived in Georgia, the defendant violated O.C.G.A. § 16-12-100.2 by utilizing computer on-line services to communicate with the purported child and entice the child to meet the defendant to engage in sexual activity. Brown v. State, 321 Ga. App. 798, 743 S.E.2d 474, 2013 Ga. App. LEXIS 412 (2013).

Sex offender registration required. — Defendant's convictions under the computer pornography and child exploitation act, O.C.G.A. § 16-12-100.2, required defendant to register as a sex offender pursuant to O.C.G.A. § 42-1-12, as defendant's conviction for pornography and child exploitation under § 16-12-100.2(d) for the use of an on-line Internet service in the attempt to commit child molestation was within the definition of a "criminal offense against a victim who was a minor," pursuant to O.C.G.A. § 42-1-12; defendant had communicated with a police officer who posed as a 14-year-old girl, sent her sexually explicit messages, and arranged a meeting with her. Spivey v. State, 274 Ga. App. 834, 619 S.E.2d 346, 2005 Ga. App. LEXIS 837 (2005), cert. denied, No. S05C2012, 2005 Ga. LEXIS 895 (Ga. Dec. 1, 2005).

Crime of child molestation requires victim and accused to be in presence of each other. — Victim and accused must be together in order for the crime of child molestation to be committed pursuant to O.C.G.A. § 16-12-100.2. Selfe v. State, 290 Ga. App. 857, 660 S.E.2d 727, 2008 Ga. App. LEXIS 98 (2008), cert. denied, No. S08C0956, 2008 Ga. LEXIS 493 (Ga. June 2, 2008), overruled in part, Gordon v. State, 334 Ga. App. 633, 780 S.E.2d 376, 2015 Ga. App. LEXIS 700 (2015).

Trial court erred by convicting defendant of child molestation, pursuant to O.C.G.A. § 16-12-100.2, with regard to defendant's actions of engaging in internet communications with an undercover police officer whom defendant thought was a 15-year-old child; the state only set forth that defendant was in one county and the victim was in another, which was insufficient to show that the victim and defendant were in the presence of each other as required by the statute. Selfe v. State, 290 Ga. App. 857, 660 S.E.2d 727, 2008 Ga. App. LEXIS 98 (2008), cert. denied, No. S08C0956, 2008 Ga. LEXIS 493 (Ga. June 2, 2008), overruled in part, Gordon v. State, 334 Ga. App. 633, 780 S.E.2d 376, 2015 Ga. App. LEXIS 700 (2015).

Statute expressly provides that use of operative or officer is not a defense. — Indictment and verdict against the defendant were not contrary to law because there was no actual victim and the victim described in the complaint, a fourteen-year-old female named "Sara," was a fiction created by law enforcement agents was proper because O.C.G.A.

General Considerations (Cont'd)

§ 16-12-100.2(d) expressly provides that the sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation under § 16-12-100.2 shall not constitute a defense. Lopez v. State, 326 Ga. App. 770, 757 S.E.2d 436, 2014 Ga. App. LEXIS 275 (2014), cert. denied, No. S14C1137, 2014 Ga. LEXIS 775 (Ga. Sept. 22, 2014).

Application

Trial court properly refused to apply the rule of lenity with regard to the defendant's conviction under O.C.G.A. § 16-12-100.2(e)(1), and the defendant was not entitled to be convicted of only the misdemeanor offense of furnishing obscene material to a minor, in violation of § 16-12-100.1(b)(1)(B), because the defendant was charged with using Internet services to contact a person believed to be a 15-year-old child and that the contact contained explicit verbal descriptions of sexual conduct that were intended to arouse and satisfy the sexual desires of the defendant; the intent to arouse was not an element included in the misdemeanor offense. Selfe v. State, 290 Ga. App. 857, 660 S.E.2d 727, 2008 Ga. App. LEXIS 98 (2008), cert. denied, No. S08C0956, 2008 Ga. LEXIS 493 (Ga. June 2, 2008), overruled in part, Gordon v. State, 334 Ga. App. 633, 780 S.E.2d 376, 2015 Ga. App. LEXIS 700 (2015).

Solicitation through adult intermediary. — Just as solicitation of prostitution can be made through a third party pimp, solicitation of a child to commit the acts prohibited by O.C.G.A. § 16-12-100.2(d)(1) may be conducted through an adult intermediary who is believed to be in a position of trust or authority with respect to the child. State v. Cosmo, 295 Ga. 76, 757 S.E.2d 819, 2014 Ga. LEXIS 290 (2014).

Entrapment not shown by defendant's electronic communication. — Defendant was not entrapped by law enforcement because: (1) the defendant, via electronic communications, asked an undercover officer who was posing as a teenage girl to engage in sexual intercourse and oral sodomy with the defendant, even after the "teenage girl" told the defendant that the teenage girl was 14 years old; (2) the defendant initiated the conversation during which a meeting was arranged and the defendant described in detail the sex acts which the defendant wished to perform on the teenage girl at the park where the two discussed meeting for sex; (3) when the defendant arrived at the park, the defendant possessed a condom on the defendant's person; and (4) when the officers who stopped the defendant at the park explained that the officers were with a task force for Internet crimes against children, the defendant immediately responded that the defendant was at the park to counsel a 14-year-old girl about the dangers of meeting men from the Internet. Logan v. State, 309 Ga. App. 95, 709 S.E.2d 302, 2011 Ga. App. LEXIS 230 (2011), cert. denied, No. S11C1101, 2011 Ga. LEXIS 579 (Ga. July 11, 2011), cert. denied, 565 U.S. 1083, 132 S. Ct. 823, 181 L. Ed. 2d 533, 2011 U.S. LEXIS 8734 (2011).

When the defendant was charged with using the Internet to seduce, solicit, lure, or entice a child or a person believed to be a child to commit an illegal sex act, under O.C.G.A. § 16-12-100.2(d)(1), attempted aggravated child molestation, under O.C.G.A. §§ 16-4-1 and 16-6-4(c), and attempted child molestation, under O.C.G.A. §§ 16-4-1 and 16-6-4(a), it was not error to deny the defendant's motion for a directed verdict of acquittal based on entrapment because the jury's determination that entrapment did not occur was supported by evidence that: (1) the defendant continued communicating with a person the defendant believed to be 14 years old, including having sexually explicit conversations with the person in which the defendant stated the defendant wanted "a lot of oral," after the defendant learned that the person was 14 years old; (2) the defendant discussed with the person how the person could meet the defendant if the person could not drive, inquired whether the person had ever snuck away from home before, and stated that the defendant believed the union would be legal if the defendant were 16 years old, instead of the defendant's

actual age; (3) the defendant left the defendant's home of Tennessee to meet a purportedly 14-year-old girl in order to have sex with the person, which the defendant admitted in the defendant's statements to officers; and (4) the defendant brought condoms with the defendant, which the defendant stated were to prevent any "accidents" in the event the defendant was able to have sex with the person. Millsaps v. State, 310 Ga. App. 769, 714 S.E.2d 661, 2011 Ga. App. LEXIS 654 (2011).

Defendant's belief. — Under O.C.G.A. § 16-12-100.2(d)(1), even if a defendant believes that the defendant is communicating with a child, a communication is prohibited only if the defendant engages in the communication for a prohibited underlying purpose, seducing or enticing a child so that the defendant can commit an act of child molestation. Lopez v. State, 326 Ga. App. 770, 757 S.E.2d 436, 2014 Ga. App. LEXIS 275 (2014), cert. denied, No. S14C1137, 2014 Ga. LEXIS 775 (Ga. Sept. 22, 2014).

No merger with criminal attempt to commit child molestation. — 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).

Evidence sufficient to support conviction. — Evidence was sufficient to establish the defendant's guilt of computer pornography and child exploitation in violation of the Computer Pornography and Child Exploitation Prevention Act, O.C.G.A. § 16-12-100.2(d)(1), because the evidence established that the defendant committed the offense by using a computer on-line service to solicit sex from a person who the defendant believed was a fifteen-year-old girl, an act which would have constituted child molestation; although the on-line solicitation crime references child molestation as an underlying purpose, the principal act proscribed by the crime is solicitation and does not require the accomplishment of an act of child molestation. Bolton v. State, 310 Ga. App. 801, 714 S.E.2d 377, 2011 Ga. App. LEXIS 659 (2011).

Victim's testimony that the victim and the defendant exchanged text messages about penis sizes and containing nude photos was sufficient for a jury to find the defendant guilty of using a cell phone to solicit a child under 16 to send and receive nude photos. Wetzel v. State, 298 Ga. 20, 779 S.E.2d 263, 2015 Ga. LEXIS 790 (2015).

In support of the defendant's conviction for computer child exploitation, the jury was authorized to find that, through email, the defendant urged and requested a person the defendant believed to be a child to engage in immoral or indecent acts. Schlesselman v. State, 332 Ga. App. 453, 773 S.E.2d 413, 2015 Ga. App. LEXIS 329 (2015).

Since O.C.G.A. § 16-12-100.2 listed on-line messaging service as a specific type of computer on-line service, an essential element of the offense, the evidence authorized a jury to find beyond a reasonable doubt that the defendant used an on-line messaging service to contact a child with explicit verbal and visual depictions of sexual conduct. Skelhorn v. State, 332 Ga. App. 782, 773 S.E.2d 45, 2015 Ga. App. LEXIS 348 (2015), cert. denied, No. S15C1661, 2015 Ga. LEXIS 711 (Ga. Oct. 5, 2015).

Evidence was sufficient to convict the defendant of three counts of computer or electronic pornography and child exploitation as the evidence established that the defendant was the perpetrator because an officer created an online profile of a 14-year-old girl for use in the officer's investigations of Internet crimes against children; in pretrial interviews with the officer, the defendant admitted that the defendant's username was the one that contacted the officer; that the defendant was the person in the pictures that were sent to the officer; and that it was safe to say that the defendant was the person chatting with the officer on the relevant dates and that it was the defendant's

Application (Cont'd)

penis shown on the webcam. Patch v. State, 337 Ga. App. 233, 786 S.E.2d 882, 2016 Ga. App. LEXIS 302 (2016).

In a case in which an undercover officer posing as a 14-year-old female, the evidence was sufficient to convict the defendant of computer pornography as the defendant went to a website where individuals could make contact with others in order to engage in sex acts; and, after learning that the female the defendant had supposedly contacted was 14 years old, the defendant continued to chat with the female minor and attempted to get the female minor to meet the defendant to engage in sex acts. Yeamans v. State, 366 Ga. App. 780, 884 S.E.2d 380, 2023 Ga. App. LEXIS 80 (2023).

Defendant's conviction for computer pornography was supported by evidence that 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).

Evidence insufficient when explicit verbal descriptions absent. — There was insufficient evidence to support the defendant's conviction for obscene internet contact with a child because the messages the defendant exchanged with the person the defendant believed to be a 14-year-old girl did not include any explicit verbal descriptions or narrative accounts of any of the four categories listed in O.C.G.A. § 16-12-100.2(e)(1). Boone v. State, 371 Ga. App. 207, 899 S.E.2d 811, 2024 Ga. App. LEXIS 136 (2024).

Prior conviction of offense admissible in trial for other sexual crimes. — Because the defendant's prior convictions under O.C.G.A. § 16-12-100.2(d)(1) and (e)(1) and defendant's indictment for aggravated sexual battery, aggravated child molestation, and child molestation alleged crimes that were sexual in nature with minors and involved a lustful disposition, the independent offenses were admissible under Ga. Unif. Super. Ct. R. 31.3(B). Butler v. State, 311 Ga. App. 873, 717 S.E.2d 649, 2011 Ga. App. LEXIS 869 (2011).

Indictment sufficient with regard to Internet sting operation allegations. — With regard to an indictment charging the defendant with computer pornography, attempted aggravated child molestation, and attempted child molestation arising from an Internet sting operation, the appellate court erred by finding that a second indictment was insufficient to withstand a special demurrer because the indictment identified the victim by the only name which the defendant knew the intended victim by and informed the defendant that the intended victim was not an actual child. State v. Grube, 293 Ga. 257, 744 S.E.2d 1, 2013 Ga. LEXIS 487 (2013).

Sufficient indictment charging obscene Internet contact. — Trial court erred by granting the defendant's special demurrer and quashing the indictment charging obscene Internet contact with a child because the indictment identified the victim by the name known to the defendant and informed the defendant that it was someone defendant thought was a 14-year-old girl, which was sufficient, and that the victim may also have been a fictitious persona created by an undercover officer was a fact to be proved at trial and its absence was not a material defect. State v. Cohron, 324 Ga. App. 137, 749 S.E.2d 416, 2013 Ga. App. LEXIS 808 (2013).

Expert testimony on psychological characteristics properly excluded. — Trial court did not abuse the court's discretion in ruling that whether the defendant would have committed the crime charged absent the inducement of law enforcement officers was a question for the jury without the assistance of expert opinion evidence because expert testimony that a defendant does not have the psychological characteristics of a person who is predisposed to having sexual contact with under-aged children invades the province of the jury as to the

ultimate issue. Lopez v. State, 326 Ga. App. 770, 757 S.E.2d 436, 2014 Ga. App. LEXIS 275 (2014), cert. denied, No. S14C1137, 2014 Ga. LEXIS 775 (Ga. Sept. 22, 2014).

Erroneous jury instruction. — Trial court erred in convicting the defendant of computer pornography because that count was predicated on the child molestation count, but the trial court's instruction on child molestation was incorrect, and the incorrect jury instruction on the child molestation count likely resulted in the jury improperly convicting the defendant on the computer pornography count. Yeamans v. State, 366 Ga. App. 780, 884 S.E.2d 380, 2023 Ga. App. LEXIS 80 (2023).

Sentence for criminal attempt at child molestation and computer child exploitation. — Because the offenses of criminal attempt to commit child molestation and computer child exploitation each required proof of a fact the other did not, the trial court did not err in sentencing the defendant on both convictions. Brown v. State, 321 Ga. App. 798, 743 S.E.2d 474, 2013 Ga. App. LEXIS 412 (2013).

RESEARCH REFERENCES

ALR.

Validity of state statutes and administrative regulations regulating internet communications under commerce clause and First Amendment of federal constitution, 98 A.L.R.5th 167.

Validity, construction, and application of state statutes prohibiting child luring as applied to cases involving luring of child by means of verbal or other nonelectronic communications, 35 A.L.R.6th 361.

State Law Liability and Relief for "Revenge Porn," 54 A.L.R.7th 2.

16-12-100.3. Obscene telephone contact; conviction; penalties.

(a) As used in this Code section, the terms "sexual conduct," "sexual excitement," and "sadomasochistic abuse" have the same meanings as provided for those terms in Code Section 16-12-100.1, relating to electronically furnishing obscene materials to minors; the term "sexually explicit nudity" has the same meaning as provided for that term in Code Section 16-12-102, relating to distributing harmful materials to minors; and the term "child" means a person under 14 years of age.

(b) A person 17 years of age or over commits the offense of obscene telephone contact with a child if that person has telephone contact with an individual whom that person knows or should have known is a child, and that contact involves any aural matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse which is intended to arouse or satisfy the sexual desire of either the child or the person, provided that no conviction shall be had for this offense on the unsupported testimony of the victim.

(c)(1) Except as otherwise provided in other paragraphs of this subsection, a person convicted of the offense of obscene telephone contact with a child shall be guilty of a misdemeanor of a high and aggravated nature.

(2) Upon the first conviction of the offense of obscene telephone contact with a child:

(A) If the person convicted is less than 21 years of age, such person shall be guilty of a misdemeanor; or

(B) The judge may probate the sentence without regard to the age of the convicted person, and such probation may be upon the special condition that the defendant undergo a mandatory period of counseling administered by a licensed psychiatrist or a licensed psychologist. However, if the judge finds that such probation should not be imposed, the judge shall sentence the defendant to imprisonment; provided, further, that upon a defendant's being incarcerated on a conviction for such first offense, the place of incarceration shall provide counseling to such defendant.

(3) Upon a second or subsequent conviction of such offense, the defendant shall be guilty of a felony and punished by imprisonment for not less than one nor more than five years.

History.
Code 1981, § 16-12-100.3, enacted by Ga. L. 2000, p. 1237, § 1.

Law reviews.
For article, "'Sexting' to Minors in a Rapidly Evolving Digital Age: Frix v. State Establishes the Applicability of Georgia's Obscenity Statutes to Text Messages," see 61 Mercer L. Rev. 1283 (2010).

JUDICIAL DECISIONS

Text messages not within ambit of statute. — Defendant was charged with obscene telephone contact with a minor based on text messages of a sexually explicit nature that the defendant had sent by cellular phone. As a text message was in written format and not capable of being heard, it was not "aural matter" within the meaning of O.C.G.A. § 16-12-100.3(b); therefore, the charge had to be quashed. Frix v. State, 298 Ga. App. 538, 680 S.E.2d 582, 2009 Ga. App. LEXIS 734 (2009).

16-12-100.4. Access or use of commercial social networking website by high-risk sex offenders; conviction; severability.

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

(1) "Commercial social networking website" includes any website, application, portal, or other means of accessing the internet that:

(A) Is operated by a person that derives revenue from membership fees, advertising, or other sources related to the operation of the website, application, portal, or other means of accessing the internet;

(B) Allows users to create personal web pages or profiles that

contain the user's name or nickname, photographs of the user, and other personal information; and

(C) Provides users or visitors a mechanism by which to communicate with others, such as a message board, chat room, or instant messenger.

Such term shall not include a website that is either owned or operated by a local, state, or federal governmental entity or that has as its primary purpose the facilitation of commercial transactions, the dissemination of news, the discussion of political or social issues, or professional networking.

(2) "High-risk sex offender" means any individual who is registered with the state sexual offender registry and who has been classified as a sexually dangerous predator pursuant to Code Section 42-1-14.

(b) It shall be unlawful for any high-risk sex offender to access or use any commercial social networking website to:

(1) Communicate with a person who the offender believes is under 16 years of age;

(2) Contact a person who the offender believes is under 16 years of age;

(3) Pose falsely as a person under 16 years of age; or

(4) Gather information about a person who the offender believes is under 16 years of age.

(c) For purposes of determining jurisdiction, an offense shall be deemed to be committed in this state if the transmission that constitutes the offense either originates in this state or is received in this state.

(d) Any person that violates this Code section 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 and by a fine of not more than $10,000.00.

(e) This Code section shall be severable in accordance with Code Section 1-1-3, relating to severability.

History.

Code 1981, § 16-12-100.4, enacted by Ga. L. 2022, p. 104, § 3/HB 1188; Ga. L. 2024, p. 1052, § 3(3)/SB 448, effective July 1, 2024.

Effective date.

This Code section became effective July 1, 2022.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised capitalization in paragraph (a)(2).

16-12-100.5. Grooming of a minor for a sexual offense or trafficking for sexual servitude.

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

(1) "Computer" has the same meaning as provided in Code Section 16-9-92.

(2) "Electronic device" has the same meaning as provided in Code Section 16-12-100.2.

(3) "Minor" means any person under the age of 18 years.

(4) "Pattern of conduct or communication" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

(5) "Sexual offense" has the same meaning as provided in Code Section 17-10-6.2.

(6) "Sexual servitude" has the same meaning as provided in Code Section 16-5-46.

(b) A person over the age of 18 and no less than 48 months older than the alleged victim commits the offense of grooming of a minor when such person knowingly and intentionally engages in a pattern of conduct or communication in person; through a third party; through the use of an electronic device, a computer, social media, or text messages; or by any other means to gain access to, to gain the compliance of, to prepare, to persuade, to induce, or to coerce a minor to engage in a sexual offense or trafficking of persons for sexual servitude.

(c) Any person who violates this Code section shall be guilty of a felony and punished by imprisonment for not less than one nor more than five years.

(d) It shall not be a defense to prosecution under this Code section that no sexual offense or trafficking of persons for sexual servitude was accomplished or attempted.

(e) A person shall be subject to prosecution in this state pursuant to Code Section 17-2-1 for any conduct made unlawful by this Code section which the person engages in while:

(1) Either within or outside of this state if such conduct involves a minor who resides in this state or another person believed by such person to be a minor residing in this state; or

(2) Within this state if such conduct involves a minor who resides within or outside this state or another person believed by such person to be a minor residing within or outside this state.

History.
Code 1981, § 16-12-100.5, enacted by Ga. L. 2024, p. 424, § 2/HB 993, effective July 1, 2024.

Effective date.
This Code section became effective July 1, 2024.

Part 3

Sale or Distribution of Harmful Materials to Minors

Editor's notes.
Prior to the effective date of the Code, Ga. L. 1981, p. 1578, § 2, effective July 1, 1981, repealed the provisions originally assigned to this part (codified at §§ 16-12-101 through 16-12-108) and enacted new provisions which were derived principally from Ga. L. 1969, p. 222, § 1 and codified at §§ 16-12-110 through 16-12-113. This part was then repealed and reenacted by Ga. L. 1983, p. 1437, § 2, effective July 1, 1983, by which Act the former §§ 16-12-110 through 16-12-113 were repealed and new §§ 16-12-101 through 16-12-105 were enacted.

Because Ga. L. 1981, p. 1578, § 2 repealed Code sections designated §§ 16-12-101 through 16-12-108 and enacted new Code sections designated as §§ 16-12-110 through 16-12-113, the Code did not originally contain a Code section designated as § 16-12-109. In 2003, the Code Commission reserved § 16-12-109; however, Ga. L. 2007, p. 47, § 16, effective May 11, 2007, repealed the reservation of this Code section.

Law reviews.
For annual survey of criminal law and procedure, see 35 Mercer L. Rev. 103 (1983).

16-12-101. Legislative purpose.

The General Assembly finds that the sale, loan, and exhibition of harmful materials to minors has become a matter of increasingly grave concern to the people of this state. The elimination of such sales, loans, and exhibition and the consequent protection of minors from harmful materials are in the best interest of the morals and general welfare of the citizens of this state in general and of minors in this state in particular. The accomplishment of these ends can best be achieved by providing public prosecutors with an effective power to commence criminal proceedings against persons who engage in the sale, loan, or exhibition of harmful materials to minors.

History.
Code 1981, § 16-12-101, enacted by Ga. L. 1983, p. 1437, § 2.

JUDICIAL DECISIONS

Constitutionality. — Decision in American Booksellers Ass'n v. Webb, 643 F. Supp. 1546 (N.D. Ga. 1986), invalidating the display provision of O.C.G.A. Pt. 3, Ch. 12, T. 16 does not prohibit the state from prosecuting a defendant for violating the exhibition, distribution, and definition components of that part. Hunter v. State, 257 Ga. 571, 361 S.E.2d 787, 1987 Ga. LEXIS 1009 (1987).

16-12-102. Definitions.

As used in this part, the term:

(1) "Harmful to minors" means that quality of description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(A) Taken as a whole, predominantly appeals to the prurient, shameful, or morbid interest of minors;

(B) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(C) Is, when taken as a whole, lacking in serious literary, artistic, political, or scientific value for minors.

(2) "Knowingly" means having a general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

(A) The character and content of any material described in this part which is reasonably susceptible to examination by the defendant; and

(B) The age of the minor; provided, however, that an honest mistake shall constitute an excuse from liability in this part if the defendant made a reasonable, bona fide attempt to ascertain the true age of such minor.

(3) "Minor" means a person less than 18 years of age.

(4) "Sadomasochistic abuse" means actual or simulated flagellation or torture by or upon a person who is nude, clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained by one so clothed or nude.

(5) "Sexual conduct" means actual or simulated acts of masturbation, homosexuality, sexual intercourse, or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is female, breasts.

(6) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(7) "Sexually explicit nudity" means a state of undress so as to expose the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

History.
Code 1981, § 16-12-102, enacted by Ga. L. 1983, p. 1437, § 2; Ga. L. 1984, p. 1495, § 3; Ga. L. 1996, p. 6, § 16.

JUDICIAL DECISIONS

Constitutionality. — Definition of material targeted in O.C.G.A. § 16-12-102 does not involve "legislative overkill"; the definition employs a narrowly crafted adaptation of the current definition of adult obscenity announced by the United States Supreme Court in Miller v. California, 413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed. 2d 419 (1973). American Booksellers v. Webb, 919 F.2d 1493, 1990 U.S. App. LEXIS 22251 (11th Cir. 1990), cert. denied, 500 U.S. 942, 111 S. Ct. 2237, 114 L. Ed. 2d 479, 1991 U.S. LEXIS 2930 (1991).

O.C.G.A. § 16-12-102 covers only material unprotected to minors and is not so indeterminate that the statute unduly chills protected expression. American Booksellers v. Webb, 919 F.2d 1493, 1990 U.S. App. LEXIS 22251 (11th Cir. 1990), cert. denied, 500 U.S. 942, 111 S. Ct. 2237, 114 L. Ed. 2d 479, 1991 U.S. LEXIS 2930 (1991).

"Obscene" work viewed "as a whole." — The O.C.G.A. § 16-12-103(a)(1) charge against the defendant was based on defendant's exhibiting to a minor an allegedly pornographic motion picture, and the jury was allowed to view a videotape of this motion picture; but at some point during the showing of this film, defense counsel stipulated that the film was sexually explicit, and the remainder of the film was not shown to the jury, as a result of this truncation of the jury's view of the film, there was insufficient evidence under which the jury could have found defendant guilty of this charge since, in order to be adjudged obscene, the work must depict sexually explicit nudity and be harmful to minors; in order to be adjudged harmful to minors, the work must meet the three-part test set out in O.C.G.A. § 16-12-102(1)(A), (B), and (C) and in order to determine whether the work meets the tests set out in subparagraphs (A) and (C), the work must be viewed "as a whole." Hunter v. State, 257 Ga. 571, 361 S.E.2d 787, 1987 Ga. LEXIS 1009 (1987).

Materials "harmful to minors." — In a prosecution for exhibiting harmful material to a minor, pursuant to the statutory definition, the question for the jury was whether the materials in question were "harmful to minors" under the "prevailing standards in the adult community" and testimony of a defense witness that the materials were not in fact harmful was irrelevant. Hollis v. State, 215 Ga. App. 35, 450 S.E.2d 247, 1994 Ga. App. LEXIS 1139 (1994).

Watching sexually explicit videotapes with minor. — In a prosecution for child molestation, based on defendant's forcing a minor to watch sexually explicit videotapes with the defendant, the state was not required to prove that the tapes were "obscene" and "harmful to minors." Stroeining v. State, 226 Ga. App. 410, 486 S.E.2d 670, 1997 Ga. App. LEXIS 635 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Protection of minors. — Public libraries may be required by legislation to take appropriate action to protect minors from exposure to materials which fall within the definition of harmful to minors. 1995 Op. Att'y Gen. No. U95-24.

16-12-103. Selling, loaning, distributing, or exhibiting; duties of video game retailers.

(a) It shall be unlawful for any person knowingly to sell or loan for monetary consideration or otherwise furnish or disseminate to a minor:

(1) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or

(2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (1) of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

(b)(1) It shall be unlawful for any person knowingly to sell or furnish to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors or exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by minors not admitted to any such premises.

(2) It shall be unlawful for any person knowingly to sell or to furnish to a person under the age of 21 an admission ticket or pass or knowingly to admit a person under the age of 21 to premises whereon there is exhibited a show or performance which is harmful to minors and which, in whole or in part, consists of sexually explicit nudity on the part of one or more live performers; sexual conduct on the part of one or more live performers; or sadomasochistic abuse on the part of one or more live performers.

(c) It shall be unlawful for any person to falsely represent his or her age to any person mentioned in subsection (a) or subsection (b) of this Code section or to his or her agent with the intent to unlawfully procure any material set forth in subsection (a) of this Code section or with the intent to unlawfully procure such person's admission to any motion picture, show, or other presentation, as set forth in subsection (b) of this Code section.

(d) It shall be unlawful for any person knowingly to make a false representation to any person mentioned in subsection (a) or subsection (b) of this Code section or to his or her agent that he or she is the parent or guardian of any minor or knowingly to make a false representation with respect to the age of another person with the intent to unlawfully procure for such other person any material set forth in subsection (a) of this Code section or with the intent to unlawfully procure such other person's admission to any motion picture, show, or other presentation, as set forth in subsection (b) of this Code section.

(e) It shall be unlawful for any person knowingly to exhibit, expose, or display in public at newsstands or any other business or commercial establishment or at any other public place frequented by minors or where minors are or may be invited as part of the general public:

(1) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or

(2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (1) of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

(f)(1) As used in this subsection, the term:

(A) "Video game" means an object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology.

(B) "Video game retailer" means a person who sells or rents video games to the public.

(2) Every video game retailer shall post a sign providing information to consumers about any video game rating system which appears on a video game offered by such retailer. The sign shall be posted in a conspicuous place within the portion of the establishment dedicated to the display or advertisement of video games. Each video game retailer shall make available to consumers, upon request, written information explaining each such rating system.

(3) A person violating the provisions of this subsection shall be punished with a civil fine in an amount not less than $250.00 and not more than $500.00 for each violation. Each day in violation of this subsection shall constitute a separate offense.

History.

Code 1981, §§ 16-12-103, 16-12-104, enacted by Ga. L. 1983, p. 1437, § 2; Ga. L. 1984, p. 22, § 16; Ga. L. 1984, p. 1495, § 3; Ga. L. 1996, p. 273, § 2; Ga. L. 2005, p. 1261, § 1/SB 106.

Editor's notes.

The provisions of the subsection (b) added by the second 1984 amendment were derived in great part from the provisions of former Code Section 16-12-104. See Editor's notes to that Code section.

Ga. L. 1996, p. 273, § 3, not codified by the General Assembly, provides for severability.

Law reviews.

For review of 1996 offenses against

public health and morals legislation, see 13 Georgia St. U.L. Rev. 116 (1996).

For article on 2005 amendment of this Code section, see 22 Georgia St. U.L. Rev. 57 (2005).

For note, "Balancing the First Amendment and Child Protection Goals in Legal Approaches to Restricting Children's Access to Violent Video Games: A Comparison of Germany and the United States," see 34 Ga. J. Int'l & Comp. L. 743 (2006).

For article, "'Sexting' to Minors in a Rapidly Evolving Digital Age: Frix v. State Establishes the Applicability of Georgia's Obscenity Statutes to Text Messages," see 61 Mercer L. Rev. 1283 (2010).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 16-12-103 produces only a slight burden on adults' access to protected material and fully comports with the First Amendment. American Booksellers v. Webb, 919 F.2d 1493, 1990 U.S. App. LEXIS 22251 (11th Cir. 1990), cert. denied, 500 U.S. 942, 111 S. Ct. 2237, 114 L. Ed. 2d 479, 1991 U.S. LEXIS 2930 (1991).

O.C.G.A. § 16-12-103(b)(2) is unconstitutional as an infringement on free speech rights without proof of a compelling state interest justifying such restriction applying to persons between 18 and 21 years of age. State v. Cafe Erotica, Inc., 269 Ga. 486, 500 S.E.2d 574, 1998 Ga. LEXIS 561 (1998).

Prosecution for exhibition or definition violations. — State is not prohibited from prosecuting a defendant for violating the exhibition and definition components of O.C.G.A. § 16-12-103, even though the display provision (subsection (e)) has been declared unconstitutional. Windom v. State, 187 Ga. App. 18, 369 S.E.2d 311, 1988 Ga. App. LEXIS 586 (1988).

"Obscene" work viewed "as a whole." — When the O.C.G.A. § 16-12-103(a)(1) charge against the defendant was based on defendant's exhibiting to a minor an allegedly pornographic motion picture, and the jury was allowed to view a videotape of this motion picture, which was found during a search of defendant's home, but at some point during the showing of this film, defense counsel stipulated that the film was sexually explicit, and the remainder of the film was not shown to the jury, as a result of this truncation of the jury's view of the film, there was insufficient evidence under which the jury could have found defendant guilty of this charge since, in order to be adjudged obscene under O.C.G.A. § 16-12-103(a)(1), the work must depict sexually explicit nudity and be harmful to minors; in order to be adjudged harmful to minors, the work must meet the three-part test set out in O.C.G.A. § 16-12-102(1)(A), (B), and (C), and in order to determine whether the work meets the tests set out in subparagraphs (A) and (C) the work must be viewed "as a whole." Hunter v. State, 257 Ga. 571, 361 S.E.2d 787, 1987 Ga. LEXIS 1009 (1987).

Private or noncommercial exhibition to minors. — Charging a defendant with showing an obscene film to a minor does not constitute an unconstitutional intrusion into defendant's right of personal privacy within the private and noncommercial boundaries of defendant's home. Hunter v. State, 257 Ga. 571, 361 S.E.2d 787, 1987 Ga. LEXIS 1009 (1987).

Distribution of text message by cell phone. — Sexually explicit text message sent to a minor via a cellular phone constitutes "printed matter however reproduced" under O.C.G.A. § 16-12-103(a)(2). Frix v. State, 298 Ga. App. 538, 680 S.E.2d 582, 2009 Ga. App. LEXIS 734 (2009).

As a person of ordinary intelligence would have fair notice that sending a sexually explicit text message to a minor via a cellular phone was unlawful under O.C.G.A. § 16-12-103, prosecuting the defendant for distribution of harmful materials to a minor based on such conduct did not violate due process. Frix v. State, 298 Ga. App. 538, 680 S.E.2d 582, 2009 Ga. App. LEXIS 734 (2009).

Placing material "harmful to minors" behind "blinder racks" or

shelves which cover at least the lower two-thirds of material that would otherwise be exposed to view does not impose a "substantially overbroad" regulation on "conduct plus speech," where adults may peruse and purchase the material without restriction. American Booksellers v. Webb, 919 F.2d 1493, 1990 U.S. App. LEXIS 22251 (11th Cir. 1990), cert. denied, 500 U.S. 942, 111 S. Ct. 2237, 114 L. Ed. 2d 479, 1991 U.S. LEXIS 2930 (1991).

Admission of challenged evidence deemed harmless error. — In a prosecution against the defendant for child molestation, enticing a child for indecent purposes, and exhibiting pornography to a minor, even if the appeals court assumed that the word "catheter" should have been redacted from what the defendant apparently conceded was an otherwise relevant list of items found in a search, the trial court's failure to do so was harmless error because it was highly improbable that such failure contributed to the verdict given the overwhelming evidence of the defendant's guilt. Goldey v. State, 289 Ga. App. 198, 656 S.E.2d 549, 2008 Ga. App. LEXIS 37 (2008).

Rule of lenity did not apply. — There was no merit to a defendant's contention that the defendant's conviction and felony sentence for child molestation were improper because the alleged conduct also violated O.C.G.A. § 16-12-103(a)(1), which makes it a misdemeanor of a high and aggravated nature to furnish or disseminate harmful material to a minor and, therefore, the defendant could only be prosecuted for the misdemeanor offense as the rule of lenity did not apply because the two offenses at issue required different conduct. Namely, the crime of child molestation required, among other things, proof of the intent to arouse or satisfy the sexual desires of either the child or the perpetrator, which was not a required element of the crime of furnishing or disseminating harmful material to a minor. Metts v. State, 297 Ga. App. 330, 677 S.E.2d 377, 2009 Ga. App. LEXIS 431 (2009).

RESEARCH REFERENCES

ALR.

Obscenity prosecution: statutory exemption based on dissemination to persons or entities having scientific, educational, or similar justification for possession of such materials, 13 A.L.R.5th 567.

Constitutionality of state statutes banning distribution of sexual devices, 94 A.L.R.5th 497.

16-12-104. Library exception.

The provisions of Code Section 16-12-103 shall not apply to any public library operated by the state or any of its political subdivisions nor to any library operated as a part of any school, college, or university.

History.

Code 1981, § 16-12-104, enacted by Ga. L. 1984, p. 1495, § 3.

Editor's notes.

This Code section formerly dealt with exhibiting to persons under 18 shows depicting sexually explicit nudity, sexual conduct, or sadomasochistic abuse; see subsection (b) of Code Section 16-12-103 for similar current provisions. The former Code section was enacted by Ga. L. 1983, p. 1437, § 2.

JUDICIAL DECISIONS

Constitutionality. — Exemption for display of materials harmful to minors at libraries does not offend the equal protection clause of the U.S. Constitution. American Booksellers v. Webb, 919 F.2d 1493, 1990 U.S. App. LEXIS 22251 (11th

Cir. 1990), cert. denied, 500 U.S. 942, 111 S. Ct. 2237, 114 L. Ed. 2d 479, 1991 U.S. LEXIS 2930 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Protection of minors. — Public libraries may be required by legislation to take appropriate action to protect minors from exposure to materials which fall within the definition of harmful to minors. 1995 Op. Att'y Gen. No. U95-24.

RESEARCH REFERENCES

ALR.
Obscenity prosecution: statutory exemption based on dissemination to persons or entities having scientific, educational, or similar justification for possession of such materials, 13 A.L.R.5th 567.

16-12-105. Penalty.

(a) Except as provided in subsection (b) of this Code section, any person who violates any provision of Code Section 16-12-103 or 16-12-104 shall be guilty of a misdemeanor of a high and aggravated nature.

(b) Any person who violates subsection (a) of Code Section 16-12-103 shall be guilty of a misdemeanor if:

(1) The person depicted was at least 14 years of age;

(2) The items described in subsection (a) of Code Section 16-12-103 were furnished or disseminated with the permission of the minor depicted; and

(3) The defendant was 18 years of age or younger at the time of the offense.

History.
Code 1981, § 16-12-105, enacted by Ga. L. 1983, p. 1437, § 2; Ga. L. 2013, p. 663, § 4/HB 156.

ARTICLE 4

OFFENSES AGAINST PUBLIC TRANSPORTATION

PART 1

GENERAL PROVISIONS

16-12-120. Certain acts in public transit buses, rapid rail cars, or stations; penalty.

(a) A person who commits or attempts to commit any of the following

acts in a public transit bus, a rapid rail car, or a rapid rail station or intermodal bus station shall be guilty of a misdemeanor:

(1) Spits, defecates, or urinates;

(2) Discards litter, except into receptacles designated for that purpose;

(3) Smokes tobacco in any form;

(4) Consumes food or beverage or possesses any open food or beverage container, provided that this paragraph shall not apply to resealable beverages in resealable plastic containers, to an operator of a public transit bus at an authorized layover point, or to a person providing food or beverage to any child under age five; provided, further, that nothing in this paragraph shall apply to a rapid rail station or intermodal bus station, unless the public transit system operating such station adopts a policy prohibiting food or beverages in such station; and provided, further, that nothing in this paragraph shall preclude a public transit system operated or funded by a county, municipality, or consolidated government from prohibiting the consumption of any beverage in a public transit bus;

(5) Plays any radio; cassette, cartridge, or tape player; or similar device unless such device is connected to an earphone that limits the sound to the hearing of the individual user;

(6) Carries or possesses any explosives, acids, other dangerous articles, or live animals, except for the following:

(A) A guide dog or service dog as described in Code Section 30-4-2, provided that such guide dog or service dog is accompanied by a physically disabled person, blind person, person with visual disabilities, deaf person, or a person who is responsible for training a guide dog or service dog; and

(B) Small pets confined to rigid pet carriers with locks or latches;

(7) Obstructs, hinders, interferes with, or otherwise disrupts or disturbs the operation, operator, or passengers of a public transit bus or rapid rail car;

(8) Boards any public transit bus through the rear exit door, unless so directed by an employee or agent of the carrier;

(9) Remains aboard any public transit bus or rapid rail car after such vehicle has completed its scheduled route and passengers have been advised to exit the vehicle or remains aboard any public transit bus or rapid rail car after having been warned and after such vehicle has entered a garage or other restricted area not open to the public;

(10) Enters, exits, or passes through any emergency door of any rapid rail car or public transit bus in the absence of a bona fide emergency; or

(11) Enters the operator's cab or driver's seat of any rapid rail car or public transit bus in the absence of a bona fide emergency.

(a.1)(1) It shall be unlawful to solicit money or sell goods or services for a fee to the operator or passengers of a public transit bus or rapid rail car within the confines of such vehicle or within the paid areas of any rapid rail station or intermodal bus station without the express permission or grant of a concession by the public transportation authority or carrier.

(2) It shall be unlawful to deliver or distribute handbills or flyers of a commercial nature to the operator or passengers of a public transit bus or rapid rail car within the confines of such vehicle or within the paid area of any rapid rail station or intermodal bus station.

(3) A person violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $50.00 and not more than $100.00. Upon a second or subsequent conviction, a person shall be punished by a fine of not less than $100.00 and not more than $250.00 or by imprisonment for not more than ten days, or both.

(b) Employees of a public transportation authority or carrier while at work performing the duties of their employment shall be exempted from the restrictions of paragraphs (8), (9), (10), and (11) of subsection (a) of this Code section.

(c) A person convicted of a first offense of violating subsection (a) of this Code section shall be punished by a fine of not less than $50.00 and not more than $100.00. Upon a second or subsequent conviction, a person shall be punished by a fine of not less than $100.00 and not more than $250.00 or by imprisonment for not more than ten days, or both.

(d) This Code section shall be cumulative to and shall not prohibit the enactment of any other general and local laws, rules, and regulations of state or local authorities or agencies, and local ordinances prohibiting such activities which are more restrictive than this Code section.

History.

Code 1933, § 26-9911, enacted by Ga. L. 1976, p. 1645, § 1; Ga. L. 1998, p. 890, § 1; Ga. L. 1999, p. 81, § 16; Ga. L. 2001, p. 4, § 16; Ga. L. 2003, p. 338, § 1; Ga. L. 2005, p. 1178, § 1/SB 129; Ga. L. 2009, p. 736, § 1/SB 89; Ga. L. 2010, p. 878, § 16/HB 1387.

Cross references.

Right of carrier of passengers to refuse admittance to or to eject persons who refuse to comply with regulations of car-

rier or who exhibit improper conduct, § 46-9-131.

Marking of explosives being transported by railroad or otherwise, § 46-9-253.

Editor's notes.

Ga. L. 2005, p. 1178, § 2/SB 129, not codified by the General Assembly, provides that the 2005 amendment adding paragraph (a.1) applies to all offenses occurring on and after July 1, 2005.

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Georgia St. U.L. Rev. 91 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders. — An offense under O.C.G.A. § 16-12-120 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

Offense under O.C.G.A. § 16-12-120 is not one for which those charged with a violation are to be fingerprinted. 2006 Op. Att'y Gen. No. 2006-2.

16-12-120.1. Altered fare payments; sale or exchange of fare payment without consent.

A person who commits or attempts to commit any of the following acts shall be guilty of a misdemeanor if such person:

(1) Sells, makes, or possesses any coin, token, stored value card, transfer, transaction card, ticket, or any other fare medium which has been altered from its original condition contrary to its intended use to enter or gain entry into or on any bus, rail vehicle, or station;

(2) Sells or exchanges any token, stored value card, transfer, transaction card, ticket, fare medium, or similar article which was obtained by fraudulent or illegal means and which is used or to be used as payment for entry into or on any bus, rail vehicle, or terminal without the express consent of the public transit agency owning or operating such vehicles or stations;

(3) Offers entry or provides entry into or on any bus, rapid rail car, or station to any person without the payment of the proper fare to the public transit agency owning or operating such vehicles or stations;

(4) Gains entry into or on any bus, rapid rail car, or station without the payment of the proper fare; or

(5) Gains entry into or on any bus, rapid rail car, or station through the use of a coin, token, transfer, transaction card, ticket, or any other fare medium which is the property of another person when the use of such medium is limited by its terms to a single user. This paragraph shall not apply to stored value cards or similar fare media which deduct the cost of the fare from the value stored on the card or other fare medium each time such card or other fare medium is used.

History.

Code 1981, § 16-12-120.1, enacted by Ga. L. 1992, p. 985, § 1; Ga. L. 1998, p. 890, § 2; Ga. L. 2006, p. 493, § 1/HB 954.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders. — An offense under O.C.G.A. § 16-12-120.1 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

PART 2

TRANSPORTATION PASSENGER SAFETY

16-12-121. Short title.

This part shall be known and may be cited as the "Transportation Passenger Safety Act."

History.
Ga. L. 1978, p. 2238, § 1; Ga. L. 1988, p. 415, § 2; Ga. L. 2002, p. 1094, § 5.
Editor's notes.
Ga. L. 2002, p. 1094, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Security Act of 2002.'"

RESEARCH REFERENCES

ALR.
Means of preventing overcrowding of streetcars, 6 A.L.R. 124.
Validity and construction of statute or ordinance specifically criminalizing passenger misconduct on public transportation, 78 A.L.R.4th 1127.

16-12-122. Definitions.

As used in this part, the term:

(1) "Aircraft" means any machine, whether heavier or lighter than air, used or designed for navigation of or flight in the air.

(2) "Avoid a security measure" means to take any action that is intended to result in any person, baggage, container, or item of any type being allowed into a secure area without being subjected to security measures or the assembly of items into an object or substance that is prohibited under the laws of this state or of the United States or any of their agencies, political subdivisions, or authorities after such items have passed through a security measure into a secure area.

(3) "Bus" means any passenger bus or coach or other motor vehicle having a seating capacity of not less than 15 passengers operated by a transportation company for the purpose of carrying passengers or freight for hire.

(4) "Charter" means a group of persons, pursuant to a common purpose and under a single contract and at a fixed charge for the vehicle in accordance with a transportation company's tariff, who

have acquired the exclusive use of an aircraft, bus, or rail vehicle to travel together as a group to a specified destination.

(5) "Interfere with a security measure" means to take any action that is intended to defeat, disable, or prevent the full operation of equipment or procedures designed or intended to detect any object or substance, including, but not limited to, disabling of any device so that it cannot fully function, creation of any diversion intended to defeat a security measure, or packaging of any item or substance so as to avoid detection by a security measure.

(6) "Passenger" means any person served by the transportation company; and, in addition to the ordinary meaning of passenger, the term shall include any person accompanying or meeting another person who is transported by such company, any person shipping or receiving freight, and any person purchasing a ticket or receiving a pass.

(7) "Rail vehicle" means any railroad or rail transit car, carriage, coach, or other vehicle, whether self-propelled or not and designed to be operated upon a rail or rails or other fixed right of way by a transportation company for the purpose of carrying passengers or freight or both for hire.

(8) "Secure area" means any enclosed or unenclosed area within a terminal whereby access is restricted in any manner or the possession of items subject to security measures is prohibited. Access to a secure area may be restricted to persons specifically authorized by law, regulation, or policy of the governing authority or transportation company operating said terminal, and such access into a secure area may be conditioned on passing through security measures, and possession of items may be restricted to designated persons who are acting in the course of their official duties.

(9) "Security measure" means any process or procedure by which employees, agents, passengers, persons accompanying passengers, containers, baggage, freight, or possessions of passengers or persons accompanying passengers are screened, inspected, or examined by any means for the purpose of ensuring the safety and welfare of aircraft, bus, or rail vehicles and the employees, agents, passengers, and freight of any transportation company. The security measures may be operated by or under the authority of any governmental entity, transportation company, or any entity contracting therewith.

(10) "Terminal" means an aircraft, bus, or rail vehicle station, depot, any such transportation facility, or infrastructure relating thereto operated by a transportation company or governmental entity or authority. This term includes a reasonable area immediately adjacent to any designated stop along the route traveled by any coach

or rail vehicle operated by a transportation company or governmental entity operating aircraft, bus, or rail vehicle transportation facility and parking lots or parking areas adjacent to a terminal.

(11) "Transportation company" or "company" means any person, group of persons, or corporation providing for-hire transportation to passengers or freight by aircraft, by bus upon the highways in this state, by rail vehicle upon any public or private right of way in this state, or by all, including passengers and freight in interstate or intrastate travel. This term shall also include transportation facilities owned or operated by local public bodies; by municipalities; and by public corporations, authorities, boards, and commissions established under the laws of this state, any of the several states, the United States, or any foreign nation.

History.
Ga. L. 1978, p. 2238, § 2; Ga. L. 1988, p. 415, § 2; Ga. L. 2002, p. 1094, § 5.
Editor's notes.
Ga. L. 2002, p. 1094, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Security Act of 2002.'"

RESEARCH REFERENCES

ALR.
Liability of motorbus carrier to passenger injured through fall while alighting at place other than regular bus stop, 7 A.L.R.4th 1031.

16-12-123. Bus or rail vehicle hijacking; boarding with concealed weapon; company use of reasonable security measures.

(a)(1) A person commits the offense of bus or rail vehicle hijacking when he or she:

(A) Seizes or exercises control by force or violence or threat of force or violence of any bus or rail vehicle within the jurisdiction of this state;

(B) By force or violence or by threat of force or violence seizes or exercises control of any transportation company or all or any part of the transportation facilities owned or operated by any such company; or

(C) By force or violence or by threat of force or violence substantially obstructs, hinders, interferes with, or otherwise disrupts or disturbs the operation of any transportation company or all or any part of a transportation facility.

(2) Any person convicted of the offense of bus or rail hijacking shall be guilty of a felony and, upon conviction thereof, shall be

punished by imprisonment for life or by imprisonment for not less than one nor more than 20 years.

(b) Any person who boards or attempts to board an aircraft, bus, or rail vehicle with any explosive, destructive device, or hoax device as such terms are defined in Code Section 16-7-80; weapon or long gun as such terms are defined in Code Section 16-11-125.1 if such person is not a lawful weapons carrier as defined in Code Section 16-11-125.1; hazardous substance as defined by Code Section 12-8-92; or other device designed or modified for the purpose of offense and defense concealed on or about his or her person or property which is or would be accessible to such person while on the aircraft, bus, or rail vehicle shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years. The prohibition of this subsection shall not apply to any law enforcement officer, peace officer retired from a state or federal law enforcement agency, person in the military service of the state or of the United States, or commercial security personnel employed by the transportation company who is in possession of weapons used within the course and scope of employment; nor shall the prohibition apply to persons transporting weapons contained in baggage which is not accessible to passengers if the presence of such weapons has been declared to the transportation company and such weapons have been secured in a manner prescribed by state or federal law or regulation for the purpose of transportation or shipment. The provisions of this subsection shall not apply to any privately owned aircraft, bus, or rail vehicle if the owner of such aircraft or vehicle has given his or her express permission to board the aircraft or vehicle with the item.

(c) The company may employ reasonable security measures, including any method or device, to detect concealed weapons, explosives, or hazardous material in baggage or freight or upon the person of the passenger. Upon the discovery of any such item or material in the possession of a person, unless the item is a weapon in the possession of a person exempted under subsection (b) of this Code section from the prohibition of that subsection (b), the company shall obtain possession and retain custody of such item or materials until they are transferred to the custody of law enforcement officers.

History.

Ga. L. 1978, p. 2238, § 3; Ga. L. 1982, p. 3, § 16; Ga. L. 1988, p. 415, § 2; Ga. L. 1996, p. 416, § 7; Ga. L. 2002, p. 1094, § 5; Ga. L. 2010, p. 963, § 2-8/SB 308; Ga. L. 2022, p. 74, § 12/SB 319.

Amendments.

The 2022 amendment, effective April 12, 2022, substituted "terms are defined in Code Section 16-7-80; weapon or long gun as such terms are defined in Code Section 16-11-125.1 if such person is not a lawful weapons carrier as defined in Code Section 16-11-125.1" for "term is defined in Code Section 16-7-80; firearm for which such person does not have on his or her person a valid weapons carry license issued pursuant to Code Section 16-11-129 unless possessing such firearm is prohibited by federal law", and deleted "or knife"

preceding "or other device" in the first sentence in subsection (b).

Cross references.

Time limitation on prosecutions, § 17-3-1 et seq.

Transportation of passengers by carriers generally, § 46-9-130 et seq.

Editor's notes.

Ga. L. 2002, p. 1094, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Security Act of 2002.'"

Ga. L. 2010, p. 963, § 3-1, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010, and shall not affect any prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecution.

Ga. L. 2022, p. 74, § 1/SB 319, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Chairman John Meadows Act.'"

Ga. L. 2022, p. 74, § 2/SB 319, not codified by the General Assembly, provides: "The General Assembly finds and determines that:

"(1) The Second Amendment to the United States Constitution recognizes the right of the people to keep and bear arms and that such right shall not be infringed; and

"(2) The people of this state, to perpetuate the principles of free government, insure justice to all, preserve peace, promote the interest and happiness of the citizen and of the family, and transmit to posterity the enjoyment of liberty, provided that the right of the people to keep and bear arms shall not be infringed but that the General Assembly shall have power to prescribe the manner in which arms may be borne."

Law reviews.

For article, "Crimes and Offenses," see 27 Georgia St. U.L. Rev. 131 (2011).

For article, "SB 319: Chairman John Meadows Act," see 39 Georgia St. U.L. Rev. 1 (2022).

JUDICIAL DECISIONS

Application to airports. — In a case in which a gun rights organization and a Georgia state representative sought declaratory and injunctive relief because they asserted that Georgia House Bill (HB) 89 permitted any person who possessed a valid Georgia firearms license to carry a firearm in the non-sterile areas of the Hartsfield-Jackson Atlanta International Airport, they argued unsuccessfully that the "notwithstanding" language of HB 89, codified at former O.C.G.A. § 16-11-127(e), which authorized Georgia firearms license (GFL) holders to carry firearms in public transportation notwithstanding O.C.G.A. §§ 16-12-122 through 16-12-127, which is the Transportation Passenger Safety Act (TPSA), would be superfluous unless it was intended to make clear that a GFL holder could carry a firearm in an airport. They misleadingly focused only on O.C.G.A. § 16-12-127, but the "notwithstanding" language in HB 89 referred to all of the TPSA, and O.C.G.A. § 16-12-123(b), another section of the TPSA, prohibited boarding any bus or rail vehicle with a firearm; since public transportation included bus and rail vehicles such as those operated by Metropolitan Atlanta Rapid Transit Authority, the "notwithstanding" language was needed to make clear that GFL holders could carry firearms onto such vehicles notwithstanding the TPSA. GeorgiaCarry.Org, Inc. v. City of Atlanta, 602 F. Supp. 2d 1281, 2008 U.S. Dist. LEXIS 108088 (N.D. Ga. 2008), aff'd, 318 Fed. Appx. 851, 2009 U.S. App. LEXIS 5295 (11th Cir. 2009).

Evidence supported verdict of guilty but mentally ill on the defendant's bus hijacking charge as the defendant's mental illness did not prove legal insanity since the defendant told a psychologist that the defendant grabbed the steering wheel of a moving bus because the driver was in difficulty; a trier of fact could conclude that if the defendant was motivated by a delusion that others were planning to harm the defendant, the delusion did not justify forcibly exercising con-

trol over the bus as the defendant did not tell the psychologist that the defendant took over steering the bus because of the defendant's fear of being harmed. Robinson v. State, 272 Ga. App. 87, 611 S.E.2d 759, 2005 Ga. App. LEXIS 225 (2005).

Evidence was sufficient to convict the defendant of boarding a bus with a concealed weapon under O.C.G.A. § 16-12-123(b) because neither the bus driver nor a police officer detected a gun on defendant while the defendant was on a bus, but during an altercation with the officer immediately after leaving the bus, the defendant was seen striking the officer with a gun. Smith v. State, 301 Ga. App. 670, 688 S.E.2d 636, 2009 Ga. App. LEXIS 1272 (2009), cert. denied, No. S10C0799, 2010 Ga. LEXIS 460 (Ga. May 17, 2010).

Evidence sufficient for bus hijacking. — Trial court did not err in denying the defendant's motion for a directed verdict after a jury found the defendant guilty of bus hijacking, O.C.G.A. § 16-12-123(a)(1)(A), because the jury was authorized to conclude beyond a reasonable doubt that the defendant exercised control of the bus by force; the defendant brandished a handgun in the open door of the bus as the defendant ordered a passenger to get off, and the bus driver testified that the driver did not feel free to drive away because the driver felt the driver's life was in danger and the driver did not want to agitate the defendant. Cannon v. State, 310 Ga. App. 262, 712 S.E.2d 645, 2011 Ga. App. LEXIS 546 (2011).

RESEARCH REFERENCES

ALR.

Pocket or clasp knife as deadly or dangerous weapon for purposes of statute aggravating offenses such as assault, robbery, or homicide, 100 A.L.R.3d 287.

What constitutes "dangerous weapon" under statutes prohibiting the carrying of dangerous weapons in motor vehicle, 2 A.L.R.4th 1342.

16-12-124. Removal of baggage, freight, or other items transported by bus or stored in a terminal.

(a) It shall be unlawful to remove any baggage, freight, container, or other item transported upon an aircraft, bus, or rail vehicle or stored in a terminal without consent of the owner of such property or the company or its duly authorized representative. Any person violating this Code section 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.

(b) The actual value of an item removed in violation of this Code section shall not be material to the crime herein defined.

History.

Ga. L. 1978, p. 2238, § 4; Ga. L. 1988, p. 415, § 2; Ga. L. 2002, p. 1094, § 5.

Cross references.

Carriage of baggage by carriers of passengers generally, §§ 46-9-136, 46-9-190 et seq.

Editor's notes.

Ga. L. 2002, p. 1094, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Security Act of 2002.'"

JUDICIAL DECISIONS

Evidence sufficient for conviction. — Evidence was sufficient to support a conviction for unlawful removal of baggage from an airport because an airport investigator identified photographs of a person wearing the type of clothing worn by defendant on the day in question approach the luggage carousal near the time when the missing luggage was supposed to arrive. Keita v. State, 285 Ga. 767, 684 S.E.2d 233, 2009 Ga. LEXIS 478 (2009).

16-12-125. Avoiding or interfering with security measures; penalty; exemption.

(a) Except as otherwise provided in this Code section, it shall be unlawful for any person to avoid or interfere with a properly functioning security measure. Any person convicted of a violation of this Code section shall be guilty of a misdemeanor of a high and aggravated nature; provided, however, that any person who violates this Code section with the intent to commit a felony within the terminal or with regard to any aircraft, bus, or rail vehicle shall be punished by imprisonment for not less than five nor more than 25 years, a fine not to exceed $100,000.00, or both.

(b) Any violation of this Code section shall be considered a separate offense.

(c) This Code section shall not apply to authorized agents of the entity owning or operating such security measure.

History.

Code 1981, § 16-12-125, enacted by Ga. L. 2002, p. 1094, § 5; Ga. L. 2003, p. 423, § 2.

Editor's notes.

Ga. L. 2002, p. 1094, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Security Act of 2002.'"

Ga. L. 2002, p. 1094, § 5, effective June 1, 2002, redesignated former Code Section 16-12-125, concerning the effect of the part and civil or criminal proceedings, as present Code Section 16-12-128.

16-12-126. Intentionally interfering with safety or traffic control devices; penalty; exemption.

(a) Except as otherwise provided in this Code section, it shall be unlawful intentionally to disable or inhibit the operation or effectiveness of any properly functioning safety device of any description or to render any item or substance less safe when said item or substance is in any freight of a transportation company, in baggage or possessions of a passenger, or in a terminal.

(b) Except as otherwise provided in this Code section, it shall be unlawful to intentionally render inoperable or partially inoperable for any period of time any properly functioning device designed or operated for traffic control that is owned, operated, or maintained by or for the benefit of a transportation company.

(c) Any violation of this Code section shall be punished by imprisonment for not less than five nor more than 20 years, a fine not to exceed $100,000.00, or both.

(d) Any violation of this Code section shall be considered a separate offense.

(e) This Code section shall not apply to authorized agents of the entity owning or operating such safety device or device designed or operated for traffic control.

History.
Code 1981, § 16-12-126, enacted by Ga. L. 2002, p. 1094, § 5; Ga. L. 2003, p. 423, § 3.

Editor's notes.
Ga. L. 2002, p. 1094, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Security Act of 2002.'"

16-12-127. Prohibition on firearms, hazardous substances, knives, or other devices; penalty; affirmative defenses.

(a) It shall be unlawful for any person, with the intention of avoiding or interfering with a security measure or of introducing into a terminal any explosive, destructive device, or hoax device as such terms are defined in Code Section 16-7-80; weapon or long gun if such person is not a lawful weapons carrier as such terms are defined in Code Section 16-11-125.1; hazardous substance as defined by Code Section 12-8-92; or other device designed or modified for the purpose of offense and defense, to:

(1) Have any such item on or about his or her person; or

(2) Place or cause to be placed or attempt to place or cause to be placed any such item:

(A) In a container or freight of a transportation company;

(B) In the baggage or possessions of any person or any transportation company without the knowledge of the passenger or transportation company; or

(C) Aboard such aircraft, bus, or rail vehicle.

(b) A person violating the provisions of this Code section shall be guilty of a felony and shall, upon conviction, be sentenced to imprisonment for not less than one year nor more than 20 years, a fine not to exceed $15,000.00, or both. A prosecution under this Code section shall not be barred by the imposition of a civil penalty imposed by any governmental entity.

(c) It is an affirmative defense to a violation of this Code section if a

person notifies a law enforcement officer or other person employed to provide security for a transportation company of the presence of such item as soon as possible after learning of its presence and surrenders or secures such item as directed by the law enforcement officer or other person employed to provide security for a transportation company.

History.

Code 1981, § 16-12-127, enacted by Ga. L. 2002, p. 1094, § 5; Ga. L. 2003, p. 423, § 4; Ga. L. 2010, p. 963, § 2-9/SB 308; Ga. L. 2022, p. 74, § 13/SB 319.

Amendments.

The 2022 amendment, effective April 12, 2022, inserted "such terms are", substituted "weapon or long gun if such person is not a lawful weapons carrier as such terms are defined in Code Section 16-11-125.1" for "firearm for which such person does not have on his or her person a valid weapons carry license issued pursuant to Code Section 16-11-129 unless possessing such firearm is prohibited by federal law", and deleted "or knife" preceding "or other device" in subsection (a), and substituted a semicolon for a comma in paragraph (a)(1).

Editor's notes.

Ga. L. 2002, p. 1094, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Security Act of 2002.'"

Ga. L. 2010, p. 963, § 3-1/SB 308, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010, and shall not affect any prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecution.

Ga. L. 2022, p. 74, § 1/SB 319, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Chairman John Meadows Act.'"

Ga. L. 2022, p. 74, § 2/SB 319, not codified by the General Assembly, provides: "The General Assembly finds and determines that:

"(1) The Second Amendment to the United States Constitution recognizes the right of the people to keep and bear arms and that such right shall not be infringed; and

"(2) The people of this state, to perpetuate the principles of free government, insure justice to all, preserve peace, promote the interest and happiness of the citizen and of the family, and transmit to posterity the enjoyment of liberty, provided that the right of the people to keep and bear arms shall not be infringed but that the General Assembly shall have power to prescribe the manner in which arms may be borne."

Law reviews.

For article, "Crimes and Offenses," see 27 Georgia St. U.L. Rev. 131 (2011).

For article, "SB 319: Chairman John Meadows Act," see 39 Georgia St. U.L. Rev. 1 (2022).

16-12-128. Effect of part on other provisions of law; civil or criminal proceedings; restitution.

(a) This part shall be cumulative and supplemental to any other law of this state. A conviction or acquittal under any of the criminal provisions of Code Section 16-12-123, 16-12-124, 16-12-125, or 16-12-126 shall not be a bar to any other civil or criminal proceeding.

(b) In addition to any other penalty imposed by law for a violation of this part, the court may require the defendant to make restitution to any affected public or private entity for the reasonable costs or damages associated with the offense. Restitution made pursuant to this subsection shall not preclude any party from obtaining any other civil or

criminal remedy available under any other provision of law. The restitution authorized by this subsection is supplemental and not exclusive.

History.
Ga. L. 1978, p. 2238, § 5; Code 1981, § 16-12-125; Ga. L. 1982, p. 3, § 16; Ga. L. 1988, p. 415, § 2; Code 1981, § 16-12-128, as redesignated by Ga. L. 2002, p. 1094, § 5.

Editor's notes.
Ga. L. 2002, p. 1094, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Security Act of 2002.'"

16-12-129. Defense of self or others an absolute defense to violation under this part.

Defense of self or others, as contemplated by and provided for under Article 2 of Chapter 3 of this title, shall be an absolute defense to any violation under this part.

History.
Code 1981, § 16-12-129, enacted by Ga. L. 2014, p. 599, § 1-12/HB 60; Ga. L. 2015, p. 5, § 16/HB 90.

Editor's notes.
Ga. L. 2014, p. 599, § 1-1/HB 60, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safe Carry Protection Act.'"

ARTICLE 5

ABORTION

Cross references.
Parental notification, § 15-11-682.

Administrative rules and regulations.
Limitations on Physician Assistant Practice, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Composite Medical Board, Physician's Assistants, Rule 360-5-.05.

Regulation of Protocol Use by Advanced Practice Registered Nurses as Authorized by O.C.G.A. Section 43-34-26.3, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Board of Nursing, Regulation of Advanced Practice Registered Nurses, Rule 410-11-.14.

Reports of Induced Termination of Pregnancy, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Public Health, Health Promotion, Rule 511-5-7-.01 et seq.

Law reviews.
For note, "The Law of Therapeutic Abortion: A Social Commentary on Proposed Reform," see 15 J. of Pub. L. 386 (1966).

For note on abortion law preceding enactment of current chapter, see 20 Mercer L. Rev. 314 (1969).

For comment on Doe v. Bolton, 319 F. Supp. 1048, (N.D. Ga. 1970), as to unconstitutionality of statutory limitation on reasons for abortion, see 22 Mercer L. Rev. 461 (1971).

For note advocating revision of former Georgia abortion statutes, see 6 Ga. L. Rev. 168 (1971).

For comment on Doe v. Bolton, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973), and Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), see 10 Ga. St. B.J. 153 (1973).

For comment, "The Trimester Approach: How Long Can the Legal Fiction Last?," see 35 Mercer L. Rev. 891 (1984).

For article, "The Politics of Virtue:

Animals, Theology and Abortion," see 25 Ga. L. Rev. 923 (1991).

For article, "Two Decades of Reproductive Freedom Litigation and Activism in Georgia: From Doe v. Bolton to Atlanta v. Operation Rescue," see 28 Ga. St. B. J. 34 (1991).

For article, "Antiprogestin Drugs: Medical and Legal Issues," see 42 Mercer L. Rev. 971 (1991).

For note, "What Do We Have Against Parents?: An Assessment of Judicial Bypass Procedures and Parental Involvement in Abortions by Minors," see 43 Ga. L. Rev. 617 (2009).

For article, "Transcript: Abortion and Gay Rights," see 35 Georgia St. U.L. Rev. 871 (2019).

OPINIONS OF THE ATTORNEY GENERAL

One 18 years of age or older may consent to abortion. — Since age of majority, and consequently age of emancipation from legal custody and control of parent is 18 years of age, a person 18 years of age or older may consent to an abortion. 1972 Op. Att'y Gen. No. 72-118.

RESEARCH REFERENCES

ALR.

Necessity, to warrant conviction of abortion, that fetus be living at time of commission of acts, 16 A.L.R.2d 949.

Pregnancy as element of abortion or homicide based thereon, 46 A.L.R.2d 1393.

Right of action for injury to or death of woman who consents to illegal abortion, 36 A.L.R.3d 630.

Right of minor to have abortion performed without parental consent, 42 A.L.R.3d 1406.

Validity of state statutes and regulations limiting or restricting public funding for abortions sought by indigent women, 20 A.L.R.4th 1166.

Requisites and conditions of judicial consent to minor's abortion, 23 A.L.R.4th 1061.

Use of Planned Parenthood v. Casey's "Large-Fraction" test in review of abortion regulations, 38 A.L.R.7th Art. 6.

Constitutional right of prisoners to abortion services and facilities — federal cases, 90 A.L.R. Fed. 683.

16-12-140. Criminal abortion.

(a) A person commits the offense of criminal abortion when, in violation of Code Section 16-12-141, he or she administers any medicine, drugs, or other substance whatever to any woman or when he or she uses any instrument or other means whatever upon any woman with intent to produce a miscarriage or abortion.

(b) A person convicted of the offense of criminal abortion shall be punished by imprisonment for not less than one nor more than ten years.

History.

Ga. L. 1876, p. 113, § 2; Code 1882, § 4337b; Penal Code 1895, § 81; Penal Code 1910, § 81; Code 1933, § 26-1101; Code 1933, §§ 26-1201, 26-1203, enacted by Ga. L. 1968, p. 1249, § 1; Code 1933, § 26-1204, enacted by Ga. L. 1973, p. 635, § 1; Ga. L. 2012, p. 575, § 2/HB 954.

Cross references.

Voluntary and informed consent to abortion, § 31-9A-3.

Disciplining of physicians by Georgia

Composite Medical Board for performing, procuring, or otherwise obtaining criminal abortion, § 43-34-8.

Editor's notes.

Ga. L. 2012, p. 575, § 1/HB 954, not codified by the General Assembly, provides that: "The General Assembly makes the following findings:

"(1) At least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

"(2) There is substantial evidence that, by 20 weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

"(3) Anesthesia is routinely administered to unborn children who have developed 20 weeks or more past fertilization who undergo prenatal surgery;

"(4) Even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children;

"(4.1) Probable gestational age is an estimate made to assume the closest time to which the fertilization of a human ovum occurred and does not purport to be an exact diagnosis of when such fertilization occurred; and

"(5) It is the purpose of the State of Georgia to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain."

Administrative rules and regulations.

Limitations on Physician Assistant Practice, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Composite Medical Board, Physician's Assistants, Rule 360-5-.05.

Regulation of Protocol Use by Advanced Practice Registered Nurses as Authorized by O.C.G.A. Section 43-34-26.3, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Board of Nursing, Regulation of Advanced Practice Registered Nurses, Rule 410-11-.14.

Law reviews.

For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

For annual survey article discussing developments in criminal law, see 51 Mercer L. Rev. 209 (1999).

For article, "Crimes and Offenses," see 27 Georgia St. U.L. Rev. 209 (2011).

For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 253 (2012).

JUDICIAL DECISIONS

Constitutionality. — Distinction between the sentences required by the Georgia feticide statute (life sentence) and O.C.G.A. § 16-12-140 is rationally related to legitimate governmental purposes. Smith v. Newsome, 815 F.2d 1386, 1987 U.S. App. LEXIS 6141 (11th Cir. 1987).

Pregnant woman does not have absolute constitutional right to abortion upon demand. Doe v. Bolton, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201, 1973 U.S. LEXIS 112 (1973).

Viable unborn children have right to protection. — Viable unborn child has right under United States Constitution to protection of state through statutes prohibiting arbitrary termination of life of an unborn fetus. Jefferson v. Griffin Spalding County Hosp. Auth., 247 Ga. 86, 274 S.E.2d 457, 1981 Ga. LEXIS 613 (1981).

Conduct of others controlled. — O.C.G.A. § 16-12-140 is specifically directed to prevent the conduct of persons other than the pregnant woman. Hillman v. State, 232 Ga. App. 741, 503 S.E.2d 610, 1998 Ga. App. LEXIS 820 (1998).

O.C.G.A. § 16-12-140 is written in the third person, clearly indicating that at least two actions must be involved; therefore, a woman cannot be prosecuted under that statute for allegedly performing a criminal abortion on herself. Hillman v. State, 232 Ga. App. 741, 503 S.E.2d 610, 1998 Ga. App. LEXIS 820 (1998).

LIFE Act upheld as constitutional. — Trial court erred relying on overruled

U.S. Supreme Court precedent to conclude that portions of the Georgia LIFE Act (Georgia Living Infants Fairness and Equality Act (LIFE), 2019 Ga. Laws 711 (2019 Ga. HB 481)) violated the U.S. Constitution and were void ab initio as Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 142 S. Ct. 2228, 213 L. Ed. 2d 545, 2022 U.S. LEXIS 3057 (2022), was now controlling precedent that the U.S. Constitution did not confer a right to abortion, and the LIFE Act complied with Dobbs. State of Ga. v. SisterSong Women of Color Reproductive Justice Collective, 317 Ga. 528, 894 S.E.2d 1, 2023 Ga. LEXIS 234 (2023).

Application of Roe-era precedent. — The Georgia Supreme Court is not at liberty to apply Roe-era precedent in determining whether the LIFE Act (Georgia Living Infants Fairness and Equality Act (LIFE), 2019 Ga. Laws 711 (2019 Ga. HB 481)) was void ab initio. State of Ga. v. SisterSong Women of Color Reproductive Justice Collective, 317 Ga. 528, 894 S.E.2d 1, 2023 Ga. LEXIS 234 (2023).

Effect of amendment. — For a discussion of the amendment by Ga. L. 2012, p. 575, § 2/HB 954, see State of Ga. v. SisterSong Women of Color Reproductive Justice Collective, 317 Ga. 528, 894 S.E.2d 1, 2023 Ga. LEXIS 234 (2023).

OPINIONS OF THE ATTORNEY GENERAL

Rights under abortion statutes extend to female inmates in state prisons. — Beyond requirements provided by abortion statute enacted in compliance with holding of Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) and Doe v. Bolton, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973), Board of Offender Rehabilitation may not regulate right of female inmates to have abortions; the board must comply with these statutory requirements in allowing and procuring abortions for female inmates; a failure to permit such abortions under prescribed conditions would lead to an infringement of the female inmates' civil rights as guaranteed under the United States Constitution. 1977 Op. Att'y Gen. No. 77-36.

RESEARCH REFERENCES

Am. Jur. 2d.

1 Am. Jur. 2d, Abortion and Birth Control, § 116 et seq.

Am. Jur. Pleading and Practice Forms.

1 Am. Jur. Pleading and Practice Forms, Abortion, § 2.

C.J.S.

1 C.J.S., Abortion and Birth Control; Family Planning, § 1 et seq.

ALR.

Criminal responsibility of one other than subject or actual perpetrator of abortion, 4 A.L.R. 351.

Admissibility, in prosecution based on abortion, of evidence of commission of similar crimes by accused, 15 A.L.R.2d 1080.

Woman upon whom abortion is committed or attempted as accomplice for purposes of rule requiring corroboration of accomplice testimony, 34 A.L.R.3d 858.

Right of action for injury to or death of woman who consented to illegal abortion, 36 A.L.R.3d 630.

Homicide based on killing of unborn child, 40 A.L.R.3d 444; 64 A.L.R.5th 671.

Entrapment defense in sex offense prosecutions, 12 A.L.R.4th 413.

Women's reproductive rights concerning abortion, and governmental regulation thereof — Supreme Court cases, 20 A.L.R. Fed. 2d 1.

16-12-141. Restrictions on the performance of abortions; availability of records; civil cause of action; affirmative defenses.

(a) As used in this article, the term:

(1) "Abortion" means the act of using, prescribing, or administering any instrument, substance, device, or other means with the purpose to terminate a pregnancy with knowledge that termination will, with reasonable likelihood, cause the death of an unborn child; provided, however, that any such act shall not be considered an abortion if the act is performed with the purpose of:

(A) Removing a dead unborn child caused by spontaneous abortion; or

(B) Removing an ectopic pregnancy.

(2) "Detectable human heartbeat" means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac.

(3) "Medical emergency" means a condition in which an abortion is necessary in order to prevent the death of the pregnant woman or the substantial and irreversible physical impairment of a major bodily function of the pregnant woman. No such greater risk shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(4) "Medically futile" means that, in reasonable medical judgment, an unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth.

(5) "Spontaneous abortion" means the naturally occurring death of an unborn child, including a miscarriage or stillbirth.

(b) No abortion is authorized or shall be performed if an unborn child has been determined in accordance with Code Section 31-9B-2 to have a detectable human heartbeat except when:

(1) A physician determines, in reasonable medical judgment, that a medical emergency exists;

(2) The probable gestational age of the unborn child is 20 weeks or less and the pregnancy is the result of rape or incest in which an official police report has been filed alleging the offense of rape or incest. As used in this paragraph, the term "probable gestational age

of the unborn child" has the meaning provided by Code Section 31-9B-1; or

(3) A physician determines, in reasonable medical judgment, that the pregnancy is medically futile.

(c) In conducting an abortion, if the child is capable of sustained life, medical aid then available shall be rendered.

(d) No abortion is authorized or shall be performed in violation of subsection (a) of Code Section 31-9B-2.

(e)(1) No abortion is authorized or shall be performed after the first trimester unless the abortion is performed in a licensed hospital, in a licensed ambulatory surgical center, or in a health facility licensed as an abortion facility by the Department of Community Health.

(2) An abortion shall be performed only by a physician licensed under Article 2 of Chapter 34 of Title 43.

(f) Health records shall be available to the district attorney of the judicial circuit in which the act of abortion occurs or the woman upon whom an abortion is performed resides.

(g) Any woman upon whom an abortion is performed in violation of this Code section may recover in a civil action from the person who engaged in such violation all damages available to her under Georgia law for any torts.

(h) It shall be an affirmative defense to prosecution under this article if:

(1) A licensed physician provides medical treatment to a pregnant woman which results in the accidental or unintentional injury to or death of an unborn child;

(2) An advanced practice registered nurse or registered professional nurse, as such terms are defined in Code Section 43-26-3, or a licensed practical nurse, as such term is defined in Code Section 43-26-32, engages in the practice of nursing to provide care for a pregnant woman which results in the accidental or unintentional injury to or death of an unborn child;

(3) A licensed pharmacist engages in the practice of pharmacy, as such term is defined in Code Section 26-4-4, to provide care for a pregnant woman which results in the accidental or unintentional injury or death of an unborn child;

(4) A licensed physician assistant, as such term is defined in Code Section 43-34-102, provides care to a pregnant woman which results in the accidental or unintentional injury to or death of an unborn child; or

(5) A woman sought an abortion because she reasonably believed that an abortion was the only way to prevent a medical emergency.

History.

Code 1933, § 26-1202, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1973, p. 635, § 1; Ga. L. 1997, p. 142, § 1; Ga. L. 2005, p. 1450, § 4/HB 197; Ga. L. 2009, p. 453, §§ 1-4, 1-6/HB 228; Ga. L. 2011, p. 705, §§ 6-3, 6-5/HB 214; Ga. L. 2012, p. 575, § 2/HB 954; Ga. L. 2019, p. 711, § 4/HB 481; Ga. L. 2024, p. 1052, § 3(4)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "be performed only" for "only be performed" in paragraph (e)(2).

Editor's notes.

Ga. L. 2012, p. 575, § 1/HB 954, not codified by the General Assembly, provides that: "The General Assembly makes the following findings:

"(1) At least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

"(2) There is substantial evidence that, by 20 weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

"(3) Anesthesia is routinely administered to unborn children who have developed 20 weeks or more past fertilization who undergo prenatal surgery;

"(4) Even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children;

"(4.1) Probable gestational age is an estimate made to assume the closest time to which the fertilization of a human ovum occurred and does not purport to be an exact diagnosis of when such fertilization occurred; and

"(5) It is the purpose of the State of Georgia to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain."

Ga. L. 2019, p. 711, § 1/HB 481, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Living Infants Fairness and Equality (LIFE) Act.'"

Ga. L. 2019, p. 711, § 2/HB 481, not codified by the General Assembly, provides: "The General Assembly of Georgia makes the following findings:

"(1) In the founding of the United States of America, the State of Georgia and the several states affirmed that: 'We hold these Truths to be self evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness — that to secure these Rights, Governments are instituted among men;'

"(2) To protect the fundamental rights of all persons, and specifically to protect the fundamental rights of particular classes of persons who had not previously been recognized under law, the 14th Amendment to the United States Constitution was ratified, providing that, 'nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws';

"(3) Modern medical science, not available decades ago, demonstrates that unborn children are a class of living, distinct persons and more expansive state recognition of unborn children as persons did not exist when *Planned Parenthood v. Casey* (1992) and *Roe v. Wade* (1973) established abortion related precedents;

"(4) The State of Georgia, applying reasoned judgment to the full body of modern medical science, recognizes the benefits of providing full legal recognition to an unborn child above the minimum requirements of federal law;

"(5) Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia affirm that '[n]o person shall be deprived of life, liberty, or property except by due process of law'; and that '[p]rotection to person and property is the para-

mount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws'; and

"(6) It shall be the policy of the State of Georgia to recognize unborn children as natural persons."

Ga. L. 2019, p. 711, § 13/HB 481, not codified by the General Assembly, provides: "Any citizen of this state shall have standing and the right to intervene and defend in any action challenging the constitutionality of any portion of this Act."

Ga. L. 2019, p. 711, § 14/HB 481, not codified by the General Assembly, provides: "All provisions of this Act shall be severable in accordance with Code Section 1-1-3."

Administrative rules and regulations.

Limitations on Physician Assistant Practice, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Composite Medical Board, Physician's Assistants, Rule 360-5-.05

Regulation of Protocol Use by Advanced Practice Registered Nurses as Authorized by O.C.G.A. Section 43-34-26.3, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Board of Nursing, Regulation of Advanced Practice Registered Nurses, Rule 410-11-.14.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 250 (1997).

For article on 2005 amendment of this Code section, see 22 Georgia St. U.L. Rev. 147 (2005).

For article, "Crimes and Offenses," see 27 Georgia St. U.L. Rev. 209 (2011).

For article on the 2011 amendment of this Code section, see 28 Georgia St. U.L. Rev. 147 (2011).

For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 253 (2012).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 155 (2019).

For annual survey on healthcare law, see 70 Mercer L. Rev. 1053 (2019).

JUDICIAL DECISIONS

Whether an abortion was necessary was a professional judgment that a Georgia physician will be called upon to make routinely, and such words did not make former Code 1933, § 26-1202 (see now O.C.G.A. § 16-12-141) unconstitutionally vague. Doe v. Bolton, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201, 1973 U.S. LEXIS 112 (1973).

Viable unborn child has right to protection. — Viable unborn child has the right under the United States Constitution to protection of state through statutes prohibiting arbitrary termination of life of an unborn fetus. Jefferson v. Griffin Spalding County Hosp. Auth., 247 Ga. 86, 274 S.E.2d 457, 1981 Ga. LEXIS 613 (1981).

As to required acquiescence by co-practitioners under former Code 1933, § 26-1202(b)(3) (see now O.C.G.A. § 16-12-141(c)), the statute's connection, or lack thereof, with patient's needs and the statute's effect on physician's right to practice, see Doe v. Bolton, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201, 1973 U.S. LEXIS 112 (1973) (decided prior to repeal and reenactment of O.C.G.A § 16-12-141 by Ga. L. 1973, p. 635, § 1).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 26-1202 and 88-1716 are included in the annotations for this Code section.

Rights under section extend to female inmates in state prisons. — Beyond requirements provided by abortion statute enacted in compliance with holding of landmark, Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), and Doe v. Bolton, 410 U.S.

179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973), the Board of Offender Rehabilitation may not regulate right of female inmates to have abortions; the board must comply with these statutory requirements in allowing and procuring abortions for female inmates, but a failure to permit such abortions under prescribed conditions would lead to infringement of the female inmates' civil rights as guaranteed under the United States Constitution. 1977 Op. Att'y Gen. No. 77-36.

Certificate of legal abortion will not replace fetal death certificate (see now O.C.G.A. §§ 31-10-18 and 31-10-19). 1973 Op. Att'y Gen. No. 73-71 (rendered under former Code 1933, §§ 26-1202 and 88-1716).

Physician is immune from civil liability for performing an abortion when requirements are met, assuming that no restraining order has been issued. 1970 Op. Att'y Gen. No. U70-61 (rendered under former Code 1933, § 26-1202, prior to repeal and reenactment by Ga. L. 1973, p. 635, § 1).

RESEARCH REFERENCES

Am. Jur. 2d.

1 Am. Jur. 2d, Abortion and Birth Control, § 3.

C.J.S.

1 C.J.S., Abortion and Birth Control; Family Planning, § 1 et seq.

ALR.

Criminal responsibility of one other than subject or actual perpetrator of abortion, 4 A.L.R. 351.

Right of action for injury to or death of woman who consented to illegal abortion, 36 A.L.R.3d 630.

Homicide based on killing of unborn child, 40 A.L.R.3d 444.

Woman's right to have abortion without consent of, or against objections of, child's father, 62 A.L.R.3d 1097.

Entrapment defense in sex offense prosecutions, 12 A.L.R.4th 413.

Medical practice in performance of legal abortion, 69 A.L.R.4th 875.

16-12-141.1. Disposal of aborted fetuses; reporting requirements; penalties; public report; confidentiality of identity of physicians filing reports.

(a)(1) Every hospital and clinic in which abortions are performed or occur spontaneously, and any laboratory to which the aborted fetuses are delivered, shall provide for the disposal of the aborted fetuses by cremation, interment, or other manner approved of by the commissioner of public health. The hospital, clinic, or laboratory may complete any laboratory tests necessary for the health of the woman or her future offspring prior to disposing of the aborted fetus.

(2) Each hospital, clinic, and laboratory shall report, on a form provided by the commissioner of public health, the manner in which it disposes of the aborted fetus. Such reports shall be made annually by December 31 and whenever the method of disposal changes. The commissioner of public health shall provide forms for reporting under this Code section.

(b) Any hospital, clinic, or laboratory violating the provisions of subsection (a) of this Code section shall be punished by a fine of not less than $1,000.00 nor more than $5,000.00.

(c) Within 90 days after May 10, 2005, the Department of Human

Resources (now known as the Department of Public Health for these purposes) shall prepare a reporting form for physicians which shall include:

(1) The number of females whose parent or guardian was provided the notice required in paragraph (1) of subsection (a) of Code Section 15-11-682 by the physician or such physician's agent; of that number, the number of notices provided personally under subparagraphs (a)(1)(A) and (a)(1)(B) of Code Section 15-11-682 and the number of notices provided by mail under subparagraph (a)(1)(C) of Code Section 15-11-682; and, of each of those numbers, the number of females who, to the best of the reporting physician's information and belief, went on to obtain the abortion;

(2) The number of females upon whom the physician performed an abortion without providing to the parent or guardian of a minor the notice required by subsection (a) of Code Section 15-11-682; and of that number, the number of females for which subsection (b) of Code Section 15-11-682 and Code Section 15-11-686 were applicable;

(3) The number of abortions performed upon a female by the physician after receiving judicial authorization pursuant to subsection (b) of Code Section 15-11-682 and Code Section 15-11-684; and

(4) The same information described in paragraphs (1), (2), and (3) of this subsection with respect to females for whom a guardian or conservator has been appointed.

(d) The Department of Public Health shall ensure that copies of the reporting forms described in subsection (c) of this Code section, together with a reprint of this Code section, are provided:

(1) Within 120 days after May 10, 2005, to all health facilities licensed as an abortion facility by the Department of Human Resources (now known as the Department of Community Health for these purposes);

(2) To each physician licensed or who subsequently becomes licensed to practice medicine in this state at the same time as official notification to that physician that the physician is so licensed; and

(3) By December 1 of every year, other than the calendar year in which forms are distributed in accordance with paragraph (1) of this subsection, to all health facilities licensed as an abortion facility by the Department of Community Health.

(e) By February 28 of each year following a calendar year in any part of which this subsection was in effect, each physician who provided, or whose agent provided, the notice described in subsection (a) of Code Section 15-11-682 and any physician who knowingly performed an

abortion upon a female or upon a female for whom a guardian or conservator had been appointed because of a finding of incompetency during the previous calendar year shall submit to the Department of Public Health a copy of the form described in subsection (c) of this Code section with the requested data entered accurately and completely.

(f) Reports that are submitted more than 30 days following the due date shall be subject to a late fee of $500.00 for that period and the same fee for each additional 30 day period or portion of a 30 day period in which they remain overdue. Any physician required to report in accordance with this Code section who submits an incomplete report or fails to submit a report for more than one year following the due date may, in an action brought by the Department of Public Health, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

(g) By June 30 of each year, the Department of Public Health shall issue a public report providing statistics for the previous calendar year compiled from all the reports covering that year submitted in accordance with this Code section for each of the items listed in subsection (c) of this Code section. The report shall also include statistics which shall be obtained by the Administrative Office of the Courts giving the total number of petitions or motions filed under subsection (b) of Code Section 15-11-682 and, of that number, the number in which the court appointed a guardian ad litem, the number in which the court appointed counsel, the number in which the judge issued an order authorizing an abortion without notification, the number in which the judge denied such an order, and, of the last, the number of denials from which an appeal was filed, the number of such appeals that resulted in the denials being affirmed, and the number of such appeals that resulted in reversals of such denials. Each report shall also provide the statistics for all previous calendar years for which such a public statistical report was required to be issued, adjusted to reflect any additional information from late or corrected reports. The Department of Public Health shall ensure that none of the information included in the public reports could reasonably lead to the identification of any individual female or of any female for whom a guardian or conservator has been appointed.

(h) The Department of Public Health may by regulation alter the dates established by paragraph (3) of subsection (d) and subsections (e) and (g) of this Code section or consolidate the forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements so long as reporting forms are sent to all facilities licensed as an abortion facility by the Department of Community Health at least once every year and the report described in subsection (g) of this Code section is issued at least once each year.

(i) The Department of Public Health shall ensure that the names and identities of the physicians filing reports under this Code section shall remain confidential. The names and identities of such physicians shall not be subject to Article 4 of Chapter 18 of Title 50.

History.

Code 1981, § 16-12-141.1, enacted by Ga. L. 1985, p. 1421, § 1; Ga. L. 2005, p. 1450, § 5/HB 197; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, §§ 6-3, 6-5/HB 214; Ga. L. 2013, p. 294, § 4-13/HB 242; Ga. L. 2017, p. 774, § 16/HB 323.

Cross references.

Reporting induced termination of pregnancy, § 31-10-19.

Reporting of fetal deaths for vital records purposes, § 31-10-29.

Dead bodies generally, § 31-21-1 et seq.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1986, in the first sentence of paragraph (a)(2), a comma was added following "shall report."

Pursuant to Code Section 28-9-5, in 2005, "May 10, 2005" was substituted for "the effective date of this subsection" in subsection (c) and in paragraph (d)(1).

Pursuant to Code Section 28-9-5, in 2009, "Community Health" was substituted for "Human Resources" throughout this Code section and "(now known as the Department of Community Health for these purposes)" was inserted in subsection (c) and in paragraph (d)(1).

Editor's notes.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Administrative rules and regulations.

Reports of Induced Termination of Pregnancy, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Public Health, Health Promotion, Rule 511-5-7-.01 et seq.

Law reviews.

For article on 2005 amendment of this Code section, see 22 Georgia St. U.L. Rev. 147 (2005).

For article on the 2011 amendment of this Code section, see 28 Georgia St. U.L. Rev. 147 (2011).

16-12-142. Objections by medical facilities, physicians, or pharmacists to providing abortion-related services.

(a) Nothing in this article shall require a hospital or other medical facility or physician to admit any patient under the provisions of this article for the purpose of performing an abortion. In addition, any person who states in writing an objection to any abortion or all abortions on moral or religious grounds shall not be required to participate in procedures which will result in such abortion; and the refusal of the person to participate therein shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against the person. The written objection shall remain in effect until the person revokes it or terminates his association with the facility with which it is filed.

(b) Any pharmacist who states in writing an objection to any abortion or all abortions on moral or religious grounds shall not be required to fill a prescription for a drug which purpose is to terminate a pregnancy; and the refusal of the person to fill such prescription shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against the person; provided, however, that the pharmacist shall make all reasonable efforts to locate another pharmacist who is willing to fill such prescription or shall immediately return the prescription to the prescription holder. The written objection shall remain in effect until the person revokes it or terminates his or her association with the facility with which it is filed. Nothing in this subsection shall be construed to authorize a pharmacist to refuse to fill a prescription for birth control medication, including any process, device, or method to prevent pregnancy and including any drug or device approved by the federal Food and Drug Administration for such purpose.

History.
Code 1933, § 26-1202, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1973, p. 635, § 1; Ga. L. 2006, p. 152, § 2A/HB 1178.

Law reviews.
For article on 2006 amendment of this Code section, see 23 Georgia St. U. L. Rev. 197 (2006).

16-12-143. Failure to file or maintain required written reports.

A person who fails to file or maintain in complete form any of the written reports required in this article within the time set forth is guilty of a misdemeanor.

History.
Code 1933, § 26-1203, enacted by Ga. L. 1973, p. 635, § 1.

16-12-144. Partial-birth abortions.

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

(1) "Fetus" means the biological offspring of human parents.

(2) "Partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living human fetus before ending the life of the fetus and completing the delivery.

(b) Any person who knowingly performs a partial-birth abortion and thereby ends the life of a human fetus shall, upon conviction thereof, be punished by a fine not to exceed $5,000.00, imprisonment for not more than five years, or both. This prohibition shall not apply to a partial-birth abortion that is necessary to save the life of the mother because her life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering condition caused by or

arising from the pregnancy itself, provided that no other medical procedure will suffice to save the mother's life.

(c)(1) The father of the fetus, and the maternal grandparents of the fetus if the mother has not attained the age of 18 years of age at the time of the abortion, may obtain appropriate relief in a civil action, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

(2) Such relief shall include:

(A) Money damages for all injuries, psychological and physical, occasioned by the violation of this Code section; and

(B) Statutory damages equal to three times the cost of the partial-birth abortion.

(d) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this Code section for violating this Code section or any provision thereof, or for conspiracy or for an attempt to violate this Code section or any provision thereof.

History.
Code 1981, § 16-12-144, enacted by Ga. L. 1997, p. 142, § 2.

Cross references.
Provision that enumeration of rights shall not exclude other inherent rights, U.S. Const., amend. 9, Ga. Const. 1983, Art. I, Sec. I, Para. XXIX.

Law reviews.
For article commenting on the enactment of this Code section, see 14 Georgia St. U.L. Rev. 250 (1997).

For annual survey on healthcare law, see 70 Mercer L. Rev. 1053 (2019).

JUDICIAL DECISIONS

Court approved parties' consent decree stipulation in plaintiff's action which challenged constitutionality of O.C.G.A. § 16-12-144, which stipulation provided that statute would be enforced only as to abortions performed after the point of viability; that the term "living human fetus" as used in that statute meant "viable human fetus"; and that the statute applied only to abortions in which an "intact dilation and extraction" abortion procedure was used. Midtown Hosp. v. Miller, 36 F. Supp. 2d 1360, 1997 U.S. Dist. LEXIS 22351 (N.D. Ga. 1997).

RESEARCH REFERENCES

ALR.
Validity, construction, and application of statutory restrictions on partial birth abortions, 76 A.L.R.5th 637.

ARTICLE 6

HUMAN BODY TRAFFIC

Law reviews.
For note, "Beyond the 'Tiers' of Human Trafficking Victims: Islamic Law's Ability to Push the Muslim World to the Top of the United States Trafficking Tier Placements and into Compliance with

International Law," see 39 Ga. J. Int'l & Comp. L. 391 (2011).

16-12-160. Buying or selling or offering to buy or sell the human body or parts.

(a) It shall be unlawful, except as provided in subsection (b) of this Code section, for any person, firm, or corporation to buy or sell, to offer to buy or sell, or to assist another in buying or selling or offering to buy or sell a human body or any part of a human body or buy or sell a human fetus or any part thereof.

(b) The prohibition contained in subsection (a) of this Code section shall not apply to:

(1) The purchase or sale of whole blood, blood plasma, blood products, blood derivatives, other self-replicating body fluids, or hair;

(2) A gift or donation of a human body or any part of a human body or any procedure connected therewith as provided in Article 6 of Chapter 5 of Title 44 or to the payment of a fee in connection with such gift or donation pursuant to subsection (b) of Code Section 44-5-154 if such fee is paid to a procurement organization, as that term is defined in Code Section 44-5-141;

(3) The reimbursement of actual expenses, including medical costs, lost income, and travel expenses, incurred by a living person in giving or donating a part of the person's body;

(4) The payment of financial assistance under a plan of insurance or other healthcare coverage;

(5) The purchase or sale of human tissue, organs, or other parts of the human body for health sciences education; or

(6) The payment of reasonable costs associated with the removal, storage, or transportation of a human body or any part of a human body given or donated for medical or scientific purposes.

(c) Any person, firm, or corporation convicted of violating subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding $5,000.00 or by imprisonment for not less than one year nor more than five years, or both.

History.

Code 1981, § 16-12-160, enacted by Ga. L. 1986, p. 645, § 4; Ga. L. 1989, p. 456, § 1; Ga. L. 1992, p. 2946, § 1; Ga. L. 2008, p. 503, § 2/SB 405; Ga. L. 2024, p. 1052, § 3(5)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "healthcare" for "health care" in paragraph (b)(4).

Cross references.
Anatomical gifts, § 44-5-140 et seq.

Law reviews.
For note on 1989 amendment to this Code section, see 6 Georgia St. U.L. Rev. 201 (1989).

RESEARCH REFERENCES

ALR.
Physician's use of patient's tissues, cells, or bodily substances for medical research or economic purposes, 16 A.L.R.5th 143.

16-12-161. Removal of body parts from scene of death or dismemberment; criminal penalty.

(a) It shall be unlawful for any person to remove from the scene of the death or dismemberment of any person any human body part; provided, however, that this Code section shall not apply to a law enforcement officer acting in the lawful discharge of his or her official duties, or to any person acting under the direction of a law enforcement officer, a physician or an emergency medical technician in the course of their professions, or in the absence of any such person to any person who transports such body part directly to a medical facility, law enforcement agency, or licensed funeral home, although all such persons remain obligated to comply with the provisions of Article 2 of Chapter 16 of Title 45 concerning death investigations.

(b) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature.

History.
Code 1981, § 16-12-161, enacted by Ga. L. 1994, p. 334, § 1.

ARTICLE 7

SALE OR DISTRIBUTION TO, OR POSSESSION BY, MINORS OF CIGARETTES AND TOBACCO RELATED OBJECTS

Cross references.
Master settlement agreement, §§ 10-13-1 et seq., 10-13A-1 et seq.

16-12-170. Definitions.

As used in this article, the term:

(1) "Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Such term shall not include any tobacco product, vapor

product, or product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

(2) "Cigar wraps" means individual cigar wrappers, known as wraps, blunt wraps, or roll your own cigar wraps, that consist in whole or in part of reconstituted tobacco leaf or flavored tobacco leaf.

(3) "Cigarette" means roll for smoking made wholly or in part of tobacco when the cover of the roll is paper or any substance other than tobacco.

(4) "Community service" means a public service which an individual under the age of 21 years might appropriately be required to perform, as determined by the court, as punishment for certain offenses provided for in this article.

(5) "Person" means any natural person or any firm, partnership, company, corporation, or other entity.

(6) "Proper identification" means any document issued by a governmental agency containing a description of the individual, such individual's photograph, or both, and giving such individual's date of birth and includes, without being limited to, a passport, military identification card, driver's license, or an identification card authorized under Code Sections 40-5-100 through 40-5-104. Proper identification shall not include a birth certificate.

(7) "Tobacco product" means any cigars, little cigars, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff or snuff powder; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. Such term shall not include any alternative nicotine product, vapor product, or product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

(8) "Tobacco related objects" means any papers, wrappers, or other products, devices, or substances, including cigar wraps, which are used for the purpose of making cigarettes or tobacco products in any form whatsoever.

(9) "Vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor or aerosol from nicotine or other substances in a solution or other form. Such term

shall include, but shall not be limited to, any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor or aerosol cartridge or other container of nicotine or other substance in a solution or other form, including, but not limited to, a device component, part, or accessory of the device, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Such term shall not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

History.
Code 1981, § 16-12-170, enacted by Ga. L. 1987, p. 945, § 1; Ga. L. 1989, p. 14, § 16; Ga. L. 1993, p. 343, § 1; Ga. L. 2013, p. 795, § 1/HB 256; Ga. L. 2014, p. 130, § 1/HB 251; Ga. L. 2017, p. 774, § 16/HB 323; Ga. L. 2020, p. 257, § 1/SB 375.

U.S. Code.
The Food, Drug, and Cosmetic Act, referred to in this Code section, is codified at 21 U.S.C. § 301.

RESEARCH REFERENCES

ALR.
Allowable Regulation of Electronic Cigarettes (E-Cigarettes), 46 A.L.R.7th Art. 5.

16-12-171. Prohibited acts.

(a)(1) It shall be unlawful for any person knowingly to:

(A) Sell or barter, directly or indirectly, any cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products to any individual under the age of 21 years;

(B) Purchase any cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products for any individual under the age of 21 years; or

(C) Advise, counsel, or compel any individual under the age of 21 years to smoke, inhale, chew, or use cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products.

(2)(A) The prohibition contained in paragraph (1) of this subsection shall not apply with respect to sale of cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products by a person when such person has been furnished with proper identification showing that the individual to whom the cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products are sold is 21 years of age or older.

(B) In any case when a reasonable or prudent person could

reasonably be in doubt as to whether or not the individual to whom cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products are to be sold or otherwise furnished is actually 21 years of age or older, it shall be the duty of the person selling or otherwise furnishing such cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products to request to see and to be furnished with proper identification as provided for in subsection (b) of this Code section in order to verify the age of such individual. The failure to make such request and verification in any case when the individual to whom the cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products are sold or otherwise furnished is less than 21 years of age may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products did so knowingly.

(3) Any person that violates this subsection shall be guilty of a misdemeanor.

(b)(1) It shall be unlawful for any individual under the age of 21 years to:

(A) Purchase, attempt to purchase, or possess for personal use any cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products; or

(B) Misrepresent his or her identity or age or use any false identification for the purpose of purchasing or procuring any cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products.

(2) An individual under the age of 21 years who commits an offense provided for in paragraph (1) of this subsection or paragraph (1) of subsection (c) of this Code section shall be punished as follows:

(A) By requiring the performance of community service not exceeding 20 hours that may be related to the awareness of the health hazards of smoking and vaping or tobacco and vapor product use;

(B) By requiring attendance at a publicly or privately sponsored lecture or discussion on the health hazards of smoking and vaping or tobacco and vapor product use, provided that such lecture or discussion is offered without charge to the individual under the age of 21 years;

(C) When an individual under the age of 21 years fails to comply with such imposed community service, or for a third or

subsequent violation within the same calendar year as the first violation, by requiring the Department of Driver Services to withhold issuance of or to suspend the driver's license or driving privilege of such individual for a period of 45 consecutive days; or

(D) By a combination of the punishments described in subparagraphs (A) through (C) of this paragraph.

(c)(1) It shall be unlawful for any individual to knowingly use a vapor product within a school safety zone. As used in this subsection, the term "school safety zone" shall have the same meaning as provided in Code Section 16-11-127.1.

(2) Any individual who is 21 years of age or older who commits the offense provided for in paragraph (1) of this subsection shall be guilty of a misdemeanor; provided, however, that for a conviction of a first offense, such individual shall be punished by a fine of $25.00 and for a conviction of a second offense, such individual shall be punished by a fine of $50.00. The provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of any prosecution for such first or second offense shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against an individual for conviction thereof.

(3) Any vapor product used in violation of paragraph (1) of this subsection is declared to be contraband, and no person shall have a property right in it. In addition to persons authorized to seize property pursuant to Code Section 9-16-6, property which is subject to forfeiture under this subsection may be seized by any special agent or enforcement officer of the state revenue commissioner. Any property which is subject to forfeiture under this subsection shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9.

History.

Code 1981, § 16-12-171, enacted by Ga. L. 1987, p. 945, § 1; Ga. L. 1993, p. 343, § 2; Ga. L. 1996, p. 483, § 1; Ga. L. 1999, p. 81, § 16; Ga. L. 2004, p. 332, § 1; Ga. L. 2007, p. 497, § 1/SB 95; Ga. L. 2014, p. 130, § 2/HB 251; Ga. L. 2020, p. 257, § 1/SB 375; Ga. L. 2021, p. 922, § 16/HB 497.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1987, "subparagraphs (A) and (B)" was substituted for "subparagraphs (A), (B), and (C)" in subparagraph (b)(2)(C).

Pursuant to Code Section 28-9-5, in 2020, a period was deleted at the end of subparagraph (b)(1)(A).

Law reviews.

For review of 1996 offenses against public health and morals legislation, see 13 Georgia St. U.L. Rev. 121 (1996).

For annual survey on evidence, see 73 Mercer L. Rev. 111 (2021).

JUDICIAL DECISIONS

Evidence sufficient for furnishing e-cigarette to minor. — Since the state presented the same information contained in the product label from sources separate

and distinct from the label itself, taken as a whole, there was sufficient evidence from which the trial judge was authorized to infer the defendant guilty of furnishing a vapor product containing nicotine for use with a noncombustible electronic cigarette to a minor. Childers v. State, 358 Ga. App. 568, 855 S.E.2d 766, 2021 Ga. App. LEXIS 96 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprintable offenses. — O.C.G.A. § 16-12-171, prohibiting the sale of cigarettes or other tobacco products to minors, and the possession of tobacco products by minors, are not at this time designated as offenses which require fingerprinting. 1987 Op. Att'y Gen. No. 87-21.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state and local laws providing for civil liability for tobacco sales or distribution to minors, 66 A.L.R.6th 315.

16-12-172. Posting signs in place of business.

(a) Any person owning or operating a place of business in which cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products are sold or offered for sale shall post in a conspicuous place a sign which shall contain the following statement:

"SALE OF CIGARETTES, TOBACCO, TOBACCO PRODUCTS, TOBACCO RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS TO INDIVIDUALS UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW."

Such sign shall be printed in letters of at least one-half inch in height.

(b) Any person that fails to comply with the requirements of subsection (a) of this Code section shall be guilty of a misdemeanor.

History.

Code 1981, § 16-12-172, enacted by Ga. L. 1987, p. 945, § 1; Ga. L. 1993, p. 343, § 3; Ga. L. 2014, p. 130, § 3/HB 251; Ga. L. 2020, p. 257, § 1/SB 375.

16-12-173. Sales from vending machines.

(a)(1) Any person that maintains in such person's place of business a vending machine which dispenses cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products shall place or cause to be placed in a conspicuous place on such vending machine a sign containing the following statement:

"THE PURCHASE OF CIGARETTES, TOBACCO PRODUCTS, TOBACCO RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS FROM THIS VENDING MACHINE

BY ANY INDIVIDUAL UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW."

(2) Any person that maintains in such person's place of business a vending machine which dispenses cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products shall not dispense any other type of product, other than matches, in such vending machine.

(b) Any person that fails to comply with the requirements of subsection (a) of this Code section shall be guilty of a misdemeanor; provided, however, that for a first offense, the sentence shall be a fine not to exceed $300.00.

(c) It shall be a violation of subsection (a) of Code Section 16-12-171 for any person knowingly to allow an individual under the age of 21 years to operate a vending machine which dispenses cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products.

(d) The offenses provided for by paragraph (1) of subsection (b) of Code Section 16-12-171 shall apply to the operation by an individual under the age of 21 years of a vending machine which dispenses cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products.

(e)(1) The sale or offering for sale of cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products from vending machines shall not be permitted except:

(A) In locations which are not readily accessible to individuals under the age of 21 years, including, but not limited to:

(i) Factories, businesses, offices, and other places which are not open to the general public;

(ii) Places open to the general public which do not admit individuals under the age of 21 years; and

(iii) Places where alcoholic beverages are offered for sale;

(B) In areas which are in the immediate vicinity, in plain view, and under the continuous supervision of the proprietor of the establishment or an employee who will observe the purchase of cigarettes, tobacco products, tobacco related objects, alternative nicotine products, and vapor products from the vending machine; and

(C) In rest areas adjacent to roads and highways of the state.

(2) Violation of this subsection shall be punished as provided in subsection (b) of this Code section.

History.
Code 1981, § 16-12-173, enacted by Ga. L. 1987, p. 945, § 1; Ga. L. 1993, p. 343, § 4; Ga. L. 2007, p. 497, § 2/SB 95; Ga. L. 2014, p. 130, § 4/HB 251; Ga. L. 2020, p. 257, § 1/SB 375.

16-12-174. Distribution of tobacco product samples.

(a) As used in this Code section, the term "tobacco product sample" means a cigarette, tobacco product, alternative nicotine product, or vapor product distributed to members of the general public at no cost for purposes of promoting the product.

(b) It shall be unlawful for any person to distribute any tobacco product sample to any individual under the age of 21 years.

(c) A person distributing tobacco product samples shall require proof of age from a prospective recipient if an ordinary person would conclude on the basis of appearance that such prospective recipient may be under the age of 21 years.

(d) It shall be unlawful for any individual who has not attained the age of 21 years to receive or attempt to receive any tobacco product sample.

(e) No person shall distribute tobacco product samples on any public street, sidewalk, or park within 500 feet of any school or playground when those facilities are being used primarily by individuals under the age of 21 years.

(f) A violation of subsection (b), (c), or (e) of this Code section shall be punished as a misdemeanor. A violation of subsection (d) of this Code section shall be punished as provided for in paragraph (2) of subsection (b) of Code Section 16-12-171.

History.
Code 1981, § 16-12-174, enacted by Ga. L. 1993, p. 343, § 5; Ga. L. 2014, p. 130, § 5/HB 251; Ga. L. 2020, p. 257, § 1/SB 375.

16-12-175. Enforcement actions; collection and report of fines; inspections by law enforcement agencies; annual report.

(a) The provisions of this article, inclusive, shall be enforced through actions brought in any court of competent jurisdiction by the prosecuting attorney for the county in which the alleged violation occurred as well as through administrative citations issued by special agents or enforcement officers of the state revenue commissioner. Any fine collected for a violation of said provision shall be paid to the clerk of the court of the jurisdiction in which the violation occurred. Upon receipt of a fine for any violation of said provision, the clerk shall promptly notify the state revenue commissioner of the violation.

(b) The state revenue commissioner, acting through special agents or enforcement officers, shall annually conduct random, unannounced inspections at locations where cigarettes, tobacco products, alternative nicotine products, or vapor products are sold or distributed to ensure compliance with this article. Individuals under the age of 21 years may be enlisted to test compliance with this article; provided, however, that such individuals may be used to test compliance with this article only if the testing is conducted under the direct supervision of such special agents or enforcement officers and written parental consent for any individual under the age of 18 years has been provided. Any other use of individuals under the age of 21 years to test compliance with this article or any other prohibition of like or similar import shall be unlawful, and the person or persons responsible for such use shall be subject to the penalties prescribed in this article. The state revenue commissioner shall prepare annually for submission by the Governor to the secretary of the United States Department of Health and Human Services the report required by Section 1926 of Subpart I of Part B of Title XIX of the federal Public Health Service Act, 42 U.S.C. 300x-26.

History.
Code 1981, § 16-12-175, enacted by Ga. L. 1993, p. 343, § 5; Ga. L. 2000, p. 1343, § 1; Ga. L. 2011, p. 752, § 16/HB 142; Ga. L. 2014, p. 130, § 6/HB 251; Ga. L. 2020, p. 257, § 1/SB 375.

Editor's notes.
Ga. L. 2011, p. 752, § 16(7)/HB 142, which amended this Code section, purported to amend Code Section 6-12-175 but actually amended Code Section 16-12-175.

Law reviews.
For review of 1996 offenses against public health and morals legislation providing for stricter regulations on the sale of cigarettes and tobacco-related objects to minors, see 13 Georgia St. U.L. Rev. 121 (1996).

16-12-176. Administration and enforcement.

The state revenue commissioner shall administer and enforce this article and may make reasonable rules and regulations for its administration and enforcement. The state revenue commissioner may designate employees of the Department of Revenue for the purpose of administering and enforcing this article and may delegate to employees of such department any of the duties required of the state revenue commissioner pursuant to this article.

History.
Code 1981, § 16-12-176, enacted by Ga. L. 2000, p. 1343, § 1; Ga. L. 2020, p. 257, § 1/SB 375.

RESEARCH REFERENCES

ALR.
Validity, construction, and application of state and local laws providing for civil liability for tobacco sales or distribution to minors, 66 A.L.R.6th 315.

ARTICLE 8

REGULATION OF LOW THC OIL

Editor's notes.

Ga. L. 2015, p. 49, § 1-1/HB 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Haleigh's Hope Act.'"

16-12-190. Definition.

As used in this article, the term "low THC oil" means an oil that contains an amount of cannabidiol and not more than 5 percent by weight of tetrahydrocannabinol, tetrahydrocannabinolic acid, or a combination of tetrahydrocannabinol and tetrahydrocannabinolic acid which does not contain plant material exhibiting the external morphological features of the plant of the genus Cannabis. Such term shall not mean products approved by the federal Food and Drug Administration under Section 505 of the federal Food, Drug, and Cosmetic Act.

History.

Code 1981, § 16-12-190, enacted by Ga. L. 2015, p. 49, § 1-2/HB 1; Ga. L. 2016, p. 798, § 1/HB 783; Ga. L. 2021, p. 184, § 1/SB 195.

Editor's notes.

Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

Law reviews.

For article on the 2015 enactment of this Code section, see 32 Georgia St. U.L. Rev. 153 (2015).

For annual survey on criminal law, see 68 Mercer L. Rev. 93 (2016).

16-12-191. Possession, manufacture, distribution, or sale of low THC oil; penalties.

(a)(1) Notwithstanding any provision of Chapter 13 of this title, it shall be lawful for any person to possess, purchase, or have under his or her control 20 fluid ounces or less of low THC oil if such substance is in a pharmaceutical container labeled by the manufacturer indicating the percentage of tetrahydrocannabinol therein and:

(A) Such person is registered with the Department of Public Health as set forth in Code Section 31-2A-18 and has in his or her possession a registration card issued by the Department of Public Health; or

(B) Such person has in his or her possession a registration card issued by another state that allows the same possession of low THC oil as provided by this state's law; provided, however, that such registration card shall not be lawful authority when such person has been present in this state for 45 days or more.

(2) Notwithstanding any provision of Chapter 13 of this title, any

person who possesses, purchases, or has under his or her control 20 fluid ounces or less of low THC oil without complying with paragraph (1) of this subsection shall be punished as for a misdemeanor.

(b)(1) Notwithstanding any provision of Chapter 13 of this title, it shall be lawful for any person to possess, purchase, or have under his or her control 20 fluid ounces or less of low THC oil if:

(A) Such person is involved in a clinical research program being conducted by the Board of Regents of the University System of Georgia or any authorized clinical trial or research study in this state or their authorized agent as:

(i) A program participant;

(ii) A parent, guardian, or legal custodian of a program participant;

(iii) An employee of the board of regents designated to participate in the research program;

(iv) A program agent;

(v) A program collaborator and their designated employees;

(vi) A program supplier and their designated employees;

(vii) A program physician;

(viii) A program clinical researcher;

(ix) Program pharmacy personnel; or

(x) Other program medical personnel; and

(B) Such substance is in a pharmaceutical container labeled by the manufacturer indicating the percentage of tetrahydrocannabinol therein.

(2) Notwithstanding any provision of Chapter 13 of this title, any person who possesses, purchases, or has under his or her control 20 fluid ounces or less of low THC oil without complying with subparagraphs (A), (B), and (C) of paragraph (1) of this subsection shall be punished as for a misdemeanor.

(c) Notwithstanding any provision of Chapter 13 of this title, any person having possession of, purchasing, or having under his or her control more than 20 fluid ounces of low THC oil but less than 160 fluid ounces of low THC oil or who manufactures, distributes, dispenses, sells, purchases, or possesses with the intent to distribute low THC oil shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years, a fine not to exceed $50,000.00, or both.

(d) Notwithstanding any provision of Chapter 13 of this title, any person who sells, manufactures, delivers, brings into this state, purchases, or has possession of 160 or more fluid ounces of low THC oil shall be guilty of the felony offense of trafficking in low THC oil and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of low THC oil is at least 160 fluid ounces but less than 31,000 fluid ounces, by imprisonment for not less than five years nor more than ten years and a fine not to exceed $100,000.00;

(2) If the quantity of low THC oil is at least 31,000 fluid ounces but less than 154,000 fluid ounces, by imprisonment for not less than seven years nor more than 15 years and a fine not to exceed $250,000.00; and

(3) If the quantity of low THC oil is 154,000 or more fluid ounces, by imprisonment for not less than ten years nor more than 20 years and a fine not to exceed $1 million.

(e) Subsections (c) and (d) of this Code section shall not apply to a person involved in a research program being conducted by the Board of Regents of the University System of Georgia or its authorized agent as an employee of the board of regents designated to participate in such program, a program agent, a program collaborator and their designated employees, a program supplier and their designated employees, a physician, clinical researcher, pharmacy personnel, or other medical personnel.

(f) Subsections (c) and (d) of this Code section shall not apply to a designated university, pharmacy, or licensee under Article 9 of Chapter 12 of Title 16, provided that such possession, purchase, control, sale, manufacturing, distribution, or dispensing is solely conducted in accordance with the provisions of Article 9 of Chapter 12 of Title 16.

(g) Nothing in this article shall require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, purchase, sale, or growing of marijuana in any form, or to affect the ability of an employer to have a written zero tolerance policy prohibiting the on-duty, and off-duty, use of marijuana, or prohibiting any employee from having a detectable amount of marijuana in such employee's system while at work.

History.

Code 1981, § 16-12-191, enacted by Ga. L. 2015, p. 49, § 1-2/HB 1; Ga. L. 2016, p. 864, § 16/HB 737; Ga. L. 2017, p. 611, § 1/SB 16; Ga. L. 2019, p. 43, § 3/HB 324; Ga. L. 2022, p. 352, § 16/HB 1428.

Amendments.

The 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, deleted "pursuant to Chapter 51 of Title 31" following "agent" in subparagraph (b)(1)(A), inserted "and" at the end of division (b)(1)(A)(x), deleted former subparagraph (b)(1)(B), which read: "Such person has in his or her possession a permit issued as provided in Code Section 31-51-7; and", redesignated former subparagraph

(b)(1)(C) as present subparagraph (b)(1)(B); and in subsection (e), deleted "pursuant to Chapter 51 of Title 31" following "agent" and ", provided that such person has in his or her possession a permit issued as provided in Code Section 31-51-7 and such possession, purchase, sale, manufacturing, distribution, or dispensing is solely for the purposes set forth in Chapter 51 of Title 31" from the end.

Cross references.

Establishment of the Low THC Oil Patient Registry, § 31-2A-18.

Editor's notes.

Ga. L. 2019, p. 43, § 1/HB 324, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Georgia's Hope Act.'"

Ga. L. 2019, p. 43, § 2/HB 324, not codified by the General Assembly, provides: "(a) The General Assembly finds that the establishment of the Low THC Oil Patient Registry in 2015 allows Georgia patients to possess low THC oil but provides no way to access low THC oil. The General Assembly finds that thousands of Georgians have serious medical conditions that can be improved by the medically approved use of cannabis and that the law should not stand between them and treatment necessary for life and health. The General Assembly finds that the purpose of this Act is to allow the legitimate use of medical cannabis for health care, including palliative care. The General Assembly finds that this Act does not in any way diminish this state's strong public policy and laws against illegal drug use, nor should it be deemed in any manner to advocate, authorize, promote, or legally or socially accept the use of marijuana for children or adults for any nonmedical use.

"(b) The General Assembly further finds that:

"(1) Low THC oil can offer significant medical benefits to patients;

"(2) Low THC oil can only be derived from the cannabis plant;

"(3) A carefully constructed system of in-state cultivation to benefit only those patients authorized by Georgia law and approved by their physician would benefit patients within the State of Georgia;

"(4) The State of Georgia is deeply opposed to any recreational or nonmedical use of marijuana, and any system to help patients access low THC oil should be as limited in scope as possible;

"(5) Business opportunities resulting from a system of in-state cultivation should be inclusive of minority, women, and veteran owned businesses;

"(6) Businesses resulting from this Act should include at least 20 percent participation by minority, women, and veteran owned businesses as licensees, suppliers, and partners of businesses licensed under this Act; and

"(7) The State of Georgia should encourage active participation by minority, women, and veteran owned businesses, as well as take any steps necessary to ensure there is no discrimination in the issuance of licenses or participation in business activities resulting from this Act."

Law reviews.

For article on the 2015 enactment of this Code section, see 32 Georgia St. U.L. Rev. 153 (2015).

For annual survey on criminal law, see 68 Mercer L. Rev. 93 (2016).

For article on the 2019 amendment of this Code section, see 36 Georgia St. U.L. Rev. 39 (2019).

RESEARCH REFERENCES

ALR.

Propriety of employer's discharge of or failure to hire employee due to employee's use of medical marijuana, 57 A.L.R.6th 285.

ARTICLE 9

ACCESS TO MEDICAL CANNABIS

Cross references.

Establishment of the Low THC Oil Patient Registry, § 31-2A-18.

Editor's notes.

Ga. L. 2019, p. 43, § 1/HB 324, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Georgia's Hope Act.'"

Ga. L. 2019, p. 43, § 2/HB 324, not codified by the General Assembly, provides: "(a) The General Assembly finds that the establishment of the Low THC Oil Patient Registry in 2015 allows Georgia patients to possess low THC oil but provides no way to access low THC oil. The General Assembly finds that thousands of Georgians have serious medical conditions that can be improved by the medically approved use of cannabis and that the law should not stand between them and treatment necessary for life and health. The General Assembly finds that the purpose of this Act is to allow the legitimate use of medical cannabis for health care, including palliative care. The General Assembly finds that this Act does not in any way diminish this state's strong public policy and laws against illegal drug use, nor should it be deemed in any manner to advocate, authorize, promote, or legally or socially accept the use of marijuana for children or adults for any nonmedical use.

"(b) The General Assembly further finds that:

"(1) Low THC oil can offer significant medical benefits to patients;

"(2) Low THC oil can only be derived from the cannabis plant;

"(3) A carefully constructed system of in-state cultivation to benefit only those patients authorized by Georgia law and approved by their physician would benefit patients within the State of Georgia;

"(4) The State of Georgia is deeply opposed to any recreational or nonmedical use of marijuana, and any system to help patients access low THC oil should be as limited in scope as possible;

"(5) Business opportunities resulting from a system of in-state cultivation should be inclusive of minority, women, and veteran owned businesses;

"(6) Businesses resulting from this Act should include at least 20 percent participation by minority, women, and veteran owned businesses as licensees, suppliers, and partners of businesses licensed under this Act; and

"(7) The State of Georgia should encourage active participation by minority, women, and veteran owned businesses, as well as take any steps necessary to ensure there is no discrimination in the issuance of licenses or participation in business activities resulting from this Act."

Law reviews.

For article on the 2019 enactment of this article, see 36 Georgia St. U.L. Rev. 39 (2019).

PART 1

GENERAL PROVISIONS

16-12-200. Definitions.

As used in this article, the term:

(1) "Applicant" means a corporate entity applying for a license pursuant to this article.

(2) "Available capital" means corporate assets that are available to fund business operations in the event a license is awarded pursuant to Part 2 of this article.

(3) "Class 1 production license" means a license to produce and manufacture low THC oil and products issued pursuant to Code Section 16-12-211.

(4) "Class 2 production license" means a license to produce and manufacture low THC oil and products issued pursuant to Code Section 16-12-212.

(5) "Commission" means the Georgia Access to Medical Cannabis Commission created pursuant to Code Section 16-12-202.

(6) "Designated universities" means the University of Georgia and Fort Valley State University.

(7) "Designated university license" means a license issued by the commission pursuant to this article to a designated university to, separately or jointly, produce, manufacture, and purchase low THC oil and products in accordance with this article.

(8) "Dispense" means the sale or provision of low THC oil and products to registered patients by a dispensing licensee.

(9) "Dispensing license" means a specialty license issued by the State Board of Pharmacy or the commission pursuant to Code Section 16-12-206 to dispense low THC oil and products to registered patients.

(10) "Grow" means cultivating and harvesting cannabis for use in producing low THC oil and products.

(11) "Licensee" means any business, or owner of such business, with a valid license issued pursuant to this article.

(12) "Low THC oil" shall have the same meaning as set forth in Code Section 16-12-190.

(13) "Manufacture" means to process cannabis to produce low THC oil and products.

(14) "Owner" means any person who directly or indirectly owns, actually or beneficially, or controls 5 percent or greater of interests of the applicant or any licensee. In the event that one person owns a beneficial right to interests and another person holds the voting rights with respect to such interests, then both shall be considered an owner of such interests.

(15) "Product" means low THC oil delivered through an oil, tincture, transdermal patch, lotion, or capsule, except as prohibited by Code Section 16-12-234, but not including any food products infused with low THC oil, including, but not limited to, cookies, candies, or edibles.

(16) "Registered patient" means an individual who is legally authorized to possess and use low THC oil and products pursuant to Code Section 31-2A-18.

(17) "Tracking system" means a seed-to-sale tracking system to track marijuana that is grown, processed, manufactured, transferred, stored, or disposed of and low THC oil and products that are transferred, stored, sold, dispensed, or disposed of pursuant to this article.

History.
Code 1981, § 16-12-200, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 2/SB 195.

Editor's notes.
Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

JUDICIAL DECISIONS

Administrative Procedure Act did not apply. — In consolidated appeals wherein each appellant in the seven discretionary appeals was an unsuccessful applicant for a license to produce cannabis and manufacture low THC oil in the State of Georgia, the court held the Georgia Administrative Procedure Act (APA), O.C.G.A. § 50-13-1 et seq., did not apply under the circumstances as the post-award proceedings did not adjudicate the legal rights, duties, or privileges of a party, O.C.G.A. § 50-13-2(2), as envisioned by the APA. Symphony Medical, LLC v. FFD GA Holdings, LLC, 370 Ga. App. 66, 893 S.E.2d 810, 2023 Ga. App. LEXIS 464 (2023).

16-12-201. Prohibition against producing, growing, manufacturing, or dispensing low THC oil or products.

Except as otherwise provided in this article, it shall be unlawful for any person in this state to produce, grow, manufacture, or dispense low THC oil or any products related to its production in this state.

History.
Code 1981, § 16-12-201, enacted by Ga. L. 2019, p. 43, § 4/HB 324.

16-12-202. Creation of Georgia Access to Medical Cannabis Commission; terms; designation; meetings; vacancy; compensation.

(a) There is created the Georgia Access to Medical Cannabis Commission which is assigned to the Secretary of State for administrative purposes only, as prescribed in Code Section 50-4-3. The commission shall consist of seven members who shall be appointed as follows:

(1) Three members appointed by the Governor;

(2) Two members appointed by the Lieutenant Governor; and

(3) Two members appointed by the Speaker of the House of Representatives.

(b) Members shall serve four-year terms of office. The Governor shall designate one of his or her appointees as the chairperson.

(c) The commission shall meet upon the call of the chairperson or upon the request of three members. The commission shall organize itself as it deems appropriate and may elect additional officers from among its members.

(d) Any vacancy on the commission shall be filled for the unexpired term by appointment by the original appointing authority.

(e) Members of the commission shall serve without compensation but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of the commission is in attendance at a meeting of such commission, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal car in connection with such attendance as members of the General Assembly receive. Such expense and travel allowance shall be paid in lieu of any per diem, allowance, or other remuneration now received by any such member for such attendance.

History.
Code 1981, § 16-12-202, enacted by Ga. L. 2019, p. 43, § 4/HB 324.

16-12-203. Powers, duties, and responsibilities.

The commission shall have the following powers, duties, and responsibilities:

(1) To apply for, receive, and administer state funds appropriated to the commission, private grants and donations, and other funds and donations. The commission's annual distributions shall be capped and limited to funds received from the sources specified in this paragraph. The commission shall ensure that its funds are not used as a supplement or secondary payor to any other third-party payor;

(2) To execute a contract or contracts to purchase or obtain low THC oil, cannabis, cannabinoids, or any other derivative, compound, or substantially similar products from any available legal source and to provide logistics related thereto in accordance with this article. Such contract or contracts may be executed with one or more qualified corporations or with one or more governmental entities. Purchases made pursuant to this paragraph shall not be subject to

state purchasing laws contained in Article 3 of Chapter 5 of Title 50 or in other provisions of the Official Code of Georgia Annotated;

(3) To utilize funds appropriated to the commission as may be necessary to purchase and transport low THC oil and products to the State of Georgia for use by registered patients;

(4) To develop, establish, maintain, and administer a low THC oil and products distribution network to obtain and distribute low THC oil and products to registered patients in this state and to coordinate the best use of facilities and resources to operate such distribution network;

(5) To establish procedures for inspecting production facilities operated by designated universities;

(6) To establish requirements and procedures to ensure quality control, security, and oversight of low THC oil and products production in this state, including, but not limited to, testing for purity and dosage levels and verification that product labels accurately reflect product content;

(7) To provide for oversight of tracking systems;

(8) To coordinate and assist in the collection of data to evaluate the provision of low THC oil and products in this state;

(9) To study the provision of low THC oil and products in this state to determine the best practices and methods of providing such services, to determine what changes are needed to improve the provision of low THC oil and products, and to report any proposed legislative changes to the General Assembly each year;

(10) To coordinate its activities with the Department of Public Health;

(11) To employ an executive director and other staff and to establish duties and responsibilities of such persons;

(12) To employ and manage consultants, as deemed necessary, in order to fulfill its duties and responsibilities under this article;

(13) To review new treatment and delivery methods for low THC oil and products that may result from medical research and are not otherwise inconsistent with this article, and recommend statutory changes to the General Assembly to authorize such treatment and delivery methods and products;

(14) To be responsible for the noncriminal enforcement of the provisions of this article and to have all of the necessary duties, power, and authority to carry out such responsibility;

(15) To be authorized to draft, adopt, amend, repeal, and enforce such rules and regulations as it deems necessary for the administration and enforcement of this article in the protection of public health, safety, and welfare;

(16) To enforce qualifications for licensure; and

(17) To levy fines for failure by a Class 1 production licensee, Class 2 production licensee, or dispensing licensee to operate in accordance with rules and regulations established by the commission within 14 days of written notice by the commission of specific violations. Such fines shall not exceed $25,000.00 for a first offense, $50,000.00 for a failure to remedy the offense within 60 days after written notice of a first offense, and $75,000.00 for subsequent failures to remedy noncompliance within 90 days after written notice of a first offense. Following a third written notice of a recurring violation, the commission may also order a licensee to cease operations for a period of up to 30 days to correct the violation. Any such fines or orders to cease operations shall be subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Code 1981, § 16-12-203, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 3/SB 195.

Editor's notes.
Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-204. Nontransferable designated university licenses to produce low THC oil and products; research and reporting of collected information; license revocation.

(a) Upon request by a designated university, the commission shall issue nontransferable designated university licenses for the production of low THC oil and products. The licenses granted to designated universities pursuant to this Code section shall be in addition to any licenses issued pursuant to Part 2 of this article. The designated universities shall have the option to be licensed as a production facility, either separately or jointly. The designated universities shall be authorized to contract with private entities to fulfill the terms of the license, including contracting for the production of low THC oil and products. All contracts shall be approved by the commission.

(b) Each designated university may conduct research on marijuana for therapeutic use if such university is licensed as a production facility pursuant to this Code section. Effective January 1, 2020, and annually thereafter, the designated universities shall submit a report to the

Senate Health and Human Services Committee and the House Committee on Health and Human Services, to include data and outcomes of the research conducted pursuant to this paragraph.

(c)(1) The commission shall collect the following information from each licensee:

(A) The amount of low THC oil and products produced by the licensee during each calendar year;

(B) The details of all production costs, including but not limited to seed, fertilizer, labor, advisory services, construction, and irrigation;

(C) The details of any items or services for which the licensee subcontracted and the costs of each subcontractor directly or indirectly working for the licensee;

(D) The amount of therapeutic chemicals produced resulting from the low THC oil and products manufactured pursuant to this article;

(E) The amounts paid each year to the licensee related to the licensee's production of low THC oil and products manufactured pursuant to this article; and

(F) The amount of low THC oil and products distributed to each dispensing licensee to dispense low THC oil and products in this state during each calendar year.

(2) The commission shall provide the information collected pursuant to this subsection for the previous calendar year in the form of a written report to the Senate Health and Human Services Committee and the House Committee on Health and Human Services no later than February 1 of each year. The commission shall also make a copy of such report available to the public by posting such report on the commission's website.

(d) The commission may revoke the license of a designated university if it is found by the commission to have violated any of the requirements established pursuant to this article.

History.

Code 1981, § 16-12-204, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 4/SB 195.

Editor's notes.

Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-205. [Reserved] Role of Georgia universities; testing of specifications.

History.

Code 1981, § 16-12-205, enacted by Ga. L. 2019, p. 43, § 4/HB 324; repealed by Ga. L. 2021, p. 184, § 5/SB 195, effective July 1, 2021.

Editor's notes.

Ga. L. 2021, p. 184, § 5/SB 195, repealed and reserved this Code section, effective July 1, 2021.

Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-206. Annual, nontransferable dispensing license; adoption of rules; fees.

(a)(1) Upon request by a licensed pharmacy in this state, the State Board of Pharmacy shall be authorized to develop an annual, nontransferable specialty dispensing license for an independent pharmacy with a registered office located within this state to dispense low THC oil and products to registered patients. The State Board of Pharmacy shall develop rules and regulations regarding dispensing pharmacies in this state in accordance with the requirements contained in subsection (b) of this Code section.

(2) The commission shall be authorized to issue five dispensing licenses to each Class 1 production licensee and each Class 2 production licensee for retail outlets to dispense low THC oil and products to registered patients. The commission shall ensure that dispensing licenses shall be issued so that retail outlets are dispersed throughout the state. The commission shall develop rules and regulations regarding retail dispensing licensees in this state in accordance with the requirements contained in subsection (b) of this Code section. The commission shall be authorized to issue one additional dispensing license to each Class 1 and Class 2 production licensee when the Low THC Oil Patient Registry established and maintained pursuant to Code Section 31-2A-18 reaches 25,000 patients and for every increase of 10,000 patients thereafter.

(b) The State Board of Pharmacy and the commission shall separately adopt rules relating to the dispensing of low THC oil and products, with the State Board of Pharmacy promulgating rules and regulations for pharmacies that dispense low THC oil and products and the commission promulgating rules and regulations for other retail outlets that dispense low THC oil and products. Such rules shall include but not be limited to:

(1) Standards, procedures, and protocols for the effective use of low THC oil and products as authorized by state law and related rules and regulations;

(2) Standards, procedures, and protocols for the dispensing of low THC oil and products by a pharmacy with a dispensing license and by retail dispensing licensees and for the utilization of a tracking system;

(3) Procedures and protocols to provide that no low THC oil or products may be sold to or transferred to a location outside of this state;

(4) The establishment of standards, procedures, and protocols for determining the amount of usable low THC oil and products that is necessary to constitute an adequate supply for registered patients in this state to ensure uninterrupted availability for a period of one month, including amounts for topical treatments;

(5) The establishment of standards, procedures, and protocols to ensure that all low THC oil and products dispensed are consistently pharmaceutical grade;

(6) The establishment of standards and procedures for the revocation, suspension, and nonrenewal of dispensing licenses;

(7) The establishment of other licensing, renewal, and operational standards which are deemed necessary by the State Board of Pharmacy and the commission;

(8) The establishment of standards and procedures for testing low THC oil and products for levels of tetrahydrocannabinol or other testing parameters deemed appropriate by the State Board of Pharmacy and the commission;

(9) The establishment of health, safety, and security requirements for pharmacies and retail dispensing licensees dispensing low THC oil and products; and

(10) Requirements for the issuance of dispensing licenses to pharmacies and Class 1 and Class 2 production licensees.

(c) The commission shall be authorized, by rules and regulations, to establish fees for dispensing licenses to Class 1 and Class 2 production licensees commensurate with the location of the retail outlet and demand for low THC oil and products at such location.

History.

Code 1981, § 16-12-206, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 6/SB 195; Ga. L. 2022, p. 352, § 16/HB 1428.

Amendments.

The 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted "commission shall be" for "commission shall each be" in subsection (c).

Editor's notes.

Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to

the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-207. Establishment of Medical Cannabis Commission Oversight Committee; membership; inspections; provision of information; plan for accredited lab testing; patient and physician input.

(a) The General Assembly shall establish a Medical Cannabis Commission Oversight Committee with two members appointed by the Lieutenant Governor and two members appointed by the Speaker of the House of Representatives. Any member of the Medical Cannabis Commission Oversight Committee shall be permitted to inspect any production facility upon request and after reasonable notice is provided to the production facility.

(b) The commission shall promptly provide any document or information requested by the oversight committee that is in its possession, provided that the commission shall not share documents containing data identifying individual patients or physicians, information marked as trade secrets by applicants or licensees, information that in the view of the commission would interfere with an ongoing licensing applicant selection process, or information that in the judgment of the commission would create law enforcement or security risks to the citizens of Georgia.

(c) No later than August 1, 2021, the oversight committee shall recommend to the commission a process and plan for providing accredited lab testing of products produced by licensees and for labeling such products. The commission shall consider the recommendations of the oversight committee in adopting policies, procedures, and regulations regarding such testing and labeling.

(d) The oversight committee may regularly seek input from patients and physicians as to the availability and quality of products produced pursuant to this chapter, and recommend to the commission changes to policies, procedures, and regulations to improve availability and quality. The commission shall consider such recommendations in adopting policies, procedures, and regulations.

History.

Code 1981, § 16-12-207, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 7/SB 195.

Editor's notes.

Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

PART 2

ROLE OF COMMISSION

16-12-210. Powers, duties, and responsibilities of Commission; no undue burden on patients; remission of fees.

(a) The commission shall have the following powers, duties, and responsibilities to implement the provisions of this part:

(1) Issue licenses related to the production, growing, and manufacturing of low THC oil and products in accordance with the provisions of this part;

(2) Coordinate with the Georgia Bureau of Investigation to implement security plans and enforce the provisions of this part;

(3) Establish procedures for granting licenses, testing products, and inspecting facilities;

(4) Establish requirements and procedures to ensure quality control, security, and oversight of all low THC oil and product production in this state, including, but not limited to, conducting testing for purity and dosage levels and verifying that product labels accurately reflect product content. The commission is authorized to contract with private laboratories to perform the functions described in this paragraph;

(5) Establish procedures and ensure sufficient resources are available to receive and resolve complaints from registered patients;

(6) Establish applications and forms necessary to carry out the provisions of this part;

(7) Establish criteria for applicants and licensees as necessary to ensure market stability and adequate supply;

(8) Provide for the selection, implementation, and oversight of tracking systems;

(9) Provide oversight of licensee reporting, data collection, and analysis;

(10) Establish requirements and procedures for marketing and signage; and

(11) Promulgate rules and regulations and adopt policies and procedures necessary to carry out the provisions of this part.

(b) The commission shall not promulgate any rules or regulations that would unduly burden access to low THC oil or products by registered patients.

(c) All fees collected by the commission shall be remitted to the general fund of the state treasury.

History.
Code 1981, § 16-12-210, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 8/SB 195.
Editor's notes.
Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offenses arising from a violation of O.C.G.A. § 16-12-210 are not offenses for which fingerprinting is required. 2020 Op. Att'y Gen. No. 20-1.

16-12-211. Class 1 production licenses; application fee; revocation; limitation on ownership.

(a) The commission may issue up to two Class 1 production licenses. A Class 1 production licensee shall be authorized to:

(1) Grow cannabis only in indoor facilities for use in producing low THC oil, limited to 100,000 square feet of cultivation space; and

(2) Manufacture low THC oil and products.

(b) Class 1 production licenses shall be issued to applicants selected by the commission following a competitive application and review process in accordance with the requirements set forth in this part. An applicant must be a Georgia corporation or entity and shall maintain a bank account with a bank or credit union located in this state. An applicant for a Class 1 production license shall submit an application on a form established by the commission, together with the following information:

(1) Proof of available capital to make the investments needed to safely, securely, and promptly perform all required functions of a licensee. Prior to issuance of a Class 1 production license, the applicant shall provide written documentation showing that on the date of application and award such applicant holds at least $2 million in available cash reserves to invest in operations in this state;

(2) A written production plan detailing the production processes that, at a minimum, includes details describing how the chain of custody will be maintained, documented, and made available for review by the commission or the Georgia Bureau of Investigation. Production processes shall include compliance with all production standards, laws, and regulations needed to protect public safety and ensure product purity;

(3) A comprehensive security plan that ensures compliance with the applicable laws of this state. At a minimum, a security plan shall include a 24 hours per day, seven days per week interior and exterior video monitoring and intrusion detection monitoring system, recording and video storage capabilities for all facilities, and licensed security personnel. The entire premises of licensees shall be equipped with a centralized access control system capable of generating detailed reports of access logs for a minimum of one year. All videos, access logs, and any other monitoring data shall be available to the Georgia Bureau of Investigation upon request. The commission is authorized to set requirements for the minimum technology, resolution, and storage capacity of at least 45 days for the video recording capabilities of licensees;

(4) A written plan detailing specific security measures to ensure secured transportation and tracking of delivered products for intra-facility transportation;

(5) A detailed employment plan specifying the jobs and salaries of employees and demonstrating the expected economic impact of proposed activities in Georgia;

(6) A written plan to ensure that no pesticides are used at any point in the production process other than those certified organic by the Organic Materials Review Institute or another similar standards organization;

(7) Detailed designs of all production facilities;

(8) Letters of support from one or more local governmental entities where the primary facilities will be located;

(9) A demonstration of significant involvement in the business by one or more minority business enterprises as defined in Code Section 50-5-131, either as co-owners of the business or as significant suppliers of goods and services for the business. Such applicants shall be encouraged to form business relationships with Georgia agricultural businesses and military veterans;

(10) Documentation of the applicant's industry capabilities and management experience. The commission shall consider the relevant industry experience and strength of the applicant's management team and board of directors when considering its merits;

(11) Sufficient documentation to prove that a $1.5 million cash bond or for any licenses that are applied for on or after July 1, 2021, other comparable surety as determined by the commission, payable to the State of Georgia or an irrevocable letter of credit can be obtained within 30 days of license award. Failure to provide the requisite bond or letter of credit within 30 days of the license award date shall be cause for revocation of the license;

(12) At least one set of classifiable electronically recorded fingerprints submitted to the commission in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The commission shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the commission shall review the record for all owners, officers, and employees of the applicant demonstrating a lack of convictions, except for felony convictions that are greater than ten years old, are not drug related, or have been expunged or pardoned; and

(13) A description of any efforts made by the applicant to create jobs or locate facilities in tier one or tier two counties as defined in Code Section 48-7-40.

(c) An applicant for a Class 1 production license shall submit a nonrefundable application fee in the amount of $25,000.00 concurrent with submission of the application.

(d) Upon award of a Class 1 production license, an applicant shall be required to submit an initial license fee of $200,000.00, and upon annual renewal, a license renewal fee of $100,000.00.

(e) A Class 1 production license shall be revoked if the licensee is not operational within 12 months of the award date.

(f)(1) No person or entity holding an ownership interest in a license issued under this Code section may hold an ownership interest in any other type of license issued under this part.

(2) No person or entity or director or officer of such entity may hold an ownership interest in more than one Class 1 production license at any one time.

(3) Ownership interests in more than one license shall be cause for revocation of all licenses.

History.

Code 1981, § 16-12-211, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 9/SB 195.

Editor's notes.

Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

JUDICIAL DECISIONS

Administrative Procedure Act did not apply. — In consolidated appeals wherein each appellant in the seven discretionary appeals was an unsuccessful applicant for a license to produce cannabis and manufacture low THC oil in the State of Georgia, the court held the Georgia Administrative Procedure Act (APA), O.C.G.A. § 50-13-1 et seq., did not apply under the circumstances as the post-award proceedings did not adjudicate the legal rights, duties, or privileges of a party, O.C.G.A. § 50-13-2(2), as envisioned by the APA. Symphony Medical, LLC v. FFD GA Holdings, LLC, 370 Ga. App. 66, 893 S.E.2d 810, 2023 Ga. App. LEXIS 464 (2023).

16-12-212. Class 2 production licenses; application fees; revocation; limitation on ownership.

(a) The commission may issue up to four Class 2 production licenses. A Class 2 production licensee shall be authorized to:

(1) Grow cannabis only in indoor facilities for use in producing low THC oil, limited to 50,000 square feet of cultivation space; and

(2) Manufacture low THC oil and products.

(b) Class 2 production licenses shall be issued to applicants selected by the commission following a competitive application and review process in accordance with the requirements set forth in this part. An applicant must be a Georgia corporation or entity and shall maintain a bank account with a bank or credit union located in this state. An applicant for a Class 2 production license shall submit an application on a form established by the commission, together with the following information:

(1) Proof of available capital to make the investments needed to safely, securely, and promptly perform all required functions of a licensee. Prior to issuance of a Class 2 production license, the applicant shall provide written documentation showing that on the date of application and award such applicant holds at least $1.25 million in available cash reserves to invest in operations in this state;

(2) A written production plan detailing the production processes that, at a minimum, includes details describing how the chain of custody will be maintained, documented, and made available for review by the commission or the Georgia Bureau of Investigation. Production processes shall include compliance with all production standards, laws, and regulations needed to protect public safety and ensure product purity;

(3) A comprehensive security plan that ensures compliance with the applicable laws of this state. At a minimum, a security plan shall include a 24 hours per day, seven days per week interior and exterior video monitoring and intrusion detection monitoring system, record-

ing and video storage capabilities for all facilities, and licensed security personnel. The entire premises of licensees shall be equipped with a centralized access control system capable of generating detailed reports of access logs for a minimum of one year. All videos, access logs, and any other monitoring data shall be available to the Georgia Bureau of Investigation upon request. The commission is authorized to set requirements for the minimum technology, resolution, and storage capacity of at least 45 days for the video recording capabilities of licensees;

(4) A written plan detailing specific security measures to ensure secured transportation and tracking of delivered products for intra-facility transportation;

(5) A detailed employment plan specifying the jobs and salaries of employees and demonstrating the expected economic impact of proposed activities in Georgia;

(6) A written plan to ensure that no pesticides are used at any point in the production process other than those certified organic by the Organic Materials Review Institute or another similar standards organization;

(7) Detailed designs of all production facilities;

(8) Letters of support from one or more local governmental entities where the primary facilities will be located;

(9) A demonstration of significant involvement in the business by one or more minority business enterprises as defined in Code Section 50-5-131, either as co-owners of the business or as significant suppliers of goods and services for the business. Such applicants shall be encouraged to form business relationships with Georgia agricultural businesses and military veterans;

(10) Documentation of the applicant's industry capabilities and management experience. The commission shall consider the relevant industry experience and strength of the applicant's management team and board of directors when considering its merits;

(11) Sufficient documentation to prove that a $625,000.00 cash bond or for any licenses that are applied for on or after July 1, 2021, other comparable surety as determined by the commission, payable to the State of Georgia or an irrevocable letter of credit can be obtained within 30 days of license award. Failure to provide the requisite bond or letter of credit within 30 days of the license award date shall be cause for revocation of the license;

(12) At least one set of classifiable electronically recorded fingerprints submitted to the commission in accordance with the finger-

print system of identification established by the director of the Federal Bureau of Investigation. The commission shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the commission shall review the record for all owners, officers, and employees of the applicant demonstrating a lack of convictions, except for felony convictions that are greater than ten years old, are not drug related, or have been expunged or pardoned; and

(13) A description of any efforts made by the applicant to create jobs or locate facilities in tier one or tier two counties as defined in Code Section 48-7-40.

(c) An applicant for a Class 2 production license shall submit a nonrefundable application fee in the amount of $5,000.00 concurrent with submission of the application.

(d) Upon award of a Class 2 production license, an applicant shall be required to submit an initial license fee of $100,000.00, and upon annual renewal, a license renewal fee of $50,000.00.

(e) A Class 2 production license shall be revoked if the licensee is not operational within 12 months of the award date.

(f)(1) No person or entity holding an ownership interest in a license issued under this Code section may hold an ownership interest in any other type of license issued under this part.

(2) No person or entity or director or officer of such entity may hold an ownership interest in more than one Class 2 production license at any one time.

(3) Ownership interests in more than one license shall be cause for revocation of all licenses.

History.

Code 1981, § 16-12-212, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 10/SB 195.

Editor's notes.

Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-213. Tracking systems required.

(a) The commission shall require that each Class 1 production licensee and Class 2 production licensee establish, maintain, and

utilize, directly or by contract, a tracking system. The commission shall approve one or more vendors to provide or operate tracking systems.

(b) A tracking system shall have the functions and capabilities described in subsections (c) and (d) of this Code section and shall be operated in compliance with the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(c) The tracking system shall be hosted on a platform that allows for:

(1) Dynamic allocation of resources;

(2) Data redundancy; and

(3) Recovery from natural disaster within 12 hours.

(d) The tracking system shall be capable of:

(1) Tracking all plants, products, packages, and registered patients' purchase totals, waste, transfers, conversions, sales, and returns that, if practicable, are linked to unique identification numbers;

(2) Tracking lot and batch information throughout the entire chain of custody;

(3) Tracking all marijuana, low THC oil, and products throughout the entire chain of custody;

(4) Tracking plant, batch, and marijuana, low THC oil, and product destruction;

(5) Tracking transportation of marijuana, low THC oil, and products;

(6) Performing complete batch recall tracking that clearly identifies all of the following details relating to the specific batch subject to the recall:

(A) Amount of low THC oil and products sold;

(B) Amount of low THC oil and products inventory that is finished and available for sale;

(C) Amount of low THC oil and products that is in the process of transfer;

(D) Amount of low THC oil and products being processed into another form; and

(E) Amount of postharvest raw marijuana, such as marijuana that is in the drying, trimming, or curing process;

(7) Reporting and tracking loss, theft, or diversion of marijuana, low THC oil, or products;

(8) Reporting and tracking all inventory discrepancies;

(9) Reporting and tracking adverse patient responses or dose related efficacy issues;

(10) Reporting and tracking all sales and refunds;

(11) Tracking purchase limits and flagging purchases in excess of authorized limits;

(12) Receiving electronically submitted information required to be reported under this Code section;

(13) Receiving testing results electronically from a laboratory via a secured application program interface into the tracking system and directly linking the testing results to each applicable source batch and sample;

(14) Flagging test results that have characteristics indicating that they may have been altered;

(15) Providing information to cross-check that low THC oil and product sales are made to a registered patient, caregiver, or designated caregiver and that the low THC oil and products received the required testing;

(16) Providing the commission with real-time access to information in the tracking system; and

(17) Providing real-time information to the commission regarding key performance indicators, including:

(A) Total low THC oil and products daily sales;

(B) Total marijuana plants in production;

(C) Total marijuana plants destroyed; and

(D) Total inventory adjustments.

(e) A Class 1 production licensee or Class 2 production licensee shall supply the relevant tracking or testing information regarding each plant, product, package, batch, test, transfer, conversion, sale, recall, or disposition of marijuana, low THC oil, or products in or from such licensee's possession or control on forms created by the commission.

History.

Code 1981, § 16-12-213, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 11/SB 195.

Editor's notes.

Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-214. Study on minority and women participation; addressing discrimination.

(a) Beginning January 1, 2022, the commission shall undertake a retrospective study of the participation of minority and women owned businesses as licensees under this part for the period from January 1, 2020, through December 31, 2021. Thereafter, the commission shall conduct such study every four years for the immediately preceding four-year period.

(b) The initial and subsequent studies conducted pursuant to subsection (a) of this Code section shall identify any proof of discrimination based on race or gender in the issuance of licenses under this part.

(c) In the event that any proof of discrimination based on race or gender in the issuance of licenses under this part is identified, the commission shall be authorized to address such proof of discrimination by:

(1) Issuing one additional Class 1 production license and two additional Class 2 production licenses to minority and women owned businesses;

(2) Reissuing any licenses that have been surrendered or revoked to minority or women owned businesses; or

(3) A combination of the above.

(d) This Code section shall not require the commission to issue a license to any applicant unless such applicant otherwise meets all requirements for licensure under this part.

History.
Code 1981, § 16-12-214, enacted by Ga. L. 2019, p. 43, § 4/HB 324.

16-12-215. Limitation on locations; advertising or marketing prohibited; information available to physicians.

(a) No licensee shall operate in any location, whether for cultivation, harvesting, and processing of marijuana or for processing, manufacturing, packaging, or distributing low THC oil or products, within a 3,000 foot radius of a covered entity, measured from property boundary to property boundary. No dispensing licensee may operate in any location within a 1,000 foot radius of a covered entity, measured from property boundary to property boundary. Notwithstanding the provisions of this subsection, local governments may, via use of existing zoning powers otherwise provided by law, allow dispensing licensees only to locate in places other than those provided in this subsection so long as such modification is needed to allow retail outlets to be established to service

registered patients residing within such local jurisdiction. As used in this subsection, the term "covered entity" means a public or private school; an early care and education program as defined in Code Section 20-1A-2; or a church, synagogue, or other place of public religious worship, in existence prior to the date of licensure of such licensee by the commission or State Board of Pharmacy.

(b) No licensee shall advertise or market low THC oil or products to registered patients or the public; provided, however, that a licensee shall be authorized to provide information regarding its low THC oil and products directly to physicians.

History.
Code 1981, § 16-12-215, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 12/SB 195.
Editor's notes.
Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-216. Bureau of Investigation, Access to Medical Cannabis Commission, and Composite Medical Board to jointly establish procedures to ensure compliance.

The Georgia Bureau of Investigation shall be responsible for investigating any alleged criminal activities related to the activities of the licensees, and shall work with the commission and the Georgia Composite Medical Board to develop procedures to ensure that all activities of licensees are conducted in accordance with this part and the laws of this state. In addition to other powers and duties, the Georgia Bureau of Investigation, the commission, and the Georgia Composite Medical Board shall jointly establish procedures to ensure that no activities conducted under this part result in the illegal or recreational use of low THC oil, products, or manufacturing by-products and jointly establish any other procedures necessary to carry out its duties and responsibilities pursuant to this part.

History.
Code 1981, § 16-12-216, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 13/SB 195.
Editor's notes.
Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-217. On-demand access to facilities; provision of samples; testing; secured transportation.

(a) All licensees shall provide on-demand access to facilities for inspection when requested by the Georgia Bureau of Investigation, the

commission, or the local law enforcement agency for the jurisdiction in which the facility is located. The commission and the Georgia Drugs and Narcotics Agency may each conduct one annual inspection. Upon request by the Georgia Bureau of Investigation, the commission, the Georgia Drugs and Narcotics Agency, or the local law enforcement agency for the jurisdiction in which the facility is located, a licensee shall immediately provide product samples for the purposes of laboratory testing.

(b) Each Class 1 production licensee and Class 2 production licensee shall contract with a laboratory on the commission's approved list of independent laboratories, subject to any requirements set by the commission, for purposes of testing low THC oil and products manufactured by such licensees. Low THC oil and products shall be analyzed for potency, foreign matter, microbial presence, pesticides, heavy metals, and residual solvents. The commission shall establish limits for each item tested to verify that such low THC oil and products meet the requirements of this part. The commission shall promulgate rules and regulations governing the operations of laboratories for the testing of low THC oil and products. The costs of laboratory testing shall be paid by the licensees. Each low THC oil product shall be required to pass all requirements established by the commission before being distributed. Products that do not pass the commission's requirements shall be destroyed by the licensee and proof of such destruction shall be sent to the commission upon request.

(c) This Code section shall not apply to intrafacility transportation of low THC oil or products; provided, however, that licensees engaging in such transportation shall maintain secured transportation and tracking of product delivery.

History.

Code 1981, § 16-12-217, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 14/SB 195.

Editor's notes.

Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-218. No eligibility for tax credit.

A licensee shall not be eligible for any tax credit allowed pursuant to any of the following Code Sections: 48-7-29.8, 48-7-29.11, 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.5, 48-7-40.7, 48-7-40.8, 48-7-40.9, 48-7-40.12, 48-7-40.17, 48-7-40.18, 48-7-40.20, 48-7-40.21, 48-7-40.22, 48-7-40.24, 48-7-40.25, 48-7-40.26, 48-7-40.26A, 48-7-40.27, 48-7-40.28, 48-7-40.29, 48-7-40.30, 48-7-40.31, or 48-7-40.32.

History.
Code 1981, § 16-12-218, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2023, p. 730, § 7(6)/HB 475, effective July 1, 2023; Ga. L. 2024, p. 1052, § 3(6)/SB 448, effective July 1, 2024.
Amendments.
The 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, deleted "48-7-40.33," following "48-7-40.32," near the end of the sentence.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "or 48-7-40.32." for "48-7-40.32, or 48-7-40.35." at the end of this Code section.

16-12-219. Convicted felons prohibited from employment; exception.

(a) No individual convicted of a drug related felony shall be eligible to work as an employee of a licensee or otherwise participate in the business activities of a licensee conducted pursuant to this part unless the conviction has been expunged or the individual has been pardoned or had his or her civil rights restored.

(b) No individual convicted of a nondrug related felony shall be eligible to work as an employee of a licensee or otherwise participate in the business activities of a licensee conducted pursuant to this part unless:

(1) The conviction has been expunged or the individual has been pardoned or had his or her civil rights restored; or

(2)(A) The date of conviction is greater than ten years old; and

(B) The individual:

(i) Has been released from incarceration for at least five years; or

(ii) Agrees to submit to weekly drug screenings.

History.
Code 1981, § 16-12-219, enacted by Ga. L. 2019, p. 43, § 4/HB 324.

16-12-220. Confidential nature of data; exclusion; patient privacy.

(a) All working papers, recorded information, documents, and copies produced by, obtained by, or disclosed to the commission pursuant to the activities conducted pursuant to this part, other than information published in an official commission report regarding the activities conducted pursuant to this article, shall be confidential data and shall not be subject to Article 4 of Chapter 18 of Title 50; provided, however, that any contract, memorandum of understanding, or cooperative endeavor agreement entered into by the commission pursuant to this article shall be subject to Article 4 of Chapter 18 of Title 50.

(b) In no event shall the commission disclose any information that would reveal the identity or health information of any registered patient or violate the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

History.
Code 1981, § 16-12-220, enacted by Ga. L. 2019, p. 43, § 4/HB 324.

16-12-221. Contracts for initial licenses awarded through bids or proposals; minimum contract terms and renewals; subcontracting; giving or receiving things of value limited.

(a) The commission shall grant initial licenses under this part pursuant to contracts awarded through competitive sealed bids or competitive sealed proposals as provided for in Article 3 of Chapter 5 of Title 50. After issuance of two initial Class 1 production licenses pursuant to Code Section 16-12-211 and four initial Class 2 production licenses pursuant to Code Section 16-12-212, and in the event that the commission revokes a Class 1 or Class 2 production license, a Class 1 or 2 production license is surrendered for any reason, or the commission issues an additional Class 1 production license pursuant to Code Section 16-12-214, the commission shall be authorized to issue any replacement Class 1 or Class 2 production licenses in accordance with rules and regulations established by the commission for such purpose. Such rules and regulations shall not otherwise conflict with this article, and to the extent practicable, such rules and regulations shall incorporate provisions and processes similar to Article 3 of Chapter 5 of Title 50.

(b) Any contract for a license awarded pursuant to this subsection shall not be for less than five years and may contain provisions for automatic renewal.

(c) No licensee shall subcontract for services for the cultivation or processing in any way of marijuana if the subcontractor, or any of the service providers in the chain of subcontractors, is owned wholly or in excess of 5 percent by any state employee or member of a state employee's immediate family, including but not limited to any legislator, state-wide public official, or employee of a designated university. For purposes of this subsection, the term "immediate family member" means a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent.

(d) No licensee shall give or receive anything of value in connection with any contract, memorandum of understanding, or cooperative endeavor agreement executed pursuant to this part except the value

that is expressed in the contract, memorandum of understanding, or cooperative endeavor agreement.

History.

Code 1981, § 16-12-221, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 15/SB 195.

Editor's notes.

Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

JUDICIAL DECISIONS

Administrative Procedure Act did not apply. — In consolidated appeals wherein each appellant in the seven discretionary appeals was an unsuccessful applicant for a license to produce cannabis and manufacture low THC oil in the State of Georgia, the court held the Georgia Administrative Procedure Act (APA), O.C.G.A. § 50-13-1 et seq., did not apply under the circumstances as the post-award proceedings did not adjudicate the legal rights, duties, or privileges of a party, O.C.G.A. § 50-13-2(2), as envisioned by the APA. Symphony Medical, LLC v. FFD GA Holdings, LLC, 370 Ga. App. 66, 893 S.E.2d 810, 2023 Ga. App. LEXIS 464 (2023).

16-12-222. Transfer of ownership; appeals; meaning of license; transfer fees.

(a) No license issued under this part shall transfer ownership within five years of issuance.

(b) All subsequent transfers of license ownership shall be approved by the commission to become valid. The commission shall not unreasonably withhold approval of a license transfer when the parties adequately demonstrate that a proposed new owner satisfies all requirements necessary to obtain a license and that the transfer is in the best interest of registered patients in this state.

(c) A licensee who has been denied transfer approval by the commission may file an appeal in the Superior Court of Fulton County in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d) A license issued pursuant to this article:

(1) Is effective for a single business entity;

(2) Vests no property or right in the holder of the license except to conduct the licensed business during the period the license is in effect;

(3) Is nontransferable, nonassignable by and between owners or location owners and location operators, and not subject to execution; and

(4) Expires upon the death of an individual holder of a license or upon the dissolution of any other holder of a license.

(e) Upon the sale of a licensee's business in its entirety, the buyer shall pay to the commission, subject to approval, a transfer fee for the license that accompanies the business in the following amounts:

(1) For the first sale of a:

(A) Class 1 production license business, a transfer fee for the license in the amount of $100,000.00; and

(B) Class 2 production license business, a transfer fee for the license in the amount of $12,500.00;

(2) For the second sale of a:

(A) Class 1 production license business, a transfer fee for the license in the amount of $150,000.00; and

(B) Class 2 production license business, a transfer fee for the license in the amount of $62,500.00;

(3) For the third sale of a:

(A) Class 1 production license business, a transfer fee for the license in the amount of $200,000.00; and

(B) Class 2 production license business, a transfer fee for the license in the amount of $112,500.00; and

(4) For the fourth or subsequent sale of a:

(A) Class 1 production license business, a transfer fee for the license in an amount to be established by the commission, which shall be not less than $200,000.00; and

(B) Class 2 production license business, a transfer fee for the license in an amount to be established by the commission, which shall be not less than $112,500.00.

History.
Code 1981, § 16-12-222, enacted by Ga. L. 2019, p. 43, § 4/HB 324.

16-12-223. Revocation of license; appeal.

(a) A license shall be revoked by the commission if the licensee:

(1) Holds ownership interest in more than one category of license issued under this article;

(2) Knowingly employs individuals convicted of a felony within the previous ten years unless the conviction has been expunged or the individual has been pardoned or had his or her civil rights restored;

(3) Utilizes pesticides other than pest management products that have been certified organic by the Organic Materials Review Institute or another similar standards organization;

(4) Fails to comply with inspection and access requirements in accordance with this part;

(5) Fails to be fully operational within 12 months of the date a license is awarded; or

(6) Fails to comply with any other provision or requirement of this part.

(b) A licensee whose license has been revoked by the commission may file an appeal in the Superior Court of Fulton County in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Code 1981, § 16-12-223, enacted by Ga. L. 2019, p. 43, § 4/HB 324.

16-12-224. Limitation on ownership by member or former member of commission; limitation on physician's involvement; identification when contributing to political campaigns.

(a) No current member of the commission, or former member of the commission for a period of five years from the date such individual ceased to be a member, shall own, operate, have a financial interest in, or be employed by a low THC oil or product manufacturer or distributor, including any licensee under this part.

(b) No physician who, presently or during the period of such business relationship, certifies individuals to the commission pursuant to Code Section 31-2A-18 for the use of low THC oil and products to treat certain conditions shall own, operate, have a financial interest in, or be employed by a low THC oil or product manufacturer or distributor, including any licensee under this part. This subsection shall not prohibit a physician from furnishing a registered patient or his or her caregiver, upon request, with the names of low THC oil and product manufacturers or distributors. Any physician violating this Code section shall be guilty of a misdemeanor.

(c) A licensee that makes a campaign contribution pursuant to Article 2 of Chapter 5 of Title 21 shall identify itself as a licensee under this part to the recipient of such campaign contribution.

History.
Code 1981, § 16-12-224, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 16/SB 195.

Editor's notes.
Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-225. Criminal offenses; penalty.

(a) A licensee or licensee's employee who knowingly or willfully encourages, causes, abets, connives, conspires, or aids in the endangerment of patients, trafficking of low THC oil, products, or its manufacturing by-products, or criminal distribution of raw materials and agricultural inputs, including but not limited to seeds, under this part shall be guilty of a felony and, upon conviction thereof, be punished by a fine not to exceed $100,000.00, imprisonment for not less than five nor more than ten years, or both.

(b) Any person whose acts or omissions of gross, willful, or wanton negligence contribute to or cause the endangerment of patients, trafficking of low THC oil, products, or its manufacturing by-products, or criminal distribution of raw materials and agricultural inputs, including but not limited to seeds, under this part shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, be punished by a fine of up to $5,000.00, imprisonment for up to 12 months, or both.

(c) Failure to comply with all other provisions of this part shall be punishable by a fine of up to $500.00 for the first offense. All persons convicted of a second or subsequent offense shall be guilty of a misdemeanor and, upon conviction thereof, be punished by a fine of up to $1,000.00, imprisonment for up to six months, or both, for each violation.

(d) The provisions of this Code section shall not preclude prosecution and punishment for the commission of any offense otherwise provided by law.

History.
Code 1981, § 16-12-225, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 17/SB 195.

Editor's notes.
Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violating subsection (b). — Offenses arising from a violation of subsection (b) of O.C.G.A. § 16-12-225 are offenses for which fingerprinting is required. 2020 Op. Att'y Gen. No. 20-1.

Fingerprinting required. — Misdemeanor offenses arising under O.C.G.A. § 16-12-225 are offenses for which those charged are to be fingerprinted. 2020 Op. Att'y Gen. No. 20-1.

16-12-226. Sales and use taxes applicable.

The sale of low THC oil and products authorized by this article shall be subject to all applicable sales and use taxes.

History.
Code 1981, § 16-12-226, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 18/SB 195.
Editor's notes.
Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offenses arising from a violation of O.C.G.A. § 16-12-226 are not offenses for which fingerprinting is required. 2020 Op. Att'y Gen. No. 20-1.

PART 3

DISPENSING AND DISTRIBUTION

16-12-230. Requirements for dispensing low THC oil and products.

(a) Low THC oil and products shall only be dispensed to registered patients in this state by a dispensing licensee or directly from the commission pursuant to this article.

(b) A pharmacist who dispenses low THC oil or products shall seek and review information on a registered patient from the prescription drug monitoring program data base established pursuant to Code Section 16-13-57 prior to dispensing low THC oil or products to the registered patient.

History.
Code 1981, § 16-12-230, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 19/SB 195.
Editor's notes.
Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-231. Exemptions from arrest, prosecutions, or penalty.

The following persons and entities, when acting in accordance with the provisions of this article, shall not be subject to arrest, prosecution,

or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the medical use, prescription, administration, manufacture, distribution, or transport of low THC oil or products:

(1) A registered patient who is in possession of an amount of low THC oil or products authorized under Code Section 16-12-191 or such patient's caregiver, parent, or guardian;

(2) A physician who certifies a patient to the Department of Public Health as being diagnosed with a condition or in a hospice program and authorized to use low THC oil or products for treatment pursuant to Code Section 31-2A-18;

(3) A pharmacist or pharmacy that dispenses or provides low THC oil or products to a registered patient;

(4) The commission or its employees or contractors associated with the production of low THC oil or products in accordance with this article;

(5) A designated university, an employee of a designated university, or any other person associated with the production of low THC oil or products in accordance with this article; and

(6) An employee, contractor, or agent of a licensee with proper identification associated with the production, manufacture, distribution, transport, or sale of low THC oil or products in accordance with this article.

History.
Code 1981, § 16-12-231, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 20/SB 195.

Editor's notes.
Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-232. Reimbursement to state employees for counsel fees.

A state employee is eligible for reimbursement for incurred counsel fees under Code Section 45-12-26 in the event of a federal criminal investigation or prosecution solely related to the employee's good faith discharge of public responsibilities under this article.

History.
Code 1981, § 16-12-232, enacted by Ga. L. 2019, p. 43, § 4/HB 324.

16-12-233. Contracts not against public policy.

It is the intent of the General Assembly that contracts related to the

cultivation, harvesting, manufacturing, production, and distribution of cannabis solely for the manufacture of low THC oil or products pursuant to this article are not deemed contracts against public policy pursuant to Code Section 13-8-2 and shall be enforceable. No such contract shall be unenforceable on the basis that activities related to cannabis are prohibited by federal law.

History.
Code 1981, § 16-12-233, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 21/SB 195.
Editor's notes.
Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-234. Unlawful ways to ingest low THC oil or products.

It shall be unlawful to ingest low THC oil or products in a manner that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor in a solution or other form, including but not limited to any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of low THC oil or product in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

History.
Code 1981, § 16-12-234, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 22/SB 195.
Editor's notes.
Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-235. Research in compliance with federal regulations.

Notwithstanding anything to the contrary within this article, nothing herein shall be construed to prohibit the conduct of research involving low THC oil, cannabis, or products that is conducted in full accordance with federal regulations, including the regulations of the United States Food and Drug Administration and United States Drug Enforcement Administration by any university or nonprofit institution of higher education within the State of Georgia, provided that:

(1) The university researchers conducting the research have the appropriate federal and state permits to acquire and use low THC oil, cannabis, or products in clinical or preclinical research; and

(2) The substances used for such research are obtained from

licensed pharmaceutical companies or through channels established by the United States government, such as the National Institute on Drug Abuse.

History.

Code 1981, § 16-12-235, enacted by Ga. L. 2019, p. 43, § 4/HB 324; Ga. L. 2021, p. 184, § 23/SB 195; Ga. L. 2022, p. 352, § 16/HB 1428.

Amendments.

The 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, deleted the subsection (a) designation; and deleted former subsection (b), which read: "Nothing in this article shall be construed to prohibit research otherwise permitted by Chapter 51 of Title 31.".

Editor's notes.

Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-235.1. Possession of THC oil and products by colleges and universities for research purposes; permitting requirements; inspection.

(a) The commission shall issue permits for colleges and universities located within the State of Georgia to possess limited quantities of low THC oil and products for purposes of conducting medical research via a bona fide partnership with a Class 1 or Class 2 licensee. Such permits shall be for a Georgia based college or university that:

(1) Is a member of the University System of Georgia, or an independent college or university accredited by a higher education accrediting body with comparable academic standards to those utilized by member institutions of the University System of Georgia;

(2) Has a campus that has been located at a physical location within the state for at least 20 years, and a full-time enrollment of at least 200 Georgia students during the past year;

(3) Is proposing a research partnership that is, in the sole judgment of the commission, fully compliant with the laws of this article; and

(4) Is proposing a research partnership that has been approved by the primary institutional review board located at such institution.

(b) Any such permit issued pursuant to this Code section shall specify:

(1) The individuals at the institution authorized to work with low THC oil;

(2) The primary objectives of the research study;

(3) The physical location on campus where the low THC oil will be

stored, and security measures in place to prevent unauthorized use of such low THC oil;

(4) The method of transporting low THC oil from a licensed production facility to the campus;

(5) The method of returning low THC oil to a licensed production facility at the conclusion of the study; and

(6) The beginning and end date of the study.

(c) Any institution which receives a permit pursuant to this Code section shall provide on-demand access to facilities for inspection when requested by the Georgia Bureau of Investigation, the commission, or the local law enforcement agency for the jurisdiction in which the facility is located.

History.
Code 1981, § 16-12-235.1, enacted by Ga. L. 2021, p. 184, § 24/SB 195.
Cross references.
Hemp research by colleges and universities, § 2-23-4.
Establishment of the Low THC Oil Patient Registry, § 31-2A-18.
Editor's notes.
Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

16-12-236. Regulation by Department of Agriculture.

The Georgia Department of Agriculture shall not regulate any activity authorized under this article. To the extent that the Department of Agriculture is authorized under any other law of this state to regulate any activity authorized by this article, including, but not limited to, the production process and seeds used by growers, such activities shall be exempt from regulation by the Department of Agriculture; provided, however, that all use of artificial pesticides regulated by the Department of Agriculture shall be banned.

History.
Code 1981, § 16-12-236, enacted by Ga. L. 2019, p. 43, § 4/HB 324.

ARTICLE 10

CONSUMABLE HEMP PRODUCTS

Effective date.
This article becomes effective October 1, 2024.
Editor's notes.
Ga. L. 2024, p. 455, § 19/SB 494, not codified by the General Assembly, provides: "All fees collected pursuant to this Act shall be paid into the general fund of the state treasury."

16-12-240. (Effective October 1, 2024.) Definitions.

As used in this article, the term:

(1) "Consumable hemp product" shall have the same meaning as provided in Code Section 2-23-3.

(2) "Person" means any natural person or any firm, partnership, company, corporation, or other entity.

(3) "Proper identification" means any document issued by a governmental agency that contains a description of an individual, such individual's photograph, or both; provides such individual's date of birth; and includes, without limitation, a passport, military identification card, driver's license, or an identification card authorized under Code Sections 40-5-100 through 40-5-104; provided, however, that such term shall not include a birth certificate.

History. Code 1981, § 16-12-240, enacted by Ga. L. 2024, p. 455, § 18/SB 494, effective October 1, 2024.

16-12-241. (Effective October 1, 2024.) Age restrictions.

(a) It shall be unlawful for any person to knowingly sell, furnish, or cause to be furnished, directly or through another person, any consumable hemp product to any individual under the age of 21 years.

(b) It shall be unlawful for any individual under the age of 21 years to knowingly:

(1) Purchase, attempt to purchase, or possess any consumable hemp product; or

(2) Misrepresent his or her identity or age or use any false identification for the purpose of obtaining, or attempting to obtain, any consumable hemp product.

(c)(1) The prohibition contained in subsection (a) of this Code section shall not apply with respect to the sale of any consumable hemp product by a person when such person has been furnished with proper identification showing that the individual to whom the consumable hemp product is to be sold or furnished is 21 years of age or older.

(2) In any case where a reasonable or prudent person could reasonably be in doubt as to whether or not the individual to whom any consumable hemp product is to be sold or furnished is 21 years of age or older, it shall be the duty of the person selling or furnishing such consumable hemp product to request to see and to be furnished with proper identification in order to verify the age of such individual. The failure to make such request and verification in any case where

the individual to whom any consumable hemp product is sold or furnished is under the age of 21 years may be considered by the trier of fact in determining whether the person who sold or furnished such consumable hemp product did so knowingly.

(d) Nothing contained in this Code section shall be construed to prohibit any individual under the age of 21 years from dispensing, serving, selling, or handling any consumable hemp product as part of employment in any place of business that requires such individual to dispense, serve, sell, or handle consumable hemp products.

(e) Any person who violates this Code section shall be guilty of a misdemeanor; provided, however, that, upon the first conviction of a violation of subsection (b) of this Code section, such person shall be punished by a fine not to exceed $500.00 and the court shall, pursuant to paragraph (3) of subsection (d) of Code Section 17-10-1, allow such person to satisfy such fine through community service as set forth in Article 3 of Chapter 3 of Title 42.

History. Code 1981, § 16-12-241, enacted by Ga. L. 2024, p. 455, § 18/SB 494, effective October 1, 2024.

16-12-242. (Effective October 1, 2024.) Notice of age restriction.

(a) Any person owning or operating a place of business in which any consumable hemp product is offered for sale shall post in a conspicuous place a sign which shall contain the following statement printed in all capital letters of at least one-half inch in height:

"SALE OF CONSUMABLE HEMP PRODUCTS TO INDIVIDUALS UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW."

(b) Any person who fails to comply with the requirements of subsection (a) of this Code section shall be guilty of a misdemeanor.

History. Code 1981, § 16-12-242, enacted by Ga. L. 2024, p. 455, § 18/SB 494, effective October 1, 2024.

16-12-243. (Effective October 1, 2024.) Inspection of seller or distributor locations.

The Commissioner of Agriculture, acting through special agents or enforcement officers, and other law enforcement agencies may conduct random, unannounced inspections at locations where consumable hemp products are sold or distributed to ensure compliance with this article. Individuals under the age of 21 years may be enlisted to test compliance with this article; provided, however, that such individuals may be used to test compliance with this article only if the testing is conducted under the direct supervision of such special agents or enforcement officers of the Department of Agriculture or a peace officer and if written parental

consent for such individuals has been provided. Any other use of individuals under the age of 21 years to test compliance with this article or any other similar provisions shall be unlawful, and the person or persons responsible for such use shall be subject to the penalties prescribed in this article.

History.
Code 1981, § 16-12-243, enacted by Ga. L. 2024, p. 455, § 18/SB 494, effective October 1, 2024.

CHAPTER 13

CONTROLLED SUBSTANCES

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16-13-110. Definitions.
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16-13-113. Article as supplement to power of licensing authority.
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Article 6

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16-13-120. (Effective until January 1, 2025.) Definition.
16-13-120. (Effective January 1, 2025.) Definitions.
16-13-121. (Effective until January 1, 2025.) Possession by indi-

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vidual under age 18; penalty.
16-13-121. (Effective January 1, 2025.) Possession by individual under age 21; sale; penalty.
Sec.
16-13-122. (Effective until January 1, 2025.) Required labeling.
16-13-122. (Effective January 1, 2025.) Content of kratom; required labeling.

Cross references.

Requirement that certain wholesale distributors of controlled substances and dangerous drugs provide price and quantity information, § 26-4-115.1.

Authority of director of investigation to retain narcotics agents on contractual basis, § 35-3-9.

Suspension or termination of public employee convicted of drug offense, § 45-23-4.

Ineligibility for public employment of person convicted of drug offense, § 45-23-5.

Editor's notes.

By resolution (Ga. L. 1983, p. 590), the General Assembly directed the Composite State Board of Medical Examiners (now Georgia Composite Medical Board) to develop and adopt rules and regulations to curb the abuse of prescription amphetamine and amphetamine-like drugs for the treatment of obesity and other nonrelated acceptable medical treatments.

By resolution (Ga. L. 1990, p. 985), the General Assembly created the Joint Steering Committee for the Georgia General Assembly's Conference on Children of Cocaine and Substance Abuse.

Administrative rules and regulations.

Rules and Regulations for Drug Abuse Treatment and Education Programs, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Community Health, Healthcare Facility Regulation, Rule 111-8-19-.01 et seq.

Law reviews.

For article, "A Report from the Front in the War on Drugs," see 7 Georgia St. U.L. Rev. 1 (1990).

For comment, "Solving the Problem of Prenatal Substance Abuse: An Analysis of Punitive and Rehabilitative Approaches," see 39 Emory L.J. 1401 (1990).

JUDICIAL DECISIONS

Evidence was insufficient to support conviction of possessing cocaine. — When (1) defendant's only connection to cocaine that was found in a jacket was that the defendant picked up the jacket after the jacket had been lying outside on an air conditioner in close proximity to a juvenile who was suspected in drug transactions and an unidentified woman, and (2) there was no evidence as to who placed the jacket on the air conditioner, the evidence against the defendant was entirely circumstantial and did not exclude every other hypothesis except guilt; therefore, the evidence was insufficient under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) to support the defendant's conviction of possessing cocaine in violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq. Stephens v. State, 258 Ga. App. 774, 575 S.E.2d 661, 2002 Ga. App. LEXIS 1503 (2002), cert. denied, No. S03C0590, 2003 Ga. LEXIS 271 (Ga. Mar. 10, 2003).

RESEARCH REFERENCES

Am. Jur. Proof of Facts.

Entrapment to Commit Narcotics Offense, 12 POF2d 237.

Injuries from Drugs, 7 POF3d 1.

Am. Jur. Trials.

Defense of Narcotics Cases, 8 Am. Jur. Trials 573.

ALR.

Defense of necessity, duress, or coercion in prosecution for violation of state narcotics laws, 1 A.L.R.5th 938.

Illegal drugs or narcotics involved in alleged offense as subject to discovery by defendant under Rule 16 of Federal Rules of Criminal Procedure, 109 A.L.R. Fed. 363.

ARTICLE 1

GENERAL PROVISIONS

16-13-1. Drug related objects.

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

(1) "Controlled substance" shall have the same meaning as defined in Article 2 of this chapter, relating to controlled substances. For the purposes of this Code section, the term "controlled substance" shall include marijuana as defined by paragraph (16) of Code Section 16-13-21.

(2) "Dangerous drug" shall have the same meaning as defined in Article 3 of this chapter, relating to dangerous drugs.

(3) "Drug related object" means any machine, instrument, tool, equipment, contrivance, or device which an average person would reasonably conclude is intended to be used for one or more of the following purposes:

(A) To introduce into the human body any dangerous drug or controlled substance under circumstances in violation of the laws of this state;

(B) To enhance the effect on the human body of any dangerous drug or controlled substance under circumstances in violation of the laws of this state;

(C) To conceal any quantity of any dangerous drug or controlled substance under circumstances in violation of the laws of this state; or

(D) To test the strength, effectiveness, or purity of any dangerous drug or controlled substance under circumstances in violation of the laws of this state.

This term shall not include a hypodermic needle or syringe.

(4) "Knowingly" means having general knowledge that a machine, instrument, tool, item of equipment, contrivance, or device is a drug related object or having reasonable grounds to believe that any such object is or may, to an average person, appear to be a drug related

object. If any such object has printed thereon or is accompanied by instructions explaining the purpose and use of such object and if following such instructions would cause a person to commit an act involving the use or possession of a dangerous drug or controlled substance in violation of the laws of this state, then such instructions shall constitute prima-facie evidence of knowledge that the object in question is a drug related object.

(5) "Minor" means any unmarried person under the age of 18 years.

(b) Except as otherwise provided by subsection (d) of this Code section, it shall be unlawful for any person knowingly to sell, deliver, distribute, display for sale, or provide to a minor or knowingly possess with intent to sell, deliver, distribute, display for sale, or provide to a minor any drug related object.

(c) It shall be unlawful for any minor falsely to represent to any person that such minor is 18 years of age or older with the intent to purchase or otherwise obtain any drug related object.

(d) No person shall be guilty of violating subsection (b) of this Code section if:

(1) The person had reasonable cause to believe that the minor involved was 18 years of age or older because the minor exhibited to such person a driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was 18 years of age or older;

(2) The person made an honest mistake in believing that the minor was 18 years of age or over after making a reasonable bona fide attempt to ascertain the true age of the minor;

(3) The person was the parent or guardian of the minor; or

(4) The person was acting in his capacity as an employee or official of any governmental agency, governmental institution, public school or other public educational institution, any bona fide private school, educational institution, healthcare facility, or institution; or the person was acting in his capacity as a registered pharmacist or veterinarian or under the direction of a registered pharmacist or veterinarian to sell such object for a legitimate medical purpose.

(e) Any person who violates subsection (b) of this Code section shall be guilty of a misdemeanor for the first offense. For the second or any subsequent offense, a person violating 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 nor more than five years or by a fine of not less than $1,000.00 nor more than $5,000.00, or

both. Any person violating subsection (c) of this Code section shall be guilty of a misdemeanor.

History.

Code 1933, § 26-9913, enacted by Ga. L. 1978, p. 2199, § 1; Ga. L. 1985, p. 149, § 16; Ga. L. 1999, p. 81, § 16; Ga. L. 2022, p. 663, § 3/SB 164; Ga. L. 2024, p. 1052, § 3(7)/SB 448, effective July 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, added the last sentence in paragraph (a)(3).

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "healthcare" for "health care" in paragraph (d)(4).

JUDICIAL DECISIONS

Constitutionality. — Definition of "drug related objects" in O.C.G.A. § 16-13-1 provides adequate notice of the persons covered and conduct proscribed and is not therefore void for vagueness. High Ol' Times, Inc. v. Busbee, 673 F.2d 1225, 1982 U.S. App. LEXIS 19863 (11th Cir. 1982).

Jury instructions. — Court's refusal to give charge to jury that defendant's explanation was to be taken into consideration insofar as it was consistent with properly admitted circumstantial evidence was not error where instruction was given to the jury regarding presumption of defendant's innocence and regarding the state's burden of proof to prove defendant guilty beyond a reasonable doubt. Upshaw v. State, 172 Ga. App. 671, 324 S.E.2d 529, 1984 Ga. App. LEXIS 3079 (1984).

Civil action to recover for injuries after consuming controlled substance. — Consumer of controlled substances may not recover damages for injuries sustained in an automobile accident after taking the drugs, when the provider had taken the drugs from the pharmacy in which the provider worked, and the consumer should have foreseen the possibility of an accident after using drugs. Guy v. McKenzie, 195 Ga. App. 670, 394 S.E.2d 576, 1990 Ga. App. LEXIS 665 (1990).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 19 et seq., 40 et seq. 32 Am. Jur. 2d, False Pretenses, § 7.

U.L.A.

Uniform Controlled Substances Act (U.L.A.) § 101 et seq.

ALR.

Prosecutions based upon alleged illegal possession of instruments to be used in violation of narcotics laws, 92 A.L.R.3d 47.

Propriety of instruction of jury on "conscious avoidance" of knowledge of nature of substance or transaction in prosecution for possession or distribution of drugs, 109 A.L.R. Fed. 710.

16-13-2. Conditional discharge for possession of controlled substances as first offense and certain nonviolent property crimes; dismissal of charges; restitution to victims.

(a) Whenever any person who has not previously been convicted of any offense under Article 2 or Article 3 of this chapter or of any statute of the United States or of any state relating to narcotic drugs, mari-

juana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a narcotic drug, marijuana, or stimulant, depressant, or hallucinogenic drug, the court may without entering a judgment of guilt and with the consent of such person defer further proceedings and place him on probation upon such reasonable terms and conditions as the court may require, preferably terms which require the person to undergo a comprehensive rehabilitation program, including, if necessary, medical treatment, not to exceed three years, designed to acquaint him with the ill effects of drug abuse and to provide him with knowledge of the gains and benefits which can be achieved by being a good member of society. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed accordingly. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this Code section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this Code section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this Code section may occur only once with respect to any person.

(b) Notwithstanding any law to the contrary, any person who is charged with possession of marijuana, which possession is of one ounce or less, shall be guilty of a misdemeanor and punished by imprisonment for a period not to exceed 12 months or a fine not to exceed $1,000.00, or both, or public works not to exceed 12 months.

(c) Persons charged with an offense enumerated in subsection (a) of this Code section and persons charged for the first time with nonviolent property crimes which, in the judgment of the court exercising jurisdiction over such offenses, were related to the accused's addiction to a controlled substance or alcohol who are eligible for any court approved drug treatment program may, in the discretion of the court and with the consent of the accused, be sentenced in accordance with subsection (a) of this Code section. The probated sentence imposed may be for a period of up to five years. No discharge and dismissal without court adjudication of guilt shall be entered under this subsection until the accused has made full restitution to all victims of the charged offenses. Discharge and dismissal under this Code section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this Code section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this Code section may not be used to disqualify a person in any application for employment or appointment to office in either the public or private sector.

(d)(1) As used in this subsection, the term:

(A) "Criminal history record information" shall have the same meaning as set forth in Code Section 35-3-30.

(B) "Restrict" or "restriction" shall have the same meaning as set forth in Code Section 35-3-37.

(2)(A) At the time of sentencing, the defendant may seek to limit public access to his or her sentencing information, and the court may, in its discretion, order that:

(i) The defendant's records shall be restricted in accordance with Code Section 35-3-37;

(ii) The criminal file, docket books, criminal minutes, final record, all other records of the court, and the defendant's criminal history record information in the custody of the clerk of court, including within any index, be sealed and unavailable to the public; and

(iii) The defendant's criminal history record information of arrest, including any fingerprints or photographs taken in conjunction with such arrest, be restricted by law enforcement agencies, jails, or detention centers.

(B) When considering the defendant's request under this paragraph, the court shall weigh the public's interest in the defendant's criminal history record information being publicly available and the harm to the defendant's privacy and issue written findings of fact thereupon.

(C) The court shall specify the date that such prohibited dissemination, sealing, and restrictions will take effect.

History.

Code 1933, § 79A-9917, enacted by Ga. L. 1971, p. 271, § 1; Ga. L. 1973, p. 688, § 1; Ga. L. 1974, p. 221, § 3; Ga. L. 1976, p. 1083, § 1; Ga. L. 1992, p. 6, § 16; Ga. L. 1997, p. 1377, § 2; Ga. L. 2004, p. 488, § 1; Ga. L. 2020, p. 753, § 2-3/SB 288.

Cross references.

Use of dogs to detect controlled substances, § 35-2-101.

Probation of first offenders, § 42-8-60 et seq.

Editor's notes.

Provisions added by Ga. L. 1976, p. 1083, § 1 were declared unconstitutional in State v. Millwood, 242 Ga. 244, 248 S.E.2d 643 (1978), insofar as they attempted to vest jurisdiction in municipal courts to try offenses against the state.

Ga. L. 1997, p. 1377, § 4, not codified by the General Assembly, provides: "It is the intent of the General Assembly to restore the law of this state to that which was generally understood to be the law prior to the decision of the Court of Appeals in Williams v. State, 222 Ga. App. 698, Case No. A96A1472, decided August 20, 1996, such that possession of one ounce or less of marijuana is a misdemeanor and the provisions of Code Section 36-32-6 are applicable to such offenses."

Law reviews.

For note, "Substantive Due Process and Felony Treatment of Pot Smokers: The Current Conflict," see 2 Ga. L. Rev. 247 (1968).

For comment on Tant v. State, 123 Ga. App. 760, 182 S.E.2d 502 (1971), advocating additional reform of Georgia's system of appellate review of criminal cases, see 9 Ga. St. B. J. 490 (1973).

For article on the effect of nolo contendere plea on conviction, see 13 Ga. L. Rev. 723 (1979).

For note on 1992 amendment of this

Code section, see 8 Georgia St. U.L. Rev. 129 (1992).

For article, "Misdemeanor Sentencing in Georgia," see 7 Ga. St. B.J. 8 (2001).

For annual survey of criminal law, see 58 Mercer L. Rev. 83 (2006).

JUDICIAL DECISIONS

Analysis

General Consideration
Constitutionality
Evidence
Jury
Sentence

General Consideration

Effect of 1997 amendment. — The 1997 amendment to O.C.G.A. § 16-13-2(b) simply restored jurisdiction over cases involving possession of marijuana, less than one ounce, to the state courts, in light of the decision in Williams v. State, 222 Ga. App. 698, 475 S.E.2d 667, 1996 Ga. App. LEXIS 912 (1996), and did not impact on defendant's prosecution in superior court, which had jurisdiction to try misdemeanor or felony offenses. Hicks v. State, 228 Ga. App. 235, 494 S.E.2d 342, 1997 Ga. App. LEXIS 1047 (1997).

Three days before the defendant pled guilty to a second offense of possession of less than an ounce of marijuana, the governor signed legislation amending O.C.G.A. § 16-13-2 to make possession of this amount a misdemeanor offense in all cases, the trial court erred in entering judgment on a felony conviction. Calbreath v. State, 235 Ga. App. 638, 510 S.E.2d 145, 1998 Ga. App. LEXIS 1592 (1998).

Trial court erred in denying defendant's motion to dismiss the indictment against defendant for felony possession of less than an ounce of marijuana because the legislature did not include a savings clause in the 1997 amendment of O.C.G.A. § 16-13-2 and clearly expressed the legislature's intent that possession of less than an ounce of marijuana is a misdemeanor offense. Hanson v. State, 271 Ga. 145, 518 S.E.2d 111, 1999 Ga. LEXIS 380 (1999).

Former Code 1933, § 79A-9917 (see now O.C.G.A. § 16-13-2) was permissive, not mandatory and absent abuse of discretion, the trial judge's discretion will not be disturbed. Owens v. State, 135 Ga. App. 497, 218 S.E.2d 168, 1975 Ga. App. LEXIS 1713 (1975).

Construction with other Code sections. — When one count of the accusation filed by the district attorney recited that it was charged under O.C.G.A. § 16-13-30, which is a felony which may not be brought by accusation pursuant to O.C.G.A. § 17-7-70 without the assent of the accused, not on record in the case, nor was it one of those felonies listed in O.C.G.A. § 17-7-70.1 which, under circumstances not present in the case, may be pursued by accusation, the count was considered by the court to be brought under O.C.G.A. § 16-13-2(b), misdemeanor possession of less than an ounce of marijuana. Chadwick v. State, 236 Ga. App. 199, 511 S.E.2d 286, 1999 Ga. App. LEXIS 119 (1999).

Search of probationer's residence for drugs. — Trial court properly denied the defendant's motion to suppress because the court did not err in determining that the law-enforcement officers who searched the defendant's home had reasonable suspicion to suspect criminal activity or violations of probation based on the probation officer's concerns that the defendant was using drugs and attempting to avoid detection; thus, the search was conducted for probationary purposes, rather than for law-enforcement purposes. Whitfield v. State, 337 Ga. App. 167, 786 S.E.2d 547, 2016 Ga. App. LEXIS 286 (2016).

Former Code 1933, § 79A-9917 (see now O.C.G.A. § 16-13-2) did not deal

with question of guilt or innocence, but referred solely to conditional discharge for first offenders charged with possession of one ounce or less of marijuana. Tift v. State, 133 Ga. App. 455, 211 S.E.2d 409, 1974 Ga. App. LEXIS 1111 (1974).

State court indictment must affirmatively show first offense. — State court, to invoke provisions of former Code 1933, § 79A-9917 (see now O.C.G.A. § 16-13-2(b)), in indictment/accusation forming basis for charges, must affirmatively show that accused was charged with possession of one ounce or less of marijuana and that the accused was a first offender, otherwise all proceedings held in state court were a nullity. Kent v. State, 129 Ga. App. 71, 198 S.E.2d 712, 1973 Ga. App. LEXIS 881 (1973).

Because there was no evidence that the witness was ineligible for first-offender treatment under the probation for first offenders statute in 2009 based on the witness pleading guilty in 2004 to misdemeanor drug possession, and being sentenced as a first offender under the conditional discharge for possession of a controlled substance as a first offense statute, the witness's failure to inform the court in the 2009 case that the witness had formerly been given first offender treatment in the misdemeanor drug-possession case did not present a credibility issue, and trial counsel was not ineffective in failing to cross-examine the witness about being twice sentenced as a first offender to attack the witness's credibility. Brittain v. State, 329 Ga. App. 689, 766 S.E.2d 106, 2014 Ga. App. LEXIS 764 (2014).

Jurisdiction of motion to withdraw guilty plea. — Since judgments of conviction are not entered in cases proceeding under the First Offender Act, O.C.G.A. § 42-8-60 et seq., unless the defendant violates the terms of defendant's probation, the sentencing court retains jurisdiction both for resentencing and to consider a motion to withdraw a guilty plea after the end of the term of court in which the plea was entered. Tripp v. State, 223 Ga. App. 73, 476 S.E.2d 844, 1996 Ga. App. LEXIS 1067 (1996).

Withdrawal of guilty plea. — Trial court did not abuse the court's discretion in denying the defendant's motion to withdraw a guilty plea to charges of trafficking in methamphetamine and possession of marijuana as the defendant acknowledged, and the record showed, that the trial court advised the defendant of the maximum allowable sentence on both a trafficking in methamphetamine and possession of marijuana charge, as well as the mandatory minimum sentence on the former offense; further, despite the fact that the waiver of rights form the defendant signed incorrectly stated that the maximum term of imprisonment was 30 years, rather than 31 years, given the aforementioned, the mistake did not amount to a manifest injustice requiring reversal of the court's refusal to allow withdrawal. Rodriguez v. State, 280 Ga. App. 423, 634 S.E.2d 182, 2006 Ga. App. LEXIS 863 (2006).

Exclusion for drug court program did not violate equal protection. — Defendant was excluded from a drug court program under O.C.G.A. § 16-13-2(a) because the defendant had a mental illness, was under a doctor's supervision, and was taking four prescription medications, not because of the defendant's HIV status. As the state's interest in preserving the defendant's health was rationally related to the state's decision to exclude the defendant from the program, there was no equal protection violation. Evans v. State, 293 Ga. App. 371, 667 S.E.2d 183, 2008 Ga. App. LEXIS 945 (2008).

Appeals under section are discretionary. — Because the defendant was sentenced after unsuccessful participation in an O.C.G.A. § 16-13-2(a) drug court program, the defendant's appeal was heard despite failing to comply with the discretionary appeal procedure of O.C.G.A. § 5-6-35(a)(5); in such cases, hearing appeals was discretionary, but that had not been clear prior to the instant case so the appellate court heard the defendant's case. Andrews v. State, 276 Ga. App. 428, 623 S.E.2d 247, 2005 Ga. App. LEXIS 1273 (2005).

Because the drug court program under O.C.G.A. § 16-13-2(a) is similar to the

General Consideration (Cont'd)

first offender statute of O.C.G.A. § 42-8-60 and because § 42-8-60 appeals are discretionary under O.C.G.A. § 5-6-35(a)(5), the discretionary appeal procedures of O.C.G.A. § 5-6-35(a)(5) must be followed when appealing after violation of the conditions of the drug court program. Andrews v. State, 276 Ga. App. 428, 623 S.E.2d 247, 2005 Ga. App. LEXIS 1273 (2005).

Constitutionality

Constitutionality of O.C.G.A. § 16-13-30(j)(2). — Difference between punishments for purchase of marijuana under O.C.G.A. § 16-13-30(j)(2) and possession of the same amount under O.C.G.A. § 16-13-2(b) does not constitute a denial of equal protection because imposition of a felony sentence under the former applies equally to all those accused of purchasing any amount of the controlled substance and, thus, there is no unconstitutional disparate treatment of similarly situated persons. State v. Jackson, 271 Ga. 5, 515 S.E.2d 386, 1999 Ga. LEXIS 322 (1999).

Constitutionality of § 16-13-2(b). — O.C.G.A. § 16-13-2(b) did not violate due process by creating a mandatory presumption of guilt. The court interpreted the statute, as the court had before, to render the statute valid and to carry out the legislative intent of establishing that possession of an ounce or less of marijuana was a misdemeanor. In the Interest of D.H., 285 Ga. 51, 673 S.E.2d 191, 2009 Ga. LEXIS 3 (2009).

Evidence

Preponderance of the evidence test. — Although O.C.G.A. § 16-13-2, which set forth the trial court's authority to institute an alternative to traditional sentencing in drug possession cases, did not establish the state's burden in terminating such situation, the Court of Appeals of Georgia found it analogous to revocation of probation or of first offender status; hence, the preponderance of the evidence test applicable to first offender status was equally applicable in cases involving an alleged violation of a drug court contract. Wilkinson v. State, 283 Ga. App. 213, 641 S.E.2d 189, 2006 Ga. App. LEXIS 1564 (2006).

Evidence of weight required to establish felony. — While the state established that defendant was in possession of marijuana, there was indeed no evidence to establish its weight; and in the absence of such evidence there was no basis for treating the offense as a felony. Whatley v. State, 189 Ga. App. 173, 375 S.E.2d 245, 1988 Ga. App. LEXIS 1322 (1988).

Proof of weight. — To discharge the burden of proving that the weight of the marijuana exceeded one ounce, it is not necessary for the state to come forward with evidence of how many grams equal an ounce, even if the state's witnesses testify about the weight of the marijuana in terms of grams; when O.C.G.A. § 16-13-2(b) refers to an "ounce" of marijuana, the statute refers, as a matter of law, to an avoirdupois ounce, which is the equivalent of, when rounded up to the nearest hundredth of a gram, 28.35 grams, and the number of grams in an ounce is not something that varies from case to case or is open to reasonable dispute. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399, 2011 Ga. App. LEXIS 453 (2011), cert. denied, No. S11C1610, 2011 Ga. LEXIS 851 (Ga. Oct. 17, 2011).

Evidence insufficient for felony status. — Offense of possession of less than one ounce of marijuana, committed prior to the decision in Williams v. State, 222 Ga. App. 698, 475 S.E.2d 667, 1996 Ga. App. LEXIS 912 (1996), was a misdemeanor, and the conviction of defendant, with a prior conviction for the same offense, did not have felony ramifications. Hicks v. State, 228 Ga. App. 235, 494 S.E.2d 342, 1997 Ga. App. LEXIS 1047 (1997).

Evidence insufficient to show possession. — Evidence was insufficient to support a conviction of possession of less than one ounce of marijuana when a marijuana cigarette was found in a car in which the defendant was riding. The circumstantial evidence was entirely consistent with the defendant's theory that the defendant was merely a passenger in the car and had nothing to do

with the marijuana cigarette; there was no evidence that the defendant was uncooperative, attempted to flee police, behaved erratically, or appeared to be under the influence of drugs; there was no marijuana residue found near the defendant or on the defendant's person; the defendant did not possess drug paraphernalia; and a witness who was also a passenger in the car testified that the defendant, who had gotten a ride home from a nightclub with the driver, did not smoke the cigarette and was not in possession of marijuana on the evening in question. Kier v. State, 292 Ga. App. 208, 663 S.E.2d 832, 2008 Ga. App. LEXIS 739 (2008).

Evidence was insufficient to convict the defendant of possession of one ounce or less of marijuana because, although marijuana was found in the residence when the residence was searched, the defendant was not present at the time; the evidence established that the defendant shared the residence with the defendant's co-conspirator and that at least one other man had been living there leading up to the search of the residence; and the state did not present evidence that the marijuana found in the search had ever been in the possession or control of the defendant. Cummings v. State, 345 Ga. App. 702, 814 S.E.2d 806, 2018 Ga. App. LEXIS 270 (2018), cert. denied, No. S18C1280, 2018 Ga. LEXIS 728 (Ga. Nov. 15, 2018).

Evidence sufficient to show possession. — By showing circumstantially that defendant and two codefendants had equal access to the cocaine and marijuana in defendant's truck, the evidence established that all three were parties to the crime and, thus, guilty of joint constructive possession of the drugs under O.C.G.A. §§ 16-13-2(b) and 16-13-30(b). Davis v. State, 270 Ga. App. 777, 607 S.E.2d 924, 2004 Ga. App. LEXIS 1601 (2004).

Despite the defendant's denial of any knowledge of the existence of drugs and other contraband in a motel room in which the defendant was the sole occupant, evidence of the contraband found in close proximity to other evidence which the defendant admitted owning, when coupled with the fact that only one key to the room existed, which the defendant admitted to having, and that no one had brought anything into the room since the person the defendant alleged was the owner of the evidence had left, was sufficient to support the defendant's convictions under O.C.G.A. §§ 16-11-106, 16-13-2, 16-13-30, 16-13-31. Hall v. State, 283 Ga. App. 266, 641 S.E.2d 264, 2007 Ga. App. LEXIS 31 (2007).

Evidence supported convictions for misdemeanor marijuana possession and cocaine trafficking under O.C.G.A. §§ 16-13-2 and 16-13-31 when officers executing a search warrant found the defendant alone in a house near bags of marijuana and with the house containing over 28 grams of cocaine, a loaded handgun, and $596; furthermore, an officer conducting surveillance and using an informant had previously observed the defendant's involvement in the sale of drugs at the home. Boyd v. State, 291 Ga. App. 528, 662 S.E.2d 295, 2008 Ga. App. LEXIS 553 (2008).

There was sufficient evidence that the defendant, a juvenile, possessed marijuana under O.C.G.A. § 16-13-2(b). Although the marijuana was in the pocket of the defendant's companion, the defendant had rolling papers with which to smoke the marijuana, and both the defendant and the companion admitted that they had just bought the marijuana and were headed to a construction site to smoke the marijuana. In the Interest of D.H., 285 Ga. 51, 673 S.E.2d 191, 2009 Ga. LEXIS 3 (2009).

Because the presence of methamphetamine in defendant's urine constituted circumstantial evidence that defendant knowingly possessed the drug within three days prior to a urine test, and because the state did not have to prove where the drug was actually ingested, the evidence was sufficient to support defendant's conviction and venue under O.C.G.A. § 17-2-2(h). Harbin v. State, 297 Ga. App. 877, 678 S.E.2d 553, 2009 Ga. App. LEXIS 595 (2009).

Convictions of drug possession pursuant to O.C.G.A. §§ 16-13-2(b), 16-13-28, 16-13-30(a), and (e), were supported by sufficient evidence under circumstances in which, following a stop, an officer found

Evidence (Cont'd)

a bag of marijuana in the defendant's pocket, and, after arresting the defendant, the officer also found $858 in the defendant's pockets and a bottle containing 16 pills of Alprazolam under the dashboard of the car the defendant had been driving; the pills were what remained of a 90-pill prescription issued five days before to a different person. Further, a bag of cocaine was later found in the patrol car where the defendant was held before backup officers arrived. Noellien v. State, 298 Ga. App. 47, 679 S.E.2d 75, 2009 Ga. App. LEXIS 582 (2009).

Trial court did not err in convicting the defendant of possession of cocaine with the intent to distribute, O.C.G.A. § 16-13-30(b), and possession of marijuana, O.C.G.A. § 16-13-2(b), because the circumstantial evidence established a meaningful connection between the defendant and the contraband, evidence which showed the defendant exercising power and dominion over the drugs found inside the wheel well on the front passenger's side of a car; the jury could infer that the drugs had been recently placed in the wheel well, and because the defendant had fled from the police, had been caught within arm's reach of the drugs, and had a large amount of cash in the defendant's pockets, the jury could infer that the defendant was a drug dealer and that the defendant had placed the drugs in the wheel well to avoid being prosecuted for possessing the drugs. Wright v. State, 302 Ga. App. 332, 690 S.E.2d 654, 2010 Ga. App. LEXIS 56 (2010).

Evidence was sufficient to sustain defendant's conviction for possession of more than one ounce of marijuana in violation of O.C.G.A. §§ 16-13-2(b) and 16-13-30(j) because the state adduced evidence at trial that the defendant had possession of 28.8 grams of marijuana, which was, by definition, more than one ounce of marijuana. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399, 2011 Ga. App. LEXIS 453 (2011), cert. denied, No. S11C1610, 2011 Ga. LEXIS 851 (Ga. Oct. 17, 2011).

Evidence was sufficient to authorize the defendant's conviction for possession of marijuana in violation of O.C.G.A. § 16-13-2(b) because the defendant was the owner and occasional driver of the vehicle and, thus, was presumed to have exclusive possession and control of the marijuana found therein; the defendant had knowledge that there was marijuana inside the vehicle and knew the exact location in the vehicle where the marijuana was located. Parker v. State, 317 Ga. App. 93, 730 S.E.2d 717, 2012 Ga. App. LEXIS 693 (2012), cert. denied, No. S12C1930, 2013 Ga. LEXIS 288 (Ga. Mar. 18, 2013), cert. denied, 571 U.S. 873, 134 S. Ct. 189, 187 L. Ed. 2d 129, 2013 U.S. LEXIS 7053 (2013).

Defendant's conviction for drug possession was upheld on appeal because there was sufficient evidence to support the defendant's conviction based on the defendant admitting to owning the safe where approximately 80 grams of marijuana were located. Franklin v. State, 325 Ga. App. 728, 754 S.E.2d 774, 2014 Ga. App. LEXIS 60 (2014).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine, possession of oxycodone and less than one ounce of marijuana, and driving while the defendant's license was suspended because the defendant knew the defendant's license to drive was suspended, and because the defendant knowingly had both the power and intention to exercise dominion or control over the controlled substances found in the backpack and was in constructive possession of those substances as the defendant was driving the car in which the backpack was located, and the defendant was linked to the backpack by the defendant's control of the car and evidence that the backpack contained a copy of a fake driver's license the defendant gave to an officer. Armstrong v. State, 325 Ga. App. 690, 754 S.E.2d 652, 2014 Ga. App. LEXIS 51 (2014).

Evidence was sufficient to convict the defendant of possession of methamphetamine and misdemeanor possession of marijuana as the evidence sufficed to support the jury's finding that the defendant possessed the drugs found under a mat-

tress because the drugs were located under the mattress directly underneath where the defendant sat; and the defendant possessed digital scales that appeared to have drug residue on the scales. Smith v. State, 331 Ga. App. 296, 771 S.E.2d 8, 2015 Ga. App. LEXIS 162 (2015), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Because the record showed that trace amounts of both marijuana and cocaine were found in the defendant's possession, and neither statute criminalizing possession of those substances required more, the evidence was sufficient to support the defendant's convictions for possession. Francis v. State, 345 Ga. App. 586, 814 S.E.2d 571, 2018 Ga. App. LEXIS 242 (2018).

Jury

Jury not to be informed of judge's refusal to grant conditional discharge. — In making determination of guilt or innocence jury should not be informed that accused would have qualified for conditional discharge but for fact that judge chose not to utilize the authority granted by former Code 1933, § 79A-9917 (see now O.C.G.A. § 16-13-2). Tift v. State, 133 Ga. App. 455, 211 S.E.2d 409, 1974 Ga. App. LEXIS 1111 (1974).

To authorize felony punishment. — When evidence is in dispute as to the amount defendant possessed, the jury must be instructed that to authorize felony punishment, the jury must find possession of more than one ounce. Jones v. State, 151 Ga. App. 560, 260 S.E.2d 555, 1979 Ga. App. LEXIS 2637 (1979).

Jury need not make special finding as to amount where evidence not in conflict. — When evidence is not in conflict as to amount, it is not necessary for the court to charge the jury that the jury must find amount specially. Coffey v. State, 141 Ga. App. 254, 233 S.E.2d 243, 1977 Ga. App. LEXIS 1857 (1977).

Necessity of jury instruction on misdemeanor possession as lesser included offense. — Defendant was improperly convicted of purchasing marijuana under O.C.G.A. § 16-13-30(j)(1) because the trial court should have given a jury instruction on the lesser included offense of misdemeanor possession of less than one ounce of marijuana under O.C.G.A. § 16-13-2(b) as the defendant did not pay for the marijuana and testified that the defendant did not intend to purchase the marijuana. Johnson v. State, 296 Ga. App. 697, 675 S.E.2d 588, 2009 Ga. App. LEXIS 317 (2009), cert. denied, No. S09C1191, 2009 Ga. LEXIS 420 (Ga. June 29, 2009).

Sentence

Once defendant begins serving a sentence it may not be increased. Perdue v. State, 155 Ga. App. 802, 272 S.E.2d 766, 1980 Ga. App. LEXIS 2797 (1980).

Attempt to make revoked probated sentence consecutive to intervening sentence amounts to increase in punishment. Perdue v. State, 155 Ga. App. 802, 272 S.E.2d 766, 1980 Ga. App. LEXIS 2797 (1980).

Time served on probation must be credited to any sentence received, including those cases involving first offender probation. Perdue v. State, 155 Ga. App. 802, 272 S.E.2d 766, 1980 Ga. App. LEXIS 2797 (1980).

Time served in treatment program. — Probationer, who elected to plead guilty and underwent alternative treatment in a drug court program offered under O.C.G.A. § 16-13-2(a), was not entitled to credit for time spent in treatment when the probationer was subsequently terminated from the program and sentenced on the original crime; moreover, a defendant in the probationer's position, who pled guilty and utilized the benefits of a rehabilitative option in order to avoid an adjudication of guilt, could not withdraw the plea as a matter of right under O.C.G.A. § 17-7-93(b). Stinson v. State, 279 Ga. App. 107, 630 S.E.2d 553, 2006 Ga. App. LEXIS 399 (2006), cert. denied, No. S06C1523, 2006 Ga. LEXIS 818 (Ga. Oct. 2, 2006).

Exclusion from drug court program did not violate double jeopardy ban. — Denying a defendant access to the drug court program under O.C.G.A. § 16-13-2(a), which had been a condition of the defendant's plea bargain, was not a

Sentence (Cont'd)

double jeopardy violation since the trial court did not involuntarily withdraw the guilty plea, but offered the defendant the option of withdrawing the plea or accepting one of several alternative sentences. Morever, agreeing to attend drug court was not a "sentence," and completion of the drug court contract was dependent on the defendant's completing the drug court program. Evans v. State, 293 Ga. App. 371, 667 S.E.2d 183, 2008 Ga. App. LEXIS 945 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Prosecuting in superior court for possessing one ounce or less makes crime felony punishable as misdemeanor under former Code 1933, § 79A-9917 (see now O.C.G.A. § 16-13-2(b)) and does not invoke former Code 1933, § 27-901 (see now O.C.G.A. § 17-6-1). 1974 Op. Att'y Gen. No. U74-79.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d., Drugs and Controlled Substances, § 207.
Am. Jur. Proof of Facts.
Insanity Defense, 41 POF2d 615.
C.J.S.
14 C.J.S., Chemical Dependents, § 13 et seq. 24 C.J.S., Criminal Procedure and Rights of the Accused, § 2359 et seq. 28A C.J.S., Drugs and Narcotics, § 483 et seq.
U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 407.
ALR.
Federal prosecutions based on manufacture, importation, transportation, possession, sale, or use of LSD, 22 A.L.R.3d 1325.

Sufficiency of prosecution proof that substance defendant is charged with possessing, selling, or otherwise unlawfully dealing in, is marijuana, 75 A.L.R.3d 717.

Validity of a state statute imposing mandatory sentence or prohibiting granting of probation or suspension of sentence for narcotics offenses, 81 A.L.R.3d 1192.

Constitutionality of state legislation imposing criminal penalties for personal possession or use of marijuana, 96 A.L.R.3d 225.

16-13-3. Penalty for abandonment of dangerous drugs, poisons, or controlled substances.

Any person who shall abandon, in a public place, any dangerous drug, poison, or controlled substance as defined by Article 2 or Article 3 of this chapter shall be guilty of a misdemeanor.

History.
Code 1933, § 79A-9918, enacted by Ga. L. 1977, p. 625, § 9.

Cross references.
Use of dogs to detect controlled substances, § 35-2-101.

JUDICIAL DECISIONS

Abandonment is not a lesser included offense of possession and, even if there was evidence that defendant prosecuted for possession of cocaine might have committed the separate act of abandonment, defendant was not entitled to a charge on that crime. Billingsley v. State, 220 Ga. App. 69, 467 S.E.2d 377, 1996 Ga. App. LEXIS 94 (1996).

Evidence sufficient for conviction. — Evidence supported defendant's conviction for abandonment of a controlled substance in a public place, in violation of O.C.G.A. § 16-13-3, because

defendant was approached by undercover officers, and when defendant realized that they were officers, defendant threw the crack cocaine that defendant was holding at a trash barrel on the abandoned residential lot where defendant was standing; the area was within the definition of "public place" under O.C.G.A. § 16-1-3(15) as the area was viewed by persons other than the members of defendant's family or household. Woods v. State, 275 Ga. App. 471, 620 S.E.2d 660, 2005 Ga. App. LEXIS 997 (2005).

Evidence was sufficient to find beyond a reasonable doubt that the defendant was guilty of manufacturing methamphetamine, O.C.G.A. § 16-13-30(b), conspiring to possess methamphetamine, O.C.G.A. § 16-13-3, and possessing methamphetamine, § 16-13-30(a) because the state was not required to show that the defendant was in sole or actual possession of the methamphetamine but could establish the element of possession by showing that the defendant was in joint constructive possession of the contraband; the evidence allowed for a finding that the defendant lived at the residence where the methamphetamine was found, that methamphetamine was found in the master bedroom atop the same dresser as a driver's license bearing the defendant's name and the residential address, that stored in a lockbox underneath the bed in that room were recipes for producing methamphetamine or a similar substance, along with digital scales associated with the drug trade, and that the defendant's residential premises was being used as a clandestine methamphetamine lab. Edwards v. State, 306 Ga. App. 713, 703 S.E.2d 130, 2010 Ga. App. LEXIS 1034 (2010).

RESEARCH REFERENCES

ALR.

Federal prosecutions based on manufacture, importation, transportation, possession, sale, or use of LSD, 22 A.L.R.3d 1325.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Marijuana cases, 1 A.L.R.6th 549.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Cocaine cases, 2 A.L.R.6th 551.

16-13-4. Approval by Food and Drug Administration as prerequisite to sale of controlled substances and dangerous drugs.

(a) No controlled substance or dangerous drug shall be sold for dispensing unless the controlled substance, as defined in Code Section 16-13-21, or the dangerous drug, as defined in Code Section 16-13-71:

(1) Is approved by the Food and Drug Administration for resale;

(2) Has a new approved drug application number (known as an NDA number) unless excepted by the Food and Drug Administration; or

(3) Has an approved abbreviated new drug application number (known as an ANDA number) unless excepted by the Food and Drug Administration.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one year nor more than five years.

History.
Ga. L. 1981, p. 557, § 6; Ga. L. 1985, p. 1219, § 1; Ga. L. 1989, p. 14, § 16.

16-13-5. Immunity from arrest or prosecution for persons seeking medical assistance for drug overdose.

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

(1) "Drug overdose" means an acute condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death, resulting from the consumption or use of a controlled substance or dangerous drug by the distressed individual in violation of this chapter or that a reasonable person would believe to be resulting from the consumption or use of a controlled substance or dangerous drug by the distressed individual.

(2) "Drug violation" means:

(A) A violation of subsection (a) of Code Section 16-13-30 for possession of a controlled substance if the aggregate weight, including any mixture, is less than four grams of a solid substance, less than one milliliter of liquid substance, or if the substance is placed onto a secondary medium with a combined weight of less than four grams;

(B) A violation of paragraph (1) of subsection (j) of Code Section 16-13-30 for possession of less than one ounce of marijuana; or

(C) A violation of Code Section 16-13-32.2, relating to possession and use of drug related objects.

(3) "Medical assistance" means aid provided to a person by a healthcare professional licensed, registered, or certified under the laws of this state who, acting within his or her lawful scope of practice, may provide diagnosis, treatment, or emergency medical services.

(4) "Seeks medical assistance" means accesses or assists in accessing the 9-1-1 system or otherwise contacts or assists in contacting law enforcement or a poison control center and provides care to a person while awaiting the arrival of medical assistance to aid such person.

(b) Any person who in good faith seeks medical assistance for a person experiencing or believed to be experiencing a drug overdose shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of such drug violation resulted solely from seeking such medical assistance. Any person who is

experiencing a drug overdose and, in good faith, seeks medical assistance for himself or herself or is the subject of such a request shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of such drug violation resulted solely from seeking such medical assistance. Any such person shall also not be subject to, if related to the seeking of such medical assistance:

(1) Penalties for a violation of a permanent or temporary protective order or restraining order; or

(2) Sanctions for a violation of a condition of pretrial release, condition of probation, or condition of parole based on a drug violation.

(c) Nothing in this Code section shall be construed to limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of subsection (b) of this Code section or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to subsection (b) of this Code section. Nothing in this Code section shall be construed to limit any seizure of evidence or contraband otherwise permitted by law. Nothing in this Code section shall be construed to limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in subsection (b) of this Code section.

History.

Code 1981, § 16-13-5, enacted by Ga. L. 2014, p. 683, § 1-3/HB 965; Ga. L. 2024, p. 1052, § 3(8)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "healthcare" for "health care" in paragraph (a)(3).

Editor's notes.

Ga. L. 2014, p. 683, § 1-1/HB 965, not codified by the General Assembly, provides that: "This part [Part I of the Act] shall be known and may be cited as the 'Georgia 9-1-1 Medical Amnesty Law.'"

Ga. L. 2014, p. 683, § 1-2/HB 965, not codified by the General Assembly, provides:

"WHEREAS, according to the Atlanta Journal Constitution ('AJC'), more than 600,000 Americans used heroin in 2012, which is nearly double the number from five years earlier according to health officials; and

"WHEREAS, the AJC article states that '[t]he striking thing about heroin's most recent incarnation is that a drug that was once largely confined to major cities is spreading into suburban and rural towns across America, where it is used predominantly by young adults between the ages of 18 and 29'; and

"WHEREAS, the Drug Enforcement Agency has noted that the 'skyrocketing' increase in the availability of cheap heroin is a direct reaction by cartels to legislative efforts to regulate and restrict access to opiate prescription painkillers; and

"WHEREAS, Stephen Cardiges of Lawrenceville died of an accidental heroin overdose; and

"WHEREAS, Randall Brannen of McDonough died of an accidental overdose; and

"WHEREAS, Stephen and Randall are a part of a growing trend of drug overdose victims in Georgia; and

"WHEREAS, those who were with them did not call 9-1-1 to seek medical assis-

tance, which could have saved their lives, because of a fear of prosecution for the possession and use of illegal drugs; and

"WHEREAS, Overdose Reporting/Medical Amnesty legislation, or '9-1-1 Good Samaritan Laws,' have been passed in 14 states, including Florida and North Carolina, and is under consideration in several more; and

"WHEREAS, in North Carolina, it is believed that at least 20 lives have been saved since passage last year of similar legislation, and in Massachusetts it is believed that more than 120 lives have been saved since passage of similar legislation in that state in 2012; and

"WHEREAS, overdose deaths result from a variety of substances, including prescription painkillers, heroin, methamphetamine, designer drugs, and alcohol."

Ga. L. 2014, p. 683, § 3-1(b)/HB 965, not codified by the General Assembly, provides, in part, that: "Parts I and II of this Act shall apply to all acts committed on or after such effective date [April 24, 2014]."

Law reviews.

For article, "From the Crime Scene to the Courtroom: The Future of Forensic Science Reform: The Overdose/Homicide Epidemic," see 34 Georgia St. U.L. Rev. 983 (2018).

JUDICIAL DECISIONS

Defendant entitled to immunity. — When the defendant was charged with two counts of possession of drugs, the defendant was entitled to immunity from prosecution under the Georgia 9-1-1 Medical Amnesty Law because the defendant's prosecution was the result of being the subject of a request for medical assistance while the defendant was experiencing a drug overdose as three people called 911 to report that the defendant was lying in the street next to the defendant's car; emergency responders were dispatched on the basis of the calls; and law enforcement officers, who searched the defendant's car and found the pills that became the evidence in support of the prosecution, were present solely because the bystanders called for medical assistance to the defendant. State v. Mercier, 349 Ga. App. 536, 826 S.E.2d 422, 2019 Ga. App. LEXIS 198 (2019).

ARTICLE 2

REGULATION OF CONTROLLED SUBSTANCES

Cross references.

Disciplinary action for student of public educational institution convicted of controlled substance offense, § 20-1-23.

Disciplinary action for student of nonpublic educational institution convicted of controlled substance abuse, § 20-1-24.

Law reviews.

For comment on Tant v. State, 123 Ga. App. 760, 182 S.E.2d 502 (1971), advocating additional reform of Georgia's system of appellate review of criminal cases, see 9 Ga. St. B. J. 490 (1973).

For annual survey of criminal law and procedure, see 35 Mercer L. Rev. 103 (1983).

For note on 2000 amendments of O.C.G.A. §§ 16-13-26 to 16-13-28, see 17 Georgia St. U.L. Rev. 85 (2000).

For comment, "The Opioid Epidemic: Returning to the Basics," see 70 Mercer L. Rev. 525 (2019).

JUDICIAL DECISIONS

Constitutionality. — Georgia Controlled Substances Act (see now O.C.G.A. § 16-13-20 et seq.) is not unconstitutional as violating Ga. Const. 1976, Art. III, Sec. VII, Para. IV (see now Ga. Const. 1983, Art. III, Sec. V, Para. III), which prohibits inclusion of more than one subject matter in any Act of the

General Assembly. Lord v. State, 235 Ga. 342, 219 S.E.2d 425, 1975 Ga. LEXIS 875 (1975).

Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., is not an unconstitutional delegation of legislative authority on ground that the General Assembly has failed to maintain control over determination of whether a substance should fall within its purview, since O.C.G.A. § 16-13-22 provides that State Board of Pharmacy shall consider nine factors and shall make findings after considering those nine factors. Consideration of the statutory factors is mandatory. Ward v. State, 248 Ga. 60, 281 S.E.2d 503, 1981 Ga. LEXIS 900 (1981).

Possession distinguished from DUI. — Possession of controlled substance is separate and distinct from conduct required to establish offense of driving under influence of intoxicants, although the offenses may arise out of the same conduct, i.e., driving. Rogers v. State, 166 Ga. App. 299, 304 S.E.2d 108, 1983 Ga. App. LEXIS 2143 (1983).

When exclusive possession of an automobile is shown, there is a rebuttable presumption that the owner has possession of the property contained therein. This presumption does not apply if it can be shown that the defendant had not been in possession or control for a period before discovery of contraband or where others had equal access to the automobile. Ledesma v. State, 251 Ga. 487, 306 S.E.2d 629, 1983 Ga. LEXIS 797 (1983), cert. denied, 464 U.S. 1069, 104 S. Ct. 975, 79 L. Ed. 2d 213, 1984 U.S. LEXIS 771 (1984).

Evidence of access by others. — Mere presence of contraband on premises occupied by accused is insufficient to sustain conviction where there is evidence of access by others. Shockley v. State, 166 Ga. App. 182, 303 S.E.2d 519, 1983 Ga. App. LEXIS 2092 (1983).

State established that controlled substance was in defendant's possession. — See White v. State, 168 Ga. App. 609, 309 S.E.2d 848, 1983 Ga. App. LEXIS 3426 (1983).

Pharmacy license as defense to drug possession charge. — Whether an individual has a license or is otherwise lawfully permitted to have in the individual's possession narcotic drugs is a matter of defense and not an element of the offense. Woods v. State, 233 Ga. 347, 211 S.E.2d 300, 1974 Ga. LEXIS 760 (1974).

A sale of drugs is complete when the seller delivers the drugs to the feigned buyer. Robinson v. State, 164 Ga. App. 652, 297 S.E.2d 751, 1982 Ga. App. LEXIS 3338 (1982).

No entrapment occurs when idea of selling illegal drugs is not planted in the defendant's mind by an undercover officer, but the defendant is predisposed to make such a sale and the officer merely provides the opportunity. Sibley v. State, 166 Ga. App. 142, 303 S.E.2d 465, 1983 Ga. App. LEXIS 2081 (1983).

Use of a "narcotics" dog, especially trained to detect marijuana and narcotics, is an authorized investigative technique. Lockhart v. State, 166 Ga. App. 555, 305 S.E.2d 22, 1983 Ga. App. LEXIS 3249 (1983).

Evidence from search incident to arrest admissible. — Admission into evidence of substances contained within boxes and envelopes found on the defendant's person during a search incident to the defendant's arrest for a violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., is not error. Dasher v. State, 166 Ga. App. 237, 304 S.E.2d 87, 1983 Ga. App. LEXIS 2115 (1983).

Written confession is not involuntarily given when the confession is induced by the arresting officer's promise of "cooperation," which offer is directed toward obtaining information regarding the source of the illegal drugs or regarding other individuals who might be involved in illegal drugs and which does not refer to the defendant's giving a statement or confession to the police. Worley v. State, 166 Ga. App. 794, 305 S.E.2d 485, 1983 Ga. App. LEXIS 2334 (1983).

Identification of contraband. — Trial judge is charged with the final responsibility of evaluating the links of the chain of custody to ascertain if the evidence of identification of contraband has become so attenuated as to become irrelevant or incompetent as an aid in

determining the issue of guilt or innocence. Thomas v. State, 166 Ga. App. 559, 305 S.E.2d 151, 1983 Ga. App. LEXIS 2246 (1983).

Trial court may, as matter of discretion, refuse to permit examination by defendant of substance used as evidence of violation of the Georgia Controlled Substances Act (see now O.C.G.A. § 16-13-20 et seq.). Patterson v. State, 238 Ga. 204, 232 S.E.2d 233, 1977 Ga. LEXIS 963, cert. denied, 431 U.S. 970, 97 S. Ct. 2932, 53 L. Ed. 2d 1067, 1977 U.S. LEXIS 2414 (1977).

Defendant's right to have substance analyzed by expert of defendant's choosing. — Defendant charged with possession or sale of a prohibited substance has a general right to have expert of defendant's choosing analyze it independently. Where defendant's conviction or acquittal is dependent upon identification of substance as contraband, due process of law requires that analysis of substance not be left completely within province of state. Patterson v. State, 238 Ga. 204, 232 S.E.2d 233, 1977 Ga. LEXIS 963, cert. denied, 431 U.S. 970, 97 S. Ct. 2932, 53 L. Ed. 2d 1067, 1977 U.S. LEXIS 2414 (1977).

Motion for independent examination of substance to be used as evidence must be timely made. Patterson v. State, 238 Ga. 204, 232 S.E.2d 233, 1977 Ga. LEXIS 963, cert. denied, 431 U.S. 970, 97 S. Ct. 2932, 53 L. Ed. 2d 1067, 1977 U.S. LEXIS 2414 (1977).

Defendant's expert should conduct analysis in state laboratory. — When the defendant's expert is to examine substance to be used as evidence of violation of the Georgia Controlled Substances Act (see now O.C.G.A. § 16-13-20 et seq.), appropriate safeguards to ensure evidence is properly preserved would generally require expert to conduct examination in state laboratory. Patterson v. State, 238 Ga. 204, 232 S.E.2d 233, 1977 Ga. LEXIS 963, cert. denied, 431 U.S. 970, 97 S. Ct. 2932, 53 L. Ed. 2d 1067, 1977 U.S. LEXIS 2414 (1977).

Counsel's failure to object to use of defendant's prior conviction to fix length of sentence. — While the trial court used defendant's prior conviction to fix the length of defendant's sentence for a violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., defendant's failure to object to such evidence waived the trial court's error; however, as defendant's attorney failed to object to the trial court's use of defendant's prior conviction, defendant received ineffective assistance and was entitled to a new trial. Turner v. State, 259 Ga. App. 902, 578 S.E.2d 570, 2003 Ga. App. LEXIS 297 (2003).

Weight and believability of evidence are jury questions. — Ultimate weight and believability of the evidence to show the true nature of the allegedly illegal substance and the identity of the substance's seller should be left to the jury. Thomas v. State, 166 Ga. App. 559, 305 S.E.2d 151, 1983 Ga. App. LEXIS 2246 (1983).

Evidence sufficient for conviction. — See Choice v. State, 168 Ga. App. 28, 308 S.E.2d 1, 1983 Ga. App. LEXIS 3369 (1983); Stewart v. State, 168 Ga. App. 154, 308 S.E.2d 615, 1983 Ga. App. LEXIS 3380 (1983); Grimes v. State, 168 Ga. App. 372, 308 S.E.2d 863, 1983 Ga. App. LEXIS 3403 (1983); Herndon v. State, 187 Ga. App. 77, 369 S.E.2d 264, 1988 Ga. App. LEXIS 593 (1988); Holmes v. State, 187 Ga. App. 214, 369 S.E.2d 533, 1988 Ga. App. LEXIS 558 (1988); Anfield v. State, 188 Ga. App. 345, 373 S.E.2d 51, 1988 Ga. App. LEXIS 1036 (1988); Jones v. State, 191 Ga. App. 332, 381 S.E.2d 575, 1989 Ga. App. LEXIS 608 (1989); Howard v. State, 191 Ga. App. 418, 382 S.E.2d 159, 1989 Ga. App. LEXIS 640 (1989), overruled in part, Willis v. State, 304 Ga. 686, 820 S.E.2d 640, 2018 Ga. LEXIS 685 (2018).

Evidence that marijuana was found in the bedroom closet of the defendant's home and not affirmatively showing that anyone but the defendant had actual access to the closet was sufficient for a conviction of possession of marijuana. Burrell v. State, 171 Ga. App. 648, 320 S.E.2d 810, 1984 Ga. App. LEXIS 2307 (1984).

Evidence that the defendant lived for one year, along with defendant's spouse and small child, in the house searched, that the old refrigerator where marijuana

was found was only 30 steps from the house, that the path between the house and the refrigerator was well worn and led directly from the house to the refrigerator, supported the jury's conclusion that the defendant "possessed the contraband drugs knowingly, exclusively or at least jointly." Norris v. State, 171 Ga. App. 676, 320 S.E.2d 886, 1984 Ga. App. LEXIS 2999 (1984).

Defendant's admission of cocaine use, along with other evidence showing that cocaine was on the seat and floorboard on the passenger side of the automobile in which defendant was a passenger, was more than sufficient to authorize a rational trier of fact to find that defendant was guilty of possession of cocaine beyond a reasonable doubt. Hall v. State, 188 Ga. App. 322, 373 S.E.2d 32, 1988 Ga. App. LEXIS 1042 (1988).

When a search of defendant's car produced, among other things, drugs, syringes, scales, and a slip of paper with amounts of money listed next to various names and initials, there was sufficient evidence from which the jury was authorized to find defendant guilty beyond a reasonable doubt of trafficking in methamphetamine. Yarbrough v. State, 264 Ga. App. 848, 592 S.E.2d 681, 2003 Ga. App. LEXIS 1591 (2003).

Denial of an appeal bond is not an abuse of discretion when the appellant admits that appellant has been addicted to drugs and that appellant has supported that addiction by shoplifting, resulting in previous arrests for that offense. Corbitt v. State, 167 Ga. App. 576, 307 S.E.2d 133, 1983 Ga. App. LEXIS 2552 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Applicability to state and local agencies. — State and local agencies are subject to the requirements of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., but are not subject to the requirements of the Dangerous Drug Act, O.C.G.A. § 16-13-70 et seq., since there is no definition of "person" specifically applicable to the Dangerous Drug Act. 1986 Op. Att'y Gen. No. 86-28.

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Drugs and Controlled Substances, § 10.

C.J.S.

28 C.J.S., Drugs and Narcotics, § 210 et seq.

ALR.

Entrapment to commit offense with respect to narcotics law, 33 A.L.R.3d 883.

Liability for discharge of at-will employee for refusal to submit to drug testing, 79 A.L.R.4th 105.

Propriety of stop and search by law enforcement officers based solely on drug courier profile, 37 A.L.R.5th 1.

Part 1

Schedules, Offenses, and Penalties

Editor's notes.

Ga. L. 2011, p. 659, § 2/SB 36, effective July 1, 2011, redesignated the former provisions of Article 2 of Chapter 13, Title 16 as Part 1, Article 2 of Chapter 13, Title 16.

16-13-20. Short title.

This article shall be known and may be cited as the "Georgia Controlled Substances Act."

History.

Code 1933, § 79A-801, enacted by Ga. L. 1974, p. 221, § 1.

Law reviews.

For annual survey of criminal law, see 38 Mercer L. Rev. 129 (1986).

For survey article on criminal law and procedure for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 117 (2003).

For annual survey on evidence law, see 69 Mercer L. Rev. 101 (2017).

JUDICIAL DECISIONS

Evidence sufficient for conviction. — Because defendant was the driver of a vehicle in which cocaine was found, the jury could conclude that defendant constructively possessed the cocaine in the vehicle and actually possessed the cocaine that fell from defendant's sock; consequently, the evidence was sufficient to convict defendant for violating O.C.G.A. § 16-13-20 et seq. Cody v. State, 275 Ga. App. 140, 619 S.E.2d 811, 2005 Ga. App. LEXIS 907 (2005).

Evidence supporting the defendant's conviction for methamphetamine possession was sufficient because the presumption of possession and control attached since the state presented evidence that the defendant was the sole resident of the house present during the execution of the search warrant when the methamphetamine was found in a common area of the house; the presumption of possession was not the sole evidence connecting the defendant to the crime of possession because the arresting officer testified that the defendant exhibited clear signs of methamphetamine intoxication. Martin v. State, 305 Ga. App. 764, 700 S.E.2d 871, 2010 Ga. App. LEXIS 809 (2010).

Evidence was sufficient to support the defendant's drug possession convictions because: (1) when the defendant was stopped, after attempting to avoid an early morning traffic safety checkpoint, the defendant fled from the defendant's vehicle, leaving the defendant's screaming child behind; (2) the defendant was pursued and apprehended by sheriff's deputies; (3) the deputies found a dry bag of marijuana and a bag of cocaine that appeared to be sticky with saliva on the ground, which was wet from rain, along the trail upon which the defendant had just run; and (4) evidence was presented of the defendant fleeing from the police in three similar incidents. Dix v. State, 307 Ga. App. 684, 705 S.E.2d 903, 2011 Ga. App. LEXIS 44 (2011).

Sentencing for attempt to possess marijuana with intent to distribute. — There was sufficient evidence to support defendant's conviction for criminal attempt to possess marijuana with intent to distribute, in violation of O.C.G.A. § 16-13-33, because defendant participated in a reverse undercover sting operation for the sale of a large amount of marijuana, defendant was seen with the money, and defendant was clearly an active participant in the transaction; sentencing under O.C.G.A. § 16-13-33 was appropriate and did not violate the rule of lenity with respect to the sentencing range for attempt under O.C.G.A. § 16-4-6(b), as the former statute was specifically enacted for purposes of providing sentencing to convictions under the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., rendering the latter sentencing statute inapplicable to the present prosecution. Woods v. State, 279 Ga. 28, 608 S.E.2d 631, 2005 Ga. LEXIS 119 (2005).

Control over substance. — Sufficient evidence supported defendant's cocaine possession conviction, even though only one witness, a police officer, testified about cocaine under defendant's body, while others did not see the contraband; the jury was authorized to conclude that defendant had control over and possessed the cocaine found underneath the defendant's body. Smith v. State, 276 Ga. App. 677, 624 S.E.2d 272, 2005 Ga. App. LEXIS 1358 (2005).

Trial court did not manifestly abuse the court's discretion when the court found by a preponderance of the evidence that the substance found in the car in which a probationer was riding was cocaine and that the probationer had constructive pos-

session of the cocaine because the driver of the car denied that the cocaine was the driver's and stated that the cocaine was thrown to the floorboard under the driver's feet by the probationer. Thurmond v. State, 304 Ga. App. 587, 696 S.E.2d 516, 2010 Ga. App. LEXIS 582 (2010).

No charge on entrapment warranted. — Trial court did not err in refusing the defendant's request to charge the jury on the defense of entrapment because there was no evidence that the defendant was improperly induced to commit the crime of selling drugs through a confidential informant's undue persuasion, incitement, or deceit; the informant gave the defendant money in exchange for pills during two transactions and cocaine during another transaction, and the defendant told the informant that the defendant needed to keep $300 to buy more pills, and the defendant demonstrated the defendant's knowledge about the drugs when the defendant identified one type of pill that the defendant was selling to the informant as "green apples". Graham v. State, 305 Ga. App. 772, 700 S.E.2d 863, 2010 Ga. App. LEXIS 813 (2010).

RESEARCH REFERENCES

U.L.A.

Uniform Controlled Substances Act (U.L.A.) § 604.

ALR.

Minimum quantity of drug required to support claim that defendant is guilty of criminal "possession" of drug under state law, 4 A.L.R.5th 1.

Validity, construction, and application of state "drug kingpin" statutes, 30 A.L.R.5th 121.

Prosecution of mother for prenatal substance abuse based on endangerment of or delivery of controlled substance to child, 70 A.L.R.5th 461.

16-13-21. Definitions.

As used in this article, the term:

(0.5) "Addiction" means a primary, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or by any other means, to the body of a patient or research subject by:

(A) A practitioner or, in his or her presence, by his or her authorized agent; or

(B) The patient or research subject at the direction and in the presence of the practitioner.

(1.1) "Agency" means the Georgia Drugs and Narcotics Agency established pursuant to Code Section 26-4-29.

(2) "Agent" of a manufacturer, distributor, or dispenser means an authorized person who acts on behalf of or at the direction of a

manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(2.1) "Board" means the State Board of Pharmacy or its designee, so long as such designee is another state entity.

(3) "Bureau" means the Georgia Bureau of Investigation.

(4) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of Code Sections 16-13-25 through 16-13-29 and Schedules I through V of 21 C.F.R. Part 1308.

(5) "Conveyance" means any object, including aircraft, vehicle, or vessel, but not including a person, which may be used to carry or transport a substance or object.

(6) "Counterfeit substance" means:

(A) A controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the controlled substance;

(B) A controlled substance or noncontrolled substance, which is held out to be a controlled substance or marijuana, whether in a container or not which does not bear a label which accurately or truthfully identifies the substance contained therein; or

(C) Any substance, whether in a container or not, which bears a label falsely identifying the contents as a controlled substance.

(6.1) "Dangerous drug" means any drug, other than a controlled substance, which cannot be dispensed except upon the issuance of a prescription drug order by a practitioner authorized under this chapter.

(6.2) "DEA" means the United States Drug Enforcement Administration.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(8) "Dependent," "dependency," "physical dependency," "psychological dependency," or "psychic dependency" means and includes the state of adaptation that is manifested by drug class specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, and administration of

an antagonist. Physical dependence, by itself, does not equate with addiction.

(9) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery, or the delivery of a controlled substance by a practitioner, acting in the normal course of his or her professional practice and in accordance with this article, or to a relative or representative of the person for whom the controlled substance is prescribed.

(10) "Dispenser" means a person licensed under the laws of this state, or any other state or territory of the United States, to dispense or deliver a Schedule II, III, IV, or V controlled substance to the ultimate user in this state but shall not include:

(A) A pharmacy licensed as a hospital pharmacy by the Georgia State Board of Pharmacy pursuant to Code Section 26-4-110;

(B) An institutional pharmacy that serves only a healthcare facility, including, but not limited to, a nursing home, an intermediate care home, a personal care home, or a hospice program, which provides patient care and which pharmacy dispenses such substances to be administered and used by a patient on the premises of the facility;

(C) A practitioner or other authorized person who administers such a substance; or

(D) A pharmacy operated by, on behalf of, or under contract with the Department of Corrections for the sole and exclusive purpose of providing services in a secure environment to prisoners within a penal institution, penitentiary, prison, detention center, or other secure correctional institution. This shall include correctional institutions operated by private entities in this state which house inmates under the Department of Corrections.

(11) "Distribute" means to deliver a controlled substance, other than by administering or dispensing it.

(12) "Distributor" means a person who distributes.

(12.05) "FDA" means the United States Food and Drug Administration.

(12.1) "Imitation controlled substance" means:

(A) A product specifically designed or manufactured to resemble the physical appearance of a controlled substance such that a reasonable person of ordinary knowledge would not be able

to distinguish the imitation from the controlled substance by outward appearances; or

(B) A product, not a controlled substance, which, by representations made and by dosage unit appearance, including color, shape, size, or markings, would lead a reasonable person to believe that, if ingested, the product would have a stimulant or depressant effect similar to or the same as that of one or more of the controlled substances included in Schedules I through V of Code Sections 16-13-25 through 16-13-29.

(13) "Immediate precursor" means a substance which the State Board of Pharmacy has found to be and by rule identifies as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used, in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(14) "Isomers" means stereoisomers (optical isomers), geometrical isomers, and structural isomers (chain and positional isomers) but shall not include functional isomers.

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(A) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or

(B) By a practitioner or by his or her authorized agent under his or her supervision for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(16) "Marijuana" means all parts of the plant of the genus Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, but shall not include samples as described in subparagraph (P) of paragraph (3) of Code Section 16-13-25; shall not include the completely defoliated mature stalks of such plant, fiber produced from such stalks, oil, or cake, or the completely sterilized samples of seeds of the plant which are incapable of germination; and shall not include hemp or hemp products as such terms are defined in

Code Section 2-23-3. Such term shall not include products approved by the federal Food and Drug Administration under Section 505 of the federal Food, Drug, and Cosmetic Act.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical to any of the substances referred to in subparagraph (A) of this paragraph, but not including the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw; or

(D) Coca leaves and any salt, compound, derivative, stereoisomers of cocaine, or preparation of coca leaves, and any salt, compound, stereoisomers of cocaine, derivative, or preparation thereof which is chemically equivalent or identical to any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(17.1) "Noncontrolled substance" means any drug or other substance other than a controlled substance as defined by paragraph (4) of this Code section.

(18) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Code Section 16-13-22, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(19) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(19.1) "Patient" means the person who is the intended consumer of a drug for whom a prescription is issued or for whom a drug is dispensed.

(20) "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, or association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(22) "Potential for abuse" means and includes a substantial potential for a substance to be used by an individual to the extent of creating hazards to the health of the user or the safety of the public, or the substantial potential of a substance to cause an individual using that substance to become dependent upon that substance.

(23) "Practitioner" means:

(A) A physician, dentist, pharmacist, podiatrist, scientific investigator, or other person licensed, registered, or otherwise authorized under the laws of this state to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state;

(B) A pharmacy, hospital, or other institution licensed, registered, or otherwise authorized by law to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state;

(C) An advanced practice registered nurse acting pursuant to the authority of Code Section 43-34-25. For purposes of this chapter and Code Section 43-34-25, an advanced practice registered nurse is authorized to register with the DEA and appropriate state authorities; or

(D) A physician assistant acting pursuant to the authority of subsection (e.1) of Code Section 43-34-103. For purposes of this chapter and subsection (e.1) of Code Section 43-34-103, a physician assistant is authorized to register with the DEA and appropriate state authorities.

(23.1) "Prescriber" means a physician, dentist, scientific investigator, or other person licensed, registered, or otherwise authorized under the laws of this state, or any other state or territory of the United States, to prescribe a controlled substance in the course of professional practice or research in this state.

(24) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(25) "Registered" or "register" means registration as required by this article.

(26) "Registrant" means a person who is registered under this article.

(26.1) "Schedule II, III, IV, or V controlled substance" means a controlled substance that is classified as a Schedule II, III, IV, or V controlled substance under Code Section 16-13-26, 16-13-27,

16-13-28, or 16-13-29, respectively, or under the federal Controlled Substances Act, 21 U.S.C. Section 812.

(27) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, or any area subject to the legal authority of the United States.

(27.1) "Tolerance" means a physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

(28) "Ultimate user" means a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administering to an animal owned by him or her or by a member of his or her household or an agent or representative of the person.

History.

Code 1933, § 79A-802, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1974, p. 221, § 1; Ga. L. 1978, p. 2237, § 1; Ga. L. 1979, p. 859, § 4; Ga. L. 1980, p. 1746, § 3; Ga. L. 1982, p. 3, § 16; Ga. L. 1982, p. 1264, §§ 1, 3; Ga. L. 1982, p. 2370, §§ 1, 2; Ga. L. 1982, p. 2403, §§ 10, 15; Ga. L. 1984, p. 22, § 16; Ga. L. 1985, p. 149, § 16; Ga. L. 1986, p. 10, § 16; Ga. L. 1986, p. 1555, §§ 1, 2; Ga. L. 1988, p. 1065, § 1; Ga. L. 1999, p. 643, § 5.1; Ga. L. 2003, p. 349, § 1; Ga. L. 2006, p. 125, § 2/SB 480; Ga. L. 2009, p. 859, § 4/HB 509; Ga. L. 2011, p. 659, § 1/SB 36; Ga. L. 2014, p. 353, § 1/SB 134; Ga. L. 2014, p. 866, § 16/SB 340; Ga. L. 2015, p. 5, § 16/HB 90; Ga. L. 2019, p. 1030, § 2/HB 213; Ga. L. 2021, p. 184, § 25/SB 195; Ga. L. 2024, p. 1052, § 3(9)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "healthcare" for "health care" in subparagraph (10)(B).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1986, substituted "stereoisomers" for "steroisomers" twice near the middle of subparagraph (17)(D).

Editor's notes.

Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

Law reviews.

For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 269 (2011).

For article on Crimes and Offenses: Crimes Against the Person, see 35 Ga. St. U.L. Rev. 19 (2018).

JUDICIAL DECISIONS

Analysis

General Consideration
Marijuana

General Consideration

Definition of "manufacture" applies to the cultivation or planting of marijuana. Hunt v. State, 222 Ga. App. 66, 473 S.E.2d 157, 1996 Ga. App. LEXIS 537 (1996), cert. denied, No. S96C1728, 1996 Ga. LEXIS 1005 (Ga. Oct. 11, 1996).

When a defendant possesses most of the objects and substances needed to "prepare" or "process" methamphetamine by the red phosphorous technique, a rational trier of fact, applying the broad definition of "manufacture" under O.C.G.A. § 16-13-21(15), may find beyond a reasonable doubt that the defendant was "preparing" or "processing" that drug. Murrell v. State, 273 Ga. App. 735, 615 S.E.2d 780, 2005 Ga. App. LEXIS 566 (2005), cert. denied, No. S05C1695, 2005 Ga. LEXIS 566 (Ga. Sept. 19, 2005).

"Distribute." — Because defendant delivered cocaine to an informant and used a pager to aid in the cocaine's distribution, the evidence was sufficient to find defendant guilty of distributing cocaine and using a communication facility to facilitate a violation of the Georgia Controlled Substance Act, specifically violations of O.C.G.A. §§ 16-13-21(11) and 16-13-32.3(a). Capers v. State, 273 Ga. App. 427, 615 S.E.2d 126, 2005 Ga. App. LEXIS 374 (2005), cert. denied, No. S05C1592, 2005 Ga. LEXIS 546 (Ga. Sept. 19, 2005).

Methaqualone. — Because the inscription "714" signifies something associated with methaqualone, this inscription on the caps of bottles containing an unidentified substance is a label falsely identifying the contents as methaqualone. Luck v. State, 163 Ga. App. 657, 295 S.E.2d 584, 1982 Ga. App. LEXIS 2612 (1982).

Possession outside of original container. — One lawfully possessing a controlled substance may lawfully possess it out of its original container. Jones v. State, 145 Ga. App. 224, 243 S.E.2d 645, 1978 Ga. App. LEXIS 1929 (1978).

Defendant's right to have substance analyzed by expert of defendant's choosing. — Defendant charged with possession or sale of a prohibited substance has a general right to have an expert of defendant's choosing analyze it independently. When the defendant's conviction or acquittal is dependent upon identification of substance as contraband, due process of law requires that analysis of the substance not be left completely within province of state. Patterson v. State, 238 Ga. 204, 232 S.E.2d 233, 1977 Ga. LEXIS 963, cert. denied, 431 U.S. 970, 97 S. Ct. 2932, 53 L. Ed. 2d 1067, 1977 U.S. LEXIS 2414 (1977).

Evidence sufficient to infer manufacturing. — Evidence showed that defendant possessed a combination of items and substances generally found together solely for the purpose of manufacturing methamphetamine, and the evidence was sufficient to support reasonable inferences of "preparation" and "processing," pursuant to O.C.G.A. § 16-13-21(15), and thus of manufacturing, even though the evidence did not show that defendant had the completed drug or all of the items needed to manufacture the completed drug. Murrell v. State, 273 Ga. App. 735, 615 S.E.2d 780, 2005 Ga. App. LEXIS 566 (2005), cert. denied, No. S05C1695, 2005 Ga. LEXIS 566 (Ga. Sept. 19, 2005).

Jury instruction on possession of prescription drugs harmless. — Although the trial court erred in charging the jury that only a person to whom, or for whose use, a controlled substance had been prescribed, sold or dispensed, may lawfully possess the same, in light of the overwhelming evidence against defendant, the error was harmless. Morris v. State, 212 Ga. App. 779, 442 S.E.2d 792, 1994 Ga. App. LEXIS 389, sub. op., No. A93A2209 (Ga. Ct. App. 1994).

Reduced jury instruction not erroneous. — Trial court did not commit reversible error for failure to include in the court's charge a definition of "intent to distribute" when the transcript revealed that the trial court did charge the jury regarding intent, the meaning of distribution being left to the word's ordinary and common dictionary meaning. Watkins v. State, 206 Ga. App. 575, 426 S.E.2d 26, 1992 Ga. App. LEXIS 1701 (1992), cert. denied, No. S93C0490, 1993 Ga. LEXIS 278 (Ga. Feb. 25, 1993).

Jury instruction insufficient. — Jury charge failed to properly define the offenses of trafficking in

methamphetamine and possession of methamphetamine with intent to distribute because all the jury was told was that it was a violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., to traffic or possess with intent to distribute methamphetamine; the instructions given completely failed to inform the jury about the manner in which the offense of trafficking in methamphetamine or the offense of possessing methamphetamine with intent to distribute may have been committed. As such, the jury did not receive sufficient instructions to guide the jury in determining the defendant's guilt or innocence on these charges. Torres v. State, 298 Ga. App. 158, 679 S.E.2d 757, 2009 Ga. App. LEXIS 638 (2009).

Recharge equating attempt to distribute with completed distribution offense. — There was no error in court's recharge equating possession with an attempt to distribute with the completed offense of distribution where the court instructed the jury according to the definitions set forth in O.C.G.A. § 16-13-21(7) and (11). Bowens v. State, 209 Ga. App. 130, 433 S.E.2d 102, 1993 Ga. App. LEXIS 797 (1993).

Imitation controlled substance. — Rule of lenity did not apply to a defendant's conviction of felony possession with intent to distribute a noncontrolled substance, O.C.G.A. § 16-13-30.1, because the evidence did not show that the substance at issue was an "imitation controlled substance" for purposes of misdemeanor unlawful manufacture, distribution, or possession with intent to distribute of imitation controlled substances, O.C.G.A. § 16-13-30.2; although the noncontrolled substance at issue was in common packaging for narcotics, the evidence did not show that the evidence appeared as a "dosage unit" based on color, shape, size, or markings or specifically designed or manufactured to resemble a controlled substance. Therefore, the evidence failed to establish that the defendant's conduct fell within § 16-13-30.2(a). Diaz v. State, 296 Ga. App. 589, 676 S.E.2d 252, 2009 Ga. App. LEXIS 279 (2009).

Rule of lenity did not apply in sale of imitation controlled substance. — Trial court did not err by refusing to apply the rule of lenity with regard to a defendant's conviction for selling a counterfeit substance because the evidence revealed that the substance would not fall under either definition of "imitation controlled substance" set forth in O.C.G.A. § 16-13-21(12.1)(A) as the parties stipulated only that the substance recovered was not a controlled substance and there was no evidence presented that it was specifically designed or manufactured to resemble the physical appearance of a controlled substance. As a result, the rule of lenity did not apply, and the trial court properly sentenced the defendant for a felony. Chandler v. State, 294 Ga. App. 27, 668 S.E.2d 510, 2008 Ga. App. LEXIS 1099 (2008).

Evidence sufficient for attempt to traffic methamphetamine. — Sufficient evidence existed to support the defendant's conviction for attempted trafficking by manufacturing methamphetamine based on the evidence that the defendant lived at the residence wherein the meth lab was discovered as shown by the owner's testimony and another witness who testified that the defendant slept at the home nightly and material used in the red phosphorous process for manufacturing methamphetamine was seized from the residence. Franks v. State, 325 Ga. App. 488, 758 S.E.2d 604, 2013 Ga. App. LEXIS 533 (2013).

Marijuana

Either spelling of word "marijuana" or "marihuana" is accepted as being correct. Allen v. State, 120 Ga. App. 533, 171 S.E.2d 380, 1969 Ga. App. LEXIS 850 (1969).

Leaves of marijuana are not excluded. Stowers v. State, 143 Ga. App. 859, 240 S.E.2d 227, 1977 Ga. App. LEXIS 2541 (1977).

Effect of part of plant being stalk. — When the state's expert testified that in the expert's opinion and estimate, approximately two-thirds of a marijuana plant was stalk, the inference was reasonable that the remaining one-third was chargeable marijuana under O.C.G.A. § 16-13-21(16). Lang v. State, 165 Ga. App. 576, 302 S.E.2d 683, 1983

Marijuana (Cont'd)

Ga. App. LEXIS 1955, 1983 Ga. App. LEXIS 3092, cert. denied, 464 U.S. 937, 104 S. Ct. 346, 78 L. Ed. 2d 312, 1983 U.S. LEXIS 2128 (1983).

Marijuana and THC. — Georgia law distinguishes marijuana from THC (tetrahydrocannabinol) as O.C.G.A. § 16-13-21(16) provides that marijuana means all parts of the plant of the genus Cannabis, whereas O.C.G.A. § 16-13-30(a) and (j) separately addresses any controlled substance and marijuana. C. W. v. Department of Human Services, 353 Ga. App. 360, 836 S.E.2d 836, 2019 Ga. App. LEXIS 698 (2019).

Conclusive, scientific tests required. — Defendant's conviction for possession of marijuana had to fail because in the absence of conclusive, scientific tests, the possibility remained that the substance at issue was not marijuana. Chambers v. State, 260 Ga. App. 48, 579 S.E.2d 71, 2003 Ga. App. LEXIS 305 (2003).

There is no requirement that state prove which species of marijuana is seized. Stowers v. State, 143 Ga. App. 859, 240 S.E.2d 227, 1977 Ga. App. LEXIS 2541 (1977).

Indictment need not describe what portion of marijuana plant defendant had in defendant's possession, as that was the very purpose of defining marijuana under former Code 1933, § 79A-802 (see now O.C.G.A. § 16-13-21). Allen v. State, 120 Ga. App. 533, 171 S.E.2d 380, 1969 Ga. App. LEXIS 850 (1969).

Odor of unburned marijuana. — Trial court properly denied defendant's motion to suppress, as the trial court was authorized to believe the police officer's testimony that the officer was qualified to detect the odor of unburned marijuana based on the officer's training and experience, and, thus, that the officer recognized the smell of the 10 pounds of unburned marijuana defendant had in the trunk of defendant's car despite defense counsel's attempt to impeach the officer with the officer's testimony from a prior case that there was no difference between the smell of burnt and unburned marijuana; accordingly, the motion to suppress was properly denied and defendant's conviction for a violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., was affirmed. King v. State, 267 Ga. App. 546, 600 S.E.2d 647, 2004 Ga. App. LEXIS 708 (2004).

For discussion of scope of definition of marijuana. — See Aycock v. State, 146 Ga. App. 489, 246 S.E.2d 489, 1978 Ga. App. LEXIS 2421 (1978); Osborn v. State, 161 Ga. App. 132, 291 S.E.2d 22, 1982 Ga. App. LEXIS 3019 (1982).

Possession of legal cannibidiol impacting search. — Denial of defendant's motion to suppress evidence was upheld because the officer had probable cause to search the defendant's vehicle based on the totality of the circumstances including the defendant's driving, appearance, conflicting statements, and the faint smell of marijuana, despite possession of a legal cannibidiol "CBD" cigarette. Coverstone v. State, 371 Ga. App. 238, 899 S.E.2d 351, 2024 Ga. App. LEXIS 90 (2024).

Probable cause established by odor. — Legalization of hemp products in Georgia did not undermine the established precedent that the smell of marijuana can establish probable cause to search a vehicle. Coverstone v. State, 371 Ga. App. 238, 899 S.E.2d 351, 2024 Ga. App. LEXIS 90 (2024).

THC considered marijuana. — Definition of "marijuana" under the Motor Vehicles Act, O.C.G.A. § 40-6-391 et seq., not only includes THC for purposes of determining whether one is driving under the influence, but requires that THC be considered "marijuana" in order for O.C.G.A. § 40-6-391(a)(6) to be actionable, since THC in the blood or urine is the method by which the presence of marijuana is detected for purposes of determining whether one is driving under the influence thereof. Cronan v. State, 236 Ga. App. 374, 511 S.E.2d 899, 1999 Ga. App. LEXIS 168 (1999).

High percentage of THC does not prevent treatment as marijuana. — Any substance which is a resin, compound, manufacture, salt, derivative mixture, or preparation of cannabis plant shall be treated as marijuana, even

though it may contain a high percentage of tetrahydrocannabinols (THC). For state to sustain charge of possession or distribution of THC under schedule I of O.C.G.A. § 16-13-25, it must prove that THC is not a compound, derivative, or preparation of the cannabis plant; that is, it must prove that the THC is synthetically derived. Aycock v. State, 146 Ga. App. 489, 246 S.E.2d 489, 1978 Ga. App. LEXIS 2421 (1978); Osborn v. State, 161 Ga. App. 132, 291 S.E.2d 22, 1982 Ga. App. LEXIS 3019 (1982).

State not required to prove THC content of marijuana. — Despite the defendant's contrary claim, the state was not required to prove the tetrahydrocannabinol (THC) content of the plant material seized in a prosecution for trafficking in marijuana; further, THC was treated separately in the criminal code as a Schedule I drug under O.C.G.A. § 16-13-25(3)(P). Trujillo v. State, 286 Ga. App. 438, 649 S.E.2d 573, 2007 Ga. App. LEXIS 790 (2007).

OPINIONS OF THE ATTORNEY GENERAL

State Board of Pharmacy regulates dispensing drugs in hospitals. — Dispensing drugs in hospitals by machine or otherwise is a matter which the legislature has left to the State Board of Pharmacy to regulate through its rule-making power. 1969 Op. Att'y Gen. No. 69-85.

Intern's or resident's authority to administer and dispense narcotics. — Intern or resident accepted for specialty or residency training in a hospital approved by Composite State Board of Medical Examiners (now Georgia Composite Medical Board) may prescribe, administer, and dispense narcotic drugs to the extent required by duties of the intern's position or by the intern's program of training for a period of two years and for such additional period as the board by application may determine. 1971 Op. Att'y Gen. No. 71-157.

Non-institutional pharmacists. — This definition of dispenser appears to contemplate that only those persons who are licensed to practice pharmacy outside of an institutional setting, i.e., non-institutional pharmacists, qualify as dispensers for purposes of the Georgia Prescription Drug Monitoring Program. 2016 Op. Att'y Gen. No. 16-7.

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 1 et seq., 18.

C.J.S.

28 C.J.S., Drugs and Narcotics, §§ 6 et seq, 219.

U.L.A.

Uniform Controlled Substances Act (U.L.A.) § 101.

ALR.

Marijuana, psilocybin, peyote, or similar drugs of vegetable origin as narcotics for purposes of drug prosecution, 50 A.L.R.3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution, 50 A.L.R.3d 1284.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Marijuana cases, 1 A.L.R.6th 549.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Cocaine cases, 2 A.L.R.6th 551.

Investigatory Stops or Searches Based on Odor of Marijuana Where Marijuana Decriminalized or Legalized, 92 A.L.R.7th 1.

Propriety of instruction of jury on "conscious avoidance" of knowledge of nature of substance or transaction in prosecution for possession or distribution of drugs, 109 A.L.R. Fed. 710.

16-13-22. Administration of article; standards and schedules.

(a) The State Board of Pharmacy shall administer this article and shall add substances to or reschedule all substances enumerated in the schedules in Code Sections 16-13-25 through 16-13-29 pursuant to the procedures of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." In making a determination or identification regarding a substance, the State Board of Pharmacy shall consider the following factors:

(1) The actual or relative potential for abuse;

(2) The scientific evidence of its pharmacological effect, if known;

(3) The state of current scientific knowledge regarding the substance;

(4) The history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) The risk to the public health;

(7) The potential of the substance to produce psychic or physiological dependence liability;

(8) Whether the substance is an immediate precursor of a substance already controlled under this article; and

(9) The designation, deletion, or rescheduling of a substance under federal law controlling controlled substances.

(b) After considering the factors enumerated in subsection (a) of this Code section, the State Board of Pharmacy shall make findings with respect thereto and cause the publication of such findings as a rule, in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," controlling the substance if it finds the substance has a potential for abuse.

(c) If the State Board of Pharmacy identifies a substance as an immediate precursor, substances which are precursors of the controlled substance shall not be subject to control solely because they are precursors of the controlled substance.

(d) Authority to control under this Code section does not extend to distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in Title 3 or 48.

History.
Code 1933, § 79A-803, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1982, p. 3, § 16.

Cross references.
State Board of Pharmacy generally, § 26-4-20 et seq.

JUDICIAL DECISIONS

Constitutionality. — Former Code 1933, § 79A-803 (see now O.C.G.A. § 16-13-22) was not unconstitutional as violative of Ga. Const. 1976, Art. I, Sec. II, Para. IV, and Art. III, Sec. I, Para. I (see now Ga. Const. 1983, Art. I, Sec. II, Para. III, and Art. III, Sec. I, Para. I), which provisions deal with separation of powers and delegation of legislative power respectively. Harmon v. State, 235 Ga. 329, 219 S.E.2d 441, 1975 Ga. LEXIS 869 (1975).

Former Code 1933, § 79A-801 et seq. (see now O.C.G.A. § 16-13-20 et seq.) was not an unconstitutional delegation of legislative authority on the ground that the General Assembly had failed to maintain control over the determination of whether a substance should fall within its purview, since these provisions provide that the State Board of Pharmacy "shall consider" nine factors and shall make findings after considering those nine factors. Consideration of the statutory factors was mandatory. Ward v. State, 248 Ga. 60, 281 S.E.2d 503, 1981 Ga. LEXIS 900 (1981).

State failed to prove drug regulated by law. — Defendant was improperly convicted of violating the Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98, 2011 Ga. App. LEXIS 605 (2011).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, § 10.

C.J.S.
28 C.J.S., Drugs and Narcotics, §§ 69, 70, 210 et seq.

U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 201.

16-13-23. Nomenclature for controlled substances.

The controlled substances listed in the schedules in Code Sections 16-13-25 through 16-13-29 are included by whatever official, common, usual, chemical, or trade name designated.

History.
Code 1933, § 79A-804, enacted by Ga. L. 1974, p. 221, § 1.

JUDICIAL DECISIONS

Trade name must be linked to its scheduled equivalent before former Code 1933, § 79A-804 (see now O.C.G.A. § 16-13-23) was operative. Elrod v. State, 143 Ga. App. 331, 238 S.E.2d 291, 1977 Ga. App. LEXIS 2309 (1977).

State failed to prove drug regulated by law. — Defendant was improperly

convicted of violating the Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98, 2011 Ga. App. LEXIS 605 (2011).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, § 10.
C.J.S.
28 C.J.S., Drugs and Narcotics, § 219 et seq.
U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 202.
ALR.
Harrison Narcotic Act, 13 A.L.R. 858; 39 A.L.R. 236.

16-13-24. Establishment of schedules of controlled substances.

(a) There are established five schedules of controlled substances, to be known as Schedules I, II, III, IV, and V. The schedules shall consist of the substances listed in Code Sections 16-13-25 through 16-13-29. The schedules so established shall be updated and republished by the State Board of Pharmacy on an annual basis.

(b) Except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to the drug or other substance. The findings for each of the schedules are as follows:

(1) Schedule I:

(A) The drug or other substance has a high potential for abuse;

(B) The drug or other substance has no currently accepted medical use in treatment in the United States; and

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) Schedule II:

(A) The drug or other substance has a high potential for abuse;

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions; and

(C) Abuse of the drug or other substance may lead to severe psychological or physical dependence.

(3) Schedule III:

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in Schedules I and II;

(B) The drug or other substance has a currently accepted medical use in treatment in the United States; and

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) Schedule IV:

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule III;

(B) The drug or other substance has a currently accepted medical use in treatment in the United States; and

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

(5) Schedule V:

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule IV;

(B) The drug or other substance has a currently accepted medical use in treatment in the United States; and

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule IV.

History.
Code 1933, § 79A-805, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1982, p. 3, § 16.

Cross references.
Authority of Georgia Drugs and Narcotics Agency to compile list of known dangerous drugs or devices, § 26-4-29.

JUDICIAL DECISIONS

Constitutionality. — Former Code 1933, § 79A-805 (see now O.C.G.A. § 16-13-25) was not unconstitutional as violative of Ga. Const. 1976, Art. I, Sec. II, Para. IV, and Art. III, Sec. I, Para. I (see now Ga. Const. 1983, Art. I, Sec. II, Para. III, and Art. III, Sec. I, Para. I), which provisions deal with separation of powers and delegation of legislative power respectively. Harmon v. State, 235 Ga. 329, 219 S.E.2d 441, 1975 Ga. LEXIS 869 (1975).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, § 10.

C.J.S.
28 C.J.S., Drugs and Narcotics, §§ 211, 212, 219.

U.L.A.
Uniform Controlled Substances Act (U.L.A.) §§ 203, 205, 207, 209, 211.

16-13-25. Schedule I.

The controlled substances listed in this Code section are included in Schedule I:

(1) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, pursuant to this article, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(A) Acetylmethadol;

(B) Allylprodine;

(C) Reserved;

(D) Alphameprodine;

(E) Alphamethadol;

(F) Benzethidine;

(G) Betacetylmethadol;

(H) Betameprodine;

(I) Betamethadol;

(J) Betaprodine;

(K) Brorphine;

(L) Dextromoramide;

(M) Dextromorphan;

(N) Diampromide;

(O) Diethylthiambutene;

(P) Dimenoxadol;

(Q) Dimetheptanol;

(R) Dimethylthiambutene;

(S) Dioxaphetyl butyrate;

(T) Dipipanone;

(U) Ethylmethylthiambutene;

(V) Reserved;

(W) Etoxeridene;

(X) Furethidine;

(Y) Hydroxypethidine;

(Z) Ketobemidone;

(AA) Levomoramide;

(BB) Levophenacylmorphan;

(CC) Morpheridine;

(DD) Noracymethadol;

(EE) Norlevorphanol;

(FF) Normethadone;

(GG) Norpipanone;

(HH) Phenadoxone;

(II) Phenampromide;

(JJ) Phenomorphan;

(KK) Phenoperidine;

(LL) Piritramide;

(MM) Proheptazine;

(NN) Properidine;

(OO) Propiram;

(PP) Racemoramide;

(QQ) Trimeperidine;

(RR) 3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl] benzamide (AH-7921);

(SS) 3,4-dichloro-N-(2-(dimethylamino)cyclohexyl)-N-methylbenzamide (U-47700);

(TT) Methyl-AP-237;

(UU) Tianeptine;

(2) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Acetorphine;

(B) Acetyldihydrocodeine;

(C) Benzylmorphine;

(D) Codeine methylbromide;

(E) Codeine-N-Oxide;

(F) Cyprenorphine;

(G) Desomorphine;

(H) Dihydromorphine;

(I) Etorphine;

(J) Heroin;

(K) Hydromorphinol;

(L) Methyldesorphine;

(M) Methyldihydromorphine;

(N) Morphine methylbromide;

(O) Morphine methylsulfonate;

(P) Morphine-N-Oxide;

(Q) Myrophine;

(R) Nicocodeine;

(S) Nicomorphine;

(T) Normorphine;

(U) Pholcodine;

(V) Thebacon;

(3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers (whether optical, position, or geometrics), and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) 3, 4-methylenedioxyamphetamine;

(B) 5-methoxy-3, 4-methylenedioxyamphetamine;

(C) 3, 4, 5-trimethoxyamphetamine;

(D) Bufotenine;

(E) Diethyltryptamine;

(F) Dimethyltryptamine;

(G) 4-methyl-2, 5-dimethoxyamphetamine;

(H) Ibogaine;

(I) Lysergic acid diethylamide;

(J) Mescaline;

(K) Peyote;

(L) N-ethyl-3-piperidyl benzilate;

(M) N-methyl-3-piperidyl benzilate;

(N) Psilocybin;

(O) Psilocyn (Psilocin);

(P) Tetrahydrocannabinol, tetrahydrocannabinolic acid, or a combination of tetrahydrocannabinol and tetrahydrocannabinolic acid which does not contain plant material exhibiting the external morphological features of the plant of the genus Cannabis, but not including such substance when found in hemp or hemp products as such terms are defined in Code Section 2-23-3. Tetrahydrocannabinols do not include products approved by the federal Food and Drug Administration under Section 505 of the federal Food, Drug, and Cosmetic Act;

(Q) 2, 5-dimethoxyamphetamine;

(R) 4-bromo-2, 5-dimethoxyamphetamine;

(S) 4-methoxyamphetamine;

(T) Cyanoethylamphetamine;

(U) (1-phenylcyclohexyl) ethylamine;

(V) 1-(1-phenylcyclohexyl) pyrrolidine;

(W) Phencyclidine;

(X) 1-piperidinocyclohexanecarbonitrile;

(Y) 1-phenyl-2-propanone (phenylacetone);

(Z) 3, 4-Methylenedioxymethamphetamine (MDMA);

(AA) 1-methyl-4-phenyl-4-propionoxypiperidine;

(BB) 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine;

(CC) Reserved;

(DD) N-ethyl-3, 4-methylenedioxyamphetamine;

(EE) Reserved;

(FF) 2,5-Dimethoxy-4-Ethylamphetamine;

(GG) Cathinone;

(HH) Reserved;

(II) PEPAP (1-(2-phenethyl)-4 phenyl-4-acetoxypiperide);

(JJ) Reserved;

(KK) Para-methoxymethamphetamine (PMMA);

(LL) 4,4'-dimethylaminorex;

(MM) Reserved;

(NN) Reserved;

(OO) 3,4-Methylenedioxy-N-Ethylamphetamine;

(PP) 4-Methylaminorex;

(QQ) N-Hydroxy-3,4-Methylenedioxyamphetamine;

(RR) Reserved;

(SS) Chlorophenylpiperazine (CPP);

(TT) N, N-Dimethylamphetamine;

(UU) 1-(1-(2-thienyl)cyclohexy)pyrrolidine;

(VV) 4-Bromo-2,5-Dimethoxyphenethylamine (DMPE);

(WW) Alpha-Ethyltryptamine;

(XX) Methcathinone;

(YY) Aminorex;

(ZZ) 4-iodo-2,5-dimethoxyamphetamine;

(AAA) 4-chloro-2,5-dimethoxyamphetamine;

(BBB) 3,4-Methylenedioxypyrovalerone (MDPV);

(CCC) 4-Methylmethcathinone (Mephedrone);

(DDD) 3,4-Methylenedioxymethcathinone (Methylone);

(EEE) 4-Methoxymethcathinone;

(FFF) Fluoromethcathinone;

(GGG) Fluorophenylpiperazine (FPP);

(HHH) 4-iodo-2,5-dimethoxyphenethylamine (2C-I);

(III) 4-chloro-2,5-dimethoxyphenethylamine (2C-C);

(JJJ) 4-iodo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine (25I-NBOMe);

(KKK) 4-chloro-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine (25C-NBOMe);

(LLL) 4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine (25B-NBOMe);

(MMM) N,N-Diallyl-5-Methoxytryptamine (5-MeO-DALT);

(NNN) 2-(2,5-dimethoxy-4-ethylphenyl)ethanamine (2C-E);

(OOO) 2-(2,5-Dimethoxy-4-nitrophenyl)-N-(2-methoxybenzyl) ethanamine (25N-NBOMe);

(PPP) 4-acetoxy-N-ethyl-N-methyltryptamine (4-AcO-MET);

(QQQ) 4-nitro-2,5-dimethoxyphenethylamine (2C-N);

(RRR) 5-methoxy-N,N-methylisopropyltryptamine (5-MeO-MIPT);

(SSS) Methoxetamine;

(TTT) N-acetyl-3,4-methylenedioxymethcathinone;

(UUU) 3-(1,3-benzenodioxol-5-yl)-N,2-dimethylpropan-1-amine (3,4-methylenedioxymethamphetamine methyl homolog);

(VVV) (2-aminopropyl)-2,3-dihydrobenzofuran (APDB);

(WWW) 4-methyl-2,5-dimethoxy-N-[(2-methoxyphenyl)

(WWW) methyl]-benzeneethanamine (25D-NBOMe);

(XXX) 2-chloro-4,5-methylenedioxymethamphetamine;

(YYY) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET);

(ZZZ) 2-bromo-4,5-methylenedioxymethamphetamine;

(AAAA) 2-(2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25H-NBOMe);

(BBBB) Methoxyphencyclidine (MeO-PCP);

(CCCC) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-OH-MiPT);

(DDDD) N,*a*-dimethyl-5-benzofuranethanamine (5-MAPB);

(EEEE) 1-(1-benzofuran-6-yl)propan-2-amine (6-APB);

(FFFF) 1-(1-benzofuran-5-yl)-*N*-ethylpropan-2-amine (5-EAPB);

(GGGG) Fluorophenmetrazine;

(HHHH) 5-methoxy-N,N-Dibutyltryptamine (5-MeO-DBT);

(IIII) 5-methoxy-N,N-Diisobutyltryptamine (5-MeO-DIBT);

(JJJJ) N-(1,4-dimethylpentyl)-3,4-dimethoxyamphetamine;

(KKKK) 1-methoxy-3-[4-(2-methoxy-2-phenylethyl)piperazin-1-yl]-1-phenylpropan-2-ol (Zipeprol);

(4) Any material, compound, mixture, or preparation which contains any of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Amineptine;

(B) Fenethylline;

(C) Mesocarb;

(D) Methiopropamine;

(E) Para-methoxyphenylpiperazine (MeOPP);

(5) Any material, compound, mixture, or preparation which contains any quantity of the following substances, their salts, isomers (whether optical, position, or geometrics), and salts of isomers, unless specifically excepted, whenever the existence of these substances, their salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Gamma hydroxybutyric acid (gamma hydroxy butyrate); provided, however, that this does not include any amount naturally and normally occurring in the human body; and

(B) Sodium oxybate, when the FDA approved form of this drug is not:

(i) In a container labeled in compliance with subsection (a) or (b) of Code Section 26-3-8; and

(ii) In the possession of:

(I) A registrant permitted to dispense the drug;

(II) Any person other than to whom the drug was prescribed; or

(III) Any person who attempts to or does unlawfully possess, sell, distribute, or give this drug to any other person;

(6) Notwithstanding the fact that Schedule I substances have no currently accepted medical use, the General Assembly recognizes certain of these substances which are currently accepted for certain limited medical uses in treatment in the United States but have a high potential for abuse. Accordingly, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of methaqualone, including its salts, isomers, optical isomers, salts of their isomers, and salts of these optical isomers, is included in Schedule I;

(7) 2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7);

(8) 1-(3-Trifluoromethylphenyl) Piperazine (TFMPP);

(9) N-Benzylpiperazine (BZP);

(10) 5-Methoxy-N,N-Diisopropyltryptamine (5-MeO-DIPT);

(11) Alpha-Methyltryptamine (AMT);

(12) Any of the following compounds, derivatives, their salts, isomers, or salts of isomers, halogen analogues, or homologues, unless specifically utilized as part of the manufacturing process by a commercial industry of a substance or material not intended for human ingestion or consumption, as a prescription administered under medical supervision, or research at a recognized institution, whenever the existence of these salts, isomers, or salts of isomers, halogen analogues, or homologues is possible within the specific chemical designation:

(A) Naphthoylindoles;

(B) Naphthylmethylindoles;

(C) Naphthoylpyrroles;

(D) Naphthylideneindenes;

(E) Phenylacetylindoles;

(F) Cyclohexylphenols;

(G) Benzoylindoles;

(H) Tricyclic benzopyrans;

(I) Adamantoylindoles;

(J) Indazole amides;

(K) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2, 3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone (WIN 55,212-2);

(L) Any compound, unless specifically excepted or listed in this or another schedule, structurally derived from 2-aminopropan-1-

one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

(i) By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substitutions, whether or not further substituted in the ring system;

(ii) By substitution at the 3-position with an alkyl, alkoxy, or cyclic substitution;

(iii) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, cyclohexyl, or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure;

(M) Indole carboxamides;

(N) Indole carboxylates;

(O) [1,1'-biphenyl]-3-yl-carbamic acid, cyclohexyl ester (URB602);

(P) Indazole carboxylates;

(Q) [3-(3-carbamoylphenyl)phenyl] N-cyclohexylcarbamate (URB597);

(R) 6-methyl-2-[(4-methylphenyl)amino]-1-benzoxazin-4-one (URB754);

(S) Indole tetramethylcyclopropanecarbonyls;

(T) Napthoylbenzimidazoles;

(U) 1-naphthalenyl[4-(pentylox)-1-naphthalenyl]-methanone (CB-13);

(V) Naphthoylindazoles;

(W) Azaindole carboxamide;

(13) The fentanyl analog structural class, including any of the following derivatives, their salts, isomers, or salts of isomers, unless specifically utilized as part of the manufacturing process by a commercial industry of a substance or material not intended for human ingestion or consumption, as a prescription administered under medical supervision, or for research at a recognized institution, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation or unless specifically excepted or listed in this or another schedule, structurally derived from fentanyl, and whether or not further modified in any of the following ways:

(A) Substitution anywhere on the phenethyl group with:

(i) Alkyl group;

(ii) Hydroxyl group;

(iii) Halide group;

(B) Replacement of the phenethyl group with:

(i) Thienyl ethyl group, which can be further substituted with:

(I) Alkyl group;

(II) Hydroxyl group;

(III) Halide group;

(ii) Oxotetrazol ethyl group, which can be further substituted with:

(I) Alkyl group;

(II) Hydroxyl group;

(III) Halide group;

(iii) Alkyl group;

(iv) Thienyl methyl group, which can be further substituted with:

(I) Alkyl group;

(II) Hydroxyl group;

(III) Halide group;

(v) Benzyl group, which can be further substituted with:

(I) Alkyl group;

(II) Hydroxyl group;

(III) Halide group;

(vi) Furanyl ethyl group, which can be further substituted with:

(I) Alkyl group;

(II) Hydroxyl group;

(III) Halide group;

(vii) Phenyl alkyl group, which can be further substituted with:

(I) Alkyl group;

(II) Hydroxyl group;

(III) Halide group;

(viii) Pyridinyl ethyl group, which can be further substituted with:

(I) Alkyl group;

(II) Hydroxyl group;

(III) Halide group;

(ix) Diazole ethyl group, which can be further substituted with:

(I) Alkyl group;

(II) Hydroxyl group;

(III) Halide group;

(IV) Nitro group;

(x) Thiazole ethyl group, which can be further substituted with:

(I) Alkyl group;

(II) Hydroxyl group;

(III) Halide group;

(xi) Benzoxazolinone ethyl group, which can be further substituted with:

(I) Alkyl group;

(II) Hydroxyl group;

(III) Halide group;

(C) Substitution anywhere on the piperidine ring with:

(i) Alkyl group;

(ii) Allyl group;

(iii) Phenyl group;

(iv) Ester group;

(v) Ether group;

(vi) Pyridine group, which can be further substituted with:

(I) Alkyl group;

(II) Hydroxyl group;

(III) Halide group;

(vii) Thiazole group, which can be further substituted with:

(I) Alkyl group;

(II) Hydroxyl group;

(III) Halide group;

(viii) Oxadiazole group, which can be further substituted with:

(I) Alkyl group;

(II) Hydroxyl group;

(III) Halide group;

(IV) Ether group;

(D) Substitution anywhere on the propanamide group with:

(i) Cyclic alkyl group;

(ii) Acyclic alkyl group:

(iii) Methoxy group;

(E) Replacement of the propanamide group with:

(i) Acryloyl amino group;

(ii) Acetamide group, which itself can be further substituted with:

(I) Cyclic alkyl group;

(II) Tetrahydrofuran group;

(iii) Methoxy acetamide group;

(iv) Furanyl amide group;

(v) Amine;

(F) Substitution anywhere on the phenyl ring with:

(i) Halide group;

(ii) Methoxy group;

(iii) Alkyl group;

(G) Replacement of the phenyl ring with the pyrazine ring;

(14) The piperidinyl-sulfonamide structural class, including any of the following compounds, derivatives, their salts, isomers, or salts

of isomers, halogen analogues, or homologues, unless specifically utilized as part of the manufacturing process by a commercial industry of a substance or material not intended for human ingestion or consumption, as a prescription administered under medical supervision, or for research at a recognized institution, whenever the existence of these salts, isomers, or salts of isomers, halogen analogues, or homologues is possible within the specific chemical designation or unless specifically excepted or listed in this or another schedule, structurally derived from piperidinyl-sulfonamide, and whether or not further modified in any of the following ways:

(A) By substitution at the 1-position of the piperidinyl ring with any of the following:

(i) Alkyl group;

(ii) Phenyl alkyl group;

(iii) Amino substituted phenyl alkyl group;

(iv) Nitro substituted phenyl alkyl group;

(v) Cycloalkyl group;

(vi) Alkenyl substituent group;

(B) By substitution at the 3-position or 4-position of the piperidinyl ring with any of the following:

(i) Halide group;

(ii) Alkyl group;

(iii) Alkoxy substituent;

(C) By substitution on the sulfonamide with any of the following:

(i) Pyridyl group;

(ii) Alkyl group;

(iii) Phenyl group;

(iv) Phenyl alkyl group;

(v) Alkoxy substituted phenyl group;

(vi) Halogen substituted phenyl group;

(vii) Nitro substituted phenyl group;

(viii) Amino substituted phenyl group;

(ix) Alkanoylamino substituted phenyl group;

(x) Amido substituted phenyl group;

(15) The 1-cyclohexyl-4-(1,2-diphenylethyl)-piperazine (MT-45) structural class, including any of the following derivatives, their salts, isomers, or salts of isomers, unless specifically utilized as part of the manufacturing process by a commercial industry of a substance or material not intended for human ingestion or consumption, as a prescription administered under medical supervision, or for research at a recognized institution, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation or unless specifically excepted or listed in this or another schedule, structurally derived from 1-cyclohexyl-4-(1,2- diphenylethyl)-piperazine (MT-45), and whether or not further modified in any of the following ways:

(A) Replacement of the cyclohexyl group with any of the following:

(i) Cycloheptyl group;

(ii) Cyclooctyl group;

(B) Substitution on the diphenyl groups with any of the following:

(i) Hydroxyl group;

(ii) Halide;

(iii) Alkoxy group;

(iv) Alkyl group;

(v) Ester group;

(vi) Phenyl ether group;

(16) The N-substituted benzimidazole structural class, including any of the following derivatives, their salts, isomers, or salts of isomers unless specifically utilized as part of the manufacturing process by a commercial industry of a substance or material not intended for human ingestion or consumption, as a prescription administered under medical supervision, or for research at a recognized institution, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation or unless specifically excepted or listed in this or another schedule, structurally derived from N-substituted benzimidazole by substitution at the 1-position with an ethylamine group and by substitution at the 2-position with a benzyl group, whether or not the compound is further modified in any of the following ways:

(A) By monoalkyl or dialkyl substitution on the nitrogen of the 1-position ethylamine group, or by inclusion of the nitrogen in a cyclic structure;

(B) By substitution on the benzylic carbon of the 2-position benzyl group by alkyl or carboxamide groups;

(C) By substitution at the 3-position or 4-position of the benzyl group, or both, with alkyl, hydroxyl, alkoxy, acetoxy, halide, or sulfide groups;

(D) By replacement of the 2-position benzyl group with an ethylbenzyl, thiophenol, or methoxybenzene group, which may be further substituted with alkyl, hydroxyl, alkoxy, acetoxy, halide, or sulfide groups; and

(E) By substitution at the 5-position or 6-position with a nitro group or primary amine;

(17) Clonazolam;

(18) Cumyl-pegaclone;

(19) Diclazepam;

(20) Etizolam;

(21) Flualprazolam;

(22) Flubromazolam.

History.

Code 1933, § 79A-806, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1978, p. 1668, § 6; Ga. L. 1979, p. 859, § 5; Ga. L. 1980, p. 1746, § 4; Ga. L. 1981, p. 557, § 3; Ga. L. 1982, p. 2403, §§ 11, 16; Ga. L. 1984, p. 22, § 16; Ga. L. 1984, p. 1019, § 1; Ga. L. 1985, p. 1219, § 2; Ga. L. 1986, p. 1555, § 3; Ga. L. 1987, p. 261, § 1; Ga. L. 1989, p. 233, § 1; Ga. L. 1990, p. 8, § 16; Ga. L. 1990, p. 640, § 1; Ga. L. 1992, p. 1131, § 1; Ga. L. 1994, p. 169, §§ 1–3, 3.1; Ga. L. 1996, p. 356, § 1; Ga. L. 2001, p. 816, § 1; Ga. L. 2002, p. 415, § 16; Ga. L. 2003, p. 349, § 2; Ga. L. 2005, p. 1028, § 1/SB 89; Ga. L. 2006, p. 219, § 14/HB 1054; Ga. L. 2008, p. 169, §§ 1, 2/HB 1090; Ga. L. 2010, p. 338, § 1/HB 1309; Ga. L. 2010, p. 860, § 1/SB 353; Ga. L. 2011, p. 656, §§ 1, 2/SB 93; Ga. L. 2012, p. 40, §§ 2, 3/SB 370; Ga. L. 2013, p. 5, § 1/HB 57; Ga. L. 2013, p. 71, §§ 1, 1.1/HB 302; Ga. L. 2013, p. 141, § 16/HB 79; Ga. L. 2014, p. 217, §§ 1-3/HB 835; Ga. L. 2015, p. 883, §§ 1, 2/HB 211; Ga. L. 2016, p. 798, §§ 2, 3/HB 783; Ga. L. 2017, p. 14, §§ 1-4/HB 231; Ga. L. 2017, p. 417, §§ 7-1, 7-2/SB 104; Ga. L. 2018, p. 314, §§ 1-4/HB 830; Ga. L. 2018, p. 1112, § 16/SB 365; Ga. L. 2019, p. 820, § 1/HB 483; Ga. L. 2019, p. 1030, § 3/HB 213; Ga. L. 2021, p. 184, § 26/SB 195; Ga. L. 2021, p. 386, §§ 1-4/HB 367; Ga. L. 2022, p. 803, §§ 1–5/HB 963; Ga. L. 2023, p. 137, §§ 1, 2/HB 332, effective May 1, 2023; Ga. L. 2024, p. 161, §§ 1–3/HB 1326, effective April 22, 2024.

Amendments.

The 2022 amendment, effective May 13, 2022, substituted "Brorphine" for "Reserved" in subparagraph (1)(K); added subparagraph (1)(UU); substituted "Paramethoxymethamphetamine (PMMA)" for "Reserved" in subparagraph (3)(KK); substituted "4,4'-dimethylaminorex" for "Reserved" in subparagraph (3)(LL); substituted "Methiopropamine" for "Reserved" in subparagraph (4)(C); substituted "an alkyl, alkoxy, or cyclic substitution;" for "a cyclic or acyclic alkyl, substitution or alkoxy; or" at the end of division (12)(L)(ii); and added division (13)(E)(v).

The 2023 amendment, effective May 1, 2023, added subparagraph (3)(KKKK), added subparagraph (4)(A), redesignated former subparagraph (4)(A) as subparagraph (4)(B), which formerly read: "Reserved;", added subpargraph (4)(C), and redesignated former subparagraphs (4)(C)

and (4)(D) as present subparagraphs (4)(D) and (4)(E), respectively.

The 2024 amendment, effective April 22, 2024, inserted "cyclohexl," in division (12)(L)(iii); substituted a semicolon for a period at the end of subparagraph (16)(E); and added paragraphs (17) through (22).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1986, in subparagraph (3)(DD) "N-ethyl-3" was substituted for "n-ethyl-3".

Editor's notes.

Ga. L. 2010, p. 338 § 1/HB 1309, not codified by the General Assembly, provides:

"WHEREAS, the General Assembly finds that there is a growing use of the unregulated synthetic cannabinoids commonly known as K2 or synthetic marijuana; and

"WHEREAS, preliminary studies indicate that the three synthetic cannabinoid substances unregulated in Georgia are from three to over 100 times more potent than THC, the active ingredient found in marijuana; and

"WHEREAS, many states as well as the federal government have already included one or more of these chemical compounds on Schedules of Controlled Substances, but none of these chemicals are currently listed on Georgia's Schedule of Controlled Substances; and

"WHEREAS, synthetic cannabinoids are referred to as the new marijuana, and K2 is gaining in popularity at an alarming rate among high school and college students and persons on probation and parole; and

"WHEREAS, while having the same or stronger physiological effects as high potency marijuana, synthetic marijuana or K2 does not show a positive reading in an urinalysis test which adds to the desirability and increased growth among drug abusers and increases the threat to public health and safety by avoiding detection; and

"WHEREAS, the General Assembly should address the growing threat of synthetic cannabinoids to the health, safety, and welfare of our citizens before the problem becomes epidemic in the State of Georgia."

Ga. L. 2012, p. 40, § 1/SB 370, not codified by the General Assembly, which provides for the annual update of the identity of controlled substances and dangerous drugs, is dedicated to the memory of Chase Corbitt Burnett and shall be known and may be cited as "Chase's Law."

Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

Administrative rules and regulations.

Registration Requirements under Georgia Controlled Substances Act, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Pharmacy, Rule 480-20-.01 et seq.

Law reviews.

For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 61 (2017).

For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017).

JUDICIAL DECISIONS

"Marijuana" defined. — Construction of O.C.G.A. § 16-13-21(16) with O.C.G.A. § 16-13-25(3) as to what constitutes marijuana. Osborn v. State, 161 Ga. App. 132, 291 S.E.2d 22, 1982 Ga. App. LEXIS 3019 (1982).

Marijuana and THC. — Any sample containing tetrahydrocannabinols (THC) which would otherwise fall under the definition of marijuana shall be considered marijuana unless it either contains more than 15 percent by weight of THC or does not exhibit the external morphological features of the plant

cannabis. Osborn v. State, 161 Ga. App. 132, 291 S.E.2d 22, 1982 Ga. App. LEXIS 3019 (1982).

Since a prosecution for misdemeanor possession of marijuana cannot be instituted on the basis of a blood or urine test which shows "positive" for marijuana, because such positive showings will be based upon the presence of THC "without the morphological features" of the marijuana plant and are thus excluded from the definition of "marijuana" under the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., prosecutions for possession of marijuana based upon positive blood or urine samples must be brought as a felony prosecution for possession of a Schedule I drug, i.e. THC. Cronan v. State, 236 Ga. App. 374, 511 S.E.2d 899, 1999 Ga. App. LEXIS 168 (1999).

Despite the defendant's contrary claim, the state was not required to prove the tetrahydrocannabinol (THC) content of the plant material seized in a prosecution for trafficking in marijuana; further, THC was treated separately in the criminal code as a Schedule I drug under O.C.G.A. § 16-13-25(3)(P). Trujillo v. State, 286 Ga. App. 438, 649 S.E.2d 573, 2007 Ga. App. LEXIS 790 (2007).

Georgia law distinguishes marijuana from THC (tetrahydrocannabinol) as O.C.G.A. § 16-13-21(16) provides that marijuana means all parts of the plant of the genus Cannabis, whereas O.C.G.A. § 16-13-30(a) and (j) separately addresses any controlled substance and marijuana. C. W. v. Department of Human Services, 353 Ga. App. 360, 836 S.E.2d 836, 2019 Ga. App. LEXIS 698 (2019).

Heroin is a Schedule I drug. — Fatal variance between the allegations of the indictment and the evidence presented at defendant's trial for trafficking in heroin did not exist as the trial court was able to take judicial notice of the rules promulgated by the State Board of Pharmacy under the Administrative Procedures Act; pursuant to O.C.G.A. § 16-13-25(2)(J), heroin was a Schedule I drug. Bailey v. State, 259 Ga. App. 293, 576 S.E.2d 668, 2003 Ga. App. LEXIS 81 (2003).

Evidence insufficient to show constructive possession of piperazine. — Trial court erred in finding that the defendant violated the defendant's probation by committing the new felony of possessing a controlled substance, piperazine or TFMPP, in violation of O.C.G.A. § 16-13-30 because the circumstantial evidence was insufficient to show the defendant's constructive possession of the TFMPP pills; the only evidence linking the defendant to the drugs was spatial proximity, but it was at least equally likely that the pills belonged to the driver of the truck where the pills were found. Scott v. State, 305 Ga. App. 596, 699 S.E.2d 894, 2010 Ga. App. LEXIS 761 (2010).

State must prove THC was synthetically derived to sustain charge of possession or distribution. — Any substance which is a resin, compound, manufacture, salt, derivative mixture, or preparation of the cannabis plant shall be treated as marijuana, even though it may contain a high percentage of tetrahydrocannabinols (THC). For the state to sustain a charge of possession or distribution of THC under O.C.G.A. § 16-13-25(3)(P)(i), it must prove that the THC is not a compound, derivative, or preparation of the cannabis plant; that is, it must prove that the THC is synthetically derived. Aycock v. State, 146 Ga. App. 489, 246 S.E.2d 489, 1978 Ga. App. LEXIS 2421 (1978).

Indictment charging defendant with selling "phenylcyclohexyl ethylamine" instead of "1-phenylcyclohexyl ethylamine," was sufficient because it did not misinform defendant as to offense charged in such manner that it either impaired defendant's ability to prepare a defense, or surprised defendant at trial, and defendant could not be subjected to a subsequent prosecution for same offense. Murray v. State, 157 Ga. App. 596, 278 S.E.2d 2, 1981 Ga. App. LEXIS 1926 (1981).

Entrapment. — Fact that a government informer furnished the contraband to a defendant does not constitute entrapment. Venable v. State, 203 Ga. App. 517, 417 S.E.2d 347, 1992 Ga. App. LEXIS 401 (1992), cert. denied, No. S92C0895, 1992 Ga. LEXIS 532 (Ga. May 21, 1992).

Evidence does not demand finding of entrapment. — Fact that the

defendant may have wished to "get in good" with the female undercover agent and that, without any undue encouragement on the agent's part, the defendant believed the informant's statement that the defendant could accomplish that by providing the agent with marijuana, this would not demand a finding of entrapment. Venable v. State, 203 Ga. App. 517, 417 S.E.2d 347, 1992 Ga. App. LEXIS 401 (1992), cert. denied, No. S92C0895, 1992 Ga. LEXIS 532 (Ga. May 21, 1992).

Evidence insufficient for finding of possession of marijuana. — Defendant's conviction for possession of marijuana had to fail because in the absence of conclusive, scientific tests, the possibility remained that the substance at issue was not marijuana. Chambers v. State, 260 Ga. App. 48, 579 S.E.2d 71, 2003 Ga. App. LEXIS 305 (2003).

Sufficient evidence to support conviction for possession of MDMA. — Because the defendant's admission to possessing MDMA was direct evidence supporting guilt, and the admission served as a direct connection to the contraband, the trial court did not err in denying the defendant's motion for a new trial based on the insufficiency of the evidence. Barrino v. State, 282 Ga. App. 496, 639 S.E.2d 489, 2006 Ga. App. LEXIS 1445 (2006).

Sufficient evidence to support conviction for trafficking MDMA. — With regard to a defendant's convictions for possession of marijuana with the intent to distribute, trafficking in 4-Methyl-enedioxymethamphetamine, com- monly known as ecstasy, trafficking in cocaine, and possession of a firearm during the commission of a crime, there was sufficient evidence to support the defendant's conviction for possession of the contraband, which was found in a backpack, based on the strong odor of marijuana coming from the vehicle in which the defendant was a passenger in, the defendant's suspicious and nervous behavior, the defendant's joint living arrangement with two other defendants, the defendant's possession of ammunition for another one of the defendant's weapons, and the fact that the defendant was, at times, within arm's reach of the backpack, which showed an intent and power to exercise joint control over the backpack and the drugs found therein; likewise, there was sufficient evidence to support the trafficking charges based on the amounts of the contraband found; and, there was sufficient evidence to support the firearm possession charge since the defendant was found in possession of a magazine that fit the gun located within arm's reach. However, considering that there were four people in the vehicle, the court found that the state's evidence was insufficient to exclude the reasonable hypothesis that the marijuana was intended for personal use, therefore, the conviction for the intent to distribute marijuana was reduced to possession. Vines v. State, 296 Ga. App. 543, 675 S.E.2d 260, 2009 Ga. App. LEXIS 246 (2009).

Sufficient evidence of selling trifluoromethylphenyl piperazine. — Combined evidence established that the defendant actively participated in and was a party to the three separate sales of a controlled substance based on the defendant freely and voluntarily admitting that during the last controlled drug buy, the defendant supplied an informant with 500-600 pills, the pills tested positive for trifluoromethylphenyl piperazine, and that defendant acted the same during all of the controlled purchases. Walker v. State, 323 Ga. App. 685, 747 S.E.2d 691, 2013 Ga. App. LEXIS 707 (2013).

State not required to allege non-existence of affirmative defenses. — Defendant's indictment for possessing and selling XLR11 withstood a general demurrer because the indictment alleged the essential elements of the offenses under O.C.G.A. § 16-13-30(b); under O.C.G.A. § 16-13-50(a), the state was not required to allege the affirmative defenses in O.C.G.A. § 16-13-25(12) such as that the XLR11 was intended for human consumption. Budhani v. State, 306 Ga. 315, 830 S.E.2d 195, 2019 Ga. LEXIS 448 (2019).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, § 10.
C.J.S.
28 C.J.S., Drugs and Narcotics, § 219. 28A C.J.S., Drugs and Narcotics, § 286 et seq.
U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 204.
ALR.
Federal prosecutions based on manufacture, importation, transportation, possession, sale, or use of LSD, 22 A.L.R.3d 1325.

Free exercise of religion as defense to prosecution for narcotic or psychedelic drug offense, 35 A.L.R.3d 939.

Marijuana, psilocybin, peyote, or similar drugs of vegetable origin as narcotics for purposes of drug prosecutions, 50 A.L.R.3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution, 50 A.L.R.3d 1284.

16-13-26. Schedule II.

The controlled substances listed in this Code section are included in Schedule II:

(1) Any of the following substances, or salts thereof, except those narcotic drugs specifically exempted or listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding naloxone hydrochloride, but including the following:

(i) Raw opium;

(ii) Opium extracts;

(iii) Opium fluid extracts;

(iv) Powdered opium;

(v) Granulated opium;

(vi) Tincture of opium;

(vii) Codeine;

(viii) Ethylmorphine;

(ix) Hydrocodone;

(x) Hydromorphone;

(xi) Metopon;

(xii) Morphine;

(xiii) Oripavine;

(xiv) Oxycodone;

(xv) Oxymorphone;

(xvi) Thebaine;

(B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subparagraph (A) of this paragraph, except that these substances shall not include the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Cocaine, coca leaves, any salt, compound, derivative, stereoisomers of cocaine, or preparation of coca leaves, and any salt, compound, derivative, stereoisomers of cocaine, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;

(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(A) Alfentanil;

(A.1) Alphaprodine;

(B) Anileridine;

(C) Bezitramide;

(C.5) Carfentanil;

(D) Dihydrocodeine;

(E) Diphenoxylate;

(F) Fentanyl;

(G) Isomethadone;

(G.5) Levo-alphacetylmethadol (some other names: levomethadyl acetate, LAAM);

(H) Levomethorphan;

(I) Levorphanol;

(J) Methazocine;

(K) Methadone;

(L) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(M) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

(M.3) Norfentanyl;

(M.5) Oliceridine;

(N) Pethidine (meperidine);

(O) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(P) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(Q) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(R) Phenazocine;

(S) Piminodine;

(T) Racemethorphan;

(U) Racemorphan;

(U.1) Remifentanil;

(V) Sufentanil;

(V.1) Tapentadol;

(V.2) Thiafentanil;

(W) 4-anilino-N-phenethyl-4-piperidine (ANPP);

(3) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances included as having a stimulant effect on the central nervous system:

(A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(B) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(C) Phenmetrazine and its salts;

(D) Methylphenidate, including its salts, isomers, and salts of isomers;

(E) Reserved;

(F) Nabilone;

(G) Lisdexamfetamine;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any of the following substances included as having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Amobarbital;

(A.5) Glutethimide;

(B) Secobarbital;

(C) Pentobarbital;

(5) Dronabinol in oral solution labeled in compliance with U.S. Food and Drug Administration requirements.

History.

Code 1933, § 79A-807, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1977, p. 625, § 7; Ga. L. 1978, p. 1668, § 7; Ga. L. 1979, p. 859, §§ 6, 7; Ga. L. 1980, p. 1746, § 5; Ga. L. 1982, p. 2403, §§ 12, 17, 17.1; Ga. L. 1985, p. 1219, § 3; Ga. L. 1987, p. 261, §§ 2-4; Ga. L. 1988, p. 420, § 1; Ga. L. 1989, p. 233, § 2; Ga. L. 1992, p. 1131, § 2; Ga. L. 1994, p. 169, § 4; Ga. L. 1997, p. 1311, § 1; Ga. L. 2000, p. 1317, § 1; Ga. L. 2007, p. 605, § 1/HB 286; Ga. L. 2008, p. 169, § 3/HB 1090; Ga. L. 2009, p. 126, § 1/HB 368; Ga. L. 2010, p. 860, § 2/SB 353; Ga. L. 2017, p. 14, §§ 5, 6/HB 231; Ga. L. 2017, p. 417, §§ 7-3, 7-4/SB 104; Ga. L. 2018, p. 314, § 5/HB 830; Ga. L. 2021, p. 386, § 5/HB 367.

Administrative rules and regulations.

Registration Requirements under Georgia Controlled Substances Act, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Pharmacy, Rule 480-20-.01 et seq.

Requirements of a Prescription Drug Order, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Pharmacy, Rule 480-22-.01 et seq.

Law reviews.

For note on airport searches of drug couriers, see 33 Mercer L. Rev. 433 (1981).

For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 61 (2017).

For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017).

JUDICIAL DECISIONS

Construed with O.C.G.A. §§ 16-13-30 and 16-13-31. — When the total weight of the substances seized from defendant was only 24.4 grams of cocaine, defendant argued that the only Georgia statute that proscribes possession of cocaine is O.C.G.A. § 16-13-31, prohibiting possession of 28 grams or more of cocaine. However, although O.C.G.A. § 16-13-31 deals with being in knowing, actual possession of 28 grams or more of cocaine or any mixture containing cocaine, O.C.G.A. § 16-13-26(1)(D) (prior to 1988 amendment inserting "cocaine") lists "Coca leaves, any salt, compound, derivative, stereoisomers of cocaine, or preparation of coca leaves, and any salt, compound, derivative, stereoisomers of

cocaine, . . . ," which includes cocaine. Under O.C.G.A. § 16-13-30, the unlawful possession of any controlled substance, regardless of amount, constitutes an offense. Dixon v. State, 180 Ga. App. 222, 348 S.E.2d 742, 1986 Ga. App. LEXIS 2685 (1986) (decided prior to 1988 amendment inserting "cocaine" at the beginning of paragraph (1)(D)).

Methylphenidate possessor's ex post facto argument rejected. — Methylphenidate has been a Schedule II controlled substance since 1974. Accordingly, the contention that defendant was sentenced for an ex post facto crime has no merit where defendant's arrest warrant stated the date of possession of methylphenidate to have been on or about July 25, 1985. Carter v. State, 180 Ga. App. 173, 348 S.E.2d 715, 1986 Ga. App. LEXIS 2690 (1986).

Simultaneous possession of different proscribed drugs may result in multiple punishments. Howard v. State, 144 Ga. App. 208, 240 S.E.2d 908, 1977 Ga. App. LEXIS 2638 (1977).

Multiple offenses arising from simultaneous possession of drugs of same category. — Multiple offenses can be charged when drugs of same category (i.e., Schedule II) are taken from one person at same time and place. Howard v. State, 144 Ga. App. 208, 240 S.E.2d 908, 1977 Ga. App. LEXIS 2638 (1977).

Defendant may be prosecuted, convicted, and separately sentenced for the simultaneous possession of each of the controlled substances listed in O.C.G.A. § 16-13-26. Tabb v. State, 250 Ga. 317, 297 S.E.2d 227, 1982 Ga. LEXIS 1235 (1982).

Controlled substance. — Cocaine was a controlled substance pursuant to O.C.G.A. § 16-13-26(1)(D), and thus defendant could be convicted both for selling a controlled substance and distributing a controlled substance within 1,000 feet of a housing project after defendant sold cocaine to an undercover informant. Dixon v. State, 252 Ga. App. 385, 556 S.E.2d 480, 2001 Ga. App. LEXIS 1289 (2001).

Sufficient evidence supported defendant's conviction of possession of cocaine under O.C.G.A. § 16-13-30(a) as: (1) the informant testified that defendant procured crack cocaine for the informant for $300.00; (2) detectives witnessed defendant enter and exit the bar where, according to the informant, defendant obtained the cocaine; and (3) the substance tested positive for cocaine, a controlled substance under O.C.G.A. § 16-13-26(1)(D); the credibility of the informant, which, according to the defendant, was allegedly impaired by the informant's prior criminal conduct, was an issue for the jury. Ross v. State, 275 Ga. App. 137, 619 S.E.2d 809, 2005 Ga. App. LEXIS 905 (2005).

Evidence sufficient to support conviction of sale of methamphetamine. — Evidence that a defendant sold an undercover officer methamphetamine on two occasions, with one sale of more than 28 grams, and that the defendant participated in a later, larger drug deal, supported the defendant's convictions for trafficking in methamphetamine, O.C.G.A. § 16-13-31(e), and sale of methamphetamine under O.C.G.A. §§ 16-13-26(3)(B) and 16-13-30(b). Culajay v. State, 309 Ga. App. 631, 710 S.E.2d 846, 2011 Ga. App. LEXIS 420 (2011).

Proper admission of similar transaction evidence. — Trial court did not abuse the court's discretion by allowing the admission of evidence regarding the defendant's prior drug possession arrest because the evidence of prior drug activity was highly probative of intent to sell a controlled substance for which the defendant was on trial and the prior act of drug possession happened while the defendant was driving a car in the same area where the sale of the methamphetamine during the first buy occurred. Moton v. State, 351 Ga. App. 789, 833 S.E.2d 171, 2019 Ga. App. LEXIS 488 (2019).

Prior out-of-state drug convictions used to impose recidivist sentence. — Defense counsel was not ineffective for failing to object to the trial court's use of prior felonies defendant committed in California to sentence the defendant as a recidivist under O.C.G.A. § 17-10-7(c) as

the elements of Cal. Health & Safety Code §§ 11054(f) and 11350(a) (possession of cocaine) were sufficiently similar to those of O.C.G.A. §§ 16-13-26(1)(D) and 16-13-30(c); and the elements of Cal. Penal. Code § 211 (robbery) were sufficiently similar to those of O.C.G.A. § 16-8-40. Williams v. State, 296 Ga. App. 270, 674 S.E.2d 115, 2009 Ga. App. LEXIS 189 (2009).

Remand for sentencing required. — Because it was unclear which schedule, which Code section, and which sentencing range would apply to the substances the defendant pled guilty to selling, the defendant's sentences had to be vacated and the case remanded to the trial court for a hearing to determine on which schedule the controlled substances at issue belonged, and to impose a lawful and appropriate sentence. Williams v. State, 320 Ga. App. 243, 739 S.E.2d 727, 2013 Ga. App. LEXIS 159 (2013).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, § 10.

C.J.S.
28 C.J.S., Drugs and Narcotics, § 219.

U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 206.

16-13-27. Schedule III.

The controlled substances listed in this Code section are included in Schedule III:

(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, included as having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Those compounds, mixtures, or preparations in dosage unit forms containing any stimulant substances which are listed as excepted compounds by the State Board of Pharmacy pursuant to this article, and any other drug of quantitative composition so excepted or which is the same except that it contains a lesser quantity of controlled substances;

(B) Benzphetamine;

(C) Chlorphentermine;

(D) Clortermine;

(E) Phendimetrazine;

(2) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances included as having a depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salts thereof and one or more active medicinal ingredients which are not listed in any schedule;

(B) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the State Board of Pharmacy for marketing only as a suppository;

(C) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof;

(D) Chlorhexadol;

(E) Reserved;

(F) Lysergic acid;

(G) Lysergic acid amide;

(H) Methyprylon;

(I) Sulfondiethylmethane;

(J) Sulfonethylmethane;

(K) Sulfonmethane;

(L) Tiletamine/Zolazepam (Telazol);

(3) Nalorphine;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs, or any salts thereof:

(A) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) Reserved;

(D) Reserved;

(E) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(F) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(H) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) The State Board of Pharmacy may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (1) and (2) of this Code section from the application of all or any part of this article if the compound, mixture, or preparation contains one or more active, medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system;

(6) Any anabolic steroid or any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for such administration:

(A.01) Androstanedione;

(A.05) Androstenediol;

(A.075) Androstenedione;

(A.08) Bolandiol;

(A.085) Bolandione;

(A.1) Boldenone;

(A.5) Boldione (Androsta-1,4-diene-3,17-dione);

(A.75) Bromoandrostanedione;

(A.85) Chloromethylandrostenediol;

(B) Chlorotestosterone;

(C) Clostebol;

(D) Dehydrochloromethyltestosterone;

(D.1) Desoxymethyltestosterone (17a-methyl-5a-androst-2-en-17-ol, madol);

(E) Dihydrotestosterone;

(F) Drostanolone;

(G) Ethylestrenol;

(H) Fluoxymesterone;

(I) Formebolone;

(I.25) Furazabol;

(I.3) Furuza;

(I.5) Halodrol;

(I.75) Hemapolin;

(I.8) Mestanolone;

(I.85) Mestanolone oxime;

(J) Mesterolone;

(K) Methandienone;

(L) Methandranone;

(M) Methandriol;

(N) Methandrostenolone;

(N.5) Methasterone;

(O) Methenolone;

(O.25) Methylandrostanol;

(O.5) Methylclostebol;

(O.7) Methyldienolone;

(O.75) Methylhydroxynandrolone;

(P) Methyltestosterone;

(P.5) Methyltrienolone;

(Q) Mibolerone;

(R) Nandrolone;

(R.5) Norbolethone;

(R.75) Norclostebol;

(S) Norethandrolone;

(S.5) Oxabolone;

(T) Oxandrolone;

(T.5) Oxyguno;

(U) Oxymesterone;

(V) Oxymetholone;

(V.5) Prostanozol;

(W) Stanolone;

(X) Stanozolol;

(Y) Testolactone;

(Z) Testosterone;

(Z.5) Tetrahydrogestrinone;

(AA) Trenbolone;

(AA.5) Trendione;

(BB) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);

(CC) 5alpha-androstan-3,6,17-trione;

(DD) 6-bromo-androsta-1,4-diene-3,17-dione;

(EE) Delta1-dihydrotestosterone;

(FF) 3beta,17beta-dihydroxy-5alpha-androstane;

(GG) 2alpha,17alpha-dimethyl-17beta-hydroxy-5beta -androstan-3-one;

(HH) 13beta-ethyl-17beta-hydroxygon-4-en-3-one;

(II) 18a-homo-3-hydroxy-estra-2,5(10)-dien-17-one;

(JJ) 4-hydroxy-androst-4-ene-3,17-dione;

(KK) 17beta-hydroxy-androstano[2,3-d]isoxazole;

(LL) 4,17beta-dihydroxy-androst-4-en-3-one (4-hydroxytestosterone);

(MM) 17alpha-methyl-androsta-1,4-diene-3,17beta-diol;

(NN) 6alpha-methyl-androst-4-ene-3,17-dione;

(OO) 17alpha-methyl-3beta,17beta-dihydroxy-5alpha- androstane;

(PP) [3,2-c]pyrazole-androst-4-en-17beta-ol;

(7) Ketamine;

(8) Dronabinol (synthetic) in sesame oil and encapsulated in a U.S. Food and Drug Administration approved drug product also known as Marinol;

(9) Sodium oxybate, when the FDA approved form of this drug is in a container labeled in compliance with subsection (a) or (b) of Code Section 26-3-8, in the possession of a registrant permitted to dispense the drug, or in the possession of a person to whom it has been lawfully prescribed;

(10) Buprenorphine;

(11) Embutramide;

(12) Any drug product in hard or soft gelatin capsule form containing natural dronabinol (derived from the cannabis plant) or synthetic dronabinol (produced from synthetic materials) in sesame oil, for which an abbreviated new drug application (ANDA) has been approved by the FDA under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)) which references as its listed drug the drug product referred to in paragraph (8) of this Code section;

(13) Perampanel and its salts, isomers, and salts of isomers.

History.

Code 1933, § 79A-808, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1978, p. 1668, § 8; Ga. L. 1980, p. 1746, § 6; Ga. L. 1982, p. 3, § 16; Ga. L. 1982, p. 2403, §§ 13, 18; Ga. L. 1989, p. 233, § 3; Ga. L. 1991, p. 312, § 1; Ga. L. 1992, p. 6, § 16; Ga. L. 1992, p. 1131, §§ 3, 4; Ga. L. 1996, p. 356, § 2; Ga. L. 1997, p. 1311, § 2; Ga. L. 1998, p. 778, § 1; Ga. L. 2000, p. 1317, § 2; Ga. L. 2003, p. 349, § 3; Ga. L. 2008, p. 169, § 4/HB 1090; Ga. L. 2009, p. 126, § 2/HB 368; Ga. L. 2011, p. 656, §§ 3, 4/SB 93; Ga. L. 2013, p. 71, § 2/HB 302; Ga. L. 2014, p. 217, § 4/HB 835; Ga. L. 2015, p. 883, § 3/HB 211; Ga. L. 2024, p. 161, §§ 4, 5/HB 1326, effective April 22, 2024.

Amendments.

The 2024 amendment, effective April 22, 2024, redesignated subparagraph (6)(A) as subparagraph (6)(A.1) and added subparagraphs (6)(A.01), (6)(A.05), (6)(A.075), (6)(A.08), (6)(A.085), (6)(A.75), (6)(A.85), (6)(I.25), (6)(I.3), (6)(I.5), (6)(I.75), (6)(I.8), (6)(I.85), (6)(O.25), (6)(O.5), (6)(O.7), (6)(O.75), (6)(P.5), (6)(R.5), (6)(R.75), (6)(S.5), (6)(T.5), (6)(Z.5), (6)(AA.5), and (6)(CC) through (6)(PP); and substituted "Dehydrochloromethyltestosterone" for "Dehydrochlormethyltestosterone" in subparagraph (6)(D).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1996, a semicolon was substituted for a period at the end of subparagraph (4)(H), at the end of paragraph (5), and at the end of subparagraph (6)(AA).

Administrative rules and regulations.

Registration Requirements under Georgia Controlled Substances Act, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Pharmacy, Rule 480-20-.01 et seq.

Requirements of a Prescription Drug

Order, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Pharmacy, Rule 480-22-.01 et seq.

JUDICIAL DECISIONS

Remand for sentencing required. — Because it was unclear which schedule, which Code section, and which sentencing range would apply to the substances the defendant pled guilty to selling, the defendant's sentences had to be vacated and the case remanded to the trial court for a hearing to determine on which schedule the controlled substances at issue belonged, and to impose a lawful and appropriate sentence. Williams v. State, 320 Ga. App. 243, 739 S.E.2d 727, 2013 Ga. App. LEXIS 159 (2013).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, § 10.
C.J.S.
28 C.J.S., Drugs and Narcotics, §§ 69, 70, 211, 212, 219.
U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 208.

16-13-27.1. Exempt anabolic steroids.

The following anabolic steroid containing compounds, mixtures, or preparations have been exempted as Schedule III Controlled Substances by the United States Drug Enforcement Administration, as listed in 21 C.F.R. 1308.34, and are therefore exempted from paragraph (6) of Code Section 16-13-27:

TABLE OF EXEMPT ANABOLIC STEROID PRODUCTS

Trade Name	Company
Androgen LA	Forest Pharmaceuticals St. Louis, MO
Andro-Estro 90-4	Rugby Labs Rockville Centre, NY
depANDROGYN	Forest Pharmaceuticals St. Louis, MO
DEPO-T.E.	Quality Research Pharm Carmel, IN
depTESTROGEN	Maroca Pharm Phoenix, AZ

Duomone	Winitec Pharm Pacific, MO
DURATESTRIN	W. E. Hauck Alpharetta, GA
DUO-SPAN II	Premedics Labs Gardena, CA
Estratest	Solvay Pharmaceuticals Marietta, GA
Estratest HS	Solvay Pharmaceuticals Marietta, GA
PAN ESTRA TEST	Pan American Labs Covington, LA
Premarin 1.25mg with Methyltestosterone	Ayerst Labs, Inc. New York, NY
Premarin 0.625mg with Methyltestosterone	Ayerst Labs, Inc. New York, NY
TEST-ESTRO Cypionates	Rugby Labs Rockville Centre, NY
Testosterone Cyp 50 Estradiol Cyp 2	I.D.E. Interstate Amityville, NY
Testosterone Cypionate-Estradiol Cypionate Injection	Best Generics N. Miami Beach, FL
Testosterone Cypionate-Estradiol Cypionate Injection	Schein Pharm Port Washington, NY
Testosterone Cypionate-Estradiol Cypionate Injection	Steris Labs, Inc. Phoenix, AZ
Testosterone Cypionate-Estradiol Valerate Injection	Schein Pharm Port Washington, NY
Testosterone Enanthate-Estradiol Valerate Injection	Steris Labs, Inc. Phoenix, AZ

History.
Code 1981, § 16-13-27.1, enacted by Ga. L. 1993, p. 590, § 1.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1993, "St." was substituted for "St" in two places in the "Company" column entries corresponding to the "Trade Name" column entries: "Androgen LA" and "depANDROGYN."

16-13-28. Schedule IV.

(a) The controlled substances listed in this Code section are included in Schedule IV. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specified chemical designation, included as having a stimulant or depressant effect on the central nervous system or a hallucinogenic effect:

(1) Alfaxalone;

(1.5) Armodafinil;

(2) Barbital;

(2.05) Brexanolone;

(2.1) Bromazepam;

(2.15) Butorphanol;

(2.25) Carisoprodol;

(2.3) Cathine;

(3) Chloral betaine;

(4) Chloral hydrate;

(5) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clidinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);

(5.1) Clobazam;

(6) Reserved;

(7) Clotiazepam;

(8) Daridorexant;

(8.1) Deschloroetizolam;

(8.5) Dexfenfluramine;

(9) Reserved;

(10) Reserved;

(11) Diethylpropion;

(11.05) Difenoxin;

(11.5) Eluxadoline;

(12) Ethchlorvynol;

(13) Ethinamate;

(13.2) Fencamfamin;

(14) Reserved;

(14.2) Fenproporex;

(14.5) Fluclotizolam;

(15) Fospropofol;

(16) Indiplon;

(16.5) Lemborexant;

(17) Lorcaserin;

(18) Mazindol;

(19) Mebutamate;

(19.2) Mefenorex;

(20) Meprobamate;

(21) Methohexital;

(22) Methylphenobarbital;

(22.1) Modafinil;

(23) Reserved;

(24) Paraldehyde;

(25) Pemoline;

(26) Pentazocine;

(27) Petrichloral;

(28) Phenobarbital;

(29) Phentermine;

(29.1) Pipradrol;

(30) Propofol;

(30.05) Propoxyphene (including all salts and optical isomers);

(30.07) Pyrazolam;

(30.1) Quazepam;

(30.15) Remimazolam;

(30.17) Serdexmethylphenidate;

(30.2) Sibutramine;

(30.25) Solriamfetol, including its salts, isomers, and salts of isomers;

(30.3) SPA (-)-1-dimethylamino-1, 2-diphenylethane;

(30.5) Suvorexant;

(31) Reserved;

(31.5) Tramadol [2-((dimethylamino)methyl)-1-(3-methoxy-phenyl) cyclohexanol, its salts, optical and geometric isomers, and salts of these isomers];

(32) Zaleplon;

(33) Zolpidem;

(34) Zopiclone (including its salts, isomers, and salts of isomers);

(35) Zuranolone.

(b) The controlled substances in the benzodiazepine structural class include any of the following compounds, derivatives, their salts, isomers, or salts of isomers, halogen analogues, or homologues, unless specifically utilized as part of the manufacturing process by a commercial industry of a substance or material not intended for human ingestion or consumption, as a prescription administered under medical supervision, or for research at a recognized institution, whenever the existence of these salts, isomers, or salts of isomers, halogen analogues, or homologues is possible within the specific chemical designation or unless specifically excepted or listed in this or another schedule, structurally derived from 1,4-benzodiazepine by substitution at the 5-position with a phenyl ring system (which may itself be further substituted), whether or not the compound is further modified in any of the following ways:

(1) By substitution at the 2-position with a ketone or a thione;

(2) By substitution at the 3-position with a hydroxyl group or ester group, which itself may be further substituted;

(3) By a fused triazole ring at the 1,2- position, which itself may be further substituted;

(4) By a fused imidazole ring at the 1,2- position, which itself may be further substituted;

(5) By a fused oxazolidine ring at the 4,5- position, which itself may be further substituted;

(6) By a fused oxazine ring at the 4,5- position, which itself may be further substituted;

(7) By substitution at the 7-position with a nitro group;

(8) By substitution at the 7-position with a halogen group; or

(9) By substitution at the 1-position with an alkyl group, which itself may be further substituted.

(c) The State Board of Pharmacy may except by rule any compound, mixture, or preparation containing any depressant, stimulant, or hallucinogenic substance listed in subsection (a) or (b) of this Code section from the application of all or any part of this article if the compound, mixture, or preparation contains one or more active, medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant or stimulant effect on the central nervous system.

History.

Code 1933, § 79A-809, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1977, p. 1287, § 1; Ga. L. 1979, p. 859, § 8; Ga. L. 1980, p. 1746, § 7; Ga. L. 1981, p. 557, § 4; Ga. L. 1982, p. 3, § 16; Ga. L. 1982, p. 2403, §§ 14, 19; Ga. L. 1984, p. 22, § 16; Ga. L. 1985, p. 1219, § 4; Ga. L. 1986, p. 10, § 16; Ga. L. 1986, p. 1555, § 4; Ga. L. 1987, p. 261, § 5; Ga. L. 1989, p. 233, § 4; Ga. L. 1990, p. 8, § 16; Ga. L. 1993, p. 590, § 2; Ga. L. 1994, p. 169, § 5; Ga. L. 1996, p. 1023, § 1; Ga. L. 1997, p. 1311, § 3; Ga. L. 1998, p. 778, § 2; Ga. L. 1999, p. 643, § 1; Ga. L. 2000, p. 1317, § 3; Ga. L. 2003, p. 349, § 4; Ga. L. 2006, p. 219, § 2/HB 1054; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2008, p. 169, § 5/HB 1090; Ga. L. 2009, p. 126, §§ 3, 4/HB 368; Ga. L. 2010, p. 860, § 3/SB 353; Ga. L. 2011, p. 656, § 5/SB 93; Ga. L. 2014, p. 217, § 5/HB 835; Ga. L. 2015, p. 883, § 4/HB 211; Ga. L. 2016, p. 798, § 4/HB 783; Ga. L. 2017, p. 14, § 7/HB 231; Ga. L. 2019, p. 820, § 2/HB 483; Ga. L. 2020, p. 16, § 1/HB 759; Ga. L. 2021, p. 386, § 6/HB 367; Ga. L. 2022, p. 803, § 6/HB 963; Ga. L. 2023, p. 137, § 3/HB 332, effective May 1, 2023; Ga. L. 2024, p. 161, § 6/HB 1326, effective April 22, 2024.

Amendments.

The 2022 amendment, effective May 13, 2022, added paragraphs (a)(14.5) and (a)(30.17).

The 2023 amendment, effective May 1, 2023, substituted "Daridorexant" for "Reserved" in paragraph (a)(8) and substituted "Reserved" for "Fenfluramine" in paragraph (a)(14).

The 2024 amendment, effective April 22, 2024, repealed paragraph (a)(13.5); substituted a semicolon for a period at the end of paragraph (a)(34); and added paragraph (a)(35).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1998, the new paragraph added in 1998 was redesignated as paragraph (a)(30.2), and former paragraph (a)(30.2) was redesignated as paragraph (a)(30.3).

Editor's notes.

Ga. L. 2024, p. 1326, § 6/HB 1326, which amended this Code section, purported to repeal paragraph (a)(13.5) but actually repealed paragraph (a)(13.15).

Administrative rules and regulations.

Registration Requirements under Georgia Controlled Substances Act, Official Compilation of the Rules and Regulations of the State of Georgia, Rules

of Georgia State Board of Pharmacy, Rule 480-20-.01 et seq.

Requirements of a Prescription Drug Order, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Pharmacy, Rule 480-22-.01 et seq.

JUDICIAL DECISIONS

Constitutionality. — Former Code 1933, § 79A-809 (see now O.C.G.A. § 16-13-28) was not unconstitutional as violative of Ga. Const. 1976, Art. I, Sec. II, Para. IV, and Art. III, Sec. I, Para. I (see now Ga. Const. 1983, Art. I, Sec. II, Para. III, and Art. III, Sec. I, Para. I), which sections deal with separation of powers and delegations of legislative power respectively. Harmon v. State, 235 Ga. 329, 219 S.E.2d 441, 1975 Ga. LEXIS 869 (1975).

Identification of drug. — Mere proof of a trade name of a controlled substance is insufficient evidence to sustain a conviction under the Controlled Substances Act, O.C.G.A. § 16-13-20 et seq.; however, circumstantial evidence was sufficient to authorize the jury's determination that Darvocet N-100 tablets defendant fraudulently obtained were the controlled substance dextropropoxyphene as alleged in the indictment. Hulsey v. State, 220 Ga. App. 64, 467 S.E.2d 610, 1996 Ga. App. LEXIS 90 (1996).

Defendant was improperly convicted of violating the Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98, 2011 Ga. App. LEXIS 605 (2011).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Drugs and Controlled Substances, § 10.

C.J.S.

28 C.J.S., Drugs and Narcotics, §§ 69, 70, 211, 212, 219.

U.L.A.

Uniform Controlled Substances Act (U.L.A.) § 210.

16-13-29. Schedule V.

The controlled substances listed in this Code section are included in Schedule V:

(1) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or salts thereof, which also contains one or more nonnarcotic, active, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(A) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(B) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(C) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(D) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(E) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(1.25) Cenobamate, including its salts;

(1.5) Ganaxolone;

(2) Lacosamide;

(3) Pregabalin;

(4) Pyrovalerone;

(5) Pseudoephedrine as an exempt over-the-counter Schedule V controlled substance distributed in the same manner as set forth in Code Section 16-13-29.2; provided, however, that such exemption shall take effect immediately and shall not require rule making by the State Board of Pharmacy; provided, further, that wholesale drug distributors located within this state and licensed by the State Board of Pharmacy and which are registered and regulated by the DEA shall not be subject to any board requirements for controlled substances for the storage, reporting, record keeping, or physical security of drug products containing pseudoephedrine which are more stringent than those included in DEA regulations;

(6) Ezogabine;

(7) Brivaracetam; or

(8) Lasmiditan, including its salts, isomers, and salts of isomers.

History.

Code 1933, § 79A-810, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1978, p. 1668, § 9; Ga. L. 1979, p. 859, § 9; Ga. L. 1980, p. 1746, § 8; Ga. L. 1981, p. 557, § 5; Ga. L. 1984, p. 1019, § 2; Ga. L. 1986, p. 1555, § 5; Ga. L. 1989, p. 233, § 5; Ga. L. 1993, p. 590, § 3; Ga. L. 2003, p. 349, § 5; Ga. L. 2007, p. 605, § 2/HB 286; Ga. L. 2010, p. 860, § 4/SB 353; Ga. L. 2011, p. 656, § 6/SB 93; Ga. L. 2012, p. 40, § 4/SB 370; Ga. L. 2015, p. 5, § 16/HB 90; Ga. L. 2017, p. 14, § 8/HB 231; Ga. L. 2019, p. 820, § 3/HB 483; Ga. L. 2020, p. 493, § 16/SB 429; Ga. L. 2021, p. 184, § 27/SB 195; Ga. L. 2021, p. 386, § 7/HB 367; Ga. L. 2023, p. 137, § 4/HB 332, effective May 1, 2023.

Amendments.

The 2023 amendment, effective May 1, 2023, substituted "Ganaxolone" for "Reserved" in paragraph (1.5).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2003, a semicolon was substituted for a period at the end of paragraph (2).

Pursuant to Code Section 28-9-5, in 2017, "or" was added at the end of paragraph (6).

Pursuant to Code Section 28-9-5, in 2021, "or" was deleted from the end of

paragraph (6) and "or" was added at the end of paragraph (7).

Editor's notes.

Ga. L. 2012, p. 40, § 1/SB 370, not codified by the General Assembly, which provides for the annual update of the identity of controlled substances and dangerous drugs, is dedicated to the memory of Chase Corbitt Burnett and shall be known and may be cited as "Chase's Law."

Ga. L. 2021, p. 184, § 28/SB 195, not codified by the General Assembly, provides that: "Nothing in this Act shall be deemed to change, amend, or alter any criteria for applications for a Class 1 or Class 2 production license submitted to the Georgia Access to Medical Cannabis Commission on or prior to January 27, 2021."

Administrative rules and regulations.

Registration Requirements under Georgia Controlled Substances Act, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Pharmacy, Rule 480-20-.01 et seq.

Requirements of a Prescription Drug Order, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Pharmacy, Rule 480-22-.01 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Drugs and Controlled Substances, § 10.

C.J.S.

28 C.J.S., Drugs and Narcotics, § 219. 28A C.J.S., Drugs and Narcotics, § 286 et seq.

U.L.A.

Uniform Controlled Substances Act (U.L.A.) § 212.

16-13-29.1. Nonnarcotic substances excluded from schedules of controlled substances.

The following nonnarcotic substances which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301), be lawfully sold over the counter without a prescription, are excluded from all schedules of controlled substances under this article:

Trade name or designation (Dosage form)	Composition/Potency	Manufacturer or distributor
Amodrine (Tablet)	Phenobarbital/8.00 mg; Aminophylline/100.00 mg; Racephedrine/25.00 mg	Searle, G.D. & Co.
Amodrine E C (Enteric-coated tablet)	Phenobarbital/8.00 mg; Aminophylline/100.00 mg; Racephedrine/25.00 mg	Searle, G.D. & Co.
Anodyne (Ointment)	Chloral hydrate/0.69 g/30 g	Zemmer Co.

Trade name or designation (Dosage form)	Composition/Potency	Manufacturer or distributor
Anti-Asthma (Tablet)	Phenobarbital/8.00 mg; Theophylline/130.00 mg; Ephedrine hydrochloride/ 25.00 mg	Ormont Drug & Chem.
Anti-asthmatic (Tablet)	Phenobarbital/8.10 mg; Ephedrine hydrochloride/ 24.00 mg; Theophylline/ 130.00 mg	Zenith Labs., Inc.
Asma-Ese (Tablet)	Phenobarbital/8.10 mg; Theophylline/129.60 mg; Ephedrine hydrochloride/ 24.30 mg	Parmed Pharm.
Asma-Lief (Tablet)	Phenobarbital/8.10 mg; Ephedrine hydrochloride/ 24.30 mg; Theophylline/ 129.60 mg	Columbia Medical Co.
Asma-Lief Pediatric (Suspension)	Phenobarbital/4.00 mg/05 ml; Ephedrine hydrochloride/ 12.00 mg/05 ml; Theophylline/65.00 mg/05 ml	Columbia Medical Co.
Asma Tuss (Syrup)	Phenobarbital/4.00 mg/05 ml; Glyceryl guaiacolate/50.00 mg/05 ml; Chlorphentramine maleate/1.00 mg/05 ml; Ephedrine sulfate/12.00 mg/05 ml; Theophylline/ 15.00 mg/05 ml	Halsey Drug Co.
Azma-Aid (Tablet)	Phenobarbital/8.00 mg; Theophylline/129.60 mg Ephedrine hydrochloride/ 24.30 mg	Rondex Labs.
Azmadrine (Tablet)	Phenobarbital/8.00 mg; Ephedrine hydrochloride/ 24.00 mg; Theophylline/ 130.00 mg	U.S. Ethicals.

Trade name or designation (Dosage form)	Composition/Potency	Manufacturer or distributor
Benzedrex Inhaler (Inhaler)	Propylhexedrine	Smith Kline Consumer Products.
Bet-U-Lol (Liquid)	Chloral hydrate/0.54 g/30 ml; Methyl salicylate/ 30.10 g/30 ml; Menthol/ 0.69 g/30 ml	Huxley Pharm.
Bronkolixir (Elixir)	Phenobarbital/4.00 mg/05 ml; Theophylline/15.00 mg/05 ml; Ephedrine sulfate/12.00 mg/05 ml; Glyceryl guaiacolate/50.00 mg/05 ml	Breon Labs.
Bronkotabs (Tablet)	Phenobarbital/8.00 mg; Theophylline/100.00 mg; Glyceryl guaiacolate/ 100.00 mg; Ephedrine sulfate/24.00 mg	Breon Labs.
Bronkotabs-Hafs (Tablet)	Phenobarbital/4.00 mg; Glyceryl guaiacolate/ 50.00 mg; Theophylline/ 50.00 mg; Ephedrine sulfate/12.00 mg	Breon Labs.
Ceepa (Tablet)	Phenobarbital/8.00 mg; Theophylline/130.00 mg; Theophylline/130.00 mg; Ephedrine hydrochloride/ 24.00 mg	Geneva Drugs.
Chlorasal (Ointment)	Chloral hydrate/648.00 mg/30 g; Menthol/ 972.00 mg/30 g; Methyl salicylate/ 4.277 g/30 g	Wisconsin Pharmacal.

Trade name or designation (Dosage form)	Composition/Potency	Manufacturer or distributor
Choate's Leg Freeze (Liquid)	Chloral hydrate/7.40 g/30 ml; Ether/10.3 ml/30 ml; Menthol/6.3 g/30 ml; Camphor/8.7 g/30 ml	Bickmore, Inc.
Chloro-salicylate (Ointment)	Chloral hydrate/648.00 mg/30 g; Methyl salicylate/6.66 g/30 g; Menthol/1.13 g/30 g	Kremers-Urban Co.
Menthalgesic (Ointment)	Chloral hydrate/0.45 g/30 g; Menthol/0.45 g/30 g; Methyl salicylate/3.60 g/30 g; Camphor/0.45 g/30 g	Blue Line Chem Co.
Neoasma (Tablet)	Phenobarbital/10.00 mg; Theophylline/130.00 mg; Ephedrine hydrochloride/ 24.00 mg	Tarmac Products.
P.E.C.T. (Tablet)	Phenobarbital/8.10 mg; Chlorpheniramine maleate/ 2.00 mg; Ephedrine sulfate/24.30 mg; Theophylline/129.60 mg	Halsom Drug Co.
Primatene (Tablet)	Phenobarbital/8.00 mg; Ephedrine hydrochloride/ 24.00 mg; Theophylline/ 130.00 mg	Whitehall Labs.
Rynal (Spray)	d1-methamphetamine hydrochloride/0.11 g/50 ml; Antipyrine/ 0.14 g/50 ml; Pyriamine maleate/0.005 g/50 ml; Hyamine 2389/0.01 g/50 ml	Blaine Co.
S-K Asthma (Tablet)	Phenobarbital/8.00 mg; Ephedrine hydrochloride/ 24.30 mg; Theophylline/ 129.60 mg	S-K Research Labs.

Trade name or designation (Dosage form)	Composition/Potency	Manufacturer or distributor
Tedral (Tablet)	Phenobarbital/8.00 mg; Theophylline/130.00 mg; Ephedrine hydrochloride/ 24.00 mg	Warner-Chilcott
Tedral Anti H (Tablet)	Phenobarbital/8.00 mg; Chlorpheniramine maleate/ 2.00 mg; Theophylline/ 130.00 mg; Ephedrine hydrochloride/24.00 mg	Warner-Chilcott.
Tedral Antiasthmatic (Tablet)	Phenobarbital/8.00 mg; Theophylline/130.00 mg; Ephedrine hydrochloride/ 24.00 mg	Parke-Davis & Co.
Tedral Elixir (Elixir)	Phenobarbital/2.00 mg/05 ml; Ephedrine hydrochloride/6.00 mg/05 ml; Theophylline/32.50 mg/ 05 ml	Warner-Chilcott.
Tedral Pediatric (Suspension)	Phenobarbital/4.00 mg/05 ml; Ephedrine hydrochloride/12.00 mg/05 ml; Theophylline/65.00 mg/05 ml	Warner-Chilcott.
Teephen (Tablet)	Phenobarbital/8.00 mg; Ephedrine hydrochloride/ 24.00 mg; Theophylline/ 130.00 mg	Robinson Labs.
Teephen Pediatric (Suspension)	Phenobarbital/4.00 mg/05 ml; Ephedrine hydrochloride/12.00 mg/05 ml; Theophylline anhydrous/ Theophylline anhydrous/	Robinson Labs.
TEP (Tablet)	Phenobarbital/8.00 mg; Theophylline/130.00 mg; Ephedrine hydrochloride/ 24.00 mg	Towne, Paulsen & Co., Inc.

Trade name or designation (Dosage form)	Composition/Potency	Manufacturer or distributor
T.E.P. Compound (Tablet)	Phenobarbital/8.10 mg; Theophylline/129.60 mg; Ephedrine hydrochloride/	Stanlabs, Inc.
Thedrizem (Tablet)	Phenobarbital/8.00 mg; Ephedrine hydrochloride/ 24.00 mg; Theophylline/ 130.00 mg	Zemmer Co.
Theobal (Tablet)	Phenobarbital/8.00 mg; Ephedrine hydrochloride/ 24.00 mg; Theophylline/ 130.00 mg	Halsey Drug Co.
Val-Tep (Tablet)	Phenobarbital/8.00 mg; Ephedrine hydrochloride/ 24.00 mg; Theophylline/ 130.00 mg	Vale Chemical Co.
Verequad (Suspension)	Phenobarbital/4.00 mg/05 ml; Ephedrine hydrochloride/ 12.00 mg/05 ml; Theophylline calcium salicylate/65.00 mg/05 ml; Glyceryl guaiacolate/ 50.00 mg/05 ml	Knoll Pharm.
Verequad (Tablet)	Phenobarbital/8.00 mg; Ephedrine hydrochloride/ 24.00 mg; Glyceryl guaiacolate/100.00 mg; Theophylline calcium salicylate/130.00 mg	Knoll Pharm.
Vicks Inhaler (Inhaler)	1-Desoxyephedrine/113.00 mg	Vick Chemical Pharm.

History.
Code 1981, § 16-13-29.1, enacted by Ga. L. 1983, p. 349, § 1; Ga. L. 1989, p. 233, § 6; Ga. L. 1990, p. 8, § 16.

16-13-29.2. Authority for exemption of over-the-counter Schedule V controlled substances.

The State Board of Pharmacy shall have the authority to exempt and control the sale of Schedule V controlled substances by rule which shall allow the sale of such substances without the need for issuance of a prescription from a medical practitioner and shall require such substances to be sold only in a pharmacy when such substances are sold without a prescription. Such substances shall be known as Exempt Over-the-Counter (OTC) Schedule V Controlled Substances.

History.
Code 1981, § 16-13-29.2, enacted by Ga. L. 2003, p. 349, § 6.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2011, "Georgia" was deleted preceding "State Board of Pharmacy" in the first sentence.

16-13-30. Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana; penalties.

(a) Except as authorized by this article, it is unlawful for any person to purchase, possess, or have under his or her control any controlled substance.

(b) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute any controlled substance.

(c) Except as otherwise provided, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule I or a narcotic drug in Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(1) If the aggregate weight, including any mixture, is less than one gram of a solid substance, less than one milliliter of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of less than one gram, by imprisonment for not less than one nor more than three years;

(2) If the aggregate weight, including any mixture, is at least one gram but less than four grams of a solid substance, at least one milliliter but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least one gram but less than four grams, by imprisonment for not less than one nor more than eight years; and

(3)(A) Except as provided in subparagraph (B) of this paragraph, if the aggregate weight, including any mixture, is at least four grams but less than 28 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if

the substance is placed onto a secondary medium with a combined weight of at least four grams but less than 28 grams, by imprisonment for not less than one nor more than 15 years.

(B) This paragraph shall not apply to morphine, heroin, opium, or any substance identified in subparagraph (RR) or (SS) of paragraph (1) or paragraph (13), (14), or (15) of Code Section 16-13-25, or subparagraph (A), (C.5), (F), (U.1), (V), or (V.2) of paragraph (2) of Code Section 16-13-26 or any salt, isomer, or salt of an isomer; rather, the provisions of Code Section 16-13-31 shall control these substances.

(d) Except as otherwise provided, any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule I or Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, he or she shall be imprisoned for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense; provided, however, that the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

(e) Any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule II, other than a narcotic drug, shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(1) If the aggregate weight, including any mixture, is less than two grams of a solid substance, less than two milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of less than two grams, by imprisonment for not less than one nor more than three years;

(2) If the aggregate weight, including any mixture, is at least two grams but less than four grams of a solid substance, at least two milliliters but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least two grams but less than four grams, by imprisonment for not less than one nor more than eight years; and

(3) If the aggregate weight, including any mixture, is at least four grams but less than 28 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least four grams but less than 28 grams, by imprisonment for not less than one nor more than 15 years.

(f) Upon a third or subsequent conviction for a violation of subsection (a) of this Code section with respect to a controlled substance in

Schedule I or II or subsection (i) of this Code section, such person shall be punished by imprisonment for a term not to exceed twice the length of the sentence applicable to the particular crime.

(g) Except as provided in subsection (l) of this Code section, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than three years. Upon conviction of a third or subsequent offense, he or she shall be imprisoned for not less than one year nor more than five years.

(h) Any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(i)(1) Except as authorized by this article, it is unlawful for any person to possess or have under his or her control a counterfeit substance. Any person who violates this paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than two years.

(2) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute a counterfeit substance. Any person who violates this paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(j)(1) It shall be unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute marijuana.

(2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 or in Code Section 16-13-2, any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or dispensing, on behalf of the solicitor, any controlled substance, counterfeit substance, or marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by law. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years or by a fine not to exceed $20,000.00, or both.

(l)(1) Any person who violates subsection (a) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(A) If the aggregate weight, including any mixture, is less than two grams of a solid substance of flunitrazepam, less than two milliliters of liquid flunitrazepam, or if flunitrazepam is placed onto a secondary medium with a combined weight of less than two grams, by imprisonment for not less than one nor more than three years;

(B) If the aggregate weight, including any mixture, is at least two grams but less than four grams of a solid substance of flunitrazepam, at least two milliliters but less than four milliliters of liquid flunitrazepam, or if the flunitrazepam is placed onto a secondary medium with a combined weight of at least two grams but less than four grams, by imprisonment for not less than one nor more than eight years; and

(C) If the aggregate weight, including any mixture, is at least four grams of a solid substance of flunitrazepam, at least four milliliters of liquid flunitrazepam, or if the flunitrazepam is placed onto a secondary medium with a combined weight of at least four grams, by imprisonment for not less than one nor more than 15 years.

(2) Any person who violates subsection (b) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, such person shall be punished by imprisonment for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense, but that subsection and the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

(m) As used in this Code section, the term "solid substance" means a substance that is not in a liquid or gas form. Such term shall include tablets, pills, capsules, caplets, powder, crystal, or any variant of such items.

History.

Code 1933, § 79A-811, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1975, p. 1112, § 1; Ga. L. 1979, p. 1258, § 1; Ga. L. 1980, p. 432, § 1; Ga. L. 1985, p. 149, § 16; Ga. L. 1990, p. 992, § 1; Ga. L. 1992, p. 2041, § 1; Ga. L. 1996, p. 1023, §§ 1.1, 2; Ga. L. 1997, p. 1311, § 4; Ga. L. 2012, p. 899, §§ 3-7A, 3-7B, 3-7C/HB 1176; Ga. L. 2013, p. 141, § 16/HB 79; Ga. L. 2014, p. 780, §§ 2-1, 3-1/SB 364; Ga. L. 2017, p. 417, § 6-1/SB 104.

Cross references.

Jurisdiction in marijuana possession cases; retention of fines and bond forfeitures; transfer of cases, § 36-32-6.

Use of marijuana for treatment of cancer and glaucoma, § 43-34-120 et seq.

Reward for furnishing information leading to arrest and conviction of person charged with selling controlled substance in violation of this Code section, § 45-12-37.

Editor's notes.

Ga. L. 2012, p. 899, § 9-1(b)(2)/HB 1176, not codified by the General Assembly, provides: "Section 3-7C of this Act shall become effective on July 1, 2014, at which time, Section 3-7B of this Act shall be superceded and repealed in its entirety, and Section 3-7C of this Act shall apply to offenses which occur on or after July 1, 2014. Any offense occurring before July 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Law reviews.

For note, "Substantive Due Process and Felony Treatment of Pot Smokers: The Current Conflict," see 2 Ga. L. Rev. 247 (1968).

For article surveying judicial developments in Georgia Criminal Law, see 31 Mercer L. Rev. 59 (1979).

For note on airport searches of drug couriers, see 33 Mercer L. Rev. 433 (1981).

For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 212 (1992).

For article, "Criminal Law," see 53 Mercer L. Rev. 209 (2001).

For note, "Comparative Analysis of Democracy and Sentencing in the United States as a Model for Reform in Iraq," see 33 Georgia J. Int'l & Comp. L. 303 (2004).

For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 290 (2012).

For article, "Taxing Marijuana: Earmarking Tax Revenue from Legalized Marijuana," see 33 Georgia St. U.L. Rev. 659 (2017).

For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 61 (2017).

For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017).

For note, "Playing Hot Pot-ato: Does Biden's Presidency Signal the End of Federal Marijuana Prohibition?," see 73 Mercer L. Rev. 1383 (2022).

For article, "Crimes of Suspicion," see 72 Emory L.J. 1429 (2023).

JUDICIAL DECISIONS

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General Consideration

Editor's notes. — Many of the following annotations were taken from cases decided prior to the 1996 amendment of this Code section.

Constitutionality of paragraph (j)(1). — O.C.G.A. § 16-13-30(j)(1) is not vague and uncertain, and does not violate due process. Walker v. State, 261 Ga. 739, 410 S.E.2d 422, 1991 Ga. LEXIS 1040 (1991).

Constitutionality of paragraph (j)(2). — Difference between punishments for purchase of marijuana under O.C.G.A. § 16-13-30(j)(2) and possession of the marijuana amount under O.C.G.A. § 16-13-2(b) does not constitute a denial of equal protection because imposition of a felony sentence under the former applies equally to all those accused of purchasing any amount of the controlled substance and, thus, there is no unconstitutional disparate treatment of similarly situated persons. State v. Jackson, 271 Ga. 5, 515 S.E.2d 386, 1999 Ga. LEXIS 322 (1999).

Right of privacy does not embrace right to possess dangerous drugs. Blincoe v. State, 231 Ga. 886, 204 S.E.2d 597, 1974 Ga. LEXIS 1269 (1974).

General Assembly vested with discretion to determine what harmful substances shall be illegal. — It is a matter of discretion vested in General Assembly, in light of scientific knowledge available to it, to determine what harmful substances shall be declared to be illegal. Blincoe v. State, 231 Ga. 886, 204 S.E.2d 597, 1974 Ga. LEXIS 1269 (1974).

Construction with other Code sections. — When one count of the accusation filed by the district attorney recited that it was charged under O.C.G.A. § 16-13-30, which is a felony which may not be brought by accusation pursuant to O.C.G.A. § 17-7-70 without the assent of the accused, not on record in the case, nor was it one of those felonies listed in O.C.G.A. § 17-7-70.1 which, under circumstances not present in the case, may be pursued by accusation, the count was considered by the court to be brought under O.C.G.A. § 16-13-2(b), misdemeanor possession of less than an ounce of marijuana. Chadwick v. State, 236 Ga. App. 199, 511 S.E.2d 286, 1999 Ga. App. LEXIS 119 (1999).

Although a court may not sentence second time offenders under both O.C.G.A. §§ 16-13-30(d) and 17-10-7(a), the court may sentence second time offenders under both O.C.G.A. § 16-13-30(d) and any remaining provisions of O.C.G.A. § 17-10-7. Brown v. State, 252 Ga. App. 714, 556 S.E.2d 881, 2001 Ga. App. LEXIS 1359 (2001), cert. denied, No. S02C0476, 2002 Ga. LEXIS 307 (Ga. Mar. 29, 2002).

Construed with O.C.G.A. §§ 16-13-26(1)(D) and 16-13-31. — When the total weight of the substances seized from defendant was only 24.4 grams of cocaine, the defendant argued that the only Georgia statute that proscribes possession of cocaine is O.C.G.A. § 16-13-31, which prohibits the possession of 28 grams or more of cocaine. However, although O.C.G.A. § 16-13-31 deals with being in knowing, actual possession of 28 grams or more of cocaine or any mixture containing cocaine, O.C.G.A. § 16-13-26(1)(D) (prior to 1988 amendment inserting "cocaine," at beginning of paragraph) lists "Coca leaves, any salt, compound, derivative, stereoisomers of cocaine, or preparation of coca leaves, and any salt, compound, derivative, stereoisomers of cocaine, or preparation thereof which is chemically equivalent or identical with any of these substances . . . ," which includes cocaine. Under O.C.G.A. § 16-13-30, the unlawful possession of any controlled substance, regardless of amount, constitutes an offense. Dixon v. State, 180 Ga. App. 222, 348 S.E.2d 742, 1986 Ga. App. LEXIS 2685 (1986) (decided prior to 1988 amendment of § 16-13-26).

Construction with O.C.G.A. § 17-10-7. — Because the felony convictions not challenged by the defendant would have sufficed to render the defendant a recidivist and because both of the defendant's attacks on prior convictions for drug possession with intent to distribute lacked merit, the trial court did not err when the court considered those prior convictions and sentenced the defendant to serve 30 years without parole under O.C.G.A. §§ 16-13-30(b) and 17-10-7(c). Merritt v.

State, 329 Ga. App. 871, 766 S.E.2d 217, 2014 Ga. App. LEXIS 789 (2014).

Construction of statute with federal laws. — Statute lists simple possession of marijuana and possession with intent to distribute in disjunctive, which indicates that they are elements in the alternative, and, thus, O.C.G.A. § 16-13-30(j) is divisible such that a modified-categorical approach to determine whether the statute qualified as a crime of violence applied; the defendant's two prior Georgia convictions were for possession with intent to distribute marijuana, which qualified as a predicate offense for both the Armed Career Criminal Act and Sentencing Guidelines. United States v. Bates, 960 F.3d 1278, 2020 U.S. App. LEXIS 17249 (11th Cir. 2020).

Construction with federal provisions. — *Unpublished decision:* When the defendant appealed 160-month sentence for violating 21 U.S.C. § 841(a)(1) and (b)(1)(C), the defendant's 2003 Georgia felony conviction for possession with intent to distribute marijuana, in violation of O.C.G.A. § 16-13-30(j)(1), qualified as a controlled substance offense for purposes of applying the career offender enhancement under U.S. Sentencing Guidelines Manual § 4B1.1(a). United States v. Stevens, 654 Fed. Appx. 984, 2016 U.S. App. LEXIS 12415 (11th Cir. 2016).

Identification of defendant by confidential informant and detective. — Trial court did not abuse the court's discretion, nor commit plain error, allowing the confidential informant (CI) and the detective to identify the defendant in videos and photographs because in addition to interacting with the defendant over the course of several drug transactions, the CI and the detective testified to have known the defendant for a long time, thus, there was some basis for concluding they were in a better position to correctly identify the defendant than the jurors. Goforth v. State, 360 Ga. App. 832, 861 S.E.2d 800, 2021 Ga. App. LEXIS 400 (2021).

Quantity purchased is not element of crime. — Sufficient evidence existed to support a defendant's conviction of purchasing marijuana under O.C.G.A. § 16-13-30(j)(1) as the quantity purchased was not an element of the crime and the purchase could be established by proof of a promise to pay such as the defendant had made; however, the defendant's conviction was reversed for failure to give a lesser included offense instruction. Johnson v. State, 296 Ga. App. 697, 675 S.E.2d 588, 2009 Ga. App. LEXIS 317 (2009), cert. denied, No. S09C1191, 2009 Ga. LEXIS 420 (Ga. June 29, 2009).

Substance not listed as controlled substance. — As to the possession of a controlled substance, namely Alpha-PVP (alpha-pyrrolidinopentiophenone), the state failed to present sufficient evidence to support the defendant's conviction for possession of a controlled substance because Alpha-PVP was not listed in any of the controlled substance schedules, nor was there testimony or other evidence that it was chemically related to any listed controlled substance. Roundtree v. State, 358 Ga. App. 140, 854 S.E.2d 340, 2021 Ga. App. LEXIS 21 (2021).

Jurisdiction in any county where crime could have been committed. — Under O.C.G.A. § 16-13-30(j)(1), it was unlawful for any person to possess marijuana and since the marijuana was found in defendant's pocket when the defendant was arrested, and defendant was observed traveling in Newton County before defendant's arrest in Rockdale County, the evidence was sufficient to conclude beyond a reasonable doubt that defendant was guilty of possession of less than one ounce of marijuana since O.C.G.A. § 17-2-2(e) provided that if a crime was committed upon any vehicle traveling within the state and it cannot readily be determined in which county the crime was committed, the crime shall be considered as having been committed in any county in which the crime could have been committed through which the vehicle has traveled. Johnson v. State, 299 Ga. App. 706, 683 S.E.2d 659, 2009 Ga. App. LEXIS 951 (2009).

Illegal possession and sale of a controlled substance are separate and distinct crimes as a matter of law. Harmon v. State, 235 Ga. 329, 219 S.E.2d 441, 1975 Ga. LEXIS 869 (1975).

General Consideration (Cont'd)

Illegal possession and illegal sale of a proscribed drug are separate crimes as a matter of law. However, if the evidence required to convict an accused of the illegal sale is the only evidence showing illegal possession, then illegal possession is included in the crime of illegal sale as a matter of fact. Sullivan v. State, 178 Ga. App. 769, 344 S.E.2d 737, 1986 Ga. App. LEXIS 1758 (1986).

State failed to prove drug regulated by law. — Defendant was improperly convicted of violating the Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98, 2011 Ga. App. LEXIS 605 (2011).

Sale of noncontrolled substance not lesser-included offense. — Offense of unlawfully selling a noncontrolled substance while representing the substance to be a controlled substance (O.C.G.A. § 16-13-30.1) is not included in the offense of conspiracy to sell or distribute cocaine (O.C.G.A. § 16-13-30). Smith v. State, 202 Ga. App. 664, 415 S.E.2d 481, 1992 Ga. App. LEXIS 149 (1992).

No evidence of lesser included offense of possession of cocaine. — With regard to a defendant's conviction for trafficking in cocaine, the trial court did not err by failing to charge the jury on the lesser included offense of possession of cocaine with intent to distribute as there was no dispute that the cocaine exceeded the amount necessary to sustain a trafficking conviction, therefore, there was no evidence of the lesser included offense. However, even if the trial court's failure to give the requested instruction was error, it is highly probable that the error did not contribute to the verdict in light of the overwhelming evidence that the defendant committed the greater offense. Celestin v. State, 296 Ga. App. 727, 675 S.E.2d 480, 2009 Ga. App. LEXIS 164 (2009), cert. denied, No. S09C1200, 2009 Ga. LEXIS 340 (Ga. June 1, 2009).

Sell and possession of cocaine did not merge. — Offenses of selling cocaine and possessing cocaine in violation of O.C.G.A. § 16-13-30(a) and (b) did not merge because two discrete portions of cocaine were used to prove the two discrete offenses; the offense of selling cocaine was proven by evidence of a crack cocaine sale to a confidential informant, and the offense of possessing cocaine was proven by the evidence that the defendant possessed the additional crack cocaine later found in the car the defendant occupied. Robertson v. State, 306 Ga. App. 721, 703 S.E.2d 343, 2010 Ga. App. LEXIS 1038 (2010).

Possession included in trafficking offense. — Offenses of possession of cocaine and possession of cocaine with intent to distribute were lesser included offenses, as a matter of fact, of the trafficking offense since proof of the two possession offenses was established by "the same or less than all the facts" required to establish the distribution offense; thus, it was error to convict defendant of all three offenses. Hancock v. State, 210 Ga. App. 528, 437 S.E.2d 610, 1993 Ga. App. LEXIS 1239 (1993).

Even if the first count of an indictment did indeed charge both possession of marijuana with intent to distribute and simple possession, those offenses could be joined in one count because they were offenses of the same nature that differed only in degree and that related to only one transaction; thus, the count was not subject to demurrer as duplicitous. Davis v. State, 285 Ga. App. 460, 646 S.E.2d 342, 2007 Ga. App. LEXIS 547 (2007).

Distinguishing trafficking from possession. — Amount of controlled substance is chosen as the basis for distinguishing the crime of trafficking

from the somewhat less serious crimes described in O.C.G.A. § 16-13-30. Twenty-eight grams was chosen as the dividing line. Bassett v. Lemacks, 258 Ga. 367, 370 S.E.2d 146, 1988 Ga. LEXIS 339 (1988).

Conviction for possessing cocaine was not inconsistent with acquittal of trafficking in cocaine, when the cocaine upon which the possession offense was based had been seized at a different time and place from the cocaine upon which the trafficking offense was based. Rogers v. State, 182 Ga. App. 599, 356 S.E.2d 546, 1987 Ga. App. LEXIS 2637 (1987).

Evidence did not demand acquittal of methamphetamine charges. — Defendant was not entitled to an acquittal on either a charge of conspiracy to manufacture methamphetamine or possession of methamphetamine, as the evidence showed that methamphetamine was being manufactured inside the residence in which defendant was found, and conviction of possession of methamphetamine did not rest solely upon evidence that the methamphetamine was found on the premises also occupied by others, nor did such conviction rest solely upon defendant's spatial proximity to the contraband. McWhorter v. State, 275 Ga. App. 624, 621 S.E.2d 571, 2005 Ga. App. LEXIS 1056 (2005).

Evidence sufficient for selling products positive for indazole amide. — State's evidence, including testimony and reports produced by the forensic chemist who tested the confiscated products as well as the exhibits showing which products were received and the results of the testing, was sufficient to prove that the products the defendants were charged with selling tested positive for indazole amide. Awtrey v. State, 346 Ga. App. 892, 815 S.E.2d 655, 2018 Ga. App. LEXIS 433 (2018).

Mere possession will not serve as basis for conviction for possessing contraband for purposes of sale. Wright v. State, 154 Ga. App. 400, 268 S.E.2d 378, 1980 Ga. App. LEXIS 2194, cert. denied, 449 U.S. 900, 101 S. Ct. 270, 66 L. Ed. 2d 130, 1980 U.S. LEXIS 3494 (1980).

When illegal possession is included in illegal sale as matter of fact. — If evidence required to convict of illegal sale of controlled substance is the only evidence showing possession, illegal possession is included in crime of illegal sale as a matter of fact. Harmon v. State, 235 Ga. 329, 219 S.E.2d 441, 1975 Ga. LEXIS 869 (1975).

Manufacturing methamphetamine. — Evidence was sufficient for a jury to find defendant guilty of manufacturing methamphetamine, as defendant leased a house in which a widespread methamphetamine manufacturing operation took place, which created a strong chemical smell immediately apparent upon entering the house, and defendant tested positive for methamphetamine, circumstantially linking defendant to the manufacturing process and undermining defendant's claim that defendant was unaware of the activity. Kirby v. State, 275 Ga. App. 216, 620 S.E.2d 459, 2005 Ga. App. LEXIS 933 (2005).

Defendant's conviction of manufacturing methamphetamine under O.C.G.A. § 16-13-30(b) was supported by sufficient evidence as the presence of chemicals and supplies as well as methamphetamine in the various containers of liquid were all indicative of a methamphetamine manufacturing operation, and testimony indicated the presence of a level of contamination in the defendant's apartment that showed that the laboratory had probably been in operation for several weeks; furthermore, the scope of the operation was such that it could not have been hidden from the defendant by defendant's co-tenant. Gentry v. State, 281 Ga. App. 315, 635 S.E.2d 782, 2006 Ga. App. LEXIS 943 (2006), cert. denied, No. S07C0117, 2007 Ga. LEXIS 78 (Ga. Jan. 22, 2007).

Because the evidence surrounding the stop of the defendant and the evidence seized thereon, including money, various guns, and almost 43 grams of methamphetamine, was sufficient to support a conviction for possession of methamphetamine with intent to distribute, the conviction was upheld on appeal; moreover, based on trial counsel's testimony and evidence that both counsel and the defendant extensively discussed the pros and cons of having a jury hear the case, suffi-

General Consideration (Cont'd)

cient extrinsic evidence showed that the defendant knowingly, voluntarily, and intelligently waived any right to a trial by jury. Whitaker v. State, 286 Ga. App. 143, 648 S.E.2d 396, 2007 Ga. App. LEXIS 558 (2007).

Evidence that the defendant owned the house where the ingredients and equipment were found, the defendant talked to the codefendant about whether the codefendant should abscond and bought the codefendant a truck, and the defendant made a list of pharmacy directions for the codefendant so that the codefendant could avoid legal restrictions on the purchase of ingredients was sufficient to support a conviction for attempt to manufacture methamphetamine. Taylor v. State, 320 Ga. App. 596, 740 S.E.2d 327, 2013 Ga. App. LEXIS 244 (2013).

Evidence was sufficient to convict the defendant of manufacturing methamphetamine and trafficking methamphetamine because, given the large array of products involved in the production of methamphetamine, their proximity to each other in the residence, and the fact that methamphetamine was found throughout the residence, the jury heard sufficient evidence to allow the jury to conclude that it would have been virtually impossible for the defendant to have been unaware that methamphetamine was being produced there; and the state presented evidence that police had observed the defendant sell methamphetamine to a confidential informant from the same residence where the methamphetamine was being produced. Cummings v. State, 345 Ga. App. 702, 814 S.E.2d 806, 2018 Ga. App. LEXIS 270 (2018), cert. denied, No. S18C1280, 2018 Ga. LEXIS 728 (Ga. Nov. 15, 2018).

Rule of lenity did not apply to imitation controlled substances. — Trial court did not err by refusing to apply the rule of lenity with regard to a defendant's conviction for selling a counterfeit substance because the evidence revealed that the substance would not fall under either definition of "imitation controlled substance" set forth in O.C.G.A. § 16-13-21(12.1)(A) as the parties stipulated only that the substance recovered was not a controlled substance and there was no evidence presented that the substance was specifically designed or manufactured to resemble the physical appearance of a controlled substance. As a result, the rule of lenity did not apply, and the trial court properly sentenced the defendant for a felony. Chandler v. State, 294 Ga. App. 27, 668 S.E.2d 510, 2008 Ga. App. LEXIS 1099 (2008).

Prior similar act admissible. — Prior guilty plea to charge of selling cocaine was substantially relevant to corroborate identification of defendant as seller, and as a prior similar act, it was similar and relevant. Evans v. State, 209 Ga. App. 606, 434 S.E.2d 148, 1993 Ga. App. LEXIS 957 (1993), cert. denied, No. S93C1990, 1993 Ga. LEXIS 1152 (Ga. Dec. 3, 1993).

Evidence showing independent crimes involving similar dollar amounts of drugs sold in sidewalk sales to passing vehicles was sufficient proof of similarity between other crimes and the one for which defendant was indicted. Aldridge v. State, 222 Ga. App. 437, 475 S.E.2d 195, 1996 Ga. App. LEXIS 869 (1996).

Admission of similar transaction evidence in a case charging the defendant with possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), and obstructing or hindering law enforcement officers, O.C.G.A. § 16-10-24, was proper because, in both the similar transaction and the incident leading to the charges being tried, the defendant was arrested in possession of cocaine and "sale-sized" baggies after seeking to avoid police; the trial court also gave an instruction that the similar transaction evidence was limited to the purpose of showing the defendant's bent of mind in committing the charged offenses. Cotton v. State, 297 Ga. App. 664, 678 S.E.2d 128, 2009 Ga. App. LEXIS 515 (2009).

Defendant was properly convicted of trafficking in methamphetamine, O.C.G.A. § 16-13-31, violating the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., and contributing to the delinquency of a minor, O.C.G.A. § 16-12-1, because the trial court properly admitted the state's similar transaction evidence when the

evidence was introduced for the appropriate purpose of showing the defendant's knowledge and intent regarding the methamphetamine found in the defendant's room, and the trial court instructed the jury to consider the evidence for that limited purpose; both incidents occurred on the same street and both involved methamphetamine, and in both incidents police found the drugs in the defendant's bedroom along with scales. Swan v. State, 300 Ga. App. 667, 686 S.E.2d 310, 2009 Ga. App. LEXIS 1245 (2009).

During defendant's trial for possession of methamphetamine and possession of marijuana, the trial court did not abuse the court's discretion in admitting evidence of the defendant's prior conviction on an obstruction charge because the trial court admitted the evidence for the purpose of showing the defendant's course of conduct only after conducting a hearing pursuant to Ga. Unif. Super. Ct. R. 31.3(B), which the court was required to do, and the state satisfied the criteria delineated in Rule 31.3 for the admission of similar-transaction evidence; even assuming that the similar-transaction evidence should have been excluded, any error in the evidence's admission was harmless because there was videotaped evidence that the defendant was driving an obviously stolen vehicle, that the defendant fled from officers who attempted to conduct a traffic stop, that the defendant continued to lead the officers on a chase even after the defendant's tires had been flattened, that the defendant ultimately exited the vehicle and ran on foot, and that methamphetamine and marijuana not belonging to the owner were found inside the vehicle in which the defendant was the sole occupant. Mangum v. State, 308 Ga. App. 84, 706 S.E.2d 612, 2011 Ga. App. LEXIS 124 (2011).

Trial court did not abuse the court's discretion in admitting similar transaction evidence because both the prior incident and the incident for which the defendant was convicted involved the possession of cocaine since the prior possession was for the purpose of distribution, inasmuch as the evidence showed that the defendant did, in fact, distribute cocaine on that occasion, and the possession for which the defendant was convicted was for an unknown purpose and not clearly for personal use; one incident involved possession and sale of less than one gram of cocaine, the other involved possession of less than two grams of cocaine, and both incidents occurred in the county within a span of two weeks. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399, 2011 Ga. App. LEXIS 453 (2011), cert. denied, No. S11C1610, 2011 Ga. LEXIS 851 (Ga. Oct. 17, 2011).

Trial court did not abuse the court's discretion by allowing the admission of evidence regarding the defendant's prior drug possession arrest because the evidence of prior drug activity was highly probative of intent to sell a controlled substance for which the defendant was on trial and the prior act of drug possession happened while the defendant was driving a car in the same area where the sale of the methamphetamine during the first buy occurred. Moton v. State, 351 Ga. App. 789, 833 S.E.2d 171, 2019 Ga. App. LEXIS 488 (2019).

Erroneous admission of prior conviction harmless. — Trial court's admission of the defendant's prior convictions for possession of cocaine was erroneous because the state did not present any testimony at trial establishing the prior convictions, but rather, the state's evidence was limited to the introduction of copies of the defendant's guilty pleas and convictions for the prior drug possession offenses; however, in light of the overwhelming competent evidence establishing the defendant's guilt of the sale of cocaine, it was unlikely that the erroneous admission of the prior possession offenses contributed to the verdict. Perry v. State, 314 Ga. App. 575, 724 S.E.2d 874, 2012 Ga. App. LEXIS 237 (2012).

Trial court did not abuse the court's discretion in admitting evidence of the defendant's prior attempts to manufacture methamphetamine because the state needed the evidence of the defendant's prior drug conviction to show the defendant's bent of mind and course of conduct with respect to the methamphetamine of-

General Consideration (Cont'd)

fense at issue, criminal attempt to manufacture methamphetamine in violation of O.C.G.A. §§ 16-4-1 and 16-13-30(b); the defendant disclaimed any involvement with or knowledge of a methamphetamine laboratory. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95, 2012 Ga. App. LEXIS 104 (2012).

Based on the defendant's position that the defendant was not involved with a methamphetamine laboratory, as well as the similarity of the defendant's prior drug crime with criminal attempt to manufacture methamphetamine, the trial court did not abuse the court's discretion in admitting the evidence of the defendant's prior attempts to manufacture methamphetamine for the purpose of showing the defendant's bent of mind and course of conduct; the trial court was authorized to find that the probative value of the similar transaction evidence outweighed its prejudicial effect, and the trial court provided jury instructions that limited consideration of the similar transaction evidence to the appropriate purposes and provided guidance so as to diminish its prejudicial impact. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95, 2012 Ga. App. LEXIS 104 (2012).

Admissibility of expert testimony. — Knowledge of the amount of crack cocaine one would generally possess for personal use or the amount which might evidence distribution was not necessarily within the scope of the ordinary layman's knowledge and experience. Therefore, the testimony of a veteran police officer on the subject would be properly admissible under former O.C.G.A. § 24-9-67 (see now O.C.G.A. § 24-7-703). Davis v. State, 200 Ga. App. 44, 406 S.E.2d 555, 1991 Ga. App. LEXIS 762 (1991).

Defendant's argument that the evidence was insufficient to support defendant's conviction for possession by ingestion of methamphetamine because the testimony of defendant's expert witness, a forensic toxicologist with a private clinical reference laboratory, called into question the validity of the state crime lab report, was rejected because the determination of the credibility of defendant's expert and the effect of the expert's testimony on the validity of the state crime lab report were for the jury. Poston v. State, 274 Ga. App. 117, 617 S.E.2d 150, 2005 Ga. App. LEXIS 679 (2005).

Officer properly qualified as expert witness in drug possession and distribution. — In a prosecution for possession of cocaine with intent to distribute (O.C.G.A. § 16-13-30(b)), the trial court did not abuse the court's discretion in qualifying the officer as an expert witness in drug possession and distribution as the arresting officer testified to making 35 to 40 drug-related arrests, about half of which were for possession with intent to distribute. Hight v. State, 293 Ga. App. 254, 666 S.E.2d 678, 2008 Ga. App. LEXIS 839 (2008).

In the defendant's trial for possession of methamphetamine with intent to distribute, the state properly laid the foundation for an investigator's opinion that the amount of meth, the paraphernalia, and the cash on the defendant's person were consistent with distribution: the investigator testified that the investigator had worked on the drug task force for seven years, had taken numerous courses, and came into contact with drug activity daily. Benton v. State, 356 Ga. App. 441, 847 S.E.2d 625, 2020 Ga. App. LEXIS 460 (2020), cert. denied, No. S21C0110, 2021 Ga. LEXIS 253 (Ga. Apr. 5, 2021).

Testimony of confidential informant admissible. — When the confidential informant testified and was subject to cross-examination, the informant's statement that the informant found out that the defendant was selling cocaine out of the defendant's residence was admissible to explain the circumstances leading to the defendant's arrest. Hamilton v. State, 242 Ga. App. 77, 528 S.E.2d 843, 2000 Ga. App. LEXIS 95 (2000).

Revelation of the identity of a confidential informant. — Defendant was not entitled to the identity of a confidential informant (CI) who purchased cocaine from the defendant in two controlled buys because, to the extent that the defendant wished to call the CI to impeach the CI or the investigating officer's testimony, the disclosure of the

CI's identity was not required in that the investigating officer engaged in visual surveillance throughout the controlled buy operations and clearly observed the defendant when the defendant sold drugs to the CI and an audiotape recording of one controlled buy diminished the need for the CI to amplify or refute any conflicting testimony. Chandler v. State, 317 Ga. App. 406, 731 S.E.2d 88, 2012 Ga. App. LEXIS 715 (2012).

Affidavit supporting search warrant not stale. — In a trial for possession of marijuana with intent to distribute, the trial court did not err in denying a motion to suppress a search warrant on the basis that a nine-month lapse from the crimes' occurrences rendered stale the information contained in the affidavit in support of the warrant since the information in the affidavit was not so remote that it made it unlikely that the items sought would not have been in the defendant's home at the time the warrant was issued. Amica v. State, 307 Ga. App. 276, 704 S.E.2d 831, 2010 Ga. App. LEXIS 1083 (2010), cert. denied, No. S11C0594, 2011 Ga. LEXIS 363 (Ga. Apr. 26, 2011).

Suppression of evidence. — Motion to suppress illegally obtained evidence was properly granted. State v. Crank, 212 Ga. App. 246, 441 S.E.2d 531, 1994 Ga. App. LEXIS 205 (1994).

Because the defendant did not grant consent to an officer to search the defendant's purse, and no other exception to the warrant requirement allowing a search of the purse applied, the trial court properly granted suppression of the drugs seized from within the purse. State v. Fulghum, 288 Ga. App. 746, 655 S.E.2d 321, 2007 Ga. App. LEXIS 1284 (2007).

Consequence of a defendant's failure to contemporaneously object to the admission of evidence. — Despite the defendant's contrary claim on appeal, because trial counsel failed to contemporaneously object to the introduction of the defendant's own statement offering to sell narcotics to a confidential informant, the defendant waived any error regarding admission of the statement on appeal; moreover, because trial counsel failed to request a mistrial or curative instruction regarding that evidence, the trial court's failure to give such an instruction, sua sponte, was not erroneous. Williams v. State, 288 Ga. App. 741, 655 S.E.2d 674, 2007 Ga. App. LEXIS 1282 (2007).

Suppression motion erroneously granted based on venue following traffic stop. — Grant of the defendant's motion to suppress on the basis of venue was reversed because the state did not need to establish venue at the pretrial hearing on the defendant's motion to suppress as it was not relevant to the issues raised in the motion, which challenged the reasonable basis for the traffic stop or whether the resulting search of the defendant and the defendant's vehicle were supported by probable cause. State v. Wallace, 338 Ga. App. 611, 791 S.E.2d 187, 2016 Ga. App. LEXIS 510 (2016).

Inconsistency in indictment caused no prejudice. — Defendant's conviction for possession of a controlled substance was proper despite the indictment charging the defendant with possession of a controlled substance with intent to distribute because the allegations in the indictment tracked the language of possession of a controlled substance and fully apprised the defendant of the offense charged, the defendant failed to show that the defense was prejudiced in any way by the inconsistency between the denomination of the offense and the allegations in the indictment, and the defendant requested a jury charge on the offense of possession of a controlled substance as a lesser included offense of possession of a controlled substance with intent to distribute. Bryant v. State, 320 Ga. App. 838, 740 S.E.2d 772, 2013 Ga. App. LEXIS 286 (2013).

"Ontrack system" test results for marijuana inadmissible. — State's failure to present any evidence as to the characteristics, theory, operation, reliability, or scientific acceptability of "ontrack system" test performed on the defendant's urine specimen at local jail to detect the presence of tetrahydrocannabinol rendered the results of the test inadmissible. Hubbard v. State, 207 Ga. App. 703, 429 S.E.2d 123, 1993 Ga. App. LEXIS 322 (1993).

General Consideration (Cont'd)

Forfeiture statute. — Forfeiture statute, O.C.G.A. § 16-13-49, did not apply to a transaction involving an imitation controlled substance. White v. State, 264 Ga. 547, 448 S.E.2d 354, 1994 Ga. LEXIS 765 (1994).

Forfeiture of vehicle not appropriate.— Denial of the state's petition for forfeiture of the claimant's vehicle was upheld because the trial court did not err in its analysis that the claimant's possession of methamphetamine was a lesser offense than those in controlling case law and lacked connection to other crimes, thus, the forfeiture was not warranted. State v. Brophy, 368 Ga. App. 136, 889 S.E.2d 337, 2023 Ga. App. LEXIS 274 (2023).

Plea bargaining. — Although the prosecutor incorrectly stated the minimum and maximum sentences in negotiating a plea bargain, defendant rejected the plea bargain and defendant's decision was a fully informed one. Accordingly, denial of a new trial was proper because there was no showing that defendant was harmed by the misstatement. Hester v. State, 261 Ga. App. 614, 583 S.E.2d 274, 2003 Ga. App. LEXIS 722 (2003).

Guilty pleas. — Because the defendant confirmed that the defendant was not under the influence of drugs, that the defendant was satisfied with counsel's representation, and that the defendant wished to plead guilty to selling cocaine, the trial court did not err in accepting the guilty plea. McCloud v. State, 272 Ga. App. 609, 612 S.E.2d 907, 2005 Ga. App. LEXIS 333 (2005).

Trial court did not abuse the court's discretion by finding that a defendant's guilty plea was voluntarily, knowingly, and intelligently made as to a conviction for possession of cocaine because the trial court had no obligation to inform the defendant of the possible collateral consequence of the revocation for a prior offense and, because the defendant was represented by counsel, the trial court properly presumed that the defendant's counsel had informed the defendant of such a collateral consequence. Lamb v. State, 278 Ga. App. 97, 628 S.E.2d 165, 2006 Ga. App. LEXIS 238 (2006).

Claimed errors on appeal deemed abandoned. — While the defendant argued that the state's evidence was insufficient to support convictions on two counts of selling cocaine in violation of O.C.G.A. § 16-13-30(b), and cited the proper standard of review, due to the lack of argument, citation of authority, or citations to the record to support this position that claim was abandoned under Ga. Ct. App. R. 25(c)(2). Clark v. State, 285 Ga. App. 182, 645 S.E.2d 671, 2007 Ga. App. LEXIS 475 (2007).

Ineffective assistance. — In a prosecution for selling marijuana and possessing marijuana with the intent to distribute, given that the state conceded that the state failed to file notice regarding the state's intent to introduce a prior conviction as evidence in aggravation of punishment, the evidence was not introduced; as a result, defense counsel could not be found ineffective for failing to object to the introduction of the prior conviction. Allen v. State, 280 Ga. App. 663, 634 S.E.2d 831, 2006 Ga. App. LEXIS 921 (2006).

Trial court did not err in denying the defendant's motion for a new trial on the ground that the defendant's trial counsel rendered ineffective assistance by failing to obtain an electronic enhancement of a videotape depicting a drug sale, which allegedly would have shown that defendant was not the perpetrator of the offense, because the defendant failed to show that the defendant was prejudiced as a result of trial counsel's failure to obtain an electronic enhancement of the videotape prior to trial since the enhanced images failed to create a reasonable probability that the defendant was not the perpetrator depicted in the images; an undercover officer unequivocally identified the defendant as the perpetrator based upon the officer's personal observations and independent memory of the defendant at the time of the drug sale, and although the defendant attempted to prove that another individual was the perpetrator depicted in the videotape's images, the defendant failed to proffer sufficient evidence in support of the defen-

dant's claim. Faulkner v. State, 304 Ga. App. 791, 697 S.E.2d 914, 2010 Ga. App. LEXIS 613 (2010).

Counsel's deficiency did not warrant a new trial. — While the defendant's trial counsel was ineffective in failing to object to that portion of the state's closing argument in which the prosecutor referenced a slain officer's funeral a week prior, as that fact had no relevance to the charges the defendant was facing, based on the overwhelming evidence of guilt, including the defendant's admission, the defendant's convictions for trafficking in cocaine and possession of cocaine with intent to distribute were upheld on appeal; thus, a new trial was properly denied. Cantrell v. State, 290 Ga. App. 651, 660 S.E.2d 468, 2008 Ga. App. LEXIS 394 (2008).

Procedure

Notice requirement of O.C.G.A § 17-10-2(a) applies to mandatory life sentences imposed under O.C.G.A. § 16-13-30(d). Moss v. State, 206 Ga. App. 310, 425 S.E.2d 386, 1992 Ga. App. LEXIS 1619 (1992).

In a prosecution for selling a controlled substance, imposition of a life sentence was improper where the state notified defendant of its intent to use previous drug convictions as similar transactions evidence but did not inform defendant of its intent to use the prior convictions in seeking the mandatory life sentence. Miller v. State, 219 Ga. App. 284, 464 S.E.2d 860, 1995 Ga. App. LEXIS 1015 (1995).

Indictment sufficient. — Trial court's decision overruling the defendant's special demurrer to an indictment charging the defendant with trafficking in methamphetamine and misdemeanor possession of marijuana in violation of O.C.G.A. §§ 16-13-30(b) and 16-13-31(e) was authorized because the allegations of the indictment were sufficient to be easily understood by the jury, to allow the defendant to prepare the defendant's defense, and to protect the defendant from double jeopardy; the indictment sufficiently set forth the date of the offenses and tracked the material language of the statutes proscribing the charged offenses, and the language set forth in the counts against the codefendants separately designated the drugs upon which those charges were based and made clear that the defendant's drug charges were not based upon the drugs allegedly possessed by those individual codefendants. Fyfe v. State, 305 Ga. App. 322, 699 S.E.2d 546, 2010 Ga. App. LEXIS 628 (2010), cert. denied, No. S10C1942, 2011 Ga. LEXIS 229 (Ga. Feb. 28, 2011), overruled in part, McNair v. State, 293 Ga. 282, 745 S.E.2d 646, 2013 Ga. LEXIS 594 (2013), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Although the indictment did not explicitly allege that the XLR11 was not specifically utilized as part of the manufacturing process, the indictment was sufficient because the indictment put the defendant on notice of the factual allegations the defendant had to defend in court, of the specific dates involved, and of the defendant's actions that constituted the alleged offenses. Budhani v. State, 345 Ga. App. 34, 812 S.E.2d 105, 2018 Ga. App. LEXIS 165 (2018), overruled in part, Willis v. State, 304 Ga. 686, 820 S.E.2d 640, 2018 Ga. LEXIS 685 (2018), aff'd, 306 Ga. 315, 830 S.E.2d 195, 2019 Ga. LEXIS 448 (2019).

Defendant's indictment for possessing and selling XLR11 withstood a general demurrer because the indictment alleged the essential elements of the offenses under O.C.G.A. § 16-13-30(b); under O.C.G.A. § 16-13-50(a), the state was not required to allege the affirmative defenses in O.C.G.A. § 16-13-25(12) such as that the XLR11 was intended for human consumption. Budhani v. State, 306 Ga. 315, 830 S.E.2d 195, 2019 Ga. LEXIS 448 (2019).

Because the accusation charged defendant with unlawfully possessing a named controlled substance by tracking the language of the statute, it was legally sufficient and the trial court did not err by denying both the general demurrer and the plea in bar. Tate-Jesurum v. State, 368 Ga. App. 710, 890 S.E.2d 78, 2023 Ga. App. LEXIS 312 (2023).

Poorly-worded charge. — Trial court did not err in allowing the manufacturing

Procedure (Cont'd)

methamphetamine offense to proceed to the jury under O.C.G.A. § 16-13-30(b); despite the poor wording of the caption of the count at issue, which stated "trafficking in methamphetamine," because the body of the count clearly charged the defendant with manufacturing methamphetamine, and the defendant failed to show how the defendant was misled by the presentment, nor did it expose the defendant to double jeopardy in violation of U.S. Const., amend. 5 or Ga. Const. 1983, Art. I, Sec. I, Para. XVIII. Gentry v. State, 281 Ga. App. 315, 635 S.E.2d 782, 2006 Ga. App. LEXIS 943 (2006), cert. denied, No. S07C0117, 2007 Ga. LEXIS 78 (Ga. Jan. 22, 2007).

Refusal to sever charges. — Trial court did not abuse its discretion in failing to sever a charge against the defendant for possession of methamphetamine in violation of O.C.G.A. § 16-13-30(a) and a charge against the defendant for kidnapping with bodily injury in violation of O.C.G.A. § 16-5-40; when the defendant was arrested for possession, the kidnapping was ongoing, as the victim remained locked in the camper where the defendant had bound the victim, and it was not an abuse of discretion for a trial judge to deny a motion for severance where the crimes alleged were part of a continuous transaction and from the nature of the entire transaction, it would have almost been impossible to present to a jury evidence of one of the crimes without also permitting evidence of the other. Johnson v. State, 281 Ga. App. 7, 635 S.E.2d 278, 2006 Ga. App. LEXIS 983 (2006).

No abuse of discretion in refusing to sever charges. — Trial court did not abuse the court's discretion by refusing to sever a defendant's drug charges from the defendant's trial on a charge of influencing a witness because evidence of either crime would have been admissible at the trial of the other and the charged offenses were neither so numerous nor so complex that the jury was unable to parse the evidence and correctly apply the law with regard to each charge. Perry v. State, 317 Ga. App. 885, 733 S.E.2d 57, 2012 Ga. App. LEXIS 833 (2012).

When possession and possession with intent to distribute may both be punished. — If a person intends to distribute only a designated part of narcotics which are possessed, both offense of possession and possession with intent to distribute may be punished. Howard v. State, 144 Ga. App. 208, 240 S.E.2d 908, 1977 Ga. App. LEXIS 2638 (1977).

Merger. — Offense of manufacturing methamphetamine under O.C.G.A. § 16-13-30(b) was a lesser included offense of trafficking/manufacturing under O.C.G.A. § 16-31-31(f)(1); thus, the trial court was authorized to sentence a defendant for the greater offense after merging the lesser offense into it. Richards v. State, 290 Ga. App. 360, 659 S.E.2d 651, 2008 Ga. App. LEXIS 239 (2008).

Selling merged into trafficking offense. — Convictions on counts for selling methamphetamine were lesser included offenses of convictions for trafficking in methamphetamine and, therefore, merged into the trafficking convictions. Nunery v. State, 229 Ga. App. 246, 493 S.E.2d 610, 1997 Ga. App. LEXIS 1369 (1997).

No merger with misdemeanor DUI charge. — Defendant could be convicted on both felony possession of methamphetamine and driving under the influence of methamphetamine, a misdemeanor. Helmeci v. State, 230 Ga. App. 866, 498 S.E.2d 326.

Possession and distribution of methamphetamine charges did not merge. — Possession of methamphetamine and distribution of methamphetamine charges did not merge under O.C.G.A. § 16-1-7 when defendant smoked methamphetamine in the company of a second person who later returned with a fresh supply of the drug with which defendant injected the second person; methamphetamine that defendant possessed while smoking constituted a separate amount of methamphetamine not accounted for in the distribution charge. Crutchfield v. State, 291 Ga. App. 24, 660 S.E.2d 878, 2008 Ga. App. LEXIS 427 (2008).

Possession and manufacturing did not merge. — Trial court did not err when the court failed to merge the count for possession of altered ephedrine-pseudoephedrine into that for manufacture of methamphetamine because different conduct by the defendant resulted in the commission of both offenses. Mitchell v. State, 366 Ga. App. 854, 884 S.E.2d 535, 2023 Ga. App. LEXIS 92 (2023).

New trial motion properly denied. — Upon convictions of possessing cocaine with intent to distribute and obstructing a law enforcement officer, the trial court properly denied the defendant's motion for a new trial as: (1) a challenged juror affirmed the guilty verdict; (2) details about a government witness's plea deal would not have changed the trial outcome; and (3) lab results confirming the purity of the contraband seized was sufficient to show that the substance defendant possessed was cocaine. Tate v. State, 278 Ga. App. 324, 628 S.E.2d 730, 2006 Ga. App. LEXIS 318 (2006).

Upon convictions on two counts of selling cocaine, the trial court properly denied the defendant a new trial as the state's commentary during opening and closing argument on the connection between illegal drugs and crime in the community was proper, no abuse of discretion resulted from the admission of the defendant's booking mug shot, and the state's identification witnesses could testify about their level of certainty in identifying the defendant. Clark v. State, 285 Ga. App. 182, 645 S.E.2d 671, 2007 Ga. App. LEXIS 475 (2007).

Waiver of error in indictment. — Trial court did not err in permitting the state to try the defendant on both the sale of cocaine and trafficking in cocaine charge, after the prosecutor informed the defendant that the defendant would only be tried for the sale offense, and after the trial court excluded evidence of the trafficking crime as a similar transaction; by failing to object, the defendant waived any alleged error. Brockington v. State, 265 Ga. App. 13, 592 S.E.2d 858, 2003 Ga. App. LEXIS 1613 (2003).

No fatal variance in indictment. — It was not a fatal variance to prosecute the defendants for possession of amphetamine when the indictment alleged possession of methamphetamine. The defendants were well aware of the misnomer and were not surprised at trial since their defense was that the substance belonged to a codefendant, and the defendants were not subject to further prosecution for possession of amphetamine. Howard v. State, 291 Ga. App. 289, 661 S.E.2d 644, 2008 Ga. App. LEXIS 467 (2008).

Indictment not final when pre-trial notice given. — When the defendant's conviction on the first count of the instant four count indictment for violations of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., was not final at the time the state gave the state's pre-trial notice of the state's intent to seek a mandatory life sentence, the conviction on the first count could not be the basis for the imposition of a life sentence on either of the remaining counts of the indictment. Nunnally v. State, 203 Ga. App. 639, 417 S.E.2d 170, 1992 Ga. App. LEXIS 550 (1992), cert. denied, No. S92C0916, 1992 Ga. LEXIS 593 (Ga. June 25, 1992).

Validity of indictment. — Although the indictment technically was partly inaccurate in that the state was required to prove that the defendant sold a Schedule II drug in violation of O.C.G.A. § 16-13-30(b), not that the defendant violated Schedule II, this inaccuracy did not invalidate the indictment because the facts stated in the indictment clearly indicated that the charged crime was an unlawful sale of methamphetamine, a Schedule II drug, to an undercover agent. Freeman v. State, 201 Ga. App. 216, 410 S.E.2d 749, 1991 Ga. App. LEXIS 1299 (1991), cert. denied, No. S92C0056, 1991 Ga. LEXIS 851 (Ga. Oct. 18, 1991).

Pregnant woman could not have reasonably known that she could have been prosecuted for delivering or distributing cocaine to her fetus if she ingested the controlled substance while pregnant; the fetus was not a "person" within the meaning of the statute. State v. Luster, 204 Ga. App. 156, 419 S.E.2d 32, 1992 Ga. App. LEXIS 796 (1992), cert. denied, No. S92C1020, 1992 Ga. LEXIS 467 (Ga. June 4, 1992).

State was not required to prove that crack cocaine was a Schedule II substance

Procedure (Cont'd)

merely because the indictment alleged the defendant sold "Cocaine, a Schedule II Controlled Substance." Wright v. State, 232 Ga. App. 104, 501 S.E.2d 543, 1998 Ga. App. LEXIS 593 (1998).

Search and Seizure

Anonymous tip serving as basis for investigatory stop. — An investigative stop of the defendant's automobile which resulted in seizure of narcotics and the defendant's arrest did not violate the Fourth Amendment when the anonymous tip which formed the basis for the stop had been sufficiently corroborated by the arresting officer's recognition of the defendant as having been involved in an earlier drug investigation so as to furnish reasonable suspicion that the defendant was engaged in criminal activity. State v. Ball, 207 Ga. App. 729, 429 S.E.2d 258, 1993 Ga. App. LEXIS 320 (1993), cert. denied, No. S93C0921, 1993 Ga. LEXIS 566 (Ga. Apr. 15, 1993).

Search of probationer's residence. — Trial court properly denied the defendant's motion to suppress because the court did not err in determining that the law-enforcement officers who searched the defendant's home had reasonable suspicion to suspect criminal activity or violations of probation based on the probation officer's concerns that the defendant was using drugs and attempting to avoid detection; thus, the search was conducted for probationary purposes, rather than for law-enforcement purposes. Whitfield v. State, 337 Ga. App. 167, 786 S.E.2d 547, 2016 Ga. App. LEXIS 286 (2016).

First-tier encounter. — Trial court did not err in denying the defendant's motion for new trial after the defendant was convicted of possession of cocaine because the court properly denied a motion to suppress the defendant's statement to a police officer that the defendant had a crack pipe in a pocket; the initial interaction between the officer and the defendant was a first-tier consensual encounter, and thus, the defendant was free to disregard the officer's questions and walk away. Minor v. State, 314 Ga. App. 253, 723 S.E.2d 702, 2012 Ga. App. LEXIS 170 (2012).

Trial court properly denied the defendant's motion to suppress with regard to the defendant's drug conviction because the case involved a first-tier encounter wherein the officer asked for consent to search, which was given by the defendant and, therefore, the search was not a seizure and did not require articulable suspicion. Carter v. State, 319 Ga. App. 624, 737 S.E.2d 724, 2013 Ga. App. LEXIS 30 (2013).

Motion to suppress filed by a defendant charged with possession of marijuana and possession of a drug-related object, O.C.G.A. §§ 16-13-30(j)(1) and 16-13-32.2(a), should have been denied because a deputy's question to the defendant, whether there was anything in the vehicle the deputy needed to know about, did not elevate a first-tier police-citizen encounter to a detention. State v. Martin, 337 Ga. App. 390, 787 S.E.2d 314, 2016 Ga. App. LEXIS 330 (2016).

Scope of consent. — Given that a police officer was granted consent to search the defendant's hotel room to search for the victim's stolen truck keys, upon the officer's receipt of an inconclusive response that a set of keys found could belong to the victim, a continued search, which yielded methamphetamine, was reasonable, and did not exceed the original scope of consent granted; thus, the trial court did not err in denying the defendant's motion to suppress the drug evidence that officers found as a result of a continued search. Shuler v. State, 282 Ga. App. 706, 639 S.E.2d 623, 2006 Ga. App. LEXIS 1514 (2006).

State failed to prove that an officer's opening of a pill container found in the defendant's pocket was justified based on consent, when the defendant only consented to the removal of the pill box from the defendant's pocket, and the box was not immediately identifiable as contraband. Defendant's convictions on controlled substances charges were reversed. McCormack v. State, 325 Ga. App. 183, 751 S.E.2d 904, 2013 Ga. App. LEXIS 985 (2013).

Invalid consent. — Any implied consent by the defendant emptying the defendant's own pockets while one officer had the officer's stungun pointed at the defendant rendered the "consent" invalid. State v. Williams, 281 Ga. App. 187, 635 S.E.2d 807, 2006 Ga. App. LEXIS 1022 (2006).

Oxycodone found in the glove box of a car was inadmissible because the oxycodone was discovered pursuant to a consent search that was the product of an unauthorized traffic stop. The officer had no reasonable suspicion to justify stopping the defendants other than that the defendants' car was "out of place" at an empty truck stop parking lot. Groves v. State, 306 Ga. App. 779, 703 S.E.2d 371, 2010 Ga. App. LEXIS 1052 (2010).

In the state's appeal, the trial court did not err in granting the defendant's motion to suppress because the court did not err in finding that the officers' detention of the defendant was unreasonable as the defendant's consent to the search of the defendant's purse was the product of an illegal detention, thus, it was not valid. State v. Allen, 330 Ga. App. 752, 769 S.E.2d 165, 2015 Ga. App. LEXIS 56 (2015).

Valid consent. — Trial court did not err by denying the defendant's motion to suppress because the evidence established that the defendant's consent was voluntary in that the defendant signed the consent forms, gave the officer the key to the home, and the record showed that during the defendant's detention, no interrogation or questioning occurred, and the duration of the detention was not overly long; further, the defendant did not appear intoxicated, spoke fluent English, was not being punished or threatened, and the consent came after the defendant spontaneously sought out the officer to talk. Durham v. State, 320 Ga. App. 81, 739 S.E.2d 389, 2013 Ga. App. LEXIS 125 (2013).

Valid consent from handcuffed defendant. — Defendant's conviction for possession of cocaine with the intent to distribute was upheld on appeal as the defendant failed to establish that the motion to suppress would have been granted had counsel not waived the issue because, even in handcuffs, the defendant voluntarily consented to the search of the vehicle and the defendant failed to show that the consent was invalid. Blitch v. State, 323 Ga. App. 677, 747 S.E.2d 863, 2013 Ga. App. LEXIS 709 (2013).

Pat-down search exceeded permissible scope. — Because the state introduced no evidence that the defendant consented to an officer's opening of a matchbox retrieved from the defendant's pants, the officer was not concerned that a weapon was hidden in the box, and the box was not readily identifiable as contraband, the search of the defendant's person exceeded the permissible scope of a pat-down for weapons, requiring suppression of the cocaine found inside the matchbox. Mason v. State, 285 Ga. App. 596, 647 S.E.2d 308, 2007 Ga. App. LEXIS 594 (2007).

Pat-down search proper. — Trial court did not err in denying the defendant's motion to suppress drug evidence found on the defendant's person because the defendant's detention and pat-down was justified; a narcotics investigator was justified in believing that the investigator's safety was at risk based on the circumstances, including that officers were searching a house to execute an arrest warrant for a resident thereof, suspicion of drug activity at the house had been reported by neighbors, and the defendant, who was sitting up in bed, failed to comply with the investigator's repeated commands that the defendant display the defendant's hands, which were obscured under the covers. Jones v. State, 314 Ga. App. 247, 723 S.E.2d 697, 2012 Ga. App. LEXIS 174 (2012).

Plain feel doctrine. — Trial court did not err in denying the defendant's motion to suppress drug evidence found on the defendant's person because the seizure of the items in the defendant's pockets was lawful; under the plain feel doctrine, a narcotics investigator was entitled to seize the item, and the evidence was properly admitted; it was unnecessary for the investigator to conclusively identify what type of drug the defendant was carrying in order for the plain feel doctrine to make the seizure of the contraband lawful. Jones v. State, 314 Ga. App. 247, 723 S.E.2d 697, 2012 Ga. App. LEXIS 174 (2012).

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Safety frisk justified. — Trial court properly denied the defendant's motion to suppress the contraband found on the defendant's person as a result of a traffic stop that came to fruition after an officer observed the defendant making a U-turn in front of a recently robbed bank because the defendant admitted to having a knife in the defendant's pocket but refused to remove the defendant's hand therefrom. As a result, the police were justified in frisking the defendant for safety reasons and the contraband was, therefore, legally obtained from the defendant. Johnson v. State, 289 Ga. App. 27, 656 S.E.2d 161, 2007 Ga. App. LEXIS 1315 (2007).

Vehicle stop for seatbelt violation. — When the officer testified that the officer had a clear and unobstructed view of the driver of the vehicle not wearing a seat belt, this view was sufficient to establish probable cause for the stop, and once the vehicle was lawfully stopped, the officer was allowed to ask for the driver's consent to search the car. State v. Millsap, 243 Ga. App. 519, 528 S.E.2d 865, 2000 Ga. App. LEXIS 103 (2000).

With regard to a defendant's convictions for possession of methamphetamine with intent to distribute, possession of a firearm during the commission of a drug offense, and carrying a concealed weapon, the trial court properly denied the defendant's motion to suppress the items seized from the defendant's vehicle and the defendant's person after a traffic stop as the defendant's failure to wear a seatbelt and to have insurance on the vehicle justified the traffic stop. Thereafter, after being released from the traffic stop and being asked to come back, the defendant consented to the search of the vehicle and of the defendant's person, which led to the seizure of the contraband. Hughes v. State, 293 Ga. App. 404, 667 S.E.2d 163, 2008 Ga. App. LEXIS 949 (2008).

Defendant's conviction on one count of felony possession of marijuana was upheld on appeal and the trial court did not err in denying the defendant's motion to suppress based on the defendant's assertion that the initial traffic stop was illegal because the initial stop, as well as the brief detention, was authorized as a result of the officer observing the defendant not wearing a seat belt. Davis v. State, 318 Ga. App. 166, 733 S.E.2d 453, 2012 Ga. App. LEXIS 872 (2012).

Vehicle stop due to broken taillight. — Trial court properly denied a defendant's motion to suppress the evidence of drug contraband found in the defendant's vehicle after the vehicle was stopped due to a broken taillight as the officers had the right to detain the defendant while awaiting word as to possible outstanding warrants; a certified drug recognition expert questioned the defendant and observed the defendant having bloodshot eyes, droopy eyelids, and displaying relaxed inhibitions; and the defendant sufficiently and voluntarily consented to the search of the vehicle as was shown on a videotape of the traffic stop, despite the defendant being handcuffed at the time. Maloy v. State, 293 Ga. App. 648, 667 S.E.2d 688, 2008 Ga. App. LEXIS 1033 (2008).

Investigatory detention to search for weapon. — After the subject of an investigative stop at an airport admitted the presence of a weapon, and the officers then removed that subject to the airport precinct for further investigation, the detention was reasonable under the circumstances, and evidence uncovered of illegal possession of a controlled substance during a subsequent search conducted with the subject's voluntary consent was improperly suppressed. State v. Crisanti, 220 Ga. App. 705, 470 S.E.2d 314, 1996 Ga. App. LEXIS 345 (1996).

Probable cause for arrest. — Police search of a defendant's bag and person, which produced handguns, cocaine, cash, and other drugs was lawful because the search was made pursuant to the police officers' lawful warrantless arrest of the defendant when the defendant arrived at a motel room exactly answering a detailed description provided by a confidential informant, who stated that the defendant would be carrying a shoulder bag containing drugs and a loaded handgun. Green v. State, 302 Ga. App. 388, 691 S.E.2d 283, 2010 Ga. App. LEXIS 135 (2010).

Trial court did not err in denying the defendant's motion to suppress evidence a

police officer recovered from a rental car because the officer had reasonable grounds for detaining the defendant since the officer found the defendant and a friend in the parking lot of a closed business late at night, knew that several burglaries and thefts had occurred in the area recently, and observed that the defendant and the friend appeared to be nervous when the officer spoke with them; in the course of securing a firearm the officer saw a firearm in the center console of the rental car, the officer saw in plain view a digital scale with white residue, affording the officer probable cause to effect a custodial arrest of the defendant. Culpepper v. State, 312 Ga. App. 115, 717 S.E.2d 698, 2011 Ga. App. LEXIS 905 (2011).

Defendant's motion for independent expert to examine seized substances rejected. — Trial court did not err in refusing to grant a continuance to allow an independent expert chemist of defendant's choice sufficient time to analyze the seized controlled substances and testify at trial since the defendant did not move to have this expert appointed until after the trial had commenced, the earliest possible time the expert could testify would be the end of the week, and the court expected the trial to be over by that time, but expressed the court's willingness to appoint someone else who would not unduly delay the trial. Dixon v. State, 180 Ga. App. 222, 348 S.E.2d 742, 1986 Ga. App. LEXIS 2685 (1986).

Shared curtilage affects admissibility. — It is confusing to combine the concepts of "common area" and "curtilage" in deciding whether a particular area adjoining an apartment building is entitled to protection; therefore, the test should be the reasonableness of the resident's expectation of privacy and the officer's reasons for being in the yard. Espinoza v. State, 265 Ga. 171, 454 S.E.2d 765, 1995 Ga. LEXIS 156 (1995).

Evidence was not within the curtilage shared by two units in a duplex where it was not found in the hallway leading to both units or in the front yard between two driveways leading to the dwelling. Because the evidence was located in the yard outside the driveway leading to defendant's unit, an area where defendant had a reasonable expectation of privacy, i.e., a part of the curtilage of defendant's unit, for which police did not have a search warrant, the evidence should have been suppressed. Espinoza v. State, 265 Ga. 171, 454 S.E.2d 765, 1995 Ga. LEXIS 156 (1995).

Wooded area not part of curtilage. — In woods 50 yards from the defendant's home, police found items used to manufacture methamphetamine under a tarp. The wooded area where the contraband was found was not so closely tied to the defendant's home as to warrant protection as curtilage under the Fourth Amendment. Minor v. State, 298 Ga. App. 391, 680 S.E.2d 459, 2009 Ga. App. LEXIS 687 (2009), cert. denied, No. S09C1744, 2009 Ga. LEXIS 771 (Ga. Nov. 9, 2009).

Use of a trained drug detection dog. — Record supported the trial court's judgment that a vehicle checkpoint that was established to check drivers' licenses, registrations, and proof of insurance was established for a legitimate purpose, that a police officer did not violate defendant's rights when the officer walked a drug detection dog around defendant's car while another officer was checking the validity of defendant's driver's license, and that police had probable cause to search defendant's car after the dog alerted on it, and the trial court properly denied a motion to suppress evidence which defendant filed after defendant was charged with trafficking in cocaine and possession of cocaine with intent to distribute, and convicted defendant of both offenses. McCray v. State, 268 Ga. App. 84, 601 S.E.2d 452, 2004 Ga. App. LEXIS 851 (2004).

Search for heroin or cocaine prior to arrest. — Totality of circumstances provided sufficient probable cause to arrest and search defendant at airport for possession of heroin or cocaine, and fact that search preceded arrest rather than vice versa was not particularly important where formal arrest followed quickly on heels of search. Berry v. State, 163 Ga. App. 705, 294 S.E.2d 562, 1982 Ga. App. LEXIS 3242 (1982).

Entrapment. — Defendant's testimony, corroborated by a paid

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informant, established a prima facie case of entrapment. There was no evidence introduced that, prior to the defendant's entrapment, defendant had a predisposition to deliver, sell, distribute, or knowingly possess cocaine as forbidden by O.C.G.A. § 16-13-30(b). Since the state failed to introduce evidence to rebut the affirmative defense of entrapment, the defendant was entitled to a directed verdict of acquittal. Hill v. State, 261 Ga. 377, 405 S.E.2d 258, 1991 Ga. LEXIS 322 (1991).

Entrapment defense was properly rebutted. — Trial court properly denied the defendant's motion for a new trial because even assuming that the defendant established a prima facie case of entrapment, the jury was authorized to find the state's evidence rebutted that defense beyond a reasonable doubt as the jury heard an audio recording of the defendant boasting that the defendant had sold a gram of heroin for $65 and that no one could get clean off of the defendant's product; thus, there was some evidence to disprove entrapment. Johnson v. State, 355 Ga. App. 683, 845 S.E.2d 419, 2020 Ga. App. LEXIS 370 (2020).

Ineffective assistance of counsel claim dismissed despite defendant's claim of working with police. — After the defendant was convicted of selling cocaine, the trial court did not err in denying the defendant's claim of ineffective assistance of counsel since the defendant failed to show that counsel did not adequately prepare for trial or that counsel's performance was deficient and that such deficiency prejudiced the defendant's defense that the defendant was working with the police and had made the sale as part of an attempt to catch another drug dealer. Sullivan v. State, 259 Ga. App. 708, 578 S.E.2d 277, 2003 Ga. App. LEXIS 242 (2003).

Nervousness in the presence of police officers does not provide reasonable articulable suspicion. — When officers testified the officers observed a black male exit a breeze way known for drug sales and walk in a hurried fashion toward the male's car, becoming nervous when seeing the officers, this activity does not amount to the reasonable articulable suspicion required for a Terry stop. Peters v. State, 242 Ga. App. 816, 531 S.E.2d 386, 2000 Ga. App. LEXIS 352 (2000).

Nervousness inadequate for prolonging detention. — As an officer did not detain a defendant for an unreasonable length of time after a traffic stop, the fact that the defendant's nervousness alone did not provide the officer with reasonable suspicion to prolong the detention was immaterial as the defendant consented to a search of the defendant's vehicle. As there was no Fourth Amendment violation, methamphetamine and drug paraphernalia found during the search did not have to be suppressed. McKnight v. State, 296 Ga. App. 38, 673 S.E.2d 573, 2009 Ga. App. LEXIS 122 (2009).

Traffic stop concluded. — After issuing a courtesy warning ticket for a seatbelt violation to defendant, the traffic stop was concluded and defendant's continued detention was excessive because the officer's testimony did not establish reasonable suspicion of criminal activity. State v. Cunningham, 246 Ga. App. 663, 541 S.E.2d 453, 2000 Ga. App. LEXIS 1323 (2000).

Traffic stop not unreasonably prolonged. — After an officer stopped a defendant for speeding at 3:32 A.M., the officer was given two different names for the defendant's intoxicated teenaged passenger; neither name was in the system. As the officer testified that in 90 percent of the cases, this meant that there was an outstanding warrant, suspension, probation, or parole, the officer had reasonable grounds to prolong the traffic stop; therefore, the methamphetamine the officer found in a consent search of a box hidden under the defendant's leg did not have to be suppressed. Matthews v. State, 294 Ga. App. 836, 670 S.E.2d 520, 2008 Ga. App. LEXIS 1329 (2008).

As an officer's questioning of the defendant, after a traffic stop, about the defendant's length of time in Georgia was done to determine whether the defendant was in compliance with O.C.G.A. §§ 40-2-8(a) and 40-5-20(a), and did not unreasonably

prolong the stop, the defendant's rights under U.S. Const., amend. IV were not violated. Therefore, methamphetamine seized from the defendant's purse during the stop did not have to be suppressed. Sommese v. State, 299 Ga. App. 664, 683 S.E.2d 642, 2009 Ga. App. LEXIS 925 (2009).

State trooper's request to search a defendant's vehicle after telling the defendant that the defendant was free to go did not unreasonably prolong the detention and did not violate the defendant's Fourth Amendment rights. Therefore, the four pounds of marijuana found during the search was not subject to suppression. Davis v. State, 303 Ga. App. 785, 694 S.E.2d 696, 2010 Ga. App. LEXIS 336 (2010), cert. denied, No. S10C1405, 2010 Ga. LEXIS 716 (Ga. Sept. 20, 2010).

Search of vehicle incident to arrest for driving under suspension. — Though central dispatch advised an officer that the defendant had not been served with notice of suspension of the defendant's license, the officer had probable cause to arrest the defendant for driving under suspension (O.C.G.A. § 40-5-121) as the officer had no way of knowing whether the defendant had obtained actual or constructive notice of the suspension by other means. Thus, drugs found in a search of the defendant's car incident to the arrest were admissible; the trial court's ultimate conclusion that the defendant did not have notice of the suspension did not "retroactively vitiate" the probable cause supporting the arrest. Johnson v. State, 297 Ga. App. 254, 676 S.E.2d 884, 2009 Ga. App. LEXIS 449 (2009).

Initial approach of vehicle justified. — Officers' initial approach of defendant's vehicle and request for consent to search were warranted, even without an articulable suspicion of criminal activity at the time of their approach; moreover, even if a reasonable articulable suspicion of criminal activity had been required to briefly detain defendant, the officers had such suspicion upon seeing: (1) individuals approach defendant's car in an area known for drug activity; (2) the individuals turn and walk away upon seeing the police; and (3) defendant's passenger swallowing what appeared to be a crack rock as the police approached. Sego v. State, 279 Ga. App. 484, 631 S.E.2d 505, 2006 Ga. App. LEXIS 615 (2006).

Consent search during sobriety roadblock. — With regard to a defendant being charged with possessing drugs, the trial court properly denied the defendant's motion to suppress the drugs found in the defendant's vehicle during a sobriety roadblock as the roadblock was legal and the defendant voluntarily consented to the search. Britt v. State, 294 Ga. App. 142, 668 S.E.2d 461, 2008 Ga. App. LEXIS 1088 (2008).

Passenger's behavior provided reasonable suspicion and consent search authorized. — In a prosecution for possession of methamphetamine and hydrocodone, a passenger, when questioned by police, was fidgety and nervous, stuttered, would not make eye contact, and fell after exiting the car. The passenger's behavior gave police reasonable suspicion to believe that the passenger had taken drugs, which justified the police in detaining the passenger and the defendant (who was the driver) while the police conducted a consent search of the car, which belonged to the passenger's boss. Robinson v. State, 295 Ga. App. 136, 670 S.E.2d 837, 2008 Ga. App. LEXIS 1336 (2008), cert. denied, No. S09C0622, 2009 Ga. LEXIS 211 (Ga. Apr. 20, 2009).

Defendant never withdrew consent to search. — With regard to a defendant's conviction for possession of methamphetamine, the trial court properly denied the defendant's motion to suppress the drugs found on the defendant's person as the police obtained the defendant's consent to search the defendant's person and the defendant's failure to produce all of the items from the defendant's pockets did not amount to a withdrawal of the consent to search. Allison v. State, 293 Ga. App. 447, 667 S.E.2d 225, 2008 Ga. App. LEXIS 968 (2008).

Voluntary consent to search hotel room. — Trial court did not err in denying a motion to suppress evidence a police officer seized in a hotel room because the

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trial court was authorized to find that the state satisfied the state's burden of showing that the defendant's consent to enter the hotel room was voluntary and not the product of coercion, express or implied; the officer's testimony and the defendant's statement supported a finding that the officer requested and received the defendant's consent to enter the hotel room under circumstances that did not suggest either coercion or threat, and the trial court was authorized to infer that the defendant's consent to search was freely given in the calculated hope that the officer would not find the hidden contraband. Liles v. State, 311 Ga. App. 355, 716 S.E.2d 228, 2011 Ga. App. LEXIS 721 (2011).

Group search. — Trial court erred in granting the defendant's motion to suppress evidence of contraband, namely, defendant's possession of marijuana, as police officer's discovery of the marijuana was not pursuant to an impermissible pat-down search that two other officers conducted on a group of students, including the defendant, but was pursuant to the defendant's invitation for the officer to search the defendant after the officer asked the defendant why the defendant's license had been suspended; however, a remand was necessary to determine whether the defendant's consent to search was voluntarily given. State v. Baker, 261 Ga. App. 258, 582 S.E.2d 133, 2003 Ga. App. LEXIS 562 (2003).

Consent of probationer to search. — When officers went to a defendant's residence to conduct a probation search based on a tip that the defendant was involved with drugs as the defendant willingly led the officers to a concealed gun, and voluntarily furnished a urine sample that tested positive for methamphetamine, the defendant gave valid consent to the search, which eliminated the need for either probable cause or a search warrant under U.S. Const., amend. IV. Brooks v. State, 285 Ga. 424, 677 S.E.2d 68, 2009 Ga. LEXIS 155 (2009).

Failure to file timely motion. — In a prosecution for possession of cocaine with intent to distribute, because the defendant failed to voice an objection at trial regarding an inaccuracy in a search warrant affidavit as to the precise location of the alleged cocaine sale which served as the basis of the charge, but instead raised the objection for the first time in a motion for a new trial, the objection was late; thus, the appellate court's review of the motion was waived. Jackson v. State, 281 Ga. App. 368, 636 S.E.2d 34, 2006 Ga. App. LEXIS 988 (2006).

Suppression motion improperly granted. — Because the evidence gathered while the defendant's residence was under surveillance, including the contents of the defendant's garbage as well as an officer's specific testimony regarding marijuana residue found on a piece of plastic wrap, supported a finding of probable cause necessary to justify the issuance of a search warrant for the defendant's residence, suppression of the evidence seized as a result of the execution of the search warrant was improper. State v. Davis, 288 Ga. App. 164, 653 S.E.2d 311, 2007 Ga. App. LEXIS 1049 (2007).

Evidence seized from search based on valid arrest warrant. — Trial court did not err in denying the defendant's motion to suppress evidence found on the defendant's person because officers' search of a resident's house, where the officers found the defendant with a methamphetamine pipe, was legal since the police reasonably believed that the resident was in the house at the time of their entry based upon information from a neighbor and the fact that the vehicle registered to the resident was parked in front of the house; because the police had a valid arrest warrant for the resident and limited their search to those areas where the resident could be located, the fact that the officers could have been motivated to enter the house to search for drugs was immaterial and did not render the entry and subsequent seizure of evidence from the defendant illegal. Jones v. State, 314 Ga. App. 247, 723 S.E.2d 697, 2012 Ga. App. LEXIS 174 (2012).

Trial court did not err in denying the defendant's motion to suppress evidence seized from a residence because an inves-

tigator's knowledge was not so remote that it made it unlikely that methamphetamine manufacturing activities would be found at the premises at the time the warrant was issued; the investigator's knowledge coincided with an officer's detection of a strong odor of ether at the premises, and the search warrant was both issued and executed on the same day that the odor was detected. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95, 2012 Ga. App. LEXIS 104 (2012).

Sufficient probable cause for issuance of search warrant. — Trial court did not err in denying the defendant's motion to suppress evidence seized from a residence because the totality of the circumstances presented probable cause supporting the magistrate's issuance of a search warrant of the premises; in addition to the strong odor of ether, a DEA-trained officer knew that the odor was indicative of a methamphetamine laboratory operation, there was a prior report that a methamphetamine laboratory was being operated on the premises, and a co-defendant had previously admitted to selling methamphetamine. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95, 2012 Ga. App. LEXIS 104 (2012).

Insufficient probable cause for issuance of search warrant. — Trial court erred in denying the appellant's petition for the return of the seized business records, currency, and edible products containing delta-8-THC and delta-10-THC because the warrant authorizing the search of its warehouse and seizure of items therefrom was not supported by probable cause since delta-8-THC and delta-10-THC were not controlled substances for purposes of criminal liability for possession or sale of a controlled substance. Elements Distribution, LLC v. State of Georgia, 369 Ga. App. 844, 894 S.E.2d 641, 2023 Ga. App. LEXIS 535 (2023).

Presence in high drug area insufficient for stop. — Officer did not have specific articulable facts sufficient to give rise to a reasonable suspicion of criminal activity and therefore the court should have granted the defendant's motion to suppress the cocaine and marijuana evidence. Specifically, while the officer believed that the defendant was involved in a criminal activity because the defendant briefly visited a motel located in a high drug area, and the defendant's brief visit was consistent with drug activity, a person's mere presence in a high crime area does not give rise to reasonable suspicion of criminal activity, even if police observe conduct which the police believe consistent with a general pattern of such activity. Adkinson v. State, 322 Ga. App. 1, 743 S.E.2d 563, 2013 Ga. App. LEXIS 433 (2013).

Odor constitutes sufficient probable cause for issuance of search warrant. — Trial court erred in granting the defendant's motion to suppress by ruling that the odor of marijuana alone could not establish the requisite probable cause for the issuance of a search warrant for a residence as the appellate court overruled the holding in State v. Pando, 284 Ga. App. 70 (2007), that the presence of odors could never be the sole basis for the issuance of a search warrant; and determined that, if the affidavit for the search warrant contained sufficient information for a magistrate to determine that the officer who detected the odor of marijuana emanating from a specified location was qualified to recognize the odor, the presence of such an odor could be the sole basis for the issuance of a search warrant. State v. Kazmierczak, 331 Ga. App. 817, 771 S.E.2d 473, 2015 Ga. App. LEXIS 250 (2015).

If the affidavit for the search warrant contains sufficient information for a magistrate to determine that the officer who detected the odor of marijuana emanating from a specified location is qualified to recognize the odor, the presence of such an odor may be the sole basis for the issuance of a search warrant; to the extent that the holdings in Patman v. State, 244 Ga. App. 833 (2000), Shivers v. State, 258 Ga. App. 253 (2002), State v. Fossett, 253 Ga. App. 791 (2002), State v. Charles, 264 Ga. App. 874 (2003), Boldin v. State, 282 Ga. App. 492 (2006), and Martinez-Vargas v. State, 317 Ga. App. 232 (2012), can be interpreted as support for the premise that the odor of raw marijuana emanating from a particular location cannot be the

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sole basis for the issuance of a search warrant for that location, such interpretations are disapproved. State v. Kazmierczak, 331 Ga. App. 817, 771 S.E.2d 473, 2015 Ga. App. LEXIS 250 (2015).

Controlled buys demonstrated reliability of informant justifying search. — With regard to drug-related convictions, the trial court properly denied the defendant's motion to suppress because the search warrant was supported by probable cause in that the confidential informant took a position against penal interest by reporting to officers that the informant bought drugs from the defendant, the officer stated that the information supplied by the confidential informant was confirmed by conducting three controlled drug purchases from the defendant, and the controlled buys strongly corroborated the reliability of the informant and demonstrated a fair probability that contraband would be found in the defendant's house. Reid v. State, 321 Ga. App. 653, 742 S.E.2d 166, 2013 Ga. App. LEXIS 367 (2013).

Possession

Unlawful possession of any controlled substance, regardless of amount, constitutes an offense. Scott v. State, 170 Ga. App. 409, 317 S.E.2d 282, 1984 Ga. App. LEXIS 2888, aff'd, 253 Ga. 147, 317 S.E.2d 830, 1984 Ga. LEXIS 855 (1984).

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).

Possession not included in crime of manufacturing. — Possession of marijuana is not a necessary element of the crime of knowingly manufacturing marijuana by cultivating or planting, and so misdemeanor possession is not a lesser offense included in the crime of manufacturing as a matter of law. Galbreath v. State, 213 Ga. App. 80, 443 S.E.2d 664, 1994 Ga. App. LEXIS 459 (1994); Hunt v. State, 222 Ga. App. 66, 473 S.E.2d 157, 1996 Ga. App. LEXIS 537 (1996), cert. denied, No. S96C1728, 1996 Ga. LEXIS 1005 (Ga. Oct. 11, 1996).

Possession included in offense of possession with intent to distribute. — Offense of possession of marijuana was a lesser included offense of the offense of possession of marijuana with intent to distribute, where the possession charge could be established by proof of a less culpable mental state (general criminal intent) than was required to establish the commission of possession with intent to distribute (specific criminal intent to distribute). Talley v. State, 200 Ga. App. 442, 408 S.E.2d 463, 1991 Ga. App. LEXIS 1059 (1991).

Possession of marijuana is a lesser included offense of the offense of possession of marijuana with intent to distribute as a matter of law. Hardeman v. State, 216 Ga. App. 165, 453 S.E.2d 775, 1995 Ga. App. LEXIS 55 (1995).

Evidence sufficient to prove possession and intent to distribute. — Evidence that small baggies of cocaine were found in a large plastic bag on the ground, where the defendant had been observed dropping what appeared to the officer to be a baseball-size clear looking bag, permitted a rational trier of fact to infer that the defendant had been in possession of the cocaine. Ample evidence showed the defendant's intent to distribute the cocaine. Barber v. State, 317 Ga. App. 600, 732 S.E.2d 125, 2012 Ga. App. LEXIS 772 (2012).

Sufficient evidence supported the defendant's conviction for possession of cocaine with the intent to distribute because the jury could infer from a narcotics officer's expert opinion testimony that the defendant possessed the cocaine with the intent to distribute the cocaine, given the way the defendant concealed the drugs, the way the drugs were packaged for street sale, the amount of drugs on the defen-

dant's person, and the fact that the defendant lacked a device for using the drugs. Moreover, the jury could infer that the defendant was selling drugs given that a citizen alerted the police to suspicious activity at the address where the defendant was found and because the defendant was lingering around a house that was not the defendant's home, late at night, in a high drug-sales area, without a credible explanation. Thomas v. State, 321 Ga. App. 214, 741 S.E.2d 298, 2013 Ga. App. LEXIS 340 (2013), cert. denied, No. S13C1182, 2013 Ga. LEXIS 777 (Ga. Sept. 23, 2013), overruled in part, Langley v. State, 313 Ga. 141, 868 S.E.2d 759, 2022 Ga. LEXIS 14 (2022).

Appellate court refused to disturb the jury's verdict convicting the defendant of possession of drugs with the intent to distribute because after hearing the evidence and having the opportunity to judge the credibility of the witnesses, the jury properly concluded that the only reasonable hypothesis was that the defendant possessed the drugs found hidden in the kitchen, despite the defendant's argument that others had equal access. King v. State, 325 Ga. App. 777, 755 S.E.2d 22, 2014 Ga. App. LEXIS 74 (2014).

Evidence was sufficient to convict the defendant of possession of marijuana with intent to distribute because the marijuana found in the stolen car was packaged in nine individual baggies, with eight of the baggies contained in a larger plastic bag on the driver's side floorboard and the ninth baggie on the passenger seat; the sheriff's investigator testified that, based on the sheriff's training and experience, the marijuana was packaged in a manner commonly used for distribution; the victim, who had the victim's car stolen, testified at trial that the marijuana did not belong to the victim; and any rational trier of fact could infer that the defendant possessed marijuana, a controlled substance, with intent to distribute. McNorrill v. State, 338 Ga. App. 466, 789 S.E.2d 823, 2016 Ga. App. LEXIS 472 (2016).

Evidence was sufficient to convict the defendant of possession of methamphetamine, possession of methamphetamine with intent to distribute, and two counts of possession of drug-related objects as the state presented ample evidence of the defendant's constructive possession of the methamphetamine and drug paraphernalia found inside a fabric bag because the contraband was found in the defendant's residence, which authorized a jury to presume that the defendant possessed it; a witness testified that the defendant and another individual sold methamphetamine; and a law-enforcement officer testified that the items contained in the bag, such as separate baggies and a digital scale, showed an intent to distribute drugs. Duncan v. State, 346 Ga. App. 777, 815 S.E.2d 294, 2018 Ga. App. LEXIS 387 (2018), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Conspiracy to possess marijuana with intent to distribute is not a lesser included offense of possession. Rowe v. State, 181 Ga. App. 492, 352 S.E.2d 813, 1987 Ga. App. LEXIS 2543 (1987).

Prima facie case of unlawful possession of controlled substance. — If state proves that the defendant possessed controlled substance in a container without a label indicating a valid prescription, the state has established a prima facie case and shifts to the defendant the burden of going forward with evidence showing that the defendant's possession was under a valid prescription or that the defendant was otherwise exempted from the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq. Nix v. State, 135 Ga. App. 672, 219 S.E.2d 6, 1975 Ga. App. LEXIS 1778 (1975).

Head of household presumption of possession of contraband found therein is no longer a viable presumption in Georgia. Ramsay v. State, 175 Ga. App. 97, 332 S.E.2d 390, 1985 Ga. App. LEXIS 2776 (1985).

Evidence sufficient for conviction of selling heroin at townhome. — Defendant's convictions for trafficking in heroin and possession with intent to distribute cocaine were supported by evidence that the drugs were found in plain view in the townhome, the defendant was seen selling heroin to an informant in the front yard, and the defendant had $3,189 in cash and three

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cell phones, one of which was used to communicate with a person being investigated for selling drugs, in the defendant's possession when arrested. Hargrove v. State, 361 Ga. App. 106, 863 S.E.2d 364, 2021 Ga. App. LEXIS 439 (2021).

Evidence of apartment "ownership" held sufficient. — Defendant's convictions for trafficking in cocaine and possession of heroin with intent to distribute was sustained even though the evidence connecting the defendant to the apartment was circumstantial. Williams v. State, 262 Ga. App. 67, 584 S.E.2d 625, 2003 Ga. App. LEXIS 713 (2003).

Driving vehicle sufficient to support trafficking in methamphetamine conviction.— Evidence at trial was sufficient to support defendant's conviction for trafficking in methamphetamine based on defendant driving an accomplice to procure methamphetamine; thus, the jury was authorized to find that defendant was a party to the crime of trafficking as the methamphetamine was found in a bag underneath defendant's feet. Jones v. State, 369 Ga. App. 339, 893 S.E.2d 460, 2023 Ga. App. LEXIS 455 (2023).

Cash as proof of intent to distribute. — It was not error to admit into evidence $390 in cash found on defendant at the time of defendant's arrest for possessing heroin with intent to distribute, where defendant was unemployed, and there was testimony that the packets of heroin defendant dropped by defendant's feet were the size packets that sold for 10 to 20 dollars and the money found in defendant's possession was in denominations of mostly 10 and 20 dollar bills. Such evidence would tend to show that defendant had been selling heroin and that defendant intended to distribute the packages of heroin in defendant's possession. Thus, the money had probative value in determining the issue of intent. Houston v. State, 180 Ga. App. 267, 349 S.E.2d 228, 1986 Ga. App. LEXIS 2708 (1986).

While a defendant was presumed to be in possession of cocaine found in a car that the defendant owned, the defendant argued the presumption was rebutted by evidence that others in the car had equal access to the drugs. As the defendant also possessed $494 in cash, the jury was not compelled to find the presumption of possession rebutted; therefore, the evidence, including testimony that the number of bags of cocaine found was inconsistent with personal consumption, was sufficient to convict the defendant of possession of cocaine with intent to distribute in violation of O.C.G.A. § 16-13-30(b). Hamilton v. State, 293 Ga. App. 297, 666 S.E.2d 630, 2008 Ga. App. LEXIS 926 (2008).

Allegation that the defendant "unlawfully," possessed cocaine was sufficient to encompass both the intent to commit the proscribed act and the knowledge necessary to form that intent. Dye v. State, 177 Ga. App. 813, 341 S.E.2d 469, 1986 Ga. App. LEXIS 1554 (1986).

Prescription drugs prescribed for another. — Nothing in the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., authorizes possession of controlled substances that allegedly were prescribed for someone other than the defendant but were not in the prescription container when found in the possession of the defendant. Black v. State, 194 Ga. App. 660, 391 S.E.2d 432, 1990 Ga. App. LEXIS 286 (1990), cert. denied, No. S90C0803, 1990 Ga. LEXIS 769 (Ga. Apr. 5, 1990).

Evidence sufficient to prove oxycodone pills were controlled substance. — Testimony from experts in drug identification that, based on the fact that the logo on pills found in the defendant's possession matched that of pharmaceutically prepared oxycodone tablets, the pills were oxycodone, was sufficient to allow a reasonable jury to conclude that the defendant possessed that controlled substance. Kessinger v. State, 298 Ga. App. 479, 680 S.E.2d 546, 2009 Ga. App. LEXIS 713 (2009).

Multiple offenses for simultaneous possession. — Defendant may be prosecuted, convicted, and separately sentenced for the simultaneous possession of each of the controlled substances listed in O.C.G.A. § 16-13-26. Tabb v. State, 250 Ga. 317, 297 S.E.2d 227, 1982 Ga. LEXIS 1235 (1982).

Sole or joint possession. — Law recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons shared actual or constructive possession of a thing, possession is joint. Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Although a probationer's boyfriend claimed ownership to methamphetamine found in a tin in the probationer's dresser drawer, the trial court, as the finder of fact, was entitled to believe that testimony while disbelieving a professed exclusive ownership of the methamphetamine; moreover, the fact that the tin was found in the probationer's dresser drawer provided more than a mere spatial connection between the probationer and this particular contraband. Giang v. State, 285 Ga. App. 491, 646 S.E.2d 710, 2007 Ga. App. LEXIS 555 (2007).

Evidence sufficient to prove constructive, joint possession. — When police officers in execution of a no-knock search warrant on the home where the teenage defendant lived with defendant's mother found a sock with cocaine in the sock floating in a toilet of a bathroom that defendant had exited, defendant's cousin acknowledged seeing defendant with the sock earlier and suspecting drugs were in the sock, and the officers also found marijuana and crack cocaine in a cigar box that defendant admitted owning during an earlier detention hearing, the evidence was sufficient to prove the defendant was in constructive, joint possession of the drugs. In the Interest of R.S., 253 Ga. App. 409, 559 S.E.2d 143, 2002 Ga. App. LEXIS 86 (2002).

By showing circumstantially that the defendant and two codefendants had equal access to the cocaine and marijuana in the defendant's truck, the evidence established that all three were parties to the crime and, thus, guilty of joint constructive possession of the drugs under O.C.G.A. §§ 16-13-2(b) and 16-13-30(b). Davis v. State, 270 Ga. App. 777, 607 S.E.2d 924, 2004 Ga. App. LEXIS 1601 (2004).

Defendant's conviction for possession of marijuana was affirmed as an accomplice testified that the accomplice and the defendant smoked a substance and that it was marijuana; having smoked the substance repeatedly and with it only inches away from the defendant in the glove compartment, the defendant had the power and intention to exercise dominion or control over the marijuana and to have constructively and jointly possessed it with the accomplice. Michael v. State, 281 Ga. App. 289, 635 S.E.2d 790, 2006 Ga. App. LEXIS 989 (2006), cert. denied, No. S07C0097, 2006 Ga. LEXIS 950 (Ga. Nov. 6, 2006), overruled in part, Gibbs v. State, 340 Ga. App. 723, 798 S.E.2d 308, 2017 Ga. App. LEXIS 126 (2017).

Despite the defendant's contrary claim, the state presented sufficient evidence that the defendant and the codefendants had joint constructive possession of the contraband seized, and that the jury could reject the defendant's equal access defense, given that: (1) some of that contraband was found in a bedroom in which the defendant slept and underneath the defendant's mattress; and (2) a large amount of cash was found in the defendant's purse. Castillo v. State, 288 Ga. App. 828, 655 S.E.2d 695, 2007 Ga. App. LEXIS 1308 (2007).

Because the codefendant testified and identified the defendant as the owner of the cocaine at issue, and because the defendant was standing next to the cocaine in plain view, evidence presented at trial was sufficient to support defendant's joint and constructive possession of the cocaine; moreover, defendant's act of pointing to evidence that the codefendant had equal access to the cocaine was of no consequence as the equal access doctrine did not apply to those charged with being in joint constructive possession of contraband. Slade v. State, 289 Ga. App. 877, 658 S.E.2d 439, 2008 Ga. App. LEXIS 222 (2008).

There was sufficient evidence to support defendant's conviction for possession of methamphetamine as the state produced evidence connecting the defendant to methamphetamine oil found in a toilet by more than spatial proximity since the evidence showed that the production of methamphetamine oil was a final stage in the process of manufacturing methamphet-

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amine in a form suitable for sale and personal use, and officers recognized the strong odor of the methamphetamine manufacturing process permeating the house where defendant was located along with methamphetamine oil. Womble v. State, 290 Ga. App. 768, 660 S.E.2d 848, 2008 Ga. App. LEXIS 412 (2008).

When the defendants, a married couple who were in a car with a third person, were charged with trafficking in cocaine, possession of cocaine with intent to distribute, possession of amphetamine, and possession of a firearm during certain crimes, there was sufficient evidence that the defendants had joint constructive possession of a duffel bag in which drugs and a weapon were found. The evidence showed that one spouse exercised control over the car that transported the contraband and that the other spouse tried to retrieve a paper sack inside the duffel bag at the sheriff's office with suspicious and inconsistent explanations. Howard v. State, 291 Ga. App. 289, 661 S.E.2d 644, 2008 Ga. App. LEXIS 467 (2008).

Even if others had access to cocaine found in a kitchen, a jury could infer that a defendant had joint constructive possession of the cocaine since the evidence showed that the defendant had been seen earlier in the day with 15 bags of cocaine that the defendant said the defendant planned to sell that day, that when the police came to execute a warrant on an alleged drug dealer's house the defendant ran into the house where the defendant was found in the kitchen with seven bags of cocaine and a heated pot of grease containing three additional "hits," and that the defendant was the only one in the kitchen. Riley v. State, 292 Ga. App. 202, 663 S.E.2d 835, 2008 Ga. App. LEXIS 745 (2008).

Defendant's convictions for trafficking in methamphetamine and possession of cocaine were upheld on appeal as the jury was authorized to find that the defendant constructively possessed the contraband since the defendant lived at the apartment searched by consent and despite the fact that others living in the apartment had equal access to the drugs. Additionally, the defendant was found lying on a mattress atop a bag containing more than an ounce of methamphetamine. Maldonado v. State, 293 Ga. App. 356, 667 S.E.2d 156, 2008 Ga. App. LEXIS 940 (2008).

Two intruders entered a house through a window, threatened the occupants with handguns, and stole over an ounce of marijuana from the house. As defendant was found trapped behind the steering wheel of the get-away vehicle after the vehicle crashed while fleeing a patrol car (the intruders having fled), the evidence was sufficient to establish that the defendant and the intruders were in joint, constructive possession of the marijuana. Olds v. State, 293 Ga. App. 884, 668 S.E.2d 485, 2008 Ga. App. LEXIS 1089 (2008).

Evidence that the defendant and another shared the bedroom where the cocaine was found, that the defendant admitted the defendant was aware the roommate sold drugs, and that the defendant used drugs supported the defendant's conviction for possession of cocaine. Stacey v. State, 292 Ga. 838, 741 S.E.2d 881, 2013 Ga. LEXIS 373 (2013).

Since the defendant leased the apartment where the drugs were found, there was sufficient evidence for the jury to conclude that the defendant and the codefendant were in joint constructive possession of the cocaine and marijuana found there. Ahmed v. State, 322 Ga. App. 154, 744 S.E.2d 345, 2013 Ga. App. LEXIS 470 (2013).

Evidence sufficient to prove constructive, joint possession but not sufficient to prove intent to distribute. — With regard to a defendant's convictions for possession of marijuana with the intent to distribute, trafficking in 4-Methylenedioxymethamphetamine, commonly known as ecstasy, trafficking in cocaine, and possession of a firearm during the commission of a crime, there was sufficient evidence to support the defendant's conviction for possession of the contraband, which was found in a backpack, based on the strong odor of marijuana coming from the vehicle in which the defendant was a passenger, the

defendant's suspicious and nervous behavior, the defendant's joint living arrangement with two other defendants, the defendant's possession of ammunition for another one of the defendant's weapons, and the fact that the defendant was, at times, within arm's reach of the backpack, which showed an intent and power to exercise joint control over the backpack and the drugs found therein; likewise, there was sufficient evidence to support the trafficking charges based on the amounts of the contraband found; and, there was sufficient evidence to support the firearm possession charge since the defendant was found in possession of a magazine that fit the gun located within arm's reach. However, considering that there were four people in the vehicle, the court found that the state's evidence was insufficient to exclude the reasonable hypothesis that the marijuana was intended for personal use, therefore, the conviction for the intent to distribute marijuana was reduced to possession. Vines v. State, 296 Ga. App. 543, 675 S.E.2d 260, 2009 Ga. App. LEXIS 246 (2009).

Actual or constructive possession. — Person who knowingly has direct physical control over a thing at a given time is in actual possession of the thing. A person who, though not in actual possession, knowingly has both the power and intention at a given time to exercise dominion or control over a thing is then in constructive possession of the thing. Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Possession of marijuana may be actual or constructive, and the evidence is sufficient to support a conviction for possession where it would authorize a jury to find that defendant, at the very least, was in constructive possession of marijuana, since defendant exercised dominion and control over it. Hadden v. State, 181 Ga. App. 628, 353 S.E.2d 532, 1987 Ga. App. LEXIS 2572 (1987).

Possession sufficient to sustain a conviction pursuant to O.C.G.A. § 16-13-30(b) may be either actual or constructive. Walton v. State, 194 Ga. App. 490, 390 S.E.2d 896, 1990 Ga. App. LEXIS 174 (1990).

Neither actual nor constructive possession of cocaine is an element of the offense of selling of cocaine. Evans v. State, 235 Ga. App. 577, 510 S.E.2d 313, 1998 Ga. App. LEXIS 1575 (1998).

Defendant's motion for a directed verdict of acquittal on a charge of possession of cocaine with intent to distribute was properly denied; the evidence establishing defendant's constructive possession of cocaine included defendant's presence in the room where it was found, defendant's actual possession of a key to the apartment where it was found and $346.00 in cash, testimony by another individual at the scene that the individual and defendant were partners in the drug trade, and defendant's giving a false name when police arrived. Jackson v. State, 276 Ga. App. 694, 624 S.E.2d 270, 2005 Ga. App. LEXIS 1362 (2005).

As the officer heard a bag that contained dime bags of marijuana fall from where the defendant, who was in custody, was walking and where a later search of the defendant revealed empty baggies, the circumstantial evidence tended to prove the offense of possession with intent to distribute marijuana under O.C.G.A. § 16-13-30 and the state was not required to tender the illegal drugs at trial. In the Interest of P.M.H., 277 Ga. App. 643, 627 S.E.2d 211, 2006 Ga. App. LEXIS 179 (2006).

Although the defendant claimed that at least 10 others were within throwing distance of the pouch containing cocaine, sufficient evidence supported the defendant's conviction of possession of cocaine and possession of less than one ounce of marijuana under O.C.G.A. § 16-13-30; the pouch was found between the defendant's legs, and the labels found in the pouch tied the defendant to the marijuana cigarettes found in the defendant's car given that they were the same type of labels. Pierre v. State, 281 Ga. App. 69, 635 S.E.2d 363, 2006 Ga. App. LEXIS 1003 (2006).

Sufficient evidence established the defendant's possession of the cocaine under O.C.G.A. § 16-13-30; a deputy found the cocaine in the area where the other deputy saw it fly from the defendant's window during a chase of the defendant's

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vehicle, and this was sufficient for the jury to conclude that the cocaine belonged to defendant. Florence v. State, 282 Ga. App. 31, 637 S.E.2d 779, 2006 Ga. App. LEXIS 1306 (2006).

Defendant's possession of cocaine conviction was upheld on appeal as supported by the sufficiency of the evidence given: (1) an officer's act of observing a hand emerge from the passenger window and toss out a bag of cocaine; (2) that, based on the officer's testimony, it would have been physically impossible for the driver of the vehicle to toss out the bag while driving the car; and (3) the evidence showed that the defendant was the passenger and no other person was in the car; moreover, as witness credibility was the jury's province, the court found that a rational trier of fact could have found the defendant guilty of possession of cocaine beyond a reasonable doubt. Johnson v. State, 283 Ga. App. 425, 641 S.E.2d 655, 2007 Ga. App. LEXIS 81 (2007).

Sufficient evidence of constructive possession of crack cocaine was presented to convict a defendant under O.C.G.A. § 16-13-30(b) based on the facts that plastic baggies containing a large amount of crack cocaine were found in an apartment bathroom shortly after the defendant fled there and closed the door; and numerous similarities existed between other items found under the tub and items found in the defendant's pockets. Marshall v. State, 295 Ga. App. 354, 671 S.E.2d 860, 2008 Ga. App. LEXIS 1374 (2008), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Jury was authorized to infer that a defendant had been in possession of the bag of cocaine found on the ground next to the garbage dumpster based on an officer's testimony that the officer saw the defendant walk over to the dumpster and bend down next to the dumpster, and that no other items were found in the area where the defendant had bent down. White v. State, 313 Ga. App. 605, 722 S.E.2d 198, 2012 Ga. App. LEXIS 34 (2012).

Sufficient evidence supported the defendant's conviction for possession of cocaine based on the evidence showing that the defendant ran from the back yard of a girlfriend's leased residence and had approximately 26 grams of cocaine on or near the defendant's person when apprehended on the front porch of the adjoining property by the police; thus, the evidence authorized the jury to infer that the defendant had either constructive or actual possession of the cocaine. Smith v. State, 323 Ga. App. 668, 747 S.E.2d 859, 2013 Ga. App. LEXIS 712 (2013).

Defendant's conviction for drug possession was upheld on appeal because there was sufficient evidence to support the defendant's conviction based on the defendant admitting to owning the safe where approximately 80 grams of marijuana were located. Franklin v. State, 325 Ga. App. 728, 754 S.E.2d 774, 2014 Ga. App. LEXIS 60 (2014).

Evidence of the quantum of marijuana seized in conjunction with the presence of the weapon and ammunition found in the bedroom the defendant ran to on being confronted by police, as well as the cell phones containing the defendant's photograph, the scholarship application in the defendant's name, the video security system, the police scanner, and the defendant's mother's pill bottle therein, linked the defendant to the marijuana and weapon. Copeland v. State, 327 Ga. App. 520, 759 S.E.2d 593, 2014 Ga. App. LEXIS 373 (2014).

Spatial proximity was not the only evidence of the defendant's possession of crack cocaine as the pill bottle containing the cocaine was not on the ground when the defendant got out of the car, the defendant attempted to hide the bottle with the defendant's feet during the search, and in a similar transaction the defendant had carried a pill bottle containing crack cocaine. Tanksley v. State, 327 Ga. App. 273, 758 S.E.2d 611, 2014 Ga. App. LEXIS 316 (2014).

Neither actual nor constructive possession shown. — When the only evidence relating to defendant was that the defendant and codefendants left a codefendant's apartment together in a codefendant's car, that a codefendant was carrying a bag containing drugs when the codefendant left the codefendant's

apartment that was found on the floor in front of the seat where a codefendant was riding, and there was no evidence that defendant even knew the bag was in the car, the evidence did not show actual possession by defendant; and a finding that defendant was in constructive possession of the contraband must be based upon some connection between the defendant and the contraband other than spatial proximity. The evidence was insufficient to support defendant's conviction of possession of the contraband. Shirley v. State, 166 Ga. App. 456, 304 S.E.2d 468, 1983 Ga. App. LEXIS 2210, cert. vacated, 251 Ga. 505, 309 S.E.2d 142, 1983 Ga. LEXIS 983 (1983).

Because there was no evidence connecting defendant with the cocaine found in a hotel room other than defendant's presence at a hotel and the fact that the room was registered in defendant's name, any presumption of possession was rebutted as a matter of law. Stringer v. State, 275 Ga. App. 519, 621 S.E.2d 761, 2005 Ga. App. LEXIS 1020 (2005).

At most, the evidence showed that cocaine in a bottle found in a yard near the defendant's home was in the possession of the defendant's son, who was seen throwing something into the yard as the officers approached to execute a search warrant; the trial court should have granted a directed verdict on the charge of possessing drugs with intent to distribute for the drugs in the bottle. Smith v. State, 278 Ga. App. 315, 628 S.E.2d 722, 2006 Ga. App. LEXIS 321 (2006), cert. denied, No. S06C1314, 2006 Ga. LEXIS 687 (Ga. Sept. 12, 2006).

Evidence was insufficient to prove that a defendant constructively possessed drugs as, even assuming that the defendant had been in a bedroom in which drugs were found, there was not sufficient evidence that the defendant exercised control over the drugs, or knew the drugs were present, since: (1) no contraband was found on or near the defendant's person; (2) the drugs were found inside a ball of electrical tape in a corner of the bedroom; (3) the home belonged to another person; and an officer believed that the other person resided in the bedroom, and (4) there was no evidence that the defendant resided on the premises, or that the defendant was seen in the bedroom in which the drugs were found. Johnson v. State, 282 Ga. App. 52, 637 S.E.2d 775, 2006 Ga. App. LEXIS 1302 (2006).

Evidence was insufficient to show constructive possession of methamphetamine found in a car in which defendant was a passenger because there was no evidence, besides spatial proximity, connecting the defendant with the contraband since there was no evidence showing that the defendant knew that a baggy found in the car contained contraband or the defendant hid the baggy in the car. Millsaps v. State, 300 Ga. App. 383, 685 S.E.2d 371, 2009 Ga. App. LEXIS 1177 (2009), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Trial court erred in finding that the defendant violated the defendant's probation by committing the new felony of possessing a controlled substance, piperazine or TFMPP, in violation of O.C.G.A. § 16-13-30 because the circumstantial evidence was insufficient to show the defendant's constructive possession of the TFMPP pills; the only evidence linking the defendant to the drugs was spatial proximity, but it was at least equally likely that the pills belonged to the driver of the truck where the pills were found. Scott v. State, 305 Ga. App. 596, 699 S.E.2d 894, 2010 Ga. App. LEXIS 761 (2010).

Possession of cocaine found in passenger's pockets. — Evidence was sufficient to convict a defendant of being a party to the crime of possession of cocaine in violation of O.C.G.A. §§ 16-2-20(b) and 16-13-30(a), although the cocaine was found in the defendant's nephew's pockets, because the nephew was blind and could not have driven himself to locate the drugs or completed the purchase by himself. Wade v. State, 305 Ga. App. 819, 701 S.E.2d 214, 2010 Ga. App. LEXIS 819 (2010).

In vicinity of contraband. — Merely having been in the vicinity of contraband does not, without more, establish possession. Ridgeway v. State, 187 Ga. App. 381, 370 S.E.2d 216, 1988 Ga. App. LEXIS 695 (1988).

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Defendant's conviction for possession of cocaine, O.C.G.A. § 16-13-30(a), was reversed because the trial court determined under Ga. Unif. Super. Ct. R. 31.3(B) whether the state possessed a proper purpose for admission of similar transaction evidence, or whether the two offenses were sufficiently connected or similar; the error was not harmless because the state could not establish that the defendant had actual possession of the cocaine found in the girlfriend's vehicle. McCrory v. State, 341 Ga. App. 174, 798 S.E.2d 385, 2017 Ga. App. LEXIS 166 (2017).

Evidence of possession of "portable" contraband near defendant's home. — Even if the equal access doctrine applied to marijuana plants growing in buckets near defendant's home, there was substantial other evidence of defendant's possession of the "portable" contraband, such as that defendant was linked to ownership of the containers in which some of the plants were growing, that some of the plant-filled buckets were on the boundaries of defendant's yard within feet of defendant's dog pen and defendant's garden, all visible from defendant's yard, and that defendant was a gardener and had a readily available water source. Blitch v. State, 188 Ga. App. 487, 373 S.E.2d 227, 1988 Ga. App. LEXIS 1084 (1988).

Access to premises. — When the defendant made no affirmative showing that anyone other than the defendant and the defendant's spouse had actual access to the bedroom or the bedroom closet during several days or weeks prior to the discovery of the pills, the jury was authorized to find defendant guilty of the offense of unlawful possession of diazepam. Prescott v. State, 164 Ga. App. 671, 297 S.E.2d 362, 1982 Ga. App. LEXIS 3340 (1982).

Evidence authorized a finding that the defendant and a codefendant were in joint constructive possession of the drugs in the bedroom that they were apparently sharing and in which the contraband was found. Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Despite the defendant's denial of any knowledge of the existence of drugs and other contraband in a motel room in which the defendant was the sole occupant, evidence of the contraband found in close proximity to other evidence which the defendant admitted owning, when coupled with the fact that only one key to the room existed, which the defendant admitted to having, and that no one had brought anything into the room since the person the defendant alleged was the owner of the evidence had left, was sufficient to support the defendant's convictions under O.C.G.A. §§ 16-11-106, 16-13-2, and 16-13-30, and 16-13-31. Hall v. State, 283 Ga. App. 266, 641 S.E.2d 264, 2007 Ga. App. LEXIS 31 (2007).

Equal access of others to premises. — Evidence that cocaine was found hidden on the outside of the defendant's mobile home, which was parked in an area to which a large number of persons, not only visitors to the unit occupied by the defendant but anyone having business in the mobile home park, had potential access, without evidence directly connecting the defendant to the cocaine, was entirely circumstantial, and insufficient to sustain the defendant's conviction for possession of cocaine. Prescott v. State, 164 Ga. App. 671, 297 S.E.2d 362, 1982 Ga. App. LEXIS 3340 (1982).

Defendant's conviction for unlawful possession of cocaine was reversed, where there was no evidence that defendant occupied the bedroom where the cocaine was found, and other persons living in the residence had equal access to the bedroom. Nations v. State, 177 Ga. App. 801, 341 S.E.2d 482, 1986 Ga. App. LEXIS 1533 (1986); Johnson v. State, 245 Ga. App. 583, 538 S.E.2d 481, 2000 Ga. App. LEXIS 1015 (2000).

When the state presented evidence that the defendant was a lessee and occupant of an apartment where cocaine was found there was a rebuttable presumption that the defendant had possession and evidence that others had access was not sufficient to rebut the presumption against the defendant. Wilson v. State, 231 Ga. App. 525, 499 S.E.2d 911, 1998 Ga. App. LEXIS 502 (1998).

Evidence was sufficient to convict defendant of possession of cocaine where a pipe used to smoke crack cocaine the night before was found in defendant's bedroom, even though defendant shared the house with other people, because additional evidence connected defendant to the pipe besides the fact that defendant used the room where it was found, as there was testimony that defendant actually possessed the crack and smoked it, and there was no evidence that anyone else had equal access to defendant's bedroom. Whitlock v. State, 265 Ga. App. 111, 593 S.E.2d 17, 2003 Ga. App. LEXIS 1538 (2003).

Sufficient evidence overcame defendant's equal access defense as defendant's ownership or possession of a vehicle containing the seized methamphetamine was not the sole evidence establishing defendant's guilt of possession of methamphetamine; the state also relied on defendant's roommate's testimony that defendant purchased the seized methamphetamine and kept the methamphetamine in the vehicle. Stovall v. State, 275 Ga. App. 244, 620 S.E.2d 462, 2005 Ga. App. LEXIS 939 (2005), cert. denied, No. S06C0200, 2006 Ga. LEXIS 100 (Ga. Jan. 30, 2006).

Insufficient evidence supported the defendant's conviction of possession of marijuana under O.C.G.A. § 16-13-30; the defendant lived with a female, and there was no evidence presented in the case that connected the defendant to the small baggies of marijuana found hidden in a bag under the end table of the living room in the apartment. Gentry v. State, 281 Ga. App. 315, 635 S.E.2d 782, 2006 Ga. App. LEXIS 943 (2006), cert. denied, No. S07C0117, 2007 Ga. LEXIS 78 (Ga. Jan. 22, 2007).

There was sufficient evidence to support a defendant's conviction on various drug possession charges based on the evidence of various drugs being found in the bedroom the defendant resided in of a two-bedroom apartment shared with another, despite others having equal access to the apartment. Smith v. State, 297 Ga. App. 526, 677 S.E.2d 717, 2009 Ga. App. LEXIS 464 (2009).

Insufficient evidence supported defendant's conviction of possession of marijuana with intent to distribute. — There was insufficient evidence to support the defendant's conviction for possession of marijuana with the intent to distribute because the state merely proved that the defendant possessed marijuana and failed to produce any evidence that the defendant possessed scales or other drug-dealing paraphernalia or that large amounts of cash on the defendant's person or in the defendant's apartment were found. Beard v. State, 318 Ga. App. 128, 733 S.E.2d 426, 2012 Ga. App. LEXIS 865 (2012).

Effect of equal access of others to premises. — Merely finding contraband on premises occupied by defendant is not sufficient to support conviction if it affirmatively appears from evidence that persons other than defendant had equal opportunity to commit the crime. McCann v. State, 137 Ga. App. 445, 224 S.E.2d 99, 1976 Ga. App. LEXIS 2480 (1976); Person v. State, 155 Ga. App. 106, 270 S.E.2d 319, 1980 Ga. App. LEXIS 2477 (1980); Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Equal access rule generally applies to contraband in open, notorious, and easily accessible areas. Wright v. State, 154 Ga. App. 400, 268 S.E.2d 378, 1980 Ga. App. LEXIS 2194, cert. denied, 449 U.S. 900, 101 S. Ct. 270, 66 L. Ed. 2d 130, 1980 U.S. LEXIS 3494 (1980).

"Equal access" instruction not warranted. — Defendant was not entitled to an "equal access" instruction relating to drugs found in the defendant's vehicle since, as there was no instruction on presumption of possession, that presumption was not placed before the jury, and since the defendant's ownership of the vehicle was not the sole evidence of possession of cocaine with intent to distribute. State v. Johnson, 280 Ga. 511, 630 S.E.2d 377, 2006 Ga. LEXIS 338 (2006).

Because the state was not relying upon the defendant's ownership or control of the residence in order to link the ownership and possession of the methamphetamine found to the defendant, a charge on equal access was not authorized by the evidence. Thrasher v. State, 289 Ga. App. 399, 657 S.E.2d 316, 2008 Ga. App. LEXIS 97 (2008).

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In a defendant's trial for possession of cocaine, the state did not rely on a presumption that the defendant possessed the cocaine, but presented direct evidence that the defendant exited a car with the drugs in a bag and disposed of the bag in the woods following an accident. Therefore, the defendant was not entitled to an equal access charge relative to the woods. Hill v. State, 302 Ga. App. 291, 690 S.E.2d 677, 2010 Ga. App. LEXIS 123 (2010).

Conviction not precluded when defendant connected with contraband. — Totality of the evidence was sufficient to connect the defendant to the possession of cocaine seized in a residence shared by the defendant and the defendant's girl friend even though the evidence would have authorized a finding that others had equal access to the drugs. Lane v. State, 177 Ga. App. 553, 340 S.E.2d 228, 1986 Ga. App. LEXIS 2431 (1986).

Evidence from the defendant's live-in girlfriend that a lunch bag and shoe box containing marijuana and scales belonged to the defendant was sufficient to prove that the defendant had sole constructive possession of the marijuana in violation of O.C.G.A. § 16-13-30(j), although both the defendant and the girlfriend had equal access to the marijuana. Jefferson v. State, 309 Ga. App. 861, 711 S.E.2d 412, 2011 Ga. App. LEXIS 473 (2011), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

When joint constructive possession alleged. — Equal access rule, conceptually and historically, has no application when all persons allegedly having equal access to the contraband are alleged to have been in joint constructive possession of that contraband. It is simply a defense available to the accused to whom a presumption of possession flows. Castillo v. State, 166 Ga. App. 817, 305 S.E.2d 629, 1983 Ga. App. LEXIS 3279 (1983).

When state's evidence is of actual, physical possession. — "Equal access" rule is inapplicable when the state's evidence is not that the defendant constructively possessed contraband, but that the defendant actually and physically possessed the contraband. Marshall v. State, 153 Ga. App. 198, 264 S.E.2d 718, 1980 Ga. App. LEXIS 1747 (1980).

Equal access rule inapplicable to marijuana plants growing outside. — While equal access rule may be applicable with reference to loose, portable quantities of contraband found inside house, it is not properly applicable to marijuana plants growing outside, which require a period of months to grow, mature, and be harvested. Goode v. State, 130 Ga. App. 791, 204 S.E.2d 526, 1974 Ga. App. LEXIS 1265 (1974).

Equal access rule does not apply to cases involving marijuana plants growing on the land outside the owner's or lessee's residence, and not in portable containers, on the basis that such contraband is stationary. Ward v. State, 178 Ga. App. 129, 342 S.E.2d 373, 1986 Ga. App. LEXIS 1610 (1986).

Equal access rule inapplicable where physical possession shown. — When a search warrant was executed, the defendant was found with a bucket of water into which the defendant was placing packets of foil, and a sampling of the packets showed the presence of cocaine, the rule that the mere presence of contraband on the premises occupied by an accused is insufficient to sustain a conviction when there is also evidence of access by others was not applicable, even though there was no proof that others had not put cocaine in the bucket. Bradley v. State, 180 Ga. App. 386, 349 S.E.2d 263, 1986 Ga. App. LEXIS 2729 (1986).

Chain of custody. — State failed to prove an adequate chain of custody because there was no evidence at trial that the plastic bag and the alleged cocaine were distinct items with readily observable distinguishing characteristics; fungible items require proof of chain of custody. Phillips v. Williams, 276 Ga. 691, 583 S.E.2d 4, 2003 Ga. LEXIS 551 (2003).

In a trial for possession of cocaine, it was not error to admit a substance into evidence when the only break in the chain of custody occurred after a scientist tested the substance and found the substance to be cocaine; even if there was error, it was

harmless given the overwhelming evidence of guilt, including trial testimony and scientist's report, even without the substance being introduced into evidence. Cowins v. State, 290 Ga. App. 814, 660 S.E.2d 865, 2008 Ga. App. LEXIS 419 (2008).

Equal access defense was not sufficient. — Evidence that the defendant placed an object, which was later found to be crack cocaine, on the hood of a car, that two other men did not move, and then the defendant tried to flee after seeing the police, was sufficient for a jury to find that the defendant was not merely in close proximity to the drugs, but that the other men in the area did not have an equal opportunity to place the cocaine on the hood of the truck. Daniels v. State, 261 Ga. App. 5, 582 S.E.2d 4, 2003 Ga. App. LEXIS 528 (2003).

Evidence was sufficient to support defendant's conviction for possession of more than 28 grams of a mixture containing methamphetamine, as a search of defendant's vehicle after a lawful stop revealed the drug as well as paraphernalia, and the presumption of equal access between defendant and the passenger was overcome by defendant's voluntary statement that the drugs belonged to the defendant. Collins v. State, 273 Ga. App. 598, 615 S.E.2d 646, 2005 Ga. App. LEXIS 584 (2005).

There was sufficient evidence to support defendant's conviction for possession of marijuana with intent to distribute, because defendant drove a car into a parking lot, an individual who was empty-handed got into the vehicle and they drove to a remote area of the lot, and thereafter, the individual exited the vehicle, as the presumption of the equal access rule was rebutted by police officers' observation that the individual was empty handed and that the marijuana which was found in defendant's vehicle was in a briefcase behind the passenger's seat; there was also sufficient other evidence that supported a finding that defendant possessed the marijuana. Causey v. State, 274 Ga. App. 506, 618 S.E.2d 127, 2005 Ga. App. LEXIS 777 (2005).

Even though the defendant did not own the home where methamphetamine and other contraband were found, and even though the defendant was not arrested with drugs or drug-related objects on the defendant's person, there was sufficient evidence to link the defendant to the contraband, including a codefendant's testimony that the defendant brought the drugs into the home and the defendant's statement to the police about the drug's location. Tucker v. State, 276 Ga. App. 117, 622 S.E.2d 466, 2005 Ga. App. LEXIS 1186 (2005).

Evidence supported the defendant's conviction for possession of methamphetamine because: (1) the defendant acknowledged that an unoccupied tractor-trailer was defendant's; (2) the police entered the cab and saw in plain sight a crack cocaine or methamphetamine pipe; (3) testing of the pipe was positive for methamphetamine; (4) the defendant admitted that the defendant smoked methamphetamine in the pipe and had a "drug problem"; and (5) the equal access rule did not apply as the defendant made inculpatory admissions authorizing a finding that the defendant possessed the methamphetamine. Rochefort v. State, 279 Ga. 738, 620 S.E.2d 803, 2005 Ga. LEXIS 665 (2005).

Although the defendant contended that the trial court erred by denying the defendant's motion for a directed verdict of acquittal because presence in the vicinity of contraband did not establish possession, defendant and the codefendant were indicted and tried together for possession of methamphetamine, the jury was entitled to conclude that defendant was in possession of the methamphetamine-coated pipe, which was found in the car the defendant drove, next to the driver's seat; moreover, the jury heard the officer's testimony that the defendant stated at arrest that the defendant was aware the item was used to smoke methamphetamine, and the trial court charged the jury on the doctrine of equal access. Thus, the jury was able to contemplate and reject the equal access defense, and sufficient evidence was presented for the jury to find that the defendant possessed the methamphetamine. Dover v. State, 307 Ga. App. 126, 704 S.E.2d 235, 2010 Ga. App. LEXIS 1099 (2010).

Equal access rule in automobile context. — Equal access rule, as the rule

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applies in the automobile context, is merely that evidence showing that a person or persons other than the owner or driver of the automobile had equal access to contraband found in the automobile may or will, depending upon the strength of the evidence, overcome the presumption that the contraband was in the exclusive possession of the owner or driver. Castillo v. State, 166 Ga. App. 817, 305 S.E.2d 629, 1983 Ga. App. LEXIS 3279 (1983).

Evidence was insufficient to support a conviction for possession of cocaine because the sole evidence of possession was the defendant's ownership and driving of the vehicle in which the cocaine was found under the passenger seat, and the passenger had equal access to that cocaine. Turner v. State, 276 Ga. App. 381, 623 S.E.2d 216, 2005 Ga. App. LEXIS 1256 (2005), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013), overruled in part as stated in Griffin v. State, 331 Ga. App. 550, 769 S.E.2d 514, 2015 Ga. App. LEXIS 41 (2015).

Presumption as to drugs found in automobile. — Absent contrary circumstances, drugs found in an automobile are presumed to belong to the driver and owner. Moore v. State, 155 Ga. App. 149, 270 S.E.2d 339, 1980 Ga. App. LEXIS 2500 (1980).

Sufficient evidence supported defendant's conviction for possession of cocaine found in the car the defendant was driving despite the fact that others had access to the car the day before and the only evidence linking defendant to the cocaine was the defendant's possession of the car; the trier of fact heard defendant's claim, and apparently decided that defendant did not rebut the inference that the driver of an automobile is presumed to have possession and control of contraband found in the automobile. Davis v. State, 272 Ga. App. 33, 611 S.E.2d 710, 2005 Ga. App. LEXIS 209 (2005).

Since the defendant admitted knowing that methamphetamine was in a vehicle in which the defendant was a passenger, and drug paraphernalia found in the defendant's home showed a sufficient connection to and knowledge of the drugs found in the vehicle, the evidence was sufficient to prove that the defendant was in constructive possession of the drugs in violation of O.C.G.A. § 16-13-30(a). Clewis v. State, 293 Ga. App. 412, 667 S.E.2d 158, 2008 Ga. App. LEXIS 952 (2008).

Defendant, as the driver of a vehicle stopped at a roadblock, was presumed to have possession and control of drugs found in the vehicle. Although the defendant presented some evidence of others' access to the vehicle, the question of whether the presumption was rebutted was for the jury, which decided against the defendant. Blankenship v. State, 301 Ga. App. 602, 688 S.E.2d 395, 2009 Ga. App. LEXIS 1421 (2009).

Evidence was sufficient to support the defendant's convictions for possession of methamphetamine and possession of marijuana because in the absence of any evidence to the contrary, the jury was authorized to consider the rebuttable presumption that the defendant, as the sole driver of a stolen vehicle, had possession of and control over the contraband contained within that vehicle, and the record was devoid of any evidence that someone other than the defendant had access to the interior of the vehicle; while affirmative evidence showing that a person or persons other than the owner or driver of the automobile had equal access to contraband found in the automobile may or will, depending upon the strength of the evidence, overcome the presumption that the contraband was in the exclusive possession of the owner or driver, this legal principle does not mean that the state must establish a negative fact, but rather, the burden on the state remains the same: to prove every element of the crimes charged beyond a reasonable doubt. Mangum v. State, 308 Ga. App. 84, 706 S.E.2d 612, 2011 Ga. App. LEXIS 124 (2011).

Presumption of ownership may be overcome by evidence of equal access. — Evidence of equal access to drugs is sufficient to overcome presumption that contraband belongs to defendant driver and owner of automobile

and was in defendant's possession; whether or not this evidence was sufficient to rebut inference arising from finding of drugs in automobile is a question for jury to decide. Moore v. State, 155 Ga. App. 149, 270 S.E.2d 339, 1980 Ga. App. LEXIS 2500 (1980).

Evidence was sufficient to convict defendant of possession of marijuana and cocaine based upon the drugs that were found on the floorboard of the truck that defendant used, which defendant's father owned, as defendant did not claim that the drugs belonged to defendant's passenger in the truck and no one else had equal access on that day to the truck. Marion v. State, 268 Ga. App. 699, 603 S.E.2d 321, 2004 Ga. App. LEXIS 989 (2004).

Presence of cocaine metabolites in body fluid is direct evidence only of the fact that cocaine was introduced into the body producing the fluid, and is not direct evidence that the person possessed the cocaine. Rather, the presence of cocaine metabolites in body fluid is only circumstantial or indirect evidence of possession. Green v. State, 260 Ga. 625, 398 S.E.2d 360, 1990 Ga. LEXIS 469 (1990), cert. denied, 500 U.S. 935, 111 S. Ct. 2059, 114 L. Ed. 2d 464, 1991 U.S. LEXIS 2884 (1991), overruled in part as stated in West v. State, 288 Ga. App. 566, 654 S.E.2d 463, 2007 Ga. App. LEXIS 1252 (2007).

Quantification of substance in urine sample not required. — Amounts of controlled substances in urine sample did not have to be quantified to prove charges of driving under the combined influence of marijuana and cocaine and drug possession. Kerr v. State, 205 Ga. App. 624, 423 S.E.2d 276, 1992 Ga. App. LEXIS 1324 (1992), cert. denied, No. S93C0106, 1993 Ga. LEXIS 32 (Ga. Jan. 7, 1993), superseded by statute as stated in Ryals v. State, 215 Ga. App. 51, 449 S.E.2d 865, 1994 Ga. App. LEXIS 1128 (1994).

Proven through stillborn fetus. — When the indictment charged defendant with possession of cocaine in violation of O.C.G.A. § 16-13-30, it was proper to admit evidence supporting the state's case that a blood specimen of her stillborn fetus tested positive for metabolite of cocaine. Jackson v. State, 208 Ga. App. 391, 430 S.E.2d 781, 1993 Ga. App. LEXIS 501, cert. dismissed, 263 Ga. 403, 436 S.E.2d 632, 1993 Ga. LEXIS 810 (1993).

Lesser included offense. — When the indictment charged the defendant with trafficking in cocaine by possessing more than 28 ounces, the trial court erred in refusing to give the defendant's requested charge on the lesser included offense of simple possession of cocaine. Howard v. State, 220 Ga. App. 579, 469 S.E.2d 746; Lumpkin v. State, 245 Ga. App. 627, 538 S.E.2d 514, 2000 Ga. App. LEXIS 1026 (2000).

Because the defendant was indicted for possession of more than 28 grams of methamphetamine, a violation of O.C.G.A. § 16-13-31, the defendant had sufficient notice that the lesser-included offense of possession with intent to distribute, a violation of O.C.G.A. § 16-13-30(b), might be submitted to the jury if the evidence warranted it; consequently, by charging the lesser offense in accordance with O.C.G.A. § 16-1-6, the trial court did not permit the jury to convict the defendant in a manner not alleged in the indictment in violation of the defendant's due process rights. Rupnik v. State, 273 Ga. App. 34, 614 S.E.2d 153, 2005 Ga. App. LEXIS 392 (2005).

State proved possession of marijuana. — See Millwood v. State, 166 Ga. App. 292, 304 S.E.2d 103, 1983 Ga. App. LEXIS 3225 (1983).

Trial court properly denied defendant's motion for a directed verdict of acquittal, and properly entered a judgment of conviction against defendant for misdemeanor possession of marijuana, as the evidence sufficiently showed that defendant possessed marijuana which police found in a search of the home. Heller v. State, 275 Ga. App. 637, 621 S.E.2d 591, 2005 Ga. App. LEXIS 1064 (2005).

In a drug possession case, the defendant was not convicted based on circumstantial evidence that, in violation of former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6), failed to exclude every other hypothesis save that of the defendant's guilt; the passenger's testimony that the defendant handed the passenger drugs and told the passenger to discard the drugs provided direct evidence that the

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defendant possessed more than an ounce of marijuana in violation of O.C.G.A. § 16-13-30. Curtis v. State, 282 Ga. App. 322, 638 S.E.2d 773, 2006 Ga. App. LEXIS 1301 (2006), cert. denied, No. S07C0427, 2007 Ga. LEXIS 203 (Ga. Feb. 26, 2007).

Passenger's testimony, stating that the defendant passed marijuana to the passenger and told the passenger to discard the marijuana, was sufficiently corroborated under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) to support a finding of guilt of possession of more than an ounce of marijuana under O.C.G.A. § 16-13-30; the marijuana found near the defendant was packaged the same way as the marijuana found outside the car, and it could, therefore, be inferred that the marijuana found outside the car had previously been in the back seat beside the defendant. Curtis v. State, 282 Ga. App. 322, 638 S.E.2d 773, 2006 Ga. App. LEXIS 1301 (2006), cert. denied, No. S07C0427, 2007 Ga. LEXIS 203 (Ga. Feb. 26, 2007).

Evidence supported the defendant's convictions of felony murder during the commission of aggravated assault, aggravated assault, possession of marijuana, and possession of a firearm during the commission of a crime since: (1) after smoking marijuana, the defendant attacked the victim, pulled a gun from the defendant's pocket, and shot the victim four times; (2) the victim told the police that the defendant did it; (3) the victim died; (4) a knife was found near the victim, the defendant had a stab wound and the defendant claimed self-defense; and (5) witnesses one and two saw the defendant pull the gun but did not see the victim with a knife. Hill v. State, 291 Ga. 160, 728 S.E.2d 225, 2012 Ga. LEXIS 500 (2012).

Sufficient evidence supported the defendant's conviction for possession of marijuana because the evidence showed that the defendant had marijuana in the defendant's possession when arrested. Smith v. State, 323 Ga. App. 668, 747 S.E.2d 859, 2013 Ga. App. LEXIS 712 (2013).

Possession of methamphetamine proven. — Evidence was sufficient for a jury to find defendant guilty of possession of methamphetamine, as defendant leased a house in which a widespread methamphetamine manufacturing operation took place, which created a strong chemical smell immediately apparent upon entering the house, and defendant tested positive for methamphetamine in the defendant's system, circumstantially linking defendant to the manufacturing process and undermining the claim that defendant was unaware of the activity. Kirby v. State, 275 Ga. App. 216, 620 S.E.2d 459, 2005 Ga. App. LEXIS 933 (2005).

Because the defendant, who was a passenger in a vehicle stopped by police, and the vehicle's driver had different responses when the arresting officers asked them where they were going, and a bag containing about three pounds of methamphetamine was found between the passenger's and driver's seats, and the defendant fled the scene, and the packaging of the methamphetamine was very similar to the packaging of the cocaine, marijuana, and cash found at the defendant's residence two months earlier, the evidence was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of trafficking in methamphetamine and of possession of methamphetamine with intent to distribute. Salinas-Valdez v. State, 276 Ga. App. 732, 624 S.E.2d 278, 2005 Ga. App. LEXIS 1367 (2005).

Because a jury could find that the defendant was aware of the methamphetamine that fell from the defendant's pants and that the defendant had actual or constructive possession of the methamphetamine, the evidence was sufficient to find the defendant guilty of possession of methamphetamine under O.C.G.A. § 16-13-30(b). Hayes v. State, 276 Ga. App. 268, 623 S.E.2d 144, 2005 Ga. App. LEXIS 1225 (2005).

There was sufficient evidence to convict the defendant of possession of methamphetamine in violation of O.C.G.A. § 16-13-30(a), as methamphetamine was found in pants from which the defendant retrieved a key and in which the defendant's wallet was found, and methamphetamine was found in the

defendant's wallet. Johnson v. State, 281 Ga. App. 7, 635 S.E.2d 278, 2006 Ga. App. LEXIS 983 (2006).

Because the trial court properly found that testimony tending to show that the defendant's daughter possessed the methamphetamine the defendant was charged with possessing was hearsay, and testimony from the defendant's grandson was irrelevant, the defendant's conviction for possession was affirmed on appeal. Corbin v. State, 287 Ga. App. 194, 651 S.E.2d 101, 2007 Ga. App. LEXIS 871 (2007).

Sufficient evidence was established to support a defendant's conviction for possession of methamphetamine with intent to distribute since the evidence seized from the defendant's vehicle included the division of the drugs in small plastic baggies, which was evidence of intent to distribute, as well as possessing methamphetamine weighing 24.75 grams, which was inconsistent with personal use. Davis v. State, 287 Ga. App. 478, 651 S.E.2d 750, 2007 Ga. App. LEXIS 928 (2007), cert. denied, No. S08C0176, 2008 Ga. LEXIS 179 (Ga. Feb. 11, 2008).

There was evidence that the defendant affirmatively stated to police officers that the methamphetamine was defendant's and not another individual's drug. The defendant testified at trial that the defendant had previously been convicted of possession of methamphetamine and that the defendant had used methamphetamine in the house; thus, there was sufficient evidence for the jury to conclude the defendant was in possession of the methamphetamine. Shoemaker v. State, 292 Ga. App. 97, 663 S.E.2d 423, 2008 Ga. App. LEXIS 709 (2008).

Officer found methamphetamine in a portion of a truck where the defendant kept personal belongings and the defendant was the sole occupant of the vehicle. The defendant's testimony denying possession of the drugs and stating that others had equal access to the truck did not establish under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) that the circumstantial evidence was insufficient to convict the defendant of possession of methamphetamine. Bryson v. State, 293 Ga. App. 392, 667 S.E.2d 170, 2008 Ga. App. LEXIS 946 (2008).

There was sufficient evidence to support a defendant's conviction for possession of methamphetamine based on the contraband being found under the passenger seat in which the defendant was sitting and an officer observing the defendant reach under the seat. Further, a syringe was found in the defendant's pocket; thus, there was more evidence than just spatial proximity to support the conviction. McBee v. State, 296 Ga. App. 42, 673 S.E.2d 569, 2009 Ga. App. LEXIS 120 (2009).

Evidence was sufficient to support a conviction of possession of methamphetamine, O.C.G.A. § 16-13-30(a), because the state presented sufficient evidence that the defendant lived at the property, and the jury could, therefore, presume that the defendant had greater access and control to the closet in the house where methamphetamine was found than that of a mere occupant; when the defendant was arrested, the defendant admitted to police that the defendant previously sold methamphetamine, and the officers discovered a large amount of currency on the defendant's person. Scales and syringes were also found at the property, and the individuals who the defendant claimed lived in the home and possessed the methamphetamine were not discovered at the property. Turner v. State, 298 Ga. App. 107, 679 S.E.2d 127, 2009 Ga. App. LEXIS 618 (2009).

Evidence supported a conviction of possession of methamphetamine when an officer testified that the officer twice observed the defendant smoke methamphetamine, identified the pipe the defendant used, and explained, from the officer's narcotics training, how the pipe was used to smoke the methamphetamine; there was also methamphetamine recovered from the desk where the defendant was sitting. While the defendant complained that the pipe was not tested for the presence of methamphetamine, in drug possession cases the state was not required to present expert testimony scientifically identifying the substance or to introduce the drugs into evidence; moreover, the officer's testimony as to a conclusion of fact that could be within the officer's knowledge had been admitted

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without objection and thus could not be attacked as incompetent. Burg v. State, 298 Ga. App. 214, 679 S.E.2d 780, 2009 Ga. App. LEXIS 627 (2009).

Evidence was sufficient to sustain the defendant's conviction for possession of methamphetamine in violation of O.C.G.A. § 16-13-30(a) because the jury was justified in concluding that a wallet containing methamphetamine belonged to the defendant based on a deputy's testimony that the wallet was found on the defendant's person during a pat-down search incident to the defendant's arrest for driving with a suspended license. McGhee v. State, 303 Ga. App. 297, 692 S.E.2d 864, 2010 Ga. App. LEXIS 346 (2010).

Trial court did not err in denying the defendant's motion for a directed verdict of acquittal after a jury found the defendant guilty of possession of methamphetamine because the totality of the evidence, although circumstantial, was sufficient to authorize a rational jury to find the defendant guilty beyond a reasonable doubt and to reject as speculative and unreasonable the hypothesis that someone else discarded the drugs in a patrol car; the defendant possessed a homemade smoking pipe containing methamphetamine residue, there was similar transaction evidence, and the patrol officer testified that the officer had exclusive control of the officer's patrol car, the officer stayed with the officer's car whenever the car was serviced by third parties, the officer searched the backseat immediately after the defendant exited from the car, and the officer discovered the drugs directly up under the seat where the defendant had been sitting. Taylor v. State, 305 Ga. App. 748, 700 S.E.2d 841, 2010 Ga. App. LEXIS 807 (2010).

Evidence was sufficient to convict the defendant of possession of methamphetamine and misdemeanor possession of marijuana as the evidence sufficed to support the jury's finding that the defendant possessed the drugs found under a mattress because the drugs were located under the mattress directly underneath where the defendant sat; and the defendant possessed digital scales that appeared to have drug residue on the scales. Smith v. State, 331 Ga. App. 296, 771 S.E.2d 8, 2015 Ga. App. LEXIS 162 (2015), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence that two bags of drugs were found in the apartment over a garage belonging to the defendant's mother where the defendant was present, and another individual only testified to bringing one bag, allowed the jury to find that the defendant had the power and intention to exercise dominion and control over the methamphetamine found in the apartment as required for a conviction for possession of less than one gram of methamphetamine. Mantooth v. State, 335 Ga. App. 734, 783 S.E.2d 133, 2016 Ga. App. LEXIS 124 (2016), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Lipstick evidence insufficient to establish constructive possession of methamphetamine. — Evidence was insufficient to convict the defendant of possession of methamphetamine as the defendant did not have constructive possession of the drugs found inside of a flower pot in a residence that was neither owned nor occupied by the defendant because there was no evidence that the residue on a pipe was actually lipstick; even if it was lipstick, there was no evidence that the defendant owned any lipstick, let alone the particular lipstick found on the pipe; the mere presence of a pipe with lipstick on it in the vicinity of a female did not constitute direct evidence of possession by that female; and there was no DNA or fingerprint evidence linking the defendant to the drug-laced pipe. Poteet v. State, 358 Ga. App. 82, 853 S.E.2d 671, 2021 Ga. App. LEXIS 4 (2021).

Evidence sufficient to support conviction of sale and trafficking in methamphetamine. — Evidence that a defendant sold an undercover officer methamphetamine on two occasions, with one sale of more than 28 grams, and that the defendant participated in a later, larger drug deal, supported the defendant's convictions for trafficking in

methamphetamine, O.C.G.A. § 16-13-31(e), and sale of methamphetamine under O.C.G.A. §§ 16-13-26(3)(B) and 16-13-30(b). Culajay v. State, 309 Ga. App. 631, 710 S.E.2d 846, 2011 Ga. App. LEXIS 420 (2011).

Evidence that defendant was actively attempting to dispose of methaqualone by flushing the methaqualone down the toilet authorized defendant's conviction. Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Evidence sufficient for conviction. — See Smith v. State, 168 Ga. App. 92, 308 S.E.2d 226, 1983 Ga. App. LEXIS 3376 (1983); Bryant v. State, 174 Ga. App. 468, 330 S.E.2d 406, 1985 Ga. App. LEXIS 2717 (1985); Lewis v. State, 174 Ga. App. 613, 330 S.E.2d 810, 1985 Ga. App. LEXIS 2734 (1985); Clarington v. State, 178 Ga. App. 663, 344 S.E.2d 485, 1986 Ga. App. LEXIS 2554 (1986); Boles v. State, 178 Ga. App. 508, 343 S.E.2d 729, 1986 Ga. App. LEXIS 2542 (1986); Brown v. State, 178 Ga. App. 691, 344 S.E.2d 509, 1986 Ga. App. LEXIS 2563 (1986); Houston v. State, 180 Ga. App. 267, 349 S.E.2d 228, 1986 Ga. App. LEXIS 2708 (1986); Bradley v. State, 180 Ga. App. 386, 349 S.E.2d 263, 1986 Ga. App. LEXIS 2729 (1986); Black v. State, 181 Ga. App. 540, 353 S.E.2d 4, 1987 Ga. App. LEXIS 1477 (1987); Freeman v. State, 182 Ga. App. 654, 356 S.E.2d 718, 1987 Ga. App. LEXIS 2654 (1987); Pittman v. State, 183 Ga. App. 12, 357 S.E.2d 855, 1987 Ga. App. LEXIS 2678 (1987); Bentley v. State, 183 Ga. App. 112, 358 S.E.2d 274, 1987 Ga. App. LEXIS 2682 (1987); Howard v. State, 185 Ga. App. 215, 363 S.E.2d 621, 1987 Ga. App. LEXIS 2861 (1987); Lewis v. State, 186 Ga. App. 349, 367 S.E.2d 123, 1988 Ga. App. LEXIS 317 (1988); Wright v. State, 189 Ga. App. 441, 375 S.E.2d 895, 1988 Ga. App. LEXIS 1438 (1988); Doe v. State, 189 Ga. App. 793, 377 S.E.2d 546, 1989 Ga. App. LEXIS 30 (1989); Reeves v. State, 194 Ga. App. 539, 391 S.E.2d 35, 1990 Ga. App. LEXIS 191 (1990); Smith v. State, 197 Ga. App. 609, 398 S.E.2d 858, 1990 Ga. App. LEXIS 1379 (1990); Nelson v. State, 197 Ga. App. 898, 399 S.E.2d 748, 1990 Ga. App. LEXIS 1505 (1990); Shiropshire v. State, 201 Ga. App. 421, 411 S.E.2d 339, 1991 Ga. App. LEXIS 1383 (1991); Ross v. State, 206 Ga. App. 1, 424 S.E.2d 308, 1992 Ga. App. LEXIS 1552 (1992); Turner v. State, 213 Ga. App. 77, 443 S.E.2d 703, 1994 Ga. App. LEXIS 456 (1994); Moreland v. State, 213 Ga. App. 638, 445 S.E.2d 388, 1994 Ga. App. LEXIS 682 (1994); Teasley v. State, 214 Ga. App. 646, 448 S.E.2d 904, 1994 Ga. App. LEXIS 996 (1994); Thomas v. State, 222 Ga. App. 337, 474 S.E.2d 631; Lang v. State, 226 Ga. App. 729, 487 S.E.2d 485; Tate v. State, 230 Ga. App. 186, 495 S.E.2d 658, 1998 Ga. App. LEXIS 83 (1998); King v. State, 230 Ga. App. 301, 496 S.E.2d 312; Johnson v. State, 230 Ga. App. 507, 496 S.E.2d 785 (1998); Grant v. State, 239 Ga. App. 608, 521 S.E.2d 654; Heath v. State, 240 Ga. App. 492, 522 S.E.2d 761; Brackins v. State, 249 Ga. App. 788, 549 S.E.2d 775, 2001 Ga. App. LEXIS 630 (2001); Wood v. State, 264 Ga. App. 787, 592 S.E.2d 455, 2003 Ga. App. LEXIS 1568 (2003); In the Interest of A.A., 265 Ga. App. 369, 593 S.E.2d 891, 2004 Ga. App. LEXIS 120 (2004), cert. dismissed, No. S04C1099, 2004 Ga. LEXIS 494 (Ga. June 7, 2004).

Evidence sufficient to sustain conviction for possession of cocaine with intent to distribute. Kinney v. State, 199 Ga. App. 354, 405 S.E.2d 98, 1991 Ga. App. LEXIS 473 (1991).

Dividing drugs is sufficient evidence for distribution. Evidence showing that cocaine found in the defendant's possession was divided between more than 30 small glassine or clear plastic packages indicated a manner of packaging commonly associated with the sale or distribution of such contraband and would authorize any rational trier of fact to infer that the defendant possessed cocaine with the intent to distribute. Williams v. State, 199 Ga. App. 544, 405 S.E.2d 539, 1991 Ga. App. LEXIS 547 (1991).

Defendant's convictions for malice murder, aggravated battery, burglary, and violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by unlawfully possessing cocaine and marijuana were supported by sufficient evidence; the defendant walked into a neighbor's house with a butcher knife in

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each hand and stabbed two people, knives found in the woods behind the defendant's apartment matched the descriptions of those used in the stabbings and had deoxyribonucleic acid matching the defendant's, two knives were missing from a knife block in the defendant's apartment, marijuana and cocaine were found in the apartment, the defendant told a friend that the defendant had "hurt some people really bad," and three eyewitnesses identified the defendant as the assailant. Swanson v. State, 282 Ga. 39, 644 S.E.2d 845, 2007 Ga. LEXIS 351 (2007).

There was sufficient evidence of possession to support a defendant's convictions of trafficking in cocaine, possession of cocaine with the intent to distribute, possession of marijuana, and possession of a firearm during the commission of a crime since: the defendant sped off when police tried to stop the defendant for running a stop sign; narcotics and a gun were found in the passenger side of the car; the passenger's story that the passenger had flagged down the defendant for a ride and that the passenger was unaware of the drugs and the gun was corroborated by the passenger's girlfriend; the defendant's sister, who owned the car, testified that there was no contraband in the car before the defendant took the car; the defendant had $1,755 in cash on the defendant's person; and the defendant had prior drug offenses. Jackson v. State, 284 Ga. App. 619, 644 S.E.2d 491, 2007 Ga. App. LEXIS 376 (2007), cert. denied, No. S07C1169, 2007 Ga. LEXIS 521 (Ga. June 25, 2007), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence supported the defendant's convictions of two counts of malice murder, armed robbery, and possession of cocaine since: a driver carrying a gun and a bag ran out of a car that had been dragging the body of the car's owner and that had another dead victim in the passenger seat; bags of cocaine were on the lap of the victim in the passenger seat; one victim had been shot with a .44 caliber weapon; a canine unit located a .44 caliber revolver, cash, a man's clothes with cocaine in them, and a shoulder bag in the woods into which the driver had fled; the defendant came out of the woods wearing only underwear; and the defendant admitted to shooting the victims. Preston v. State, 282 Ga. 210, 647 S.E.2d 260, 2007 Ga. LEXIS 477 (2007).

Given that two officers testified that the officers saw the defendant, in plain view, packaging 35 grams of cocaine and 94 grams of marijuana into smaller packages, and the testimony of a single witness was generally sufficient to establish a fact, the defendant's convictions for trafficking in cocaine and possession of marijuana with the intent to distribute were upheld on appeal. King v. State, 289 Ga. App. 461, 657 S.E.2d 570, 2008 Ga. App. LEXIS 120 (2008).

There was sufficient evidence to uphold defendant's conviction for drug possession as the evidence established that the defendant attempted to sell drugs during a controlled buy situation set up by the police and a gray pouch containing numerous small red bags of marijuana as well as one medium-sized bag of cocaine were found on the defendant's person. Further, at trial, the defendant admitted to possessing the marijuana and, although defendant insisted that the officers put the cocaine in the gray pouch, three officers participating in the arrest denied that the cocaine and the pouch had been planted. Habersham v. State, 289 Ga. App. 718, 658 S.E.2d 253, 2008 Ga. App. LEXIS 190 (2008).

There was sufficient evidence to support defendant's conviction for possession of cocaine and marijuana, both with intent to distribute, and defendant's conviction was not based only on circumstantial evidence as there was direct evidence that the defendant sold cocaine based on the defendant being observed in the bathroom of the residence doing something at the toilet in response to the police entry; a large quantity of cocaine and marijuana were found in the toilet tank; a witness linked defendant to those drugs; several digital scales were found around the house; and two witnesses testified that no one else in the house sold drugs but defendant. Howard v. State, 291 Ga. App. 386,

662 S.E.2d 203, 2008 Ga. App. LEXIS 513 (2008).

Convictions of drug possession pursuant to O.C.G.A. §§ 16-13-2, 16-13-28, and 16-13-30 were supported by sufficient evidence under circumstances in which, following a stop, an officer found a bag of marijuana in the defendant's pocket, and, after arresting the defendant, the officer also found $858 in the defendant's pockets and a bottle containing 16 pills of Alprazolam under the dashboard of the car the defendant had been driving; the pills were what remained of a 90-pill prescription issued five days before to a different person. Further, a bag of cocaine was later found in the patrol car where the defendant was held before backup officers arrived. Noellien v. State, 298 Ga. App. 47, 679 S.E.2d 75, 2009 Ga. App. LEXIS 582 (2009).

Any rational trier of fact could have found the defendant guilty of trafficking in cocaine, possession of methylenedioxyamphetamine, and possession of less than one ounce of marijuana beyond a reasonable doubt because based on the evidence, the jury was authorized to conclude that the defendant threw a plastic bag containing drugs out the passenger side window of the defendant's car; the state presented evidence that a deputy saw the defendant actually possessing the bag of illegal narcotics as the defendant held the bag in the car before the defendant threw the bag out the passenger's window, and another deputy assigned to the drug suppression task force testified, without objection, that the amount of cocaine in the bag was more than a user would have in a user's possession and that would be the amount that a mid-level dealer would have in a dealer's possession. McCombs v. State, 306 Ga. App. 64, 701 S.E.2d 496, 2010 Ga. App. LEXIS 798 (2010).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine, possession of oxycodone and less than one ounce of marijuana, and driving while the defendant's license was suspended because the defendant knew the defendant's license to drive was suspended, and because the defendant knowingly had both the power and intention to exercise dominion or control over the controlled substances found in the backpack and was in constructive possession of those substances, as the defendant was driving the car in which the backpack was located, and the defendant was linked to the backpack by the defendant's control of the car and evidence that the backpack contained a copy of a fake driver's license the defendant gave to an officer. Armstrong v. State, 325 Ga. App. 690, 754 S.E.2d 652, 2014 Ga. App. LEXIS 51 (2014).

Because the record showed that trace amounts of both marijuana and cocaine were found in the defendant's possession, and neither statute criminalizing possession of those substances required more, the evidence was sufficient to support the defendant's convictions for possession. Francis v. State, 345 Ga. App. 586, 814 S.E.2d 571, 2018 Ga. App. LEXIS 242 (2018).

Evidence sufficient for cocaine. — Defendant's presence in the vicinity of cocaine, defendant's participation in an attempt to elude possession, the finding of cocaine at the defendant's feet and the presence of cocaine in the defendant's bodily system as evinced by drug tests were sufficient to authorize a rational trier of fact to infer that the defendant possessed cocaine with intent to distribute. Jones v. State, 207 Ga. App. 46, 427 S.E.2d 40, 1993 Ga. App. LEXIS 57 (1993).

Defendant's conviction of possession of cocaine in violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-30 et seq., was supported by sufficient evidence; the defendant admitted that a passenger in the defendant's vehicle had purchased crack cocaine, and a pipe found in the vehicle tested positive for cocaine residue. Bevis v. State, 259 Ga. App. 269, 576 S.E.2d 652, 2003 Ga. App. LEXIS 75 (2003).

Evidence of the defendant's possession of cocaine was sufficient when the evidence consisted of a police officer's testimony that the officer saw the defendant discard a glass tube while fleeing the officer and a forensic chemist's testimony that the tube contained trace amounts of cocaine. Jones v. State, 260 Ga. App. 487,

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580 S.E.2d 278, 2003 Ga. App. LEXIS 411 (2003).

Evidence was sufficient to support defendant's conviction for possession of cocaine with intent to distribute, as a police officer saw defendant commit traffic offenses, pursued defendant's car for those offenses, saw defendant throw a white substance out of the driver's side window, the substance was later identified as an amount of cocaine consistent with the distribution and personal use of cocaine, and defendant had a large amount of cash on defendant at the time defendant's car was finally stopped; the evidence was sufficient under the Jackson standard to support each element of defendant's conviction although a remand was required to make a finding regarding an ineffective assistance of counsel claim. Talbot v. State, 261 Ga. App. 12, 581 S.E.2d 669, 2003 Ga. App. LEXIS 512 (2003).

Evidence was sufficient to support the defendant's conviction for possession of cocaine when the state introduced blood test results showing a metabolite of cocaine in the defendant's blood after the defendant refused to spit out the substance the defendant was chewing. Millsap v. State, 261 Ga. App. 427, 582 S.E.2d 568, 2003 Ga. App. LEXIS 650 (2003).

Evidence held sufficient for possessing cocaine, possessing cocaine within 1,000 feet of a housing project, and attempted bribery, where police officers observed the defendant engaging in what appeared to be a drug transaction, the officers thereafter found cocaine on the sidewalk where the defendant had been standing and cocaine in the defendant's pockets, and the defendant told a police officer who was counting the defendant's money to take it and the defendant's watch, and that the defendant would pay the officer more in a week if the officer would let the defendant go. Hester v. State, 261 Ga. App. 614, 583 S.E.2d 274, 2003 Ga. App. LEXIS 722 (2003).

Testimony of the officers alone held sufficient to support convictions of selling cocaine as the credibility and weight to be given to the witnesses was within the province of the jury. Sutton v. State, 261 Ga. App. 860, 583 S.E.2d 897, 2003 Ga. App. LEXIS 790 (2003).

There was sufficient evidence to show that the defendant possessed cocaine since the defendant resided in the bedroom where the cocaine was discovered, a friend testified that the friend heard the defendant admit the cocaine was found in the defendant's room, the defendant's mother pointed out the room as defendant's, and after the cocaine was discovered, the defendant went into hiding, and the argument of equal access by the defendant's mother and brother to the cocaine was unavailing when other evidence linked the defendant to the cocaine. Truitt v. State, 266 Ga. App. 56, 596 S.E.2d 219, 2004 Ga. App. LEXIS 299 (2004).

Defendant's acts, including telephoning a known drug dealer about purchasing cocaine and driving to an agreed location to make the transaction sufficiently constituted a substantial step to convict defendant of attempting to possess cocaine. Massey v. State, 267 Ga. App. 482, 600 S.E.2d 437, 2004 Ga. App. LEXIS 690 (2004).

Evidence was sufficient to sustain convictions of possession of controlled substances, O.C.G.A. § 16-13-30(a), and possession of controlled substances with intent to distribute, O.C.G.A. § 16-13-30(b), when two witnesses testified that the substance in a bag carried by the defendant appeared to be crack cocaine, and a field test indicated that the substance was crack cocaine. Riddle v. State, 267 Ga. App. 630, 600 S.E.2d 709, 2004 Ga. App. LEXIS 738 (2004).

Evidence that an undercover police officer tried to purchase drugs from a third person, that the third person said the person would have to get the drugs from "his source," and that the officer was present when defendant gave a package to a third person shortly before the third person delivered cocaine to the officer was sufficient to sustain defendant's convictions for trafficking in cocaine and possessing cocaine with intent to distribute. Serrate v. State, 268 Ga. App. 276, 601 S.E.2d 766, 2004 Ga. App. LEXIS 888 (2004).

Evidence was sufficient to support the defendant's conviction of possession of cocaine in violation of O.C.G.A. § 16-13-30(a) as cocaine was a controlled substance under O.C.G.A. § 16-13-26(1)(D) and the defendant had an additional 2.2 grams of cocaine in the defendant's pocket when the defendant was arrested for trafficking in cocaine found in a cooler. Salgado v. State, 268 Ga. App. 18, 601 S.E.2d 417, 2004 Ga. App. LEXIS 827 (2004).

Evidence was sufficient to support the defendant's conviction for possession of cocaine as cocaine was found in the defendant's pocket during a search of the defendant's clothes while being arrested on other charges. Finney v. State, 270 Ga. App. 422, 606 S.E.2d 637, 2004 Ga. App. LEXIS 1467 (2004).

Defendant's cocaine possession conviction was affirmed as defendant's statement that defendant and two other men went to the victim's house to buy cocaine, that the victim came out of the victim's house with the cocaine and gave it to defendant, and that defendant split the cocaine with defendant's accomplices, was corroborated by proof that cash was found on the victim's bed next to several bags of a substance that later tested positive for crack cocaine. Williams v. State, 270 Ga. App. 424, 606 S.E.2d 871, 2004 Ga. App. LEXIS 1456 (2004).

Evidence was sufficient to support the defendant's conviction for possession of cocaine as the evidence showed that the defendant kept cocaine in the office and that the defendant alone controlled access to the defendant's office as a sign on the office door made it plain that the office was the defendant's office and that the office was off limits to everyone except the defendant. Simmons v. State, 271 Ga. App. 330, 609 S.E.2d 678, 2005 Ga. App. LEXIS 49 (2005).

Conviction for possessing cocaine with intent to distribute was sufficiently supported by evidence showing that 1.5 grams of cocaine were found in the defendant's pocket and that an electronic scale, small plastic baggies, and over $2,600.00 in cash were found in the defendant's residence. Copeland v. State, 273 Ga. App. 850, 616 S.E.2d 189, 2005 Ga. App. LEXIS 638 (2005).

Sufficient evidence supported the defendant's conviction of possession of cocaine under O.C.G.A. § 16-13-30(a) as: (1) the informant testified that the defendant procured crack cocaine for the informant for $300.00; (2) detectives witnessed the defendant enter and exit the bar where, according to the informant, defendant obtained the cocaine; and (3) the substance tested positive for cocaine, a controlled substance under O.C.G.A. § 16-13-26(1)(D); the credibility of the informant, which, according to the defendant, was allegedly impaired by the informant's prior criminal conduct, was an issue for the jury. Ross v. State, 275 Ga. App. 137, 619 S.E.2d 809, 2005 Ga. App. LEXIS 905 (2005).

Circumstantial evidence under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) was sufficient to support the defendant's conviction for possession of cocaine, in violation of O.C.G.A. § 16-13-30, as the defendant was approached by two undercover officers and upon seeing that one of the officers had a badge, the defendant turned around and made a throwing motion with a clenched fist in the direction of a trash barrel; the defendant was in an area known for drug sales, and three pieces of crack cocaine were found in the vicinity of the trash barrel. Woods v. State, 275 Ga. App. 471, 620 S.E.2d 660, 2005 Ga. App. LEXIS 997 (2005).

Evidence was sufficient to support conviction of simple possession of cocaine where, during the defendant's flight on foot from an officer, the officer saw defendant take an object from a pocket and flick it away and where the police found a small box containing drugs in the area of the chase, which the officer identified as the object the defendant discarded. Wilburn v. State, 278 Ga. App. 76, 628 S.E.2d 174, 2006 Ga. App. LEXIS 252 (2006).

Sufficient evidence, including a tape recording of the drug transaction, testimony from three government agents, and the jury's rejection of the defendant's defenses of misidentification and mere presence at the scene of a crime supported the defendant's sale of cocaine conviction; the defendant failed to preserve an alleged error in the jury charge regarding the factors

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the jury may consider in assessing reliability of identification testimony. Bonner v. State, 278 Ga. App. 855, 630 S.E.2d 127, 2006 Ga. App. LEXIS 418 (2006).

Defendant's convictions of possession of cocaine, O.C.G.A. § 16-13-30(a), and giving a false name and date of birth, O.C.G.A. § 16-10-25, were supported by sufficient evidence that, during a level-one encounter with an officer, the defendant gave the officer a false name and birth date, that, during a subsequent search of the defendant's person validly consented to by the defendant, the officer found documents that revealed the defendant's true identity and five pieces of a substance that the officer suspected was crack cocaine, that the officer's field test of the substance indicated positive for cocaine, that the substance was later tested at a state crime lab which confirmed that it was cocaine, and that there was a sufficient chain of custody for that substance. Postell v. State, 279 Ga. App. 275, 630 S.E.2d 867, 2006 Ga. App. LEXIS 518 (2006).

There was sufficient evidence to sustain the jury's verdict finding the defendant guilty beyond a reasonable doubt of possession of cocaine in violation of O.C.G.A. § 16-13-30(a), as the arresting officer testified that the defendant was in possession of a substance that tested positive for cocaine. Copeland v. State, 281 Ga. App. 11, 635 S.E.2d 283, 2006 Ga. App. LEXIS 984 (2006).

Appellate court upheld the defendant's convictions for possession of cocaine, sale of cocaine, and possession of cocaine with intent to distribute, based on sufficient evidence consisting of testimony from two special agents identifying the defendant, a videotape of a cocaine sale, and positive test results confirming the substance the defendant sold and possessed was cocaine. Henley v. State, 281 Ga. App. 242, 635 S.E.2d 856, 2006 Ga. App. LEXIS 1065 (2006).

Upon the defendant's challenge to the evidence supporting a cocaine possession charge and portions of the state's closing argument, because sufficient evidence corroborated the accomplice testimony supporting said charge, including that cocaine was found in the vicinity of the vehicle the defendant drove, and the defendant's flight from police showed a consciousness of guilt, conviction on said charge was upheld; moreover, the defendant waived objection to any argument of future dangerousness, and even if an objection had been made, the prosecutor's argument was proper, as such urged conviction based on current evidence that the defendant was a drug dealer and could not be seen as urging conviction based on future dangerousness. Carr v. State, 282 Ga. App. 199, 638 S.E.2d 348, 2006 Ga. App. LEXIS 1351 (2006).

Sufficient evidence supported the defendant's conviction of possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30 despite the passenger's claim at trial that the passenger, not the defendant, threw the cocaine out the car window; the jury was permitted to reject the passenger's trial testimony as it conflicted with the passenger's earlier statement that the defendant had thrown the cocaine, and other evidence included the officer's statement that the cocaine was thrown from the driver's side where the defendant had been seated, and a substantial amount of cash was recovered from the defendant. Smith v. State, 282 Ga. App. 255, 638 S.E.2d 388, 2006 Ga. App. LEXIS 1355 (2006).

Given that the evidence presented against the defendant showed that, as the only passenger in a moving vehicle, the defendant, as that passenger, and not the driver, could have tossed bags of cocaine out of a window, the evidence supported the defendant's possession conviction. Johnson v. State, 283 Ga. App. 425, 641 S.E.2d 655, 2007 Ga. App. LEXIS 81 (2007).

Defendant's convictions for possession of cocaine with intent to distribute and possession of a controlled substance within 1,000 feet of a housing project, in violation of O.C.G.A. § 16-13-30(b) and O.C.G.A. § 16-13-32.5(b), were based on sufficient evidence since the state proved by circumstantial evidence pursuant to former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) that the defendant had been walking back and forth to an

overturned bucket when people approached from the street in what appeared to be drug transactions, and the drugs were found under the bucket; there was evidence that the amount of drugs recovered were more than one would use for personal use, such that it indicated an intent to distribute, and there was also evidence indicating the proximity of the bucket to a nearby public housing complex. Reason v. State, 283 Ga. App. 608, 642 S.E.2d 236, 2007 Ga. App. LEXIS 136 (2007).

Defendant's conviction for cocaine possession did not rest on "mere presence" evidence; an officer's unobstructed observation of the defendant in the act of throwing a crack pipe onto the ground, combined with the lab testing of the substance removed from the pipe, provided ample direct evidence from which the jury could have found that the defendant possessed cocaine. Smith v. State, 285 Ga. App. 399, 646 S.E.2d 499, 2007 Ga. App. LEXIS 533 (2007); Marshall v. State, 286 Ga. App. 86, 648 S.E.2d 674, 2007 Ga. App. LEXIS 696 (2007).

Trial court properly denied a defendant's motion for a new trial, and there was sufficient evidence to support defendant's conviction for possession of cocaine with the intent to distribute and that defendant's drug possession was not for personal use, based on the finding of 25 pieces of crack cocaine, totaling 1.68 grams being found on defendant's person, and an officer testifying that the officer investigated crack cocaine sales in the area for over a year and was familiar with the price of crack cocaine, how the cocaine was packaged, how buyers and sellers interact, and how sellers often use a two-way radio, such as was found on the defendant, to conduct the transactions. Defendant's contention that the defendant was addicted to crack cocaine was further contradicted by no crack pipe being found on the defendant's person, nor was there any evidence that the defendant was under the influence of any drug at the time of the search. Griffin v. State, 291 Ga. App. 618, 662 S.E.2d 171, 2008 Ga. App. LEXIS 500 (2008), cert. denied, No. S08C1469, 2008 Ga. LEXIS 709 (Ga. Sept. 8, 2008).

Additional evidence other than a defendant's ownership of the premises demonstrated the defendant's possession of cocaine with intent to distribute. The cocaine was found in an office containing the defendant's personal items; entry into the office had been made more difficult by installation of a steel padlocked door, which was locked when officers arrived to conduct the search; the defendant admitted to installing surveillance equipment; numerous items used to measure, prepare, and ingest cocaine were found in the office; and the defendant admitted to an officer that pill bottles of cocaine belonged to the defendant. Bailey v. State, 294 Ga. App. 437, 669 S.E.2d 453, 2008 Ga. App. LEXIS 1212 (2008), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

There was sufficient evidence to support a defendant's conviction for possession of cocaine based on the police observing the defendant making a throwing motion with the defendant's hands after the police commanded the defendant to come and thereafter finding in the area where the defendant was standing three rocks of dry crack cocaine even though it had been raining, and no one else was in the area. Ware v. State, 297 Ga. App. 400, 677 S.E.2d 423, 2009 Ga. App. LEXIS 438 (2009).

Evidence was sufficient to permit a rational jury to find the defendant guilty beyond a reasonable doubt of possession of cocaine in violation of O.C.G.A. § 16-13-30 because a sheriff's deputy and the arresting officer testified that cocaine was found on the defendant's person and the expert testimony of the state crime lab technician confirmed that the seized substance was cocaine. Davis v. State, 304 Ga. App. 355, 696 S.E.2d 381, 2010 Ga. App. LEXIS 527 (2010).

Testimony from both of the arresting officers that the officers personally witnessed the defendant with what looked like crack cocaine rocks in the defendant's mouth and further testimony that the officers saw the defendant spit out some pieces of the suspected cocaine, which the officers retrieved and which later tested positive for cocaine, supported a conviction for possession of cocaine. Jordan v. State, 326 Ga. App. 78, 755 S.E.2d 882, 2014 Ga. App. LEXIS 123 (2014).

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Evidence that the defendant's ex-girlfriend and the ex-girlfriend's aunt saw the defendant place a plastic bag containing what they believed to be marijuana onto a scale before taking it out the back door and the defendant sat alone on the back steps until police arrived and found plastic bags of marijuana and cocaine side-by-side behind a panel beside the steps where the defendant sat, showed more than spatial proximity, and was sufficient to support a conviction for possession of cocaine. Johnson v. State, 335 Ga. App. 796, 783 S.E.2d 156, 2016 Ga. App. LEXIS 86 (2016).

Sufficient evidence of manufacturing and trafficking in methamphetamine. Even assuming the lab results regarding methamphetamine were non-probative hearsay, the detailed testimony by the officers provided the requisite evidence to convict defendant of manufacturing and trafficking in methamphetamine. Bilow v. State, 262 Ga. App. 850, 586 S.E.2d 675, 2003 Ga. App. LEXIS 785 (2003), cert. denied, No. S04C0048, 2004 Ga. LEXIS 42 (Ga. Jan. 12, 2004).

Cocaine on piece of paper sufficient. Evidence that, inter alia, an officer observed the defendant drop a piece of paper which later tested positive for cocaine was sufficient to support a conviction for possession of cocaine. Griffin v. State, 266 Ga. App. 50, 596 S.E.2d 405, 2004 Ga. App. LEXIS 296 (2004).

Evidence sufficient for methamphetamine conviction. Evidence supported the defendant's conviction for possession of methamphetamine as an accomplice's statement that the defendant was involved in a drug transaction was supported by the defendant's admission that the defendant was at the accomplice's house to buy drugs, the defendant's possession of a digital scale of the type used in drug transactions, and cash in an amount an expert testified was typical of that charged for an eightball of methamphetamine. Lewis v. State, 268 Ga. App. 547, 602 S.E.2d 278, 2004 Ga. App. LEXIS 962 (2004).

Evidence supported the defendant's conviction for possession of methamphetamine because a police officer testified the methamphetamine was taken from the defendant's wallet. Morrison v. State, 272 Ga. App. 34, 611 S.E.2d 720, 2005 Ga. App. LEXIS 219 (2005), aff'd, 280 Ga. 222, 626 S.E.2d 500, 2006 Ga. LEXIS 119 (2006), overruled in part, State v. Slaughter, 289 Ga. 344, 711 S.E.2d 651, 2011 Ga. LEXIS 470 (2011).

Conviction for possession by ingestion of methamphetamine was supported by a positive preliminary urine test for amphetamines conducted by the defendant's supervising probation officer and a gas chromatography/mass spectrometry test performed on the sample by the state forensic toxicologist, which confirmed the presence of methamphetamine. Poston v. State, 274 Ga. App. 117, 617 S.E.2d 150, 2005 Ga. App. LEXIS 679 (2005).

There was sufficient evidence to support a conviction for possession of methamphetamine and possession of drug related objects when the defendant admitted telling officers that the defendant owned a pipe that had methamphetamine residue on the pipe, but said that the admission had been made under pressure and that a purse in which drug-related items were found was a "community purse" used by employees of the convenience store where the defendant worked; it was for the jury to resolve conflicts in the testimony and to weigh the evidence. Doyal v. State, 287 Ga. App. 667, 653 S.E.2d 52, 2007 Ga. App. LEXIS 894 (2007).

Convictions of manufacture, distribution, and possession of methamphetamine with the intent to distribute under O.C.G.A. § 16-13-30(b), possession of ephedrine/pseudoephedrine under O.C.G.A. § 16-13-30.3(b)(1), and possession of a firearm during the commission of a felony under O.C.G.A. § 16-11-106(b)(4) were supported by the evidence. A panel van belonging to the defendant had been modified as a methamphetamine lab, was located on the defendant's property, and was powered by an electrical cord running from the defendant's trailer; everything necessary to support the production of methamphetamine was present in the

vicinity of the vehicle; the defendant's name and that of the defendant's spouse had been scrawled on an interior panel of the vehicle; the defendant offered to provide any methamphetamine that a house guest wanted; uncured methamphetamine and enough ephedrine was present at the scene to make 30 to 33 grams of methamphetamine; and the defendant admitted to giving methamphetamine to others and to owning the sawed-off shotgun recovered from the panel van. Boone v. State, 293 Ga. App. 654, 667 S.E.2d 880, 2008 Ga. App. LEXIS 1041 (2008).

There was sufficient evidence to support a defendant's conviction for possession of methamphetamine with the intent to distribute with regard to the police finding the contraband in the defendant's vehicle, despite the defendant's contention that the state failed to show that the defendant was in possession of the drug and failed to show an intention to distribute, based on the defendant's intentional use of the vehicle. Further, there was testimony from a witness that the witness had recently ingested methamphetamine that was procured from the defendant and the codefendants and that the defendant provided the transportation that facilitated the procurement of the methamphetamine that was ingested. Armstrong v. State, 298 Ga. App. 855, 681 S.E.2d 662, 2009 Ga. App. LEXIS 805 (2009).

Evidence was sufficient to convict the defendant of possession of methamphetamine in violation of O.C.G.A. § 16-13-30(a) because the defendant occupied and controlled a trailer where the drugs were found. Peacock v. State, 301 Ga. App. 873, 689 S.E.2d 853, 2010 Ga. App. LEXIS 12 (2010).

No right to know identity of informant in cocaine case. — When the defendant's possession of a vehicle was not the sole evidence of defendant's possession of drugs and a confidential informant's testimony was not material to the defense, the defendant was not entitled to know the informant's identity and the trial court properly denied the defendant's motion for a new trial on the charges of possession of cocaine. Respress v. State, 267 Ga. App. 654, 600 S.E.2d 727, 2004 Ga. App. LEXIS 743 (2004).

Cocaine in hotel room. Evidence was sufficient to support the defendant's conviction for possession of cocaine as police searched a hotel room where the defendant was with a girlfriend and cocaine residue and paraphernalia was found. Wilson v. State, 271 Ga. App. 359, 609 S.E.2d 703, 2005 Ga. App. LEXIS 41 (2005).

Videotape of drug transactions. Although a videotape of the transaction provided helpful confirmation of an undercover officer's identification of the defendant as the seller of cocaine, the testimony of the officer, by itself, was sufficient to support the jury's determination of guilt. Williams v. State, 277 Ga. App. 633, 627 S.E.2d 196, 2006 Ga. App. LEXIS 166 (2006).

Juvenile convicted of possession. As the defendant admitted at trial that the defendant was in possession of a gun and cocaine when the defendant was stopped by the police and that the defendant was 16 years old at the time, there was sufficient evidence for the jury to find the defendant guilty of possession of cocaine, possession of a firearm while in the commission of a felony, and possession of a pistol by a person under the age of 18. Olive v. State, 291 Ga. App. 538, 662 S.E.2d 308, 2008 Ga. App. LEXIS 560 (2008).

Evidence sufficient for convictions of felony murder and possession of cocaine. — A person fitting the defendant's description, wearing black clothing and carrying a black garbage bag, ran from the store where the victim worked; within an hour of the shooting, the defendant, who lived three blocks away, gave a neighbor's child "cigars without tobacco" and lottery tickets from a black garbage bag, and said that the defendant had "hit a lick"; packages of tobacco tubes were found on the ground between the store and the defendant's apartment complex; the victim's wallet was found in a trash receptacle at the complex, and a police dog followed the scent on the wallet to the defendant's apartment; officers searching the defendant's apartment found cocaine, a handgun, black clothing, a black stocking, and a novelty dollar bill of the sort that

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had been given to the victim the night before the shooting; and the bullet that killed the victim was fired from the handgun in the defendant's room. Jones v. State, 284 Ga. 672, 670 S.E.2d 790, 2008 Ga. LEXIS 1021 (2008).

Evidence was sufficient for conviction of cocaine and marijuana possession. — An officer testified that the officer found a plastic bag containing the drugs in the location where the officer saw a person identified as the defendant pull out an object and then replace the object; the defendant's arguments regarding the identification testimony, which was contradicted by defense witnesses, went to the weight and credit to be given the evidence and not to the evidence's sufficiency. Smith v. State, 297 Ga. App. 658, 678 S.E.2d 496, 2009 Ga. App. LEXIS 507 (2009).

Evidence sufficient for constructive possession of cocaine. Evidence was sufficient to convict a defendant of constructive possession of cocaine in violation of O.C.G.A. § 16-13-30(a) given that an extended stay motel room where an undercover officer purchased cocaine was rented to the defendant, the defendant was in the room, and drugs and paraphernalia were in plain view on the table. A jury could infer that the defendant was aware of the cocaine, was in control of the cocaine, and was in sole or joint constructive possession of the cocaine. Conyers v. State, 302 Ga. App. 95, 690 S.E.2d 233, 2010 Ga. App. LEXIS 65 (2010), cert. denied, No. S10C0909, 2010 Ga. LEXIS 439 (Ga. June 1, 2010).

Presumption of drug ownership when owner of home. Since the defendant was the owner of the house where the ephedrine and pseudoephedrine were found, the defendant was presumed to have possessed all of the contents and, thus, there was sufficient evidence to support the defendant's possession conviction. Taylor v. State, 320 Ga. App. 596, 740 S.E.2d 327, 2013 Ga. App. LEXIS 244 (2013).

Parent's convictions for son's possession. Evidence that the defendant's son spent most of the son's time in the downstairs of the defendant's house smoking marijuana and selling the marijuana to a regular stream of customers and that the defendant was not surprised when a safe in the son's bedroom was opened and drugs and paraphernalia were found there supported the defendant's conviction for possession of more than one ounce of marijuana. Kirchner v. State, 322 Ga. App. 275, 744 S.E.2d 802, 2013 Ga. App. LEXIS 495 (2013), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Drugs found on night stand. — Evidence was sufficient to support defendant's conviction of possession of cocaine because the police found the cocaine on defendant's night stand next to defendant's wallet and the victim testified that it belonged to defendant. Freeman v. State, 365 Ga. App. 332, 878 S.E.2d 578, 2022 Ga. App. LEXIS 440 (2022).

Evidence sufficient for codeine possession conviction. — Trial court did not err in refusing to direct a verdict of acquittal because the evidence was sufficient to convict the defendant of possession of codeine as the evidence at trial supported an inference that the defendant possessed a prescription bottle that was in another person's name and that the liquid in the bottle contained codeine; and the state was not required to show that the codeine fell specifically within Schedule V as a description in an indictment to a specified controlled substance by reference to a particular Schedule in the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., was mere surplusage. Evans v. State, 330 Ga. App. 241, 766 S.E.2d 821, 2014 Ga. App. LEXIS 823 (2014), cert. dismissed, No. S15C0653, 2015 Ga. LEXIS 207 (Ga. Mar. 30, 2015).

Trial court determines credibility and resolves conflicts. — In a bench trial, because conflicts in the evidence were for the trial court as the trier of fact, and not the court of appeals to resolve, the defendant's convictions for theft by taking a motor vehicle and possessing cocaine were not subject to reversal on appeal based on the conflicts. Marshall v. State,

286 Ga. App. 86, 648 S.E.2d 674, 2007 Ga. App. LEXIS 696 (2007).

Defendant failed to demonstrate search warrant inadequately described car where cocaine found. — Trial court properly denied defendant's motion to suppress evidence and motion for a directed verdict of acquittal, and properly entered a judgment of conviction against defendant for possession of cocaine, as the evidence sufficiently showed that defendant possessed cocaine which police found in a search of defendant's home and vehicle parked on a street just outside a fence that defendant and the wife owned; the motion to suppress was properly denied since defendant did not show that the search warrant inadequately described the car in which the cocaine would be found. Heller v. State, 275 Ga. App. 637, 621 S.E.2d 591, 2005 Ga. App. LEXIS 1064 (2005).

Drugs within vehicles. — Evidence was sufficient to authorize the jury's finding that defendant was in joint constructive possession of the cocaine, marijuana, and a pistol found inside the driver's car because the drugs were in plain view inside a car that smelled of raw marijuana, defendant was nervous about the impending search and gave evasive answers to the officers, defendant was in possession of an unusually large amount of cash and was in a position to see the pistol when the driver took the driver's proof of insurance from the glove box and, given the trafficking amount of cocaine found, the jury was authorized to infer that the driver and defendant possessed a loaded handgun to protect their illegal drug trade; thus, the evidence was sufficient to support the jury's finding that defendant was guilty of trafficking in cocaine, possession of marijuana, and possession of a firearm during the commission of a crime. Lopez v. State, 259 Ga. App. 720, 578 S.E.2d 304, 2003 Ga. App. LEXIS 257 (2003), cert. denied, No. S03C0933, 2003 Ga. LEXIS 583 (Ga. June 2, 2003).

When narcotics officers observed the defendant attempt to destroy a white substance against the side of the defendant's vehicle, and by rubbing the defendant's hand against a beer can, when coupled with a positive field test of both areas for cocaine, provided sufficient direct evidence to sustain a possession of cocaine conviction. Davis v. State, 260 Ga. App. 853, 581 S.E.2d 380, 2003 Ga. App. LEXIS 493 (2003).

When the evidence was sufficient to conclude that the defendant saw, had access to, and control over a plastic bag of cocaine sitting on a vehicle's front passenger seat, the trial court did not err in denying the defendant's acquittal motion. Felder v. State, 264 Ga. App. 583, 591 S.E.2d 471, 2003 Ga. App. LEXIS 1517 (2003).

Rational trier of fact was authorized to find that both defendants burglarized the victims' residence; that, once inside, they took money, clothing, and other personal property by use of a gun; that the first defendant also committed an aggravated assault on the female victim by striking her in the head with a handgun and was, therefore, in possession of a firearm during the commission of a crime; and that both defendants, along with their cohorts, had been in possession of the cocaine which was tossed out the vehicle they were riding in and found along the roadway. Davis v. State, 264 Ga. App. 221, 590 S.E.2d 192, 2003 Ga. App. LEXIS 1441 (2003).

Defendant was properly convicted of possession of cocaine after a crack pipe with cocaine residue was found in defendant's car because although defendant claimed that the pipe belonged to a friend, defendant admitted knowing of the pipe's presence in defendant's car. Walker v. State, 265 Ga. App. 449, 594 S.E.2d 678, 2004 Ga. App. LEXIS 147 (2004).

There was sufficient evidence to support defendant's conviction for possession of cocaine with intent to distribute because defendant was lawfully stopped for a traffic violation due to having only one operational headlight, a canine alerted to the passenger side of the vehicle, and a search of defendant's person and of the truck revealed cocaine and cash in such amounts as to lead a reasonable person to conclude that defendant had been selling the drugs. Barnett v. State, 275 Ga. App. 464, 620 S.E.2d 663, 2005 Ga. App. LEXIS 994 (2005).

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Evidence was sufficient to support the defendant's conviction for violation of O.C.G.A. § 16-13-30 of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., because a passenger in the defendant's truck testified that the defendant purchased crack cocaine from an individual in a high drug area, a rock of crack cocaine was found in the defendant's truck, and a police officer corroborated that testimony pursuant to former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) with the officer's own observations that the individual that the defendant was talking to had money in the individual's hand as it was lowered from the defendant's truck window. Millsap v. State, 275 Ga. App. 732, 621 S.E.2d 837, 2005 Ga. App. LEXIS 1104 (2005).

Since there was direct testimony that the defendant possessed the cocaine found in a car, corroborated by circumstantial evidence that a police officer saw the defendant take something from the defendant's pants and place it on the floor of the car, the defendant was properly found guilty of possession of cocaine. Depree v. State, 276 Ga. App. 499, 623 S.E.2d 701, 2005 Ga. App. LEXIS 1290 (2005).

Evidence that there were plastic bags of drugs in the driver's side door of a vehicle in which the defendant was sitting in the driver's seat, along with plastic bags recovered from the defendant's pocket that matched the bags containing the drugs, was sufficient to convict the defendant of possession of marijuana and cocaine with intent to distribute. Mackey v. State, 299 Ga. App. 851, 683 S.E.2d 899, 2009 Ga. App. LEXIS 1006 (2009).

Evidence that a cigarette pack containing methamphetamine and cocaine was found at the defendant's feet on the floor of a car after a traffic stop, along with evidence that the others in the car had just picked up the defendant to buy drugs from the defendant, was sufficient to allow a jury to find constructive possession in violation of O.C.G.A. § 16-13-30(a). Howard v. State, 300 Ga. App. 124, 684 S.E.2d 297, 2009 Ga. App. LEXIS 1097 (2009).

Trial court did not err in convicting the defendant of possession of cocaine with the intent to distribute, O.C.G.A. § 16-13-30(b), and possession of marijuana, O.C.G.A. § 16-13-2(b), because the circumstantial evidence established a meaningful connection between the defendant and the contraband, evidence which showed the defendant exercising power and dominion over the drugs found inside the wheel well on the front passenger's side of a car; the jury could infer that the drugs had been recently placed in the wheel well, and because the defendant had fled from the police, had been caught within arm's reach of the drugs, and had a large amount of cash in the defendant's pockets, the jury could infer that the defendant was a drug dealer and that the defendant had placed the drugs in the wheel well to avoid being prosecuted for possessing the drugs. Wright v. State, 302 Ga. App. 332, 690 S.E.2d 654, 2010 Ga. App. LEXIS 56 (2010).

Trial court erred in denying the defendant's motion for new trial after a jury found the defendant guilty of possession of more than one ounce of marijuana in violation of O.C.G.A. § 16-13-30(j) because the evidence adduced at trial was insufficient to show that the defendant was in sole constructive possession of the contraband when the defendant alone was charged with possessing the marijuana although the passenger in the defendant's car had equal access to the drugs, and the only legal evidence linking the defendant to the marijuana in the back seat was the defendant's spatial proximity to the marijuana; an officer's testimony concerning scales that were found in the car, to the extent it suggested some deception on the passenger's part, that deception did not give rise to the sole, reasonable inference that defendant was in sole constructive possession of the marijuana, and because the inference did not exclude every other reasonable hypothesis save the guilt of defendant, the evidence was insufficient to prove beyond a reasonable doubt that the defendant was in sole constructive possession of the marijuana. Rogers v. State, 302 Ga. App.

65, 690 S.E.2d 437, 2010 Ga. App. LEXIS 47 (2010), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Possession of car and possession of drugs. — Trial court did not err in denying either a motion for directed verdict or a motion for new trial based on sufficiency grounds because the evidence supported the finding that the defendant was in possession of bags of cocaine and marijuana found in the cargo area of the car when stopped and, although the defendant did not own the car, the fact that the defendant was driving the car gave rise to a rebuttable presumption that the defendant possessed the drugs found within the car, which the defendant failed to rebut. Cromartie v. State, 348 Ga. App. 563, 824 S.E.2d 32, 2019 Ga. App. LEXIS 47 (2019).

Insufficient evidence of possession in vehicle. — There was insufficient evidence of constructive possession to support a conviction of possessing cocaine with intent to distribute; although a brown paper bag of cocaine was found under the passenger seat where the defendant had been sitting for over three hours, there was no evidence that the defendant knew of the contents of the bag or that the defendant had hid the bag, and the defendant's spatial proximity to the cocaine over a long period of time could not sustain the defendant's conviction. Gillis v. State, 285 Ga. App. 199, 645 S.E.2d 674, 2007 Ga. App. LEXIS 474 (2007).

Evidence was insufficient for adjudication as a delinquent for acts that would have constituted cocaine possession if committed by an adult because the circumstantial evidence of defendant's spatial proximity to cocaine found in a car's console did not exclude every reasonable hypothesis other than constructive possession. In the Interest of J.S., 303 Ga. App. 788, 694 S.E.2d 375, 2010 Ga. App. LEXIS 399 (2010).

Drugs thrown from vehicles. — While a defendant claimed that the evidence was insufficient to exclude the possibility that the cocaine belonged solely to the defendant's passenger, the testimony of the passenger that the passenger dropped the drugs out of the truck after the defendant threw them in the passenger's lap was adequately corroborated under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) by the facts that the defendant had more than $2,000 in the defendant's pocket and that the defendant was the owner and driver of the truck from which the drugs were thrown; the defendant was, thus, properly convicted of trafficking in cocaine under O.C.G.A. § 16-13-31(a)(1) and possession of cocaine as a lesser included offense of possession with intent to distribute. Wingfield v. State, 297 Ga. App. 476, 677 S.E.2d 704, 2009 Ga. App. LEXIS 454 (2009).

Evidence sufficient for conviction of possession of methaqualone with intent to distribute. — See Johnston v. State, 178 Ga. App. 219, 342 S.E.2d 706, 1986 Ga. App. LEXIS 2516 (1986).

Evidence insufficient to establish actual or constructive possession of cocaine or methamphetamine. — See Dawson v. State, 183 Ga. App. 94, 357 S.E.2d 891, 1987 Ga. App. LEXIS 1897 (1987); Ridgeway v. State, 187 Ga. App. 381, 370 S.E.2d 216, 1988 Ga. App. LEXIS 695 (1988); Johnson v. State, 245 Ga. App. 583, 538 S.E.2d 481, 2000 Ga. App. LEXIS 1015 (2000).

Evidence was insufficient to support the defendant's convictions of possession of methamphetamine with intent to distribute as there was no evidence connecting the defendant to the drugs other than the defendant's own equal access. The drugs and paraphernalia were not found in an area exclusively used by the defendant, and the defendant's cousin had the same access to the drugs and paraphernalia. Xiong v. State, 295 Ga. App. 697, 673 S.E.2d 86, 2009 Ga. App. LEXIS 96 (2009), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Evidence sufficient to support conviction for possession with intent to distribute. — Given the items found in the defendant's pockets, including large amounts of drugs, cash, two cell phones, and a residue-laden razor blade, coupled with the evidence regarding the text messages between the defendant and

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other individuals, the evidence was sufficient to support the defendant's convictions for possession with intent to distribute the drugs. Glispie v. State, 335 Ga. App. 177, 779 S.E.2d 767, 2015 Ga. App. LEXIS 748 (2015), aff'd in part and rev'd in part, 300 Ga. 128, 793 S.E.2d 381, 2016 Ga. LEXIS 736 (2016), vacated in part, 341 Ga. App. 817, 801 S.E.2d 910, 2017 Ga. App. LEXIS 286 (2017).

Evidence of res gestae admissible as relevant. — Because the defendant was charged with possessing cocaine, and other evidence showed that the defendant purchased cocaine from a man who was outside of a game room, evidence that the man dropped crack cocaine into a trash can immediately after the transaction as police detectives appeared, and that cash was found on the man, was relevant as part of the res gestae of the crime that the defendant was charged with committing; denial of the defendant's motion for mistrial was proper. Millsap v. State, 275 Ga. App. 732, 621 S.E.2d 837, 2005 Ga. App. LEXIS 1104 (2005).

Knowing possession of cocaine. — There was no evidentiary basis upon which the jury could have concluded beyond a reasonable doubt that defendant was in knowing possession of cocaine. Evidence showed only that a certain amount of crack cocaine was found on the floorboard between the seat and the door on the passenger side of the car near where defendant had been sitting and that defendant denied seeing the owner of the car with any drugs that day. Reid v. State, 212 Ga. App. 787, 442 S.E.2d 852, 1994 Ga. App. LEXIS 397 (1994), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Intent to possess not found. — State failed to establish that a defendant knowingly possessed khat with the knowledge that it contained cathinone as the state's expert witness testified that cathinone converted into cathine, another chemical that the defendant was not charged with possessing, after some period of time and that cathinone was undetectable without the use of scientific testing equipment. Additionally, the evidence showed that the khat in the case was harvested more than two days before its subsequent arrival in Georgia, the defendant testified that the defendant believed the chemical "went out" of the khat after two days, and there was no evidence that the defendant made any attempt to conceal the nature of the package in which the khat was found by, for example, evading police or showing false identification. Mohamed v. State, 314 Ga. App. 181, 723 S.E.2d 694, 2012 Ga. App. LEXIS 144 (2012), cert. denied, No. S12C1038, 2012 Ga. LEXIS 616 (Ga. June 18, 2012).

Defendant was entitled to reversal of a conviction for possession of cathinone, a Schedule I substance, because the state failed to establish that the defendant knowingly possessed cathinone; a state crime lab chemist who tested the khat concluded that cathinone was not detectable by sight, although scientific testing revealed detectable amounts. Amin v. State, 317 Ga. App. 685, 732 S.E.2d 340, 2012 Ga. App. LEXIS 795 (2012).

Delivery and Distribution

Construed with O.C.G.A. § 16-13-32.5. — Convictions for selling cocaine (O.C.G.A. § 16-13-30) and selling cocaine within 1000 feet of a public housing project (O.C.G.A. § 16-13-32.5) did not merge because the latter statute contains a specific non-merger provision and the intent thereof is simply to increase the punishment for violating both statutes. Harper v. State, 213 Ga. App. 611, 445 S.E.2d 300, 1994 Ga. App. LEXIS 672 (1994), cert. denied, No. S94C1579, 1994 Ga. LEXIS 1028 (Ga. Sept. 29, 1994).

Admission, in trafficking trial, of evidence of prior possession conviction. — In trial for trafficking in cocaine, there was no error in admission of evidence of defendant's prior conviction for possession, since evidence of possession of a bag or container containing residue or traces of cocaine (which is the evidence upon which the prior conviction was based) does not demand the conclusion that defendant used, rather than sold or distributed, the

cocaine which had at one time been in the bag. Stephens v. State, 208 Ga. App. 291, 430 S.E.2d 29, 1993 Ga. App. LEXIS 444 (1993).

Knowledge shown. — Although circumstantial, evidence that the products the defendants were selling were pre-packaged in small quantities, yet sold for unusually large amounts, and that clerks observed customers come in multiple times a day to purchase them, along with smoking papers, and the customers often returned in an altered state, was sufficient to support a finding the defendants knew the products contained a controlled substance. Awtrey v. State, 346 Ga. App. 892, 815 S.E.2d 655, 2018 Ga. App. LEXIS 433 (2018).

Pregnant woman not guilty for transporting drugs to fetus. — Legislature did not intend to include transmission of controlled substances to fetuses in the conduct prohibited by O.C.G.A. § 16-13-30(b). State v. Luster, 204 Ga. App. 156, 419 S.E.2d 32, 1992 Ga. App. LEXIS 796 (1992), cert. denied, No. S92C1020, 1992 Ga. LEXIS 467 (Ga. June 4, 1992).

Delivery of marijuana and distribution of marijuana are both distinct violations of O.C.G.A. § 16-13-30(b) and they are not included but each may be committed exclusive of the other. Buford v. State, 162 Ga. App. 498, 291 S.E.2d 256, 1982 Ga. App. LEXIS 2197 (1982).

Included offenses. — Sale and delivery under O.C.G.A. § 16-13-30(b) are not separate and distinct crimes because a sale necessarily includes a delivery of goods for a price and the sale is complete upon delivery. Robinson v. State, 164 Ga. App. 652, 297 S.E.2d 751, 1982 Ga. App. LEXIS 3338 (1982).

When the trial court charged the entirety of O.C.G.A. § 16-13-30 even though the indictment alleged only possession of marijuana "with intent to distribute," sufficient remedial instructions were given which properly confined the charge to the particular portion of the section applicable to the offense charged in the indictment, and defendant was not harmed thereby. Caithaml v. State, 163 Ga. App. 429, 294 S.E.2d 674, 1982 Ga. App. LEXIS 2518 (1982).

Expert opinions. — Although the police officer who made an investigatory stop of defendant's vehicle was not formally tendered as an expert witness, because the state laid the foundation for that officer's opinion by eliciting the testimony about the officer's experience and training in drug enforcement, and the defendant never objected to the officer's opinion that the amount of marijuana the defendant possessed was more consistent with distribution rather than personal use, the evidence was admissible. Daniels v. State, 278 Ga. App. 263, 628 S.E.2d 684, 2006 Ga. App. LEXIS 303 (2006), cert. denied, No. S06C1248, 2006 Ga. LEXIS 430 (Ga. June 12, 2006).

Smell of marijuana on person in own driveway. — After the defendant exited a vehicle parked in the defendant's driveway, police smelled an odor of raw marijuana on the defendant's person and, after searching the vehicle with the driver's consent, found marijuana residue. Therefore, the police had probable cause to arrest the defendant for possession of marijuana. Minor v. State, 298 Ga. App. 391, 680 S.E.2d 459, 2009 Ga. App. LEXIS 687 (2009), cert. denied, No. S09C1744, 2009 Ga. LEXIS 771 (Ga. Nov. 9, 2009).

Intent to distribute inferred from evidence. — After police officers found ten grams of cocaine, two "chunks" of hashish, and two bags containing approximately one pound of hashish in defendants' automobiles, the quantity of the contraband found, as well as the presence of a cocaine analysis field kit, cocaine-tainted spoons, rolling papers and related drug paraphernalia, gave rise to a reasonable reference that defendants had the intent to distribute marijuana and cocaine. Holbrook v. State, 177 Ga. App. 318, 339 S.E.2d 346, 1985 Ga. App. LEXIS 2951 (1985).

Evidence that the defendant was in possession of nine rocks of crack cocaine, did not have a smoking device, and did not appear to be under the influence at the time of the defendant's arrest, and an expert's testimony that someone with that amount of cocaine had the cocaine for the purpose of distributing the cocaine, established the defendant's intent to distribute cocaine. Palmer v. State, 210 Ga. App. 717,

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437 S.E.2d 490, 1993 Ga. App. LEXIS 1331 (1993).

Defendant's possession of 11 rocks of cocaine combined with the officer's expert testimony that such quantity far exceeded that possessed for personal use sufficed to sustain a conviction for possessing cocaine with intent to distribute. Myers v. State, 268 Ga. App. 607, 602 S.E.2d 327, 2004 Ga. App. LEXIS 970 (2004).

Because two experienced police officers involved in defendant's arrest testified that the packaging of the marijuana found on defendant's person was consistent with preparing it for sale as opposed to personal use, and defendant conceded that the officers' testimony concerning their training and experience in drug cases laid a proper foundation for their opinion testimony that the packaging of the marijuana was consistent with distribution, sufficient evidence supported defendant's conviction of possession with the intent to distribute marijuana. Marshall v. State, 270 Ga. App. 663, 607 S.E.2d 258, 2004 Ga. App. LEXIS 1571 (2004).

Evidence supported the defendant's conviction of possession of marijuana and possession of cocaine with intent to distribute because the defendant stipulated that cocaine and marijuana were found under a sink and behind wall paneling in the house where the defendant lived, showing the defendant's constructive possession, and the amount of the drugs, and other indicia of distribution such as currency, baggies, razor blades, and scales, showed the defendant's intent to distribute. Marshall v. State, 273 Ga. App. 17, 614 S.E.2d 169, 2005 Ga. App. LEXIS 396 (2005).

Officer's testimony that the amount of cocaine in a bag in the defendant's possession was inconsistent with personal use, and that the cocaine was packaged for distribution, was sufficient to support the defendant's conviction for possessing cocaine with the intent to distribute. Best v. State, 279 Ga. App. 309, 630 S.E.2d 900, 2006 Ga. App. LEXIS 533 (2006).

Trial court did not err in denying the defendant's motion for a directed verdict of acquittal under O.C.G.A. § 17-9-1(a) in the possession with intent to distribute cocaine in violation of O.C.G.A. § 16-13-30 case; the defendant was seen fleeing into the woods wearing an unmarked black hat, a dog smelled the defendant on the same hat that was found near the defendant and that contained cocaine, and the defendant was not wearing a hat when the defendant was found. Riggins v. State, 281 Ga. App. 266, 635 S.E.2d 867, 2006 Ga. App. LEXIS 1075 (2006).

Despite the defendant's challenge to the sufficiency of the evidence to support a conviction for possession of marijuana with intent to distribute that conviction was upheld on appeal given that: (1) the marijuana found in the defendant's vehicle was packaged in 17 small zip-lock bags, commonly known as a dime bags and used for the purchase and selling of marijuana; (2) no evidence was presented which connected any other person to their possession; and (3) the jury could infer the defendant's intent from the individual packaging and number of bags found. Gerlock v. State, 283 Ga. App. 229, 641 S.E.2d 240, 2007 Ga. App. LEXIS 18 (2007).

Because: (1) the circumstantial evidence was sufficient to support a finding that the defendant intended to distribute the cocaine seized, as the defendant was in possession of a large amount of cash and 12.12 grams of cocaine divided into 33 individual packages; and (2) the arresting officer, who had been involved in thousands of drug arrests, testified that the small bags of crack cocaine ordinarily sold for $20 each, the jury was authorized to infer and find that the defendant possessed the drugs with the intent to distribute the drugs. Harper v. State, 285 Ga. App. 261, 645 S.E.2d 741, 2007 Ga. App. LEXIS 505 (2007).

Given the evidence seized from an athletic bag taken from the back of the vehicle searched, which the defendant was driving, as well as the scales used to weigh the substance out, sufficient evidence existed to authorize a finding that the defendant intended to sell the narcotics stashed in the bag with the cocaine, which included methamphetamine. Stroud v. State, 286 Ga. App. 124, 648 S.E.2d 476, 2007 Ga. App. LEXIS 708 (2007).

Given a police officer's testimony that the drugs found at the scene came from a bag which the defendant removed from a pants pocket, the jury was authorized to find that the defendant trafficked in cocaine, possessed cocaine with intent to distribute, and possessed less than one ounce of marijuana; moreover, the amount of cocaine at issue, as well as the defendant's possession of digital scales typically used to weigh drugs for distribution, permitted the jury to discount the defendant's own testimony and find an intention to distribute the drugs. Lipsey v. State, 287 Ga. App. 835, 652 S.E.2d 870, 2007 Ga. App. LEXIS 1112 (2007).

There was sufficient evidence to support a defendant's conviction of being a party to the crimes of possession of marijuana and cocaine with intent to distribute in violation of O.C.G.A. §§ 16-2-20 and 16-13-30 because the defendant was holding large quantities of drugs for an accomplice in a running car outside a hotel with knowledge that the accomplice was at the hotel to make a sale. Haywood v. State, 301 Ga. App. 717, 689 S.E.2d 82, 2009 Ga. App. LEXIS 1431 (2009).

Evidence sufficient to support conviction for sale of controlled substance.— Testimony from the narcotics officers and an informant, as well as the methamphetamine and money used in the exchange, provided sufficient evidence for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of sale of a controlled substance. Yeomans v. State, 369 Ga. App. 15, 891 S.E.2d 540, 2023 Ga. App. LEXIS 389 (2023).

Evidence sufficient to show intent to distribute cocaine. — Officer's opinion that the amount of cocaine in the defendant's possession was greater than that normally kept for personal use and was separately packaged for distribution authorized the jury to find that the defendant possessed the cocaine with intent to distribute. Horne v. State, 318 Ga. App. 484, 733 S.E.2d 487, 2012 Ga. App. LEXIS 881 (2012).

Opinion evidence not allowed if it invades jury's province. — Admission of police officer's testimony identifying the defendant in photographs of alleged drug deals established a fact that jurors could decide for themselves was inadmissible and reversible error. Mitchell v. State, 283 Ga. App. 456, 641 S.E.2d 674, 2007 Ga. App. LEXIS 86 (2007), superseded by statute as stated in Goforth v. State, 360 Ga. App. 832, 861 S.E.2d 800, 2021 Ga. App. LEXIS 400 (2021), superseded by statute as stated in Anderson v. State, 313 Ga. 178, 869 S.E.2d 401, 2022 Ga. LEXIS 33 (2022).

Irrelevant evidence properly excluded. — In a prosecution for possession of marijuana with intent to distribute, while the defendant was entitled to introduce relevant and admissible testimony tending to show that another person committed the crime, the trial court did not abuse the court's discretion in excluding evidence that an individual the defendant went to go visit on the night of the arrest was a known drug dealer and had been arrested on drug charges as there was no evidence tending to connect that person to the marijuana found in the defendant's vehicle; hence, the evidence failed to raise a reasonable inference of the defendant's innocence, and did not directly connect the other person with the corpus delicti, or show that the other person recently committed a crime of the same or similar nature. Gerlock v. State, 283 Ga. App. 229, 641 S.E.2d 240, 2007 Ga. App. LEXIS 18 (2007).

Evidence sufficient for conviction of selling heroin. — See Russell v. State, 226 Ga. App. 574, 486 S.E.2d 704.

Evidence sufficient for conviction of selling cocaine. — See Bagby v. State, 178 Ga. App. 282, 342 S.E.2d 731, 1986 Ga. App. LEXIS 2513 (1986); Hubert v. State, 181 Ga. App. 684, 353 S.E.2d 612, 1987 Ga. App. LEXIS 2569 (1987); Golden v. State, 184 Ga. App. 434, 361 S.E.2d 703, 1987 Ga. App. LEXIS 2282 (1987); Flournoy v. State, 186 Ga. App. 774, 368 S.E.2d 538, 1988 Ga. App. LEXIS 513 (1988); Grant v. State, 258 Ga. 299, 368 S.E.2d 737, 1988 Ga. LEXIS 248 (1988); Barrow v. City of Atlanta, 188 Ga. App. 400, 373 S.E.2d 88, 1988 Ga. App. LEXIS 1054 (1988); Cleveland v. State, 192 Ga. App. 659, 386 S.E.2d 169, 1989 Ga. App. LEXIS 1113 (1989); Dublin v. State, 194

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Ga. App. 606, 391 S.E.2d 451, 1990 Ga. App. LEXIS 274 (1990); Woods v. State, 210 Ga. App. 172, 435 S.E.2d 464, 1993 Ga. App. LEXIS 1097 (1993); Johnson v. State, 214 Ga. App. 77, 447 S.E.2d 74, 1994 Ga. App. LEXIS 775 (1994), cert. denied, No. S94C1738, 1994 Ga. LEXIS 1146 (Ga. Oct. 28, 1994); Sorrells v. State, 218 Ga. App. 413, 461 S.E.2d 904, 1995 Ga. App. LEXIS 749 (1995); Jackson v. State, 223 Ga. App. 207, 477 S.E.2d 347, 1996 Ga. App. LEXIS 1101 (1996); Copps v. State, 223 Ga. App. 518, 478 S.E.2d 390; Jones v. State, 229 Ga. App. 63, 493 S.E.2d 224; Clay v. State, 232 Ga. App. 541, 502 S.E.2d 267; Beard v. State, 242 Ga. App. 742, 531 S.E.2d 168, 2000 Ga. App. LEXIS 330 (2000); Jones v. State, 243 Ga. App. 374, 533 S.E.2d 437, 2000 Ga. App. LEXIS 467 (2000).

Defendant who told an undercover officer that the defendant could procure crack cocaine, took the officer's the money, and attempted to procure the cocaine could be reasonably found to have been a party to the sale. Little v. State, 230 Ga. App. 803, 498 S.E.2d 284, 1998 Ga. App. LEXIS 290 (1998).

Evidence was sufficient to support the defendant's conviction for sale of a controlled substance, cocaine, as ample evidence supported the jury's verdict that the defendant made a sale of cocaine to a confidential informant and that the substance was cocaine. Dixon v. State, 252 Ga. App. 385, 556 S.E.2d 480, 2001 Ga. App. LEXIS 1289 (2001).

Evidence was sufficient to sustain the defendant's convictions for selling cocaine because, regardless of the name the defendant used, the fact remained that the confidential informant identified the defendant as the man who sold the cocaine on two occasions and the white powdered substance that was immediately turned over to police after each buy was scientifically analyzed and determined to be cocaine. Johnson v. State, 259 Ga. App. 452, 576 S.E.2d 911, 2003 Ga. App. LEXIS 147 (2003).

Defendant's conviction of possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30, was supported by sufficient evidence as testimony by a police officer indicated that the defendant acted as a lookout during drug sales and took the money from the sales; the jury was free to discount testimony by another person involved in the sales that the defendant knew nothing about the sales. Arnold v. State, 260 Ga. App. 287, 581 S.E.2d 601, 2003 Ga. App. LEXIS 341 (2003).

Evidence held sufficient to support the defendant's conviction for selling cocaine when the evidence showed that the defendant directed an undercover agent to a place where a drug sale could be made, that one of the two passengers with the defendant took money from the undercover agent and gave the undercover agent crack cocaine in return, both passengers in the defendant's car testified that the money from the sale was given to defendant, and the money used in the sale, identifiable because the money had been photocopied, was found in the defendant's pockets during the defendant's arrest a short time after the sale. Zinnamon v. State, 261 Ga. App. 170, 582 S.E.2d 146, 2003 Ga. App. LEXIS 567 (2003).

Comments which an informant made on tape shortly after the defendant sold drugs to the informant and left the informant's car were part of the res gestae; the trial court did not abuse the court's discretion by admitting those comments during the defendant's trial or by allowing the jury to read transcripts of the tape recording police made, and evidence showing that the defendant was the person who sold drugs to the informant was sufficient to sustain the defendant's conviction. Lyons v. State, 266 Ga. App. 89, 596 S.E.2d 226, 2004 Ga. App. LEXIS 307 (2004).

Evidence was sufficient to support the defendant's convictions on two counts of selling cocaine as the evidence showed that the first sale was made after an undercover officer approached the defendant's employee and the employee could only facilitate the transaction after conferring with the defendant and going into the defendant's office with defendant; it also showed that the second, separate sale was made by the defendant when the undercover officer dealt with the defendant directly and that the sale would go forward

after the defendant was satisfied that the undercover officer had cash to facilitate the transaction. Simmons v. State, 271 Ga. App. 330, 609 S.E.2d 678, 2005 Ga. App. LEXIS 49 (2005).

Because the police officer witnessed the confidential informant and defendant engage in a hand-to-hand exchange and the informant returned to the officer with a rock of crack cocaine that the informant did not previously possess, sufficient evidence supported the selling cocaine conviction in violation of O.C.G.A. § 16-13-30, even though neither the defendant nor the informant was found with $20.00 that was provided to the informant for the purchase as this went to the weight, not the sufficiency, of the evidence. Hampton v. State, 272 Ga. App. 565, 612 S.E.2d 854, 2005 Ga. App. LEXIS 327 (2005).

There was sufficient evidence to support the defendant's conviction for two counts of selling cocaine, based on two controlled buys conducted by a confidential informant, wherein the defendant was given cash in exchange for cocaine; even assuming that a concealed audio recording device produced a tape which was inadmissible on one such occasion, the evidence was still sufficient for purposes of conviction. Brown v. State, 274 Ga. App. 302, 617 S.E.2d 227, 2005 Ga. App. LEXIS 726 (2005), cert. denied, No. S05C1902, 2005 Ga. LEXIS 734 (Ga. Oct. 24, 2005).

Conviction for sale of cocaine in violation of O.C.G.A. § 16-13-30 was supported by sufficient evidence because the defendant could not argue that the defendant acted as an informant when the defendant had no reason to believe that the buyers were law enforcement officers and knowingly gave the buyers cocaine with the intent to obtain remuneration. Enoch v. State, 277 Ga. App. 164, 626 S.E.2d 160, 2006 Ga. App. LEXIS 21 (2006).

Conviction for selling cocaine was upheld on appeal because sufficient evidence was established, via a positive field test, that defendant was in possession of cocaine that the defendant attempted to sell to an undercover officer and there was no requirement that the state should have tested the substance again at the crime lab. Collins v. State, 278 Ga. App. 103, 628 S.E.2d 148, 2006 Ga. App. LEXIS 241 (2006).

Because the testimony of a single witness was generally sufficient to establish a fact, and there was no requirement that an actual exchange of money for drugs be witnessed by more than one person or be recorded on videotape, the defendant's sale of cocaine conviction was upheld on appeal, based on a law enforcement agent's actions of handing the defendant $40 in exchange for two pieces of a substance that tested positive for cocaine. Hicks v. State, 281 Ga. App. 217, 635 S.E.2d 830, 2006 Ga. App. LEXIS 1053 (2006).

Evidence supported a defendant's conviction of selling cocaine after testimony by an undercover agent that the defendant sold the agent cocaine was corroborated by a videotape; moreover, as the defendant had been charged as a party to the crime, the state had to prove only that the defendant, as opposed to a passenger in the defendant's car and a codefendant, facilitated the sale, and the defendant did not challenge the evidence proving facilitation. Woods v. State, 287 Ga. App. 268, 651 S.E.2d 188, 2007 Ga. App. LEXIS 932 (2007).

Evidence supported the defendant's conviction of selling crack cocaine after a confidential informant testified at trial that the defendant had twice sold the informant crack cocaine, a police officer checked the informant before and after the videotaped sales, and a forensic chemist testified that the substance sold was cocaine. Ingram v. State, 286 Ga. App. 662, 650 S.E.2d 743, 2007 Ga. App. LEXIS 843 (2007), overruled, State v. Lane, 308 Ga. 10, 838 S.E.2d 808, 2020 Ga. LEXIS 98 (2020).

Evidence was sufficient to support a defendant's conviction for violating the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by selling cocaine, in violation of O.C.G.A. § 16-13-30(b), based on an undercover officer's testimony as well as a corroborative tape recording of the drug sale transaction with the defendant; there was no requirement that the audio recording conclusively identify the

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defendant's voice. McSears v. State, 292 Ga. App. 804, 665 S.E.2d 890, 2008 Ga. App. LEXIS 866 (2008).

Evidence was sufficient to convict defendant of selling cocaine rather than merely being present while the defendant's stepsibling sold the cocaine because both confidential informants testified that the informants negotiated the purchase of cocaine from defendant, not from the defendant's stepsibling, and this was reflected in a videotape of the transaction that was played for the jury. Additionally, the stepsibling testified that the defendant gave the stepsibling the cocaine to give to the informants, and that the defendant received the money. Duffie v. State, 301 Ga. App. 607, 688 S.E.2d 389, 2009 Ga. App. LEXIS 1419 (2009).

Defendant abandoned any challenge to the sufficiency of the evidence with regard to defendant's conviction for selling cocaine because the defendant offered no substantive argument to support the defendant's argument as required under Ga. Ct. App. R. 25(a)(3) and (c)(2); nevertheless, there was sufficient evidence for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of selling cocaine. Quarterman v. State, 305 Ga. App. 686, 700 S.E.2d 674, 2010 Ga. App. LEXIS 793 (2010).

Defendant's claim that the evidence was insufficient to support the defendant's convictions because the state relied on hearsay testimony of a forensic scientist who did not personally conduct the chemical tests failed because, even assuming the testimony was inadmissible, the state submitted sufficient evidence, including testimony from the police, the informant, and the defendant, establishing that the drugs recovered, with one exception, constituted cocaine. Cooper v. State, 324 Ga. App. 451, 751 S.E.2d 102, 2013 Ga. App. LEXIS 863 (2013).

Confidential informant working for law enforcement in an undercover operation purchased crack cocaine from the defendant on two separate occasions. Therefore, the evidence was clearly sufficient to allow the jury to convict the defendant of selling and possessing cocaine. McDougler v. State, 323 Ga. App. 828, 748 S.E.2d 475, 2013 Ga. App. LEXIS 756 (2013).

Aiding and abetting sale of cocaine. — Evidence was sufficient to convict the defendant because the defendant aided and abetted the sale of cocaine to the undercover officer pursuant to O.C.G.A. § 16-2-20; the defendant approached an undercover officer, the defendant took money from the officer and went into a hotel room, and the defendant later returned and gave the officer cocaine. Ware v. State, 308 Ga. App. 24, 707 S.E.2d 111, 2011 Ga. App. LEXIS 29 (2011), cert. denied, No. S11C0941, 2011 Ga. LEXIS 441 (Ga. May 31, 2011).

Evidence sufficient for conviction of selling cocaine and marijuana. — See Smith v. State, 178 Ga. App. 19, 341 S.E.2d 901, 1986 Ga. App. LEXIS 2492 (1986).

Evidence sufficient to sustain conviction of conspiracy to distribute methaqualone. — See Skinner v. State, 182 Ga. App. 370, 355 S.E.2d 726, 1987 Ga. App. LEXIS 1706 (1987).

Evidence sufficient to convict for sale of and trafficking in cocaine. — See Thomas v. State, 184 Ga. App. 318, 361 S.E.2d 280, 1987 Ga. App. LEXIS 2768 (1987).

Evidence that the defendant agreed to sell drugs to an informant was sufficient to support defendant's conviction for selling and trafficking in cocaine. Carter v. State, 261 Ga. App. 204, 583 S.E.2d 126, 2003 Ga. App. LEXIS 586 (2003).

Evidence sufficient for conviction of trafficking and possession of controlled substances. — See Clark v. State, 184 Ga. App. 380, 361 S.E.2d 682, 1987 Ga. App. LEXIS 2777 (1987).

Because the state presented recorded conversations between the defendant and a confidential informant (CI) to set up a drug buy, and evidence that the defendant drove to the meeting place and that the CI dropped the money for the drugs in the defendant's seat, while the defendant did not participate in the actual transaction, there was sufficient evidence to show that the defendant was a party to the transaction, and sufficient evidence to authorize the conviction. Murphy v. State, 272 Ga. App. 287, 612 S.E.2d 104, 2005 Ga. App. LEXIS 269 (2005).

Evidence supported a defendant's conviction for possession with intent to distribute a controlled painkiller as the defendant was hiding 35 painkiller pills in a plastic zip-lock bag without a label indicating a valid prescription in the waistband of the defendant's pants and the defendant gave one pill to the driver of a car; though the defendant might have been authorized to possess the painkiller, the defendant was not authorized to distribute the drug. Atkinson v. State, 280 Ga. App. 635, 634 S.E.2d 828, 2006 Ga. App. LEXIS 922 (2006).

Evidence supported a defendant's conviction for the sale of a controlled painkiller as the jury rejected a third party's testimony that the defendant had given the third party four painkiller pills and believed a police officer's testimony that on the evening of the incident, the third party told the officer that the third party paid the defendant $20 for the four painkiller pills. Atkinson v. State, 280 Ga. App. 635, 634 S.E.2d 828, 2006 Ga. App. LEXIS 922 (2006).

Convictions of manufacture, distribution, and possession of methamphetamine with the intent to distribute under O.C.G.A. § 16-13-30(b), possession of ephedrine/pseudoephedrine under O.C.G.A. § 16-13-30.3(b)(1), and possession of a firearm during the commission of a felony under O.C.G.A. § 16-11-106(b)(4) were supported by the evidence. A panel van belonging to the defendant had been modified as a methamphetamine lab, was located on the defendant's property, and was powered by an electrical cord running from the defendant's trailer; everything necessary to support the production of methamphetamine was present in the vicinity of the vehicle; the defendant's name and that of the defendant's spouse had been scrawled on an interior panel of the vehicle; the defendant offered to provide any methamphetamine that a house guest wanted; uncured methamphetamine and enough ephedrine was present at the scene to make 30 to 33 grams of methamphetamine; and the defendant admitted to giving methamphetamine to others and to owning the sawed-off shotgun recovered from the panel van. Boone v. State, 293 Ga. App. 654, 667 S.E.2d 880, 2008 Ga. App. LEXIS 1041 (2008).

Because a police officer properly stopped defendant's car for a suspended registration, saw what appeared to be a weapon in defendant's fanny pack, and the suspected methamphetamine was found in plain view during a limited protective search and while the officer was engaged in a lawful arrest; accordingly, defendant's constitutional rights were not violated, and defendant was properly convicted of trafficking in methamphetamine and possession of methamphetamine with intent to distribute under O.C.G.A. §§ 16-13-30(b) and 16-13-31(e). Eaton v. State, 294 Ga. App. 124, 668 S.E.2d 770, 2008 Ga. App. LEXIS 1118 (2008).

Because probation officers were authorized to investigate an allegation that the defendant's son possessed drugs in violation of the son's probation, and because the officers were authorized to seize contraband falling in plain view, the evidence was sufficient to sustain the defendant's convictions for possession of methamphetamine with intent to distribute and trafficking in methamphetamine under O.C.G.A. §§ 16-13-30(b) and 16-13-31(e)(1). Prince v. State, 299 Ga. App. 164, 682 S.E.2d 180, 2009 Ga. App. LEXIS 851 (2009).

Evidence was sufficient to support the defendant's conviction of sale of a controlled substance because the person who sold the drugs to the informant for the defendant gave a detailed account of the sale, including the defendant's planning and execution of the crime, the person's testimony was corroborated by the testimony of the informant, and the testimony was further corroborated by the four trash pulls at the defendant's residence, which yielded pill bottles, full prescriptions, and the doctor's notes, and the search of the defendant's residence, which yielded a large number of prescription pills. Thompson v. State, 349 Ga. App. 1, 825 S.E.2d 413, 2019 Ga. App. LEXIS 97 (2019).

Evidence sufficient for conviction of possession of cocaine with intent to distribute. — See Copeland v. State, 228 Ga. App. 734, 492 S.E.2d 723, 1997

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Ga. App. LEXIS 1251 (1997); Morgan v. State, 230 Ga. App. 608, 496 S.E.2d 924, 1998 Ga. App. LEXIS 237 (1998); Stewart v. State, 232 Ga. App. 565, 502 S.E.2d 502, 1998 Ga. App. LEXIS 747 (1998); McNair v. State, 240 Ga. App. 324, 523 S.E.2d 392, 1999 Ga. App. LEXIS 1333 (1999).

Evidence was sufficient to support the defendant's conviction for possession of cocaine with intent to distribute after the defendant was arrested on an outstanding warrant and a search of the defendant's residence and person revealed cocaine, which according to the state's expert was packaged for distribution, a razor blade, baggies of the type used to package cocaine, and a cell phone. Taylor v. State, 267 Ga. App. 588, 600 S.E.2d 675, 2004 Ga. App. LEXIS 714 (2004).

Evidence was sufficient to support defendant's conviction for possession of cocaine with intent to distribute after: (1) an informant provided information that defendant was in a certain hotel room waiting for a ride, which was corroborated; (2) the informant also stated that defendant had cocaine that defendant wished to sell; (3) when police officers stopped a car in which defendant was riding, the defendant refused to show the officers defendant's hands, and as the officers thought that defendant was reaching for a weapon, the officers subdued defendant; and (4) a pill bottle in defendant's pocket contained crack cocaine cut into small rocks for distribution, along with cash. Mew v. State, 267 Ga. App. 454, 600 S.E.2d 397, 2004 Ga. App. LEXIS 681 (2004).

Evidence was sufficient to convict the defendant of cocaine trafficking and possession of cocaine with intent to distribute because there was more evidence than the defendant's mere presence in the apartment, which was actually rented by the defendant's sister, that linked the defendant to the cocaine: (1) the jury could infer that the defendant actually lived in the apartment because the defendant claimed ownership of a television and a video game in the apartment; (2) it was a one-bedroom apartment to which the defendant had a key; (3) the defendant was sleeping in the bedroom when the police arrived; (4) the defendant's own statements provided additional evidence demonstrating the defendant's possession of the cocaine hidden in the kitchen cabinets; and (5) the defendant had a lot of cash on the defendant's person with large numbers of denominations that was typically used to purchase drugs. Ballard v. State, 268 Ga. App. 55, 601 S.E.2d 434, 2004 Ga. App. LEXIS 840 (2004).

Evidence supported the defendant's conviction for possession of cocaine with intent to distribute because two investigators saw the defendant put a plastic bag under a beer bottle in the woods, the plastic bag was found to contain crack cocaine, and one investigator testified that the amount in question exceeded that possessed for personal use. Tise v. State, 273 Ga. App. 201, 614 S.E.2d 832, 2005 Ga. App. LEXIS 454 (2005).

Because: (1) the defendant failed to sufficiently prove an entrapment defense, and hence, the need for disclosure of an informant's identity; (2) no error resulted in refusing to strike a juror for cause; and (3) the trial court's entrapment instruction was legally correct and did not mislead the jury, the defendant's convictions for trafficking in cocaine, in violation of O.C.G.A. § 16-13-31(a), possession of cocaine with intent to distribute, contrary to O.C.G.A. § 16-13-30(b), and two counts of use of communication facilities in committing a felony drug offense, under O.C.G.A. § 16-13-32.3, were affirmed on appeal. Griffiths v. State, 283 Ga. App. 176, 641 S.E.2d 169, 2006 Ga. App. LEXIS 1516 (2006), cert. denied, No. S07C0652, 2007 Ga. LEXIS 333 (Ga. Apr. 24, 2007).

Evidence was sufficient to support two defendants' convictions for possession of cocaine with the intent to distribute after officers found a large amount of cash on the first defendant's person, including a recorded bill used in a controlled buy, as well as scales, small plastic bags, and scattered bags of drugs, including five individually wrapped pieces of cocaine. Beck v. State, 286 Ga. App. 553, 650 S.E.2d 728, 2007 Ga. App. LEXIS 827 (2007), aff'd in part and rev'd in part, 283 Ga. 352, 658 S.E.2d 577, 2008 Ga. LEXIS 247 (2008), vacated in part, 293 Ga. App.

854, 668 S.E.2d 479, 2008 Ga. App. LEXIS 1281 (2008).

Defendant's convictions for possessing 28 grams or more of cocaine, possessing cocaine with intent to distribute, and possession of a firearm during the commission of a felony were upheld on appeal as sufficient evidence was presented via the direct testimony of the defendant's live-in girlfriend, which when combined with the evidence showing their joint constructive possession of the drugs and gun tended to connect and identify the defendant with the crimes charged. Allen v. State, 286 Ga. App. 469, 649 S.E.2d 583, 2007 Ga. App. LEXIS 810 (2007).

Despite the defendant's equal access claim, because: (1) the evidence sufficiently showed the defendant's ownership and possession of the vehicle where the contraband was found; (2) the similar transaction evidence showed that the defendant previously admitted possessing an almost identical array of drugs and drug processing paraphernalia; (3) the informant was a mere tipster and not a material or necessary witness; and (4) trial counsel did not render ineffective assistance, the defendant's possession of cocaine with intent to distribute conviction was upheld on appeal; thus, the trial court properly denied the defendant's motion for a directed verdict of acquittal. Cauley v. State, 287 Ga. App. 701, 652 S.E.2d 586, 2007 Ga. App. LEXIS 1071 (2007).

Evidence was sufficient to support the defendant's conviction of possession of cocaine with intent to distribute: (1) crack cocaine and plastic bags were found at a hotel room where the defendant was; (2) a witness testified that the witness and the witness's cousin had gone to the hotel room and begun looking for someone to bring them cocaine; (3) the defendant brought crack cocaine there; and (4) after some was smoked, the cousin, the defendant, and another person packaged the crack into the small bags found at the scene. Gassett v. State, 289 Ga. App. 792, 658 S.E.2d 366, 2008 Ga. App. LEXIS 110 (2008).

Evidence was sufficient to support a conviction of possession of cocaine with intent to distribute when the defendant was the only person who ran when officers approached a home, an officer saw the defendant toss cocaine into the kitchen, and the defendant was the only person in the house who had a significant amount of money. Although two witnesses testified that the witnesses had tried to buy cocaine from the defendant earlier that evening and had been told by the defendant that the defendant had none, the jury was authorized to believe the officer's testimony over the witnesses. Thomas v. State, 291 Ga. App. 795, 662 S.E.2d 849, 2008 Ga. App. LEXIS 646 (2008).

There was sufficient evidence to show that the defendant distributed cocaine based on the defendant providing a confidential informant cocaine in exchange for cash. Beck v. State, 292 Ga. App. 472, 665 S.E.2d 701, 2008 Ga. App. LEXIS 714 (2008), cert. denied, No. S08C1863, 2008 Ga. LEXIS 922 (Ga. Oct. 6, 2008).

Defendant was properly convicted of possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), as the following evidence was sufficient to prove the cocaine found by police belonged to the defendant rather than a companion: (1) police found two large pieces of cocaine about four feet from where defendant placed the defendant's right hand after police ordered the defendant to lie on the ground; (2) the companion testified that the defendant bought the cocaine just before the police arrived; and (3) the defendant confessed to selling drugs. Neugent v. State, 294 Ga. App. 284, 668 S.E.2d 888, 2008 Ga. App. LEXIS 1171 (2008).

Defendant's conviction for possession of cocaine with the intent to distribute was proper as an accomplice's testimony identifying defendant as the owner of a purse containing the cocaine was corroborated. Smith v. State, 296 Ga. App. 160, 674 S.E.2d 42, 2009 Ga. App. LEXIS 150 (2009).

Trial court did not err in convicting the defendant of distribution of cocaine in violation of O.C.G.A. § 16-13-30(b) and in denying the defendant's motion for directed verdict because it was not an abuse of discretion to admit a deputy's lay opinion testimony identifying the defendant on a surveillance videotape

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since the testimony was probative of a fact in issue and based on the deputy's observations of the defendant at the time the surveillance photograph was taken; because the deputy's testimony was sufficient to identify the defendant as the perpetrator of the crime pursuant to former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8), the evidence was sufficient to find the defendant guilty of distribution of cocaine beyond a reasonable doubt. Strickland v. State, 302 Ga. App. 44, 690 S.E.2d 638, 2010 Ga. App. LEXIS 30 (2010).

Evidence was sufficient to support the defendant's conviction for possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), because the evidence established beyond any reasonable doubt that the defendant had the power and the intent to exercise control over the cocaine, and the state established by overwhelming circumstantial evidence that the defendant was in either constructive or actual possession of the cocaine; the defendant was found kneeling over the contraband, the jury was authorized to infer that the defendant had been "fidgeting" with a piggy bank in which 37 small bags of cocaine were hidden, and pants with the defendant's driver's license and cash were found in the same corner of the bedroom as the cocaine. Jackson v. State, 306 Ga. App. 33, 701 S.E.2d 481, 2010 Ga. App. LEXIS 737 (2010).

Evidence was sufficient to authorize the finding that the defendant was guilty of possession of cocaine with intent to distribute because evidence that cocaine was found on the ground where the defendant had been observed dropping what appeared to officers to be cocaine permitted a rational trier of fact to infer that the defendant had been in possession of the cocaine and had the intent to distribute the cocaine, which the defendant dropped when the defendant was apprehended; moreover, immediately before the defendant's apprehension, an officer had witnessed the defendant appearing to sell crack cocaine to another person. Bush v. State, 305 Ga. App. 617, 699 S.E.2d 899, 2010 Ga. App. LEXIS 763 (2010).

Evidence was sufficient to support the defendants' conviction for possession of cocaine with intent to distribute and marijuana with intent to distribute because: (1) police officers, while executing a search of the defendants' home, found crack cocaine, marijuana, a large number of plastic baggies, digital scales which had cocaine residue on them, a police scanner, and a handgun; (2) one of the defendants told an officer that all of the narcotics belonged to that defendant; (3) a police lieutenant, who was accepted by the trial court as an expert in the field of street level narcotics, opined, based on the large number of packaging supplies that were found, the large amounts of marijuana and crack cocaine that were found, as well as the handgun and police scanner that were found, that the defendants possessed the crack cocaine and marijuana for the purpose of distributing the drugs; and (4) evidence of one defendant's prior arrest and conviction for possession of cocaine with intent to distribute was introduced as a similar transaction. Smith v. State, 309 Ga. App. 889, 714 S.E.2d 593, 2011 Ga. App. LEXIS 484 (2011).

Evidence that the defendant possessed enough crack-cocaine for 30 individual hits, which was consistent with distribution rather than personal use, the defendant was in possession of a scale, and the scale was coated in residue that appeared to be crack-cocaine was sufficient to support the defendant's conviction for possession with intent to distribute. Taylor v. State, 344 Ga. App. 439, 810 S.E.2d 333, 2018 Ga. App. LEXIS 48 (2018).

Evidence insufficient for conviction of possession with intent to distribute. — Evidence consisting of a reference to a hearsay tip from an unidentified source that defendant was selling drugs and the opinion testimony of the arresting police officer, not qualified as an expert, that 1.2 grams of cocaine would not normally be an amount held by a user was not sufficient to support a conviction of possession with intent to distribute. James v. State, 214 Ga. App. 763, 449 S.E.2d 126, 1994 Ga. App. LEXIS 1046 (1994).

After the state introduced evidence of the defendant's prior guilty pleas for possession with intent to distribute cocaine

and the sale of cocaine, but this evidence was offered to impeach the defendant when the defendant took the stand, not as evidence of similar transactions whereby the jury could infer similar motive or bent of mind, the evidence was held insufficient to support a conviction of intent to distribute. Bethea v. State, 220 Ga. App. 800, 470 S.E.2d 328, 1996 Ga. App. LEXIS 351 (1996).

Evidence showing merely that defendant possessed two bags of marijuana and had a prior conviction for possession of marijuana with intent to distribute and possession of cocaine was not sufficient for conviction. Parris v. State, 226 Ga. App. 854, 487 S.E.2d 690, 1997 Ga. App. LEXIS 801 (1997).

Trial court was not authorized to find the defendant intended to distribute drugs since the state produced no evidence that defendant had scales, guns, cash, drug packaging materials, or a large quantity of marijuana, and did not introduce any evidence of prior drug sales by the defendant, or any testimony that the defendant was observed selling or attempting to sell drugs. Clark v. State, 245 Ga. App. 267, 537 S.E.2d 742, 2000 Ga. App. LEXIS 939 (2000).

State failed to prove defendant was guilty of possession of cocaine with intent to distribute as to a substance found in defendant's car; thus, defendant's conviction was reversed since: (1) defendant did not state that the substance was cocaine in defendant's post-arrest statement; (2) the police expert did not identify the substance as cocaine, but as suspected cocaine; (3) no tests were performed on the substance; (4) the photographs admitted into evidence did not establish that the substance was cocaine; and (5) codefendant's testimony and the purported statement by the confidential informant did not identify the substance found in defendant's car. Cooper v. State, 258 Ga. App. 825, 575 S.E.2d 691, 2002 Ga. App. LEXIS 1535 (2002), cert. denied, No. S03C0553, 2003 Ga. LEXIS 343 (Ga. Mar. 28, 2003), cert. denied, 540 U.S. 888, 124 S. Ct. 270, 157 L. Ed. 2d 160, 2003 U.S. LEXIS 6399 (2003).

Evidence did not support the defendant's conviction for possession of marijuana with intent to distribute as the mere fact that a package of marijuana was addressed, but not delivered, to an apartment leased by defendant did not tie the defendant to the drugs; the evidence was circumstantial and it was equally plausible that the codefendants were independently dealing in marijuana. Patten v. State, 275 Ga. App. 574, 621 S.E.2d 550, 2005 Ga. App. LEXIS 1040 (2005).

There was insufficient evidence of intent to convict the defendant of possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30, as there was no evidence that the cocaine had been divided and packaged for individual sale or as to a personal use quantity; thus, the circumstantial evidence did not permit a rational trier to exclude the reasonable hypothesis, pursuant to former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6), that the defendant intended to use the cocaine. Florence v. State, 282 Ga. App. 31, 637 S.E.2d 779, 2006 Ga. App. LEXIS 1306 (2006).

While the evidence was sufficient to convict the defendant of possession of cocaine found in a pill bottle in the defendant's vehicle, it was insufficient to prove that the defendant intended to distribute the cocaine under O.C.G.A. § 16-13-30(b) because the state produced no evidence that the defendant had scales, cutting implements, weapons, a large amount of cash, a customer list, or drug packaging materials; there was no evidence of prior convictions of drug possession with intent to distribute, no testimony that the defendant was seen selling or trying to sell drugs, no expert testimony that the amount of drugs seized was inconsistent with personal use, and no evidence as to the amount of cocaine seized. Under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6), storing drugs in a pill bottle, and possessing an unidentified number of sales-size pieces of the drug, without more, equally supported the hypothesis that the person found with the drugs was a user rather than a dealer. Hicks v. State, 293 Ga. App. 830, 668 S.E.2d 474, 2008 Ga. App. LEXIS 1226 (2008).

Codefendant's convictions for possession of cocaine with intent to distribute,

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O.C.G.A. § 16-13-30(b), and possession with intent to distribute a controlled substance within 1,000 feet of a housing project, O.C.G.A. § 16-13-32.5(b), was unsupportable as a matter of law, and the trial court erred by denying the defendant's motion for a directed verdict of acquittal because the circumstantial evidence and the reasonable inferences derived therefrom were insufficient to connect the codefendant to the cocaine, which was found in an upstairs bedroom occupied by the codefendants; no evidence was introduced to show that the codefendant resided in the apartment where the cocaine was found, which could authorize an inference that the codefendant possessed the property therein. Jackson v. State, 306 Ga. App. 33, 701 S.E.2d 481, 2010 Ga. App. LEXIS 737 (2010).

Evidence that the defendant kicked in a door and entered an occupied apartment with others, the defendant provided the guns used, the defendant placed a gun to one victim's head, a victim's wallet and key were taken, and marijuana, digital scales, and a device used to grind marijuana were found at the defendant's house was sufficient to support the defendant's convictions for four counts of aggravated assault, three counts of false imprisonment, and one count each of armed robbery, burglary, possession of marijuana with intent to distribute, and possession of a firearm during the commission of a felony. Thompson v. State, 320 Ga. App. 150, 739 S.E.2d 434, 2013 Ga. App. LEXIS 141 (2013).

Defendant was entitled to reversal of the convictions for possession with intent to distribute and trafficking drugs because the defendant was merely present at a residence, which the defendant did not own or lease, when a search warrant was executed, there was no evidence the defendant had actual or constructive possession of the drugs, and there was no evidence the defendant was a party to these crimes. Scott v. State, 326 Ga. App. 115, 756 S.E.2d 220, 2014 Ga. App. LEXIS 133 (2014).

Since the evidence only showed that the defendant had been a visitor at the residence where the drugs were found and there was no evidence that the officers found drugs, cash, or other evidence on the defendant's person linking the defendant to the contents of the residence in question, the evidence was insufficient to support the defendant's convictions for trafficking, possession, and possession with intent to distribute the drugs. Morales v. State, 332 Ga. App. 794, 775 S.E.2d 168, 2015 Ga. App. LEXIS 400 (2015).

Evidence was insufficient to support the second defendant's convictions of trafficking methamphetamine and possession of methamphetamine with intent to distribute as circumstantial evidence of knowledge and approval of the criminal activity was not enough to prove that the second defendant was in constructive possession of the contraband found in the residence; and an officer's limited testimony of conduct susceptible of multiple interpretations, without more, did not show that the second defendant intentionally aided or abetted the crime. Bustos v. State, 365 Ga. App. 433, 878 S.E.2d 774, 2022 Ga. App. LEXIS 456 (2022).

Supplying drugs for sex with minor supported conviction. — Evidence was sufficient to support a conviction of distribution of cocaine under O.C.G.A. § 16-13-30 because the 15-year-old victim admitted that, on several of the occasions when having sex with defendant, the defendant had supplied the victim with crack cocaine, which they had smoked together. Watson v. State, 302 Ga. App. 619, 691 S.E.2d 378, 2010 Ga. App. LEXIS 195 (2010), cert. denied, 562 U.S. 932, 131 S. Ct. 328, 178 L. Ed. 2d 213, 2010 U.S. LEXIS 7482 (2010).

Evidence sufficient to support convictions for both sale of cocaine and possession of cocaine with intent to distribute. — Because the state presented sufficient evidence through: (1) the testimony of an informant and the agent conducting a controlled buy from the defendant involving the informant; (2) the field tests done on the substance purchased and seized as a result of a search warrant; and (3) the results of the state's crime lab tests, the defendant's convictions for the sale of cocaine and

possession with intent to distribute cocaine were upheld on appeal. Moreover, the latter conviction was further supported by testimony from the agent that the quantity and unique packaging of the cocaine found in the location searched were inconsistent with mere personal consumption. Johnson v. State, 289 Ga. App. 206, 656 S.E.2d 861, 2008 Ga. App. LEXIS 36 (2008).

Similar transaction evidence properly admitted. — In a prosecution for possession of cocaine with intent to distribute, the trial court properly admitted similar transaction evidence as the evidence showed that the defendant previously admitted possessing an almost identical array of drugs and drug processing paraphernalia. Cauley v. State, 287 Ga. App. 701, 652 S.E.2d 586, 2007 Ga. App. LEXIS 1071 (2007).

Defendant's three prior drug offenses involved the sale of $20 worth of crack cocaine to undercover officers or informants during drug investigations in the same neighborhood. Therefore, these similar transactions were admissible to show the defendant's bent of mind, course of conduct, and intent to sell cocaine in violation of O.C.G.A. § 16-13-30(b). Morrison v. State, 300 Ga. App. 405, 685 S.E.2d 413, 2009 Ga. App. LEXIS 1187 (2009).

Trial court did not abuse the court's discretion in admitting similar transaction evidence that the defendant had sold cocaine to a confidential informant because the trial court expressly found that the similar transaction was admissible for the purpose of showing the defendant's intent, that the defendant had committed the similar transaction, and that there was sufficient connection between the similar transaction and the charged offense, possession of cocaine with intent to distribute in violation of O.C.G.A. § 16-13-30(b). Wright v. State, 313 Ga. App. 829, 723 S.E.2d 59, 2012 Ga. App. LEXIS 86 (2012).

Trial court did not abuse the court's discretion in admitting similar transaction evidence because the evidence was sufficient for a rational trier of fact to have found the defendant guilty beyond a reasonable doubt of possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), even without the similar transaction evidence; the defendant testified on direct examination that the defendant was on parole at the time of a traffic stop and had previously pled guilty to a drug charge, and the trial court properly instructed the jury to limit the jury's consideration of the similar transaction evidence to the appropriate purpose. Wright v. State, 313 Ga. App. 829, 723 S.E.2d 59, 2012 Ga. App. LEXIS 86 (2012).

New trial ordered after evidence improperly admitted. — Because the seizure of cash found on the defendant's person was conducted based on a lawful arrest for a domestic violence act of assault, given information by the defendant's girlfriend, the girlfriend's obvious injuries, and the defendant's attempt to flee, the trial court properly denied suppression of the evidence; however, because the defendant maintained a reasonable expectation of privacy in the curtilage surrounding the defendant's residence, absent a warrant or exigent circumstances, suppression of cocaine found in that area was erroneously denied, and as such the defendant was erroneously denied a new trial. Rivers v. State, 287 Ga. App. 632, 653 S.E.2d 78, 2007 Ga. App. LEXIS 1046 (2007).

Custodial statement by defendant properly admitted. — Custodial statement in which the defendant admitted having turned over an electric meter used in the manufacture of drugs was properly admitted at the defendant's trial and did not improperly introduce character evidence against the defendant since even though a defendant is not charged with every crime committed during a criminal transaction, every aspect relevant to the crime charged may be presented at trial. Ward v. State, 285 Ga. App. 574, 646 S.E.2d 745, 2007 Ga. App. LEXIS 583 (2007).

Conflicting descriptions of the defendant in officer's report. — Conflicting descriptions of the defendant given by a deputy in reports summarizing incidents where the deputy purchased drugs affected the weight of the deputy's

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testimony, not the testimony's admissibility, and the jury was entitled to overlook the discrepancies and believe the deputy when the deputy testified that the deputy bought cocaine from the defendant. Mathis v. State, 265 Ga. App. 541, 594 S.E.2d 737, 2004 Ga. App. LEXIS 176 (2004).

Even though an officer had not been qualified as an expert at trial, the officer's testimony was admissible to prove that the substance found in the defendant's pickup truck was marijuana because at the time of the defendant's arrest, the officer who discovered the substance in the defendant's truck was certified to recognize the odor of marijuana and to identify and test marijuana, and the officer was subject to cross-examination by defense counsel; it was then for the jury to decide the weight and credibility the jury would give to the officer's testimony. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818, 2011 Ga. App. LEXIS 408 (2011).

Chain of custody of methamphetamine sufficiently established. — Because the state met the state's burden in establishing a chain of custody by sufficiently demonstrating that the evidence seized was the same as that which was admitted at trial, the defendant was not entitled to a directed verdict as to a charge of possession of methamphetamine with intent to distribute based on this ground. Cook v. State, 287 Ga. App. 81, 650 S.E.2d 757, 2007 Ga. App. LEXIS 879 (2007), cert. denied, No. S07C1874, 2008 Ga. LEXIS 127 (Ga. Jan. 28, 2008).

Evidence sufficient to support conviction for possession of methamphetamine with intent to distribute. — Defendant's conviction for possession of methamphetamine with intent to distribute was upheld on appeal since sufficient evidence showed that: (1) the trial court properly admitted similar transaction evidence despite addressing all of the Williams factors, but preserving the defendant's confrontation rights; (2) the defendant's trial counsel was not ineffective; and (3) no Brady violation occurred. Hinton v. State, 290 Ga. App. 479, 659 S.E.2d 841, 2008 Ga. App. LEXIS 353 (2008).

Evidence that when a defendant's vehicle was stopped, the defendant was in possession of 14 grams of methamphetamine packaged in small plastic bags, other illegal drugs, and a digital scale, along with testimony from an experienced officer that the packaging indicated an intent to sell the methamphetamine, was sufficient to support the defendant's conviction for possession with intent to distribute under O.C.G.A. § 16-13-30(b). Driscoll v. State, 295 Ga. App. 5, 670 S.E.2d 824, 2008 Ga. App. LEXIS 1332 (2008).

State presented evidence that the officers found about 14 grams of methamphetamine crystals hidden in the defendant's shoe, which was a large amount of methamphetamine, and the state showed the defendant's intention to sell or distribute the methamphetamine; the defendant also gave a statement to a police officer admitting that the defendant possessed the methamphetamine and intended to sell the methamphetamine. Thus, the evidence was sufficient for the trial court to find beyond a reasonable doubt that the defendant was guilty of possession of methamphetamine with intent to distribute in violation of O.C.G.A. § 16-13-30(b). Boyd v. State, 300 Ga. App. 455, 685 S.E.2d 319, 2009 Ga. App. LEXIS 1120 (2009), cert. denied, No. S10C0309, 2010 Ga. LEXIS 204 (Ga. Mar. 1, 2010).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine under O.C.G.A. § 16-13-30(a) because testimony of drug enforcement agents and co-indictees as well as drugs, money, and drug paraphernalia obtained during a search established that the defendant engaged in three sales of this contraband. Williamson v. State, 300 Ga. App. 538, 685 S.E.2d 784, 2009 Ga. App. LEXIS 1218 (2009), cert. denied, No. S10C0387, 2010 Ga. LEXIS 191 (Ga. Mar. 1, 2010).

Evidence was sufficient to convict the defendant of conspiracy to distribute methamphetamine in violation of O.C.G.A. § 16-13-30(b) because methamphetamine was found in a trailer on the defendant's property, which the

defendant occupied and controlled, a known drug dealer was found on the defendant's premises, who had been "fronting" the defendant and the defendant's spouse methamphetamine on a weekly basis, and the defendant's spouse kept a book regarding their sales from the drugs supplied by the dealer. Peacock v. State, 301 Ga. App. 873, 689 S.E.2d 853, 2010 Ga. App. LEXIS 12 (2010).

Evidence was sufficient to find beyond a reasonable doubt that the defendant was guilty of manufacturing methamphetamine, O.C.G.A. § 16-13-30(b), conspiring to possess methamphetamine, O.C.G.A. § 16-13-3, and possessing methamphetamine, § 16-13-30(a) because the state was not required to show that the defendant was in sole or actual possession of the methamphetamine but could establish the element of possession by showing that the defendant was in joint constructive possession of the contraband; the evidence allowed for a finding that the defendant lived at the residence where the methamphetamine was found, that methamphetamine was found in the master bedroom atop the same dresser as a driver's license bearing the defendant's name and the residential address, that stored in a lockbox underneath the bed in that room were recipes for producing methamphetamine or a similar substance, along with digital scales associated with the drug trade, and that the defendant's residential premises was being used as a clandestine methamphetamine lab. Edwards v. State, 306 Ga. App. 713, 703 S.E.2d 130, 2010 Ga. App. LEXIS 1034 (2010).

Evidence sufficient to show sale of controlled pills. — Combined evidence established that the defendant actively participated in and was a party to the three separate sales of a controlled substance based on the defendant freely and voluntarily admitting that during the last controlled drug buy, the defendant supplied an informant with 500-600 pills, the pills tested positive for trifluoromethylphenyl piperazine, and that the defendant acted the same during all of the controlled purchases. Walker v. State, 323 Ga. App. 685, 747 S.E.2d 691, 2013 Ga. App. LEXIS 707 (2013).

Sufficient evidence prison guard intended to distribute drugs in prison. — Evidence supported convictions of possession of cocaine with intent to distribute, possession of marijuana with intent to distribute, and crossing a prison guard line with drugs when the defendant, a corrections officer, was found with a cookie box containing drugs. Although the defendant claimed to be unaware of the contents of the package, none of the people the defendant named as being involved in the transaction were proven to exist, and the jury was authorized to infer that it was unreasonable for a corrections officer to take a suspicious package from an unknown person into a prison to give to an unknown recipient; furthermore, given the large amount and variety of contraband, the contraband's high street value, and that the defendant was taking the contraband inside a heavily guarded prison facility, the jury was authorized to infer that the defendant intended to distribute the contraband to others instead of using the contraband personally. Bradley v. State, 292 Ga. App. 737, 665 S.E.2d 428, 2008 Ga. App. LEXIS 850 (2008).

Marijuana

"Manufacture." — O.C.G.A. § 16-13-30(j)(1) applies to the cultivation or planting of marijuana, and it is therefore error for a trial court to conclude that "one cannot manufacture marijuana by growing same." State v. Hunt, 201 Ga. App. 327, 411 S.E.2d 273, 1991 Ga. App. LEXIS 1362 (1991), cert. denied, No. S92C0094, 1991 Ga. LEXIS 987 (Ga. Nov. 21, 1991).

Marijuana is not a controlled substance for the purpose of a prosecution under O.C.G.A. § 16-11-106 for possession of a firearm during the commission of a "crime involving the possession, manufacture, delivery, distribution, dispensing, administering, selling, or possession with intent to distribute any controlled substance." Asberry v. State, 220 Ga. App. 40, 467 S.E.2d 225, 1996 Ga. App. LEXIS 82 (1996).

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Question of whether marijuana is a harmful drug is essentially a scientific one. Blincoe v. State, 231 Ga. 886, 204 S.E.2d 597, 1974 Ga. LEXIS 1269 (1974).

If marijuana is a dangerous drug, state has right to make the drug's sale and use criminal. Blincoe v. State, 231 Ga. 886, 204 S.E.2d 597, 1974 Ga. LEXIS 1269 (1974).

Legal capability of certain pharmacists to sell marijuana to certain customers is not an element of the offense of selling marijuana. May v. State, 179 Ga. App. 736, 348 S.E.2d 61, 1986 Ga. App. LEXIS 2002 (1986).

To authorize felony punishment, jury must find possession of more than one ounce of marijuana. — When the evidence is in dispute as to the amount of marijuana defendant possessed, the jury must be instructed that to authorize felony punishment the jury must find possession of more than one ounce. Jones v. State, 151 Ga. App. 560, 260 S.E.2d 555, 1979 Ga. App. LEXIS 2637 (Oct. 1, 1979).

Weight of plants. — Testimony of expert as to the weight of the marijuana produced by a given quantity of marijuana plants which were seized, together with photographs of the plants, is sufficient to establish the weight of the plants which had been destroyed upon confiscation. Evans v. State, 176 Ga. App. 818, 338 S.E.2d 48, 1985 Ga. App. LEXIS 2907 (1985).

Proof of weight. — To discharge the burden of proving that the weight of the marijuana exceeded one ounce, it is not necessary for the state to come forward with evidence of how many grams equal an ounce, even if the state's witnesses testify about the weight of the marijuana in terms of grams; when O.C.G.A. § 16-13-2(b) refers to an "ounce" of marijuana, the statute refers, as a matter of law, to an avoirdupois ounce, which is the equivalent of, when rounded up to the nearest hundredth of a gram, 28.35 grams, and the number of grams in an ounce is not something that varies from case to case or is open to reasonable dispute. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399, 2011 Ga. App. LEXIS 453 (2011), cert. denied, No. S11C1610, 2011 Ga. LEXIS 851 (Ga. Oct. 17, 2011).

Identification of marijuana. — Identification testimony regarding the identity of illegal drugs, when made by experienced officers, is admissible, and expert testimony based on scientific tests is not required to establish that a substance is marijuana. Jones v. State, 268 Ga. App. 246, 601 S.E.2d 763, 2004 Ga. App. LEXIS 897 (2004).

During testimony, the defendant referred to a substance as marijuana, and this, together with an officer's testimony, established the evidence was marijuana beyond a reasonable doubt and was sufficient for the jury to find the defendant guilty of possession of marijuana. Dulcio v. State, 297 Ga. App. 600, 677 S.E.2d 758, 2009 Ga. App. LEXIS 488 (2009).

Sufficiency of evidence. — Conviction of a second defendant for possession of marijuana with intent to distribute in violation of O.C.G.A. § 16-13-30 was affirmed after: (1) evidence that the second defendant expected to receive $1,000 to receive a package for a person authorized the jury to conclude beyond a reasonable doubt that defendant was aware the package contained contraband; (2) a mistrial was not warranted since curative instructions were given by the court regarding the irrelevancy of remands by the first defendant's attorney; and (3) the package was admissible since it was easily identifiable, securely packed, and there was no evidence of tampering. Sandoval v. State, 260 Ga. App. 61, 579 S.E.2d 75, 2003 Ga. App. LEXIS 309 (2003).

Trial court did not err in denying defendant's motion for a directed verdict on the charge of possession of marijuana with intent to distribute, a codefendant testified that the marijuana belonged to defendant, and no other evidence showed that the large amount of marijuana, contained in five bags total, was for defendant's personal use. Pitts v. State, 260 Ga. App. 553, 580 S.E.2d 618, 2003 Ga. App. LEXIS 419 (2003).

When marijuana allegedly possessed by the defendant was tested by the state crime lab but then was lost and was not

presented at trial, the evidence presented, including the defendant's admissions and the arresting officers' identification of the marijuana, was sufficient to sustain the defendant's possession conviction. Jones v. State, 268 Ga. App. 246, 601 S.E.2d 763, 2004 Ga. App. LEXIS 897 (2004).

Convictions for trafficking in cocaine and possession of marijuana with intent to distribute were supported by sufficient evidence which showed that defendant was the sole lessee and resident of an apartment where nearly 500 grams of cocaine were found, along with several bags of marijuana packaged for resale, and that defendant had recently sold cocaine, which came from a blue bag holding 111 grams of cocaine, which was also found in the apartment. Vance v. State, 268 Ga. App. 556, 602 S.E.2d 276, 2004 Ga. App. LEXIS 956 (2004).

Evidence supported the defendant's possession of marijuana conviction because: defendant fled from the police, kicked two officers, and had marijuana, BC packets, and a cell phone, and the defendant's DNA matched the DNA on the beer can. Lewis v. State, 271 Ga. App. 744, 611 S.E.2d 80, 2005 Ga. App. LEXIS 157 (2005).

There was sufficient evidence to support convictions of possession of marijuana with intent to distribute and possession of a handgun during commission of a crime after an undercover officer met the defendant in the defendant's car, the defendant had a handgun beside the defendant, the officer showed the defendant the money that the officer showed brought to buy ten pounds of marijuana, and the defendant showed the officer a sample of the marijuana and told the officer that the marijuana was in a nearby van; after the transaction was called off because the officer would not give the defendant the money before receiving the marijuana, police found ten pounds of marijuana in the van and the handgun in the defendant's car. Davis v. State, 285 Ga. App. 460, 646 S.E.2d 342, 2007 Ga. App. LEXIS 547 (2007).

In a prosecution for two counts of possession of less than one ounce of marijuana, evidence of the defendant's three prior convictions for the same offense was properly admitted. Given that the defendant denied possessing marijuana in two of the prior cases and in the case at bar, the prior transactions were probative of the defendant's bent of mind and course of conduct. Neal v. State, 297 Ga. App. 223, 676 S.E.2d 864, 2009 Ga. App. LEXIS 414 (2009).

Evidence that a defendant showed officers a can in the defendant's kitchen cupboard with a false bottom that concealed 33.18 grams of cocaine and 19.8 grams of marijuana was sufficient to support the defendant's convictions for trafficking in cocaine and possession of marijuana in violation of O.C.G.A. §§ 16-13-30(j)(1) and 16-13-31(a)(1)(A). The jury was charged on equal access and clearly rejected the defendant's defense that a confidential informant working as a handyman at the defendant's home could have placed the drugs there. Daniel v. State, 306 Ga. App. 48, 701 S.E.2d 499, 2010 Ga. App. LEXIS 816 (2010).

Even though an officer had not been qualified as an expert at trial, the officer's testimony was admissible to prove that the substance found in the defendant's pickup truck was marijuana because at the time of the defendant's arrest, the officer who discovered the substance in the defendant's truck was certified to recognize the odor of marijuana and to identify and test marijuana, and the officer was subject to cross-examination by defense counsel; it was then for the jury to decide the weight and credibility the jury would give to the officer's testimony. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818, 2011 Ga. App. LEXIS 408 (2011).

Evidence was sufficient to sustain the defendant's conviction for possession of more than one ounce of marijuana in violation of O.C.G.A. §§ 16-13-2(b) and 16-13-30(j) because the state adduced evidence at trial that the defendant had possession of 28.8 grams of marijuana, which was, by definition, more than one ounce of marijuana. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399, 2011 Ga. App. LEXIS 453 (2011), cert. denied, No. S11C1610, 2011 Ga. LEXIS 851 (Ga. Oct. 17, 2011).

Evidence was sufficient to enable a rational trier of fact to find the defendant

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guilty beyond a reasonable doubt of malice murder, felony murder while in the commission of armed robbery, armed robbery, and conspiracy to violate the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., through a violation of O.C.G.A. § 16-13-30(j)(1), because: (1) the defendant and another buyer met with the victim and another seller where the defendant and the other buyer inspected marijuana which the victim and the other seller had for sale; (2) after some discussion about price, the victim told the defendant what the price was and that the defendant could take it or leave it; (3) the defendant said that the defendant would take it, pulled a gun from the defendant's waistband, and fatally shot the victim; and (4) there was conflicting testimony as to whether the defendant took the marijuana and ran away with the marijuana after shooting the victim. Darville v. State, 289 Ga. 698, 715 S.E.2d 110, 2011 Ga. LEXIS 671 (2011).

Trial court did not err in denying the defendant's motion for a directed verdict because the evidence was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of distribution of marijuana, O.C.G.A. § 16-13-30(j), and possession of a firearm during the commission of a felony, O.C.G.A. § 16-11-106(b)(4); the testimony of a party to the transaction was corroborated by the observations of the detectives, the marijuana taken into evidence, the written statements of the parties regarding the defendant's involvement, and the defendant's own statement to a detective. Arnett v. State, 311 Ga. App. 811, 717 S.E.2d 312, 2011 Ga. App. LEXIS 859 (2011).

When the police discovered marijuana as the result of an illegal arrest, evidence was insufficient to support the defendant's conviction for possessing less than one ounce of marijuana. Ewumi v. State, 315 Ga. App. 656, 727 S.E.2d 257, 2012 Ga. App. LEXIS 399 (2012).

There was sufficient evidence to support the defendant's conviction for felony possession of marijuana based on the parties' stipulation that the marijuana in question in the case was scientifically determined to be marijuana and that it weighed 29.3 grams and the testimony of an officer that the officer saw the defendant trying to hide the marijuana, that the defendant asked for mercy, and the officer identified the marijuana and the bag as the one the officer recovered from the defendant's car during the traffic stop. Davis v. State, 318 Ga. App. 166, 733 S.E.2d 453, 2012 Ga. App. LEXIS 872 (2012).

Evidence that the defendant lived at the residence where the drugs were found gave rise to a rebuttable presumption that the defendant possessed the contraband and supported the defendant's convictions of possession with intent to distribute and possession of more than one ounce of marijuana. Evans v. State, 318 Ga. App. 706, 734 S.E.2d 527, 2012 Ga. App. LEXIS 979 (2012), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence there was a path between the closest residence and the marijuana plants; one of the tires on the vehicle the defendant drove was the same as the tire the plants were grown in; the defendant had a relationship with the owner of the house near which the plants were found; the owner denied knowing marijuana was growing there; and the defendant's car contained rolling papers, fertilizer, and a book about marijuana authorized the jury to find the defendant guilty of manufacturing marijuana. Ross v. State, 323 Ga. App. 28, 747 S.E.2d 81, 2013 Ga. App. LEXIS 647 (2013).

Defendant's admission to staying at the apartment with the defendant's girlfriend, and the presence of the defendant's clothing and a picture of the defendant and girlfriend in a bedroom supported the jury's determination that the defendant committed the offenses of trafficking in cocaine and possession of marijuana with the intent to distribute, and the defendant's experience in handling cocaine established that the defendant knew the weight of the cocaine was more than 28 grams. Griffin v. State, 331 Ga. App. 550, 769 S.E.2d 514, 2015 Ga. App. LEXIS 41 (2015), cert. denied, No. S15C1138, 2015 Ga. LEXIS 473 (Ga. June 15, 2015).

Evidence was insufficient to support the defendant's convictions for trafficking in

cocaine or possession of marijuana with intent to distribute as the state failed to show that the defendant owned or rented the house where the drugs were found, lived at the house, occupied the master bedroom or kept personal belongings there, had keys to the house, or received mail at the house. Holland v. State, 334 Ga. App. 600, 780 S.E.2d 40, 2015 Ga. App. LEXIS 689 (2015).

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 entered 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 of almost a pound of marijuana, zip-lock baggies, digital scales, and a large quantity of United States currency was insufficient to sustain the defendant's conviction for possession of marijuana with intent to distribute. Kennedy v. State, 371 Ga. App. 163, 899 S.E.2d 803, 2024 Ga. App. LEXIS 138 (2024).

Urine sample with marijuana metabolites sufficient. On appeal from the trial court's judgment convicting the defendant of possession of marijuana, the appellate court refused to affirm the defendant's conviction on the basis of seeds, stems, and residue that were found in the defendant's bedroom because those items were not tested scientifically and a forensic toxicologist who testified could not state beyond a reasonable doubt that the items were marijuana, but the appellate court held that the toxicologist's testimony that the toxicologist found marijuana metabolites in a urine sample the defendant gave to police was sufficient to sustain the defendant's conviction. Cargile v. State, 261 Ga. App. 319, 582 S.E.2d 473, 2003 Ga. App. LEXIS 531 (2003), cert. denied, No. S03C1360, 2003 Ga. LEXIS 808 (Ga. Sept. 22, 2003).

Constructive possession. — Because the state showed that, in addition to a juvenile's close proximity to a bag of marijuana, the juvenile confessed to an intent to purchase the marijuana, and had money equal to the marijuana's approximate street value, such established a sufficient connection between the juvenile and the marijuana to support an adjudication for the marijuana's constructive possession, contrary to O.C.G.A. § 16-13-30. In the Interest of B.J.C., 281 Ga. App. 228, 635 S.E.2d 833, 2006 Ga. App. LEXIS 1058 (2006).

Sufficient evidence supported the defendant's convictions of trafficking in cocaine, possession of marijuana with intent to distribute, and possession of cocaine with intent to distribute within 1,000 feet of a school, despite an argument on appeal that no evidence of either actual or constructive possession was presented as: (1) sufficient additional evidence, albeit circumstantial, tied the defendant to those crimes and established more than the defendant's mere presence to the drugs seized; and (2) the proved facts excluded any reasonable hypotheses that a crime could have been committed by anyone else. Slaughter v. State, 282 Ga. App. 276, 638 S.E.2d 417, 2006 Ga. App. LEXIS 1365 (2006).

Evidence supported an adjudication of juvenile delinquency based on possession of marijuana; an officer saw the juvenile defendant searching the floorboard of a car, and marijuana was later found on the floorboard in the area where the defendant had been searching. In the Interest of Q.P., 286 Ga. App. 225, 648 S.E.2d 731, 2007 Ga. App. LEXIS 740 (2007).

Trial court did not err in convicting the defendants of felony possession of more than one ounce of marijuana in violation of O.C.G.A. § 16-13-30(j)(1) because the trial court was authorized to conclude that the defendants had equal access to and joint constructive possession of the marijuana that was found in a minivan and that the defendants participated as parties to the drug possession offense; the

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defendants, who were passengers in the back of the minivan, knew that marijuana was inside the minivan, and the driver informed an officer that the passengers were hiding marijuana inside the minivan. Dennis v. State, 313 Ga. App. 595, 722 S.E.2d 190, 2012 Ga. App. LEXIS 31 (2012).

Definition of marijuana under § 16-13-25. — Since a prosecution for misdemeanor possession of marijuana cannot be instituted on the basis of a blood or urine test which shows "positive" for marijuana, because such positive showings will be based upon the presence of THC "without the morphological features" of the marijuana plant and are thus excluded from the definition of "marijuana" under O.C.G.A. § 16-13-25, prosecutions for possession of marijuana based upon positive blood or urine samples must be brought as a felony prosecution for possession of a Schedule I drug, i.e. THC. Cronan v. State, 236 Ga. App. 374, 511 S.E.2d 899, 1999 Ga. App. LEXIS 168 (1999).

Marijuana and THC distinguished. — Georgia law distinguishes marijuana from THC (tetrahydrocannabinol) as O.C.G.A. § 16-13-21(16) provides that marijuana means all parts of the plant of the genus Cannabis, whereas O.C.G.A. § 16-13-30(a) and (j) separately addresses any controlled substance and marijuana. C. W. v. Department of Human Services, 353 Ga. App. 360, 836 S.E.2d 836, 2019 Ga. App. LEXIS 698 (2019).

Jury need not make special finding as to amount where evidence not in conflict. — When evidence is not in conflict as to amount, it is not necessary for the court to charge the jury that the jury must find amount specially. Coffey v. State, 141 Ga. App. 254, 233 S.E.2d 243, 1977 Ga. App. LEXIS 1857 (1977).

Pleading amount of marijuana possessed and first offender status. — While it is necessary to plead amount of marijuana possessed and whether the defendant is a first offender when trial is to be had in an inferior court having jurisdiction over misdemeanors only, there is no requirement to plead this matter in an indictment or accusation when trial is to be had in a superior court which has concurrent jurisdiction over felonies and misdemeanors. Stinnett v. State, 132 Ga. App. 261, 208 S.E.2d 16, 1974 Ga. App. LEXIS 1666 (1974).

When the jury asked the court to distinguish possession of marijuana from the sale of marijuana, and the trial court responded that the defendant was accused of selling marijuana and then read O.C.G.A. § 16-13-30(j)(1) to the jury, it was held that it is not usually cause for a new trial that an entire Code Section is given, even though a part of the charge may be inapplicable under the facts in evidence, and the conviction of selling marijuana was affirmed. McBurse v. State, 182 Ga. App. 759, 357 S.E.2d 144, 1987 Ga. App. LEXIS 1811 (1987).

Proof that proffered marijuana same as that seized. — State showed with "reasonable certainty" that marijuana offered into evidence was same as that seized. Williams v. State, 165 Ga. App. 708, 302 S.E.2d 609, 1983 Ga. App. LEXIS 1993 (1983).

Testimony of arresting officer sufficient for felony possession of marijuana sufficient. — Defendant was properly convicted of felony possession of marijuana as a deputy sheriff testified that the defendant admitted that the marijuana found in the trunk of a rental car belonged to the defendant. Even though the defendant denied saying this, or possessing the drugs, the credibility of witnesses was for the jury to determine, and under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8), the testimony of a single witness was sufficient to establish the facts. McKinney v. State, 293 Ga. App. 419, 667 S.E.2d 210, 2008 Ga. App. LEXIS 958 (2008).

As a defendant's landlord could not give valid consent to search the defendant's trailer to find the subject of an arrest warrant who did not live there, and no emergency required the subject's immediate arrest, an officer's warrantless entry into the defendant's trailer violated the Fourth Amendment. Therefore, the plain view doctrine did not apply, and the officer could not seize marijuana plants found in the trailer. Looney v. State, 293 Ga. App.

639, 667 S.E.2d 893, 2008 Ga. App. LEXIS 1039 (2008).

Evidence sufficient for conviction of possession of marijuana. — See Johnston v. State, 178 Ga. App. 219, 342 S.E.2d 706, 1986 Ga. App. LEXIS 2516 (1986); Kelly v. State, 181 Ga. App. 605, 353 S.E.2d 92, 1987 Ga. App. LEXIS 2554 (1987); Akins v. State, 184 Ga. App. 441, 361 S.E.2d 707, 1987 Ga. App. LEXIS 2798 (1987); Rich v. State, 188 Ga. App. 287, 372 S.E.2d 670, 1988 Ga. App. LEXIS 956 (1988); Crawford v. State, 233 Ga. App. 323, 504 S.E.2d 19, 1998 Ga. App. LEXIS 888 (1998); Driver v. State, 240 Ga. App. 513, 523 S.E.2d 919, 1999 Ga. App. LEXIS 1395 (1999), cert. denied, No. S00C0321, 2000 Ga. LEXIS 205 (Ga. Feb. 25, 2000); Brown v. State, 244 Ga. App. 440, 535 S.E.2d 785, 2000 Ga. App. LEXIS 752 (2000).

When there was more evidence to connect defendant to the marijuana than that of mere spatial proximity or presence as the marijuana was hidden during the transport in the patrol vehicle to the station by one of the three codefendants, and when defendant admitted that defendant knew the owner of the marijuana, although the defendant refused to identify such person and there was evidence that marijuana had been used in defendant's vehicle and that defendant had recently used marijuana there was sufficient evidence to find defendant guilty of joint constructive possession, or at least as a party to the crime. Harvey v. State, 212 Ga. App. 632, 442 S.E.2d 478, 1994 Ga. App. LEXIS 328 (1994), cert. denied, No. S94C1123, 1994 Ga. LEXIS 739 (Ga. May 27, 1994).

Based on the defendant's statements regarding the "dope" in the defendant's apartment and the fact that the defendant waived the defendant's claim that the state failed to prove that the substance was marijuana by failing to object to the state's alleged failure to lay a foundation for the officer's testimony that it was marijuana, the evidence was sufficient to support the defendant's conviction for possession-of-marijuana. Ballard v. State, 268 Ga. App. 55, 601 S.E.2d 434, 2004 Ga. App. LEXIS 840 (2004).

Evidence was sufficient to sustain defendant's convictions for possession of marijuana and possession of cocaine with intent to distribute; officers testified that they recovered the 34 bags of cocaine and one bag of marijuana that the defendant threw out the window of a car, as well as two bags of cocaine the defendant still had and that such a large amount of cocaine individually wrapped was consistent with an intent to distribute. Mayo v. State, 277 Ga. App. 282, 626 S.E.2d 245, 2006 Ga. App. LEXIS 62 (2006).

Evidence supported a defendant's conviction of bringing stolen property to Georgia, eluding an officer, and possessing marijuana as a party, if not as a conspirator, since: (1) the defendant discussed with the defendant's boyfriend what would happen if they were apprehended by the police; (2) the boyfriend gave the defendant a handgun after the boyfriend stole a new gun and the defendant packed two guns with the defendant's personal items and the ski masks; (3) the defendant suspected that the truck was stolen, refused to ask about the truck's origin, saw the stolen gun on the seat of the truck, observed two gas drive-offs, ate stolen food, smoked shared marijuana repeatedly, and sat next to the glove compartment where the marijuana lay; and (4) the defendant was silent during the police pursuits, saw the defendant's boyfriend retrieve a stolen handgun just prior to an assault of a police officer, did not hinder the boyfriend or warn the police, lied to the police to cover up the matter, and referred to the entire affair as having "fun for a minute." Michael v. State, 281 Ga. App. 289, 635 S.E.2d 790, 2006 Ga. App. LEXIS 989 (2006), cert. denied, No. S07C0097, 2006 Ga. LEXIS 950 (Ga. Nov. 6, 2006), overruled in part, Gibbs v. State, 340 Ga. App. 723, 798 S.E.2d 308, 2017 Ga. App. LEXIS 126 (2017).

Evidence sufficient for conviction. — Evidence was sufficient to support the defendant's conviction for possession with intent to distribute marijuana because the defendant was in possession of clear plastic baggies, smaller baggies of suspected marijuana, a digital scale, and cash, and a police officer testified that in the officer's capacity as a marijuana tester for the county sheriff's office, the officer tested a total of 11 bags, containing

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approximately 190 grams of a substance that tested positive for marijuana; possession of a scale, baggies, and large amounts of currency along with drugs can constitute circumstantial evidence of intent to distribute. Hardaway v. State, 309 Ga. App. 432, 710 S.E.2d 634, 2011 Ga. App. LEXIS 353 (2011).

Evidence was sufficient to permit a rational trier of fact to find the defendant guilty beyond a reasonable doubt of possession of cocaine with intent to distribute because a chemist testified that in the chemist's opinion, the substance found in the defendant's pocket consisted of cocaine; a drug task force officer testified about a field test indicating the presence of cocaine. White v. State, 310 Ga. App. 386, 714 S.E.2d 31, 2011 Ga. App. LEXIS 564 (2011).

Evidence was sufficient to authorize the defendant's conviction for possessing more than one ounce of marijuana because the defendant was presumed to have exclusive possession and control of the marijuana that a police officer found in the car the defendant was driving; as the fact-finder, the jury was entitled to reject the testimony of the defendant's friend that the marijuana was the friend's and to determine that the presumption of the defendant's possession of the marijuana had not been rebutted. Nix v. State, 312 Ga. App. 43, 717 S.E.2d 550, 2011 Ga. App. LEXIS 880 (2011).

Defendant's convictions for possession of marijuana and a firearm were affirmed because, although circumstantial, the evidence was sufficient to show that the weapon was within arm's reach of the defendant during the commission of a crime. Under the circumstances, the trial court could find that, given the close proximity, the defendant passed within reach of the handgun while handling the marijuana. Carter v. State, 319 Ga. App. 609, 737 S.E.2d 714, 2013 Ga. App. LEXIS 20 (2013), cert. denied, No. S13C0836, 2013 Ga. LEXIS 525 (Ga. June 3, 2013).

Combined evidence was sufficient to enable a rational trier of fact to find the defendant guilty beyond a reasonable doubt of possession of marijuana with intent to distribute because the owner of the residence where the police found drugs and drug paraphernalia testified that the defendant brought marijuana to the residence along with digital scales and assisted in picking the stems out of the marijuana; the testimony of a witness who saw the defendant where the marijuana, scales, and marijuana stems were located in plain view and the testimony of the deputies who participated in the execution of the search warrant served to corroborate the owner's testimony. Kegler v. State, 317 Ga. App. 427, 731 S.E.2d 111, 2012 Ga. App. LEXIS 726 (2012), overruled in part, Hamm v. State, 294 Ga. 791, 756 S.E.2d 507, 2014 Ga. LEXIS 222 (2014).

Evidence supported finding of intent to distribute marijuana. — Deputy's testimony supported a jury's finding that a defendant possessed marijuana with the intent to distribute in violation of O.C.G.A. § 16-13-30(j)(1); the deputy testified that the packaging and amount of marijuana (7 grams), as well as the digital scales in the defendant's bag, indicated that the defendant was selling the marijuana. Boring v. State, 303 Ga. App. 576, 694 S.E.2d 157, 2010 Ga. App. LEXIS 370 (2010).

Evidence that a defendant participated in a plan for the delivery of a package containing 12 pounds of marijuana to a residence, along with digital scales, a marijuana grinder, and plastic baggies at the residence, and the defendant's admission that the marijuana was the defendant's, was sufficient to convict the defendant as a party to possession of marijuana with intent to distribute, trafficking in marijuana, and possession of marijuana, pursuant to O.C.G.A. § 16-2-20. Salinas v. State, 313 Ga. App. 720, 722 S.E.2d 432, 2012 Ga. App. LEXIS 58 (2012).

Jury was authorized to reject as incredible the defendant's wife's testimony that the couple went to Georgia to take a trip because they were having marital issues and the wife's claim that the defendant had no knowledge of the crimes the wife committed when the wife's step-brother asked the wife to transport some drugs to Ohio and, thus, the evidence was sufficient to support the defendant's convic-

tions for trafficking in cocaine and possession of marijuana with intent to distribute. Calcaterra v. State, 341 Ga. App. 599, 801 S.E.2d 337, 2017 Ga. App. LEXIS 254 (2017).

Evidence sufficient to sustain conviction for possession with intent to distribute marijuana. — See Wiley v. State, 178 Ga. App. 136, 342 S.E.2d 342, 1986 Ga. App. LEXIS 2508 (1986); Rivers v. State, 178 Ga. App. 310, 342 S.E.2d 781, 1986 Ga. App. LEXIS 2510 (1986); Brooks v. State, 190 Ga. App. 430, 379 S.E.2d 228, 1989 Ga. App. LEXIS 250 (1989); Ward v. State, 195 Ga. App. 166, 393 S.E.2d 21, 1990 Ga. App. LEXIS 432 (1990); King v. State, 238 Ga. App. 575, 519 S.E.2d 500; Buckholts v. State, 247 Ga. App. 697, 545 S.E.2d 99, 2001 Ga. App. LEXIS 92 (2001).

Presence of the marijuana in defendant's home, coupled with the quantity of marijuana and the presence of scales used to weigh drugs, was sufficient evidence of possession of marijuana with an intent to distribute. Midura v. State, 183 Ga. App. 523, 359 S.E.2d 416, 1987 Ga. App. LEXIS 2036 (1987).

When drugs were found in the area of a car where the defendant sat, when the evidence showed that the driver of the car was trying to buy drugs from the defendant, and when the driver denied to an officer that the seized drugs belonged to the defendant, the defendant's conviction of possessing drugs with intent to distribute was supported by the evidence. Johnson v. State, 268 Ga. App. 808, 602 S.E.2d 840, 2004 Ga. App. LEXIS 1024 (2004).

Evidence was sufficient to convict defendant of possession of marijuana with the intent to distribute based on the testimony of an officer and a forensic chemist that the leafy substance that was found on the floorboard of the truck that defendant used was in fact marijuana. Marion v. State, 268 Ga. App. 699, 603 S.E.2d 321, 2004 Ga. App. LEXIS 989 (2004).

Evidence was sufficient to support a conviction for possession of marijuana with the intent to distribute given that the defendant was riding as a passenger in a vehicle that was stopped, the defendant immediately informed the police where individually packaged bags of marijuana could be found within the car, the defendant had been previously convicted of a similar offense a few months earlier, and the driver indicated that the drugs belonged to the defendant. Williams v. State, 277 Ga. App. 106, 625 S.E.2d 509, 2005 Ga. App. LEXIS 1399 (2005).

There was sufficient evidence that the defendant was guilty of possessing with intent to distribute 40.1 pounds of marijuana in violation of O.C.G.A. § 16-13-30(j); the defendant's intent to distribute was proved by evidence that the amount of marijuana was far in excess of that possessed for personal use, and the circumstantial evidence showed a connection between defendant and the marijuana other than spatial proximity. Taylor v. State, 285 Ga. App. 697, 647 S.E.2d 381, 2007 Ga. App. LEXIS 629 (2007), cert. denied, No. S07C1515, 2007 Ga. LEXIS 655 (Ga. Sept. 10, 2007).

In a prosecution for possession of marijuana with intent to distribute, there was sufficient evidence that the defendant possessed the marijuana found in a car in which the defendant was riding; the defendant admitted to owning the car, marijuana was found where the defendant had been sitting and under the driver's seat, and a passenger testified that the defendant had been driving earlier that evening and that the defendant admitted to the passenger that the marijuana was the defendant's. King v. State, 287 Ga. App. 375, 651 S.E.2d 496, 2007 Ga. App. LEXIS 976 (2007).

Evidence, although circumstantial, was sufficient to connect the defendant to the house where drugs were found; thus, it was sufficient to support convictions of trafficking in cocaine and possession of marijuana with intent to distribute. Although others might have been present on the property on various unspecified occasions, the defendant was allowed by the owner to use the house, had been seen at the residence by police on previous occasions, had a vehicle on the premises, and hurriedly walked away from officers when the officers arrived; the evidence also showed that no other persons were present when officers executed the search warrant. Clyde v. State, 298 Ga. App. 283, 680 S.E.2d 146, 2009 Ga. App. LEXIS 649 (2009).

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Evidence was sufficient to establish the defendant's conviction for possession of marijuana with intent to distribute in violation of O.C.G.A. § 16-13-30(j)(1) because during the execution of a search warrant at the defendant's residence, police officers seized eighteen baggies of marijuana individually packaged in a manner that was indicative of possession with intent to distribute, and the residence belonged to the defendant, which permitted an inference that the defendant controlled the premises and was in constructive possession of the drug contraband; the circumstantial evidence implied the defendant's consciousness of guilt and further supported the defendant's conviction because, when the officers approached the residence, the defendant fled inside to the closet area where the drugs were later located, and when the officers searched the closet, the officers discovered that the jacket the defendant had been wearing was placed over the box containing the drugs. Williams v. State, 303 Ga. App. 222, 692 S.E.2d 820, 2010 Ga. App. LEXIS 321 (2010).

Trial court did not err in denying the defendant's motion for a directed verdict after a jury found the defendant guilty of trafficking in cocaine, O.C.G.A. § 16-13-31(a)(1)(A), and possession of marijuana with intent to distribute, O.C.G.A. § 16-13-30(j), because the verdict was not insupportable as a matter of law; in addition to evidence that the defendant rented a hotel room where illegal drugs were found, had a key to the suite, and was going to the suite at a time when a great quantity and variety of drugs were in open view, there was other evidence linking the defendant to the contraband found there, including the defendant's suspicious behavior upon seeing officers near the suite and the presence of the defendant's personal property inside the suite. Glass v. State, 304 Ga. App. 414, 696 S.E.2d 140, 2010 Ga. App. LEXIS 540 (2010).

Evidence was sufficient to find the defendant guilty of possession of marijuana with intent to distribute, O.C.G.A. § 16-13-30(j)(1), and possession of marijuana with intent to distribute within 1,000 feet of a housing project, O.C.G.A. § 16-13-32.5(b), because it appeared that the jury accepted that version of the events most unfavorable to the defendant after hearing all of the evidence and resolving the credibility of all of the witnesses, and the jury was solely authorized to make such determinations. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818, 2011 Ga. App. LEXIS 408 (2011).

Evidence was sufficient to support the defendant's conviction for possession with intent to distribute marijuana as over a pound of marijuana was found in the defendant's vehicle, and the marijuana was found with a trafficking amount of 3,4 methylenedioxymethamphetamine (MDMA) and a loaded weapon, constituting evidence of involvement in the drug trade. Jackson v. State, 314 Ga. App. 272, 724 S.E.2d 9, 2012 Ga. App. LEXIS 179 (2012).

Evidence that the defendant was in possession of the marijuana during a pat-down search prior to being transported in the patrol car, but the pat-down failed to discover the marijuana on the defendant's person, that the defendant placed the marijuana under the backseat while being transported, and the marijuana found in the backseat was packaged in seven individual bags supported a conviction for possession with intent to distribute. Wiggins v. State, 323 Ga. App. 754, 748 S.E.2d 120, 2013 Ga. App. LEXIS 733 (2013).

Evidence sufficient to convict for manufacture of marijuana. — Evidence supported conviction for manufacture of marijuana even though laboratory expert could not definitively state that certain alleged marijuana plants on the manufacturing premises were marijuana. Burch v. State, 213 Ga. App. 392, 444 S.E.2d 370, 1994 Ga. App. LEXIS 558 (1994), cert. denied, No. S94C1446, 1994 Ga. LEXIS 936 (Ga. Sept. 8, 1994).

Evidence sufficient to support conviction for selling marijuana. — See Puckett v. State, 178 Ga. App. 143, 342 S.E.2d 487, 1986 Ga. App. LEXIS

2502 (1986); Byrd v. State, 182 Ga. App. 284, 355 S.E.2d 666, 1987 Ga. App. LEXIS 2608 (1987).

Evidence supported the defendant's conviction for selling marijuana after undercover officers saw the defendant sell marijuana from a distance of 10-15 feet, the buyer dropped a bag of marijuana when arrested, and when officers later approached the defendant, defendant said, "I didn't sell my man no weed." McKay v. State, 234 Ga. App. 556, 507 S.E.2d 484, 1998 Ga. App. LEXIS 1300 (1998), cert. denied, No. S99C0220, 1999 Ga. LEXIS 205 (Ga. Feb. 19, 1999).

Defendant's convictions for simple battery and the sale of marijuana were upheld on appeal as sufficient evidence was presented that the defendant spat in the face of another and the undercover officer who the defendant sold the marijuana to testified regarding the sale; further, the trial court properly admitted similar transaction evidence as the evidence was probative of defendant's bent of mind to become belligerent with police officers when arrested. Williams v. State, 287 Ga. App. 40, 651 S.E.2d 347, 2007 Ga. App. LEXIS 868 (2007).

Evidence insufficient to convict for selling marijuana. — Prior inconsistent statement by marijuana dealer charged with selling marijuana in violation of O.C.G.A. § 16-13-30(j)(1) that defendants were involved in selling marijuana, and evidence that the defendants were in close proximity to seized marijuana did not establish that the defendants were a party to the crime of violating paragraph (j)(1). Oldwine v. State, 184 Ga. App. 173, 360 S.E.2d 915, 1987 Ga. App. LEXIS 2756 (1987).

Evidence insufficient for conviction for possession with intent to distribute. — Although the trial court properly admitted evidence of similar transactions, given the quantity of marijuana and methamphetamine found, the evidence was insufficient to convict defendant of possession with intent to distribute under O.C.G.A. § 16-13-30(b). Ryan v. State, 277 Ga. App. 490, 627 S.E.2d 128, 2006 Ga. App. LEXIS 132 (2006).

Evidence insufficient for possession conviction. — Evidence did not support a defendant juvenile's adjudication of delinquency for possession of marijuana as: (1) a substance an officer said was marijuana was found in a truck in which the defendant juvenile was riding; (2) the defendant juvenile did not own the truck; (3) the marijuana was not found where the defendant juvenile had been sitting; and (4) the state did not have the bag tested at the crime lab and therefore there was no testimony that the substance found in the truck had actually tested positive for marijuana. In the Interest of C.C., 280 Ga. App. 590, 634 S.E.2d 532, 2006 Ga. App. LEXIS 905 (2006).

Evidence was insufficient to support the defendant's conviction of possession of marijuana as there was no evidence connecting the defendant to the drugs other than the defendant's own equal access. The drugs and paraphernalia were not found in an area exclusively used by the defendant, and the defendant's cousin had the same access to the drugs and paraphernalia. Xiong v. State, 295 Ga. App. 697, 673 S.E.2d 86, 2009 Ga. App. LEXIS 96 (2009), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Evidence sufficient to convict for attempt to possess marijuana. — There was sufficient evidence to support a defendant's conviction for attempting to possess marijuana based on the evidence that the defendant solicited undercover officers and asked for marijuana and attempted to pay for the marijuana. The defendant's rejection of the first bag the undercover officers gave did not establish abandonment of the crime since the defendant asked for a second bag. Collins v. State, 297 Ga. App. 364, 677 S.E.2d 407, 2009 Ga. App. LEXIS 434 (2009).

Confrontation clause violation was harmless error in light of other evidence of marijuana. — Although a trial court erred in excluding evidence that a witness had pending unrelated drug charges, violating the defendant's right to confrontation, the error was harmless given the overwhelming evidence of the defendant's possession of marijuana, scales, and plastic bags in a car the defendant had rented and was driving. Shelton v. State, 323 Ga. App.

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798, 748 S.E.2d 278, 2013 Ga. App. LEXIS 749 (2013).

Inconsistent verdict. — Guilty verdict for charge of possession of marijuana with intent to distribute was not inconsistent where the jury simply broke down the verdict into the two primary findings necessary to find defendant guilty of the offense; in any event, simple possession of marijuana is a lesser-included offense of possession of marijuana with the intent to distribute, and there is nothing improper with a jury finding a defendant guilty of both the charged offense and a lesser-included offense. Ellison v. State, 265 Ga. App. 446, 594 S.E.2d 675, 2004 Ga. App. LEXIS 140 (2004), overruled on other grounds, Middleton v. State, 309 Ga. 337, 846 S.E.2d 73, 2020 Ga. LEXIS 476 (2020).

No speedy trial violation. — Upon the appellate court's analysis of the four Barker v. Wingo factors, given the negative weight of one of two factors against the state, specifically, the reason for the delay, and the defendant's failure to show prejudice and timely assertion of a speedy trial right, no abuse of discretion resulted by the trial court's denial of a motion to dismiss the indictments filed against the defendant, charging the sale of cocaine and marijuana, on speedy trial grounds. Simmons v. State, 290 Ga. App. 315, 659 S.E.2d 721, 2008 Ga. App. LEXIS 302 (2008).

No double jeopardy violation. — 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 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).

Maximum punishment provisions of section apply to charge of conspiracy. — If defendants are indicted under general conspiracy statute, maximum punishment provisions of it apply, but if indictment charges, "Conspiracy to Possess and Sell Marijuana," a violation of provisions of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., is properly charged and the maximum punishment provisions of it apply. Jones v. State, 135 Ga. App. 893, 219 S.E.2d 585, 1975 Ga. App. LEXIS 1864 (1975).

Marijuana conviction not aggravated felony under Immigration and Nationality Act. — Because petitioner alien's O.C.G.A. § 16-13-30(j)(1) conviction for marijuana distribution failed to establish that the conviction involved either remuneration or more than a small amount of marijuana, it was not an aggravated felony under the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. Moncrieffe v. Holder, 569 U.S. 184, 133 S. Ct. 1678, 185 L. Ed. 2d 727, 2013 U.S. LEXIS 3313 (2013).

Jury Instructions

Jury instruction on substance of O.C.G.A. §§ 16-13-30 and 16-13-31. — When the defendant was charged with trafficking in cocaine and possession of marijuana and on the day of the trial filed a request that the "jury be charged with the substance of § 16-13-30 and § 16-13-31," by seeking an instruction on two entire Code sections the request necessarily included much matter not adjusted to the issues of the case, and for this reason it was not error to fail to give such instructions. Partridge v. State, 187 Ga. App. 325, 370 S.E.2d 173, 1988 Ga. App. LEXIS 687 (1988).

Jury instruction on actual and constructive possession. — In the absence of a request, a court's failure to give an instruction defining actual and constructive possession does not constitute reversible error. Black v. State, 167 Ga. App. 204, 305 S.E.2d 837, 1983 Ga. App. LEXIS 3313 (1983).

When a jury issue exists as to whether the defendant was exercising actual or constructive possession of cocaine, the lesser offense of possession of cocaine was reasonably raised by the evidence, and the trial court committed prejudicial error in

failing to instruct pursuant to the defendant's written request. Alvarado v. State, 194 Ga. App. 781, 391 S.E.2d 668, 1990 Ga. App. LEXIS 316, aff'd, 260 Ga. 563, 397 S.E.2d 550, 1990 Ga. LEXIS 420 (1990).

Because there was evidence that the defendant, at different times, had both actual and constructive possession of marijuana, the trial court's jury charge on both types of possession was proper and did not impermissibly expand the indictment, which did not specify the manner of possession. Davis v. State, 285 Ga. App. 460, 646 S.E.2d 342, 2007 Ga. App. LEXIS 547 (2007).

Jury instruction on equal access not required. — When a defendant was charged with possession of cocaine with intent to distribute, it was not error to fail to give a charge on equal access. The state was not relying upon the defendant's ownership or control of the home to prove that cocaine in the kitchen belonged to the defendant, but upon direct evidence that the defendant tossed the cocaine into the kitchen after being apprehended by an officer; furthermore, a charge on constructive possession was not tantamount to a charge on the presumption of ownership. Thomas v. State, 291 Ga. App. 795, 662 S.E.2d 849, 2008 Ga. App. LEXIS 646 (2008).

In a prosecution for possession of cocaine with intent to distribute (O.C.G.A. § 16-13-30(b)), the defendant was not entitled to an instruction on equal access, which applied only when the sole evidence of possession of contraband found in a vehicle was the defendant's ownership or possession of the vehicle. There was additional evidence showing that the drugs belonged to the defendant: (1) a large sum of cash on the defendant's person; (2) the defendant's prior conviction for possession of cocaine with intent to distribute; and (3) testimony that the defendant conducted another drug transaction on the day of the arrest. Hight v. State, 293 Ga. App. 254, 666 S.E.2d 678, 2008 Ga. App. LEXIS 839 (2008).

Because equal access was not a defendant's sole defense to a charge of possession with intent to distribute cocaine, the trial court was not required sua sponte to give a charge on equal access after the court gave the jury an instruction on presumption of possession based on ownership of the premises. Bailey v. State, 294 Ga. App. 437, 669 S.E.2d 453, 2008 Ga. App. LEXIS 1212 (2008), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Curative instruction properly given. — Sale of marijuana convictions, in violation of O.C.G.A. § 16-13-30(j), were upheld, as an officer's in-court identification of defendant was obtained via investigative techniques and was thus not unduly suggestive, and the trial court gave curative instructions to the jury after the officer testified to pulling defendant's photograph from an arrest record. Hansberry v. State, 260 Ga. App. 480, 580 S.E.2d 274, 2003 Ga. App. LEXIS 401 (2003).

Because the state presented sufficient evidence showing defendant's involvement in the sale of cocaine and the sale of cocaine within 1,000 feet of a public housing project as a party to the crimes, and because the judge's instruction and explanation after reading the wrong indictment to the jury at trial cured any error, the defendant's convictions were upheld on appeal, and a mistrial based on the latter was properly denied; moreover, the defendant was properly denied a new trial. Walker v. State, 290 Ga. App. 749, 660 S.E.2d 844, 2008 Ga. App. LEXIS 407 (2008), cert. dismissed, No. S08C1701, 2008 Ga. LEXIS 776 (Ga. Sept. 22, 2008).

Jury instruction on further deliberations. — On appeal from a conviction for possession of cocaine, because the verdict of "guilty with reasonable doubt" was unclear and had no single element that was necessarily dispositive of the jury's finding with regard to ultimate criminal responsibility, the trial court did not err by refusing to accept the verdict and in sending the jury out for further deliberations with proper instructions. Robinson v. State, 282 Ga. App. 214, 638 S.E.2d 370, 2006 Ga. App. LEXIS 1348 (2006), cert. denied, No. S07C0406, 2007 Ga. LEXIS 152 (Ga. Feb. 5, 2007).

Jury instruction insufficient. — Jury charge failed to define properly the

Jury Instructions (Cont'd)

offenses of trafficking in methamphetamine and possession of methamphetamine with intent to distribute because all the jury was told was that it was a violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., to traffic or possess with intent to distribute methamphetamine; the instructions given completely failed to inform the jury about the manner in which the offense of trafficking in methamphetamine or the offense of possessing methamphetamine with intent to distribute may have been committed. As such, the jury did not receive sufficient instructions to guide the jury in determining the defendant's guilt or innocence on these charges. Torres v. State, 298 Ga. App. 158, 679 S.E.2d 757, 2009 Ga. App. LEXIS 638 (2009).

Reversal of a conviction for conspiracy to violate the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., through a violation of O.C.G.A. § 16-13-30(j)(1), was required because the trial court failed to provide any limiting instruction informing jurors that the purchaser and the buyer in a drug transaction could not conspire together. Darville v. State, 289 Ga. 698, 715 S.E.2d 110, 2011 Ga. LEXIS 671 (2011).

Recharge on "sale" proper in jury instruction. — Trial court did not err in recharging the jury after the jury requested a specific definition of "sale" under O.C.G.A. § 16-13-30 because the court acted within the court's discretion by simply referring the jury back to the correct charge, rather than giving a lengthy explanation of the absence of a word-for-word definition in O.C.G.A. § 16-13-30, and given that the charge was correct as given initially, the recharge did not deprive the defendant of any legitimate defense to the defendant's actions; the jury appeared to be confused about whether the jury had a proper definition of a sale, and when the trial court referred the jury to the correct law that had already been given, it sufficiently informed the jury that the jury had the definition that the jury needed. Ware v. State, 308 Ga. App. 24, 707 S.E.2d 111, 2011 Ga. App. LEXIS 29 (2011), cert. denied, No. S11C0941, 2011 Ga. LEXIS 441 (Ga. May 31, 2011).

Jury instructions on lesser included offense. — Instructions on the elements of the offense of possession of cocaine with intent to distribute and on the lesser included offense of simple possession given in the language of the Suggested Pattern Jury Charge were sufficient. Burse v. State, 232 Ga. App. 729, 503 S.E.2d 638, 1998 Ga. App. LEXIS 815 (1998).

Defendant was properly convicted of trafficking in methamphetamine in violation of O.C.G.A. § 16-13-31(e) because the trial court did not commit reversible error by refusing to charge the jury on the lesser included offense of simple possession of methamphetamine, O.C.G.A. § 16-13-30, when there was no written request to give a charge on simple possession; even if the trial court erred in not giving the charge, reversal was not required in light of the overwhelming evidence that defendant possessed 432.31 grams of methamphetamine, which clearly constituted trafficking, and, therefore, it was highly unlikely that the failure to give an instruction on simple possession contributed to the verdict. Gonzalez v. State, 299 Ga. App. 777, 683 S.E.2d 878, 2009 Ga. App. LEXIS 970 (2009).

Trial court's failure to charge the jury on manufacturing methamphetamine, O.C.G.A. § 16-13-30(a), as a lesser included offense of trafficking methamphetamine, O.C.G.A. § 16-13-31(f), did not contribute to the verdict and was harmless; although the trial court was required to charge the jury on § 16-13-30(b) as a lesser included offense to § 16-13-31(f) since there was evidence that the defendant manufactured methamphetamine as prohibited by § 16-13-30(b), there was no relevant distinction between the two statutes with regard to methamphetamine as applied to the case. Because the evidence established that the defendant manufactured methamphetamine, and the defendant's admission that the defendant was "cooking" showed that the defendant knowingly manufactured

methamphetamine, the jury could have found the defendant guilty of both offenses or not guilty of both. Poole v. State, 302 Ga. App. 464, 691 S.E.2d 317, 2010 Ga. App. LEXIS 161 (2010), overruled in part, McNair v. State, 293 Ga. 282, 745 S.E.2d 646, 2013 Ga. LEXIS 594 (2013).

Trial counsel was not deficient for failing to object to the trial court's instruction on the lesser included offense of possession of MDMA (Ecstasy) because the instruction explained the elements of possession of MDMA with intent to distribute and delineated that charge from simple possession of MDMA; the charge substantially covered the principles in the defendant's request to charge and adequately instructed the jury as to the jury's consideration of the charged offense and the lesser offense, and since there was overwhelming evidence of the defendant's guilt, in that the defendant possessed a distribution amount of MDMA, the defendant could not show a reasonable probability that the outcome of the defendant's trial would have been different. Taylor v. State, 306 Ga. App. 175, 702 S.E.2d 28, 2010 Ga. App. LEXIS 895 (2010), cert. denied, No. S11C0258, 2011 Ga. LEXIS 231 (Ga. Feb. 28, 2011).

Trial court did not err in instructing the jury to consider the lesser offense of possession of methamphetamine only if the jury did not believe beyond a reasonable doubt that the defendant was guilty of possession of methamphetamine with intent to distribute because the trial court did not insist upon unanimity with regard to the jury's decision on the greater offense. Dockery v. State, 308 Ga. App. 502, 707 S.E.2d 889, 2011 Ga. App. LEXIS 224 (2011), cert. denied, No. S11C1080, 2011 Ga. LEXIS 577 (Ga. July 11, 2011).

Circumstantial evidence charge not necessary when direct evidence is sufficient. — A charge to the jury that a conviction based on circumstantial evidence alone is not warranted unless the proven facts exclude every hypothesis other than the guilt of the accused is not required, even if requested, unless the state's evidence is entirely circumstantial; when a police officer testified that the officer saw the defendant in actual possession of cocaine, and there was other direct evidence of the defendant's possession of marijuana, including the defendant's admission that the defendant owned the garment in which some marijuana was found, there was no error in the trial court's refusal to give the charge. Wells v. State, 180 Ga. App. 133, 348 S.E.2d 681, 1986 Ga. App. LEXIS 2689 (1986).

Charge on circumstantial evidence not required. — When, in a trial for possessing heroin with intent to distribute, there was direct evidence that defendant was in possession of heroin, it is not error to refuse to charge on circumstantial evidence. Houston v. State, 180 Ga. App. 267, 349 S.E.2d 228, 1986 Ga. App. LEXIS 2708 (1986).

Requested charge on mere presence properly denied. — In a trial for possession of cocaine with intent to distribute, the court did not erroneously deny the defendant's request to charge on mere presence, where a police officer testified that the officer watched the defendant receive money from a third party in exchange for a packet of what appeared to be cocaine, and when the officer arrested the defendant moments later, the officer observed a number of packages of what proved to be cocaine in the front seat of the car in which the defendant was seated. Garner v. State, 199 Ga. App. 468, 405 S.E.2d 299, 1991 Ga. App. LEXIS 537 (1991).

Instruction proper. — Charge regarding constructive possession which closely tracked the language of the Suggested Pattern Jury Instructions for Criminal Cases and which gave a rebuttable inference of possession was not erroneous. Pittman v. State, 208 Ga. App. 211, 430 S.E.2d 141, 1993 Ga. App. LEXIS 469 (1993), cert. denied, No. S93C1079, 1993 Ga. LEXIS 763 (Ga. July 15, 1993).

In a prosecution for possession of cocaine with the intent to distribute, the court did not err in giving an instruction on the lesser-included charge of possession of cocaine; no injury resulted because the jury found defendant guilty of possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30(b) and that verdict was supported by sufficient

Jury Instructions (Cont'd)

competent evidence. Brown v. State, 243 Ga. App. 632, 534 S.E.2d 98, 2000 Ga. App. LEXIS 506 (2000).

Because it was unlawful under the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., to possess any amount of a controlled substance such as codeine, absent exceptions such as lawful possession, which was charged to the jury, the instruction as given was not misleading as the fact that the violation was an "alleged" violation was implicit given the trial court's instructions to the jury as to the state's burden of proof and the presumption of innocence. Furthermore, since the indictment's reference to codeine as a Schedule V drug was surplusage, the state was required to show that the defendant was in possession of codeine, not that the codeine fell within Schedule V; thus, the failure to instruct the jury regarding a Schedule V substance was not erroneous as it was not a defense to the offense of possession of codeine and to suggest so was misleading. Evans v. State, 330 Ga. App. 241, 766 S.E.2d 821, 2014 Ga. App. LEXIS 823 (2014), cert. dismissed, No. S15C0653, 2015 Ga. LEXIS 207 (Ga. Mar. 30, 2015).

Instruction on entrapment. — In a prosecution for trafficking in cocaine, the trial court did not err in refusing to instruct the jury on the affirmative defense of entrapment as: (1) sufficient evidence was presented that the defendant voluntarily committed the offense upon being given the opportunity to do so; and (2) no evidence was presented to show that the informant employed undue persuasion, incitement, or deceit to induce the defendant into selling drugs; thus, the defendant's claim of ineffective assistance of counsel for failing to present evidence to support an entrapment defense was rejected and did not warrant a new trial. Campbell v. State, 281 Ga. App. 503, 636 S.E.2d 687, 2006 Ga. App. LEXIS 1147 (2006).

Trial court did not err in failing to charge the jury on entrapment because there was no evidence that a deputy's undue persuasion, incitement, or deceit induced the defendant to sell cocaine or that the defendant was not predisposed to commit the crime. Quarterman v. State, 305 Ga. App. 686, 700 S.E.2d 674, 2010 Ga. App. LEXIS 793 (2010).

Trial court did not err in failing to define "intent to distribute" in jury charge. — Trial court's failure to define "intent to distribute" when charging on intent to distribute marijuana under O.C.G.A. § 16-13-30(j)(1) was not error; the term "distribute" possessed only the ordinary and common dictionary meaning and did not need to be specifically defined. The defendant failed to object to the charge without the definition, and the charge as given was not plain error excusing the failure to object under O.C.G.A. § 17-8-58(b). Boring v. State, 303 Ga. App. 576, 694 S.E.2d 157, 2010 Ga. App. LEXIS 370 (2010).

Charge on "specific intent" not required. — In a prosecution for possession of cocaine with intent to distribute, the trial court correctly rejected a requested charge necessitating that the state prove a "specific intent" to commit the crime. Price v. State, 223 Ga. App. 807, 478 S.E.2d 915, 1996 Ga. App. LEXIS 1282 (1996).

Necessity of jury instruction on lesser included offense of misdemeanor possession. — Defendant was improperly convicted of purchasing marijuana under O.C.G.A. § 16-13-30(j)(1) because the trial court should have given a jury instruction on the lesser included offense of misdemeanor possession of less than one ounce of marijuana under O.C.G.A. § 16-13-2(b) as the defendant did not pay for the marijuana and testified that the defendant did not intend to purchase the marijuana. Johnson v. State, 296 Ga. App. 697, 675 S.E.2d 588, 2009 Ga. App. LEXIS 317 (2009), cert. denied, No. S09C1191, 2009 Ga. LEXIS 420 (Ga. June 29, 2009).

Objection to jury instruction on possession of firearm in conjunction with marijuana possession. — Trial counsel was not ineffective for failing to object to the trial court's jury instruction on possession of a firearm during the commission of a crime that referenced possession of marijuana as a potential predicate felony offense because there was

sufficient evidence to support the defendant's felony conviction for possession of marijuana with intent to distribute, which could serve as the predicate felony offense for the defendant's conviction of possession of a firearm during the commission of a crime; and there was not a reasonable probability that, if the trial court had omitted the reference to simple possession of marijuana from the instruction, the outcome of the trial would have been more favorable to the defendant. McNorrill v. State, 338 Ga. App. 466, 789 S.E.2d 823, 2016 Ga. App. LEXIS 472 (2016).

Jury instruction with reference to marijuana possession. — Although the trial court's jury instruction included a reference to simple possession of marijuana, the jury instruction did not prejudice the defendant's case because the trial court read the indictment to the jury that charged the defendant with possession of marijuana with intent to distribute, instructed the jury that the state had the burden of proving every material allegation of the indictment beyond a reasonable doubt, instructed the jury that the jury could find the defendant guilty if the jury found beyond a reasonable doubt that the defendant committed the offenses alleged in the indictment, and provided the indictment to the jury during the jury's deliberations; thus, the defendant could not succeed on an ineffective assistance of counsel claim. McNorrill v. State, 338 Ga. App. 466, 789 S.E.2d 823, 2016 Ga. App. LEXIS 472 (2016).

Jury instructions on mere association and mere presence. — Trial court's instructions on "mere association" and "mere presence" with regard to charging a defendant as a party to a crime under O.C.G.A. § 16-2-20(a) were misstatements of the law and also directly conflicted with other closely related instructions, and were harmful error requiring reversal of the defendant's convictions for possession of marijuana with intent to distribute in violation of O.C.G.A. § 16-13-30(j)(1). Able v. State, 312 Ga. App. 252, 718 S.E.2d 96, 2011 Ga. App. LEXIS 936 (2011).

Sentencing

Constitutionality of subsection (d). — O.C.G.A. § 16-13-30(d), which mandates a sentence of life imprisonment upon a second conviction for selling cocaine, is not unconstitutional; it does not violate the Eighth and the Fourteenth Amendments to the Constitution of the United States. Grant v. State, 258 Ga. 299, 368 S.E.2d 737, 1988 Ga. LEXIS 248 (1988); Rucks v. State, 201 Ga. App. 142, 410 S.E.2d 206, 1991 Ga. App. LEXIS 1267 (1991); Carr v. State, 201 Ga. App. 479, 411 S.E.2d 913, 1991 Ga. App. LEXIS 1426 (1991); Crutchfield v. State, 218 Ga. App. 360, 461 S.E.2d 555, 1995 Ga. App. LEXIS 713 (1995), cert. denied, No. S95C1983, 1995 Ga. LEXIS 1242 (Ga. Nov. 17, 1995).

Mandatory life imprisonment sentence found in O.C.G.A. § 16-13-30(d) does not unconstitutionally deprive a defendant of due process of law. Tillman v. State, 260 Ga. 801, 400 S.E.2d 632, 1991 Ga. LEXIS 74 (1991).

Mandatory life sentence of O.C.G.A. § 16-13-30(d) does not constitute cruel and unusual punishment under Ga. Const. 1983, Art. I, Sec. I, Para. XVII. Stephens v. State, 261 Ga. 467, 405 S.E.2d 483, 1991 Ga. LEXIS 332 (1991); Cody v. State, 222 Ga. App. 468, 474 S.E.2d 669.

O.C.G.A. § 16-13-30(d) does not violate the equal protection or due process guarantees of the Georgia and federal constitutions. Isom v. State, 261 Ga. 596, 408 S.E.2d 701, 1991 Ga. LEXIS 425 (1991).

O.C.G.A. § 16-13-30(d) does not violate state or federal constitutional guarantees against cruel and unusual punishment. Isom v. State, 261 Ga. 596, 408 S.E.2d 701, 1991 Ga. LEXIS 425 (1991); Martin v. State, 205 Ga. App. 200, 422 S.E.2d 6, 1992 Ga. App. LEXIS 1106 (1992), cert. dismissed, No. S92C1472, 1992 Ga. LEXIS 802 (Ga. Oct. 2, 1992); Crutchfield v. State, 218 Ga. App. 360, 461 S.E.2d 555, 1995 Ga. App. LEXIS 713 (1995), cert. denied, No. S95C1983, 1995 Ga. LEXIS 1242 (Ga. Nov. 17, 1995).

Sentencing scheme in O.C.G.A. § 16-13-30(d) cannot be found

Sentencing (Cont'd)

unconstitutional for not having a rational basis since the legislature may have perceived repeated violations of O.C.G.A. § 16-13-30(b) with narcotic drugs (for which a life sentence is mandated) as a greater threat to the public health, safety, and welfare than repeated violations with nonnarcotic drugs. Hailey v. State, 263 Ga. 210, 429 S.E.2d 917, 1993 Ga. LEXIS 478 (1993), cert. denied, 510 U.S. 1048, 114 S. Ct. 700, 126 L. Ed. 2d 667, 1994 U.S. LEXIS 169 (1994).

Illegal sentence in drug crime. — Written sentence reflecting that the defendant was sentenced to seven-years for possession of a controlled substance in Schedule I had to be vacated because the maximum sentence for possession of a controlled substance in a Schedule I offense, under the circumstances of this crime, was three years. Hood v. State, 315 Ga. 809, 884 S.E.2d 901, 2023 Ga. LEXIS 49 (2023).

No violations based on a high percentage of African-Americans convicted. — O.C.G.A. § 16-13-30 does not violate due process or equal protection based on statistical evidence as to the high percentage of African-Americans serving life sentences for drug offenses, nor because it creates an irrational sentencing scheme. Stephens v. State, 265 Ga. 356, 456 S.E.2d 560, 1995 Ga. LEXIS 161, cert. denied, 516 U.S. 849, 116 S. Ct. 144, 133 L. Ed. 2d 90, 1995 U.S. LEXIS 5894 (1995).

Constitutionality of subsections (b) and (d). — No evidence supported contention that provision mandating life sentence for the second conviction of unlawful possession of a controlled substance with intent to distribute has been unconstitutionally enforced selectively against young, impoverished blacks. Hall v. State, 262 Ga. 596, 422 S.E.2d 533, 1992 Ga. LEXIS 915 (1992), cert. denied, 507 U.S. 1055, 113 S. Ct. 1956, 123 L. Ed. 2d 660, 1993 U.S. LEXIS 3088 (1993); Hailey v. State, 263 Ga. 210, 429 S.E.2d 917, 1993 Ga. LEXIS 478 (1993), cert. denied, 510 U.S. 1048, 114 S. Ct. 700, 126 L. Ed. 2d 667, 1994 U.S. LEXIS 169 (1994).

Discriminatory enforcement of section. — When the defendant produced, from several sources, various statistics, articles, and charts showing that blacks are more likely to be imprisoned for drug offenses than are whites, but did not offer any evidence specific to the defendant's own case that would support an inference that racial considerations played a part in the prosecution's decision to charge the defendant, the defendant's statistics failed to prove an essential element necessary in a selective prosecution case, i.e., that the prosecution engaged in a deliberate selective process of enforcement based on race. Cain v. State, 262 Ga. 598, 422 S.E.2d 535, 1992 Ga. LEXIS 953 (1992).

Defendant's claim that the mandatory life imprisonment provision was applied in a racially discriminatory manner was not properly supported since no evidence was offered that (1) blacks in general or (2) defendant in particular had been selectively prosecuted. Anderson v. State, 218 Ga. App. 872, 463 S.E.2d 502, 1995 Ga. App. LEXIS 908 (1995).

Construed with O.C.G.A. § 17-10-7. — Both O.C.G.A. §§ 16-13-30(d) and 17-10-7 give direction as to the imposition of punishment under specified aggravated circumstances; however, O.C.G.A. § 16-13-30(d) increases the maximum from 15 years to life for the subsequent offense, whereas O.C.G.A. § 17-10-7 does not increase the maximum but adds weight in favor of its imposition. Wainwright v. State, 208 Ga. App. 777, 432 S.E.2d 555, 1993 Ga. App. LEXIS 577 (1993).

O.C.G.A. § 16-13-30(d) is interpreted as providing that, although the court may not sentence second time offenders under both O.C.G.A. §§ 16-13-30(d) and 17-10-7(a), it may sentence second time offenders under both § 16-13-30(d) and any remaining provisions of § 17-10-7. Blackwell v. State, 237 Ga. App. 896, 516 S.E.2d 787, 1999 Ga. App. LEXIS 556 (1999), cert. denied, No. S99C1235, 1999 Ga. LEXIS 758 (Ga. Sept. 17, 1999).

Because O.C.G.A. § 17-10-7 is the only recidivist provision that governs the situation where a defendant, who has a prior felony conviction for armed robbery, is subsequently convicted of a felony for selling cocaine, the trial court correctly applied that section in sentencing defendant. Harden v. State, 239 Ga. App. 700, 521 S.E.2d 829, 1999 Ga. App. LEXIS 1114 (1999).

In a prosecution for sale of cocaine, the court was not required to impose a life sentence upon the defendant who had five previous drug convictions. The court retained the discretion either to impose any sentence within the statutory mandatory minimum and maximum sentence range or else to impose a life sentence. Scott v. State, 248 Ga. App. 542, 545 S.E.2d 709, 2001 Ga. App. LEXIS 324 (2001).

Since the defendant was found guilty of possessing cocaine with the intent to distribute, the defendant's third conviction for the possession of a controlled substance with the intent to distribute and the defendant's ninth felony conviction, the sentencing judge had the discretion to sentence the defendant under O.C.G.A. § 16-13-30(d) to "any sentence within the statutory mandatory minimum and maximum sentence range or else to impose a life sentence" and was not required to sentence the defendant to life imprisonment under O.C.G.A. § 17-10-7(a). Mann v. State, 273 Ga. 366, 541 S.E.2d 645, 2001 Ga. LEXIS 65 (2001).

After the defendant entered a guilty plea to possession of cocaine with intent to distribute, and the state introduced copies of a prior out-of-state drug conviction and a prior federal drug conviction, the trial court erred in sentencing defendant to 30 years under O.C.G.A. §§ 16-13-30(d) and 17-10-7(a). Papadoupalos v. State, 249 Ga. App. 300, 548 S.E.2d 59, 2001 Ga. App. LEXIS 493 (2001).

Because the defendant's conviction on count one of the indictment was the second conviction for violating O.C.G.A. § 16-13-30(b), selling a controlled substance, the trial court was not prohibited from sentencing the defendant under both O.C.G.A. §§ 16-13-30(d) and 17-10-7(c). Johnson v. State, 259 Ga. App. 452, 576 S.E.2d 911, 2003 Ga. App. LEXIS 147 (2003).

Trial court's decision to probate a portion of the sentence imposed on the defendant for the defendant's second conviction for possession of cocaine with intent to distribute, requiring the defendant to serve only seven years, was in direct contravention to O.C.G.A. § 16-13-30(d), which stated specifically that a second time offender was to have been imprisoned for not less than 10 years; by the plain reading of § 16-13-30(d), a defendant must have served at least 10 years in prison, and O.C.G.A. § 17-10-7(c), which applied to a second offense under § 16-13-30(b), required that the time be served without parole. State v. Jones, 265 Ga. App. 493, 594 S.E.2d 706, 2004 Ga. App. LEXIS 163 (2004), cert. denied, No. S04C1066, 2004 Ga. LEXIS 591 (Ga. June 28, 2004), overruled in part, Langley v. State, 313 Ga. 141, 868 S.E.2d 759, 2022 Ga. LEXIS 14 (2022).

Trial court did not err in stacking two recidivist sentencing provisions by first sentencing defendant to life in prison under former O.C.G.A. § 16-13-30(d), which at the time of defendant's crime and sentencing required a life sentence for repeat offenders of § 16-13-30(b), and by then sentencing defendant to life without parole under O.C.G.A. § 17-10-7(c), which required that upon conviction of a fourth felony, defendant was not eligible for parole. Butler v. State, 277 Ga. App. 57, 625 S.E.2d 458, 2005 Ga. App. LEXIS 1364 (2005), aff'd, 281 Ga. 310, 637 S.E.2d 688, 2006 Ga. LEXIS 979 (2006).

Court of Appeals properly affirmed the imposition of a life sentence without parole against the defendant, as a recidivist, under both O.C.G.A. §§ 16-13-30(d) and 17-10-7(c), as the defendant was convicted and sentenced before the effective date of the 1996 amendment to O.C.G.A. § 16-13-30(d), thus making a life sentence the only sentence that the trial court could impose; further, because the instant felony conviction was the defendant's fourth, O.C.G.A. § 17-10-7(c) applied to the sentence by operation of subsection (e) of that statute, as enacted in 1994, so as to require the defendant to serve the sentence imposed by the trial court

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without the possibility of parole. Butler v. State, 281 Ga. 310, 637 S.E.2d 688, 2006 Ga. LEXIS 979 (2006).

Upon the conviction for the sale of cocaine, the trial court properly sentenced the defendant under O.C.G.A. § 17-10-7(c) and not O.C.G.A. § 17-10-1(a)(1), to the minimum sentence of ten years imprisonment under O.C.G.A. § 16-13-30(d), without the possibility of parole, as the defendant had three prior felony convictions. Fortson v. State, 283 Ga. App. 120, 640 S.E.2d 693, 2006 Ga. App. LEXIS 1571 (2006), overruled in part, Langley v. State, 313 Ga. 141, 868 S.E.2d 759, 2022 Ga. LEXIS 14 (2022).

Because sufficient proof of the necessary prior convictions, even without inclusion of the defendant's first offender plea, existed to authorize punishment under both O.C.G.A. §§ 16-13-30 and 17-10-7, the recidivist sentence imposed by the trial court was upheld. Johnson v. State, 284 Ga. App. 724, 644 S.E.2d 544, 2007 Ga. App. LEXIS 392 (2007), cert. denied, No. S07C1179, 2007 Ga. LEXIS 538 (Ga. July 13, 2007).

Trial court properly denied the defendant's plea withdrawal motion as the court fully informed the defendant that the sentence the court intended on imposing would be without parole, despite failing to advise the defendant of the sentence prior to the acceptance of the plea; moreover, as methamphetamine was a Schedule II non-narcotic drug, the more general provisions of O.C.G.A. §§ 16-13-30(e) and 17-10-7, and not O.C.G.A. § 16-13-30(c), applied. Thomas v. State, 287 Ga. App. 500, 651 S.E.2d 801, 2007 Ga. App. LEXIS 1003 (2007).

Defendant's sentence of 30 years without parole for trafficking in cocaine was a sentence allowed under O.C.G.A. § 16-13-30(d), and hence, not illegal or void. Defendant could not have been sentenced under O.C.G.A. § 17-10-7(a), or defendant's sentence would have been 40 years. Because the sentence was not void, it was not subject to modification under O.C.G.A. § 17-10-1(f). State v. Blue, 304 Ga. App. 471, 696 S.E.2d 692, 2010 Ga. App. LEXIS 561 (2010).

Defendant sentenced to life in prison without parole, under O.C.G.A. §§ 16-13-30(d) and 17-10-7(c), based on the defendant's prior convictions stemming from guilty pleas, was not entitled to habeas relief on the basis of the defendant's trial counsel's failure to review the transcripts of the defendant's prior plea colloquies because: (1) no per se rule required counsel to review the transcripts; and (2) counsel otherwise adequately investigated the validity of the prior convictions. Barker v. Barrow, 290 Ga. 711, 723 S.E.2d 905, 2012 Ga. LEXIS 294, cert. denied, 568 U.S. 987, 133 S. Ct. 540, 184 L. Ed. 2d 354, 2012 U.S. LEXIS 8455 (2012).

Pursuant to O.C.G.A. § 17-10-7(b.1), a defendant who has been convicted previously of violating either subsection (a), or (j), or paragraph (i)(1) of O.C.G.A. § 16-13-30 may not be sentenced as a recidivist for a second or any subsequent conviction for violating any of those provisions even if the defendant had never been convicted previously of violating the exact subsection for which the defendant is being sentenced. Mathis v. State, 336 Ga. App. 257, 784 S.E.2d 98, 2016 Ga. App. LEXIS 157 (2016).

Trial court erred because it sentenced the defendant based on the improper assumption that a life sentence was required because of the interplay between O.C.G.A. §§ 16-13-30(d) and 17-10-7(c) as the trial judge retained the discretion to sentence the defendant to either ten to forty years or a life sentence for a subsequent violation of O.C.G.A. § 16-13-30(b). Waller v. State, 365 Ga. App. 693, 879 S.E.2d 865, 2022 Ga. App. LEXIS 491 (2022).

Construed with O.C.G.A. § 16-13-31. — Most reasonable interpretation of the legislative intent in enacting O.C.G.A. § 16-13-31(f)(1) was to supplant the general punishment provision of O.C.G.A. § 16-13-30(b) with a specific and potentially more harsh punishment provision for manufacturing methamphetamine. Richards v. State, 290 Ga. App. 360, 659 S.E.2d 651, 2008 Ga. App. LEXIS 239 (2008).

The 1996 amendment of O.C.G.A. § 16-13-30(d) giving the trial court

greater discretion in imposing a lesser sentence than life was not retroactive. Maddox v. State, 227 Ga. App. 602, 490 S.E.2d 174, 1997 Ga. App. LEXIS 987 (1997).

Trial court erred in imposing mandatory life sentences for crimes committed in 1997, that is, after the legislative enactment making a life sentence discretionary. Moton v. State, 242 Ga. App. 397, 530 S.E.2d 31, 2000 Ga. App. LEXIS 203 (2000).

Special probation. — Plain language of O.C.G.A. § 42-8-35.2(a) requires that a term of special probation be served "in addition to any term of imprisonment" rendered under O.C.G.A. § 16-13-30(d); thus, the two statutes do not conflict. Accordingly, a defendant was properly sentenced to a ten-year incarceration followed by special probation, and the defendant's claim that former O.C.G.A. § 42-8-32.5 was implicitly repealed by the 1996 amendment to O.C.G.A. § 16-13-30 was without merit. Mike v. State, 290 Ga. App. 214, 659 S.E.2d 664, 2008 Ga. App. LEXIS 283 (2008), cert. denied, No. S08C1196, 2008 Ga. LEXIS 612 (Ga. June 16, 2008), overruled in part, Langley v. State, 313 Ga. 141, 868 S.E.2d 759, 2022 Ga. LEXIS 14 (2022).

Defendant's sentence for possession of methamphetamine with intent to distribute of 30 years, with the first 20 years to be served in confinement and the remainder to be served on probation, along with a special term of probation of three years in addition to the 30-year term, was valid under O.C.G.A. §§ 16-13-30(d) and 42-8-35.2. Benton v. State, 356 Ga. App. 441, 847 S.E.2d 625, 2020 Ga. App. LEXIS 460 (2020), cert. denied, No. S21C0110, 2021 Ga. LEXIS 253 (Ga. Apr. 5, 2021).

Authority to resentence defendant. — Because the trial court was correct that the court had imposed a sentence not allowed, the sentence was void and the trial court retained jurisdiction to resentence the defendant. Loveless v. State, 344 Ga. App. 716, 812 S.E.2d 42, 2018 Ga. App. LEXIS 130 (2018).

Subsection (b) must be violated for life sentence to be mandatory. — Trial court erred in imposing life sentences upon counts two, three, and four of the indictment when a defendant must have been convicted of violating O.C.G.A. § 16-13-30(b) in order for the imposition of a life sentence to be mandatory. Brown v. State, 204 Ga. App. 794, 420 S.E.2d 823, 1992 Ga. App. LEXIS 988 (1992).

Motion to modify sentence inappropriate remedy. — Defendant's claim that the trial court did not give defendant credit for time defendant spent in pretrial confinement when the court sentenced defendant after defendant pled guilty to charges of possession of cocaine with intent to distribute and possession of marijuana with intent to distribute was cognizable only in a mandamus or injunction action against the Commissioner of the Georgia Department of Corrections, or in a petition for habeas corpus, not in a motion to modify defendant's sentence, and the trial court properly dismissed defendant's motion to modify defendant's sentence. Maldonado v. State, 260 Ga. App. 580, 580 S.E.2d 330, 2003 Ga. App. LEXIS 428 (2003).

With regard to the defendant's conviction for attempted possession of oxycodone with the intent to distribute and the sentence imposed of 30 years confinement as a recidivist, to serve 20 years in confinement and the remainder probated, the defendant was entitled to resentencing as the state conceded that the state failed to show that the defendant's prior convictions were adjudged upon the advice of counsel or following a waiver thereof. Woodall v. State, 291 Ga. App. 484, 662 S.E.2d 549, 2008 Ga. App. LEXIS 535 (2008).

Motion to correct void sentence. — Sentencing court should have dismissed the defendant's motion to vacate a void sentence for lack of jurisdiction because the defendant's motion presented no cognizable claim that a sentence was void as constituting punishment the law did not allow. The defendant only challenged the existence or validity of the factual or adjudicative predicate for the recidivist sentence. Kimbrough v. State, 325 Ga. App. 519, 754 S.E.2d 109, 2014 Ga. App. LEXIS 8 (2014).

Because a more specific law applies to trafficking methamphetamine, the general provisions for manufacturing con-

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trolled substances do not apply; there being no uncertainty as to which statute applies, the rule of lenity is not implicated. State v. Nankervis, 295 Ga. 406, 761 S.E.2d 1, 2014 Ga. LEXIS 538 (2014).

Life sentence for conviction of a second offense. — Life sentence for conviction of a second offense was permissible when defendant had not been convicted of the first offense at the time defendant committed the second offense. Hailey v. State, 263 Ga. 210, 429 S.E.2d 917, 1993 Ga. LEXIS 478 (1993), cert. denied, 510 U.S. 1048, 114 S. Ct. 700, 126 L. Ed. 2d 667, 1994 U.S. LEXIS 169 (1994); Key v. State, 226 Ga. App. 240, 485 S.E.2d 804, 1997 Ga. App. LEXIS 487 (1997).

After the defendant was convicted of trafficking in cocaine and conspiracy of trafficking in cocaine in 2011 and sentenced to two concurrent terms of life in prison, the defendant's life sentence was proper because the defendant's 2010 trafficking conviction pursuant to O.C.G.A. § 16-13-31 qualified as an actual conviction under O.C.G.A. § 16-13-30(b) to trigger the recidivist provisions of § 16-13-30(d) and enhance the defendant's sentence for the 2011 trafficking conviction; and the legislature did not intend that violators of the more serious offense of trafficking be exempt from the severe punishment of § 16-13-30(d). Duron v. State, 340 Ga. App. 74, 796 S.E.2d 310, 2017 Ga. App. LEXIS 11 (2017), cert. denied, No. S17C0983, 2017 Ga. LEXIS 599 (Ga. June 30, 2017).

Life sentence based on conviction under prior statute. — O.C.G.A. § 16-13-30(d) authorizes a life sentence only for a second violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., which was enacted in 1974. Thus, it does not include earlier convictions for crimes which would have been violations of the Act had they been committed after the effective date of the Act. Smith v. State, 193 Ga. App. 365, 387 S.E.2d 648, 1989 Ga. App. LEXIS 1427 (1989), superseded by statute as stated in Gilbert v. State, 208 Ga. App. 258, 430 S.E.2d 391, 1993 Ga. App. LEXIS 455 (1993).

Prior conviction under federal law. — Life sentence may only be imposed for a second violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., and was not authorized since the prior offense used against the defendant was a federal drug conviction. Query v. State, 217 Ga. App. 61, 456 S.E.2d 704, 1995 Ga. App. LEXIS 340 (1995), cert. denied, No. S95C1168, 1995 Ga. LEXIS 791 (Ga. June 1, 1995).

After federal convictions, state prosecutions barred on same conduct. — Threshold requirement of concurrent jurisdiction in O.C.G.A. § 16-1-8(c) was met in the defendant's state prosecution because the Georgia crimes of manufacturing, delivering, or selling a controlled substance and attempt, O.C.G.A. §§ 16-13-30(a) and 16-13-33, were counterparts to the defendant's federal convictions under 21 U.S.C. §§ 841(b)(1)(C) and 846. Calloway v. State, 303 Ga. 48, 810 S.E.2d 105, 2018 Ga. LEXIS 66 (2018).

Defendant, sentenced to life under O.C.G.A. § 16-13-30(d) was not similarly situated to codefendant granted first offender probation for equal protection purposes because the codefendant was a first offender and defendant was convicted of seven other drug charges in addition to the sale of 200 grams or more of cocaine and had prior convictions for robbery and possession of cocaine with intent to distribute. Bell v. State, 252 Ga. App. 74, 555 S.E.2d 747, 2001 Ga. App. LEXIS 1204 (2001).

Career offender implications. — *Unpublished decision:* Defendant's conviction for possessing a counterfeit substance with intent to sell under O.C.G.A. § 16-13-30(i) was an offense under a state law that prohibited the possession of a counterfeit substance, and was punishable by imprisonment for a term exceeding one year; as such, the elements of the offense matched the plain language of U.S. Sentencing Guidelines Manual §§ 4B1.1 and 4B1.2, and the offense was sufficient to count towards defendant's career offender status. Moreover, this interpretation was not

modified by the statutory definitions contained in 21 U.S.C. § 802(7), and nothing in 28 U.S.C. § 994 prevented the sentencing commission from using the commission's authority in this manner. United States v. Smith, 156 Fed. Appx. 154, 2005 U.S. App. LEXIS 25382 (11th Cir. 2005), cert. denied, 547 U.S. 1048, 126 S. Ct. 1639, 164 L. Ed. 2d 349, 2006 U.S. LEXIS 2641 (2006).

Unpublished decision: Defendant was properly sentenced as an armed career criminal because the defendant's 1998 Georgia felony conviction for obstructing or hindering a law enforcement officer was a violent felony, and the defendant's 1998 Georgia felony conviction for possessing marijuana with the intent to distribute fell squarely within the Armed Career Criminal Act's definition of a serious drug offense. United States v. Dixon, 598 Fed. Appx. 704, 2015 U.S. App. LEXIS 1698 (11th Cir. 2015).

Prior out-of-state convictions. — Defense counsel was not ineffective for failing to object to the trial court's use of prior felonies defendant committed in California to sentence the defendant as a recidivist under O.C.G.A. § 17-10-7(c) as the elements of Cal. Health & Safety Code §§ 11054(f), 11350(a) (possession of cocaine) were sufficiently similar to those of O.C.G.A. §§ 16-13-26(1)(D) and 16-13-30(c); and the elements of Cal. Penal. Code § 211 (robbery) were sufficiently similar to those of O.C.G.A. § 16-8-40. Williams v. State, 296 Ga. App. 270, 674 S.E.2d 115, 2009 Ga. App. LEXIS 189 (2009).

Nonfinal conviction of first offense as predicate for life sentence on second charge. — O.C.G.A. § 17-10-2(a), relating to presentence hearings, did not operate to bar the trial court from relying on one of the cocaine charges to which defendant pled guilty in a guilty plea hearing in order to impose an enhanced mandatory life sentence pursuant to O.C.G.A. § 16-13-30(d) for the second sale of cocaine charge to which defendant pled guilty at the same hearing. Plea bargain negotiations can serve the same purpose as the giving of notice under O.C.G.A. § 17-10-2(a), and, when plea bargain negotiations are conducted, the defendant can be given "clear notice" of what the state intends to rely upon in aggravation of sentencing at the guilty plea hearing. Martin v. State, 207 Ga. App. 861, 429 S.E.2d 332, 1993 Ga. App. LEXIS 370 (1993).

In order for the imposition of life sentences to be mandatory pursuant to O.C.G.A. § 16-13-30(d), a defendant's prior conviction need not have preceded the defendant's subsequent violations of O.C.G.A. § 16-13-30(b), but the defendant's prior conviction must necessarily have preceded the defendant's subsequent trial for violating O.C.G.A. § 16-13-30(b). State v. Sears, 202 Ga. App. 352, 414 S.E.2d 494, 1991 Ga. App. LEXIS 1774 (1991).

Prior conviction trigger for mandatory life sentence. — Defendant's conviction for the more serious offense of trafficking in cocaine under O.C.G.A. § 16-13-31 was sufficient in conjunction with the defendant's previous conviction for possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30(b) to trigger the mandatory life sentence provisions of § 16-13-30(d) and the state gave proper notice that the prior conviction would be used in aggravation at sentencing pursuant to § 16-13-30(d). Brundage v. State, 231 Ga. App. 478, 499 S.E.2d 408, 1998 Ga. App. LEXIS 470 (1998).

Life sentence appropriate. — When there is evidence of record that the defendant was properly notified of the state's intent to use defendant's prior drug convictions in aggravation of punishment at the sentencing hearing, and such evidence was not sufficiently rebutted by defendant, the trial court did not err in sentencing defendant to life in prison as a recidivist. Washington v. State, 216 Ga. App. 352, 454 S.E.2d 214, 1995 Ga. App. LEXIS 113 (1995).

Defendant's conviction for the more serious offense of trafficking in cocaine under O.C.G.A. § 16-13-31 was sufficient in conjunction with prior convictions for sale of cocaine to trigger the mandatory life sentence provision of O.C.G.A. § 16-13-30(d). Covington v. State, 231 Ga. App. 851, 501 S.E.2d 37, 1998 Ga. App. LEXIS 538 (1998).

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Life sentence cannot be imposed for a first offense even though, at the time a conviction is entered on that offense, the defendant had committed and been convicted of an intervening offense. Mays v. State, 262 Ga. 90, 414 S.E.2d 481, 1992 Ga. LEXIS 244 (1992).

Recidivist punishment under subsection (d) not precluded by § 17-10-7(c). — Imposition of mandatory life sentences as recidivist punishment for convictions under each count of an indictment charging six separate offenses of selling cocaine was not precluded by provisions of the statute placing limitations on the use of prior convictions as the basis for imposing enhanced recidivist punishment. McCoy v. State, 210 Ga. App. 672, 437 S.E.2d 366, 1993 Ga. App. LEXIS 1308 (1993).

Neither of two concurrent convictions can serve as the predicate for the imposition of a life sentence (under O.C.G.A. § 16-13-30(d)) as to the other. State v. Sears, 202 Ga. App. 352, 414 S.E.2d 494, 1991 Ga. App. LEXIS 1774 (1991).

Rehabilitation and life sentence. — There appears to be no constitutional requirement that a defendant receive "the benefit of rehabilitation" before a life sentence for repeated conduct may be imposed under O.C.G.A. § 16-13-30(d). Beasley v. State, 202 Ga. App. 349, 414 S.E.2d 663, 1991 Ga. App. LEXIS 1773 (1991).

Neither convictions could serve basis for life imprisonment. — Concurrent six-year sentences imposed upon defendant were not void, and the state's appeal was dismissed, since neither of defendant's instant convictions could serve as the predicate for the imposition of a life sentence as to the others. State v. Sampson, 203 Ga. App. 396, 417 S.E.2d 34, 1992 Ga. App. LEXIS 432 (1992), cert. denied, No. S92C0825, 1992 Ga. LEXIS 571 (Ga. July 8, 1992).

Use of second offense to revoke first-offender probation. — Trial court did not err in treating the defendant's commission of the second offense both as the basis for the revocation of defendant's first-offender probation which, in turn, resulted in defendant's conviction of the original offense, and as the "second or subsequent offense" for which O.C.G.A. § 16-13-30 mandates a life sentence. Dean v. State, 200 Ga. App. 752, 409 S.E.2d 667, 1991 Ga. App. LEXIS 1140 (1991), cert. denied, No. S91C1484, 1991 Ga. LEXIS 583 (Ga. Sept. 6, 1991).

Notice required for life term. — If a life sentence is to be imposed under O.C.G.A. § 16-13-30(d), the state must notify defendant of any conviction the state intends to use in aggravation of punishment pursuant to that section. Armstrong v. State, 264 Ga. 237, 442 S.E.2d 759, 1994 Ga. LEXIS 421 (1994).

Notice to the defendant that two prior convictions would be used against the defendant was timely where notice was given on the day of trial, but before the trial started. Howard v. State, 234 Ga. App. 260, 506 S.E.2d 648, 1998 Ga. App. LEXIS 1200 (1998).

Written notice that the state intends to present evidence of prior convictions coupled with oral notice that the state intends to seek a life sentence satisfies the notice requirement. Washington v. State, 238 Ga. App. 561, 519 S.E.2d 234, 1999 Ga. App. LEXIS 858 (1999).

Advance notice not required. — O.C.G.A. § 16-13-30 contains no requirement of advance notice of prior felony convictions as a condition to sentencing or to receiving evidence of prior drug conviction. Armstrong v. State, 209 Ga. App. 796, 434 S.E.2d 560, 1993 Ga. App. LEXIS 998 (1993), aff'd, 264 Ga. 237, 442 S.E.2d 759, 1994 Ga. LEXIS 421 (1994).

Advising on sentencing. — In a prosecution for possession of methamphetamine, the defendant claimed defense counsel was ineffective for failing to advise the defendant of the possibility of receiving a prison sentence without the possibility of parole. This claim failed as the trial court was entitled to believe trial counsel's testimony that counsel advised the defendant of this possible sentence before the defendant elected to go to trial. Matthews v. State, 294 Ga. App. 836, 670 S.E.2d 520, 2008 Ga. App. LEXIS 1329 (2008).

Enforcement of plea agreement. — With regard to the defendant's drug

possession charges and a plea agreement that waived recidivist punishment, the court held that the trial court erred by denying the defendant's motion to enforce the plea agreement made with the prior district attorney because an agreement as to terms was clearly made and the fact that the state changed the state's mind and no longer wanted to honor the plea agreement was not acceptable policy. Syms v. State, 331 Ga. App. 225, 770 S.E.2d 305, 2015 Ga. App. LEXIS 138 (2015).

Evidence sufficient for conviction of manufacturing marijuana. — See Holland v. State, 205 Ga. App. 695, 423 S.E.2d 694, 1992 Ga. App. LEXIS 1300 (1992).

When verdict sustained. — If the totality of the evidence is sufficient to connect defendant to possession of drugs, even though there is evidence to authorize a contrary finding, the jury's verdict will be sustained. Singleton v. State, 194 Ga. App. 5, 389 S.E.2d 496, 1989 Ga. App. LEXIS 1705 (1989), superseded by statute as stated in Davenport v. State, 308 Ga. App. 140, 706 S.E.2d 757, 2011 Ga. App. LEXIS 142 (2011).

Possession with intent to distribute is not punishable by both fine and imprisonment. — General Assembly has not seen fit to permit imposition of both fine and imprisonment as punishment for a felony, except in specified cases, and possession of phencyclidine with intent to distribute is not one of these. Taylor v. State, 149 Ga. App. 362, 254 S.E.2d 432, 1979 Ga. App. LEXIS 1849 (1979).

Unauthorized fines are void part of sentence. — When defendants violated O.C.G.A. § 16-13-30(b) by possessing with intent to distribute diazepam, a Schedule IV controlled substance, the trial court was without authority to impose a $5,000 fine on one defendant and $10,000 fines on each of the other defendants since O.C.G.A. § 16-13-30(h) does not authorize imposition of any fines; since a trial judge may only fix a sentence within the limits prescribed by law, the fines imposed are void and must be stricken from the respective sentences. Castillo v. State, 166 Ga. App. 817, 305 S.E.2d 629, 1983 Ga. App. LEXIS 3279 (1983).

Defendant's sentence for cocaine possession requiring the defendant to begin making monthly payments on fines, fees, and court costs during the defendant's incarceration was a punishment that the law did not allow, and therefore was void. Pursuant to O.C.G.A. § 17-10-8, the defendant could only be ordered to make such payments as a condition of probation. Crane v. State, 302 Ga. App. 422, 691 S.E.2d 559, 2010 Ga. App. LEXIS 148 (2010).

Juvenile court erred in imposing a fine for possession of cocaine because a fine was not an authorized penalty under O.C.G.A. § 16-13-30. In re A. T., 302 Ga. App. 713, 691 S.E.2d 642, 2010 Ga. App. LEXIS 218 (2010).

Monetary fines not authorized on conviction. — Upon conviction of a defendant of possession of cocaine with intent to distribute, the trial court was without authority to impose a fine, penalty fee, and D.A.T.E. fee; the penalty for the offense does not include monetary fines. Rawls v. State, 210 Ga. App. 408, 436 S.E.2d 527, 1993 Ga. App. LEXIS 1202 (1993).

Fine of $50,000 was not authorized upon a conviction of a violation of O.C.G.A. § 16-13-30. Donelson v. State, 220 Ga. App. 688, 469 S.E.2d 861, 1996 Ga. App. LEXIS 313 (1996).

Phrase "subsequent offense" in O.C.G.A. § 16-13-30(g) means possession of any controlled substance rather than "a controlled substance in Schedule III, IV, or V." Ray v. State, 181 Ga. App. 42, 351 S.E.2d 490, 1986 Ga. App. LEXIS 2801 (1986).

Repeat offenders. — It was not error to sentence defendant as a repeat offender rather than under O.C.G.A. § 16-13-30, where first offense involved possession and control of a controlled substance, and second offense involved possession with intent to distribute. Sewell v. State, 162 Ga. App. 483, 291 S.E.2d 783, 1982 Ga. App. LEXIS 2192 (1982).

Enhanced punishment based upon prior conviction. — If the state has not specifically informed the defendant, prior to trial, that it intends to seek enhanced punishment based upon a conviction for a prior offense, the trial court would not be

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able to impose an enhanced sentence, even if the offense for which the defendant is being tried is a "second or subsequent offense." Mays v. State, 262 Ga. 90, 414 S.E.2d 481, 1992 Ga. LEXIS 244 (1992); Jordan v. State, 217 Ga. App. 420, 457 S.E.2d 692, 1995 Ga. App. LEXIS 467 (1995).

Previous convictions not final at the time a sentence was imposed because they were on appeal could not be relied upon as grounds for imposing enhanced punishment. Dunn v. State, 208 Ga. App. 197, 430 S.E.2d 50, 1993 Ga. App. LEXIS 466 (1993); Covington v. State, 226 Ga. App. 484, 486 S.E.2d 706, 1997 Ga. App. LEXIS 657 (1997).

Unpublished decision: Categorical approach was properly applied in determining that a defendant's prior conviction under O.C.G.A. § 16-13-30 was a "controlled substance offense" for purposes of the career offender guideline, U.S. Sentencing Guidelines Manual § 4B1.1; although the defendant received less than the statutory minimum sentence under O.C.G.A. § 16-13-30, the state court record showed that the defendant was convicted of selling cocaine, not possessing cocaine. United States v. Partee, 376 Fed. Appx. 614, 2010 U.S. App. LEXIS 10687 (7th Cir.), cert. denied, 562 U.S. 991, 131 S. Ct. 439, 178 L. Ed. 2d 340, 2010 U.S. LEXIS 8271 (2010).

Date of commission of offense determines applicability of enhanced punishment. — It is not the date of conviction which determines the applicability of enhanced punishment but the date of the commission of the offense; where conviction was for offense which occurred prior to offense which resulted in prior conviction, trial court erred in imposing enhanced punishment under subsection (d). Doe v. State, 205 Ga. App. 322, 422 S.E.2d 558, 1992 Ga. App. LEXIS 1218 (1992).

Second conviction for sale of cocaine results in sentence of imprisonment for life, even when the prior offense is not set out in the indictment, when the state complies with the requirement of O.C.G.A. § 17-10-2(a), which provides that only such evidence in aggravation as the state has made known to the defendant prior to defendant's trial shall be admissible. State v. Hendrixson, 251 Ga. 853, 310 S.E.2d 526, 1984 Ga. LEXIS 555 (1984).

Sentenced for a second offense of cocaine possession. — Defendant's previous conviction for cocaine possession with the intent to distribute constituted a previous conviction for cocaine possession that triggered the mandatory 30-year sentencing for a second simple possession offense under O.C.G.A. § 16-13-30(c). Smiley v. State, 241 Ga. App. 712, 527 S.E.2d 585, 2000 Ga. App. LEXIS 4 (2000).

Life sentence for trafficking in cocaine. — Life sentence was properly imposed on the defendant after the defendant was convicted of trafficking in cocaine under O.C.G.A. § 16-13-31. Howard v. State, 234 Ga. App. 260, 506 S.E.2d 648, 1998 Ga. App. LEXIS 1200 (1998).

Life sentence based on conviction in another state. — Imposition of the life sentence was erroneous when defendant's prior conviction was under South Carolina law and thus did not invoke the provisions of O.C.G.A. § 16-13-30(d). Peterson v. State, 212 Ga. App. 147, 441 S.E.2d 481, 1994 Ga. App. LEXIS 191 (1994).

Probation as punishment. — Punishments provided in O.C.G.A. § 16-13-30 do not preclude probation as a punishment. Lester v. State, 190 Ga. App. 59, 378 S.E.2d 364, 1989 Ga. App. LEXIS 115 (1989).

Sentence for attempted possession appropriate. — Trial court did not err in sentencing defendant, who had been convicted of attempted possession of crack cocaine, for purchasing a piece of a nut from an undercover police officer thinking it was crack cocaine, within the sentencing range for attempted possession of a Schedule II controlled substance, despite the fact that the indictment did not specifically allege that crack cocaine was a Schedule II controlled substance. The indictment and proof clearly showed that defendant had in fact attempted to purchase a Schedule II

controlled substance. Lovain v. State, 253 Ga. App. 271, 558 S.E.2d 812, 2002 Ga. App. LEXIS 29 (2002).

Fine as condition of probation. — When a defendant was convicted of possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30 and sentenced to the mandatory minimum of 10 years' imprisonment, plus 30 years on probation, the trial court did not err in imposing a $5,000 fine as a condition of probation. O.C.G.A. § 17-10-8 permitted a trial court to impose a fine as a condition of probation. Marshall v. State, 291 Ga. App. 284, 661 S.E.2d 662, 2008 Ga. App. LEXIS 473 (2008).

Sentence outside statutory range. — Since the ten-year felony sentence, entered by the trial court and imposed upon the defendant's convictions for possession of a controlled substance, possession of marijuana, and improper turn, was outside the statutory range in O.C.G.A. § 16-13-30(g), the sentence was void. Accordingly, the trial court had jurisdiction to resentence the defendant at any time. Simmons v. State, 315 Ga. App. 82, 726 S.E.2d 573, 2012 Ga. App. LEXIS 320 (2012).

Because the 25-year sentence imposed by the trial court exceeded the statutory maximum under O.C.G.A. § 16-13-30(c), the sentence was void. Royals v. State, 327 Ga. App. 337, 761 S.E.2d 357, 2014 Ga. App. LEXIS 334 (2014).

Sentence within authorized range. — Defendant's sentence to five years of confinement to be probated after 12 months, payment of fines, a monthly probation fee, and submission to special conditions of probation was well within the range authorized for possession of cocaine and was not cruel and unusual punishment. Toth v. State, 213 Ga. App. 247, 444 S.E.2d 159, 1994 Ga. App. LEXIS 530 (1994).

When a defendant was sentenced to five years imprisonment for possession of cocaine, the sentence was within the statutory limits of two to 15 years, and was not so overly severe or excessive as to shock the conscience. Palmore v. State, 236 Ga. App. 285, 511 S.E.2d 624, 1999 Ga. App. LEXIS 128 (1999).

Defendant's sentence of 30 years with five years to serve and 25 years on probation for selling cocaine was within the limits set by O.C.G.A. § 16-13-30(d) and would not be disturbed. Harden v. State, 239 Ga. App. 700, 521 S.E.2d 829, 1999 Ga. App. LEXIS 1114 (1999).

Since defendant, as a fourth-time felon, faced a maximum punishment of 30 years in prison with no possibility of parole, and the trial court sentenced defendant to 25 years in prison with no possibility of parole, defendant's sentence was within the statutory guidelines; accordingly, the sentence was not void. Taylor v. State, 261 Ga. App. 248, 582 S.E.2d 209, 2003 Ga. App. LEXIS 601 (2003), cert. dismissed, No. S03C1377, 2003 Ga. LEXIS 801 (Ga. Sept. 22, 2003).

Appellate court declined to review the defendant's 30-year sentence because the sentence was within the statutory guidelines; the defendant had been found guilty of possessing cocaine with the intent to distribute, the state introduced three prior felony convictions in aggravation of sentencing pursuant to O.C.G.A. § 17-10-2(a), and given the defendant's prior drug convictions and the mandate of O.C.G.A. § 17-10-7(c), the defendant faced a maximum punishment of life in prison under O.C.G.A. § 16-13-30(d). Jackson v. State, 284 Ga. App. 619, 644 S.E.2d 491, 2007 Ga. App. LEXIS 376 (2007), cert. denied, No. S07C1169, 2007 Ga. LEXIS 521 (Ga. June 25, 2007), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Defendant misconstrued the language in O.C.G.A. § 16-13-30(d) when the defendant contended that a prior conviction for the sale of marijuana was improperly used to enhance defendant's sentence for a first conviction for possession with intent to sell amphetamine; the defendant's sentence of 30 years with 20 to serve was within the range set out for a conviction for possession with intent to sell amphetamine. McElreath v. State, 284 Ga. App. 349, 643 S.E.2d 863, 2007 Ga. App. LEXIS 320 (2007).

Because the defendant's conviction was the second for possession of cocaine, the defendant was subject to a sentence of between 5 and 30 years under O.C.G.A.

Sentencing (Cont'd)

§ 16-13-30(c), and the trial judge's sentence of 25 years, with eight years to serve, was within the legal range of punishment. Shook v. State, 300 Ga. App. 59, 684 S.E.2d 129, 2009 Ga. App. LEXIS 1083 (2009).

Trial court did not err in vacating the defendant's sentence of 40 years confinement and resentencing the defendant as a recidivist to 20 years confinement because there was nothing in the record showing that the trial court failed to exercise the court's discretion when the court imposed the sentence; the 20-year sentence the trial court imposed on resentencing was within the court's discretion, as the sentence fell within the statutory limits for the offense for which the defendant was convicted, possession of cocaine with intent to distribute. Bush v. State, 305 Ga. App. 617, 699 S.E.2d 899, 2010 Ga. App. LEXIS 763 (2010).

No modification of the defendant's sentence or hearing was mandated because the trial court considered the positive evidence presented by the defendant, weighed that evidence with the evidence of the defendant's prior criminal history, and the seriousness of the charge before pronouncing the sentence; the sentence was authorized by O.C.G.A.§ 16-13-30, and the record did not support the defendant's ineffective assistance of counsel claim. Benford v. State, 316 Ga. App. 95, 729 S.E.2d 414, 2012 Ga. App. LEXIS 492 (2012).

Even though the General Assembly reduced the punishment for possession of methamphetamine after the subject offense occurred, the trial court did not err in imposing a sentence within the range that existed at the time of the offense, and the sentence did not amount to cruel and unusual punishment. Thompson v. State, 332 Ga. App. 204, 770 S.E.2d 364, 2015 Ga. App. LEXIS 254 (2015), cert. denied, No. S15C1245, 2015 Ga. LEXIS 562 (Ga. Sept. 8, 2015).

Section not ambiguous due to sentencing options. — O.C.G.A. § 16-13-30 was not ambiguous merely because the statute offered two options for sentencing, ten to forty years or life imprisonment and, thus, the trial court was not required to utilize the rule of lenity. Waller v. State, 365 Ga. App. 693, 879 S.E.2d 865, 2022 Ga. App. LEXIS 491 (2022).

Life sentence neither discriminatory nor disproportionate. — Mandatory life sentence for second violation of O.C.G.A. § 16-13-30 did not violate defendant's equal protection or due process rights, nor was it disproportionate. Jackson v. State, 223 Ga. App. 471, 477 S.E.2d 893, 1996 Ga. App. LEXIS 1200 (1996).

Trial court lacked discretion to suspend, probate or defer sentence. — When the defendant was twice convicted of selling cocaine, the trial court correctly held that the court lacked discretion to suspend, probate, or defer a portion of the defendant's life sentence. Mosley v. State, 203 Ga. App. 275, 416 S.E.2d 736, 1992 Ga. App. LEXIS 499 (1992).

Defendant held sentenced beyond statutory maximum. — See Smith v. State, 186 Ga. App. 303, 367 S.E.2d 573, 1988 Ga. App. LEXIS 376 (1988).

Maximum sentence appropriate. — Because conspiracy to manufacture methamphetamine was a crime penalized by a special law, the general provisions of the penal code did not apply; thus, under both O.C.G.A. §§ 16-13-30 and 16-13-33, which were mutually exclusive, defendant was properly sentenced to 30 years, which was the maximum sentence allowed. McWhorter v. State, 275 Ga. App. 624, 621 S.E.2d 571, 2005 Ga. App. LEXIS 1056 (2005).

Merger of sentences by operation of law. — Convictions for possession of methamphetamine and criminal attempt to manufacture methamphetamine merged as a matter of fact since the state used the same conduct to establish commission of both crimes, namely the same methamphetamine oil found in a toilet; therefore, though it was permissible to prosecute defendant for each crime, defendant could not be convicted for both offenses and the possession conviction and sentence were vacated by operation of law on appeal.

Womble v. State, 290 Ga. App. 768, 660 S.E.2d 848, 2008 Ga. App. LEXIS 412 (2008).

Merger of convictions. — Defendant's conviction for manufacturing marijuana in violation of O.C.G.A. § 16-13-30(j)(1) should have been merged into the defendant's conviction for trafficking in marijuana in violation of O.C.G.A. § 16-13-31(c) because the same evidence was used to prove both crimes, and the manufacturing count did not require proof of any fact which the trafficking count did not require. Preval v. State, 302 Ga. App. 785, 692 S.E.2d 51, 2010 Ga. App. LEXIS 226 (2010).

Denial of merger. — Because the defendant's convictions for attempt to sell oxycodone and possession with intent to distribute each required proof of a fact which the other did not, the trial court did not err in not merging the offenses and in sentencing the defendant on both. Crankshaw v. State, 336 Ga. App. 700, 786 S.E.2d 245, 2016 Ga. App. LEXIS 130 (2016).

Trial court did not err in failing to merge the defendant's convictions for possession of drug-related objects and possession of methamphetamine, each of which required proof that the other did not. Lee v. State, 347 Ga. App. 508, 820 S.E.2d 147, 2018 Ga. App. LEXIS 559 (2018).

Waiver of notice required for life term. — Error by the trial court in imposing a life sentence when the defendant was not given formal notice prior to trial of the state's intent to demand recidivist punishment was waived by the defendant's failure to object at the time the state introduced the defendant's prior drug conviction into evidence during the presentencing phase of the trial. Tillman v. State, 217 Ga. App. 269, 457 S.E.2d 228, 1995 Ga. App. LEXIS 387 (1995), cert. denied, No. S95C1204, 1995 Ga. LEXIS 909 (Ga. July 14, 1995).

Term of 30-years imprisonment for sale of cocaine was not an abuse of discretion because, even though O.C.G.A. § 17-10-7(a) was not applicable, such term was within the statutory limits. Covington v. State, 231 Ga. App. 851, 501 S.E.2d 37, 1998 Ga. App. LEXIS 538 (1998).

Banishment. — It was proper for the trial court to banish the defendant from all areas of Georgia north of Interstate 20 after the defendant pled guilty to possession of cocaine. The sentence allowed the defendant to receive rehabilitative services while at the same time removing the defendant from an area where the defendant committed the defendant's prior crimes and presumably had access to illegal drugs. Shook v. State, 300 Ga. App. 59, 684 S.E.2d 129, 2009 Ga. App. LEXIS 1083 (2009).

Rule of lenity inapplicable. — Trial court did not err in failing to apply the rule of lenity because both of the defendant's offenses, trafficking in methamphetamine and misdemeanor possession of marijuana, O.C.G.A. §§ 16-13-30(e) and 16-13-31(b), were classified as felonies, and thus, the rule of lenity did not apply. Fyfe v. State, 305 Ga. App. 322, 699 S.E.2d 546, 2010 Ga. App. LEXIS 628 (2010), cert. denied, No. S10C1942, 2011 Ga. LEXIS 229 (Ga. Feb. 28, 2011), overruled in part, McNair v. State, 293 Ga. 282, 745 S.E.2d 646, 2013 Ga. LEXIS 594 (2013), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Because there was no uncertainty that O.C.G.A. § 16-13-30(c)(1) applied to the defendant's sentencing, the rule of lenity was not applicable. Cooper v. State, 352 Ga. App. 783, 835 S.E.2d 724, 2019 Ga. App. LEXIS 628 (2019).

Remand for resentencing required. — Because it was unclear which schedule, which Code section, and which sentencing range would apply to the substances the defendant pled guilty to selling, the defendant's sentences had to be vacated and the case remanded to the trial court for a hearing to determine on which schedule the controlled substances at issue belonged, and to impose a lawful and appropriate sentence. Williams v. State, 320 Ga. App. 243, 739 S.E.2d 727, 2013 Ga. App. LEXIS 159 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Access to database. — Registered nurses and licensed practical nurses cannot access the GAPDMP database as dispensers or as practitioners authorized to dispense under the Georgia Prescription Drug Monitoring Program, but nurses may be able to access the GAPDMP database as delegates of physicians who do have the authority to prescribe or dispense. 2016 Op. Att'y Gen. No. 16-7.

Reporting of convictions. — Convictions for violations of O.C.G.A. §§ 40-6-391(2), (4), (6), and 40-5-151 should be reported by the superior court clerk to Department of Driver Services (DDS) and violations of O.C.G.A. §§ 16-13-30(b), 16-13-31, and 16-13-31.1 should be reported to DDS only upon the clerk's determination that the conviction meets the mandate of O.C.G.A. § 40-5-54(a)(2). 2017 Op. Att'y Gen. No. 17-4.

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 19 et seq., 40, 141 et seq., 180, 197 et seq.

C.J.S.

28 C.J.S., Drugs and Narcotics, §§ 210 et seq., 263 et seq., 342 et seq.

U.L.A.

Uniform Controlled Substances Act (U.L.A.) § 401.

ALR.

What constitutes "possession" of a narcotic drug proscribed by § 2 of the Uniform Narcotic Drug Act, 91 A.L.R.2d 810.

Construction and effect of "sale" or "sell" in Uniform Narcotic Drug Act, 93 A.L.R.2d 1008.

Admissibility, in prosecution for illegal sale of narcotics, of evidence of other sales, 93 A.L.R.2d 1097.

Homicide: criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another, 32 A.L.R.3d 589.

Offense of aiding and abetting illegal possession of drugs or narcotics, 47 A.L.R.3d 1239.

Marijuana, psilocybin, peyote, or similar drugs of vegetable origin as narcotics for purposes of drug prosecution, 50 A.L.R.3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution, 50 A.L.R.3d 1284.

Permitting unlawful use of narcotics in private home as criminal offense, 54 A.L.R.3d 1297.

Conviction of possession of illicit drugs found in automobile of which defendant was not sole occupant, 57 A.L.R.3d 1319.

Validity and construction of statute creating presumption or inference of intent to sell from possession of specified quantity of illegal drugs, 60 A.L.R.3d 1128.

Modern status of the law concerning entrapment to commit narcotics offense — state cases, 62 A.L.R.3d 110.

Sufficiency of prosecution proof that substance defendant is charged with possessing, selling, or otherwise unlawfully dealing in, is marijuana, 75 A.L.R.3d 717.

What constitutes such discriminatory prosecution or enforcement of laws as to provide valid defense in state criminal proceedings, 95 A.L.R.3d 280.

Constitutionality of state legislation imposing criminal penalties for personal possession or use of marijuana, 96 A.L.R.3d 225.

Narcotics conviction as crime of moral turpitude justifying disbarment or other disciplinary action against attorney, 99 A.L.R.3d 288.

Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 A.L.R.3d 854.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute — state cases, 83 A.L.R.4th 629.

Minimum quantity of drug required to support claim that defendant is guilty of criminal "possession" of drug under state law, 4 A.L.R.5th 1.

State law criminal liability of licensed physician for prescribing or dispensing drug or similar controlled substance, 13 A.L.R.5th 1.

Criminality of act of directing to, or recommending, source from which illicit drugs may be purchased, 34 A.L.R.5th 125.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Marijuana cases, 1 A.L.R.6th 549.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Cocaine cases, 2 A.L.R.6th 551.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — factors other than proximity, explanation, amount, packaging, and odor, 101 ALR 6th 1.

Investigatory Stops or Searches Based on Odor of Marijuana Where Marijuana Decriminalized or Legalized, 92 A.L.R.7th 1.

Drug abuse: what constitutes illegal constructive possession under 21 USCS § 841(a)(1), prohibiting possession of a controlled substance with intent to manufacture, distribute, or dispense the same, 87 A.L.R. Fed. 309.

Admissibility of expert evidence concerning meaning of narcotics code language in federal prosecution for narcotics dealing — modern cases, 104 A.L.R. Fed. 230.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — marijuana offenses under 8 U.S.C.A. § 1101(a)(43)(B), 76 ALR Fed. 2d 1.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — cocaine and crack cocaine offenses under 8 U.S.C.A. § 1101(a)(43)(B), 76 ALR Fed. 2d 61.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — heroin offenses under 8 U.S.C.A. § 1101(a)(43)(B), 78 ALR Fed. 2d 133.

What constitutes "aggravated felony" for which aliens can be deported or removed under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — illicit methamphetamine offenses under 8 U.S.C.A. § 1101(a)(43)(B), 78 ALR Fed. 2d 151.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — Miscellaneous or unspecified narcotics offenses under 8 U.S.C.A. § 1101(a)(43)(B), 79 ALR Fed. 2d 335.

Voluntary Consent to Warrantless Police Search by Nonverbal Gesture or Action, 80 A.L.R. Fed. 3d 5.

16-13-30.1. Manufacture, delivery, distribution, possession, or sale of noncontrolled substances; civil forfeiture.

(a)(1) It is unlawful for any person knowingly to manufacture, deliver, distribute, dispense, possess with the intent to distribute, or sell a noncontrolled substance upon either:

(A) The express or implied representation that the substance is a narcotic or nonnarcotic controlled substance;

(B) The express or implied representation that the substance is of such nature or appearance that the recipient of said delivery will be able to distribute said substance as a controlled substance; or

(C) The express or implied representation that the substance has essentially the same pharmacological action or effect as a controlled substance.

(2) The definitions of the terms "deliver," "delivery," "distribute," "dispense," and "manufacture" provided in Code Section 16-13-21 shall not be applicable to this Code section; but such terms as used in this Code section shall have the meanings ascribed to them in the ordinary course of business.

(b) An implied representation may be shown by proof of any two of the following:

(1) The manufacture, delivery, distribution, dispensing, or sale included an exchange or a demand for money or other valuable property as consideration for delivery of the substance and the amount of such consideration was substantially in excess of the reasonable value of the noncontrolled substance;

(2) The physical appearance of the finished product containing the substance is substantially identical to a specific controlled substance;

(3) The finished product bears an imprint, identifying mark, number, or device which is substantially identical to the trademark, identifying mark, imprint, number, or device of a manufacturer licensed by the Food and Drug Administration of the United States Department of Health and Human Services.

(c) In any prosecution for unlawful manufacture, delivery, distribution, possession with intent to distribute, dispensing, or sale of a noncontrolled substance, it is no defense that the accused believed the noncontrolled substance to be actually a controlled substance.

(d) The provisions of this Code section shall not prohibit a duly licensed business establishment, acting in the usual course of business, from selling or for a practitioner, acting in the usual course of his professional practice, from dispensing a drug preparation manufactured by a manufacturer licensed by the Food and Drug Administration of the United States Department of Health and Human Services for over-the-counter sale which does not bear a label stating "Federal law prohibits dispensing without a prescription" or similar language meaning that the drug preparation requires a prescription.

(e) The unlawful manufacture, delivery, distribution, dispensing, possession with the intention to distribute, or sale of a noncontrolled substance in violation of this Code section is a felony and, upon conviction thereof, such person shall be punished by imprisonment for not less than one year nor more than ten years or by a fine not to exceed $25,000.00, or both.

(f)(1) As used in this subsection, the terms "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, and any noncontrolled substance which is manufactured, distributed, dispensed, possessed with the intent to distribute, or sold in violation of this Code section are declared to be contraband and no person shall have a property right in them.

(3) Any property or noncontrolled substance 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.

History.

Code 1981, § 16-13-30.1, enacted by Ga. L. 1982, p. 2370, § 3; Ga. L. 1991, p. 886, § 2; Ga. L. 2015, p. 693, § 2-16/HB 233.

Editor's notes.

Ga. L. 1991, p. 886, § 4, not codified by the General Assembly, provides: "(a) The repeal, or repeal and reenactment, of the provisions of Code Section 16-13-49 by this Act shall not abate any cause of action which arose at any previous time under the provisions of said Code section prior to the effective date of this Act. Furthermore, no action for forfeiture shall be abated as a result of the provisions of this Act, and any and every such action or cause of action shall continue, subject only to the applicable statute of limitations.

"(b) No property shall be subject to forfeiture pursuant to this Act where the act or omission which makes such property subject to forfeiture occurred prior to the effective date of this Act unless such property was subject to forfeiture under the laws of this state at the time such act or omission occurred."

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For survey article on criminal law and procedure for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 117 (2003).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

JUDICIAL DECISIONS

Penalty provision held constitutional. — O.C.G.A. § 16-13-30.1, which subjects a defendant to a greater penalty for the sale of a non-controlled substance than for the sale of some controlled substances, does not violate due process. Thompson v. State, 254 Ga. 393, 330 S.E.2d 348, 1985 Ga. LEXIS 731 (1985).

Applicability. — Defendant was erroneously convicted of felony selling a non-controlled substance under O.C.G.A. § 16-13-30.1(a)(1)(A) where the subject conduct also violated O.C.G.A. § 16-13-30.2, which makes it a misdemeanor to possess or distribute an "imitation controlled substance"; the state improperly prosecuted defendant for violating the statute with the greater penalty rather than the one with the lesser penalty. Brown v. State, 276 Ga. 606, 581 S.E.2d 35, 2003 Ga. LEXIS 481 (2003).

O.C.G.A. § 16-13-30.2 is not a lesser included offense. — O.C.G.A. § 16-13-30.2 cannot be considered a lesser included crime of O.C.G.A. § 16-13-30.1 under the required evidence test because the plain language of § 16-13-30.2 requires proof of a fact not required for a

conviction under § 16-13-30.1. State v. Burgess, 263 Ga. 143, 429 S.E.2d 252, 1993 Ga. LEXIS 394 (1993).

Not included offense of sale of controlled substance. — Offense of unlawfully selling a noncontrolled substance while representing the substance to be a controlled substance (O.C.G.A. § 16-13-30.1) is not included in the offense of conspiracy to sell or distribute cocaine (O.C.G.A. § 16-13-30). Smith v. State, 202 Ga. App. 664, 415 S.E.2d 481, 1992 Ga. App. LEXIS 149 (1992).

Jurors may use experience to determine whether drug was represented. — Jury properly concluded, based on their common sense and the ordinary test of human experiences, that $20 is "substantially in excess of" the "reasonable value" of an ordinary pebble such as one might pick up off the ground and that the appearance of the noncontrolled substance was so "substantially identical" to that of rock cocaine that an undercover agent whose assignment was to purchase actual cocaine bought it. Billups v. State, 206 Ga. App. 91, 424 S.E.2d 355, 1992 Ga. App. LEXIS 1427 (1992).

Conviction was relevant under U.S. Sentencing Guidelines. — *Unpublished decision:* When a defendant appealed a 72-month sentence for violating 18 U.S.C. § 922(g)(1), which was enhanced pursuant to U.S. Sentencing Guidelines Manual § 2K2.1(a)(2), the defendant's argument was foreclosed that the defendant's non-controlled substance conviction under O.C.G.A. § 16-13-30.1(a)(1) was not a controlled substance offense under U.S. Sentencing Guidelines Manual § 4B1.2(b). United States v. James, 712 Fed. Appx. 838, 2017 U.S. App. LEXIS 20259 (11th Cir. 2017).

Rule of lenity did not apply to a defendant's conviction of felony possession with intent to distribute a noncontrolled substance, O.C.G.A. § 16-13-30.1, because the evidence did not show that the substance at issue was an "imitation controlled substance" for purposes of misdemeanor unlawful manufacture, distribution, or possession with intent to distribute of imitation controlled substances, O.C.G.A. § 16-13-30.2; although the noncontrolled substance at issue was in common packaging for narcotics, the evidence did not show that it appeared as a "dosage unit" based on color, shape, size, or markings or was specifically designed or manufactured to resemble a controlled substance. Therefore, the evidence failed to establish that the defendant's conduct fell within § 16-13-30.2(a). Diaz v. State, 296 Ga. App. 589, 676 S.E.2d 252, 2009 Ga. App. LEXIS 279 (2009).

Rule of lenity did not apply to conviction for imitation controlled substances. — Trial court did not err by refusing to apply the rule of lenity with regard to a defendant's conviction for selling a counterfeit substance because the evidence revealed that the substance would not fall under either definition of "imitation controlled substance" set forth in O.C.G.A. § 16-13-21(12.1)(A) as the parties stipulated only that the substance recovered was not a controlled substance and there was no evidence presented that it was specifically designed or manufactured to resemble the physical appearance of a controlled substance. As a result, the rule of lenity did not apply, and the trial court properly sentenced the defendant for a felony. Chandler v. State, 294 Ga. App. 27, 668 S.E.2d 510, 2008 Ga. App. LEXIS 1099 (2008).

Evidence sufficient to support conviction. — Evidence was sufficient to support a defendant's convictions under O.C.G.A. § 16-13-30.1 for possessing with intent to distribute a substance represented to be cocaine and possessing with intent to distribute a substance represented to be methamphetamine because, although the defendant argued that the defendant was merely a backseat passenger in a vehicle involved in the underlying transaction who was not shown to be in either actual or constructive possession of the substance at issue, evidence established that the defendant negotiated to sell to an agent a substance expressly represented to be cocaine and a substance expressly represented to be methamphetamine; this material was in the car with the defendant, who handed the material to a

third person who was to deliver the substance to the agent, and, the claim that the defendant acted innocently was refuted by the third person's testimony that the third person and the defendant knew what was going on and that the third person called the defendant to ask about drugs in connection with this transaction. Any rational trier of fact could have concluded beyond a reasonable doubt that the defendant was a party to the crimes. Diaz v. State, 296 Ga. App. 589, 676 S.E.2d 252, 2009 Ga. App. LEXIS 279 (2009).

RESEARCH REFERENCES

ALR.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute — state cases, 83 A.L.R.4th 629.

16-13-30.2. Manufacture, distribution, or possession with intent to distribute of imitation controlled substances; civil forfeiture.

(a) Any person who knowingly manufactures, distributes, or possesses with intent to distribute an imitation controlled substance as defined in paragraph (12.1) of Code Section 16-13-21 is guilty of a misdemeanor of a high and aggravated nature.

(b) The provisions of this Code section are cumulative and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party.

(c) No civil or criminal liability shall be imposed by virtue of this Code section on any person registered under this article who manufactures, distributes, or possesses an imitation controlled substance for use by a practitioner, as defined in paragraph (23) of Code Section 16-13-21, in the course of lawful professional practice or research.

(d) All materials which are manufactured, distributed, or possessed in violation of this Code section and any proceeds are declared to be contraband and no person shall have a property right in them and shall be forfeited according to the procedure set forth in Chapter 16 of Title 9. As used in this subsection, the term "proceeds" shall have the same meaning as set forth in Code Section 9-16-2.

History.

Code 1981, § 16-13-30.2, enacted by Ga. L. 1988, p. 1065, § 2; Ga. L. 2015, p. 693, § 2-17/HB 233.

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For note, "Can't Do the Time, Don't Do the Crime?: Dixon v. State, Statutory Construction, and the Harsh Realities of Mandatory Minimum Sentencing in Georgia," see 22 Georgia St. U.L. Rev. 519 (2005).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

JUDICIAL DECISIONS

Applicability. — Defendant was erroneously convicted of felony selling a non-controlled substance under O.C.G.A. § 16-13-30.1(a)(1)(A) where the subject conduct also violated O.C.G.A. § 16-13-30.2, which makes it a misdemeanor to possess or distribute an "imitation controlled substance"; the state improperly prosecuted defendant for violating the statute with the greater penalty rather than the one with the lesser penalty. Brown v. State, 276 Ga. 606, 581 S.E.2d 35, 2003 Ga. LEXIS 481 (2003).

O.C.G.A. § 16-13-30.2 not lesser included offense of Code Section 16-13-30.1. — O.C.G.A. § 16-13-30.2 cannot be considered a lesser included crime of O.C.G.A. § 16-30-30.1 under the required evidence test because the plain language of § 16-13-30.2 requires proof of a fact not required for a conviction under § 16-13-30.1. State v. Burgess, 263 Ga. 143, 429 S.E.2d 252, 1993 Ga. LEXIS 394 (1993).

Conduct of selling is subsumed in the expressly prohibited activity of distributing and therefore constitutes a violation of O.C.G.A. § 16-13-30.2. Dorsey v. State, 212 Ga. App. 479, 441 S.E.2d 891, 1994 Ga. App. LEXIS 275 (1994).

Undercover deputies' possession of wax pieces of fake cocaine to identify and arrest drug buyers did not violate prohibition against possessing imitation controlled substance with intent to distribute. Guzman v. State, 206 Ga. App. 170, 424 S.E.2d 849, 1992 Ga. App. LEXIS 1565 (1992).

Evidence insufficient for conviction. — When a federal chemist testified that, although the chemist thought the green leafy material was marijuana, the chemist did not test the substance, so the chemist could not testify beyond a reasonable doubt that the substance was marijuana, and since no scientifically conclusive evidence was presented at all, a conviction for possession of marijuana with intent to distribute could not stand. Adkinson v. State, 236 Ga. App. 270, 511 S.E.2d 527, 1999 Ga. App. LEXIS 138 (1999).

Rule of lenity did not apply. — Rule of lenity did not apply to a defendant's conviction of felony possession with intent to distribute a noncontrolled substance, O.C.G.A. § 16-13-30.1, because the evidence did not show that the substance at issue was an "imitation controlled substance" for purposes of misdemeanor unlawful manufacture, distribution, or possession with intent to distribute an imitation of controlled substances, O.C.G.A. § 16-13-30.2; although the noncontrolled substance at issue was in common packaging for narcotics, the evidence did not show that the substance appeared as a "dosage unit" based on color, shape, size, or markings or was specifically designed or manufactured to resemble a controlled substance. Therefore, the evidence failed to establish that the defendant's conduct fell within § 16-13-30.2(a). Diaz v. State, 296 Ga. App. 589, 676 S.E.2d 252, 2009 Ga. App. LEXIS 279 (2009).

Rule of lenity did not apply to conviction for imitation controlled substances. — Trial court did not err by refusing to apply the rule of lenity with regard to a defendant's conviction for selling a counterfeit substance because the evidence revealed that the substance would not fall under either definition of "imitation controlled substance" set forth in O.C.G.A. § 16-13-21(12.1)(A) as the parties stipulated only that the substance recovered was not a controlled substance and there was no evidence presented that the substance was specifically designed or manufactured to resemble the physical appearance of a controlled substance. As a result, the rule of lenity did not apply, and the trial court properly sentenced the defendant for a felony. Chandler v. State, 294 Ga. App. 27, 668 S.E.2d 510, 2008 Ga. App. LEXIS 1099 (2008).

RESEARCH REFERENCES

ALR.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute — state cases, 83 A.L.R.4th 629.

Validity, construction, and effect of state statute regulating sale of counterfeit or imitation controlled substances, 84 A.L.R.4th 936.

16-13-30.3. Possession of substances containing ephedrine or pseudoephedrine; restrictions on sales of products containing those ingredients.

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

(1) "Ephedrine" or "pseudoephedrine" means any drug product containing ephedrine or pseudoephedrine or any of their salts, isomers, or salts of isomers, alone or in a mixture.

(2) "Georgia Meth Watch" means the program entitled Georgia Meth Watch or a similar program which has been promulgated, approved, and distributed by the Georgia Council on Substance Abuse.

(3) "Pharmacy" shall have the same meaning as provided in Code Section 26-4-5.

(4) "Real-time electronic logging system" means an electronic system approved by the Georgia Bureau of Investigation which is operated in real time and which can track required information and generate a stop sale alert to notify a pharmacy that a purchase of ephedrine or pseudoephedrine which exceeds the quantity limits set forth in this Code section is being attempted. Such system shall:

(A) Contain an override function that will not only allow a pharmacy to complete a sale in violation of this Code section when the person making the sale is in reasonable fear of imminent bodily harm if he or she does not complete the sale but also will track any override sales made;

(B) Be accessible to the state, pharmacies, and law enforcement agencies, without a charge or fee, including a transaction fee; and

(C) Have real-time interstate communicability with similar systems in other states.

(5) "Required information" means the full name and address of the purchaser; the type of government issued photographic identification presented, including the issuer and identification number; a description of the nonprescription product purchased which contains

ephedrine or pseudoephedrine, including the number of grams of pseudoephedrine in the product; and the date and time of the purchase.

(b)(1) It shall be unlawful for any person, other than a person or entity described in paragraph (22), (28), (29), (30), (33), or (41) of Code Section 26-4-5, to possess any product that contains ephedrine or pseudoephedrine in an amount which exceeds 300 pills, tablets, gelcaps, capsules, or other individual units or more than 9 grams of ephedrine or pseudoephedrine or a combination of these substances, whichever is smaller.

(2) It shall be unlawful for any person to possess any product containing ephedrine or pseudoephedrine with the intent to manufacture amphetamine or methamphetamine.

(3) Any person who violates the provisions of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(c)(1) Products whose sole active ingredient is pseudoephedrine may be offered for retail sale only if sold in blister packaging. Nonprescription products whose sole active ingredient is ephedrine or pseudoephedrine shall only be sold in a pharmacy in a manner which complies with State Board of Pharmacy rules established pursuant to Code Section 16-13-29.2.

(2) No person shall distribute or purchase any nonprescription product containing more than 3.6 grams of ephedrine or pseudoephedrine per day in dosage form or more than 9 grams of ephedrine or pseudoephedrine per 30 day period in dosage form of any product. The limits set forth in this paragraph shall apply to the total amount of ephedrine or pseudoephedrine contained in the product and not the overall weight of such product.

(3) The pharmacy shall maintain a record of required information for each sale of a nonprescription product which contains ephedrine or pseudoephedrine for a period of two years from the date of each transaction. Except as to law enforcement agencies in this state which shall be provided immediate access by a pharmacy to all written and electronic logs or records upon request, the records maintained by a pharmacy pursuant to this Code section shall not be disclosed. Pharmacies may destroy the required information collected pursuant to this subsection after two years from the date of the transaction.

(4)(A) On and after January 1, 2017, pharmacies shall, before completing a sale of a nonprescription product which contains ephedrine or pseudoephedrine, electronically track all such sales

and submit the required information to a real-time electronic logging system. A pharmacy shall not complete the sale of a nonprescription product which contains ephedrine or pseudoephedrine if the real-time electronic logging system generates a stop sale alert except as provided in subparagraph (a)(4)(A) of this Code section.

(B) If a pharmacy selling a nonprescription product which contains ephedrine or pseudoephedrine experiences mechanical or electronic failure of the real-time electronic logging system and is unable to comply with the requirements of this paragraph, the pharmacy shall maintain a written log or an alternative electronic recording mechanism until such time as the pharmacy is able to comply with the electronic logging requirement.

(C) Absent negligence, wantonness, recklessness, or deliberate misconduct, any pharmacy utilizing the real-time electronic logging system in accordance with this paragraph shall not be civilly liable as a result of any act or omission in carrying out the duties required by this paragraph and shall be immune from liability to any third party unless the pharmacy has violated any provision of this paragraph in relation to a claim brought for such violation.

(D) The Georgia Bureau of Investigation shall provide real-time access to records on such logging system through an online portal to law enforcement agencies in this state.

(5) It shall be unlawful for a pharmacy to purchase any product containing ephedrine or pseudoephedrine from any person or entity other than a manufacturer or a wholesale distributor licensed by the State Board of Pharmacy.

(6) This subsection shall preempt all local ordinances or regulations governing the retail sale of products containing ephedrine or pseudoephedrine except such local ordinances or regulations that existed on or before December 31, 2004. Effective January 1, 2006, this subsection shall preempt all local ordinances.

(7)(A) Any person convicted of a violation of paragraph (1), (2), (3), or (4) of this subsection shall be guilty of a misdemeanor which, upon the first conviction, shall be punished by a fine of not more than $500.00 and, upon the second or subsequent conviction, shall be punished by not more than six months' imprisonment or a fine of not more than $1,000.00, or both.

(B) Any person convicted of a violation of paragraph (5) of this subsection shall, upon the first conviction, be guilty of a misdemeanor and, upon the second or subsequent conviction, be guilty of a misdemeanor of a high and aggravated nature.

(C) It shall be a defense to a prosecution pursuant to this paragraph by law enforcement of a pharmacy for violation of paragraph (1), (2), (3), (4), or (5) of this subsection that, at the time of the alleged violation, all of the employees of the pharmacy had completed training complying with standards established under Georgia Meth Watch as such standards existed on June 30, 2016, and the pharmacy was in compliance with procedures established by Georgia Meth Watch as such standards existed on June 30, 2016; provided, however, that this subparagraph shall not apply to the State Board of Pharmacy or prevent it from taking disciplinary action for a violation of this subsection.

(d) This Code section shall not apply to products that the State Board of Pharmacy, upon application of a manufacturer, exempts by rule from this Code section because the product has been formulated in such a way as to prevent effectively the conversion of the active ingredient into methamphetamine or its salts or precursors.

(e) Except as authorized by this article, it is unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute any product containing any amounts of ephedrine or pseudoephedrine which have been altered from their original condition so as to be powdered, liquefied, or crushed. This subsection shall not apply to any of the substances identified within this subsection which are possessed or altered for a legitimate medical purpose. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

History.

Code 1981, § 16-13-30.3, enacted by Ga. L. 2003, p. 177, § 3; Ga. L. 2005, p. 194, § 1/HB 216; Ga. L. 2006, p. 72, § 16/SB 465; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2016, p. 273, § 1/HB 362; Ga. L. 2024, p. 1052, § 3(10)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "shall have the same meaning as provided" for "has the same meaning as" in paragraph (a)(3).

Administrative rules and regulations.

Listed Chemical Wholesale Distributor, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Pharmacy, Rule 480-7A-.01 et seq.

Law reviews.

For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 97 (2016).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 16-13-30.3(b)(1) was constitutional as it created classifications between those possessing 300 or less individual units of the substances listed, and those possessing more than 300 units; the classifications had a rational basis in combating the illicit drug trade as the

Georgia legislature determined that possession of 300 or less individual units served a legitimate health concern, while possession of more than 300 individual units did not. Rochefort v. State, 279 Ga. 738, 620 S.E.2d 803, 2005 Ga. LEXIS 665 (2005).

O.C.G.A. § 16-13-30.3(b)(1) was not unconstitutionally vague as "ephedrine," "pseudoephedrine," and "phenylpro-panolamine" were so similar to one another that each was considered a functional equivalent of the others. Rochefort v. State, 279 Ga. 738, 620 S.E.2d 803, 2005 Ga. LEXIS 665 (2005).

Evidence sufficient for conviction. — Evidence supported defendant's conviction for possession of more than 300 tablets of ephedrine as: (1) the equal access rule did not apply as defendant made inculpatory admissions that authorized a finding that defendant possessed the substances; (2) the random testing of two of the 2,329 tablets supported the conviction as an expert examined the remainder of the tablets, stated that they had the same logo and appearance, and opined that all of the tablets contained pseudoephedrine; and (3) there was not a fatal variance, even though the accusation charged defendant with possession of more than 300 tablets of ephedrine, but the proof showed that the tablets contained pseudoephedrine, as for purposes of O.C.G.A. § 16-13-30.3, "ephedrine" and "pseudoephedrine" were synonymous. Rochefort v. State, 279 Ga. 738, 620 S.E.2d 803, 2005 Ga. LEXIS 665 (2005).

Convictions of manufacture, distribution, and possession of methamphetamine with the intent to distribute under O.C.G.A. § 16-13-30(b), possession of ephedrine/pseudoephedrine under O.C.G.A. § 16-13-30.3(b)(1), and possession of a firearm during the commission of a felony under O.C.G.A. § 16-11-106(b)(4) were supported by the evidence. A panel van belonging to the defendant had been modified as a methamphetamine lab, was located on the defendant's property, and was powered by an electrical cord running from the defendant's trailer; everything necessary to support the production of methamphetamine was present in the vicinity of the vehicle; the defendant's name and that of the defendant's spouse had been scrawled on an interior panel of the vehicle; the defendant offered to provide any methamphetamine that a house guest wanted; uncured methamphetamine and enough ephedrine was present at the scene to make 30 to 33 grams of methamphetamine; and the defendant admitted to giving methamphetamine to others and to owning the sawed-off shotgun recovered from the panel van. Boone v. State, 293 Ga. App. 654, 667 S.E.2d 880, 2008 Ga. App. LEXIS 1041 (2008).

Lesser included offense to trafficking. — Crimes set forth in O.C.G.A. §§ 16-13-30.3(b)(2) and 16-13-32.2, with regard to possessing objects or materials of any kind for the purpose of manufacturing or preparing a controlled substance, are lesser included offenses of the crime of trafficking by manufacture of methamphetamine under O.C.G.A. § 16-13-31(f). Franks v. State, 325 Ga. App. 488, 758 S.E.2d 604, 2013 Ga. App. LEXIS 533 (2013).

Because the possession of pseudoephedrine and possession of a drug-related object required proof of elements not required for the crime of trafficking, those crimes were not lesser included offenses of the crime of trafficking in methamphetamine as indicted, and the trial court did not err in denying the second defendant's requested charges on lesser included offenses. Long v. State, 325 Ga. App. 488, 758 S.E.2d 604, 2013 Ga. App. LEXIS 1008 (2013).

Failure to instruct jury on lesser included offenses reversible error. — Defendant's conviction for attempted trafficking by manufacturing methamphetamine was reversed because the evidence was not overwhelming as to the charge of trafficking, thus, it could not be said that it was harmless error for the trial court to refuse to instruct the jury on the lesser included offenses requested by the defendant. Franks v. State, 325 Ga. App. 488, 758 S.E.2d 604, 2013 Ga. App. LEXIS 533 (2013).

Possession and manufacturing did not merge. — Trial court did not err

when the court failed to merge the count for possession of altered ephedrine-pseudoephedrine into that for manufacture of methamphetamine because different conduct by the defendant resulted in the commission of both offenses. Mitchell v. State, 366 Ga. App. 854, 884 S.E.2d 535, 2023 Ga. App. LEXIS 92 (2023).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — O.C.G.A. § 16-13-30.3 is an offense for which those charged with a violation are to be fingerprinted. 2006 Op. Att'y Gen. No. 2006-2.

16-13-30.4. Products containing pseudoephedrine.

(a) As used in this Code section and unless otherwise specified, the term "board" or "board of pharmacy" shall mean the State Board of Pharmacy.

(b)(1) A wholesale distributor who sells, transfers, purchases for resale, or otherwise furnishes any product containing pseudoephedrine must first obtain a license from the board of pharmacy; provided, however, that a wholesale distributor that has a valid license as a wholesale distributor under Code Section 26-4-113 shall not be required to obtain an additional license under this Code section.

(2) Wholesale distributors licensed under Code Section 26-4-113 shall be subject to the provisions of this Code section in the same manner as wholesale distributors licensed under this Code section.

(3) Every wholesale distributor licensed as provided in this Code section shall:

(A) Submit reports, upon verbal or written request from the Georgia Drugs and Narcotics Agency, the Georgia Bureau of Investigation, or the sheriff of a county or the police chief of a municipality located in this state, to account for all transactions with persons or firms located within this state; such reportable transactions shall include all sales, distribution, or transactions dealing with products containing pseudoephedrine; and

(B) Within seven days, notify the Georgia Drugs and Narcotics Agency of any purchases of products containing pseudoephedrine from the wholesale distributor which the wholesaler judges to be excessive.

(4) Whenever any firm or person located in this state receives, purchases, or otherwise gains access to products containing pseudoephedrine from any wholesale distributor, whether located in or outside this state, such firm or person shall maintain a copy of such wholesale distributor's license issued by the State Board of Pharmacy. Such firm or person shall maintain copies of all invoices,

receipts, and other records regarding such products containing pseudoephedrine for a minimum of three years from the date of receipt, purchase, or access. Failure to maintain records to verify the presence of any and all products containing pseudoephedrine being held by a firm or person shall subject such products containing pseudoephedrine to being embargoed or seized by proper law enforcement authorities until such time as proof can be shown that such products containing pseudoephedrine were obtained from a Georgia licensed wholesale distributor.

(5) Agents of the Georgia Drugs and Narcotics Agency, agents of the Georgia Bureau of Investigation, and the sheriff of a county or the police chief of a county or municipality in this state in which a firm or person that receives, purchases, or otherwise gains access to products containing pseudoephedrine is located may request to review the receiving records for such products. Failure to provide such records within five business days following such request to account for the presence of such products shall result in the embargo or seizure of such products.

(c) A license or permit obtained pursuant to this Code section shall be denied, suspended, or revoked by the board of pharmacy upon finding that the licensee or permit holder has:

(1) Furnished false or fraudulent material information in any application filed under this Code section;

(2) Been convicted of a crime under any state or federal law relating to any controlled substance;

(3) Had his or her federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances;

(4) Violated the provisions of Chapter 4 of Title 26; or

(5) Failed to maintain effective controls against the diversion of products containing pseudoephedrine to unauthorized persons or entities.

(d) The board of pharmacy may adopt reasonable rules and regulations to effectuate the provisions of this Code section. The board is further authorized to charge reasonable fees to defray expenses incurred in issuing any licenses or permits, maintaining any records or forms required by this Code section, and the administration of the provisions of this Code section.

(e) Notwithstanding any other provision of this Code section to the contrary, no person shall be required to obtain a license or permit for the sale, receipt, transfer, or possession of a product containing pseudoephedrine when:

(1) Such lawful distribution takes place in the usual course of business between agents or employees of a single regulated person or entity; or

(2) A product containing pseudoephedrine is delivered to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman.

(f) Any products containing pseudoephedrine that have been or that are intended to be sold, transferred, purchased for resale, possessed, or otherwise transferred in violation of a provision of this Code section and any proceeds are declared to be contraband and no person shall have a property right in them and shall be forfeited according to the procedure set forth in Chapter 16 of Title 9. As used in this subsection, the term "proceeds" shall have the same meaning as set forth in Code Section 9-16-2.

(g)(1) Any person who sells, transfers, receives, or possesses a product containing pseudoephedrine violates this Code section if the person:

(A) Knowingly fails to comply with the reporting requirements of this Code section;

(B) Knowingly makes a false statement in a report or record required by this Code section or the rules adopted thereunder; or

(C) Is required by this Code section to have a license or permit and knowingly or deliberately fails to obtain such a license or permit.

(2) It shall be illegal for a person to possess, sell, transfer, or otherwise furnish a product containing pseudoephedrine if such person possesses, sells, transfers, or furnishes the substance with the knowledge or intent that the substance will be used in the unlawful manufacture of a controlled substance.

(3)(A) A person who violates paragraph (2) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 15 years or by a fine not to exceed $100,000.00, or both.

(B) A person who violates any provision of this Code Section other than paragraph (2) of this subsection shall be guilty of a misdemeanor on the first offense and a misdemeanor of a high and aggravated nature on the second and subsequent offenses.

History.
Code 1981, § 16-13-30.4, enacted by Ga. L. 2005, p. 194, § 2/HB 216; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2015, p. 693, § 2-18/HB 233.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2011, "Georgia" was deleted preceding "State Board of Pharmacy" in subsection (a) and in the first sentence of paragraph (b)(4).
Editor's notes.
Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."
Law reviews.
For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — O.C.G.A. § 16-13-30.4 is an offense for which those charged with a violation are to be fingerprinted. 2006 Op. Att'y Gen. No. 2006-2.

16-13-30.5. Possession of substances with intent to use or convey such substances for the manufacture of Schedule I or Schedule II controlled substances.

(a) It shall be illegal for a person to possess, whether acquired through theft or other means, any substance with the intent to:

(1) Use such substance in the manufacture of a Schedule I or Schedule II controlled substance; or

(2) Knowingly convey such substance to another for use in the manufacture of a Schedule I or Schedule II controlled substance.

(b) In determining whether a particular substance is possessed with the intent required to violate subsection (a) of this Code section, the court or other authority making such a determination may, in addition to all other logically relevant factors, consider the following:

(1) Statements by the owner or anyone in control of the substance concerning its use;

(2) Prior convictions, if any, of the owner or of anyone in control of the substance for violation of any state or federal law relating to the sale or manufacture of controlled substances;

(3) Instructions or descriptive materials of any kind accompanying the substance or found in the owner's or controlling person's possession concerning, explaining, or depicting its use;

(4) The manner in which the substance is displayed or offered for sale;

(5) The quantity and location of the substance considered in

relation to the existence and scope of legitimate uses for the substance in the community; and

(6) Expert testimony concerning the substance's use.

(c) This Code section shall not apply where possession was by a person authorized by law to dispense, prescribe, manufacture, or possess the substance in question.

(d) A person who violates this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 15 years or by a fine not to exceed $100,000.00, or both.

History.
Code 1981, § 16-13-30.5, enacted by Ga. L. 2005, p. 194, § 3/HB 216; Ga. L. 2006, p. 72, § 16/SB 465.

JUDICIAL DECISIONS

Sufficient evidence defendant was party to possession. — Evidence that an informant told an investigator that the defendant was going to a friend's mobile home to cook methamphetamine, that the home was permeated by chemical haze and pungent odor associated with the manufacture of methamphetamine when the investigator arrived, and most of the substances seized were in plain view was sufficient to authorize the jury to find that the defendant was a party to the possession of the substances seized following the search. Thompson v. State, 348 Ga. App. 609, 824 S.E.2d 62, 2019 Ga. App. LEXIS 56 (2019).

Evidence insufficient to support conviction. — Defendant's conviction for use or conveyance of certain substances used in the manufacture of controlled substances was reversed, because all of the items listed in indictment were found in the common areas of the house, and there was no evidence that the defendant possessed them or had a present intent to convey them to the defendant's mother or stepfather. Hutchins v. State, 326 Ga. App. 250, 756 S.E.2d 347, 2014 Ga. App. LEXIS 164 (2014).

16-13-30.6. Prohibition on purchase and sale of marijuana flavored products.

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

(1) "Marijuana flavored product" means any product, including lollipops, gumdrops, or other candy, which is flavored to taste like marijuana or hemp. The term shall include, but is not limited to, "Chronic Candy," "Kronic Kandy," or "Pot Suckers."

(2) "Minor" means any person under the age of 18 years.

(3) "Person" means any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, lim-

ited liability company, joint venture, joint stock association, or other entity or business organization of any kind.

(b) The General Assembly finds and determines that:

(1) According to the "2004 Monitoring the Future Study" conducted by the University of Michigan, 16.3 percent of eighth graders, 35.1 percent of tenth graders, and 45.7 percent of twelfth graders reported using marijuana at least once during their lifetimes;

(2) According to a 2002 Substance Abuse and Mental Health Service Administration report, "Initiation of Marijuana Use: Trends, Patterns and Implications," the younger children are when they first use marijuana, the more likely they are to use cocaine and heroin and become drug dependent as adults;

(3) Marijuana abuse is associated with many negative health effects, including frequent respiratory infections, impaired memory and learning, increased heart rate, anxiety, and panic attacks;

(4) Marijuana users have many of the same respiratory problems that are associated with tobacco use;

(5) According to the "2001 National Household Survey on Drug Abuse," marijuana is the nation's most commonly used illicit drug, and more than 83,000,000 Americans aged 12 and older have tried marijuana at least once;

(6) Use of marijuana has been shown to lower test scores among high school students, and workers who smoke marijuana are more likely to have problems on their jobs;

(7) Federal, state, and local governments spend millions of dollars annually on programs educating people about the hazards of drugs, and the marketing of marijuana flavored substances would have an adverse impact upon these programs;

(8) The sale of marijuana flavored products, including lollipops and gum drops, which claim "every lick is like taking a hit" is a marketing ploy that perpetuates an unhealthy culture and should not be permitted in the State of Georgia;

(9) Marijuana flavored products are a threat to minors in the State of Georgia because such products give the false impression that marijuana is fun and safe;

(10) Marijuana flavored products packaged as candy or lollipops falling into the hands of unsuspecting minors may serve as a gateway to future use of marijuana and other drugs; and

(11) Merchants who sell marijuana flavored products are promoting marijuana use and creating new customers for drug dealers in the State of Georgia.

Therefore, the purpose of this Code section is to prohibit the purchase and sale of marijuana flavored products to minors in the State of Georgia.

(c) It shall be unlawful for any person knowingly to sell, deliver, distribute, or provide to a minor or knowingly possess with intent to sell, deliver, distribute, or provide to a minor any marijuana flavored product in the State of Georgia.

(d) It shall be unlawful for any minor falsely to represent to any person that such minor is 18 years of age or older with the intent to purchase or otherwise obtain any marijuana flavored product.

(e) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor and shall be subject to a fine of $500.00 for each offense. Each sale in violation of this Code section shall constitute a separate offense.

History.
Code 1981, § 16-13-30.6, enacted by Ga. L. 2008, p. 129, § 1/HB 280; Ga. L. 2009, p. 8, § 16/SB 46.

Editor's notes.
Ga. L. 2008, p. 129, § 2/HB 280, not codified by the General Assembly, provides that this Code section shall apply to offenses committed on or after July 1, 2008.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Offenses arising under O.C.G.A. § 16-13-30.6(c) are designated as offenses for which those charged are to be fingerprinted. 2009 Op. Att'y Gen. No. 2009-1.

16-13-30.7. Possession of a pill press, tableting machine, encapsulating machine, or other controlled substance counterfeiting materials.

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

(1) "Controlled substance" has the same meaning as provided in Code Section 16-13-21.

(2) "Controlled substance counterfeiting material" means a punch, die, plate, stone, or other item designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon a drug or container or the labeling thereof so as to render such drug a counterfeit substance.

(3) "Counterfeit substance" has the same meaning as provided in Code Section 16-13-21.

(4) "Encapsulating machine" means manual, semiautomatic, or fully automatic equipment that may be used to fill shells or capsules

with powdered or granular solids or semisolid material to produce coherent solid tablets.

(5) "Pill press" means a mechanical device that compresses powder substances into tablets by running such powder substance through a machine fitted with a die mold that determines the shape and markings on such tablets.

(6) "Regulated person" means a person or entity described in paragraph (22), (28), (29), (30), (33), or (41) of Code Section 26-4-5.

(7) "Tableting machine" means manual, semiautomatic, or fully automatic equipment that may be used to compact or mold powdered or granular solids or semisolid material to produce coherent solid tablets.

(b) It shall be unlawful for any person other than a regulated person to possess, purchase, deliver, sell, or possess with intent to sell or deliver a pill press or tableting machine, an encapsulating machine, or other controlled substance counterfeiting materials knowing, intending, or having reasonable cause to believe that such items or materials will be used to manufacture a controlled substance or counterfeit substance.

(c) Except as provided in subsection (b) of this Code section, a person who violates 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 ten years.

History.
Code 1981, § 16-13-30.7, enacted by Ga. L. 2024, p. 488, § 3/SB 465, effective April 30, 2024.

Effective date.
This Code section became effective April 30, 2024. See Editor's notes for applicability.

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 'Austin's Law.'"

Ga. L. 2024, p. 488, § 4/SB 465, not codified by the General Assembly, makes this Code section applicable to offenses committed on or after April 30, 2024.

16-13-31. Trafficking in cocaine, illegal drugs, marijuana, or methamphetamine; penalties.

(a)(1) Except as authorized by this article, any person who sells, manufactures, delivers, or brings into this state or who is in possession of 28 grams or more of cocaine or of any mixture with a purity of 10 percent or more of cocaine, as described in Schedule II, in violation of this article commits the felony offense of trafficking in cocaine and, upon conviction thereof, shall be punished as follows:

(A) If the quantity of the cocaine or the mixture involved is 28

grams or more, but less than 200 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a fine of $200,000.00;

(B) If the quantity of the cocaine or the mixture involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of $300,000.00; and

(C) If the quantity of the cocaine or the mixture involved is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine of $1 million.

(2) Except as authorized by this article, any person who sells, manufactures, delivers, or brings into this state or who is in possession of any mixture with a purity of less than 10 percent of cocaine, as described in Schedule II, in violation of this article commits the felony offense of trafficking in cocaine if the total weight of the mixture multiplied by the percentage of cocaine contained in the mixture exceeds any of the quantities of cocaine specified in paragraph (1) of this subsection. Upon conviction thereof, such person shall be punished as provided in paragraph (1) of this subsection, depending upon the quantity of cocaine such person is charged with selling, manufacturing, delivering, or bringing into this state or possessing.

(b) Except as authorized by this article, any person who sells, manufactures, delivers, brings into this state, or has possession of four grams or more of any morphine, opium, or substance identified in subparagraph (RR) or (SS) of paragraph (1) or paragraph (13), (14), or (15) of Code Section 16-13-25, or subparagraph (A), (C.5), (F), (U.1), (V), or (V.2) of paragraph (2) of Code Section 16-13-26 or any salt, isomer, or salt of an isomer thereof, including heroin, as described in Schedules I and II, or four grams or more of any mixture containing any such substance in violation of this article commits the felony offense of trafficking in illegal drugs and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of such substances involved is four grams or more, but less than 14 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of five years and shall pay a fine of $50,000.00;

(2) If the quantity of such substances involved is 14 grams or more, but less than 28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a fine of $100,000.00; and

(3) If the quantity of such substances involved is 28 grams or

more, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine of $500,000.00.

(c) Except as authorized by this article, any person who sells, manufactures, grows, delivers, brings into this state, or has possession of a quantity of marijuana exceeding ten pounds commits the offense of trafficking in marijuana and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of marijuana involved is in excess of ten pounds, but less than 2,000 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of five years and shall pay a fine of $100,000.00;

(2) If the quantity of marijuana involved is 2,000 pounds or more, but less than 10,000 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of seven years and shall pay a fine of $250,000.00; and

(3) If the quantity of marijuana involved is 10,000 pounds or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of $1 million.

(d) Except as authorized by this article, any person who sells, manufactures, delivers, or brings into this state 200 grams or more of methaqualone or of any mixture containing methaqualone, as described in paragraph (6) of Code Section 16-13-25, in violation of this article commits the felony offense of trafficking in methaqualone and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of the methaqualone or the mixture involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of five years and shall pay a fine of $50,000.00; and

(2) If the quantity of the methaqualone or the mixture involved is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of $250,000.00.

(e) Except as authorized by this article, any person who sells, delivers, or brings into this state or has possession of 28 grams or more of methamphetamine, amphetamine, or any mixture containing either methamphetamine or amphetamine, as described in Schedule II, in violation of this article commits the felony offense of trafficking in methamphetamine or amphetamine and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 28 grams or more,

but less than 200 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a fine of $200,000.00;

(2) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of $300,000.00; and

(3) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine of $1 million.

(f) Except as authorized by this article, any person who manufactures methamphetamine, amphetamine, or any mixture containing either methamphetamine or amphetamine, as described in Schedule II, in violation of this article commits the felony offense of trafficking methamphetamine or amphetamine and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is less than 200 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a fine of $200,000.00;

(2) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of $300,000.00; and

(3) If the quantity of methamphetamine, amphetamine, or a mixture containing either substance involved is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine of $1 million.

(g)(1) The district attorney may move the sentencing court to impose a reduced or suspended sentence upon any person who is convicted of a violation of this Code section who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, or principals. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may impose a reduced or suspended sentence if he or she finds that the defendant has rendered such substantial assistance.

(2)(A) In the court's discretion, the judge may depart from the mandatory minimum sentence specified for a person who is

convicted of a violation of this Code section as set forth in subparagraph (B) of this paragraph if the judge concludes that:

(i) The defendant was not a leader of the criminal conduct;

(ii) The defendant did not possess or use a firearm, dangerous weapon, or hazardous object during the crime;

(iii) The criminal conduct did not result in a death or serious bodily injury to a person other than to a person who is a party to the crime;

(iv) The defendant has no prior felony conviction; and

(v) The interests of justice will not be served by the imposition of the prescribed mandatory minimum sentence.

(B) The sentencing departure ranges pursuant to subparagraph (A) of this paragraph shall be as follows:

(i) Any person convicted of violating paragraph (1) of subsection (b) or (d) of this Code section, two years and six months to five years imprisonment and a fine of not less than $25,000.00 nor more than $50,000.00;

(ii) Any person convicted of violating paragraph (1) of subsection (c) of this Code section, two years and six months to five years imprisonment and a fine of not less than $50,000.00 nor more than $100,000.00;

(iii) Any person convicted of violating paragraph (2) of subsection (c) of this Code section, three years and six months to seven years imprisonment and a fine of not less than $125,000.00 nor more than $250,000.00;

(iv) Any person convicted of violating subparagraph (a)(1)(A), paragraph (2) of subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(A) of this Code section, or paragraph (1) of subsection (e) or (f) of this Code section, five to ten years imprisonment and a fine of not less than $100,000.00 nor more than $200,000.00;

(v) Any person convicted of violating paragraph (2) of subsection (b) of this Code section, five to ten years imprisonment and a fine of not less than $50,000.00 nor more than $100,000.00;

(vi) Any person convicted of violating subparagraph (a)(1)(B), paragraph (2) of subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(B) of this Code section, or paragraph (2) of subsection (e) or (f) of this Code section, seven years and six months to 15 years imprisonment

and a fine of not less than $150,000.00 nor more than $300,000.00;

(vii) Any person convicted of violating paragraph (3) of subsection (c) of this Code section, seven years and six months to 15 years imprisonment and a fine of not less than $500,000.00 nor more than $1 million;

(viii) Any person convicted of violating paragraph (2) of subsection (d) of this Code section, seven years and six months to 15 years imprisonment and a fine of not less than $125,000.00 nor more than $250,000.00;

(ix) Any person convicted of violating paragraph (3) of subsection (b) of this Code section, 12 years and six months to 25 years imprisonment and a fine of not less than $250,000.00 nor more than $500,000.00; and

(x) Any person convicted of violating subparagraph (a)(1)(C), paragraph (2) of subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(C) of this Code section, or paragraph (3) of subsection (e) or (f) of this Code section, 12 years and six months to 25 years imprisonment and a fine of not less than $500,000.00 nor more than $1 million.

(C) If a judge reduces the mandatory minimum sentence pursuant to this paragraph, the judge shall specify on the record the circumstances for the reduction and the interests served by such departure. Any such order shall be appealable by the State of Georgia pursuant to Code Section 5-7-1.

(D) As used in this paragraph, the term:

(i) "Dangerous weapon" shall have the same meaning as set forth in Code Section 16-11-121.

(ii) "Firearm" shall have the same meaning as set forth in Code Section 16-11-127.1.

(iii) "Hazardous object" shall have the same meaning as set forth in Code Section 20-2-751.

(iv) "Leader" means a person who planned and organized others and acted as a guiding force in order to achieve a common goal.

(3) In the court's discretion, the judge may depart from the mandatory minimum sentence specified in this Code section for a person who is convicted of a violation of this Code section when the prosecuting attorney and the defendant have agreed to a sentence that is below such mandatory minimum.

(h) Any person who violates any provision of this Code section shall be punished as provided for in the applicable mandatory minimum punishment and for not more than 30 years of imprisonment and by a fine not to exceed $1 million.

(i) Notwithstanding Code Section 16-13-2, any sentence imposed pursuant to subsection (g) of this Code section shall not be reduced by any earned time, early release, work release, leave, or other sentence-reducing measures under programs administered by the Department of Corrections, the effect of which would be to reduce the period of incarceration ordered by the sentencing court or any form of pardon, parole, or commutation of sentence by the State Board of Pardons and Paroles; provided, however, that during the final year of incarceration, a defendant so sentenced shall be eligible to be considered for participation in a Department of Corrections administered transitional center or work release program.

History.

Ga. L. 1980, p. 432, § 1; Ga. L. 1982, p. 3, § 16; Ga. L. 1982, p. 2215, § 1; Ga. L. 1983, p. 620, § 1; Ga. L. 1985, p. 149, § 16; Ga. L. 1985, p. 552, § 1; Ga. L. 1986, p. 10, § 16; Ga. L. 1986, p. 397, § 1; Ga. L. 1988, p. 420, § 2; Ga. L. 1989, p. 1594, § 1; Ga. L. 1992, p. 2106, § 1; Ga. L. 1994, p. 169, § 5.1; Ga. L. 1997, p. 1311, § 5; Ga. L. 2003, p. 177, § 4; Ga. L. 2003, p. 257, § 1; Ga. L. 2012, p. 899, § 3-8/HB 1176; Ga. L. 2013, p. 222, § 4/HB 349; Ga. L. 2014, p. 432, § 2-8/HB 826; Ga. L. 2014, p. 780, § 2-2/SB 364; Ga. L. 2015, p. 5, § 16/HB 90; Ga. L. 2017, p. 417, § 6-2/SB 104.

Cross references.

Reward for furnishing information leading to arrest and conviction of person charged with selling controlled substance in violation of this Code section, § 45-12-37.

Editor's notes.

Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

Ga. L. 2014, p. 780, § 5-1/SB 364, not codified by the General Assembly, provides, in part, that this Act shall apply to any sentence imposed on or after July 1, 2013.

Law reviews.

For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

For annual survey of criminal law and procedure, see 41 Mercer L. Rev. 115 (1989).

For annual survey on criminal law and procedure, see 42 Mercer L. Rev. 141 (1990).

For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 212 (1992).

For article, "Criminal Forfeiture: An Appropriate Solution to the Civil Forfeiture Debate," see 10 Georgia St. U.L. Rev. 241 (1994).

For note on the 2003 amendment to this Code section, see 20 Georgia St. U.L. Rev. 76 (2003).

For annual survey of criminal law, see 57 Mercer L. Rev. 113 (2005).

For survey article on criminal law, see 59 Mercer L. Rev. 89 (2007).

For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 290 (2012).

For article, "Appeal and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Georgia St. U.L. Rev. 17 (2013).

For annual survey on criminal law, see 66 Mercer L. Rev. 37 (2014).

For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 61 (2017).

For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017).

For note, "Playing Hot Pot-ato: Does Biden's Presidency Signal the End of Federal Marijuana Prohibition?," see 73 Mercer L. Rev. 1383 (2022).

JUDICIAL DECISIONS

Analysis

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General Consideration

Constitutionality. — See Paras v. State, 247 Ga. 75, 274 S.E.2d 451, 1981 Ga. LEXIS 623 (1981).

Imposing greater punishment based on the total amount of mixture possessed, and not on the total amount of cocaine, is not an unconstitutional classification scheme. Lavelle v. State, 250 Ga. 224, 297 S.E.2d 234, 1982 Ga. LEXIS 1237 (1982).

Setting a maximum sentence does not conflict with the preamble of the act which enacted O.C.G.A. § 16-13-31, which refers to minimum sentences; O.C.G.A. § 16-13-31(f) is logically related to the

purposes of the act and is therefore constitutional. Ellis v. State, 256 Ga. 751, 353 S.E.2d 19, 1987 Ga. LEXIS 599 (1987).

Mandatory fines imposed under O.C.G.A. § 16-13-31 do not violate constitutional standards. Green v. State, 239 Ga. App. 617, 521 S.E.2d 441, 1999 Ga. App. LEXIS 1050 (1999), cert. denied, No. S99C1791, 1999 Ga. LEXIS 1015 (Ga. Nov. 19, 1999).

O.C.G.A. § 16-13-31(e) did not violate equal protection of the laws because the statute contained no purity requirement, as was required for cocaine, because the legislature was under no duty to treat all drugs and drug offenders the same, the mere fact that cocaine and methamphetamine were both listed as Schedule II controlled substances did not mean that the legislature had to enact identical statutes pertaining to those substances, and the statute treated all those charged with methamphetamine trafficking equally. Hardin v. State, 277 Ga. 242, 587 S.E.2d 634, 2003 Ga. LEXIS 889 (2003).

No violation of ex post facto protections. — Manufacturing methamphetamine charge in the complaint did not violate ex post facto protections under U.S. Const. Art. I, Sec. X and Ga. Const. 1983, Art. I, Sec. I, Para. X since the defendant was not charged under O.C.G.A. § 16-13-31(f)(1), which was not effective at the time of the defendant's conduct; at the time of the offense, the defendant's alleged conduct was prohibited by former O.C.G.A. § 16-13-31(e). Gentry v. State, 281 Ga. App. 315, 635 S.E.2d 782, 2006 Ga. App. LEXIS 943 (2006), cert. denied, No. S07C0117, 2007 Ga. LEXIS 78 (Ga. Jan. 22, 2007).

Abatement of pending prosecutions by 1985 repeal and reenactment. — Prosecutions for trafficking in cocaine by possessing more than 28 grams of a mixture containing cocaine were abated by the lack of a savings clause in the 1985 repeal and reenactment of O.C.G.A. § 16-13-31. Blount v. State, 181 Ga. App. 330, 352 S.E.2d 220, 1986 Ga. App. LEXIS 2826 (1986).

While clearly after July 1, 1985, the date O.C.G.A. § 16-13-31 was repealed and reenacted, the legislature no longer regarded as trafficking in cocaine the possession of an undetermined and perhaps infinitesimal amount of cocaine in a mixture, it is clear the legislature continued to regard selling, manufacturing, delivering or bringing into this state and possessing 342.4 grams of pure cocaine to be trafficking and, moreover, increased the penalty. Therefore, the prosecution of such conduct under the former law did not abate with re-defining the crime and the reenactment of harsher criminal sanctions. Thus, the trial court did not err in sentencing the defendant to 25 years, 15 years in confinement and ten years on probation, with a $250,000 fine, which was the penalty that attached to defendant's conduct under the law by which the defendant was prosecuted. Barrett v. State, 183 Ga. App. 729, 360 S.E.2d 400, 1987 Ga. App. LEXIS 2742 (1987), cert. denied, 183 Ga. App. 905; Mataluni v. State, 185 Ga. App. 551, 364 S.E.2d 911, 1988 Ga. App. LEXIS 162 (1988).

When at the time of the indictment and trial O.C.G.A. § 16-13-31(a) provided that any person who was knowingly in actual possession of 28 grams or more of cocaine or of any mixture containing cocaine committed the felony offense of trafficking in cocaine, but effective July 1, 1985, the new statute deleted the mixture language and trafficking in cocaine was no longer defined as being in possession of "any mixture containing cocaine," and the July 1, 1985, effective date occurred prior to the time that the defendant's appeal had reached final disposition in the Court of Appeals, the repeal of the statute abated the prosecution, as the prosecution had not reached final disposition in the highest court. Blackshear v. Wharton, 258 Ga. 427, 370 S.E.2d 152, 1988 Ga. LEXIS 329 (1988).

Repeal date of former subsection (a). — Repeal date of former O.C.G.A. § 16-13-31(a) occurred on July 1, 1986, the effective date of a 1986 amendment to that subsection (a), and not the date of the amendment's enactment on March 28, 1986, so that there was no gap between March 28 and July 1 in which cocaine trafficking was legal. Rodriguez v. State,

General Consideration (Cont'd)

184 Ga. App. 819, 363 S.E.2d 23, 1987 Ga. App. LEXIS 2839 (1987).

Conviction prior to redefinition of crime. — Redefinition of the crime of trafficking in cocaine prior to the defendant's conviction did not void the conviction when the conviction was authorized under the redefinition of the crime of trafficking in cocaine as well as under the former version of O.C.G.A. § 16-13-31. Nichols v. State, 186 Ga. App. 314, 367 S.E.2d 266, 1988 Ga. App. LEXIS 344 (1988).

Offense committed prior to redefinition of crime. — When the defendant challenges the sufficiency of the evidence, contending that the state failed to show that the defendant was in "actual possession" of cocaine as was then required by O.C.G.A. § 16-13-31(a), and the appellate courts of this state have held that a charge such as the one given in the defendant's case constitutes reversible error because there is a substantial likelihood that the instruction could have been interpreted by the jury as authorizing a conviction for trafficking in cocaine on a finding of mere constructive possession, the instruction was substantially in error and harmful as a matter of law, and the court reversed the defendant's conviction for the offense of trafficking in cocaine. Riley v. State, 191 Ga. App. 781, 383 S.E.2d 172, 1989 Ga. App. LEXIS 817 (1989).

Invalidity of convictions under repealed statute. — Conviction for conspiracy to traffic in cocaine was void when the indictment alleged a conspiracy to commit the crime of possessing a sufficient amount of substance containing cocaine and the Georgia Supreme Court denied review by certiorari after July 1, 1985, the date of repeal of the former trafficking in cocaine statute; use of the word "substance" in the indictment was a synonym for "mixture" as used in the statute. Gonzalez v. Abbott, 262 Ga. 671, 425 S.E.2d 272, 1993 Ga. LEXIS 67 (1993).

Conviction for conspiracy to traffic in cocaine was void where the indictment alleged a conspiracy to commit the crime of possessing a sufficient amount of a substance containing cocaine and alleged that the defendant committed the overt act of possessing 945 grams of cocaine at a certain time, and the Georgia Supreme Court denied review by certiorari after July 1, 1985, the date of repeal of the former trafficking in cocaine statute. Gonzalez v. Abbott, 262 Ga. 671, 425 S.E.2d 272, 1993 Ga. LEXIS 67 (1993).

Illegal possession included in crime of illegal sale. — Inclusion of language of the applicable Code section which was not pertinent to the indictment was not reversible error because illegal possession is included in the crime illegal sale. Sullivan v. State, 204 Ga. App. 274, 418 S.E.2d 807, 1992 Ga. App. LEXIS 842 (1992).

Jurisdiction. — When a defendant acts as a procuring agent in this state in arranging the sale of controlled substances in another state, the defendant thereby commits an offense defined in O.C.G.A. § 16-13-31, and this state has jurisdiction to impose punishment. Raftis v. State, 175 Ga. App. 893, 334 S.E.2d 857, 1985 Ga. App. LEXIS 2198 (1985).

Distinguishing between trafficking and possession. — Amount of controlled substance was chosen as the basis for distinguishing the crime of trafficking from the somewhat less serious crimes described in O.C.G.A. § 16-13-30. Twenty-eight grams was chosen as the dividing line. Bassett v. Lemacks, 258 Ga. 367, 370 S.E.2d 146, 1988 Ga. LEXIS 339 (1988).

Drug trafficking by alien. — District court's sentencing enhancement under U.S. Sentencing Guidelines Manual § 2L1.2(b)(1)(A)(i) to alien's illegal re-entry conviction under 8 U.S.C. § 1326(a)(2) and (b)(2) was proper because Georgia's three-tiered drug scheme recognized that someone in possession of 87 grams of methamphetamine planned on distributing and thereby "trafficking" those drugs; therefore, the alien's previous conviction under O.C.G.A. § 16-13-31(e) constituted drug trafficking for purposes of § 2L1.2(b)(1)(A)(i) of the manual. United States v. Madera-Madera, 333 F.3d

1228, 2003 U.S. App. LEXIS 11509 (11th Cir.), cert. denied, 540 U.S. 1026, 124 S. Ct. 589, 157 L. Ed. 2d 447, 2003 U.S. LEXIS 8509 (2003).

Circumstantial evidence of possession. — There is no requirement that the proof of actual possession be by direct and not circumstantial evidence. Heath v. State, 186 Ga. App. 655, 368 S.E.2d 346, 1988 Ga. App. LEXIS 426 (1988).

Construed with O.C.G.A. §§ 16-13-20 and 16-13-26(1)(D). — When the total weight of the substances seized from the defendant was only 24.4 grams of cocaine, the defendant argued that the only Georgia statute that proscribes possession of cocaine is O.C.G.A. § 16-13-31, which prohibits the possession of 28 grams or more of cocaine. However, although that section deals with knowing, actual possession of 28 grams or more of cocaine or any mixture containing cocaine, O.C.G.A. § 16-13-26(1)(D) (prior to 1988 amendment inserting "Cocaine," at the beginning of the paragraph) lists "Coca leaves, any salt, compound, derivative, stereoisomers of cocaine, or preparation of coca leaves, and any salt, compound, derivative, stereoisomers of cocaine, or preparation thereof which is chemically equivalent or identical with any of these substances . . . ," which includes cocaine. Under O.C.G.A. § 16-13-30, the unlawful possession of any controlled substance, regardless of amount, constitutes an offense. Dixon v. State, 180 Ga. App. 222, 348 S.E.2d 742, 1986 Ga. App. LEXIS 2685 (1986) (decided prior to 1988 amendment of § 16-13-26).

Dual federal and state prosecution not barred. — Trial court did not err in denying the defendant's motion in autrefois convict/plea in bar because the federal and state prosecutions required proof of a fact that the other did not as the defendant's federal conviction for conspiracy to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance required the agreement of two or more persons to commit a criminal act, and the state trafficking charge did not require proof of an agreement between two or more people to commit a criminal act, and required proof of the possession of the cocaine. Stembridge v. State, 331 Ga. App. 199, 770 S.E.2d 285, 2015 Ga. App. LEXIS 122 (2015).

General demurrer. — Counsel was not ineffective for failing to file a general demurrer to an indictment; even if a general demurrer had been filed, there would have been no error in denying it as the defendant could not have admitted all the facts and still have been innocent. Harris v. State, 258 Ga. App. 669, 574 S.E.2d 871, 2002 Ga. App. LEXIS 1536 (2002).

Totality of circumstances suggests participation. — Totality of the circumstances supported the finding that the defendants not only had knowledge of the drug transport but directly and actively participated in the transport, since the defendants were nervous at the initial traffic stop, and had vague accounts of visiting a sick relative. Eliopulos v. State, 203 Ga. App. 262, 416 S.E.2d 745, 1992 Ga. App. LEXIS 493 (1992), cert. denied, No. S92C0791, 1992 Ga. LEXIS 366 (Ga. Apr. 24, 1992).

Jury charge on criminal solicitation not authorized. — Because defendant delivered a package containing drugs to an informant's girlfriend who was working with police, and there was no evidence that the defendant asked the girlfriend to engage in anything or that the defendant used language indicating a clear and present danger that a felony would be committed, the defendant was not entitled to a jury charge on criminal solicitation in violation of O.C.G.A. § 16-4-7(a). Dimas v. State, 276 Ga. App. 245, 622 S.E.2d 914, 2005 Ga. App. LEXIS 1220 (2005).

Court did not err in jury charge by quoting statute in the statute's entirety, and the fact that the trafficking charge also stated that possession was required did not by itself result in charging an offense with which the defendant was not charged since the jury was informed there were two separate counts and the indictment gave the defendant notice that the defendant would have to

General Consideration (Cont'd)

defend against both counts. Cauthen v. State, 177 Ga. App. 565, 340 S.E.2d 199, 1986 Ga. App. LEXIS 2434 (1986).

Failure to timely raise constitutional challenge. — Failure of the defendant to raise the defendant's constitutional challenge to O.C.G.A. § 16-13-31 in the trial court, either before the jury rendered the jury's verdict or in an amended motion for a new trial, caused such a challenge to be unpreserved for review on appeal. Goldsby v. State, 273 Ga. App. 523, 615 S.E.2d 592, 2005 Ga. App. LEXIS 561 (2005).

Suppression of contraband not required. — Because the defendant's consent to search was not obtained by deceit, the defendant voluntarily accompanied officers to the motel room searched, and the consent was not the product of an illegal detention, suppression of the contraband seized was unwarranted. Miller v. State, 287 Ga. App. 179, 651 S.E.2d 103, 2007 Ga. App. LEXIS 901 (2007).

Suppression of drugs seized from purse. — Because the defendant did not grant consent to an officer to search the defendant's purse, and no other exception to the warrant requirement allowing a search of the purse applied, the trial court properly granted suppression of the drugs seized from within the purse. State v. Fulghum, 288 Ga. App. 746, 655 S.E.2d 321, 2007 Ga. App. LEXIS 1284 (2007).

Possession

Law recognizes two kinds of possession, actual possession and constructive possession. A person who knowingly has direct physical control over a thing at a given time is in actual possession of the thing. A person who, though not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing is then in constructive possession. Lockwood v. State, 257 Ga. 796, 364 S.E.2d 574, 1988 Ga. LEXIS 64 (1988); Chews v. State, 187 Ga. App. 600, 371 S.E.2d 124, 1988 Ga. App. LEXIS 836 (1988).

Constructive possession sufficient. — Either actual or constructive possession suffices to establish the element of "possession" necessary to support a conviction of trafficking in controlled substances. Williams v. State, 199 Ga. App. 566, 405 S.E.2d 716, 1991 Ga. App. LEXIS 591 (1991); Gamble v. State, 223 Ga. App. 653, 478 S.E.2d 455, 1996 Ga. App. LEXIS 1254 (1996).

Actual possession. — Person who knowingly has direct physical control over a thing at a given time is in "actual possession" of the thing, as when a person has the keys to a locked airplane or a locked suitcase where marijuana is found. Evans v. State, 167 Ga. App. 396, 306 S.E.2d 691, 1983 Ga. App. LEXIS 3327 (1983).

Legislature did not intend the phrase "actual possession" in O.C.G.A. § 16-13-31(c) to mean that a person would be holding marijuana in the person's hand or have the marijuana physically on the person because the punishment for trafficking in marijuana is divided into three categories of 100 to less than 2,000 pounds; 2,000 to less than 10,000 pounds; and more than 10,000 pounds. For a person to have such large amounts of marijuana "on his person" in order to constitute actual possession would be a physical impossibility in most instances. Evans v. State, 167 Ga. App. 396, 306 S.E.2d 691, 1983 Ga. App. LEXIS 3327 (1983) (decided prior to 1988 amendment which deleted "actual" preceding "possession").

"Actual possession" required by O.C.G.A. § 16-13-31 to authorize a conviction for trafficking refers not merely to physical custody, but refers to actual active participation in the possession of such substances so as to be a party to the crime of trafficking. Dukes v. State, 186 Ga. App. 815, 369 S.E.2d 259, 1988 Ga. App. LEXIS 454 (1988); Green v. State, 187 Ga. App. 373, 370 S.E.2d 348, 1988 Ga. App. LEXIS 675 (1988).

Actual possession refers to actual active participation. — Although the defendant never had physical possession of cocaine and marijuana in the cab from which the cocaine was delivered, the defendant aided and abetted its actual physical possession and is guilty of the offense of trafficking under O.C.G.A. §§ 16-2-20 and 16-13-31 as a party to the

crime. The "actual possession" required by § 16-13-31 to authorize a conviction for trafficking refers not merely to physical custody but to actual active participation in the possession of such substances so as to be a party to the crime of trafficking. Holder v. State, 194 Ga. App. 790, 391 S.E.2d 808, 1990 Ga. App. LEXIS 309 (1990).

Joint constructive possession of contraband. — Despite the defendant's contrary claim, the state presented sufficient evidence that the defendant and the codefendants had joint constructive possession of the contraband seized, and that the jury could reject the defendant's equal access defense, given that: (1) some of that contraband was found in a bedroom in which the defendant slept and underneath the defendant's mattress; and (2) a large amount of cash was found in the defendant's purse. Castillo v. State, 288 Ga. App. 828, 655 S.E.2d 695, 2007 Ga. App. LEXIS 1308 (2007).

Inference of ownership from possession of premises. — When immediate and exclusive possession of an automobile, locker room, or other premises is shown, the inference is authorized that the owner of such property is the owner of what is contained therein, and this inference has been referred to as a rebuttable presumption; however, as to automobiles, the rule does not apply when there is evidence in the case that the defendant has not been in possession of the vehicle for a period of time prior to the discovery of the contraband or that others have had access to the vehicle. Robinson v. State, 175 Ga. App. 769, 334 S.E.2d 358, 1985 Ga. App. LEXIS 2831 (1985).

Driver of automobile as possessor. — If a person is driving an automobile or has an automobile in the person's possession, custody, or control, all that is in that automobile is presumed to be the person's and in the person's possession, and whether or not the evidence was sufficient to rebut the inference arising from the finding of the drugs in the automobile is a question for the jury to decide. Reed v. State, 186 Ga. App. 539, 367 S.E.2d 809, 1988 Ga. App. LEXIS 410 (1988).

The "actual possession" that was required for a conviction for trafficking in cocaine did not mean that the person had to be holding the contraband in the person's hand or have the contraband physically on the person. If a person was driving an automobile or had an automobile in the person's possession, custody, or control, all property in that automobile was presumed to be the person's and in the person's possession. Johnson v. State, 195 Ga. App. 577, 394 S.E.2d 359, 1990 Ga. App. LEXIS 588 (1990).

Trial court did not err in denying either a motion for directed verdict or a motion for new trial based on sufficiency grounds because the evidence supported the finding that the defendant was in possession of bags of cocaine and marijuana found in the cargo area of the car when stopped and, although the defendant did not own the car, the fact that the defendant was driving the car gave rise to a rebuttable presumption that the defendant possessed the drugs found within the car, which the defendant failed to rebut. Cromartie v. State, 348 Ga. App. 563, 824 S.E.2d 32, 2019 Ga. App. LEXIS 47 (2019).

Head of household presumption of possession of contraband found therein is no longer a viable presumption in Georgia. Ramsay v. State, 175 Ga. App. 97, 332 S.E.2d 390, 1985 Ga. App. LEXIS 2776 (1985).

Spatial proximity insufficient for possession. — Trial court erred in convicting the defendant of trafficking in cocaine, O.C.G.A. § 16-13-31(a)(1), trafficking in methamphetamine, § 16-13-31(e), and possession of a firearm during the commission of a felony, O.C.G.A. § 16-11-106(a)(5), because the state failed to prove any connection between the defendant and the contraband other than spatial proximity; no drugs were found on the defendant's person, and the defendant was not seen in proximity to the well-hidden drugs. Cobarrubias-Garcia v. State, 316 Ga. App. 787, 730 S.E.2d 455, 2012 Ga. App. LEXIS 653 (2012), cert. denied, No. S12C1248, 2012 Ga. LEXIS 1044 (Ga. Oct. 1, 2012).

Internal possession. — When a customs agent had a reasonable suspicion that the defendant could have been

Possession (Cont'd)

carrying drugs internally, the trial court properly denied the defendant's contention that the defendant signed a consent form out of frustration and due to fatigue. Blackwood v. State, 261 Ga. App. 110, 581 S.E.2d 724, 2003 Ga. App. LEXIS 556 (2003).

Quantity of Contraband

Legislative intent. — By enacting O.C.G.A. § 16-13-31(b), the legislature clearly authorized a trafficking conviction based upon knowing possession of four or more grams of opium; although the defendant disagreed that such possession established "trafficking," the appellate court could not ignore the clear statutory language governing the case. Nahid v. State, 276 Ga. App. 687, 624 S.E.2d 264, 2005 Ga. App. LEXIS 1361 (2005), cert. denied, No. S06C0690, 2006 Ga. LEXIS 330 (Ga. Apr. 25, 2006).

Statute does not require state to establish purity of substance. — Trial court did not err in denying the defendant's post-trial motion to require the state crime lab to test the substance contained in the corner tie that the defendant sold to an undercover officer as heroin to determine the purity of the heroin it contained because the defendant was able to elicit testimony from the expert from the state crime lab that the tests the expert performed did not establish the purity of the substance and that the crime lab did not have the ability to test for the purity of heroin contained in a sample; O.C.G.A. § 16-13-31(b) does not require that the substance containing heroin exceed any purity threshold. Thomas v. State, 306 Ga. App. 279, 701 S.E.2d 895, 2010 Ga. App. LEXIS 920 (2010), cert. denied, No. S11C0327, 2011 Ga. LEXIS 420 (Ga. May 16, 2011).

Quantity of drugs averred controls mandatory minimum sentence. — It is that quantity of drugs averred in the indictment of which the offender has been convicted, rather than the amount of drugs which the evidence establishes that the offender possessed in excess of the amount averred in the indictment, that controls in determining which mandatory minimum sentence is operative under O.C.G.A. § 16-13-31(a). Mallarino v. State, 190 Ga. App. 398, 379 S.E.2d 210, 1989 Ga. App. LEXIS 268 (1989).

Multiple charges not allowed. — Language of O.C.G.A. § 16-13-31, "28 grams or more," would not allow the prosecutor to divide the amount discovered during a search for the purpose of creating multiple charges. Snoke v. State, 237 Ga. App. 686, 516 S.E.2d 541, 1999 Ga. App. LEXIS 535 (1999).

Sufficiency of Evidence

Evidence sufficient to support conviction for heroin trafficking. — Jury's finding that the defendant was guilty of trafficking in heroin was authorized when officers found a plate containing over four grams of a mixture containing heroin, five loaded handguns, drug paraphernalia, items used in the business of trafficking heroin and over $1,000 on the bed in the defendant's apartment. Hutchins v. State, 204 Ga. App. 690, 420 S.E.2d 374, 1992 Ga. App. LEXIS 965 (1992).

Surveillance showing persons entering for approximately a minute prior to leaving, a controlled buy by a confidential and reliable informant, and the fact that the defendant had a set of keys which opened a black nylon bag found on the bed inside the bedroom that contained heroin, all provided sufficient evidence to convict the defendant of trafficking. Ibekilo v. State, 277 Ga. App. 384, 626 S.E.2d 592, 2006 Ga. App. LEXIS 94 (2006), cert. dismissed, No. S06C1592, 2006 Ga. LEXIS 776 (Ga. Sept. 18, 2006).

Evidence was sufficient to support the defendant's conviction for trafficking in heroin in violation of O.C.G.A. § 16-13-31(b)(3) because the expert witness from the state crime lab testified that the witness examined the substance contained in the corner tie that the defendant sold to the undercover officer as heroin, the witness took a representative sampling of different parts of the substance, the witness subjected the samples to three separate tests, and the witness concluded that the substance contained heroin; whether the substance in the corner tie was a mixture containing

heroin or merely a "look alike" substance was a question for the jury as was the weight to be given to the testimony of the state's expert from the crime lab. Thomas v. State, 306 Ga. App. 279, 701 S.E.2d 895, 2010 Ga. App. LEXIS 920 (2010), cert. denied, No. S11C0327, 2011 Ga. LEXIS 420 (Ga. May 16, 2011).

Defendant's convictions for trafficking in heroin and possession with intent to distribute cocaine were supported by evidence that the drugs were found in plain view in the townhome, the defendant was seen selling heroin to an informant in the front yard, and the defendant had $3,189 in cash and three cell phones, one of which was used to communicate with a person being investigated for selling drugs, in the defendant's possession when arrested. Hargrove v. State, 361 Ga. App. 106, 863 S.E.2d 364, 2021 Ga. App. LEXIS 439 (2021).

Evidence was sufficient to convict the defendant of trafficking in heroin because the defendant constructively possessed the heroin as the heroin was discovered inside of a tea box in the kitchen of the apartment, but other items throughout the apartment that were related to the distribution of heroin were not hidden; and officers discovered $3,100 in cash on the defendant and a small baggie of heroin hidden in the accomplice's private area; and because the defendant knew that the heroin found in the kitchen weighed 28 grams or more as the heroin weighed 81.68 grams — nearly three times the threshold weight of 28 grams; and a digital scale, a cutting agent, cutting tools, and a tally sheet to record amounts of drugs sold were found in the kitchen. Jones v. State, 339 Ga. App. 95, 791 S.E.2d 625, 2016 Ga. App. LEXIS 559 (2016), cert. denied, No. S17C0590, 2017 Ga. LEXIS 411 (Ga. May 15, 2017).

Entrapment defense was properly rebutted. — Trial court properly denied the defendant's motion for a new trial because even assuming that the defendant established a prima facie case of entrapment, the jury was authorized to find the state's evidence rebutted the defense beyond a reasonable doubt as the jury heard an audio recording of the defendant boasting that the defendant had sold a gram of heroin for $65 and that no one could get clean off of the defendant's product; thus, there was some evidence to disprove entrapment. Johnson v. State, 355 Ga. App. 683, 845 S.E.2d 419, 2020 Ga. App. LEXIS 370 (2020).

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).

Evidence was insufficient to support the second defendant's convictions of trafficking methamphetamine and possession of methamphetamine with intent to distribute as circumstantial evidence of knowledge and approval of the criminal activity was not enough to prove that the second defendant was in constructive possession of the contraband found in the residence; and an officer's limited testimony of conduct susceptible of multiple interpretations, without more, did not show that the second defendant intentionally aided or abetted the crime. Bustos v. State, 365 Ga. App. 433, 878 S.E.2d 774, 2022 Ga. App. LEXIS 456 (2022).

Evidence sufficient to support trafficking in methamphetamine conviction. — Evidence at trial was sufficient to support defendant's conviction for trafficking in methamphetamine based on defendant driving an accomplice to procure methamphetamine, thus, the jury was authorized to find that defendant was a party to the crime of trafficking as the methamphetamine was found in a bag underneath defendant's feet. Jones v. State, 369 Ga. App. 339, 893 S.E.2d 460, 2023 Ga. App. LEXIS 455 (2023).

Sufficient evidence to support trafficking in methamphetamine. — Defendant's conviction for trafficking in methamphetamine was supported by sufficient evidence based on the state showing that police found the defendant with over 55 grams of methamphetamine in a box in a car that the defendant

Sufficiency of Evidence (Cont'd)

admitted belonged to the defendant. Smith v. State, 350 Ga. App. 496, 829 S.E.2d 776, 2019 Ga. App. LEXIS 330 (2019).

Evidence was sufficient to establish that the first defendant had constructive possession of the methamphetamine and to sustain the first defendant's conviction for trafficking methamphetamine as the first defendant was present at a drug stash house; officers testified that a drug organization would not allow individuals not involved in the organization to visit a stash house; the first defendant had in the first defendant's pocket the keys to the vehicle that had, shortly before the first defendant's arrest, transported drugs for a sale; and the man who lived upstairs testified that the first defendant spent a significant amount of time in the basement apartment. Bustos v. State, 365 Ga. App. 433, 878 S.E.2d 774, 2022 Ga. App. LEXIS 456 (2022).

Evidence sufficient for conviction of trafficking and possession of controlled substances. — See Clark v. State, 184 Ga. App. 380, 361 S.E.2d 682, 1987 Ga. App. LEXIS 2777 (1987); Rice v. State, 224 Ga. App. 725, 481 S.E.2d 839, 1997 Ga. App. LEXIS 136 (1997), cert. denied, No. S97C0997, 1997 Ga. LEXIS 526 (Ga. June 6, 1997).

Existence of drugs and contraband in motel room. — Despite the defendant's denial of any knowledge of the existence of drugs and other contraband in a motel room in which the defendant was the sole occupant, evidence of the contraband found in close proximity to other evidence which the defendant admitted owning, when coupled with the fact that only one key to the room existed, which the defendant admitted to having, and that no one had brought anything into the room since the person the defendant alleged was the owner of the evidence had left, was sufficient to support the defendant's convictions under O.C.G.A. §§ 16-11-106, 16-13-2, 16-13-30, and 16-13-31. Hall v. State, 283 Ga. App. 266, 641 S.E.2d 264, 2007 Ga. App. LEXIS 31 (2007).

Mere presence at residence insufficient for drug conviction. — Defendant was entitled to reversal of the convictions for possession with intent to distribute and trafficking drugs because the defendant was merely present at a residence, which the defendant did not own or lease, when a search warrant was executed, there was no evidence the defendant had actual or constructive possession of the drugs, and there was no evidence the defendant was a party to these crimes. Scott v. State, 326 Ga. App. 115, 756 S.E.2d 220, 2014 Ga. App. LEXIS 133 (2014).

Pager insufficient evidence of drug involvement. — Evidence was not sufficient to convict the defendant after the defendant "acted a little nervous" at the scene, scene, a pager was found in the glove compartment, and that in the defendant's wallet was a list "full of different phone numbers" as the state adduced no evidence to connect the pager, the phone numbers, or the digits with dollar signs to telltale signs of criminality. Hughes v. State, 215 Ga. App. 6, 449 S.E.2d 547, 1994 Ga. App. LEXIS 1099 (1994).

Trial court did not abuse the courts discretion by permitting similar transaction evidence. — Given the substantial evidence of the defendant's guilt, a trial court did not abuse the courts discretion by permitting evidence showing the commission of similar transactions, in the nature of two out-of-state traffic stops which led to searches and discovery of drugs and drug paraphernalia on the defendant, because there was no reasonable probability that the results of the trial would have been different had the evidence been excluded. Goldsby v. State, 273 Ga. App. 523, 615 S.E.2d 592, 2005 Ga. App. LEXIS 561 (2005).

Controlled buys demonstrated reliability of informant. — With regard to drug-related convictions, the trial court properly denied the defendant's motion to suppress because the search warrant was

supported by probable cause in that the confidential informant took a position against penal interest by reporting to officers that the informant bought drugs from the defendant, the officer stated that the information supplied by the confidential informant was confirmed by conducting three controlled drug purchases from the defendant, and the controlled buys strongly corroborated the reliability of the informant and demonstrated a fair probability that contraband would be found in the defendant's house. Reid v. State, 321 Ga. App. 653, 742 S.E.2d 166, 2013 Ga. App. LEXIS 367 (2013).

Sentencing

Sentence reduction provision not unconstitutionally vague. — Term "substantial assistance" in O.C.G.A. § 16-13-31(e)(2) (now (f)(2)), regarding reduced sentences for those convicted of drug trafficking, is not too vague for persons of ordinary intelligence to understand. Brugman v. State, 255 Ga. 407, 339 S.E.2d 244, 1986 Ga. LEXIS 533 (1986).

Sentence does not violate Fifth Amendment rights. — O.C.G.A. § 16-13-31(e)(2) (now (f)(2)), regarding reduced sentences for those convicted of drug trafficking, does not compel a defendant to exchange the defendant's Fifth Amendment rights for a chance at a reduced sentence as it only requires the defendant to provide information about other persons involved in the same crime for which the defendant has already been convicted. Brugman v. State, 255 Ga. 407, 339 S.E.2d 244, 1986 Ga. LEXIS 533 (1986).

Legislative intent. — Most reasonable interpretation of the legislative intent in enacting O.C.G.A. § 16-13-31(f)(1) was to supplant the general punishment provision of O.C.G.A. § 16-13-30(b) with a specific and potentially more harsh punishment provision for manufacturing methamphetamine. Richards v. State, 290 Ga. App. 360, 659 S.E.2d 651, 2008 Ga. App. LEXIS 239 (2008).

Separate offenses may be subject to only one punishment. — If separate offenses charged in one indictment were committed at the same time and place as parts of a continuous criminal act, and inspired by the same criminal intent, they are susceptible of only one punishment. York v. State, 242 Ga. App. 281, 528 S.E.2d 823, 2000 Ga. App. LEXIS 79 (2000).

Discussion of relationship between sentencing provisions of O.C.G.A. §§ 16-13-31 and 17-10-2, dealing with presentence hearings. — See Paras v. State, 247 Ga. 75, 274 S.E.2d 451, 1981 Ga. LEXIS 623 (1981).

Conviction, not indictment, controls sentence. — It is the conviction of the specific trafficking offense which authorizes a particular sentence and not the language of the indictment. The defendants' sentence was within the maximum sentence for the offense and was therefore not invalid or illegal. Moon v. State, 194 Ga. App. 777, 392 S.E.2d 19, 1990 Ga. App. LEXIS 312 (1990).

General sentencing provision superfluous. — In view of the specific sentences required for a specified offense under O.C.G.A. § 16-13-31, subsection (f) (now (g)) is a general provision and in large part a superfluity. Steward v. State, 182 Ga. App. 659, 356 S.E.2d 890, 1987 Ga. App. LEXIS 2652 (1987).

Construction with probated and suspended sentence provisions. — Mandatory sentence provisions of O.C.G.A. § 16-13-31(e) (now (f)), by its express terms, is removed from the application of the probated and suspended sentence provisions of O.C.G.A. § 17-10-1(a). Moran v. State, 170 Ga. App. 837, 318 S.E.2d 716, 1984 Ga. App. LEXIS 2931 (1984).

Pursuant to O.C.G.A. § 16-13-31(g)(1), the trial court lacked the authority to probate or suspend sentences imposed against two defendants in unrelated criminal actions, and neither the 2004 nor the 2006 amendments to the general sentencing provisions under O.C.G.A. § 17-10-1(a)(1) were relevant; moreover, because O.C.G.A. §§ 17-10-6.1 and 17-10-6.2 were statutes that defined certain categories of crimes and provided the sentencing guidelines for those categories, it did not appear that the list of these two exceptions normally would have

Sentencing (Cont'd)

included § 16-13-31 or any other specific criminal statute, and any omission would be significant only with regard to a statute that defined classes or categories of crimes. Gillen v. State, 286 Ga. App. 616, 649 S.E.2d 832, 2007 Ga. App. LEXIS 836 (2007), cert. denied, No. S07C1780, 2007 Ga. LEXIS 809 (Ga. Oct. 29, 2007).

O.C.G.A. § 16-13-31(e) (now (f)) does not conflict with parole authority of State Board of Pardons and Paroles granted under Ga. Const. 1976, Art. IV, Sec. II, Para. I (see now Ga. Const. 1983, Art. IV, Sec. II, Para. II). Paras v. State, 247 Ga. 75, 274 S.E.2d 451, 1981 Ga. LEXIS 623 (1981).

Power to move for sentence reduction not reserved for district attorney alone. — Acts constituting "substantial assistance" as contemplated by O.C.G.A. § 16-13-31(e)(2) (now (f)(2)) may be brought to the attention of the sentencing court by motion of either the district attorney or the defendant, or the sentencing court may make its own inquiry into the matter. Brugman v. State, 255 Ga. 407, 339 S.E.2d 244, 1986 Ga. LEXIS 533 (1986); Swantner v. State, 244 Ga. App. 372, 535 S.E.2d 343, 2000 Ga. App. LEXIS 717 (2000), cert. denied, No. S00C1700, 2000 Ga. LEXIS 748 (Ga. Oct. 6, 2000).

Judge not required to reduce or suspend sentence. — O.C.G.A. § 16-13-31(e)(2) (now (f)(2)) does not by its terms require the judge to impose a reduced or suspended sentence in the event a defendant has rendered such assistance but instead merely authorizes the judge to do so. Lastohkein v. State, 199 Ga. App. 555, 405 S.E.2d 554, 1991 Ga. App. LEXIS 576 (1991).

Sentence within statutory limit. — Because the defendant's 25-year sentence for trafficking in cocaine was within the statutory limit, the defendant presented no basis upon which to vacate the sentence of imprisonment. Brown v. State, 353 Ga. App. 559, 839 S.E.2d 21, 2020 Ga. App. LEXIS 39 (2020).

Sentencing deal for codefendant not shown. — Defendant failed to prove a Brady violation in the state's failure to reveal a deal the state made with a codefendant in exchange for the codefendant's substantial assistance because the defendant presented no evidence that there was a deal but merely argued that there must have been one because of the codefendant's sentence; all of the evidence showed there was no deal. Pihlman v. State, 292 Ga. App. 612, 664 S.E.2d 904, 2008 Ga. App. LEXIS 826 (2008), cert. denied, No. S08C1954, 2008 Ga. LEXIS 977 (Ga. Nov. 3, 2008).

Recidivist sentence proper. — Recidivist sentence imposed upon the defendant was upheld on appeal, pursuant to O.C.G.A. §§ 17-10-7(a) and 16-13-31(a)(1)(A) and (h), based on evidence of the defendant's 1993 convictions; hence, the defendant was properly sentenced to the longest period of time prescribed for the punishment of the offense, and ordered to serve the mandatory minimum of 10 years. Smith v. State, 282 Ga. App. 317, 638 S.E.2d 440, 2006 Ga. App. LEXIS 1374 (2006).

Deviation from mandatory minimum sentence appropriate. — When the trial court sentenced the defendant to serve 15 years in prison for three drug offenses, the trial court did not err in failing to sentence the defendant below the mandatory minimum because the trial court's statements during the sentencing hearing clearly indicated an awareness that the court had the discretion to deviate from the mandatory minimum sentence; there was nothing in the trial court's statement that indicated the court was applying a mechanical policy or that there was an outright refusal to consider the defendant's request to deviate; and the trial court did not abuse the court's discretion in concluding that the interests of justice factor did not weigh in favor of deviating from the mandatory minimum sentence. Reed v. State, 342 Ga. App. 466, 804 S.E.2d 129, 2017 Ga. App. LEXIS 357 (2017).

There was no affirmative showing that the trial judge was unaware of the discretion to deviate from the sentencing range, and given the state's argument that deviation from the mandatory minimum sentence was not warranted because the defendant never accepted responsibility for

the defendant's actions, the defendant failed to show entitlement to a sentence that deviated from the mandatory minimum. Gage v. State, 358 Ga. App. 855, 856 S.E.2d 440, 2021 Ga. App. LEXIS 142 (2021).

Recidivist sentence inappropriate. — Defendant's case was remanded for resentencing after a conviction for criminal attempt to manufacture methamphetamine because the trial court considered an uncertified Arkansas docket sheet in aggravation of sentence and a Tennessee conviction that might not qualify as a prior felony in Georgia under the recidivist statute. Elliot v. State, 274 Ga. App. 73, 616 S.E.2d 844, 2005 Ga. App. LEXIS 669 (2005).

Cocaine

1. In General

Impact of 1985 amendment on defendant convicted of cocaine possession. — Since at the time of the offense, O.C.G.A § 16-13-31(a) defined two methods of committing the crime of trafficking in cocaine, one dealing with pure cocaine and the other with mixtures containing cocaine, by amending the trafficking statute in 1985 to define the crime as "actual possession of 28 grams or more of cocaine," the legislature demonstrated an intent to repeal that portion of the trafficking statute which defined the crime as "actual possession of 28 grams or more . . of any mixture containing cocaine . . . ," and a defendant convicted thereafter of trafficking in a mixture is being held under an illegal sentence and must be discharged in a habeas corpus proceeding. Bassett v. Lemacks, 258 Ga. 367, 370 S.E.2d 146, 1988 Ga. LEXIS 339 (1988).

Form of cocaine. — Offense "trafficking in cocaine" is committed whether cocaine is delivered in a pure form or whether the cocaine is present in a mixture containing other substances, as long as the quantity of the mass containing cocaine is more than 28 grams. Belcher v. State, 161 Ga. App. 442, 288 S.E.2d 299, 1982 Ga. App. LEXIS 1909 (1982), superseded by statute as stated in Robinson v. State, 256 Ga. 564, 350 S.E.2d 464, 1986 Ga. LEXIS 954 (1986); Godett v. State, 205 Ga. App. 545, 423 S.E.2d 34, 1992 Ga. App. LEXIS 1254 (1992).

Any salt of cocaine sufficient. — Indictment charging the defendant with trafficking in cocaine is not at fatal variance with proof at trial that a powder found in the defendant's suitcase was cocaine hydrochloride, a salt of cocaine, because under O.C.G.A. § 16-13-26 the definition of cocaine includes any salt of cocaine. Britt v. State, 186 Ga. App. 418, 367 S.E.2d 298, 1988 Ga. App. LEXIS 370 (1988).

Ownership of the contraband is not an element of the offense of trafficking in cocaine. Reeves v. State, 192 Ga. App. 12, 383 S.E.2d 613, 1989 Ga. App. LEXIS 895 (1989).

"Intent to distribute" not required. — There is no requirement in O.C.G.A. § 16-13-31 that the state either allege or prove that defendant had an intent to distribute cocaine. Moran v. State, 170 Ga. App. 837, 318 S.E.2d 716, 1984 Ga. App. LEXIS 2931 (1984).

Knowledge of possession by other defendant. — Mere fact that a defendant is traveling with someone who is convicted for possessing cocaine does not establish that the defendant is a party to the crime of possession even if the defendant may have known that the defendant's companion is carrying drugs. Haxho v. State, 186 Ga. App. 393, 367 S.E.2d 282, 1988 Ga. App. LEXIS 380 (1988).

Defendant's knowledge of quantity. — O.C.G.A. § 16-13-31 requires as the mens rea that the defendant know that the defendant possesses cocaine but it does not require that the defendant know that the substance possessed weighs at least 28 grams. Cleveland v. State, 218 Ga. App. 661, 463 S.E.2d 36, 1995 Ga. App. LEXIS 849 (1995).

2. Procedure

Indictment based on actual possession. — Because the evidence was that the defendant was in actual possession of cocaine buried in the defendant's backyard, the defendant could not claim harmful error arising out of the superior court's charge indicating that the jury could convict upon a finding of actual,

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2. Procedure (Cont'd)

joint, or constructive possession thereof notwithstanding the defendant's indictment upon actual possession alone. Williams v. State, 247 Ga. App. 88, 543 S.E.2d 402, 2000 Ga. App. LEXIS 1424 (2000).

Error in indictment as to purity of cocaine. — When an indictment incorrectly charged the defendant with possession of a substance composed of a purity of one-tenth of a percent of cocaine, and the defendant moved at trial to dismiss the indictment, the trial court properly refused and constructively amended the indictment before the jury to read "ten percent." By waiting until trial to complain of the form of the indictment, the defendant was too late; motions to quash must be entered before trial, or the motions are waived. Arena v. State, 194 Ga. App. 883, 392 S.E.2d 264, 1990 Ga. App. LEXIS 382 (1990), cert. denied, No. S90C0912, 1990 Ga. LEXIS 750 (Ga. Apr. 18, 1990).

Habeas relief warranted for invalid indictment. — Denial of habeas relief was reversed after conviction for conspiracy to traffic in cocaine was based on an indictment alleging "a conspiracy to commit the crime of possessing a sufficient amount of a substance containing cocaine": this indictment was invalid as a matter of law. Gonzalez v. Abbott, 986 F.2d 461, 1993 U.S. App. LEXIS 5200 (11th Cir.), cert. denied, 510 U.S. 894, 114 S. Ct. 257, 126 L. Ed. 2d 210, 1993 U.S. LEXIS 6109 (1993).

Absence of the word "purity" from an indictment charging trafficking in cocaine did not render the indictment void as the Georgia Supreme Court itself has omitted the word when describing the crime prohibited by the statute. Clark v. State, 266 Ga. App. 334, 596 S.E.2d 783, 2004 Ga. App. LEXIS 380 (2004).

Purity not required element in criminal attempt to traffic cocaine. — Trial court properly denied the defendant's motion to dismiss the indictment accusing the defendant of criminal attempt to traffic in cocaine in violation of O.C.G.A. §§ 16-4-1 and 16-13-31(a)(1); purity did not have to be alleged in an attempt case, particularly since there was no cocaine involved in the instant case, the indictment satisfied O.C.G.A. § 17-7-54(a) by tracking the applicable statutes in a manner that was easily understood and by apprising the defendant of both the crime and the manner in which it was alleged to have been committed, and if the defendant admitted the allegations precisely as set forth in the indictment, the defendant would have been guilty of criminal attempt to traffic in cocaine. Davis v. State, 281 Ga. App. 855, 637 S.E.2d 431, 2006 Ga. App. LEXIS 1169 (2006), cert. denied, No. S07C0282, 2007 Ga. LEXIS 75 (Ga. Jan. 22, 2007).

State not required to prove intent to distribute. — Evidence supported a defendant's conviction for trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a)(1). The state was not required to prove an intent to distribute, and the determination of guilt or innocence depended largely on whether the jury believed the defendant, who claimed that some drugs were thrown into the defendant's lap and that the defendant panicked, picked the drugs up, and threw the drugs out of the window. Hancock v. State, 293 Ga. App. 595, 667 S.E.2d 437, 2008 Ga. App. LEXIS 1018 (2008).

3. Evidence

Motel safe with cocaine inside. — Sufficient evidence supported the conviction of the defendant for trafficking cocaine under O.C.G.A. § 16-13-31(a)(1); during a police search of the defendant's motel room, to which the defendant consented, police discovered that a safe key on the defendant's person opened a safe that contained 58.1 grams of cocaine. Nelson v. State, 274 Ga. App. 585, 618 S.E.2d 192, 2005 Ga. App. LEXIS 810 (2005).

Evidence sufficient when cocaine found in hotel. — There was sufficient evidence to support a defendant's conviction for trafficking in cocaine based on the evidence showing more than mere proximity to the cocaine in that the defendant was alone in the hotel room

when the defendant heard the knock on the door; no one entered or exited the room prior to the search; paraphernalia commonly used to prepare crack cocaine was openly displayed on the counter; and the jacket in which the cocaine was found was the same jacket the defendant wore during a prior arrest that had been videotaped at which time the defendant was also found to have possessed cocaine. Celestin v. State, 296 Ga. App. 727, 675 S.E.2d 480, 2009 Ga. App. LEXIS 164 (2009), cert. denied, No. S09C1200, 2009 Ga. LEXIS 340 (Ga. June 1, 2009).

Toilet with cocaine and cash. — Sufficient evidence supported the defendant's conviction of trafficking in cocaine in violation of O.C.G.A. § 16-13-31 and violating the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq.; the defendant was found alone in a bathroom in which the toilet contained 90 grams of cocaine and a large amount of cash, and a key to a car, which was later found to contain marijuana, was found in the defendant's pants. Jackson v. State, 281 Ga. App. 83, 635 S.E.2d 372, 2006 Ga. App. LEXIS 1004 (2006).

Cocaine found in bathroom pipes. — Evidence was sufficient to support a drug trafficking charge because, inter alia, an officer observed a steady flow of vehicle and pedestrian traffic around two residences, the officer explained that a suspected seller would enter the first home and then return to the second home to complete a sale, and after completing five or six sales, the suspected seller would return to the first home, the officer observed almost 20 of these transactions and, in executing a search warrant, officers saw the defendant and the spouse leave a bathroom in one of the homes, and officers found cocaine in the pipes of the bathroom's toilet. Blue v. State, 275 Ga. App. 671, 621 S.E.2d 616, 2005 Ga. App. LEXIS 1079 (2005), cert. denied, No. S06C0349, 2006 Ga. LEXIS 135 (Ga. Feb. 13, 2006).

Cocaine under hood of vehicle. — Defendant's conviction for trafficking in cocaine was supported by sufficient evidence that officers found more than 43 grams of cocaine under the hood of the vehicle the defendant was driving after a drug dog alerted that contraband was located inside the vehicle and a subsequent search based on the alert. Garvin v. State, 283 Ga. App. 242, 641 S.E.2d 176, 2006 Ga. App. LEXIS 1540 (2006), cert. denied, No. S07C0676, 2007 Ga. LEXIS 329 (Ga. Apr. 24, 2007).

Cocaine found in truck bed. — Defendant failed to rebut the presumption of possession of bricks of cocaine found in the defendant's pickup truck following a road block stop because the defendant claimed that the truck was the defendant's, the defendant asserted ownership over the contents of the truck, the defendant was the sole occupant of the truck, and there was no showing that others had access to the truck bed. Maldonado v. State, 313 Ga. App. 511, 722 S.E.2d 123, 2012 Ga. App. LEXIS 8 (2012).

Evidence sufficient when drugs thrown from car. — While a defendant claimed that the evidence was insufficient to exclude the possibility that the cocaine belonged solely to the defendant's passenger, the testimony of the passenger that the passenger dropped the drugs out of the truck after the defendant threw the drugs in the passenger's lap was adequately corroborated under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) by the facts that the defendant had more than $2,000 in the defendant's pocket and that the defendant was the owner and driver of the truck from which the drugs were thrown; the defendant was, thus, properly convicted of trafficking in cocaine under O.C.G.A. § 16-13-31(a)(1) and possession of cocaine as a lesser included offense of possession with intent to distribute. Wingfield v. State, 297 Ga. App. 476, 677 S.E.2d 704, 2009 Ga. App. LEXIS 454 (2009).

Evidence of defendant's knowledge of weight of drugs sufficient. — Knowledge of the weight of cocaine in a case of cocaine trafficking under O.C.G.A. § 16-13-31(a) was shown by evidence that crack cocaine packaged for resale, a 72.65-gram slab of crack cocaine beside a mirror and cutting tools, 37 individual packets of powder cocaine, digital scales, sandwich bags, and loaded handguns, were in a home defendant rented. Scott v.

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3. Evidence (Cont'd)

State, 331 Ga. App. 395, 771 S.E.2d 93, 2015 Ga. App. LEXIS 172 (2015), cert. denied, No. S15C1120, 2015 Ga. LEXIS 477 (Ga. June 15, 2015).

Circumstances of the possession, including the defendant driving the car from which the cocaine was thrown, the presence of a very large quantity of narcotics in the car, the display of nervousness during the stop, the inconsistent statements made, the scales found on the passenger floorboard, the defendant's spontaneous admissions, and the weight provided sufficient evidence to sustain the defendant's conviction for trafficking to show knowing possession of more than 200 grams of the drug. Robinson v. State, 331 Ga. App. 872, 772 S.E.2d 223, 2015 Ga. App. LEXIS 258 (2015).

Possession of mixture in conspiracy to traffic in cocaine. — State proved the conspiracy to traffic cocaine charge by showing that the defendant knowingly possessed 28 grams or more of cocaine and that one of the conspirators took an overt act to possess the cocaine. The conviction was not invalid on the ground that the indictment alleged the defendant possessed pure cocaine, but the evidence showed that the cocaine was a mixture, as the crime could be proved by either showing that a defendant possessed pure cocaine or cocaine mixtures, and the state was not required to prove every substantive element of the offense since the defendant was charged with conspiracy to traffic, not trafficking itself. Allison v. State, 259 Ga. App. 775, 577 S.E.2d 845, 2003 Ga. App. LEXIS 165 (2003), cert. denied, No. S03C0904, 2003 Ga. LEXIS 512 (Ga. May 5, 2003).

Use of similar transaction evidence in drug possession case. — With regard to the defendant's convictions for trafficking in cocaine and possession of a drug related object, the trial court did not abuse the court's discretion by allowing the state to introduce evidence of the defendant's 2003 drug possession incident because both incidents involved the possession and concealment of cocaine and, during both incidents, the defendant described the process by which the drugs were obtained. Stover v. State, 322 Ga. App. 142, 744 S.E.2d 119, 2013 Ga. App. LEXIS 467 (2013).

Warrantless search of parolee. — Trial court erred in granting the defendant's motion to suppress evidence seized after an automobile search given that law enforcement had reliable information that the defendant was transporting drugs, specifically, cocaine, as: (1) the defendant was on parole, and that as a condition thereof, had specifically consented to a warrantless search; (2) the information received from the informant about the defendant's actions was reliable; and (3) no evidence was presented that the officers acted in bad faith or to harass the defendant. State v. Cauley, 282 Ga. App. 191, 638 S.E.2d 351, 2006 Ga. App. LEXIS 1349 (2006), cert. denied, No. S07C0420, 2007 Ga. LEXIS 148 (Ga. Feb. 5, 2007).

Evidence sufficient to support conviction of selling cocaine. — See Dixon v. State, 177 Ga. App. 506, 339 S.E.2d 775, 1986 Ga. App. LEXIS 2425 (1986); Hamilton v. State, 180 Ga. App. 284, 349 S.E.2d 230, 1986 Ga. App. LEXIS 2703 (1986); Wilson v. State, 193 Ga. App. 183, 387 S.E.2d 413, 1989 Ga. App. LEXIS 1389 (1989); Roberson v. State, 195 Ga. App. 379, 393 S.E.2d 516, 1990 Ga. App. LEXIS 500 (1990); Ross v. State, 206 Ga. App. 1, 424 S.E.2d 308, 1992 Ga. App. LEXIS 1552 (1992).

Accomplice's testimony combined with a videotape of defendant in the front seat of a car while talking to a confidential police informant during a drug buy was sufficient corroboration to justify defendant's convictions for selling cocaine. Etchison v. State, 266 Ga. App. 528, 597 S.E.2d 583, 2004 Ga. App. LEXIS 417 (2004).

Despite a sufficiency of the evidence challenge based solely on an issue of the identity of the defendant as the perpetrator, the defendant's conviction for the sale of cocaine was affirmed on appeal because the issue surrounding the credibility of the witness making such identification was for the jury, and not the Court of Appeals of Georgia, to determine, while resolving any inconsistencies in the testi-

mony presented for or against the guilt of the accused. Cosby v. State, 289 Ga. App. 36, 656 S.E.2d 186, 2007 Ga. App. LEXIS 1323 (2007).

State's uncontradicted evidence showed that the idea to sell cocaine to an informant originated with the defendant, and the defendant was predisposed to commit the crime without any undue persuasion, incitement, or deceit by the state, and therefore supported the defendant's conviction for the sale of cocaine and the trial court's refusal to charge the jury on the defense of entrapment. Lightsey v. State, 289 Ga. App. 181, 656 S.E.2d 852, 2008 Ga. App. LEXIS 33 (2008).

Sufficient evidence was presented to sustain the defendant's conviction for selling cocaine because unrefuted testimony from an undercover agent identifying the defendant as the seller of the cocaine purchased in a controlled buy conducted by the agent was corroborated by an audio tape and the testimony of other officers at the scene. Thompson v. State, 289 Ga. App. 387, 657 S.E.2d 296, 2008 Ga. App. LEXIS 88 (2008).

Selling cocaine. — Witness's testimony established that the defendant sold cocaine to the victim, later struggled with the victim and the victim was shot, and the defendant threatened the witness not to tell the police; the evidence was sufficient to find the defendant guilty of violating the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., and of concealing a death under O.C.G.A. § 16-13-1. Jackson v. State, 271 Ga. App. 278, 609 S.E.2d 207, 2005 Ga. App. LEXIS 26 (2005).

Cocaine found in backpack. — Evidence was sufficient to support the defendant's convictions for trafficking in cocaine, possession of a firearm during the commission of a felony, possession of a firearm by a convicted felon, and felony fleeing or attempting to elude based on the defendant's involvement in a police chase that included speeds in excess of 100 m.p.h. in a residential area and the defendant's attempt to flee on foot; a backpack that the defendant was carrying while running from the police and which was recovered from the roof of the house around which the defendant had disappeared had drugs and a pistol in the backpack. Hinton v. State, 297 Ga. App. 565, 677 S.E.2d 752, 2009 Ga. App. LEXIS 473 (2009).

Videotape of cocaine sale sufficient evidence. — Because a videotape of a cocaine sale provided independent evidence of the defendant's participation in the transaction, the evidence was sufficient to support the defendant's conviction for selling cocaine. McKinney v. State, 274 Ga. App. 859, 619 S.E.2d 367, 2005 Ga. App. LEXIS 845 (2005).

Pat-down search resulting in cocaine. — Trial court did not err in denying the defendant's motion to suppress the cocaine found by an officer after a precautionary pat-down as the officer's actions in responding to a suspicious-person complaint and immediately encountering the defendant were reasonable and neither arbitrary nor harassing; hence, the seizure was authorized as incident to a lawful arrest. Simmons v. State, 281 Ga. App. 654, 637 S.E.2d 70, 2006 Ga. App. LEXIS 1193 (2006), cert. denied, No. S07C0216, 2007 Ga. LEXIS 77 (Ga. Jan. 22, 2007).

Police search of a defendant's bag and person which produced handguns, cocaine, cash, and other drugs was lawful because the search was made pursuant to the police officers' lawful warrantless arrest of the defendant when the defendant arrived at a motel room exactly answering a detailed description provided by a confidential informant, who stated that the defendant would be carrying a shoulder bag containing drugs and a loaded handgun. Green v. State, 302 Ga. App. 388, 691 S.E.2d 283, 2010 Ga. App. LEXIS 135 (2010).

Testimony by agent. — Court properly allowed an agent to testify on direct examination as to the agent's conversations with a coconspirator as part of the res gestae. What the coconspirator said, as related by the agent, did not refer to the defendants or directly implicate the defendants but concerned instead the quantity of cocaine being negotiated for sale. Lawrence v. State, 187 Ga. App. 211, 369 S.E.2d 531, 1988 Ga. App. LEXIS 557 (1988).

Aiding and abetting possession. — Whether or not the defendant had physical possession of cocaine, the

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defendant aided and abetted the cocaine's actual physical possession and was guilty of the offense of trafficking under O.C.G.A. §§ 16-2-20 and 16-13-31 as a party to the crime. Barrett v. State, 183 Ga. App. 729, 360 S.E.2d 400, 1987 Ga. App. LEXIS 2742 (1987), cert. denied, 183 Ga. App. 905.

Intentional aiders and abettors. — Jury could find the defendant mother and her son guilty of joint actual possession of cocaine either directly or as intentional aiders and abettors or intentional encouragers. As to the indirect roles, there was ample evidence that at the least, the mother was permitting direct committers to use her apartment for trafficking, providing a haven, and her son was intentionally encouraging the trafficking by himself being a direct receiver. Heath v. State, 186 Ga. App. 655, 368 S.E.2d 346, 1988 Ga. App. LEXIS 426 (1988).

Evidence of similar transaction properly admitted. — With regard to a defendant's conviction for trafficking in cocaine, the trial court did not err by admitting evidence of the defendant's 2004 arrest for trafficking in cocaine as a similar transaction since, despite the defendant's claims, sufficient similarities existed between the prior offense and the crime charged because the prior transaction involved the defendant's possession of a trafficking amount of cocaine and the defendant's intent and bent of mind to traffic in cocaine were at issue in the crime charged. Celestin v. State, 296 Ga. App. 727, 675 S.E.2d 480, 2009 Ga. App. LEXIS 164 (2009), cert. denied, No. S09C1200, 2009 Ga. LEXIS 340 (Ga. June 1, 2009).

Proof of joint constructive possession. — Because the defendant's brother was prosecuted in federal court for possession of a cocaine mixture in an apartment, the state was permitted to prove the state's case against the defendant by proof of joint constructive possession; the state did not prosecute the brother for the brother's joint constructive possession of the cocaine mixture in the apartment, but the United States did prosecute the brother in federal court. Holiman v. State, 313 Ga. App. 76, 720 S.E.2d 363, 2011 Ga. App. LEXIS 1078 (2011), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Undisputed evidence that the defendant was driving the car in which the cocaine was found gave rise to a rebuttable presumption that the defendant had possession and control over the drug and the presumption could not be rebutted by citation to the equal access rule when both the defendant and the passenger were charged with joint constructive possession. Robinson v. State, 331 Ga. App. 872, 772 S.E.2d 223, 2015 Ga. App. LEXIS 55 (2015).

Actual or constructive possession supports trafficking offense. — Defendant may be convicted under O.C.G.A. § 16-13-31 of trafficking in cocaine based on a finding of either actual or constructive possession. Cheeks v. State, 234 Ga. App. 446, 507 S.E.2d 204, 1998 Ga. App. LEXIS 1277 (1998).

Constructive possession of cocaine. — Testimony by two of the defendant's cohorts that the defendant directed one of them to pull the cocaine from under the front seat and hide the cocaine in a cup was sufficient evidence of the defendant's constructive possession of the cocaine to support a trafficking conviction. Thomas v. State, 261 Ga. App. 493, 583 S.E.2d 207, 2003 Ga. App. LEXIS 687 (2003).

Conviction for cocaine trafficking reversed following confrontation rights violation. — Despite sufficient evidence existing to support the defendant's conviction for trafficking in cocaine, the conviction was reversed because the trial court violated the defendant's right to confrontation by admitting the out-of-court statements of a confidential informant that the informant purchased crack cocaine from the defendant, which was arguably the only direct or non-circumstantial evidence that the defendant was involved in the illegal drug activity occurring at the residence. Freeman v. State, 329 Ga. App. 429, 765 S.E.2d 631, 2014 Ga. App. LEXIS 706 (2014).

Insufficient evidence to convict passenger of cocaine offense. — Since the circumstantial evidence failed to

establish a connection between the defendant and the cocaine other than the fact that the cocaine was found hidden in a package on the floor behind the driver's seat in a car in which the defendant was riding in the front passenger seat, a conviction for knowingly possessing more than 400 grams of a mixture containing at least 10 percent cocaine was reversed. Hodges v. State, 277 Ga. App. 174, 626 S.E.2d 133, 2006 Ga. App. LEXIS 18 (2006).

Equal access defense rejected. — Evidence was sufficient to authorize a defendant's conviction for trafficking in cocaine under O.C.G.A. § 16-13-31(a)(1) as the evidence showed that, during a traffic stop, a sheriff's deputy found a package containing cocaine in a car owned and driven by the defendant. While the defendant argued that the defendant was entitled to a directed verdict of acquittal under the equal access rule because the sole evidence of the defendant's possession of the cocaine was the defendant's ownership and possession of the car and because others had equal access to the part of the car where the cocaine was found, the equal access rule was inapplicable as the state charged all three occupants of the car with possession of cocaine; thus, the state was entitled to rely on the presumption to show that the defendant, as the car's owner and driver, had possession and control over the cocaine. Warren v. State, 314 Ga. App. 477, 724 S.E.2d 404, 2012 Ga. App. LEXIS 138 (2012), cert. denied, No. S12C1072, 2012 Ga. LEXIS 548 (Ga. May 29, 2012).

Drugs in plain view of defendant driver results in conviction. — Evidence was sufficient when the cocaine was found in plain view of the defendant in the lap of the front-seat passenger of the car the defendant was driving, scales were found in the car, and there was testimony from an accomplice. Knight v. State, 242 Ga. App. 363, 528 S.E.2d 855, 2000 Ga. App. LEXIS 99 (2000).

Passenger in vehicle convicted of trafficking in cocaine. — Evidence was sufficient to find that the defendant was guilty beyond a reasonable doubt of trafficking in cocaine since cocaine was found in a vehicle in which the defendant was a passenger, the defendant had $1,780 in the defendant's pockets, and the defendant was accompanied by the defendant's brother, who had a history of possessing cocaine with the intent to distribute. McKenzie v. State, 283 Ga. App. 555, 642 S.E.2d 187, 2007 Ga. App. LEXIS 112 (2007).

Drugs found in car sufficient for trafficking conviction. — Evidence that the defendant admitted to driving the car where the drugs were found, that the defendant had been paid to drive drugs from one county to another, that the defendant had transported drugs in the past, the defendant had been told the defendant was transporting marijuana, and a passenger told the defendant that the defendant was transporting four kilos of cocaine only as they saw police officers supported the defendant's conviction for trafficking cocaine. Martinez v. State, 315 Ga. App. 727, 728 S.E.2d 255, 2012 Ga. App. LEXIS 422 (2012).

Defendant's conviction of trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a)(1) was affirmed because the defendant was the driver of the car, and the defendant exercised dominion and control over the car throughout the car's use over the course of several days and the baggy containing the cocaine was in plain view between the defendant's driver's seat and the front passenger seat, which showed the defendant's access to the drugs. Sabb v. State, 317 Ga. App. 537, 731 S.E.2d 399, 2012 Ga. App. LEXIS 762 (2012), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Sufficient evidence to support the defendant's conviction for trafficking in more than 400 grams of cocaine including evidence that the defendant arranged to use the defendant's fiancée's car and allowed another individual to drive it, the defendant and the driver gave differing accounts of their travel that day, and when police found cocaine in the trunk, the defendant was not surprised, but rather disappointed. Cooper v. State, 370 Ga. App. 703, 898 S.E.2d 600, 2024 Ga. App. LEXIS 57 (2024).

Search of vehicle results in trafficking conviction. — When the defendant was free to go after a valid

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traffic stop, was not unreasonably detained or asked numerous questions unrelated to the traffic stop, the defendant's constitutional rights were not violated when a police officer requested consent to search a car and the defendant was subsequently convicted of trafficking in cocaine; the trial court did not err in denying the defendant's motion to suppress. Daniel v. State, 260 Ga. App. 732, 580 S.E.2d 682, 2003 Ga. App. LEXIS 471 (2003), aff'd, 277 Ga. 840, 597 S.E.2d 116, 2004 Ga. LEXIS 415 (2004).

Record supported the trial court's judgment that a vehicle checkpoint that was established to check drivers' licenses, registrations, and proof of insurance was established for a legitimate purpose, that a police officer did not violate the defendant's rights when the officer walked a drug detection dog around the defendant's car while another officer was checking the validity of the defendant's driver's license, and that police had probable cause to search the defendant's car after the dog alerted on the car; furthermore, the trial court properly denied a motion to suppress evidence which the defendant filed after the defendant was charged with trafficking in cocaine and possession of cocaine with intent to distribute, and the defendant was properly convicted of both offenses. McCray v. State, 268 Ga. App. 84, 601 S.E.2d 452, 2004 Ga. App. LEXIS 851 (2004).

Evidence was sufficient to show that the defendants knowingly possessed cocaine as was required to support the defendants' convictions under O.C.G.A. § 16-13-31(a)(1)(C) for trafficking in cocaine; the defendants' criminal intention was shown by the fact that when stopped by a police officer for a traffic offense and a seat belt violation, the defendants' stories contradicted each other, the defendants' car smelled of air freshener, the defendants could not explain who owned the car nor produce a vehicle registration for the vehicle that the defendants were traveling in, and related circumstances from which a jury could infer that the defendants knew about the large quantity of cocaine that was hidden in a secret compartment in the defendants' car, despite the defendants' claims that the defendants did not know about the cocaine. Fernandez v. State, 275 Ga. App. 151, 619 S.E.2d 821, 2005 Ga. App. LEXIS 918 (2005).

Defendant's motion to suppress evidence of cocaine and crack pipes found during an inventory search of a car was properly denied as: (1) the police impound was not unlawful; (2) waiting a reasonable time, usually 20 minutes, prior to having the car towed, was not unreasonable as a matter of law; and (3) the officers were not required to call the defendant's relatives first. Carlisle v. State, 278 Ga. App. 528, 629 S.E.2d 512, 2006 Ga. App. LEXIS 363 (2006).

Defendant's conviction for cocaine trafficking was upheld on appeal as the evidence showed that an excess of twenty-eight grams of cocaine, with a purity of over 10 percent, was found in plain view in a car that the defendant was driving, directly in front of the defendant and the defendant was the only person in the car. Johnson v. State, 279 Ga. App. 98, 630 S.E.2d 612, 2006 Ga. App. LEXIS 458 (2006).

Defendant's knowledge that the vehicle in which the defendant was riding had a hidden compartment containing $130,000 in cash and a kilo of cocaine could be inferred from the circumstances including the defendant's claiming ownership of the car and the conflicting stories told by a codefendant and the defendant regarding their destination. Feliciano v. State, 302 Ga. App. 328, 690 S.E.2d 680, 2010 Ga. App. LEXIS 113 (2010), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Suppression motion properly denied. — Trial court did not err in dismissing as untimely a defendant's motion in limine to suppress unlawfully obtained evidence with regard to the defendant being charged with cocaine trafficking for which the defendant was later convicted because the defendant waived formal arraignment and pleaded not guilty, and more than three months

later the defendant filed a motion in limine to suppress evidence, arguing that both the cocaine and any testimony regarding the cocaine should be excluded on the ground that both were products of an unlawful search of the home where the defendant and the cocaine were found; the defendant was unable to circumvent the requirements of Ga. Unif. Super. Ct. R. 31.1 by couching the defendant's motion to suppress as a motion in limine as the defendant's failure to file a timely motion to suppress the seized evidence waived any right to claim that the search which produced the evidence was unconstitutional. Fraser v. State, 283 Ga. App. 477, 642 S.E.2d 129, 2007 Ga. App. LEXIS 84 (2007), overruled in part, State v. Lane, 308 Ga. 10, 838 S.E.2d 808, 2020 Ga. LEXIS 98 (2020).

In a prosecution for trafficking in cocaine, the trial court did not err in denying the defendant's motion to suppress the cocaine seized after a valid traffic stop had essentially concluded as a state trooper's objective observations, when combined with the extensive experience the trooper possessed in drug interdiction and knowledge of drug smuggling patterns, supplied sufficient facts to conclude that the defendant might have been engaged in criminal activity. Giles v. State, 284 Ga. App. 1, 642 S.E.2d 921, 2007 Ga. App. LEXIS 255 (2007), cert. denied, No. S07C0965, 2007 Ga. LEXIS 456 (Ga. June 4, 2007).

In a prosecution for trafficking in cocaine, the trial court did not err in denying motions to suppress filed by the two defendants because: the officer (1) had a reasonable and sufficient basis for initiating a traffic stop of the car the defendants were traveling in based on a belief that the license plate on the subject vehicle might have belonged on another car, and hence, was illegally transferred; and (2) did not improperly prolong the stop once the defendants told conflicting stories of their travels and one declined to grant the officer consent to search. Andrews v. State, 289 Ga. App. 679, 658 S.E.2d 126, 2008 Ga. App. LEXIS 103 (2008), cert. denied, No. S08C0963, 2008 Ga. LEXIS 507 (Ga. June 2, 2008).

In a cocaine trafficking prosecution, although the defendant testified that an officer kicked in the door to the defendant's residence, the defendant's landlord testified that there was no damage to the front door, and the trial court was entitled to believe the officer's testimony that the door was open, thus, the officer was entitled to seize drugs seen in plain view through the open door and the defendant's motion to suppress the drugs was properly denied. Reid v. State, 298 Ga. App. 889, 681 S.E.2d 671, 2009 Ga. App. LEXIS 811 (2009).

Trial court did not err in denying the defendant's motion to suppress the cocaine that was discovered during a search of the rental vehicle the defendant was driving based on evidence from the officer that the defendant consented to the search, although the defendant testified that the defendant did not consent and that the officer just announced that the officer was going to search. Morgan v. State, 311 Ga. App. 740, 716 S.E.2d 821, 2011 Ga. App. LEXIS 836 (2011).

With regard to the defendant's conviction for trafficking in cocaine, the trial court did not err in denying the defendant's motion to suppress the cocaine found on the bus the defendant was driving because the consent to search was obtained approximately 10 minutes after the stop and a prolonged traffic stop was justified based on the information the deputy learned during the course of the traffic stop, such as the inconsistencies in the defendant's statements and the log book. Rocha v. State, 317 Ga. App. 863, 733 S.E.2d 38, 2012 Ga. App. LEXIS 830 (2012).

Trial court properly denied the defendant's motion to suppress the cocaine evidence found in the defendant's vehicle after a warrantless search because the fact that the officer detected the odor of marijuana emitting from the defendant's car provided probable cause to believe that the car contained drug contraband, which authorized the search of the car. Jones v. State, 319 Ga. App. 678, 738 S.E.2d 130, 2013 Ga. App. LEXIS 42 (2013).

Evidence sufficient to defeat motion for acquittal. — Evidence that the 817.7 grams of powdery substance seized contained cocaine, without proof

Cocaine (Cont'd)
3. Evidence (Cont'd)

that the actual cocaine in the substance exceeded 400 grams, defeated a motion for acquittal. Quinn v. State, 171 Ga. App. 590, 320 S.E.2d 827, 1984 Ga. App. LEXIS 2993 (1984).

Conviction for possessing cocaine was not inconsistent with acquittal of trafficking in cocaine since the cocaine upon which the possession offense was based was seized at a different time and place from the cocaine upon which the trafficking offense was based. Rogers v. State, 182 Ga. App. 599, 356 S.E.2d 546, 1987 Ga. App. LEXIS 2637 (1987).

Constructive possession insufficient to support trafficking conviction. — After the defendant was charged with both trafficking in cocaine and possession with intent to distribute, and the instructions given by the court were not separated as to the two counts, the court erred in charging both constructive and actual possession with regard to the trafficking count. While constructive possession will support possession with intent to distribute, it will not support a trafficking conviction under O.C.G.A. § 16-13-31. Edwards v. State, 194 Ga. App. 571, 391 S.E.2d 137, 1990 Ga. App. LEXIS 209 (1990) (decided under facts existing prior to 1988 amendment which deleted "actual" preceding "possession").

Possession offenses included in trafficking. — Offenses of possession of cocaine and possession of cocaine with intent to distribute were lesser included offenses, as a matter of fact, of the trafficking offense since proof of the two possession offenses was established by "the same or less than all the facts" required to establish the distribution offense; thus, it was error to convict the defendant of all three offenses. Hancock v. State, 210 Ga. App. 528, 437 S.E.2d 610, 1993 Ga. App. LEXIS 1239 (1993).

Evidence sufficient to find purity of 10 percent of more. — Although the lab reports were less than explicit on the element of purity of the cocaine, the reports could have reasonably been interpreted to authorize the trial judge to find beyond a reasonable doubt that the substances described therein were of a purity of 10 percent or more of cocaine. Stroud v. State, 286 Ga. App. 124, 648 S.E.2d 476, 2007 Ga. App. LEXIS 708 (2007).

Counsel's deficiency did not warrant a new trial. — While the defendant's trial counsel was ineffective in failing to object to that portion of the state's closing argument in which the prosecutor referenced a slain officer's funeral a week prior, as that fact had no relevance to the charges the defendant was facing, based on the overwhelming evidence of guilt, including the defendant's admission, the defendant's convictions for trafficking in cocaine and possession of cocaine with intent to distribute were upheld on appeal; thus, a new trial was properly denied. Cantrell v. State, 290 Ga. App. 651, 660 S.E.2d 468, 2008 Ga. App. LEXIS 394 (2008).

Evidence sufficient to support conviction of possession. — Evidence, although it was for the most part circumstantial, was sufficient for a rational trier of fact to find, beyond a reasonable doubt, that one defendant was knowingly in actual possession of more than 28 grams of cocaine and that one other defendant was a party to the crime. Green v. State, 187 Ga. App. 373, 370 S.E.2d 348, 1988 Ga. App. LEXIS 675 (1988).

Evidence was sufficient to show that the defendant was in "possession" of cocaine since the defendant was seen by law enforcement officers holding a grocery sack, which was later found to contain over $5,000 in cash, since cocaine with a street value of over $400 was found in the kitchen garbage basket, and since the defendant was the only person in the kitchen at the time the police entered the apartment. Owens v. State, 192 Ga. App. 335, 384 S.E.2d 920, 1989 Ga. App. LEXIS 1035 (1989).

When the defendant was seen sitting on the living room sofa, under which were found the defendant's keys and a large stash of cocaine, $423 in cash was found in the defendant's front pocket, cocaine was found hidden in the defendant's bedroom closet, cocaine was found carefully hidden

in the defendant's and the codefendant's bathroom, and a matchbox containing 12 pieces of "crack" or "rock" cocaine was found in the "breast pocket" of the codefendant's jacket and that a plastic bag containing 43 pieces of "rock" or "crack" cocaine was found on the living room sofa next to the codefendant's jacket, this evidence was sufficient to enable a rational trier of fact to reasonably find that the defendants were in "actual possession" of the more than 28 grams of pure cocaine. Owens v. State, 192 Ga. App. 335, 384 S.E.2d 920, 1989 Ga. App. LEXIS 1035 (1989) (decided prior to 1988 amendment).

Defendants were observed purchasing several small objects from a codefendant in what the detectives believed to be a drug transaction and when the defendants were pulled over a short time later, the arresting officer saw a napkin, which contained several pieces of crack cocaine fall out of the car. This evidence was sufficient to enable a rational trier of fact to find the defendants guilty of possession of cocaine beyond a reasonable doubt. Byers v. State, 212 Ga. App. 110, 441 S.E.2d 290, 1994 Ga. App. LEXIS 151 (1994).

After the defendant was found seated near a bag containing a large quantity of cocaine, had within reach two loaded guns and access to ammunition, was monitoring police traffic using a scanner, and had more drugs and large amounts of money stashed in various places, the jury was authorized to conclude that the defendant was in knowing, constructive possession of over 28 grams of cocaine. Cobb v. State, 236 Ga. App. 265, 511 S.E.2d 522, 1999 Ga. App. LEXIS 137 (1999).

As the defendant was seen in actual possession of a shoebox containing 241 grams of cocaine, which the defendant disposed of in a dumpster, there was sufficient evidence to support the jury's guilty verdict. Hubbard v. State, 274 Ga. App. 184, 617 S.E.2d 167, 2005 Ga. App. LEXIS 704 (2005).

Appellate court upheld the defendant's convictions for possession of cocaine, sale of cocaine, and possession of cocaine with intent to distribute, based on sufficient evidence consisting of testimony from two special agents identifying the defendant, a videotape of a cocaine sale, and positive test results confirming the substance the defendant sold and possessed was cocaine. Henley v. State, 281 Ga. App. 242, 635 S.E.2d 856, 2006 Ga. App. LEXIS 1065 (2006).

Based on: (1) the evidence presented to the jury about the condition and location of two bags of cocaine found in the grass near a vehicle after the vehicle rolled over with the defendant inside was sufficient to allow the jury to infer that the bags were thrown out of the vehicle along with the other items; (2) items thrown from inside the car were traced back to the defendant and a passenger as the only occupants of the vehicle; and (3) receipts found in the vehicle, the jury could infer that the defendant had been in Maryland on one day, in Texas two days thereafter, and in Georgia on the day after that, and that this pattern indicated that the defendant was knowingly engaged in delivering cocaine, sufficient circumstantial evidence existed to support the defendant's possession and trafficking cocaine convictions. Davis v. State, 285 Ga. App. 315, 645 S.E.2d 753, 2007 Ga. App. LEXIS 496 (2007).

Defendant's convictions for possessing 28 grams or more of cocaine, possessing cocaine with intent to distribute, and possession of a firearm during the commission of a felony were upheld on appeal as sufficient evidence was presented via the direct testimony of the defendant's live-in girlfriend, which when combined with the evidence showing their joint constructive possession of the drugs and gun tended to connect and identify the defendant with the crimes charged. Allen v. State, 286 Ga. App. 469, 649 S.E.2d 583, 2007 Ga. App. LEXIS 810 (2007).

Adequate corroboration supported trafficking conviction. — Evidence supported a conviction for trafficking in cocaine; even if corroboration of a confidential informant's testimony was necessary, the informant's testimony was sufficiently corroborated by the testimony of a police officer and an agent with the Drug Enforcement Agency. Moss v. State, 278 Ga. App. 362, 629 S.E.2d 5, 2006 Ga. App. LEXIS 64 (2006).

Conspiracy to traffic in cocaine. — State put forth sufficient evidence to convict the defendant of conspiracy to

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3. Evidence (Cont'd)

traffic in cocaine after the state established, through the defendant's confession, that the defendant arranged the purchase of 28 grams or more of cocaine; the state was not required under O.C.G.A. § 16-13-31(a)(1) to prove the purity of the cocaine. Gumbs v. State, 258 Ga. App. 230, 573 S.E.2d 485, 2002 Ga. App. LEXIS 1401 (2002).

Evidence insufficient to sustain conviction for trafficking in cocaine. — See Crenshaw v. State, 183 Ga. App. 527, 359 S.E.2d 419, 1987 Ga. App. LEXIS 2028 (1987); Cochran v. State, 190 Ga. App. 884, 380 S.E.2d 319, 1989 Ga. App. LEXIS 444 (1989); Jordan v. State, 225 Ga. App. 424, 484 S.E.2d 60, 1997 Ga. App. LEXIS 398 (1997); Stevens v. State, 245 Ga. App. 237, 537 S.E.2d 688, 2000 Ga. App. LEXIS 925 (2000); Baltazar v. State, 254 Ga. App. 773, 564 S.E.2d 202, 2002 Ga. App. LEXIS 369 (2002), cert. denied, No. S02C1168, 2002 Ga. LEXIS 883 (Ga. Sept. 30, 2002).

Defendant's trafficking in cocaine conviction was reversed on appeal, as the state failed to present sufficient evidence linking the defendant to the cocaine found in a house, the defendant had no tie to the house as an occupant or resident, and the act of standing in the front of the house when officers approached the defendant amounted to mere spatial proximity, which on its own, was insufficient to link the defendant to the crime; moreover, because the evidence showed that another individual, who was later incarcerated on drug charges, lived at the residence at that time, such gave rise to an unrebutted reasonable hypothesis that this other individual possessed the drugs in question. Brown v. State, 285 Ga. App. 330, 646 S.E.2d 273, 2007 Ga. App. LEXIS 433 (2007), cert. denied, No. S07C1406, 2007 Ga. LEXIS 750 (Ga. Oct. 9, 2007).

An officer exceeded the permissible scope of a consent frisk for weapons as nothing indicated that a cigar box that the officer removed from a defendant's pocket felt like a gun or other weapon, and the officer pointed to no particularized facts that reasonably led the officer to believe that the defendant might have a weapon. Thus, crack cocaine found in the box was inadmissible, and in the absence of this evidence, there was insufficient evidence to convict the defendant of possession of cocaine with the intent to distribute. Brown v. State, 293 Ga. App. 564, 667 S.E.2d 410, 2008 Ga. App. LEXIS 1010 (2008).

Evidence was insufficient to convict the defendant of trafficking in cocaine because the defendant did not own or lease the house where the contraband was found; officers found no bills in the defendant's name in the house; the defendant did not possess any marked currency from the controlled buy; and the defendant's possession of $1,332 in unmarked cash when the defendant was arrested did not connect the defendant to the drugs found in the house, in light of the three-day time lapse and evidence that the defendant was employed. Blue v. State, 350 Ga. App. 702, 830 S.E.2d 279, 2019 Ga. App. LEXIS 369 (2019).

Evidence insufficient to revoke probation for alleged cocaine trafficking. — Defendant's probation was improperly revoked based on the defendant's alleged trafficking in cocaine, O.C.G.A. § 16-13-31(a)(1), as an informant's hearsay statements were not competent to show the defendant arranged a drug sale, and no evidence connected the defendant with cocaine found in a house where the informant said the sale was to occur. That the defendant was sitting in front of the house and fled from police was insufficient to show the defendant's constructive possession of the cocaine as none of the defendant's belongings were inside the house; the defendant did not live there; and there was no evidence the defendant had ever been inside the house. Brown v. State, 294 Ga. App. 1, 668 S.E.2d 490, 2008 Ga. App. LEXIS 983 (2008).

Evidence too attenuated to be intrinsic. — Defendant's conviction on one count of trafficking in cocaine was reversed because the trial court abused the court's discretion in admitting the evidence of the United States Drug Enforcement Administration (DEA) investigation as intrinsic evidence of the

charged trafficking offense since the state failed to sufficiently link the DEA evidence to the events immediately surrounding the defendant's arrest as it was too attenuated in time and space from the events leading up to the charged offense. Sanchez-Villa v. State, 341 Ga. App. 264, 799 S.E.2d 364, 2017 Ga. App. LEXIS 178 (2017), cert. denied, No. S17C1576, 2017 Ga. LEXIS 746 (Ga. Aug. 28, 2017).

Circumstantial evidence sufficient for trafficking conviction. — Evidence, although circumstantial, was sufficient to connect the defendant to the house where drugs were found; thus, it was sufficient to support convictions of trafficking in cocaine and possession of marijuana with intent to distribute. Although others might have been present on the property on various unspecified occasions, the defendant was allowed by the owner to use the house, had been seen at the residence by police on previous occasions, had a vehicle on the premises, and hurriedly walked away from officers when the officers arrived; the evidence also showed that no other persons were present when officers executed the search warrant. Clyde v. State, 298 Ga. App. 283, 680 S.E.2d 146, 2009 Ga. App. LEXIS 649 (2009).

Police officer testified about searching a patrol car before transporting the defendant in the car, and about the officer's suspicions that the defendant had stuffed something underneath the backseat because the officer saw debris on the back of the defendant's pants and on the backseat. This circumstantial evidence was sufficient under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) to convict the defendant of possessing the cocaine found wedged underneath the backseat. Simmons v. State, 299 Ga. App. 21, 681 S.E.2d 712, 2009 Ga. App. LEXIS 827 (2009).

Circumstantial evidence insufficient for cocaine trafficking. — Circumstantial evidence consisting of the following facts was insufficient to convict the defendant of cocaine trafficking: the defendant was a passenger in a car, which was owned by the defendant's brother and driven by a friend; the car's trunk contained two kilos of cocaine; the car led police on a high speed chase across state lines; and the car crashed near the defendant's relatives' home. Foster v. State, 300 Ga. App. 446, 685 S.E.2d 422, 2009 Ga. App. LEXIS 1195 (2009), cert. denied, No. S10C0361, 2010 Ga. LEXIS 164 (Ga. Feb. 8, 2010).

In a "reverse sting" case, the authorities conducting the sting arrested the defendants before the defendants acquired possession of the drug and therefore the convictions for trafficking in cocaine are reversed. Epps v. State, 251 Ga. App. 645, 555 S.E.2d 25, 2001 Ga. App. LEXIS 1104 (2001), cert. denied, No. S02C0087, 2002 Ga. LEXIS 130 (Ga. Feb. 4, 2002).

Evidence sufficient when drugs found in shoebox. — State's admission of proof that over 28 grams of cocaine of at least ten percent purity was found in an envelope box on the floor of the car that the defendant was driving was sufficient to support the defendant's conviction for cocaine trafficking. Kates v. State, 271 Ga. App. 326, 609 S.E.2d 710, 2005 Ga. App. LEXIS 35 (2005).

Evidence sufficient when drugs found in laundry box. — Evidence was sufficient to convict the defendant of trafficking in cocaine when in addition to the defendant's fingerprint on a laundry detergent box of cocaine, the jury was entitled to infer from tape recorded conversations between a codefendant and an informant that the defendant was the supplier of the cocaine that was to be delivered to the informant; the day after the codefendant notified the informant that the supplier had arrived, the codefendant and the defendant showed up at the informant's house, and the defendant was with the codefendant when the codefendant turned to avoid a roadblock and when the laundry detergent box was left in the woods. Maldonado v. State, 284 Ga. App. 26, 643 S.E.2d 316, 2007 Ga. App. LEXIS 248 (2007).

Evidence that the defendant agreed to sell drugs to an informant was sufficient to sustain the defendant's conviction for cocaine trafficking. Carter v.

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State, 261 Ga. App. 204, 583 S.E.2d 126, 2003 Ga. App. LEXIS 586 (2003).

Felony murder conviction reversed when no conspiracy to traffic cocaine. — Defendant's conviction for conspiracy to commit trafficking in cocaine was reversed because there was no evidence of any agreement between the defendant and those operating the stash house, beyond a possible buy-sell agreement, and since the felony murder conviction was predicated on the conspiracy offense, that conviction required reversal as well. Griffin v. State, 294 Ga. 325, 751 S.E.2d 773, 2013 Ga. LEXIS 1016 (2013).

Insufficient evidence of conspiracy to traffic in cocaine. — Because the state failed to prove the essential element of an agreement between the defendant and the occupants of a stash house in a drug conspiracy trial, since the only evidence was that a purchase of drugs was to take place, the defendant's conviction for conspiracy to traffic in cocaine under O.C.G.A. §§ 16-4-8 and 16-13-31(a)(1) was reversed. Griffin v. State, 294 Ga. 325, 751 S.E.2d 773, 2013 Ga. LEXIS 1016 (2013).

Evidence sufficient for attempt to traffic in cocaine. — In an attempt to traffic in cocaine case under O.C.G.A. §§ 16-4-1 and 16-13-31, the defendant was not entitled to a directed verdict of acquittal because the state did not prove the purity of the cocaine that the defendant intended to purchase; proof of purity was unnecessary given that all that was needed was a substantial step towards the crime of trafficking, not completion of the crime. Davis v. State, 281 Ga. App. 855, 637 S.E.2d 431, 2006 Ga. App. LEXIS 1169 (2006), cert. denied, No. S07C0282, 2007 Ga. LEXIS 75 (Ga. Jan. 22, 2007).

Sufficient evidence supported the defendant's conviction for criminal attempt to commit trafficking in cocaine based on the trial evidence establishing that the defendant negotiated for and attempted to purchase one kilogram of cocaine from an undercover investigator, that the defendant took substantial steps and actively participated in the attempted drug offense by meeting with the undercover investigator at the designated location and at the arranged time for the purpose of conducting the transaction and by executing the bill of sale for a vehicle in exchange for the drug purchase, and by taking possession of the package of cocaine and cutting the package open to examine the contents. Tehrani v. State, 321 Ga. App. 685, 742 S.E.2d 502, 2013 Ga. App. LEXIS 369 (2013).

Evidence sufficient to support conviction for cocaine trafficking. — See Wilson v. State, 179 Ga. App. 780, 347 S.E.2d 709, 1986 Ga. App. LEXIS 2663 (1986); Rodriquez v. State, 180 Ga. App. 272, 349 S.E.2d 22, 1986 Ga. App. LEXIS 2717 (1986); Feblez v. State, 181 Ga. App. 567, 353 S.E.2d 64, 1987 Ga. App. LEXIS 2551 (1987); Kelly v. State, 181 Ga. App. 605, 353 S.E.2d 92, 1987 Ga. App. LEXIS 2554 (1987); Lopez v. State, 184 Ga. App. 31, 360 S.E.2d 722, 1987 Ga. App. LEXIS 2750 (1987); Thomas v. State, 184 Ga. App. 318, 361 S.E.2d 280, 1987 Ga. App. LEXIS 2768 (1987); Reed v. State, 186 Ga. App. 539, 367 S.E.2d 809, 1988 Ga. App. LEXIS 410 (1988); Means v. State, 188 Ga. App. 210, 372 S.E.2d 484, 1988 Ga. App. LEXIS 916 (1988); Burroughs v. State, 190 Ga. App. 467, 379 S.E.2d 175, 1989 Ga. App. LEXIS 261 (1989); Ward v. State, 193 Ga. App. 137, 387 S.E.2d 150, 1989 Ga. App. LEXIS 1311 (1989); Kelly v. State, 193 Ga. App. 549, 388 S.E.2d 377, 1989 Ga. App. LEXIS 1526 (1989); Beauchene v. State, 194 Ga. App. 222, 390 S.E.2d 116, 1990 Ga. App. LEXIS 32 (1990); Mitchell v. State, 195 Ga. App. 255, 393 S.E.2d 274, 1990 Ga. App. LEXIS 455 (1990); Tatum v. State, 195 Ga. App. 349, 393 S.E.2d 494, 1990 Ga. App. LEXIS 516 (1990); Ross v. State, 206 Ga. App. 1, 424 S.E.2d 308, 1992 Ga. App. LEXIS 1552 (1992); Daniels v. State, 221 Ga. App. 476, 471 S.E.2d 560, 1996 Ga. App. LEXIS 547 (1996); White v. State, 225 Ga. App. 74, 483 S.E.2d 329, 1997 Ga. App. LEXIS 211 (1997); Covington v. State, 226 Ga. App. 484, 486 S.E.2d 706, 1997 Ga. App. LEXIS 657 (1997); Brown v. State, 229 Ga. App. 87, 493 S.E.2d 230, 1997 Ga. App. LEXIS 1354 (1997); McCoy v. State, 231 Ga. App. 703, 500 S.E.2d 611, 1998 Ga. App. LEXIS

519 (1998); Milton v. State, 232 Ga. App. 672, 503 S.E.2d 566, 1998 Ga. App. LEXIS 784 (1998); Smith v. State, 237 Ga. App. 616, 516 S.E.2d 319, 1999 Ga. App. LEXIS 499 (1999); Gurr v. State, 238 Ga. App. 1, 516 S.E.2d 553, 1999 Ga. App. LEXIS 1045 (1999), cert. denied, No. S99C1260, 1999 Ga. LEXIS 897 (Ga. Oct. 21, 1999); Straite v. State, 238 Ga. App. 420, 518 S.E.2d 914, 1999 Ga. App. LEXIS 832 (1999); Small v. State, 243 Ga. App. 678, 534 S.E.2d 139, 2000 Ga. App. LEXIS 522 (2000); Brown v. State, 244 Ga. App. 440, 535 S.E.2d 785, 2000 Ga. App. LEXIS 752 (2000); Montgomery v. State, 249 Ga. App. 777, 549 S.E.2d 463, 2001 Ga. App. LEXIS 577 (2001), cert. denied, No. S01C1386, 2001 Ga. LEXIS 894 (Ga. Nov. 5, 2001).

When the defendant was convicted of the offense of trafficking in cocaine, and at trial, the state's expert witness testified that the cocaine seized from the defendant's possession weighed 28.0 grams, and on cross-examination stated that the electronic balance scales on which the cocaine was weighed had a margin of error of less than one percent, the trial court did not err in denying the defendant's motion for directed verdict because even if the jury could reasonably find that the cocaine seized from the defendant was slightly less than the requisite 28 grams, the jury could just as reasonably have found that the weight measurement was accurate or that the amount of cocaine seized slightly exceeded 28 grams. Newton v. State, 191 Ga. App. 664, 382 S.E.2d 432, 1989 Ga. App. LEXIS 728 (1989).

When the defendant was chased by a detective to the vicinity of an abandoned house where the defendant was seen throwing something under the front porch by another police officer and a mailman, and when a bag was immediately retrieved from that location containing marijuana, rolling papers and a bottle of cocaine, the evidence presented at trial was sufficient to support a guilty verdict of trafficking in cocaine. Hall v. State, 192 Ga. App. 151, 384 S.E.2d 428, 1989 Ga. App. LEXIS 944 (1989).

When more than 28 grams of pure cocaine was found in the defendants' apartment, where some of the cocaine was found in plain view, and where some of the illegal drug was found hastily stashed in and under household furnishings and some of the cocaine was found carefully hidden in various spots throughout the apartment, this evidence was sufficient to support a finding that someone was involved in trafficking in cocaine. Owens v. State, 192 Ga. App. 335, 384 S.E.2d 920, 1989 Ga. App. LEXIS 1035 (1989).

Evidence was sufficient to support the defendant's conviction for trafficking in cocaine since: (1) a confidential informant made a controlled buy from the defendant; (2) the defendant offered to provide the name of a major drug dealer if the defendant were set free; (3) a person who was with the defendant at the time of the defendant's arrest stated that the defendant had taken the person to the defendant's residence to pick up cocaine; (4) officers executing a search warrant at the defendant's residence found a lockbox filled with scales and cocaine; and (5) the defendant's equal access defense was rejected. Johnson v. State, 267 Ga. App. 549, 600 S.E.2d 667, 2004 Ga. App. LEXIS 710 (2004).

Defendant's motion for a directed verdict of acquittal was properly denied and the evidence supported the defendant's conviction for trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a)(1) as the defendant arranged the drug transaction with an undercover officer, accepted the container in which the officer directed the defendant to place the cocaine, and delivered to the officer 397 grams of cocaine with a purity of 44 percent. Salgado v. State, 268 Ga. App. 18, 601 S.E.2d 417, 2004 Ga. App. LEXIS 827 (2004).

Evidence was sufficient to convict the defendant of cocaine trafficking and possession of cocaine with intent to distribute because there was more evidence than the defendant's mere presence in the apartment, which was actually rented by the defendant's sister, that linked the defendant to the cocaine: (1) the jury could infer that the defendant actually lived in the apartment because the defendant claimed ownership of a television and a video game in the apartment; (2) it was a one-bedroom apartment to which the defendant had a key; (3) the defendant was

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sleeping in the bedroom when the police arrived; (4) the defendant's own statements provided additional evidence demonstrating the defendant's possession of the cocaine hidden in the kitchen cabinets; and (5) the defendant had a lot of cash on the defendant's person with large numbers of denominations that was typically used to purchase drugs. Ballard v. State, 268 Ga. App. 55, 601 S.E.2d 434, 2004 Ga. App. LEXIS 840 (2004).

Evidence that an undercover police officer tried to purchase drugs from a third person, that the third person would have to get the drugs from "his source," and that the officer was present when the defendant gave a package to a third person shortly before the third person delivered cocaine to the officer was sufficient to sustain the defendant's convictions for trafficking in cocaine and possessing cocaine with intent to distribute. Serrate v. State, 268 Ga. App. 276, 601 S.E.2d 766, 2004 Ga. App. LEXIS 888 (2004).

When, upon executing a search warrant for the defendant's house, four kilograms of cocaine were found in the house and a fifth kilogram was found in the defendant's car parked at the house, the evidence was sufficient to support the defendant's conviction for cocaine trafficking. Solis v. State, 268 Ga. App. 493, 602 S.E.2d 166, 2004 Ga. App. LEXIS 914 (2004), cert. denied, No. S04C1966, 2004 Ga. LEXIS 1069 (Ga. Nov. 22, 2004).

Sufficient evidence existed to support a defendant's conviction for cocaine trafficking and the subsequent denial of the defendant's motion for a new trial since the evidence showed, via testimony from the defendant's wife and the wife's two friends, that once the defendant found the cocaine in the house of a client the defendant was sent to retrieve the drug from, the defendant not only took possession of the cocaine but also used some of the drug as well. Fraser v. State, 283 Ga. App. 477, 642 S.E.2d 129, 2007 Ga. App. LEXIS 84 (2007), overruled in part, State v. Lane, 308 Ga. 10, 838 S.E.2d 808, 2020 Ga. LEXIS 98 (2020).

There was sufficient evidence that the defendant was guilty of trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a); in addition to evidence that 1,000 grams of cocaine (with a purity of 73 percent) was found in the apartment occupied by the defendant, the state produced evidence connecting the defendant to the cocaine by more than mere spatial proximity. Taylor v. State, 285 Ga. App. 697, 647 S.E.2d 381, 2007 Ga. App. LEXIS 629 (2007), cert. denied, No. S07C1515, 2007 Ga. LEXIS 655 (Ga. Sept. 10, 2007).

Given sufficient evidence that: (1) the defendant was arrested after driving a car containing over 900 grams of cocaine, raising a presumption of both possession and control; (2) the link between the defendant and the cocaine was not based solely on the presumption of possession; (3) the defendant admitted to purchasing the shoes originally packaged in the box containing the cocaine, and was wearing those shoes; (4) a search of the defendant's person further revealed a large sum of cash; and (5) the trial court considered the defendant's equal access theory but found that it did not demand a defense verdict, the defendant's cocaine trafficking conviction was upheld on appeal. McGee v. State, 287 Ga. App. 460, 651 S.E.2d 546, 2007 Ga. App. LEXIS 999 (2007), cert. denied, No. S08C0171, 2008 Ga. LEXIS 167 (Ga. Feb. 11, 2008).

When testimony from three troopers revealed that one package of contraband was taken from each of three passengers occupying a car, the packages were identified at trial as Exhibits 1, 2, and 3, and one of the troopers stated unequivocally on direct examination that the package of cocaine identified as Exhibit 2 was the one the trooper took from the defendant, and the state's expert established that each package met the requisite weight and purity under O.C.G.A. § 16-13-31, the evidence was sufficient for a rational trier of fact to find the defendant guilty of trafficking in cocaine beyond a reasonable doubt. Volcey v. State, 200 Ga. App. 881, 410 S.E.2d 36, 1991 Ga. App. LEXIS 1158 (1991).

When the total weight of the mixture equaled almost three times the amount required for the conviction and the chemist testified that the chemist tested bags

containing over half of the mixture there was ample evidence from which a rational trier of fact could have found defendant guilty of trafficking in cocaine. Hancock v. State, 212 Ga. App. 78, 441 S.E.2d 261, 1994 Ga. App. LEXIS 139 (1994), cert. denied, No. S94C0920, 1994 Ga. LEXIS 672 (Ga. Apr. 15, 1994).

When the state tendered cocaine evidence in three exhibits, only one of which had been analyzed for purity, proof that one of the packages contained over 400 grams of cocaine, consisting of more than 10 percent purity was sufficient to support a conviction for trafficking. Edwards v. State, 219 Ga. App. 239, 464 S.E.2d 851, 1995 Ga. App. LEXIS 1007 (1995), cert. dismissed, No. S96C0574, 1996 Ga. LEXIS 398 (Ga. Mar. 8, 1996).

Evidence was sufficient to establish that defendant was the person named in the indictment and to establish that defendant was guilty of cocaine trafficking beyond a reasonable doubt. Robinson v. State, 231 Ga. App. 368, 498 S.E.2d 579, 1998 Ga. App. LEXIS 452 (1998), cert. denied, No. S98C1130, 1998 Ga. LEXIS 765 (Ga. June 26, 1998).

Defendant's conviction on conspiracy to traffic in cocaine was supported by the evidence as it showed that the defendant conspired with others to knowingly possess 28 grams or more of cocaine and that the defendant took the overt act of possessing the cocaine by picking it up from the defendant's nephew, telling the driver of the vehicle to slow down in order to avoid arrest, and tried to conceal the cocaine under the defendant's seat after being stopped for speeding. Smith v. State, 253 Ga. App. 131, 558 S.E.2d 455, 2001 Ga. App. LEXIS 1426 (2001).

Evidence was sufficient to support the jury's finding that the defendants knowingly possessed more than 28 grams of cocaine found in the defendants' car, and were guilty of trafficking in cocaine after, inter alia, officers searched the car and found a package containing 165 grams of crack cocaine under the front passenger seat and another package containing 235 grams of powder cocaine in a bag sitting on the back seat. Wiggins v. State, 258 Ga. App. 703, 574 S.E.2d 896, 2002 Ga. App. LEXIS 1547 (2002).

Trial court did not err in denying the defendant's motion for a directed verdict as the evidence was legally sufficient to support the defendant's conviction for trafficking in cocaine; evidence showed that the one bag that the state tested was positive for cocaine, the state was not required to test the other two bags containing a similar-looking substance, the three bags together contained more than 28 grams of cocaine with a purity of 10 percent, and no evidence indicated the defendant was making personal use of that amount of cocaine. Pitts v. State, 260 Ga. App. 553, 580 S.E.2d 618, 2003 Ga. App. LEXIS 419 (2003).

When the drug expert testified to performing a random analysis on the 200 grams of cocaine, tested approximately 40.8 grams, and found that the sample was 93 percent pure cocaine, the defendant's conviction of trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a) was affirmed because the expert's opinion was sufficient to support the jury's verdict on the drug trafficking charge. Castillo v. State, 263 Ga. App. 772, 589 S.E.2d 325, 2003 Ga. App. LEXIS 1320 (2003).

There was sufficient evidence to show that the defendant possessed cocaine when the defendant resided in the bedroom where the cocaine was discovered, a friend testified that the friend heard the defendant admit the cocaine was found in the defendant's room, the defendant's mother pointed out the room as the defendant's, and after the cocaine was discovered, the defendant went into hiding, and the argument of equal access by the defendant's mother and brother to the cocaine was unavailing since other evidence linked the defendant to the cocaine. Truitt v. State, 266 Ga. App. 56, 596 S.E.2d 219, 2004 Ga. App. LEXIS 299 (2004).

Evidence was sufficient to support the defendant's conviction for trafficking in cocaine because: (1) the defendant rented and furnished an apartment for the codefendant, who defendant described as a casual friend; (2) the defendant paid for a cell phone used by the codefendant; and (3) a kilogram of cocaine and over $98,000.00 was found in the apartment; however, the conviction was reversed on other grounds. Patten v. State, 275 Ga.

Cocaine (Cont'd)
3. Evidence (Cont'd)

App. 574, 621 S.E.2d 550, 2005 Ga. App. LEXIS 1040 (2005).

Because: (1) the defendant failed to sufficiently prove an entrapment defense and, hence, the need for disclosure of an informant's identity; (2) no error resulted in refusing to strike a juror for cause; and (3) the trial court's entrapment instruction was legally correct and did not mislead the jury, the defendant's convictions for trafficking in cocaine, in violation of O.C.G.A. § 16-13-31(a), possession of cocaine with intent to distribute, contrary to O.C.G.A. § 16-13-30(b), and two counts of use of communication facilities in committing a felony drug offense, under O.C.G.A. § 16-13-32.3, were affirmed on appeal. Griffiths v. State, 283 Ga. App. 176, 641 S.E.2d 169, 2006 Ga. App. LEXIS 1516 (2006), cert. denied, No. S07C0652, 2007 Ga. LEXIS 333 (Ga. Apr. 24, 2007).

Evidence was sufficient to find the defendant guilty beyond a reasonable doubt of trafficking in cocaine since the defendant was the only passenger in a hatchback and chose to sit in the rear of the vehicle with full access to the cargo area and the cocaine. The defendant volunteered in an interview that the defendant "just needed to make some money." Oliveres v. State, 292 Ga. App. 460, 664 S.E.2d 836, 2008 Ga. App. LEXIS 817 (2008), cert. denied, No. S08C1821, 2008 Ga. LEXIS 916 (Ga. Oct. 27, 2008).

Evidence which included testimony from a defendant's codefendant that: (1) the defendant came to the codefendant's house; (2) the defendant showed the codefendant drugs; (3) the defendant indicated that the defendant needed help to move the drugs; and (4) the codefendant contacted the defendant and arranged a date and time for a drug transaction after a confidential informant (CI) told the codefendant that CI had an associate in need of one to four kilos of cocaine was sufficient to support the defendant's conviction on a trafficking in cocaine charge. Jones v. State, 294 Ga. App. 854, 670 S.E.2d 506, 2008 Ga. App. LEXIS 1320 (2008).

Trial court properly denied a defendant's motion for a directed verdict as there was sufficient evidence to support the defendant's conviction for trafficking in cocaine based on the observations of the police watching the defendant and codefendants engaging in suspicious behavior in a high-crime area; the contents of the backpack, which contained 377.45 grams of 50.7 percent pure cocaine heavily wrapped in saran wrap, with a street value between $8,000 and $10,000 in powder form or as much as $15,000 if cut with an agent and compressed into rocks of crack cocaine; the drugs found in the trunk of the defendant's rental vehicle; and the rental of a motel room by the defendant. Mosley v. State, 296 Ga. App. 746, 675 S.E.2d 607, 2009 Ga. App. LEXIS 324 (2009), cert. denied, No. S09C1188, 2009 Ga. LEXIS 322 (Ga. June 8, 2009).

There was sufficient evidence to support convictions for trafficking in cocaine and possession of a drug-related object, in violation of O.C.G.A. §§ 16-13-31(a)(1) and 16-13-32.2, against the defendant as the defendant's van contained items used as drug pipe filters, the defendant's passenger had dropped crack cocaine on the ground just prior to being apprehended, both individuals had large amounts of cash on them, and the defendant had a criminal history of similar drug-related conduct. Holloway v. State, 297 Ga. App. 81, 676 S.E.2d 445, 2009 Ga. App. LEXIS 356 (2009).

Sufficient evidence existed to convict a defendant of trafficking in cocaine under O.C.G.A. § 16-13-31(a)(1) because a search of the defendant's residence revealed, inter alia, large amounts of cocaine and cash and several persons approached the residence while the officers were there to execute the search warrant and sought to purchase drugs. Weems v. State, 295 Ga. App. 680, 673 S.E.2d 50, 2009 Ga. App. LEXIS 420 (2009).

Evidence was sufficient to convict a defendant on a trafficking in cocaine charge as a large amount of cash was found on the defendant's person, the defendant tried to flee once a drug dog alerted to the area of a van in which the defendant was sitting, and a shopping bag containing cocaine was observed by the defendant's foot. Singleton v. State, 297 Ga. App. 452,

677 S.E.2d 348, 2009 Ga. App. LEXIS 377 (2009).

Evidence that the defendant was going in and out of the defendant's home, that an officer saw through the open front door the codefendant sitting near a large slab of cocaine, and that a small amount of cocaine was found on the defendant's person, allowed the jury to find that the defendant had the intent to exercise control over the slab of cocaine seen in plain view. Therefore, the evidence was sufficient to convict the defendant of trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a)(1). Reid v. State, 298 Ga. App. 889, 681 S.E.2d 671, 2009 Ga. App. LEXIS 811 (2009).

Defendant's accomplice's testimony that the defendant was knowingly in possession of cocaine found in their vehicle was corroborated by evidence of 575 grams of cocaine in the vehicle, that the defendant was extremely anxious when stopped by police, and the fact that there were 18 air fresheners hung throughout the vehicle, and was therefore sufficiently corroborated under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8), supporting the defendant's conviction for trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a)(1). Richardson v. State, 305 Ga. App. 850, 700 S.E.2d 738, 2010 Ga. App. LEXIS 827 (2010).

There was sufficient evidence to support convictions for trafficking in cocaine and possession of tools for the commission of a crime, O.C.G.A. §§ 16-7-20 and 16-13-31, when narcotics and an electronic scale were found in the defendant's residence, and although the defendant did not own the residence, the defendant resided there for the previous five years and there was a lack of evidence at the home of any other persons residing therein. Further, the items were well hidden within the premises, the defendant used a closed circuit surveillance system to monitor the home, and the defendant possessed a substantial amount of cash at the time of the search. Brown v. State, 307 Ga. App. 99, 704 S.E.2d 227, 2010 Ga. App. LEXIS 1101 (2010).

Evidence supported a defendant's conviction for trafficking in more than 400 grams of cocaine in violation of O.C.G.A. § 16-13-31(a)(1)(C) because the defendant directed that the cocaine package be cut open and tasted, provided a knife for this purpose, directed another man to get the money, and assisted in counting the money. A jury could conclude that the defendant had the power and intent to control the cocaine. Phillips v. State, 307 Ga. App. 366, 705 S.E.2d 287, 2010 Ga. App. LEXIS 1135 (2010).

Evidence was sufficient to support the defendant's conviction for trafficking in cocaine, in violation of O.C.G.A. § 16-13-31(a)(1), based on the defendant's participation in a sale of a sufficient amount and purity of cocaine to an undercover agent; although a codefendant conducted the sale directly, the defendant was a party to the sale under O.C.G.A. § 16-2-20(b)(3) since the defendant was in a nearby vehicle that the codefendant went to during the transaction. McGee v. State, 316 Ga. App. 661, 730 S.E.2d 131, 2012 Ga. App. LEXIS 629 (2012).

Evidence was sufficient to convict the defendant of cocaine trafficking because the defendant arrived at a house under surveillance wearing a light-colored shirt and carrying a package. After police entered the house, an officer saw a man in a light-colored shirt drop a bag of cocaine out the window. No other person present had on a light-colored shirt; therefore, the jury could conclude that the defendant possessed the 490.22 grams of cocaine found in the bag. Kimble v. State, 301 Ga. App. 237, 687 S.E.2d 242, 2009 Ga. App. LEXIS 1358 (2009), cert. denied, No. S10C0570, 2010 Ga. LEXIS 464 (Ga. May 17, 2010), cert. denied, No. S10C0569, 2010 Ga. LEXIS 466 (Ga. May 17, 2010).

Sufficient evidence existed to support the defendant's conviction for trafficking in cocaine based on the evidence showing that the mixture in the defendant's possession weighed 37.79 grams and had a purity of 34.6 percent of cocaine. Jones v. State, 319 Ga. App. 678, 738 S.E.2d 130, 2013 Ga. App. LEXIS 42 (2013).

Regardless of whether the defendant passenger had physical possession of the cocaine, the evidence was sufficient to find that the defendant passenger actively participated in, and was a party to, the trafficking of the three kilos of 70-percent

Cocaine (Cont'd)
3. Evidence (Cont'd)

pure cocaine because a sergeant set up an undercover surveillance at an apartment complex; after the defendants exited the building, the defendants were talking back and forth and the defendant driver was carrying a black and grey duffle bag, which the defendant driver did not have upon entering the building; and, during an open-air sniff, a canine alerted to the rear passenger side of the vehicle where the detective saw the black and grey duffle bag that contained the cocaine. Williams v. State, 336 Ga. App. 64, 783 S.E.2d 666, 2016 Ga. App. LEXIS 117, overruled in part, Quiller v. State, 338 Ga. App. 206, 789 S.E.2d 391, 2016 Ga. App. LEXIS 460 (2016).

Evidence that the defendant made a four-hour round trip drive at night for a brief stop before police found over 200 grams of cocaine and that upon being stopped the defendant expressed to the defendant's girlfriend that the defendant could not go to prison for over 30 years was sufficient to support the defendant's conviction for trafficking in cocaine under O.C.G.A. § 16-13-31(a)(1). Anderson v. State, 338 Ga. App. 171, 789 S.E.2d 363, 2016 Ga. App. LEXIS 448 (2016), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence sufficient for conviction of trafficking in cocaine as "party thereto." Williams v. State, 199 Ga. App. 566, 405 S.E.2d 716, 1991 Ga. App. LEXIS 591 (1991).

Evidence sufficient for conviction as party to trafficking in cocaine. — Evidence was sufficient to support a defendant's conviction as a party to trafficking in cocaine since the evidence showed that the defendant was aware that an alleged drug dealer kept cocaine in the house where the defendant was arrested, that the dealer doled cocaine out to the defendant and others so that they could sell the cocaine, that the defendant had sold cocaine for the dealer in the past and had stated the intent to do so on the day the defendant was arrested, that cocaine found in the defendant's possession had the same packaging as cocaine found in the basement of the house, and that when the police arrived to execute a search warrant, the defendant attempted to destroy the cocaine the defendant had in the defendant's physical possession. Riley v. State, 292 Ga. App. 202, 663 S.E.2d 835, 2008 Ga. App. LEXIS 745 (2008).

Evidence was sufficient to enable a rational trier of fact to find the defendant guilty beyond a reasonable doubt of trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a)(1) because the state presented evidence that even if the defendant did not bring the bag of cocaine to an owner's residence, the defendant possessed the cocaine and was a party to the crime of trafficking in cocaine under O.C.G.A. § 16-2-20. Kegler v. State, 317 Ga. App. 427, 731 S.E.2d 111, 2012 Ga. App. LEXIS 726 (2012), overruled in part, Hamm v. State, 294 Ga. 791, 756 S.E.2d 507, 2014 Ga. LEXIS 222 (2014).

Evidence that the defendant was the driver, approximately 220 grams of narcotics were found in the passenger compartment, the defendant was nervous, and scales were found on the passenger floor board was sufficient to sustain the defendant's conviction for trafficking in cocaine. Robinson v. State, 331 Ga. App. 872, 772 S.E.2d 223, 2015 Ga. App. LEXIS 55 (2015).

Defendant's trafficking conviction was supported by evidence that the defendant had been staying at the house where the warrant was executed, the defendant was inside the house during an active cook of crack cocaine, the defendant fled with several other people, some of whom were throwing cocaine in the air, police apprehended the defendant immediately after the defendant jumped the back yard fence and found drugs within arm's reach, and the defendant made an inculpatory statement. Johnson v. State, 338 Ga. App. 500, 790 S.E.2d 291, 2016 Ga. App. LEXIS 478 (2016).

Principal or party to cocaine trafficking. — Evidence that the defendant's companion showed a bag of cocaine to an undercover officer while the defendant stood nearby in a manner the officer described as a "show of force," and

that the companion's car contained another 16 ounces of cocaine, was sufficient for a jury to find that the defendant was guilty beyond a reasonable doubt of trafficking in cocaine as either a principal in the transaction or as a party to the crime. Martinez v. State, 259 Ga. App. 402, 577 S.E.2d 82, 2003 Ga. App. LEXIS 113 (2003).

Juvenile delinquent for trafficking in cocaine. — Juvenile's possession of 38.7 grams of cocaine was sufficient to sustain delinquency adjudication for trafficking in cocaine under O.C.G.A. § 16-13-31(a)(1). In the Interest of R.S., 253 Ga. App. 409, 559 S.E.2d 143, 2002 Ga. App. LEXIS 86 (2002).

Spatial proximity insufficient to convict juvenile defendant. — State failed to prove the state's case that the defendant, a minor, was delinquent under former O.C.G.A. § 15-11-2 (see now O.C.G.A. §§ 15-11-2 and 15-11-471) for trafficking in cocaine, in violation of O.C.G.A. § 16-13-31, as the state did not prove the necessary connection between the defendant and the drugs, other than spatial proximity, which was insufficient; the fact that the defendant was in a house in the middle of the night with non-family members, that a large amount of cocaine and cash were found in the house, although not visible, and that the defendant was sitting on a couch where a bag containing crack cocaine was found did not establish the necessary connection and did not exclude all other possibilities except the guilt of the defendant under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6). In re E.A.D., 271 Ga. App. 531, 610 S.E.2d 153, 2005 Ga. App. LEXIS 93 (2005).

Constructive possession of cocaine shown. — Defendants' convictions for trafficking in cocaine were vacated, and their cases remanded with direction that a conviction and sentence be entered for both defendants for possession of cocaine, since there was not sufficient evidence for a rational trier of fact to conclude, beyond a reasonable doubt, that defendants possessed at least 28 grams of pure cocaine, but the circumstantial evidence was sufficient to enable a rational trier of fact to conclude, beyond a reasonable doubt, that the defendant had constructive possession of the cocaine seized from the adjacent building. Byers v. State, 204 Ga. App. 552, 420 S.E.2d 23, 1992 Ga. App. LEXIS 911 (1992), cert. denied, 507 U.S. 928, 113 S. Ct. 1305, 122 L. Ed. 2d 694, 1993 U.S. LEXIS 1388 (1993).

Trial court did not err in convicting the defendant of trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a)(1) because the jury was authorized to find that the defendant was in joint constructive possession of the cocaine and was a party to the crime pursuant to O.C.G.A. § 16-2-20(a) and (b)(3), and the trial evidence authorized the jury to find that the only reasonable hypothesis pointed to the defendant's guilt of the drug offense; the evidence showed that the defendant participated and intentionally aided in the commission of the drug trafficking offense by driving the codefendants and the cocaine to the pre-arranged location for the transaction, warning the codefendants that the principal agent was a police officer and taking possession of the funds used for the transaction. Valdez v. State, 310 Ga. App. 274, 712 S.E.2d 656, 2011 Ga. App. LEXIS 542 (2011).

Because the state introduced sufficient corroborating evidence of an accomplice's testimony that the drugs found in the basement of the house belonged to the defendant because the record showed the presence of all factors required to authorize admission of the similar transaction evidence, and because there was sufficient evidence of probable cause for a search warrant even without the representation that the affiant saw the informant buy drugs from the defendant, the evidence was sufficient to convict the defendant of trafficking in cocaine. Dickerson v. State, 312 Ga. App. 320, 718 S.E.2d 564, 2011 Ga. App. LEXIS 947 (2011).

Defendant was properly convicted of trafficking in 400 grams or more of a mixture containing cocaine, O.C.G.A. § 16-13-31(a)(1)(C), because the evidence tended to show a connection between the defendant and the contraband sufficient to prove the defendant knowingly shared with the defendant's brother the power

Cocaine (Cont'd)
3. Evidence (Cont'd)

and intention to exercise dominion or control over the mixture; there was evidence that the cocaine mixture was in plain view and visible from the common sitting area of the apartment and that the defendant was in the apartment alone for an extended period of time, and there was evidence of two similar transactions, which tended to show a course of conduct and intent to possess and distribute cocaine, possess large amounts of currency, and in one of the similar transactions, use a black bag to transport drug-related items. Holiman v. State, 313 Ga. App. 76, 720 S.E.2d 363, 2011 Ga. App. LEXIS 1078 (2011), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Evidence was sufficient to sustain the defendant's conviction for trafficking in cocaine because the state presented sufficient evidence from which the jury could find that the defendant possessed the cocaine the defendant retrieved from the trunk of a car; the defendant retrieved the drugs from the trunk of the car and had the drugs in hand when the police arrested the defendant. Raines v. State, 313 Ga. App. 879, 722 S.E.2d 779, 2012 Ga. App. LEXIS 103 (2012).

Defendant's conviction for trafficking in cocaine, in violation of O.C.G.A. § 16-13-31(a)(1), was supported by sufficient evidence under O.C.G.A. §§ 16-2-20(b)(3) and former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) because both the defendant and the codefendant made statements regarding the defendant's involvement in the criminal activity, and the police observed the defendant's actions; there was evidence that the defendant was an active participant and a party to the trafficking offense. Martinez v. State, 314 Ga. App. 551, 724 S.E.2d 851, 2012 Ga. App. LEXIS 232 (2012).

Evidence was sufficient to convict the second defendant of drug trafficking because an intercepted phone call indicated that the second defendant had successfully delivered nine kilograms of cocaine. Estrada-Nava v. State, 332 Ga. App. 133, 771 S.E.2d 28, 2015 Ga. App. LEXIS 160, overruled in part, Martin v. McLaughlin, 298 Ga. 44, 779 S.E.2d 294, 2015 Ga. LEXIS 793 (2015).

Evidence was sufficient to convict the third defendant of drug trafficking because the third defendant arranged a drug sale involving 10 kilograms of cocaine; monitored and directed the transfer of vehicles; and monitored the testing of the cocaine once received. Estrada-Nava v. State, 332 Ga. App. 133, 771 S.E.2d 28, 2015 Ga. App. LEXIS 160, overruled in part, Martin v. McLaughlin, 298 Ga. 44, 779 S.E.2d 294, 2015 Ga. LEXIS 793 (2015).

Insufficient evidence of quantity of cocaine. — State failed to present sufficient facts from which a jury could have reasonably inferred that the defendant knowingly possessed 28 grams or more of cocaine with a purity of 10 percent or more as there was only one bag containing 35 grams of cocaine in evidence, the purity was never tested, and the state could not point to a scale or other evidence that the defendant weighed or measured the cocaine to know that the cocaine was more than 28 grams. Childs v. State, 330 Ga. App. 727, 769 S.E.2d 147, 2015 Ga. App. LEXIS 49 (2015).

Knowledge of weight or purity not required for conviction. — Evidence sustained the finding of guilt on the charge of trafficking in cocaine because knowledge of the weight or precise purity of the cocaine was not necessary for a conviction. Barr v. State, 302 Ga. App. 60, 690 S.E.2d 643, 2010 Ga. App. LEXIS 46 (2010).

Weight of cocaine. — When the defendant was indicted for being "knowingly in actual possession of more than 400 grams of cocaine, a schedule two controlled substance, and a mixture with a purity of more than 10 percent of cocaine," but the evidence showed the total mass of the substance to be 450 grams, of which 71 percent or 319 grams was pure cocaine, it was held that since the amount shown would still show a violation of law, even if it did not meet the increment charged, there would not be a material variance between the allegata

and probata. Partridge v. State, 187 Ga. App. 325, 370 S.E.2d 173, 1988 Ga. App. LEXIS 687 (1988).

Sufficient evidence showed the defendant had knowledge of the weight of the cocaine found in the search as the evidence showed that the crack cocaine which the defendant was convicted of possessing had a purity of 82 percent and weighed 50.62 grams and was packaged in a plastic bag, hidden in a vent in a bedroom that the defendant was occupying, plus, the jury heard of five similar transactions, including the defendant's three convictions for possession of cocaine with the intent to distribute. Freeman v. State, 329 Ga. App. 429, 765 S.E.2d 631, 2014 Ga. App. LEXIS 706 (2014).

Separate lots of drugs impacting quantity. — Defendant possessed requisite 28 grams of cocaine, even though it was found in two individual lots totaling 47.5 grams in the defendant's house and truck and neither lot amounted to 28 grams. Hite v. State, 206 Ga. App. 245, 424 S.E.2d 885, 1992 Ga. App. LEXIS 1595 (1992); Snoke v. State, 237 Ga. App. 686, 516 S.E.2d 541, 1999 Ga. App. LEXIS 535 (1999).

Evidence established chain of custody of cocaine. — In a prosecution for trafficking in cocaine, the state established a chain of custody for the drugs with: 1) testimony of the officer who found the drugs; 2) testimony of the officer who placed the drugs in an evidence bag, which the officer then sealed, labeled, and transported to the crime lab; 3) that officer's identification of the state's exhibit as that bag; and 4) testimony of a Georgia Crime Lab chemist, who identified the exhibit as the bag containing the substance the chemist tested. Testimony of another chemist who had inspected the drugs was not required since, absent evidence of tampering, the crime lab could be treated as a single link in the chain of custody for admissibility purposes. Simmons v. State, 299 Ga. App. 21, 681 S.E.2d 712, 2009 Ga. App. LEXIS 827 (2009).

4. Jury Instruction

Belief by jury of informant over defendant. — Evidence in cocaine trafficking case did not require a directed verdict on the basis of entrapment; although the defendant claimed a confidential informant repeatedly contacted the defendant about arranging a sale, the informant testified that the defendant contacted the informant and offered to set up the sale, and the jury was entitled to reject the defendant's version and accept the informant's version. Mulvey v. State, 250 Ga. App. 345, 551 S.E.2d 412, 2001 Ga. App. LEXIS 745 (2001).

Charge as to possession properly refused. — When under the evidence presented, only two verdicts were possible—guilty of trafficking in cocaine or acquittal, it was not error for the trial court to refuse to charge the jury concerning possession of cocaine. Hernandez v. State, 182 Ga. App. 797, 357 S.E.2d 131, 1987 Ga. App. LEXIS 1821 (1987).

Charge on lesser included offense of possession authorized. — When the indictment charged defendant with trafficking in cocaine by possessing more than 28 ounces, the trial court erred in refusing to give defendant's requested charge on the lesser included offense of simple possession of cocaine. Howard v. State, 220 Ga. App. 579, 469 S.E.2d 746; Lumpkin v. State, 245 Ga. App. 627, 538 S.E.2d 514, 2000 Ga. App. LEXIS 1026 (2000).

Instruction on lesser included offense of possession. — When a jury issue exists as to whether the defendant was exercising actual or constructive possession of cocaine, the lesser offense of possession of cocaine was reasonably raised by the evidence, and the trial court committed prejudicial error in failing to instruct pursuant to the defendant's written request. Alvarado v. State, 194 Ga. App. 781, 391 S.E.2d 668, 1990 Ga. App. LEXIS 316, aff'd, 260 Ga. 563, 397 S.E.2d 550, 1990 Ga. LEXIS 420 (1990).

With regard to a defendant's conviction for trafficking in cocaine, the trial court did not err by failing to charge the jury on the lesser included offense of possession of cocaine with intent to distribute as there was no dispute that the cocaine exceeded the amount necessary to sustain a trafficking conviction, therefore, there was no

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4. Jury Instruction (Cont'd)

evidence of the lesser included offense. However, even if the trial court's failure to give the requested instruction was error, it is highly probable that the error did not contribute to the verdict in light of the overwhelming evidence that the defendant committed the greater offense. Celestin v. State, 296 Ga. App. 727, 675 S.E.2d 480, 2009 Ga. App. LEXIS 164 (2009), cert. denied, No. S09C1200, 2009 Ga. LEXIS 340 (Ga. June 1, 2009).

Charge on entire definition of trafficking not error. — Trial court did not commit plain error by charging the jury on the entire definition of trafficking as no evidence was introduced at trial suggesting that the defendant brought the cocaine at issue into the state, sold the cocaine, or that the defendant delivered the cocaine to anyone; rather, the evidence showed only that the defendant was in knowing possession of the cocaine for a brief period of time; thus, there was no reasonable possibility that the jury convicted the defendant of trafficking in a manner not charged in the indictment. Hernandez-Garcia v. State, 322 Ga. App. 455, 745 S.E.2d 706, 2013 Ga. App. LEXIS 542 (2013).

Instruction on purity not required. — Trial court's jury charge in the attempted trafficking in cocaine case under O.C.G.A. §§ 16-4-1 and 16-13-31 was not improper despite the trial court's failure to instruct the jury on purity, as purity was not an essential element of criminal attempt to traffic in cocaine. Davis v. State, 281 Ga. App. 855, 637 S.E.2d 431, 2006 Ga. App. LEXIS 1169 (2006), cert. denied, No. S07C0282, 2007 Ga. LEXIS 75 (Ga. Jan. 22, 2007).

Knowingly in jury instruction. — Trial court did not plainly err by not instructing the jury that the state had to prove that the defendant knew that the substance defendant possessed contained methamphetamine because O.C.G.A. § 16-13-31 was amended to delete the "knowingly" requirement. Duffie v. State, 359 Ga. App. 662, 859 S.E.2d 810, 2021 Ga. App. LEXIS 258 (2021).

Jury question on knowledge answered incorrectly. — Although the evidence was sufficient to support the defendant's conviction for trafficking in cocaine, in violation of O.C.G.A. § 16-13-31(a)(1), the trial court's erroneous response to a jury question regarding the knowledge requirement may have resulted in an improper verdict; such error might have led the jury to incorrectly substitute criminal negligence for the knowledge requirement when the jury rendered the jury's verdict. McGee v. State, 316 Ga. App. 661, 730 S.E.2d 131, 2012 Ga. App. LEXIS 629 (2012).

Jury instruction on weight of cocaine in trafficking case. — Trial court's instruction requiring the jury to find that a defendant who was charged with trafficking in cocaine in violation of O.C.G.A. § 16-13-31(a)(1) was required to have knowingly possessed 28 grams of cocaine or more sufficiently charged that the jury had to find that the defendant was aware of the weight of the cocaine the defendant possessed. Further, any error in the charge was harmless because the defendant was shown to have possessed 106 grams of cocaine and to have been familiar with the weight of cocaine from the defendant's past dealings with cocaine. Harrison v. State, 309 Ga. App. 454, 711 S.E.2d 35, 2011 Ga. App. LEXIS 363 (2011), cert. denied, No. S11C1379, 2011 Ga. LEXIS 692 (Ga. Sept. 12, 2011).

Failure to give circumstantial evidence charge was error. — Trial court's failure to give the circumstantial evidence charge under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) constituted reversible error even though the defendant failed to request such a charge because the evidence against a defendant in a cocaine trafficking case under O.C.G.A. § 16-13-31(a)(1) was entirely circumstantial based on the defendant's participation in the crime with defendant's brother and a third party. Martinez v. State, 303 Ga. App. 71, 692 S.E.2d 737, 2010 Ga. App. LEXIS 278 (2010).

Jury charge on trafficking sufficient. — When in the court's charge to the jury, the court read the indictment, pointing out that in Count 1 the defendants were charged with trafficking by knowing possession of the cocaine, and

further instructed that the jury should reach a decision on the trafficking offense based on the charges as made in Count 1 of the indictment, the instructions were sufficient to prevent any likelihood that the jury would mistakenly convict defendants on evidence supporting a form of trafficking in cocaine not charged in the indictment. Ancrum v. State, 197 Ga. App. 819, 399 S.E.2d 574, 1990 Ga. App. LEXIS 1485 (1990).

Despite the defendant's allegation that there was a reasonable probability that the defendant was convicted of committing the offense of trafficking in cocaine in a manner other than that alleged in the indictment, when the trial court immediately charged the jury that to establish the defendant's guilt for trafficking, the state had to prove beyond a reasonable doubt that the defendant knowingly had in the defendant's possession more than 28 grams of cocaine on the date alleged, the court properly limited the jury's consideration to the offense as charged; thus, reversal on this ground was unwarranted. Brockington v. State, 265 Ga. App. 13, 592 S.E.2d 858, 2003 Ga. App. LEXIS 1613 (2003).

Failure to instruct on actual and constructive possession. — When the prosecution and defense of a case turned on proof, or the lack of proof, that each of three defendants had actual or constructive possession of the cocaine and other dangerous drugs found under the seat of the rented car in which the defendants were passengers, without any instruction on the law of possession, the jury was left without appropriate guidelines for reaching a verdict. The failure to so charge was substantial error and required reversal of the defendants' convictions. Ancrum v. State, 197 Ga. App. 819, 399 S.E.2d 574, 1990 Ga. App. LEXIS 1485 (1990).

Instruction on constructive possession not harmful error. — Trial court's jury instruction on constructive possession was not harmful error, even though the indictment charged the defendant only with actual possession, since the evidence indisputably showed that immediately before the defendant's arrest the defendant had actual possession of the crack cocaine at issue. Cheeks v. State, 234 Ga. App. 446, 507 S.E.2d 204, 1998 Ga. App. LEXIS 1277 (1998).

Jury instruction on defendant closing eyes to what would have otherwise been obvious. — Trial court's error in instructing the jury that the element of intent could be satisfied by inferences drawn from proof that the defendant deliberately closed the defendant's eyes to what would otherwise have been obvious to the defendant was harmless given the entire jury charge and the record as a whole, including the jury's ability to assess the credibility of the defendant and the arresting officer, both of whom testified at trial. Matos-Bautista v. State, 353 Ga. App. 773, 839 S.E.2d 260, 2020 Ga. App. LEXIS 84 (2020), cert. denied, No. S20C0982, 2020 Ga. LEXIS 693 (Ga. Aug. 24, 2020).

5. Sentencing

O.C.G.A. § 16-13-31(a)(1)-(3) establishes the specific mandatory minimum sentences for trafficking in cocaine and subsection (f) (now (g)) provides a general maximum sentence. Recoba v. State, 179 Ga. App. 31, 345 S.E.2d 81, 1986 Ga. App. LEXIS 2583 (1986).

Fine does not violate the defendant's constitutional rights. — When the defendant was convicted of trafficking in cocaine in violation of O.C.G.A. § 16-13-31 and was sentenced to 20 years imprisonment and fined $100,000, the fine was not out of proportion to the severity of the crime and not constitutionally infirm either because of the fine's mandatory nature or the fine's amount. Wyatt v. State, 259 Ga. 208, 378 S.E.2d 690, 1989 Ga. LEXIS 195 (1989).

Error in applying U.S. Sentencing Guidelines Manual. — *Unpublished decision:* District court erred by applying the U.S. Sentencing Guidelines Manual § 2L1.2(b) enhancement because O.C.G.A. § 16-13-31(a)(1), the portion of the Georgia statute under which the defendant was convicted, prohibited the possession of cocaine, not possession with the intent to manufacture, import, export, distribute, or dispense; because the

Cocaine (Cont'd)
5. Sentencing (Cont'd)

district court considered the defendant's underlying conduct to arrive at the conclusion the defendant possessed cocaine with the intent to distribute the cocaine, the district court erred (correctly applying the modified categorical approach led to the conclusion that the defendant's Georgia conviction was for simple possession and, thus, the conviction was not a drug trafficking offense). United States v. Veleta-Dominguez, 506 Fed. Appx. 834, 2013 U.S. App. LEXIS 229 (10th Cir. 2013).

Presentence hearing was not required when the court imposed the statutory minimum sentence for cocaine trafficking under O.C.G.A. § 16-13-31(a)(1)(C). Edwards v. State, 219 Ga. App. 239, 464 S.E.2d 851, 1995 Ga. App. LEXIS 1007 (1995), cert. dismissed, No. S96C0574, 1996 Ga. LEXIS 398 (Ga. Mar. 8, 1996).

Sentence not void due to weight of drugs. — Since it was not required that the defendant be in possession of a specific amount of methamphetamine, the defendant's sentence was not void because the crime lab report said the sample weight was less than one gram. Oneill v. State, 352 Ga. App. 103, 834 S.E.2d 111, 2019 Ga. App. LEXIS 534 (2019).

Defendants assistance was not substantial. — O.C.G.A. § 16-13-31(g)(2) did not require the trial court to impose a reduced or suspended sentence if the defendant rendered substantial assistance that led to the arrest or conviction of accomplices, accessories, coconspirators, or principals, but merely authorized the court to do so. Therefore, the defendant was properly given the mandatory minimum sentence for cocaine trafficking as the trial court found that the assistance the defendant rendered was not "substantial" since the assistance did not lead to the arrest of an associate, a codefendant, or a supplier. Eidman v. State, 295 Ga. App. 304, 671 S.E.2d 292, 2008 Ga. App. LEXIS 1058 (2008).

Sentence for possession of 200 or more grams of cocaine. — Defendant was properly sentenced under O.C.G.A. § 16-13-31(a)(1)(B) for possession of 200 or more grams of cocaine because although the indictment only charged that the defendant did knowingly possess more than 28 grams, the jury returned a verdict, based on the testimony of a forensic expert, that the cocaine in the defendant's possession weighed 245.64 grams. Singleton v. State, 297 Ga. App. 452, 677 S.E.2d 348, 2009 Ga. App. LEXIS 377 (2009).

Refusal to follow mandatory sentencing. — Second remand was required when, upon the defendant's conviction for trafficking in cocaine and after a prior remand, the trial court imposed the entire ten-year mandatory minimum prison sentence but refused to impose the fine of $200,000 as such was mandatory under O.C.G.A. § 16-13-31(a)(1)(A). State v. Andrews, 278 Ga. App. 899, 630 S.E.2d 139, 2006 Ga. App. LEXIS 428 (2006).

Sentence upon conviction of trafficking in cocaine within the limits set by O.C.G.A. § 16-13-31(a)(1)(C) and subsection (g) was not so disproportionate as to shock the conscience. Small v. State, 243 Ga. App. 678, 534 S.E.2d 139, 2000 Ga. App. LEXIS 522 (2000).

After the defendant was convicted of trafficking in cocaine and conspiracy of trafficking in cocaine in 2011 and sentenced to two concurrent terms of life in prison, the defendant's life sentence was proper because the defendant's 2010 trafficking conviction pursuant to O.C.G.A. § 16-13-31 qualified as an actual conviction under O.C.G.A. § 16-13-30(b) to trigger the recidivist provisions of § 16-13-30(d) and enhance the defendant's sentence for the 2011 trafficking conviction; and the legislature did not intend that violators of the more serious offense of trafficking be exempt from the severe punishment of § 16-13-30(d). Duron v. State, 340 Ga. App. 74, 796 S.E.2d 310, 2017 Ga. App. LEXIS 11 (2017), cert. denied, No. S17C0983, 2017 Ga. LEXIS 599 (Ga. June 30, 2017).

Trafficking as a second violation of § 16-13-30. — Conviction for trafficking in cocaine under O.C.G.A. § 16-13-31

constituted a second violation of O.C.G.A. § 16-13-30(b) for purposes of the sentencing provisions of § 16-13-30(d) since the first conviction was for a more serious version of the offenses outlined in § 16-13-30(b). Gilber v. State, 208 Ga. App. 258, 430 S.E.2d 391, 1993 Ga. App. LEXIS 455 (1993), cert. denied, No. S93C1141, 1993 Ga. LEXIS 940 (Ga. Oct. 5, 1993).

Life sentence appropriate. — Defendant's conviction for the more serious offense of trafficking in cocaine under O.C.G.A. § 16-13-31 was sufficient in conjunction with prior convictions for sale of cocaine to trigger the mandatory life sentence provision of O.C.G.A. § 16-13-30(d). Covington v. State, 231 Ga. App. 851, 501 S.E.2d 37, 1998 Ga. App. LEXIS 538 (1998).

Life sentence was properly imposed on the defendant under O.C.G.A. § 16-13-30 after the defendant was convicted of trafficking in cocaine. Howard v. State, 234 Ga. App. 260, 506 S.E.2d 648, 1998 Ga. App. LEXIS 1200 (1998).

Prior conviction triggers mandatory life sentence. — Defendant's conviction for the more serious offense of trafficking in cocaine under O.C.G.A. § 16-13-31 was sufficient in conjunction with the defendant's previous conviction for possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30(b) to trigger the mandatory life sentence provisions of § 16-13-30(d) and the state gave proper notice that the prior conviction would be used in aggravation at sentencing pursuant to § 16-13-30(d). Brundage v. State, 231 Ga. App. 478, 499 S.E.2d 408, 1998 Ga. App. LEXIS 470 (1998).

Sentence properly enhanced for cocaine trafficking. — *Unpublished decision:* Defendant's offense level was properly enhanced based on a prior conviction for cocaine trafficking in Georgia as: (1) United States v. Madera-Madera, 333 F.3d 1228 (11th Cir. 2003), which held that the Georgia crime of drug trafficking was a qualifying predicate offense for sentence enhancement under U.S. Sentencing Guidelines Manual § 2L1.2, controlled; (2) Moncrieffe v. Holder, 133 S. Ct. 1678 (2013), did not abrogate or supplant Madera-Madera because it merely determined that a Georgia possession of marijuana offense could not be an aggravated felony under the Immigration and Nationality Act; and (3) Madera-Madera properly used a categorical approach by performing an analysis of the elements of the Georgia drug trafficking statute. United States v. Pineda-Goigochea, 640 Fed. Appx. 851, 2016 U.S. App. LEXIS 496 (11th Cir.), cert. denied, 578 U.S. 988, 136 S. Ct. 2042, 195 L. Ed. 2d 240, 2016 U.S. LEXIS 3064 (2016).

20-year sentence for cocaine possession. — Trial court properly denied defendant's "new sentence" motion since it was a rehash of a prior motion to modify the sentence; the defendant's 20-year sentence for cocaine possession was within the statutory range and was, therefore, not void as a matter of law. Baez v. State, 257 Ga. App. 129, 570 S.E.2d 352, 2002 Ga. App. LEXIS 1037 (2002), cert. denied, No. S03C0008, 2002 Ga. LEXIS 988 (Ga. Oct. 28, 2002).

30-year sentence for trafficking cocaine. — Defendant's sentence of 30 years without parole for trafficking in cocaine was a sentence allowed under O.C.G.A. § 16-13-30(d) and, hence, not illegal or void. Defendant could not have been sentenced under O.C.G.A. § 17-10-7(a), or defendant's sentence would have been 40 years. Because the sentence was not void, the sentence was not subject to modification under O.C.G.A. § 17-10-1(f). State v. Blue, 304 Ga. App. 471, 696 S.E.2d 692, 2010 Ga. App. LEXIS 561 (2010).

Sentence was not enhanced, nor was defendant sentenced as a recidivist. — With regard to a defendant's conviction for trafficking in cocaine, the trial court did not improperly consider similar transaction evidence of being arrested for trafficking in cocaine in 2004, as well as convictions that were reversed on appeal, in aggravation of the defendant's sentence because, although the state filed a notice of intent to seek recidivist punishment, the state did not offer certified copies of any convictions in evidence at sentencing and the defendant

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was not sentenced as a recidivist. Celestin v. State, 296 Ga. App. 727, 675 S.E.2d 480, 2009 Ga. App. LEXIS 164 (2009), cert. denied, No. S09C1200, 2009 Ga. LEXIS 340 (Ga. June 1, 2009).

Marijuana

1. In General

Assessment of marijuana bales from samples rather than from every part. — See Coop v. State, 186 Ga. App. 578, 367 S.E.2d 836, 1988 Ga. App. LEXIS 413 (1988).

2. Procedure

State not required to prove THC content of marijuana. — Despite the defendant's contrary claim, the state was not required to prove the tetrahydrocannabinol (THC) content of the plant material seized in a prosecution for trafficking in marijuana; further, THC was treated separately in the criminal code as a Schedule I drug under O.C.G.A. § 16-13-25(3)(P). Trujillo v. State, 286 Ga. App. 438, 649 S.E.2d 573, 2007 Ga. App. LEXIS 790 (2007).

3. Evidence

Evidence held sufficient to show defendant possessed marijuana fields from which bulk of marijuana was confiscated. Meeks v. State, 178 Ga. App. 9, 341 S.E.2d 880, 1986 Ga. App. LEXIS 2493 (1986).

112 pounds of marijuana found in rental car trunk. — When the two defendants were occupants of a car rented by another in Florida which was stopped for speeding, and each admitted driving the vehicle at alternate times, the evidence was sufficient to enable any rational trier of fact to find beyond a reasonable doubt that both defendants had possession of the 112 pounds of marijuana found in the car trunk. Coop v. State, 186 Ga. App. 578, 367 S.E.2d 836, 1988 Ga. App. LEXIS 413 (1988).

Precise knowledge of weight of marijuana not required. — Evidence that the defendant took delivery of a large package of marijuana from an investigator dressed as a postal worker, that the defendant said the defendant was expecting the package and signed for the package using a false name and then took possession of the package was sufficient to support the defendant's conviction for trafficking in marijuana in violation of O.C.G.A. § 16-13-31(c). Defendant's knowledge of the precise weight of the drugs in the defendant's possession was not required to sustain the defendant's drug trafficking conviction, and the trial court did not err in so instructing the jury. Wilson v. State, 312 Ga. App. 166, 718 S.E.2d 31, 2011 Ga. App. LEXIS 856 (2011), aff'd, 291 Ga. 458, 729 S.E.2d 364, 2012 Ga. LEXIS 646 (2012).

Evidence of weight. — Testimony of expert as to the weight of the marijuana produced by a given quantity of marijuana plants which were seized, together with photographs of the plants, is sufficient to establish the weight of the plants which had been destroyed upon confiscation. Evans v. State, 176 Ga. App. 818, 338 S.E.2d 48, 1985 Ga. App. LEXIS 2907 (1985).

Evidence showing that the total weight of confiscated marijuana plants, including stalks, stems, and leaves, was 10,340 pounds was sufficient to allow the jury to conclude that the marijuana leaves alone weighed more than 100 pounds. Westberry v. State, 178 Ga. App. 243, 342 S.E.2d 737, 1986 Ga. App. LEXIS 2523 (1986).

Reasonable doubt existed as to whether more than 100 pounds of marijuana was confiscated. Payton v. State, 177 Ga. App. 104, 338 S.E.2d 462, 1985 Ga. App. LEXIS 2925 (1985).

No remotely reasonable doubt that at least 100 pounds of chargeable marijuana was trafficked in. Lang v. State, 165 Ga. App. 576, 302 S.E.2d 683, 1983 Ga. App. LEXIS 1955, 1983 Ga. App. LEXIS 3092, cert. denied, 464 U.S. 937, 104 S. Ct. 346, 78 L. Ed. 2d 312, 1983 U.S. LEXIS 2128 (1983).

Destruction of bulk of evidence harmless beyond reasonable doubt. — When the evidence is overwhelming that the defendant possessed more than 100 pounds of marijuana, the destruction

of all but 100 grams without notice to the defendant or the defendant's attorney, even if it was erroneous, was harmless beyond a reasonable doubt, and if only by accident, did not prevent the state from proving possession of 100 pounds. Lang v. State, 165 Ga. App. 576, 302 S.E.2d 683, 1983 Ga. App. LEXIS 1955, 1983 Ga. App. LEXIS 3092, cert. denied, 464 U.S. 937, 104 S. Ct. 346, 78 L. Ed. 2d 312, 1983 U.S. LEXIS 2128 (1983).

Joinder of offenses. — Charges of conspiracy to import marijuana and trafficking in marijuana could be joined for trial, over objection, where the charges arose from the same conduct. Bridges v. State, 195 Ga. App. 851, 395 S.E.2d 30, 1990 Ga. App. LEXIS 744 (1990).

Offenses of conspiracy to traffic in marijuana and trafficking itself did not merge when conspirators first possessed the marijuana, since the "trafficking" charge involved sale of the marijuana, an act not yet completed. Meyers v. State, 174 Ga. App. 161, 329 S.E.2d 293, 1985 Ga. App. LEXIS 1773 (1985).

Incomplete sell of marijuana impacts offense charged. — Offense of selling marijuana was not complete upon defendants' leading undercover agents to the site of the marijuana since an agreed-upon weighing, loading, and delivering had not yet occurred; thus, the substantive trafficking offense did not merge with or extinguish the conspiracy-to-traffic offense. Meyers v. State, 174 Ga. App. 161, 329 S.E.2d 293, 1985 Ga. App. LEXIS 1773 (1985).

Evidence insufficient to show possession by vehicle passenger. — In a trial for possession of marijuana, when a codefendant, appearing as a defense witness, claimed ownership of the contraband and testified that the defendant and another had not known of the presence of contraband in the automobile, it was established without dispute that the defendant had neither a possessory nor a proprietary interest in the vehicle but was simply occupying the vehicle as a passenger. Therefore, the trial court erred in denying defendant's motion for directed verdict. Llaguno v. State, 197 Ga. App. 789, 399 S.E.2d 564, 1990 Ga. App. LEXIS 1498 (1990).

Suppression motion denied after seizure of marijuana following traffic stop. — Trial court properly denied the defendant's motion to suppress the marijuana seized as the search of the defendant's truck was conducted after a valid traffic stop after the defendant gave the officer consent to conduct the search, and nothing supported the defendant's claim that this consent was coerced because the consent was obtained during a custodial interrogation and without the benefit of Miranda warnings as the officer's questioning did not unduly prolong the traffic stop and did not result in an unauthorized seizure or an equivalent custodial detention for which Miranda warnings were required. Trujillo v. State, 286 Ga. App. 438, 649 S.E.2d 573, 2007 Ga. App. LEXIS 790 (2007).

Marijuana found in trailer. — There was sufficient evidence to support the defendant's conviction for trafficking marijuana as the jury was authorized to conclude that it was not reasonable, as the defendant suggested, that someone other than the defendant placed over 21 pounds of marijuana in open view in the back of a trailer of which the defendant had the only key, without the defendant's knowledge. Mora v. State, 292 Ga. App. 860, 666 S.E.2d 412, 2008 Ga. App. LEXIS 829 (2008).

Evidence sufficient when defendant signed for boxes of drugs. — When the defendant: (1) signed for two boxes containing approximately 82 pounds of marijuana using two different aliases; (2) claimed ignorance as to the contents of the boxes but admitted to police that the plan was to deliver the boxes to another person in a public restroom and then to accept payment of $200 per box at yet another location; and (3) gave conflicting stories before and during trial as to defendant's belief regarding the contents of the boxes, such evidence supported the defendant's conviction of trafficking in more than 50 pounds of marijuana in violation of O.C.G.A. § 16-13-31(c), especially since

Marijuana (Cont'd)
3. Evidence (Cont'd)

the "deliberate ignorance" doctrine applied. Perez-Castillo v. State, 257 Ga. App. 633, 572 S.E.2d 657, 2002 Ga. App. LEXIS 1241 (2002), cert. denied, No. S03C0224, 2003 Ga. LEXIS 36 (Ga. Jan. 13, 2003).

Defendant was properly convicted for trafficking in marijuana as the defendant owned a farm used by the defendant's son to grow marijuana, the defendant helped to construct a building used to grow marijuana, and the defendant helped acquire necessary support devices to put the building into operation; this evidence authorized the jury to find that the defendant's son had actual possession of the marijuana and that the defendant had constructive possession by aiding and abetting the son's possession. Lang v. State, 171 Ga. App. 368, 320 S.E.2d 185, 1984 Ga. App. LEXIS 2205 (1984).

Evidence was sufficient to support the defendant's conviction for trafficking in marijuana after: (1) an informant testified at trial that the informant purchased marijuana from the defendant, which was corroborated by the recovery of a large quantity of marijuana from the informant's vehicle; (2) an expert confirmed that the substance recovered from the informant's vehicle weighed well in excess of the 50-pound threshold for trafficking established by O.C.G.A. § 16-13-31(c); and (3) in a taped statement, the defendant admitted buying 125 pounds of marijuana and selling 100 pounds. Whitehead v. State, 258 Ga. App. 271, 574 S.E.2d 351, 2002 Ga. App. LEXIS 1420 (2002).

Because the state presented sufficient evidence that identified the contraband seized as marijuana, and it was not unreasonable for the court to conclude that the two lightweight nylon duffel bags seized, along with some plastic wrap, weighed less than 40 pounds, a rational trier of fact could have found proof beyond a reasonable doubt that the amount of marijuana seized from the defendant was at least the equivalent of the amount charged in the indictment; thus, the defendant's trafficking conviction was upheld on appeal. Trujillo v. State, 286 Ga. App. 438, 649 S.E.2d 573, 2007 Ga. App. LEXIS 790 (2007).

Evidence supported conviction of trafficking in marijuana since, when a package that a parcel service and police had found to contain marijuana was delivered to the place where defendant rented a mailbox, the defendant took possession of the package and said that the package contained Christmas presents, then took the package to the defendant's truck and was arrested; it was only just before the package was opened at a police station that the defendant said the package was not the property of the defendant. Hitchcock v. State, 291 Ga. App. 455, 662 S.E.2d 155, 2008 Ga. App. LEXIS 452 (2008), cert. denied, No. S08C1569, 2008 Ga. LEXIS 665 (Ga. Sept. 8, 2008).

Evidence that a defendant participated in a plan for the delivery of a package containing 12 pounds of marijuana to a residence, along with digital scales, a marijuana grinder, and plastic baggies at the residence, and the defendant's admission that the marijuana was the defendant's, was sufficient to convict the defendant as a party to possession of marijuana with intent to distribute, trafficking in marijuana, and possession of marijuana, pursuant to O.C.G.A. § 16-2-20. Salinas v. State, 313 Ga. App. 720, 722 S.E.2d 432, 2012 Ga. App. LEXIS 58 (2012).

Defendant's conviction for trafficking in marijuana in violation of O.C.G.A. § 16-13-31(c)(1) was affirmed because there was sufficient evidence to corroborate the accomplice's testimony regarding the defendant's involvement. Evidence corroborated the accomplice's testimony that the accomplice and the defendant planned to switch vehicles after taking delivery of the crate. Watt v. State, 317 Ga. App. 551, 732 S.E.2d 96, 2012 Ga. App. LEXIS 756 (2012).

Evidence constituted substantial step towards drug trafficking. — Circumstantial evidence was sufficient to allow the jury to exclude every reasonable hypothesis save the guilt of the defendant with regard to convicting the defendant of marijuana trafficking because the evidence authorized the jury to find that by entering a vehicle used in a police sting

operation, the defendant took a substantial step towards marijuana trafficking in that the defendant made a substantial step towards possessing the marijuana. Drammeh v. State, 285 Ga. App. 545, 646 S.E.2d 742, 2007 Ga. App. LEXIS 574 (2007).

Evidence sufficient to support conviction for trafficking in marijuana. — Defendant's conviction for trafficking in marijuana, in violation of O.C.G.A. § 16-13-31(c), was sufficiently supported by the evidence because, although only one ounce of two plastic bags in the defendant's vehicle was tested, the state's expert testified that the remainder of the bags' contents were similar to the test sample; the opinion of the state's expert that the remainder of the bags contained marijuana was sufficient to uphold the defendant's conviction. Smith v. State, 289 Ga. App. 236, 656 S.E.2d 574, 2008 Ga. App. LEXIS 51 (2008).

Evidence that the defendant followed a person to a house, retrieved something from the house, placed it in the trunk of a friend's vehicle, and that the marijuana found in the trunk weighed approximately 21 pounds was sufficient to support the defendant's conviction for marijuana trafficking. Summerville v. State, 332 Ga. App. 617, 774 S.E.2d 190, 2015 Ga. App. LEXIS 369 (2015).

Evidence sufficient for conviction of attempted trafficking in marijuana. — Evidence was sufficient to support a conviction of attempted trafficking in marijuana. A codefendant's testimony at the codefendant's trial and the codefendant's statement to the police were admissible as prior inconsistent statements and constituted substantive evidence of the defendant's participation in the attempted drug trafficking; furthermore, the codefendant's statements were sufficiently corroborated underformer O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) by the testimony of a case agent that a loaded pistol was found at the defendant's feet and that a bag containing the currency used in the drug transaction was found within arm's reach of the defendant. Green v. State, 298 Ga. App. 17, 679 S.E.2d 348, 2009 Ga. App. LEXIS 566 (2009).

Providing safe haven as part of trafficking offense. — Defendant's conviction for trafficking in marijuana was authorized because the defendant, a roommate, and an accomplice were willing participants in the drug offenses, and the defendant agreed to accept delivery of the package of marijuana at the defendant's residence in exchange for $200 and an ounce of marijuana for the defendant's personal consumption; whether the defendant had physical possession of the drugs, the defendant aided and abetted the marijuana's actual physical possession and was guilty of the offense of trafficking under O.C.G.A. § 16-13-31(c) and under O.C.G.A. § 16-2-20 as a party to the crime because the defendant admitted that the defendant was aiding the accomplice's efforts to commit the trafficking offense by giving the accomplice a safe haven and a means to avoid law enforcement detection. Park v. State, 308 Ga. App. 648, 708 S.E.2d 614, 2011 Ga. App. LEXIS 265 (2011).

4. Jury Instruction

Jury instruction on knowledge of weight. — Even if the trial court erred in instructing the jury that knowledge of the weight of the marijuana possessed by the defendant was not required for a conviction of trafficking under O.C.G.A. § 16-13-31(c), because the issue was subject to reasonable dispute, the instruction did not amount to plain error under O.C.G.A. § 17-8-58(b). Wilson v. State, 291 Ga. 458, 729 S.E.2d 364, 2012 Ga. LEXIS 646 (2012).

Because the trial court instructed that the trafficking in marijuana count alleged that the defendant did knowingly possess more than 10 pounds of marijuana and because the trial court did not charge the jury that the state was not required to prove knowledge of the weight of the marijuana, the charge accurately and fully apprised the jury of the applicable law, and the failure of the trial court to give the requested instruction that the defendant knew that the weight of the marijuana

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4. Jury Instruction (Cont'd)

was greater than 10 pounds was not error. Prado v. State, 327 Ga. App. 402, 759 S.E.2d 287, 2014 Ga. App. LEXIS 349 (2014), cert. denied, No. S14C1483, 2014 Ga. LEXIS 993 (Ga. Dec. 11, 2014).

Charge on lesser included offense of possession of marijuana properly refused. — See Christian v. State, 181 Ga. App. 569, 353 S.E.2d 65, 1987 Ga. App. LEXIS 1506 (1987).

Jury instruction on trafficking and conspiracy to traffic. — Since the defendant was convicted of trafficking in marijuana, a conviction for conspiracy to traffic in marijuana cannot also stand and the jury should be instructed that a verdict of one or the other is authorized but not both. Hardin v. State, 172 Ga. App. 232, 322 S.E.2d 540, 1984 Ga. App. LEXIS 2468 (1984).

Jury instruction on deliberate ignorance. — With regard to a defendant's conviction for trafficking in marijuana, the trial court properly denied the defendant's motion for a new trial since no error occurred with the trial court giving the state's requested instruction on deliberate ignorance as the defendant's actions in being paid to pick up a package from a shipping company, the defendant and the codefendant approaching the driver twice, giving a false name, and trying to allude the police, all supported the inference of deliberate ignorance. Aguilera v. State, 293 Ga. App. 523, 667 S.E.2d 378, 2008 Ga. App. LEXIS 993 (2008).

Evidence sufficient to support jury instruction on conspiracy. — With regard to a defendant's conviction for trafficking in marijuana, the trial court properly denied the defendant's motion for a new trial since no error occurred by the trial court giving the jury an instruction on conspiracy as evidence that the defendant and the codefendant were paid, jointly picked up a package containing drugs from a shipping company, and both refused to tell who hired the pair was sufficient to support that a conspiracy existed. Aguilera v. State, 293 Ga. App. 523, 667 S.E.2d 378, 2008 Ga. App. LEXIS 993 (2008).

5. Sentencing

Merger of manufacturing and trafficking marijuana offenses. — Defendant's conviction for manufacturing marijuana in violation of O.C.G.A. § 16-13-30(j)(1) should have been merged into the defendant's conviction for trafficking in marijuana in violation of O.C.G.A. § 16-13-31(c) because the same evidence was used to prove both crimes, and the manufacturing count did not require proof of any fact which the trafficking count did not require. Preval v. State, 302 Ga. App. 785, 692 S.E.2d 51, 2010 Ga. App. LEXIS 226 (2010).

Methamphetamine or Amphetamine

1. In General

Methamphetamine defendants treated differently not violation of substantive due process or equal protection. — Even assuming that defendants convicted of methamphetamine trafficking who provided substantial assistance were similarly situated and treated differently than those who could not provide assistance, because there was a rational basis for doing so as the legislature intended to reward individuals with a reduced sentence in exchange for information that was useful in assisting law enforcement officials with identifying, arresting, or convicting other individuals involved with illegal drugs and shutting down drug networks, the provisions for sentencing those defendants who provided assistance differently than those like the defendant who could not did not violate the defendant's substantive due process or equal protection rights. State v. Nankervis, 295 Ga. 406, 761 S.E.2d 1, 2014 Ga. LEXIS 538 (2014).

Driver with keys had access to trunk with methamphetamine. — Trial court did not err by denying the defendant's motion for new trial because the evidence at trial showed that the defendant was driving the car at the time of the stop and, thus, necessarily was in possession of the vehicle's keys, affording the defendant access to the trunk where the methamphetamine was located. Smith v. State, 350 Ga. App. 496, 829

S.E.2d 776, 2019 Ga. App. LEXIS 330 (2019).

2. Procedure

No fatal variance between "methamphetamine" and "mixture containing methamphetamine". — Because "methamphetamine" and a "mixture containing methamphetamine" are synonymous for purposes of O.C.G.A. § 16-13-31(e), there was no fatal variance between the delinquency petition charging delivery of a certain amount of methamphetamine and the proof at the hearing showing delivery of that amount of a mixture containing methamphetamine. In the Interest of S. C. P., 320 Ga. App. 166, 739 S.E.2d 474, 2013 Ga. App. LEXIS 147 (2013).

No fatal variance in indictment for trafficking in methamphetamine. — There was no fatal variance between the allegations of the indictment and the proof at trial when the defendant was charged with possession of a firearm during the commission of a crime by trafficking in methamphetamine, while defendant was charged, in another count, with trafficking in amphetamine rather than methamphetamine; trafficking in either methamphetamine or amphetamine fell within the categories set forth in O.C.G.A. § 16-13-31. Sims v. State, 258 Ga. App. 536, 574 S.E.2d 622, 2002 Ga. App. LEXIS 1497 (2002).

Nolle prosequi on two counts after submission to jury required new trial. — Trial court erred in allowing the state to nolle prosequi the two methamphetamine possession charges over the defendant's objection and proceed only on a trafficking charge because the case had been submitted to the jury within the meaning of O.C.G.A. § 17-8-3. Also, this procedure essentially allowed the state to amend the indictment. Truelove v. State, 302 Ga. App. 418, 691 S.E.2d 549, 2010 Ga. App. LEXIS 145 (2010).

Merger of selling with trafficking. — Convictions on counts for selling methamphetamine were lesser included offenses of convictions for trafficking in methamphetamine and, therefore, merged into the trafficking convictions. Nunery v. State, 229 Ga. App. 246, 493 S.E.2d 610, 1997 Ga. App. LEXIS 1369 (1997).

3. Evidence

Manufacture of methamphetamine. — Evidence was sufficient to convict defendant of possession and manufacture of methamphetamine. Query v. State, 217 Ga. App. 61, 456 S.E.2d 704, 1995 Ga. App. LEXIS 340 (1995), cert. denied, No. S95C1168, 1995 Ga. LEXIS 791 (Ga. June 1, 1995).

Quantity of amphetamine. — Evidence was sufficient to support the defendant's conviction for trafficking in amphetamine after the state's chemist testified that the bag containing the drug weighed 251.1 grams; the only reasonable interpretation of the testimony was that the substance inside the "plastic ziploc type" bag weighed 251.1 grams. Emilio v. State, 257 Ga. App. 49, 570 S.E.2d 372, 2002 Ga. App. LEXIS 1042 (2002).

Mixture or purity of drugs. — Subsection (e) treats pure methamphetamine and a mixture containing methamphetamine equally; accordingly, any variance in proof at trial regarding whether the substance was a mixture containing methamphetamine or pure methamphetamine is not fatal. Bellamy v. State, 243 Ga. App. 575, 530 S.E.2d 243, 2000 Ga. App. LEXIS 251 (2000), cert. denied, No. S00C1377, 2000 Ga. LEXIS 761 (Ga. Oct. 6, 2000).

Trial court's instruction to the jury that trafficking in amphetamine could be accomplished by possessing "amphetamine or any mixture of amphetamine" did not create the possibility that the defendant was convicted of an offense not charged since O.C.G.A. § 16-13-31(e)(2) did not establish two different methods of trafficking based on the purity of the drug. Emilio v. State, 257 Ga. App. 49, 570 S.E.2d 372, 2002 Ga. App. LEXIS 1042 (2002).

Constructive possession of methamphetamine. — Even if a bag containing methamphetamine was found on the floorboard of the van in which the defendant was riding, as the defendant claimed, instead of on the defendant's person, the evidence sufficed to show

Methamphetamine or Amphetamine (Cont'd)
3. Evidence (Cont'd)

constructive possession of the bag; the bag was in plain view at the defendant's feet, and the methamphetamine in the bag was packaged in the same way as the methamphetamine in a container that was found on the defendant's person. Hulsey v. State, 284 Ga. App. 461, 643 S.E.2d 888, 2007 Ga. App. LEXIS 338 (2007).

Defendant's convictions for trafficking in methamphetamine and possession of cocaine were upheld on appeal as the jury was authorized to find that the defendant constructively possessed the contraband since the defendant lived at the apartment searched by consent and despite the fact that others living in the apartment had equal access to the drugs. Additionally, the defendant was found lying on a mattress atop a bag containing more than an ounce of methamphetamine. Maldonado v. State, 293 Ga. App. 356, 667 S.E.2d 156, 2008 Ga. App. LEXIS 940 (2008).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine because the defendant was in joint constructive possession of the contraband as the evidence demonstrated that the defendant lived at the house where the methamphetamine was found, and that methamphetamine residue was found in the kitchen, and methamphetamine oil was found in the garage, both of which were common areas over which a resident might exercise control; and the evidence showed that the defendant was more than merely present at the scene as the defendant knew that large quantities of methamphetamine were present in the house and actively participated in guarding the methamphetamine in exchange for monetary benefit. Lopez-Vasquez v. State, 331 Ga. App. 570, 771 S.E.2d 218, 2015 Ga. App. LEXIS 198 (2015).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine based on constructive possession of at least 28 grams of methamphetamine because the defendant made phone calls to one of the sellers to arrange for the informant to buy 28 grams of methamphetamine; both sellers came to the prearranged meeting location with more than 28 grams in their possession; and, while the defendant argued that only 26 grams was delivered to support the sale in which the defendant was involved, the evidence did not demand such a finding as the jury could infer that the sellers brought some of the additional methamphetamine in case the informant insisted on delivery of the full weight for which the informant had bargained. Hampton v. State, 338 Ga. App. 864, 792 S.E.2d 124, 2016 Ga. App. LEXIS 558 (2016).

Whether the defendant constructively possessed the methamphetamine found in the defendant's bedroom was a question for the jury and the defendant's admission to using drugs and drug paraphernalia found in the room was sufficient to allow the jury to convict the defendant of trafficking in methamphetamine. Thomas v. State, 342 Ga. App. 310, 803 S.E.2d 131, 2017 Ga. App. LEXIS 343 (2017).

Combining quantity to convict of conspiracy to traffic in methamphetamine prohibited. — Agreement relating to the sale or delivery of amounts of less than 28 grams cannot support a conspiracy to traffic in methamphetamine, even if the amounts sold over time amount to 28 grams or more, as the plain language of O.C.G.A. § 16-13-31(e) requires a transaction involving 28 grams or more; additionally, the coconspirators must act "together with" one another to commit the crime of trafficking. Pruitt v. State, 264 Ga. App. 44, 589 S.E.2d 864, 2003 Ga. App. LEXIS 1382 (2003).

Confession and videotape of sale of methamphetamine. — Based on the defendant's confession to selling methamphetamine and the other evidence, including a videotape of the transaction, the evidence was sufficient to support a conviction under O.C.G.A. § 16-13-31(e). Graves v. State, 274 Ga. App. 855, 619 S.E.2d 356, 2005 Ga. App. LEXIS 841 (2005).

Methamphetamine found in hotel room. — Because the state did not rely solely on the fact that the drugs were found in the defendant's hotel room, but

also presented evidence that a large bag of methamphetamine was found inside a hard drive which the defendant expressly claimed ownership of, this fact constituted additional evidence of possession of the methamphetamine and contraband seized to support a trafficking conviction. Miller v. State, 287 Ga. App. 179, 651 S.E.2d 103, 2007 Ga. App. LEXIS 901 (2007).

Informants testimony sufficient for conviction of selling methamphetamine. — Because the informant's testimony was the only testimony in which the defendant was identified as the person who sold the methamphetamine to the informant in violation of O.C.G.A. § 16-13-31, there was sufficient evidence to support the conviction; under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8), the testimony of one witness was sufficient to establish the defendant's identity. Vasquez v. State, 275 Ga. App. 548, 621 S.E.2d 764, 2005 Ga. App. LEXIS 1027 (2005).

Motions to suppress drug evidence based on consent and Miranda denied. — Trial court did not err in denying either defendant's motion to suppress the methamphetamine seized during the consensual search of the defendant's vehicle or a motion to suppress the defendant's voluntary custodial statement as the testimony of the arresting and investigating officers established that the defendant did not display any problems with the understanding of the English language as did videotapes of the vehicle search and the in custody interview, which likewise showed the defendant having no problems with the English language. Therefore, the defendant's consent to the search of the vehicle nor the defendant's waiver of defendant's Miranda rights were invalidated. Serrano v. State, 291 Ga. App. 500, 662 S.E.2d 280, 2008 Ga. App. LEXIS 549 (2008).

Lesser included offenses. — Manufacturing methamphetamine was lesser-included offense of trafficking methamphetamine as charged. Wesson v. State, 279 Ga. App. 428, 631 S.E.2d 451, 2006 Ga. App. LEXIS 591 (2006).

Crimes set forth in O.C.G.A. §§ 16-13-30.3(b)(2) and 16-13-32.2, with regard to possessing objects or materials of any kind for the purpose of manufacturing or preparing a controlled substance, are lesser included offenses of the crime of trafficking by manufacture of methamphetamine under O.C.G.A. § 16-13-31(f). Franks v. State, 325 Ga. App. 488, 758 S.E.2d 604, 2013 Ga. App. LEXIS 533 (2013).

Because the possession of pseudoephedrine and possession of a drug-related object required proof of elements not required for the crime of trafficking, those crimes were not lesser included offenses of the crime of trafficking in methamphetamine as indicted, and the trial court did not err in denying the second defendant's requested charges on lesser included offenses. Long v. State, 325 Ga. App. 488, 758 S.E.2d 604, 2013 Ga. App. LEXIS 1008 (2013).

Conspiracy to traffic methamphetamine. — Evidence was sufficient to convict defendant of a conspiracy to traffic in methamphetamine based on the defendant's understanding with the defendant's spouse regarding the spouse's drug sales, and testimony of drug enforcement agents and co-indictees as well as drugs, money, and drug paraphernalia obtained during a search of the residence the defendant shared with the spouse, who had engaged in three sales of this contraband. Williamson v. State, 300 Ga. App. 538, 685 S.E.2d 784, 2009 Ga. App. LEXIS 1218 (2009), cert. denied, No. S10C0387, 2010 Ga. LEXIS 191 (Ga. Mar. 1, 2010).

Evidence was sufficient to sustain the defendant's conviction for conspiracy to traffic methamphetamine over 400 grams in violation of O.C.G.A. §§ 16-4-8 and 16-13-31(e)(3) because an accomplice testified that the defendant supplied the accomplice with several pounds of methamphetamine, and that testimony was amply corroborated by other evidence in the record; the defendant's translator testified that the translator retrieved $15,000 from the accomplice as payment for fronted methamphetamine, police officers recovered $15,000 in cash from the translator upon leaving the accomplice's residence, and there were recorded conversations between the accomplice, the

Methamphetamine or Amphetamine (Cont'd)
3. Evidence (Cont'd)

defendant, and the translator in which they discussed methamphetamine transactions. Melesa v. State, 314 Ga. App. 306, 724 S.E.2d 30, 2012 Ga. App. LEXIS 182 (2012).

Probable cause for arrest for trafficking methamphetamine. — In a prosecution for burglary and trafficking methamphetamine, probable cause supported the defendant's warrantless arrest and supported the admission of the seized evidence because: (1) it was reasonable for the arresting officers to act upon an investigating deputy's observations; (2) law enforcement had reasonably trustworthy information to warrant their belief that the defendant had committed or had participated in committing a burglary; and (3) a determination of probable cause to arrest the defendant could rest on the collective knowledge of the police, given the communication between them. Murphy v. State, 286 Ga. App. 447, 649 S.E.2d 565, 2007 Ga. App. LEXIS 796 (2007).

Criminal attempt to manufacture methamphetamine. — Defendant's conviction for criminal attempt to manufacture methamphetamine was supported by the evidence because: (1) the defendant's wife informed law enforcement authorities that the defendant was manufacturing methamphetamine; (2) the defendant was discovered at a motel and was arrested; and (3) a forensic chemist testified that the items found in the defendant's motel room were those used in the manufacture of methamphetamine. Elliot v. State, 274 Ga. App. 73, 616 S.E.2d 844, 2005 Ga. App. LEXIS 669 (2005).

Attempt to traffic by manufacturing methamphetamine. — Sufficient evidence existed to support the defendant's conviction for attempted trafficking by manufacturing methamphetamine based on the evidence that the defendant lived at the residence wherein the meth lab was discovered as shown by the owner's testimony and another witness who testified that the defendant slept at the home nightly and material used in the red phosphorous process for manufacturing methamphetamine was seized from the residence. Franks v. State, 325 Ga. App. 488, 758 S.E.2d 604, 2013 Ga. App. LEXIS 533 (2013).

Evidence was sufficient to support both the defendants' convictions for attempted trafficking by manufacturing methamphetamine because the evidence connected the defendants to the house and the rooms in which the manufacturing components and the items containing methamphetamine residue were found; the police found lantern fuel in the house, which was commonly used as a solvent in methamphetamine labs; the chief of police, who was qualified as an expert witness, testified that the items seized appeared to have been used in the red phosphorous process for manufacturing methamphetamine; and a chemical odor associated with methamphetamine labs lingered around the house. Long v. State, 325 Ga. App. 488, 758 S.E.2d 604, 2013 Ga. App. LEXIS 1008 (2013).

Evidentiary issues did not warrant new trial. — Because the state's evidence sufficiently showed the first defendant's joint constructive possession of methamphetamine beyond mere spatial proximity, and the first defendant's act of testifying for the state without a promise of leniency or immunity did not unfairly prejudice the second defendant at the expense of that defendant's constitutional right not to testify, the defendants' convictions for trafficking in methamphetamine and possession of tools for the commission of a crime were upheld; thus, the trial court did not err in denying both defendants a new trial. Herberman v. State, 287 Ga. App. 635, 653 S.E.2d 74, 2007 Ga. App. LEXIS 1045 (2007).

Motion for acquittal properly denied. — Denial of the defendant's motion for acquittal was supported by evidence that the defendant stated the defendant had three ounces of methamphetamine about two hours before the drug transaction, that amount was found in the vehicle, and the defendant provided methamphetamine to

an individual who sold the methamphetamine to the confidential informant. Osorio v. State, 323 Ga. App. 843, 748 S.E.2d 483, 2013 Ga. App. LEXIS 759 (2013).

Party to offense of trafficking in methamphetamine. — Evidence that the defendant helped direct a witness to a police informant's home in order to buy a pound of methamphetamine, combined with the defendant's previous contact with the informant, showed more than mere presence, and, at a minimum, showed that the defendant was guilty as a party to the offense of trafficking in methamphetamine. Lopez v. State, 281 Ga. App. 623, 636 S.E.2d 770, 2006 Ga. App. LEXIS 1179 (2006).

Valid consent given by driver and car owner speaking Spanish. — Trial court properly denied the defendants' motion to suppress the methamphetamine found in the car because the search was conducted pursuant to the valid consent of both defendants and the involvement of the Spanish-speaking officer was needed to fulfill the purpose of the stop to explain the violation. Flores v. State, 347 Ga. App. 174, 818 S.E.2d 90, 2018 Ga. App. LEXIS 478 (2018).

Methamphetamine found in vehicle supported trafficking conviction. — Sufficient evidence supported the defendant's conviction of trafficking in methamphetamine in violation of O.C.G.A. § 16-13-31; the vehicle in which the methamphetamine was found was the defendant's vehicle and the defendant had been driving the vehicle, the defendant was found with methamphetamine on the defendant's person, and although there had been a passenger, the passenger had not been in the car alone. Giacini v. State, 281 Ga. App. 426, 636 S.E.2d 145, 2006 Ga. App. LEXIS 1129 (2006).

Evidence authorized a finding that the defendant was guilty as a party to trafficking methamphetamine and not merely a passenger in the codefendant's truck after the codefendant testified that the defendant obtained methamphetamine from a third party and was the supplier for the deal, the defendant admitted that the defendant had previously purchased methamphetamine from the third party and knew what was going on when the defendant and the codefendant met with the third party, and the defendant remained in the truck when the codefendant took the methamphetamine and got into an agent's vehicle to make the sale. Russell v. State, 289 Ga. App. 789, 658 S.E.2d 400, 2008 Ga. App. LEXIS 200 (2008).

Trial court properly denied a defendant's motion for a directed verdict of acquittal and the defendant's motion for a new trial with regard to the defendant's conviction for trafficking in methamphetamine as the defendant failed to rebut the presumption that finding the defendant in possession of such a large amount of drugs was sufficient to establish trafficking. The reviewing court noted that it was for the jury to decide if the defendant rebutted the presumption and the fact that a codefendant owned the vehicle in which the drugs were found and had equal access to the drugs was not sufficient to rebut the presumption. Navarro v. State, 293 Ga. App. 329, 667 S.E.2d 125, 2008 Ga. App. LEXIS 928 (2008).

Because a police officer properly stopped the defendant's car for a suspended registration, saw what appeared to be a weapon in the defendant's fanny pack, and the suspected methamphetamine was found in plain view during a limited protective search and while the officer was engaged in a lawful arrest; accordingly, the defendant's constitutional rights were not violated, and the defendant was properly convicted of trafficking in methamphetamine and possession of methamphetamine with intent to distribute under O.C.G.A. §§ 16-13-30(b) and 16-13-31(e). Eaton v. State, 294 Ga. App. 124, 668 S.E.2d 770, 2008 Ga. App. LEXIS 1118 (2008).

Defendant was not entitled to a directed verdict of acquittal because the jury was authorized to find the defendant guilty of trafficking in methamphetamine in violation of O.C.G.A. § 16-13-31(e) beyond a reasonable doubt since the evidence was sufficient to show that the defendant knowingly had the power and intention to exercise dominion and control over the drugs, which were stashed inside a green

Methamphetamine or Amphetamine (Cont'd)
3. Evidence (Cont'd)

vehicle; the defendant had moments earlier given an accomplice the keys to the vehicle, told the accomplice where to drive and park the vehicle, and led the accomplice to a motel. Flores v. State, 308 Ga. App. 368, 707 S.E.2d 578, 2011 Ga. App. LEXIS 188 (2011), cert. denied, No. S11C1072, 2011 Ga. LEXIS 527 (Ga. June 27, 2011).

Defendant was not entitled to a directed verdict of acquittal for the offense of trafficking in methamphetamine, in violation of O.C.G.A. § 16-13-31(e), because there was no evidence that anyone other than the defendant and the codefendant had recent access to the vehicle in which they were riding when they were stopped for a traffic violation, even though the vehicle belonged to the defendant's grandparent. Moreover, because the defendant and the codefendant were jointly charged with the offense of trafficking in methamphetamine, the State of Georgia was not required to show that the defendant was in sole constructive possession of the brick of methamphetamine which was found in a search of the vehicle. Mercado v. State, 317 Ga. App. 403, 731 S.E.2d 85, 2012 Ga. App. LEXIS 714 (2012), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Evidence that the defendant was the only occupant of the car, drugs were found under a blanket that the defendant held in the defendant's hand, and the defendant had a large sum of cash on the defendant's person, was sufficient to support the defendant's conviction for trafficking in methamphetamine and showed more than the defendant's mere presence at the scene. Reyes v. State, 322 Ga. App. 496, 745 S.E.2d 738, 2013 Ga. App. LEXIS 547 (2013).

Methamphetamine found in vehicle insufficient for conviction. — Trial court erred in denying the codefendant's motion for a directed verdict after the codefendant was convicted of trafficking in methamphetamine in violation of O.C.G.A. § 16-13-31(e) because the evidence against the codefendant was insufficient to authorize a rational trier of fact to find beyond a reasonable doubt that the codefendant was in actual or constructive possession of the drugs found in a vehicle, and there was no presumption of drug possession since there was no evidence that the codefendant owned or controlled the vehicle in which the drugs were found; there was no evidence that the codefendant had even been in or had any connection to that vehicle, no testimony implicated the codefendant in the transaction, and the evidence showed nothing more than the codefendant's presence in the vehicle with the defendant, but there was no evidence that the codefendant had the power and intent to exercise control over the drugs. Flores v. State, 308 Ga. App. 368, 707 S.E.2d 578, 2011 Ga. App. LEXIS 188 (2011), cert. denied, No. S11C1072, 2011 Ga. LEXIS 527 (Ga. June 27, 2011).

Equal access of passenger to methamphetamine. — Although the defendant argued that the defendant's passenger had equal access to 27.1 grams of methamphetamine that were found taped under the console tray of the defendant's truck, the state sufficiently proved the defendant's possession. Dalton v. State, 261 Ga. App. 72, 581 S.E.2d 700, 2003 Ga. App. LEXIS 545 (2003).

There was sufficient evidence to show that the defendant was in joint constructive possession of drugs found under the passenger seat of a car the defendant was driving; at a minimum, there was evidence that the defendant was transporting the passenger, a codefendant, in a car knowing that the passenger was in possession of the bag containing methamphetamine. Waters v. State, 280 Ga. App. 566, 634 S.E.2d 508, 2006 Ga. App. LEXIS 887 (2006).

Equal access rule did not apply. — Because the defendant's possession of the 400 grams of methamphetamine found inside a vehicle was established by other circumstantial evidence besides ownership, use, or possession of the vehicle, the equal access rule did not entitle the defendant to an acquittal of the

drug trafficking charge. The issue of whether the drugs belonged to the defendant was for the jury's determination and an appellate court cannot reweigh the evidence and reassess the witnesses' credibility. Evans v. State, 288 Ga. App. 103, 653 S.E.2d 520, 2007 Ga. App. LEXIS 1146 (2007).

Evidence was sufficient to support a conviction under O.C.G.A. § 16-13-31(e), despite an equal access defense, given the evidence linking the defendant to the methamphetamine found, and the defendant's unusual nervousness following the traffic stop. Arellano v. State, 289 Ga. App. 148, 656 S.E.2d 264, 2008 Ga. App. LEXIS 22 (2008).

Because the state was not relying upon the defendant's ownership or control of the residence in order to link the ownership and possession of the methamphetamine found to the defendant, a charge on equal access was not authorized by the evidence. Thrasher v. State, 289 Ga. App. 399, 657 S.E.2d 316, 2008 Ga. App. LEXIS 97 (2008).

Evidence supported a conviction of trafficking in methamphetamine when the defendant was driving a vehicle that contained 441.11 grams of amphetamine, over which the defendant presumptively had possession and control, the drug was on the seat directly behind the defendant, and the vehicle was registered to another person, which an investigator testified was common among drug dealers; the defendant had not presented any evidence to rebut the presumption of possession, and as both the defendant and the defendant's passenger were charged with the crime of possession, the equal access rule did not apply. Ramirez v. State, 290 Ga. App. 3, 658 S.E.2d 790, 2008 Ga. App. LEXIS 231 (2008).

Evidence at trial was sufficient to enable the jury to find the defendant guilty of trafficking in methamphetamine because the codefendant testified that the defendant and the defendant's daughter sold drugs from the defendant's house, and the defendant tested positive for methamphetamine the day of the search; a rebuttable presumption arose that the defendant possessed the methamphetamine because the defendant was the owner of the house in which the methamphetamine was found, and it was found in the defendant's bedroom, and because a codefendant was a member of the defendant's immediate household, evidence of the codefendant's access was not sufficient to rebut the presumption against the defendant and did not demand an acquittal under the equal access rule. Swan v. State, 300 Ga. App. 667, 686 S.E.2d 310, 2009 Ga. App. LEXIS 1245 (2009).

Circumstantial evidence sufficient to support conviction of possession of methamphetamine. — As the defendant was the driver, owner, and sole occupant of a vehicle, and 250 grams of methamphetamine were found hidden beneath the steering column, within arm's reach of the driver, the circumstantial evidence was sufficient to establish the defendant's "knowing" possession of the drugs as required by O.C.G.A. § 16-13-31(e). Garcia v. State, 293 Ga. App. 422, 667 S.E.2d 205, 2008 Ga. App. LEXIS 961 (2008).

Admission of similar transaction evidence. — Defendant was properly convicted of trafficking in methamphetamine, O.C.G.A. § 16-13-31, violating the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., and contributing to the delinquency of a minor, O.C.G.A. § 16-12-1, because the trial court properly admitted the state's similar transaction evidence when the evidence was introduced for the appropriate purpose of showing the defendant's knowledge and intent regarding the methamphetamine found in the defendant's room, and the trial court instructed the jury to consider the evidence for that limited purpose; both incidents occurred on the same street and both involved methamphetamine, and in both incidents police found the drugs in the defendant's bedroom along with scales. Swan v. State, 300 Ga. App. 667, 686 S.E.2d 310, 2009 Ga. App. LEXIS 1245 (2009).

Suppression motion improperly denied. — Police officers lacked a reasonable articulable suspicion necessary to justify the officers' presence in the back yard of a home where the officers were conducting a first-tier

Methamphetamine or Amphetamine (Cont'd)
3. Evidence (Cont'd)

encounter "knock and talk," and the officers' detention of the home's occupants as the occupants fled out the back door was unlawful. Therefore, methamphetamine seen through the back door of the home was not in "plain view" and was required to be suppressed. Galindo-Eriza v. State, 306 Ga. App. 19, 701 S.E.2d 516, 2010 Ga. App. LEXIS 847 (2010).

Sufficient corroboration for methamphetamine conviction. — Sufficient corroboration existed to support a defendant's conviction for trafficking in methamphetamine after a police informant testified that the defendant appeared to be involved in the deal and the state also offered testimony that a person would not simply tag along to a drug transaction involving over 400 grams of methamphetamine. Casanova v. State, 285 Ga. App. 554, 646 S.E.2d 754, 2007 Ga. App. LEXIS 575 (2007).

There was sufficient corroborating evidence to support a defendant's conviction for violating the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., specifically O.C.G.A. § 16-13-31(e), as the defendant's presence with a codefendant outside the rurally located barn where the methamphetamine was found corroborated the codefendant's testimony that some of the drugs belonged to the defendant. Dingler v. State, 293 Ga. App. 27, 666 S.E.2d 441, 2008 Ga. App. LEXIS 897 (2008).

Evidence held sufficient to support sale of methamphetamine charge. — Conviction for the sale of methamphetamine was upheld on appeal because the state presented sufficient evidence to support a charge of the sale of methamphetamine before the defendant moved for a directed verdict of acquittal, specifically, that the drugs allegedly sold to an informant were packaged in the same type of Ziploc bag as those found on the defendant's person, and the defendant was in possession of a large of amount of cash and paraphernalia. Ramey v. State, 288 Ga. App. 800, 655 S.E.2d 675, 2007 Ga. App. LEXIS 1294 (2007).

Evidence sufficient to support conviction of trafficking in methamphetamine. — See Cook v. State, 226 Ga. App. 113, 485 S.E.2d 595; Neill v. State, 247 Ga. App. 152, 543 S.E.2d 436, 2000 Ga. App. LEXIS 1448 (2000), cert. denied, No. S01C0524, 2001 Ga. LEXIS 479 (Ga. June 4, 2001).

Evidence was sufficient to support the defendant's conviction for trafficking in methamphetamine since: (1) the defendant was the owner of a vehicle in which drugs were found and was a passenger at the time the drugs were found; (2) the driver stated that the drugs did not belong to the driver; (3) the drugs were in plain view on the passenger side of the vehicle where the defendant was sitting; and (4) the defendant told the driver not to stop and fled the scene when approached by officers. The equal access rule did not apply since the defendant's possession of the vehicle was not the sole evidence of the defendant's guilt. Kantorik v. State, 257 Ga. App. 828, 572 S.E.2d 690, 2002 Ga. App. LEXIS 1312 (2002).

Evidence was sufficient to find the defendant guilty of trafficking in methamphetamine when the defendant drove to the meeting place, got out of the defendant's car and got into the passenger seat of the informant's car, and the defendant gave the informant the agreed upon amount of money, $3200, half of the purchase price for the drugs. Harris v. State, 258 Ga. App. 669, 574 S.E.2d 871, 2002 Ga. App. LEXIS 1536 (2002).

Evidence that the first defendant actually handled and attempted to sell the nearly 450 grams of methamphetamine to the undercover officer, and the second defendant not only accompanied the first defendant to the scene but also sat in the seat under which the drugs were stored prior to the attempted sale was sufficient to support convictions for trafficking in methamphetamine. Evidence that the third defendant's participation was voluntary and not the product of entrapment was sufficient to sustain that defendant's conviction. Baggs v. State, 265 Ga. App. 282, 593 S.E.2d 734, 2004 Ga. App. LEXIS 90 (2004).

Evidence was sufficient for a rational trier of fact to find that the defendant was guilty beyond a reasonable doubt of trafficking in methamphetamine since, among other things, the testimony of the codefendant was corroborated by the fact that, at the time of the defendant's arrest, methamphetamine was found behind the front passenger seat of the car the defendant was driving, and the defendant had items in the defendant's pocket commonly known to be drug paraphernalia. Garmon v. State, 265 Ga. App. 622, 594 S.E.2d 779, 2004 Ga. App. LEXIS 201 (2004).

Evidence was sufficient to support the defendant's conviction for trafficking in methamphetamine under O.C.G.A. § 16-13-31(e) as: (1) methamphetamine, weighing 59.49 grams, was found in the defendant's truck; (2) the defendant was the sole occupant and admitted owner of the truck; (3) the methamphetamine was found hidden near where the defendant was sitting; (4) the defendant had recently ingested methamphetamine; and (5) the defendant provided no evidence of equal access by others. Craig v. State, 274 Ga. App. 504, 617 S.E.2d 653, 2005 Ga. App. LEXIS 776 (2005).

Sufficient circumstantial evidence supported the defendant's conviction for trafficking in methamphetamine, in violation of O.C.G.A. § 16-13-31, because testimony from police agents and task force members who were part of the surveillance or take-down of the defendant established that an informant had arranged a drug deal, the designated vehicle drove up to the specified location, the defendant was identified as the individual who exited the vehicle and was on the phone with the informant at the time that the vehicle arrived at the location, and drugs were found in the vehicle; the testimony of the agents was based on the agents' observations and actions and was not hearsay. Diaz v. State, 275 Ga. App. 557, 621 S.E.2d 543, 2005 Ga. App. LEXIS 1033 (2005).

Because the defendant, who was a passenger in a vehicle stopped by police, and the vehicle's driver had different responses when the arresting officers asked them where they were going, and a bag containing about three pounds of methamphetamine was found between the passenger's and driver's seats, and the defendant fled the scene, and the packaging of the methamphetamine was very similar to the packaging of the cocaine, marijuana, and cash found at the defendant's residence two months earlier, the evidence was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of trafficking in methamphetamine and of possession of methamphetamine with intent to distribute. Salinas-Valdez v. State, 276 Ga. App. 732, 624 S.E.2d 278, 2005 Ga. App. LEXIS 1367 (2005).

Evidence was sufficient to sustain a conviction of trafficking in methamphetamine when a confidential informant (CI) arranged to have drugs delivered to a mall, a short time later, the defendant arrived in a taxi and entered the mall, the CI then received a call and told the caller that the CI had moved to a different location, the defendant came out of the mall, and got back into the taxi, and the officers stopped the defendant with the drugs. Flores v. State, 277 Ga. App. 211, 626 S.E.2d 181, 2006 Ga. App. LEXIS 33 (2006).

Trial court's denial of a motion for a directed verdict of acquittal pursuant to O.C.G.A. § 17-9-1 was proper as the evidence was sufficient to support a conviction of trafficking in methamphetamine, in violation of O.C.G.A. § 16-13-31(e); there was clearly evidence that the sale of the drug involved more than 28 grams of methamphetamine, that defendant either possessed or sold the methamphetamine through the defendant's presence when the drug was being cut, weighed, packaged, and sold, and that the defendant was liable as an aider and abettor under O.C.G.A. § 16-2-21 even if there was no evidence that the defendant either arranged the sale or received any money in connection therewith. Blackwood v. State, 277 Ga. App. 870, 627 S.E.2d 907, 2006 Ga. App. LEXIS 222 (2006).

Trial court did not err in denying the defendant's motion for a directed verdict of acquittal on a charge of trafficking methamphetamine in violation of

Methamphetamine or Amphetamine (Cont'd)
3. Evidence (Cont'd)

O.C.G.A. § 16-13-31(e) based on insufficient evidence, given the various items seized from the defendant's property that were indicative of the manufacture of methamphetamine as well as the samples of substances that tested positive for methamphetamine. Wesson v. State, 279 Ga. App. 428, 631 S.E.2d 451, 2006 Ga. App. LEXIS 591 (2006).

Defendant's conviction for methamphetamine trafficking was supported by sufficient evidence as: (1) on the basis of a tip from a confidential informant, the police made a controlled buy of methamphetamine from a codefendant dropped off from a car driven by the defendant; (2) the codefendant testified that the defendant had arranged to drop the codefendant off in the driveway, circle the neighborhood, and pick the codefendant up; and (3) a second codefendant had also been a passenger in the car and testified that the second codefendant and the defendant ran a methamphetamine business together. Temples v. State, 280 Ga. App. 874, 635 S.E.2d 249, 2006 Ga. App. LEXIS 968 (2006).

Defendant's trafficking in methamphetamine conviction was upheld as the evidence showed that: (1) no compelling reason existed to grant a continuance of the trial; and (2) the defendant failed to show that but for counsel's alleged inactions, the outcome of the trial would have been different or aided in the presentation of a defense. Hartley v. State, 283 Ga. App. 388, 641 S.E.2d 607, 2007 Ga. App. LEXIS 68 (2007).

In a prosecution for trafficking in methamphetamine: (1) no error resulted from the admission of evidence of a 2003 incident in which officers investigated the defendant's involvement in another drug case; (2) admission of evidence regarding the two packs of crystalline substance that were not tested was not erroneous; and (3) the fact that portions of the suspected methamphetamine had not been tested went to the weight of the evidence and not the admissibility of the evidence. Perry v. State, 283 Ga. App. 520, 642 S.E.2d 141, 2007 Ga. App. LEXIS 98 (2007).

There was sufficient evidence to support a conviction of trafficking in methamphetamine; the defendant participated in phone calls in which the defendant's over interest arranged to deliver methamphetamine to an informant and had driven the car used to lead the person making the delivery to the informant's house. Gonzalez v. State, 283 Ga. App. 843, 643 S.E.2d 8, 2007 Ga. App. LEXIS 199 (2007).

Despite the defendant's contrary contentions, evidence seized via the execution of a valid search warrant, specifically a substantial amount of methamphetamine, a set of scales in a case marked "dope kit inside," a .38 revolver, common tools of the drug trade, written instructions for making pure ephedrine, a loose bag of vitamin B-12 commonly used to dilute methamphetamine, over $2,000 in cash, and evidence that the defendant installed a video surveillance system to monitor the front door and driveway, both a trafficking in methamphetamine and possession of a weapon by a convicted felon conviction were supported by sufficient evidence. McTaggart v. State, 285 Ga. App. 178, 645 S.E.2d 658, 2007 Ga. App. LEXIS 458 (2007).

Although no evidence was presented as to the ownership of a Nissan Pathfinder parked at the scene of the crime, the defendant was not entitled to a judgment of acquittal as sufficient evidence was presented to not only link the defendant with that vehicle where the trafficking amount of drugs was found, but also to support a finding of guilt as a party to the crime; moreover, the jury could conclude that as a party to the crimes charged, the defendant was actively involved in a criminal enterprise to possess the methamphetamine stashed inside the vehicle. Sherrer v. State, 289 Ga. App. 156, 656 S.E.2d 258, 2008 Ga. App. LEXIS 25 (2008), cert. dismissed, No. S08C0875, 2008 Ga. LEXIS 391 (Ga. Apr. 21, 2008).

With regard to defendant's conviction for trafficking in methamphetamine, the trial court properly denied the defendant's motion for a new trial, which was based on the trial court improperly admitting evi-

dence of a witness's statements made during a polygraph examination as the evidence, which indicated that the defendant sold methamphetamine, did not go to proving what the defendant was indicted for, namely trafficking methamphetamine since possessing the drug in a certain amount was also a way of proving the crime. Further, the defendant was able to fully call into issue the witness's motive for testifying. Corn v. State, 290 Ga. App. 792, 660 S.E.2d 782, 2008 Ga. App. LEXIS 342 (2008), cert. denied, No. S08C1356, 2008 Ga. LEXIS 712 (Ga. Sept. 8, 2008).

There was sufficient evidence to support a conviction for trafficking methamphetamine. Although a person could not be convicted of a felony based solely on an accomplice's uncorroborated testimony, there was no evidence that the friend who testified against the defendant was an accomplice; furthermore, an officer's sighting of the defendant with a dog within walking distance of the residence that the defendant left with a dog, the defendant's appearance at a convenience store that was consistent with the violent argument described by the friend, the defendant's arrest there with the gun the friend said the defendant had left with, and the discovery of the defendant's photographs at the residence would be sufficient corroboration of the friend's testimony. Honeycutt v. State, 293 Ga. App. 614, 668 S.E.2d 19, 2008 Ga. App. LEXIS 1028 (2008).

Sufficient evidence existed to convict a defendant of trafficking in methamphetamine (meth) under O.C.G.A. § 16-13-31(e) because evidence showed that the defendant had actual possession of the drugs when the defendant arrived at an apartment complex with the meth and showed the meth to the confidential informant; the defendant also admitted possession of the drugs during a cell phone conversation with an undercover detective, and undercover officers observed the transfer of the drugs to the defendant's accomplice in an ice cream van. Escobar v. State, 296 Ga. App. 898, 676 S.E.2d 291, 2009 Ga. App. LEXIS 376 (2009).

Because probation officers were authorized to investigate an allegation that the defendant's son possessed drugs in violation of the son's probation, and because the officers were authorized to seize contraband falling in plain view, the evidence was sufficient to sustain the defendant's convictions for possession of methamphetamine with intent to distribute and trafficking in methamphetamine under O.C.G.A. §§ 16-13-30(b) and 16-13-31(e)(1). Prince v. State, 299 Ga. App. 164, 682 S.E.2d 180, 2009 Ga. App. LEXIS 851 (2009).

Trial court did not err in convicting the defendant of trafficking in methamphetamine because the evidence sufficed to sustain the conviction, and the jury was authorized to conclude that the circumstances excluded the hypothesis that another passenger had placed drugs in the bed of the truck; the passenger testified at trial that the passenger did not place the drugs in the truck bed, and a police officer testified that the passenger, whom the officer had in sight the entire time, never came within five-to-six feet of the truck and that the officer not only saw the defendant place the defendant's arm in the truck bed but heard an accompanying thump. Haggard v. State, 302 Ga. App. 502, 690 S.E.2d 651, 2010 Ga. App. LEXIS 57 (2010).

Jury was authorized to find the defendant guilty of trafficking in methamphetamine beyond a reasonable doubt because the evidence was sufficient to show more than the defendant's mere presence and spatial proximity to the methamphetamine drugs when the defendant and the codefendant, who was the defendant's boyfriend, lived at the residence where the drugs were found, and the presumption that the defendants had joint possession of the drugs was not rebutted by the evidence; the defendant had sold methamphetamine to an informant during the controlled buy, the money used to make the drug purchase was located during the subsequent search of the defendant's purse, and two individuals who had been arrested at the residence testified at trial that the defendant had supplied those individuals with methamphetamine. Fyfe v. State, 305 Ga. App. 322, 699 S.E.2d 546, 2010 Ga. App. LEXIS 628 (2010), cert. denied, No. S10C1942, 2011 Ga. LEXIS

Methamphetamine or Amphetamine (Cont'd)
3. Evidence (Cont'd)

229 (Ga. Feb. 28, 2011), overruled in part, McNair v. State, 293 Ga. 282, 745 S.E.2d 646, 2013 Ga. LEXIS 594 (2013), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Trial court did not err in convicting the defendant of trafficking in methamphetamine in violation of O.C.G.A. § 16-13-31(f)(1) because given the evidence, the jury was authorized under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) to find that the defendant was guilty beyond a reasonable doubt as either the actual perpetrator or as a party to the crime of the offense of trafficking in methamphetamine as charged in the indictment; officers executing a search warrant for a house discovered the defendant on a couch with a codefendant and baggies of methamphetamine. Hughes v. State, 309 Ga. App. 150, 709 S.E.2d 900, 2011 Ga. App. LEXIS 325 (2011).

Evidence was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of trafficking in methamphetamine, O.C.G.A. § 16-13-31(e), because the equal access doctrine was not applicable since the evidence of the defendant's possession of the drugs included more than the defendant's mere possession of the car where the drugs were discovered; because the defendant's possession of the methamphetamine found inside the trunk of the car was established by evidence besides the defendant's mere ownership, use, or possession of the car, including the defendant's statement that the defendant was transporting the methamphetamine, the issue of whether the drugs belonged to the defendant or one of the other occupants was for the jury's determination. Arroyo v. State, 309 Ga. App. 494, 711 S.E.2d 60, 2011 Ga. App. LEXIS 372 (2011).

Evidence that a defendant sold an undercover officer methamphetamine on two occasions, with one sale of more than 28 grams, and that the defendant participated in a later, larger drug deal, supported the defendant's convictions for trafficking in methamphetamine, O.C.G.A. § 16-13-31(e), and sale of methamphetamine under O.C.G.A. §§ 16-13-26(3)(B) and 16-13-30(b). Culajay v. State, 309 Ga. App. 631, 710 S.E.2d 846, 2011 Ga. App. LEXIS 420 (2011).

Evidence that the defendant resided in the house, refused to show the house to an individual who was in the yard even though the house was for sale, occupied a bedroom in which methamphetamine was found, was present when drugs were brought into the house, and was surrounded with plastic garbage bags full of narcotics packing material when police entered the house was sufficient to support the defendant's conviction for trafficking in methamphetamine. Lopez-Jimenez v. State, 317 Ga. App. 868, 733 S.E.2d 42, 2012 Ga. App. LEXIS 829 (2012).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine because the officers found coffee filters, tubing, a funnel, a bottle with tubing coming out of it, a bottle containing a liquid substance, a can of fuel, drain cleaner, muriatic acid, a cold pack containing ammonium nitrate, a coffee grinder, lithium batteries, and rubber gloves, which were all items that could be used together to produce methamphetamine; and because the investigators found scales, which were consistent with selling drugs, as well as syringes, a spoon, and straws, commonly used for ingesting drugs. State v. Nankervis, 295 Ga. 406, 761 S.E.2d 1, 2014 Ga. LEXIS 538 (2014).

Evidence that the box with the methamphetamine was found in the debris field of the wreck, the defendant was walking around the wrecked car looking for something on the ground, and there was over 15 times the threshold trafficking amount in the box was sufficient for the jury to conclude that the defendant knew the defendant possessed 28 grams or more of a mixture containing methamphetamine as required to convict the defendant of trafficking over 400 grams of a mixture with methamphetamine. Brown v. State, 334 Ga. App. 674, 780 S.E.2d 372, 2015 Ga. App. LEXIS 693 (2015).

Evidence was sufficient to convict the defendant of manufacturing methamphetamine and trafficking methamphetamine because, given the large array of products involved in the production of methamphetamine, their proximity to each other in the residence, and the fact that methamphetamine was found throughout the residence, the jury heard sufficient evidence to allow the jury to conclude that it would have been virtually impossible for the defendant to have been unaware that methamphetamine was being produced there; and the state presented evidence that police had observed the defendant sell methamphetamine to a confidential informant from the same residence where the methamphetamine was being produced. Cummings v. State, 345 Ga. App. 702, 814 S.E.2d 806, 2018 Ga. App. LEXIS 270 (2018), cert. denied, No. S18C1280, 2018 Ga. LEXIS 728 (Ga. Nov. 15, 2018).

Evidence sufficient for trafficking in amphetamine conviction. — Circumstantial evidence demonstrating that the defendant had a key to the house searched, received mail there, and kept clothes there was sufficient to sustain a trafficking in amphetamine conviction under O.C.G.A. § 16-13-31(e), and the defendant's equal access defense did not apply. Swanger v. State, 251 Ga. App. 182, 554 S.E.2d 207, 2001 Ga. App. LEXIS 959 (2001).

Evidence supported a conviction for trafficking in amphetamine after a package was dropped from the defendant's truck containing amphetamine, the codefendant testified that the package was obtained from the defendant's aunt in exchange for money, and a police officer testified that an individual user would have had paraphernalia, less amphetamine, and more money than was found with the defendant and the codefendant; the state did not rely solely on the testimony of the codefendant, who was acquitted. Steed v. State, 273 Ga. App. 845, 616 S.E.2d 185, 2005 Ga. App. LEXIS 637 (2005).

Evidence insufficient for trafficking in methamphetamine. — There was an initial one-ounce sale of methamphetamine between the defendant and the supplier, but each week thereafter, for about four months, the defendant called the supplier and requested one-half ounce of methamphetamine or less; thus, there was insufficient evidence of an agreement to act together to sell or deliver 28 grams, and the defendant's trafficking conviction was reversed. Pruitt v. State, 264 Ga. App. 44, 589 S.E.2d 864, 2003 Ga. App. LEXIS 1382 (2003).

Evidence was not sufficient to convict the defendant of trafficking in methamphetamine in violation of O.C.G.A. § 16-13-31(e) because a known drug dealer, who was on the defendant's premises at the time police arrived and conducted a search, was the only person possessing sufficient methamphetamine and the evidence did not show that the defendant had control over the drugs on the dealer's person or any basis to attribute these drugs to the defendant, particularly as the dealer had always advanced the defendant much smaller amounts of methamphetamine. Peacock v. State, 301 Ga. App. 873, 689 S.E.2d 853, 2010 Ga. App. LEXIS 12 (2010).

Trial court erred in convicting the defendant of trafficking in methamphetamine in violation of O.C.G.A. § 16-13-31(e)(3) because although the evidence raised grave suspicions of the defendant's guilt, the state failed to establish that the defendant had both the power and the intention at the time of the defendant's arrest to exercise dominion or control over the drugs and failed to show that other men did not have equal access to the house and the items within the house; all of the evidence was circumstantial with regard to the defendant's constructive possession of the contraband, there was nothing in the case linking the defendant to the drugs or manufacturing equipment in the house, and several other people with access to the house were unaccounted for and were not charged. Aquino v. State, 308 Ga. App. 163, 706 S.E.2d 746, 2011 Ga. App. LEXIS 141 (2011).

Codefendant's conviction for trafficking in methamphetamine in violation of O.C.G.A. § 16-13-31(e) could not be upheld on the ground that the codefendant was a party to the crime of

Methamphetamine or Amphetamine (Cont'd)
3. Evidence (Cont'd)

trafficking in methamphetamine because the state failed to adduce evidence that the codefendant intentionally caused another to commit the crime, aided or abetted in the commission of the crime, or advised or encouraged another to commit the crime; thus, the state's evidence did not show essential links between the codefendant's proven behavior and the drug trafficking charge. Flores v. State, 308 Ga. App. 368, 707 S.E.2d 578, 2011 Ga. App. LEXIS 188 (2011), cert. denied, No. S11C1072, 2011 Ga. LEXIS 527 (Ga. June 27, 2011).

Defendant's conviction for attempted trafficking by manufacturing methamphetamine was reversed because the evidence was not overwhelming as to the charge of trafficking; thus, it could not be said that it was harmless error for the trial court to refuse to instruct the jury on the lesser included offenses requested by the defendant. Franks v. State, 325 Ga. App. 488, 758 S.E.2d 604, 2013 Ga. App. LEXIS 533 (2013).

Insufficient evidence of methamphetamine. — After an investigating officer took various containers used to cook methamphetamine from the inside and outside of the defendant's trailer home and scraped residue from the inside of the containers into one pile, the evidence only showed that the mixture of materials from all the containers contained some unknown quantity of methamphetamine and weighed 90.5 grams; thus, it was impossible to determine how much of the material was methamphetamine and how much may have been simply ephedrine or something else. Hill v. State, 253 Ga. App. 658, 560 S.E.2d 88, 2002 Ga. App. LEXIS 177 (2002).

Insufficient evidence of trafficking but sufficient for possession. — Evidence was insufficient to support conviction of trafficking in amphetamine where the charge was brought under a portion of O.C.G.A. § 16-13-31 that required proof that the defendant knowingly possessed 28 grams or more of amphetamine and a chemist testified that a substance recovered from the defendant that weighed 28.8 grams contained only 40 to 60 percent pure amphetamine; however, evidence did support conviction for possession of amphetamine. Daniel v. State, 251 Ga. App. 792, 555 S.E.2d 154, 2001 Ga. App. LEXIS 1142 (2001), overruled in part, In the Interest of S. C. P., 320 Ga. App. 166, 739 S.E.2d 474, 2013 Ga. App. LEXIS 147 (2013).

4. Jury Instruction

Charge on lesser included offense of possession with intent to distribute. — Because defendant was indicted for possession of more than 28 grams of methamphetamine, a violation of O.C.G.A. § 16-13-31, defendant had sufficient notice that the lesser included offense of possession with intent to distribute, a violation of O.C.G.A. § 16-13-30(b), might be submitted to the jury if the evidence warranted it; consequently, by charging the lesser offense in accordance with O.C.G.A. § 16-1-6, the trial court did not permit the jury to convict the defendant in a manner not alleged in the indictment in violation of the defendant's due process rights. Rupnik v. State, 273 Ga. App. 34, 614 S.E.2d 153, 2005 Ga. App. LEXIS 392 (2005).

Instruction on accomplice testimony not required. — State did not rely solely on the testimony of the codefendant to convict the defendant of trafficking in amphetamine, so an instruction on accomplice testimony was not required; further, counsel was not ineffective in failing to submit a written request for instructions on accomplice testimony and corroboration. Steed v. State, 273 Ga. App. 845, 616 S.E.2d 185, 2005 Ga. App. LEXIS 637 (2005).

Jury charge failed to properly define the offenses of trafficking in methamphetamine and possession of methamphetamine with intent to distribute because all the jury was told was that it was a violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., to traffic or possess with intent to distribute methamphetamine; the instructions given

completely failed to inform the jury about the manner in which the offense of trafficking in methamphetamine or the offense of possessing methamphetamine with intent to distribute may have been committed. As such, the jury did not receive sufficient instructions to guide the jury in determining the defendant's guilt or innocence on these charges. Torres v. State, 298 Ga. App. 158, 679 S.E.2d 757, 2009 Ga. App. LEXIS 638 (2009).

Refusal to charge on simple possession of methamphetamine. — Defendant was properly convicted of trafficking in methamphetamine in violation of O.C.G.A. § 16-13-31(e) because the trial court did not commit reversible error by refusing to charge the jury on the lesser-included offense of simple possession of methamphetamine, O.C.G.A. § 16-13-30, when there was no written request to give a charge on simple possession; even if the trial court erred in not giving the charge, reversal was not required in light of the overwhelming evidence that the defendant possessed 432.31 grams of methamphetamine, which clearly constituted trafficking, and, therefore, it was highly unlikely that the failure to give an instruction on simple possession contributed to the verdict. Gonzalez v. State, 299 Ga. App. 777, 683 S.E.2d 878, 2009 Ga. App. LEXIS 970 (2009).

Failure to charge jury on manufacturing methamphetamine as lesser offense of trafficking methamphetamine. — Trial court's failure to charge the jury on manufacturing methamphetamine, O.C.G.A. § 16-13-30(a), as a lesser included of offense of trafficking methamphetamine, O.C.G.A. § 16-13-31(f), did not contribute to the verdict and was harmless; although the trial court was required to charge the jury on § 16-13-30(b) as a lesser included offense of § 16-13-31(f) since there was evidence that the defendant manufactured methamphetamine as prohibited by § 16-13-30(b), there was no relevant distinction between the two statutes with regard to methamphetamine as applied to the case. Because the evidence established that the defendant manufactured methamphetamine, and the defendant's admission that the defendant was "cooking" showed that the defendant knowingly manufactured methamphetamine, the jury could have found the defendant guilty of both offenses or not guilty of both. Poole v. State, 302 Ga. App. 464, 691 S.E.2d 317, 2010 Ga. App. LEXIS 161 (2010), overruled in part, McNair v. State, 293 Ga. 282, 745 S.E.2d 646, 2013 Ga. LEXIS 594 (2013).

Failure to instruct on mistake of fact not error. — In a criminal trial on a charge of trafficking in methamphetamine in violation of O.C.G.A. § 16-13-31(e), the trial court did not err when the court did not sua sponte instruct the jury on the affirmative defense of mistake of fact under O.C.G.A. § 16-3-5 as the defendant's mistaken belief that the bag that the defendant delivered contained marijuana rather than methamphetamine did not justify delivery of the package in any event. Dimas v. State, 276 Ga. App. 245, 622 S.E.2d 914, 2005 Ga. App. LEXIS 1220 (2005).

Instruction on accident defense not warranted. — In an action in which defendant was charged with trafficking in methamphetamine in violation of O.C.G.A. § 16-13-31(e), a claim that the defendant thought that the defendant was delivering marijuana to an informant's girlfriend rather than methamphetamine, based on prior marijuana deliveries made by the defendant for a drug dealer did not warrant a jury instruction on accident pursuant to O.C.G.A. § 16-2-2; that defense was unavailable to the defendant as the defendant thought that the defendant was committing a criminal act. Dimas v. State, 276 Ga. App. 245, 622 S.E.2d 914, 2005 Ga. App. LEXIS 1220 (2005).

Jury instructions on possession were sufficient. — Defendant's conviction for trafficking in methamphetamine was affirmed because the trial court instructed the jury on sole and joint possession, actual and constructive possession, mere presence at the scene of the commission of a crime and mere association with persons involved in

Methamphetamine or Amphetamine (Cont'd)
4. Jury Instruction (Cont'd)

the commission of a crime, thus fairly instructing the jury regarding the defendant's defense. Palencia-Barron v. State, 318 Ga. App. 301, 733 S.E.2d 824, 2012 Ga. App. LEXIS 901 (2012).

5. Sentencing

Rule of lenity is not implicated in trafficking methamphetamine. — Because a more specific law applies to trafficking methamphetamine, the general provisions for manufacturing controlled substances do not apply; there being no uncertainty as to which statute applies, the rule of lenity is not implicated. State v. Nankervis, 295 Ga. 406, 761 S.E.2d 1, 2014 Ga. LEXIS 538 (2014).

No separate quantity used to prove trafficking charge distinct from possession charge. — Because both the trafficking and manufacturing charges against the defendants arose from methamphetamine found in a cooler, no other quantity of methamphetamine was presented at trial, and there was no separate quantity of methamphetamine used to prove the trafficking charge, defendants were entitled to resentencing because the convictions merged and the trial court erred in sentencing for both offenses. Goldsby v. State, 273 Ga. App. 523, 615 S.E.2d 592, 2005 Ga. App. LEXIS 561 (2005).

Trial court's failure to follow the mandatory sentencing requirement for conviction of trafficking in methamphetamine in a quantity of 28 grams or more required that the sentence be vacated and remanded to the trial court with direction that the trial court follow the mandates of O.C.G.A. § 16-13-31(e)(1). Conrad v. State, 217 Ga. App. 388, 457 S.E.2d 592, 1995 Ga. App. LEXIS 421 (1995), cert. denied, No. S95C1378, 1995 Ga. LEXIS 1016 (Ga. Sept. 5, 1995).

Prison sentence and one million dollar fine appropriate. — When the defendant was in possession of 434.72 grams of methamphetamine, the sentence of 25 years in prison and a one million dollar fine was mandated; given the large quantity and value of the methamphetamine, the sentence required by the legislature was not wholly irrational or grossly disproportionate to the severity of the crime, and because trafficking in methamphetamine was so lucrative, the mandatory sentence did not constitute cruel and unusual punishment. Flores v. State, 277 Ga. App. 211, 626 S.E.2d 181, 2006 Ga. App. LEXIS 33 (2006).

Resentencing to include the mandatory fine did not violate double jeopardy. — Because O.C.G.A. § 16-13-31(f)(1) required a mandatory minimum sentence for trafficking in methamphetamine of ten years and a $200,000 fine, and the sentence imposed by the trial court failed to include the fine, the trial court's resentencing to add the fine after the defendant began serving the sentence was valid and did not violate the defendant's double jeopardy rights. The suspended sentence provisions of O.C.G.A. § 17-10-1(a) were inapplicable to the mandatory sentence provisions of § 16-13-31, and there was no indication that the trial court intended to suspend the fine portion. Strickland v. State, 301 Ga. App. 272, 687 S.E.2d 221, 2009 Ga. App. LEXIS 1365 (2009).

Fine excessive. — Assessment of a $300,000 fine for trafficking in 87.5 grams of methamphetamine exceeded the trial court's authority. Davis v. State, 232 Ga. App. 450, 501 S.E.2d 241, 1998 Ga. App. LEXIS 547 (1998).

Sentence not void. — Upon a conviction of methamphetamine trafficking, because the sentence imposed by a trial judge against the defendant under O.C.G.A. § 16-13-31(g)(2) was supported by the record evidence that the defendant assisted the police in identifying a methamphetamine supplier, and did not result from an illegal departure from O.C.G.A. § 16-13-31(e)(1), the state's appeal from imposition of the sentence on grounds that the sentence was void was dismissed. State v. Carden, 281 Ga. App. 886, 637 S.E.2d 493, 2006 Ga. App. LEXIS 1280 (2006).

Recidivist sentence inappropriate. — Defendant's case was remanded for resentencing after a conviction for

criminal attempt to manufacture methamphetamine because the trial court considered an uncertified Arkansas docket sheet in aggravation of sentence and a Tennessee conviction that might not qualify as a prior felony in Georgia under the recidivist statute. Elliot v. State, 274 Ga. App. 73, 616 S.E.2d 844, 2005 Ga. App. LEXIS 669 (2005).

Sentence on greater offense after merging lesser included offense. — Offense of manufacturing methamphetamine under O.C.G.A. § 16-13-30(b) was a lesser included offense of trafficking/manufacturing under O.C.G.A. § 16-31-31(f)(1); thus, the trial court was authorized to sentence a defendant for the greater offense after merging the lesser offense into it. Richards v. State, 290 Ga. App. 360, 659 S.E.2d 651, 2008 Ga. App. LEXIS 239 (2008).

Multiple Drugs

1. In General

Constitutional issue on purity of different drugs rejected. — Trial counsel was not ineffective in failing to raise a constitutional challenge to O.C.G.A. § 16-13-31(e) based on the statute's allowance of a conviction for trafficking in methamphetamine if a defendant possessed 28 grams or more, regardless of the purity of the methamphetamine mixture, while O.C.G.A. § 16-13-31(a) only allowed a conviction for trafficking in cocaine if the mixture of cocaine had a purity of at least 10 percent; the proposed challenge was not supported by the evidence as the state's expert testified that 56.2 grams of the 79.0 grams of the substance tested was positive for methamphetamine, and there was no proffer or evidence as to the purity of the mixture or any allegation by defendants that the substance was not methamphetamine. Christopher v. State, 262 Ga. App. 257, 585 S.E.2d 107, 2003 Ga. App. LEXIS 761 (2003), cert. denied, No. S03C1545, 2003 Ga. LEXIS 927 (Ga. Oct. 20, 2003).

2. Procedure

Indictment sufficient. — Trial court's decision overruling the defendant's special demurrer to an indictment charging the defendant with trafficking in methamphetamine and misdemeanor possession of marijuana in violation of O.C.G.A. §§ 16-13-30(b) and 16-13-31(e) was authorized because the allegations of the indictment were sufficient to be easily understood by the jury, to allow the defendant to prepare the defendant's defense, and to protect the defendant from double jeopardy; the indictment sufficiently set forth the date of the offenses and tracked the material language of the statutes proscribing the charged offenses, and the language set forth in the counts against the codefendants separately designated the drugs upon which those charges were based and made clear that the defendant's drug charges were not based upon the drugs allegedly possessed by those individual codefendants. Fyfe v. State, 305 Ga. App. 322, 699 S.E.2d 546, 2010 Ga. App. LEXIS 628 (2010), cert. denied, No. S10C1942, 2011 Ga. LEXIS 229 (Ga. Feb. 28, 2011), overruled in part, McNair v. State, 293 Ga. 282, 745 S.E.2d 646, 2013 Ga. LEXIS 594 (2013), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

3. Evidence

Intent to distribute drugs. — Given a police officer's testimony that the drugs found at the scene came from a bag which the defendant removed from a pants pocket, the jury was authorized to find that the defendant trafficked in cocaine, possessed cocaine with intent to distribute, and possessed less than one ounce of marijuana; moreover, the amount of cocaine at issue, as well as the defendant's possession of digital scales typically used to weigh drugs for distribution, permitted the jury to discount the defendant's own testimony and find an intention to distribute the drugs. Lipsey v. State, 287 Ga. App. 835, 652 S.E.2d 870, 2007 Ga. App. LEXIS 1112 (2007).

Drugs found in motel. — Trial court did not err in denying the defendant's motion for a directed verdict after a jury found the defendant guilty of trafficking

Multiple Drugs (Cont'd)
3. Evidence (Cont'd)

in cocaine, O.C.G.A. § 16-13-31(a)(1)(A), and possession of marijuana with intent to distribute, O.C.G.A. § 16-13-30(j), because the verdict was not insupportable as a matter of law; in addition to evidence that the defendant rented a hotel room where illegal drugs were found, had a key to the suite, and was going to the suite at a time when a great quantity and variety of drugs were in open view, there was other evidence linking the defendant to the contraband found there, including the defendant's suspicious behavior upon seeing officers near the suite and the presence of the defendant's personal property inside the suite. Glass v. State, 304 Ga. App. 414, 696 S.E.2d 140, 2010 Ga. App. LEXIS 540 (2010).

Identification testimony based on photograph of defendant erroneously admitted. — In the prosecution for the sale of cocaine and methamphetamine, the trial court erred in allowing an officer to identify the defendant in two surveillance photographs based on the officer's familiarity with the defendant's appearance and absent a change in the defendant's appearance because the testimony was offered to establish a fact which the jurors could decide for themselves; hence, the evidence was erroneously admitted as invading the jury's province to decide the issue. Mitchell v. State, 283 Ga. App. 456, 641 S.E.2d 674, 2007 Ga. App. LEXIS 86 (2007), superseded by statute as stated in Goforth v. State, 360 Ga. App. 832, 861 S.E.2d 800, 2021 Ga. App. LEXIS 400 (2021), superseded by statute as stated in Anderson v. State, 313 Ga. 178, 869 S.E.2d 401, 2022 Ga. LEXIS 33 (2022).

Packing of drugs into smaller packages. — Given that two officers testified that the officers saw the defendant, in plain view, packaging 35 grams of cocaine and 94 grams of marijuana into smaller packages, and the testimony of a single witness was generally sufficient to establish a fact, the defendant's convictions for trafficking in cocaine and possession of marijuana with the intent to distribute were upheld on appeal. King v. State, 289 Ga. App. 461, 657 S.E.2d 570, 2008 Ga. App. LEXIS 120 (2008).

Trafficking in cocaine and possession of marijuana convictions sustained. — Convictions for trafficking in cocaine and possession of marijuana with intent to distribute were supported by sufficient evidence which showed that the defendant was the sole lessee and resident of an apartment where nearly 500 grams of cocaine were found, along with several bags of marijuana packaged for resale, and that the defendant had recently sold cocaine, which came from a blue bag holding 111 grams of cocaine, which was also found in the apartment. Vance v. State, 268 Ga. App. 556, 602 S.E.2d 276, 2004 Ga. App. LEXIS 956 (2004).

Sufficient evidence supported the defendant's convictions of trafficking in cocaine, possession of marijuana with intent to distribute, and possession of cocaine with intent to distribute within 1,000 feet of a school, despite an argument on appeal that no evidence of either actual or constructive possession was presented as: (1) sufficient additional evidence, albeit circumstantial, tied the defendant to those crimes and established more than the defendant's mere presence to the drugs seized; and (2) the proved facts excluded any reasonable hypotheses that a crime could have been committed by anyone else. Slaughter v. State, 282 Ga. App. 276, 638 S.E.2d 417, 2006 Ga. App. LEXIS 1365 (2006).

Evidence that a defendant showed officers a can in the defendant's kitchen cupboard with a false bottom that concealed 33.18 grams of cocaine and 19.8 grams of marijuana was sufficient to support the defendant's convictions for trafficking in cocaine and possession of marijuana in violation of O.C.G.A. §§ 16-13-30(j)(1) and 16-13-31(a)(1)(A). The jury was charged on equal access and clearly rejected the defendant's defense that a confidential informant working as a handyman at the defendant's home could have placed the drugs there. Daniel v. State, 306 Ga. App. 48, 701 S.E.2d 499, 2010 Ga. App. LEXIS 816 (2010).

Jury was authorized to reject as incredible the defendant's wife's testimony that

the couple went to Georgia to take a trip because they were having marital issues and the wife's claim that the defendant had no knowledge of the crimes the wife committed when the wife's step-brother asked the wife to transport some drugs to Ohio and, thus, the evidence was sufficient to support the defendant's convictions for trafficking in cocaine and possession of marijuana with intent to distribute. Calcaterra v. State, 341 Ga. App. 599, 801 S.E.2d 337, 2017 Ga. App. LEXIS 254 (2017).

Defendant's admission to staying at the apartment with the defendant's girlfriend, and the presence of the defendant's clothing and a picture of the defendant and girlfriend in a bedroom supported the jury's determination that the defendant committed the offenses of trafficking in cocaine and possession of marijuana with the intent to distribute; the defendant's experience in handling cocaine established that the defendant knew the weight of the cocaine was more than 28 grams. Griffin v. State, 331 Ga. App. 550, 769 S.E.2d 514, 2015 Ga. App. LEXIS 41 (2015), cert. denied, No. S15C1138, 2015 Ga. LEXIS 473 (Ga. June 15, 2015).

Circumstantial evidence sufficient for trafficking and possession. — Defendant's convictions for trafficking in cocaine and possession of heroin with intent to distribute was sustained even though the evidence connecting the defendant to the apartment was circumstantial. Williams v. State, 262 Ga. App. 67, 584 S.E.2d 625, 2003 Ga. App. LEXIS 713 (2003).

Evidence sufficient for possession of marijuana and cocaine. — Although the superior court erred in admitting hearsay, by allowing the investigating officers to testify that the officers initiated their investigation on the basis of an anonymous tip alleging drug activity in the defendant's home, such error was harmless in view of the defendant's consent to the investigators' search, direct evidence of the defendant's possession of marijuana, and strong circumstantial evidence showing defendant was in possession of cocaine. Carlisle v. State, 242 Ga. App. 253, 529 S.E.2d 385, 2000 Ga. App. LEXIS 145 (2000).

Evidence was sufficient to authorize the jury's finding that the defendant was in joint constructive possession of the cocaine, marijuana, and pistol found inside the driver's car because the drugs were in plain view inside a car that smelled of raw marijuana, the defendant was nervous about the impending search and gave evasive answers to the officers, the defendant was in possession of an unusually large amount of cash and was in a position to see the pistol when the driver took the driver's proof of insurance from the glove box, and, given the trafficking amount of cocaine found, the jury was authorized to infer that the driver and the defendant possessed a loaded handgun to protect their illegal drug trade; thus, the evidence was sufficient to support the jury's finding that the defendant was guilty of trafficking in cocaine, possession of marijuana, and possession of a firearm during the commission of a crime. Lopez v. State, 259 Ga. App. 720, 578 S.E.2d 304, 2003 Ga. App. LEXIS 257 (2003), cert. denied, No. S03C0933, 2003 Ga. LEXIS 583 (Ga. June 2, 2003).

There was sufficient evidence of possession to support a defendant's convictions of trafficking in cocaine, possession of cocaine with the intent to distribute, possession of marijuana, and possession of a firearm during the commission of a crime since: the defendant sped off when police tried to stop the defendant for running a stop sign; narcotics and a gun were found in the passenger side of the car; the passenger's story that the passenger had flagged down the defendant for a ride and that the passenger was unaware of the drugs and the gun was corroborated by the passenger's girlfriend; the defendant's sister, who owned the car, testified that there was no contraband in the car before the defendant took the car; the defendant had $1,755 in cash on the defendant's person; and the defendant had prior drug offenses. Jackson v. State, 284 Ga. App. 619, 644 S.E.2d 491, 2007 Ga. App. LEXIS 376 (2007), cert. denied, No. S07C1169, 2007 Ga. LEXIS 521 (Ga. June 25, 2007), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Insufficient evidence of trafficking in cocaine and possession of marijuana. — Evidence was insufficient

Multiple Drugs (Cont'd)
3. Evidence (Cont'd)

to support the defendant's convictions for trafficking in cocaine or possession of marijuana with intent to distribute as the state failed to show that the defendant owned or rented the house where the drugs were found, lived at the house, occupied the master bedroom or kept personal belongings there, had keys to the house, or received mail at the house. Holland v. State, 334 Ga. App. 600, 780 S.E.2d 40, 2015 Ga. App. LEXIS 689 (2015).

Evidence sufficient for attempting to traffic in cocaine and marijuana. — Evidence that the defendant and the defendant's coconspirators arranged and attempted to purchase one kilogram of cocaine and also attempted to purchase 25 pounds of marijuana from an undercover officer and that the defendant showed the undercover officer money to make the purchases was sufficient to support the defendant's convictions for criminal attempt to traffic in cocaine and criminal attempt to traffic in marijuana. Rainey v. State, 319 Ga. App. 858, 738 S.E.2d 685, 2013 Ga. App. LEXIS 93 (2013).

Multiple convictions when drugs found in kitchen cupboard. — Evidence that a defendant showed officers a can in the defendant's kitchen cupboard with a false bottom that concealed 33.18 grams of cocaine and 19.8 grams of marijuana was sufficient to support the defendant's convictions for trafficking in cocaine and possession of marijuana in violation of O.C.G.A. §§ 16-13-30(j)(1) and 16-13-31(a)(1)(A). The jury was charged on equal access and clearly rejected the defendant's defense that a confidential informant working as a handyman at the defendant's home could have placed the drugs there. Daniel v. State, 306 Ga. App. 48, 701 S.E.2d 499, 2010 Ga. App. LEXIS 816 (2010).

Multiple drug convictions based on drugs and fake license in backpack. — Evidence was sufficient to convict the defendant of trafficking in methamphetamine, possession of oxycodone and less than one ounce of marijuana, and driving while the defendant's license was suspended because the defendant knew the defendant's license to drive was suspended, and because the defendant knowingly had both the power and intention to exercise dominion or control over the controlled substances found in the backpack and was in constructive possession of those substances as the defendant was driving the car in which the backpack was located, and the defendant was linked to the backpack by the defendant's control of the car and evidence that the backpack contained a copy of a fake driver's license the defendant gave to an officer. Armstrong v. State, 325 Ga. App. 690, 754 S.E.2d 652, 2014 Ga. App. LEXIS 51 (2014).

Conviction of multiple drug offenses. — With regard to a defendant's convictions for possession of marijuana with the intent to distribute, trafficking in 4-Methylenedioxymethamphetamine, commonly known as ecstasy, trafficking in cocaine, and possession of a firearm during the commission of a crime, there was sufficient evidence to support the defendant's conviction for possession of the contraband, which was found in a backpack, based on the strong odor of marijuana coming from the vehicle in which the defendant was a passenger, the defendant's suspicious and nervous behavior, the defendant's joint living arrangement with two other defendants, the defendant's possession of ammunition for another one of the defendant's weapons, and the fact that the defendant was, at times, within arm's reach of the backpack, which showed an intent and power to exercise joint control over the backpack and the drugs found therein; likewise, there was sufficient evidence to support the trafficking charges based on the amounts of the contraband found; and, there was sufficient evidence to support the firearm possession charge since the defendant was found in possession of a magazine that fit the gun located within arm's reach. However, considering that there were four people in the vehicle, the court found that the state's evidence was insufficient to exclude the reasonable hypothesis that the marijuana was intended for personal use, therefore, the

conviction for the intent to distribute marijuana was reduced to possession. Vines v. State, 296 Ga. App. 543, 675 S.E.2d 260, 2009 Ga. App. LEXIS 246 (2009).

Conviction for drug trafficking. — Evidence was sufficient to convict the first defendant of drug trafficking because that the defendant drove a vehicle described in the wiretap intercept to a gas station, and exchanged vehicles there, which was a common method used by drug traffickers to facilitate the clandestine exchange of drugs and money; and once the first defendant retrieved the stash vehicle, the first defendant drove that vehicle to a house where the drugs were tested. Estrada-Nava v. State, 332 Ga. App. 133, 771 S.E.2d 28, 2015 Ga. App. LEXIS 160, overruled in part, Martin v. McLaughlin, 298 Ga. 44, 779 S.E.2d 294, 2015 Ga. LEXIS 793 (2015).

Evidence sufficient to prove constructive, joint possession. — When police officers in execution of a no-knock search warrant on the home where the teenage defendant lived with the defendant's mother found a sock with cocaine in the sock floating in a toilet of a bathroom that the defendant had exited, the defendants cousin acknowledged seeing the defendant with the sock earlier and suspecting drugs were in the sock, and the officers also found marijuana and crack cocaine in a cigar box the defendant admitted owning during an earlier detention hearing, the evidence was sufficient to prove defendant was in constructive, joint possession of the drugs. In the Interest of R.S., 253 Ga. App. 409, 559 S.E.2d 143, 2002 Ga. App. LEXIS 86 (2002).

Joint constructive possession of multiple drugs. — When the defendants, a married couple who were in a car with a third person, were charged with trafficking in cocaine, possession of cocaine with intent to distribute, possession of amphetamine, and possession of a firearm during certain crimes, there was sufficient evidence that the defendants had joint constructive possession of a duffel bag in which drugs and a weapon were found. The evidence showed that one spouse exercised control over the car that transported the contraband and that the other spouse tried to retrieve a paper sack inside the duffel bag at the sheriff's office with suspicious and inconsistent explanations. Howard v. State, 291 Ga. App. 289, 661 S.E.2d 644, 2008 Ga. App. LEXIS 467 (2008).

Conviction for misdemeanor marijuana possession and cocaine trafficking. — Evidence supported convictions for misdemeanor marijuana possession and cocaine trafficking under O.C.G.A. §§ 16-13-2 and 16-13-31 when officers executing a search warrant found the defendant alone in a house near bags of marijuana and with the house containing over 28 grams of cocaine, a loaded handgun, and $596; furthermore, an officer conducting surveillance and using an informant had previously observed the defendant's involvement in the sale of drugs at the home. Boyd v. State, 291 Ga. App. 528, 662 S.E.2d 295, 2008 Ga. App. LEXIS 553 (2008).

Withdrawal of guilty plea for trafficking in methamphetamine and possession of marijuana. — Trial court did not abuse the court's discretion in denying the defendant's motion to withdraw a guilty plea to charges of trafficking in methamphetamine and possession of marijuana as the defendant acknowledged, and the record showed, that the trial court advised the defendant of the maximum allowable sentence on both a trafficking in methamphetamine and possession of marijuana charge, as well as the mandatory minimum sentence on the former offense; further, despite the fact that the waiver of rights form the defendant signed incorrectly stated that the maximum term of imprisonment was 30 years, rather than 31 years, given the aforementioned, the mistake did not amount to a manifest injustice requiring reversal of the court's refusal to allow withdrawal. Rodriguez v. State, 280 Ga. App. 423, 634 S.E.2d 182, 2006 Ga. App. LEXIS 863 (2006).

4. Jury Instruction

Jury instruction requesting charge on O.C.G.A. " 16-13-30 and 16-13-31. — When the defendant was charged with trafficking in cocaine and possession of

Multiple Drugs (Cont'd)
4. Jury Instruction (Cont'd)

marijuana and on the day of the trial filed a request that the "jury be charged with the substance of § 16-13-30 and § 16-13-31," by seeking an instruction on two entire Code sections the request necessarily included such matter not adjusted to the issues of the case, and for this reason it was not error to fail to give such instructions. Partridge v. State, 187 Ga. App. 325, 370 S.E.2d 173, 1988 Ga. App. LEXIS 687 (1988).

5. Sentencing

Separate sentences for separate drug trafficking offenses. — Trial court did not err under O.C.G.A. §§ 16-1-6(2) and 16-1-7(a)(1) by sentencing the defendant separately for trafficking in methamphetamine, in violation of O.C.G.A. § 16-13-31, and trafficking in ecstasy, in violation of O.C.G.A. § 16-13-31.1, when the substance which was found in the defendant's vehicle tested positive for both methamphetamine and ecstasy as there was no evidence that chemical compounds or elements were shared between the drugs. Ahmad v. State, 312 Ga. App. 703, 719 S.E.2d 563, 2011 Ga. App. LEXIS 1032 (2011).

Rule of lenity inapplicable. — Trial court did not err in failing to apply the rule of lenity because both of the defendant's offenses, trafficking in methamphetamine and misdemeanor possession of marijuana, O.C.G.A. §§ 16-13-30(e) and 16-13-31(b), were classified as felonies and, thus, the rule of lenity did not apply. Fyfe v. State, 305 Ga. App. 322, 699 S.E.2d 546, 2010 Ga. App. LEXIS 628 (2010), cert. denied, No. S10C1942, 2011 Ga. LEXIS 229 (Ga. Feb. 28, 2011), overruled in part, McNair v. State, 293 Ga. 282, 745 S.E.2d 646, 2013 Ga. LEXIS 594 (2013), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Reporting of convictions. — Convictions for violations of O.C.G.A. §§ 40-6-391(2), (4), (6), and 40-5-151 should be reported by the superior court clerk to Department of Driver Services (DDS) and violations of O.C.G.A. §§ 16-13-30(b), 16-13-31, and 16-13-31.1 should be reported to DDS only upon the clerk's determination that the conviction meets the mandate of O.C.G.A. § 40-5-54(a)(2). 2017 Op. Att'y Gen. No. 17-4.

RESEARCH REFERENCES

ALR.

Sufficiency of random sampling of drug or contraband to establish jurisdictional amount required for conviction, 45 A.L.R.5th 1.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Marijuana cases, 1 A.L.R.6th 549.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Cocaine cases, 2 A.L.R.6th 551.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — marijuana offenses under 8 U.S.C.A. § 1101(a)(43)(B), 76 ALR Fed. 2d 1.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — cocaine and crack cocaine offenses under 8 U.S.C.A. § 1101(a)(43)(B), 76 ALR Fed. 2d 61.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — heroin offenses under 8 U.S.C.A. § 1101(a)(43)(B), 78 ALR Fed. 2d 133.

What constitutes "aggravated felony" for which aliens can be deported or removed under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — illicit methamphetamine offenses under 8 U.S.C.A. § 1101(a)(43)(B), 78 ALR Fed. 2d 151.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — Miscellaneous or unspecified narcotics offenses under 8 U.S.C.A. § 1101(a)(43)(B), 79 ALR Fed. 2d 335.

16-13-31.1. Trafficking in ecstasy; sentencing; variation.

(a) Any person who sells, manufactures, delivers, brings into this state, or has possession of 28 grams or more of 3, 4-methylenedioxyamphetamine or 3, 4-methylenedioxymethamphetamine, or any mixture containing 3, 4-methylenedioxyamphetamine or 3, 4-methylenedioxymethamphetamine as described in Schedule I, in violation of this article commits the felony offense of trafficking in 3, 4-methylenedioxyamphetamine or 3, 4-methylenedioxymethamphetamine and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of such substance involved is 28 grams or more, but less than 200 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three years but not more than 30 years and shall pay a fine of not less than $25,000.00 nor more than $250,000.00;

(2) If the quantity of such substance involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of five years but not more than 30 years and shall pay a fine of not less than $50,000.00 nor more than $250,000.00; and

(3) If the quantity of such substance involved is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years but not more than 30 years and shall pay a fine of not less than $100,000.00 nor more than $250,000.00.

(b)(1) In the court's discretion, the judge may depart from the mandatory minimum sentence specified for a person who is convicted of a violation of this Code section as set forth in paragraph (2) of this subsection if the judge concludes that:

(A) The defendant was not a leader of the criminal conduct;

(B) The defendant did not possess or use a firearm, dangerous weapon, or hazardous object during the crime;

(C) The criminal conduct did not result in a death or serious bodily injury to a person other than to a person who is a party to the crime;

(D) The defendant has no prior felony conviction; and

(E) The interests of justice will not be served by the imposition of the prescribed mandatory minimum sentence.

(2) The sentencing departure ranges pursuant to paragraph (1) of this subsection shall be as follows:

(A) Any person convicted of violating paragraph (1) of subsection (a) of this Code section, one year and six months to 30 years imprisonment and a fine of not less than $12,500.00 nor more than $250,000.00;

(B) Any person convicted of violating paragraph (2) of subsection (a) of this Code section, two years and six months to 30 years imprisonment and a fine of not less than $25,000.00 nor more than $250,000.00; and

(C) Any person convicted of violating paragraph (3) of subsection (a) of this Code section, five to 30 years imprisonment and a fine of not less than $50,000.00 nor more than $250,000.00;

(3) If a judge reduces the mandatory minimum sentence pursuant to this subsection, the judge shall specify on the record the circumstances for the reduction and the interests served by such departure. Any such order shall be appealable by the State of Georgia pursuant to Code Section 5-7-1.

(4) As used in this subsection, the term:

(A) "Dangerous weapon" shall have the same meaning as set forth in Code Section 16-11-121.

(B) "Firearm" shall have the same meaning as set forth in Code Section 16-11-127.1.

(C) "Hazardous object" shall have the same meaning as set forth in Code Section 20-2-751.

(D) "Leader" means a person who planned and organized others and acted as a guiding force in order to achieve a common goal.

(c) The district attorney may move the sentencing court to impose a reduced or suspended sentence upon any person who is convicted of a violation of this Code section who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, or principals. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may impose a reduced or suspended sentence if he or she finds that the defendant has rendered such substantial assistance.

(d) In the court's discretion, the judge may depart from the mandatory minimum sentence specified in this Code section for a person who is convicted of a violation of this Code section when the prosecuting attorney and the defendant have agreed to a sentence that is below such mandatory minimum.

(e) Notwithstanding Code Section 16-13-2, any sentence imposed pursuant to subsection (b) of this Code section shall not be reduced by any earned time, early release, work release, leave, or other sentence-reducing measures under programs administered by the Department of Corrections, the effect of which would be to reduce the period of incarceration ordered by the sentencing court or any form of pardon, parole, or commutation of sentence by the State Board of Pardons and Paroles; provided, however, that during the final year of incarceration, a defendant so sentenced shall be eligible to be considered for participation in a Department of Corrections administered transitional center or work release program.

History.

Code 1981, § 16-13-31.1, enacted by Ga. L. 2004, p. 1070, § 1; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2013, p. 222, § 5/HB 349; Ga. L. 2014, p. 432, § 2-9/HB 826; Ga. L. 2014, p. 780, § 2-3/SB 364; Ga. L. 2015, p. 5, § 16/HB 90; Ga. L. 2017, p. 774, § 16/HB 323.

Editor's notes.

Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

Ga. L. 2014, p. 780, § 5-1/SB 364, not codified by the General Assembly, provides, in part, that this Act shall apply to any sentence imposed on or after July 1, 2013.

Law reviews.

For article, "Appeal and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Georgia St. U.L. Rev. 17 (2013).

JUDICIAL DECISIONS

Sufficient evidence to support conviction for trafficking MDMA. — With regard to a defendant's convictions for possession of marijuana with the intent to distribute, trafficking in 4-Methylenedioxymethamphetamine, commonly known as ecstasy, trafficking in cocaine, and possession of a firearm during the commission of a crime, there was sufficient evidence to support the defendant's conviction for possession of the contraband, which was found in a backpack, based on the strong odor of marijuana coming from the vehicle in which the defendant was a passenger, the defendant's suspicious and nervous behavior, the defendant's joint living arrangement with two other defendants, the defendant's possession of ammunition for another one of the defendant's weapons, and the fact that the defendant was, at times, within arm's reach of the backpack, which showed an intent and power to exercise joint control over the backpack and the drugs found therein; likewise, there was sufficient evidence to support the trafficking charges based on the amounts of the contraband found; and, there was sufficient evidence to support the firearm possession charge since the defendant was found in possession of a magazine that fit the gun located within arm's reach. However, considering that there were four people in the vehicle, the court found that the state's evidence was insufficient to exclude the reasonable hypothesis that the marijuana was intended for personal use therefore, the conviction for the intent to distribute marijuana was reduced to possession. Vines v. State, 296 Ga. App. 543, 675 S.E.2d 260, 2009 Ga. App. LEXIS 246 (2009).

Sufficient evidence supported the defendant's conviction for trafficking in 3,4 methylenedioxymethamphetamine (MDMA, or "ecstasy") as the jury was authorized to find the defendant knew that a codefendant had possession of marijuana and ecstasy, and the evidence

showed that the defendant allowed the codefendant to place the drugs in the trunk of the defendant's vehicle and knowingly transported the drugs in the vehicle. Jackson v. State, 314 Ga. App. 272, 724 S.E.2d 9, 2012 Ga. App. LEXIS 179 (2012).

Imposition of separate trafficking sentences proper for methamphetamine and ecstasy. — Trial court did not err under O.C.G.A. §§ 16-1-6(2) and 16-1-7(a)(1) by sentencing the defendant separately for trafficking in methamphetamine, in violation of O.C.G.A. § 16-13-31, and trafficking in ecstasy, in violation of O.C.G.A. § 16-13-31.1, when the substance which was found in the defendant's vehicle tested positive for both methamphetamine and ecstasy as there was no evidence that chemical compounds or elements were shared between the drugs. Ahmad v. State, 312 Ga. App. 703, 719 S.E.2d 563, 2011 Ga. App. LEXIS 1032 (2011).

Reporting of convictions. — Convictions for violations of O.C.G.A. §§ 40-6-391(2), (4), (6), and 40-5-151 should be reported by the superior court clerk to Department of Driver Services (DDS) and violations of O.C.G.A. §§ 16-13-30(b), 16-13-31, and 16-13-31.1 should be reported to DDS only upon the clerk's determination that the conviction meets the mandate of O.C.G.A. § 40-5-54(a)(2). 2017 Op. Att'y Gen. No. 17-4.

16-13-32. Transactions in drug related objects; civil forfeiture; penalties.

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

(1) "Drug related object" means any instrument, device, or object which is designed or marketed as useful primarily for one or more of the following purposes:

(A) To ingest, inhale, or otherwise introduce marijuana or a controlled substance into the human body;

(B) To enhance the effect of marijuana or a controlled substance on the human body;

(C) To test the strength, effectiveness, or purity of marijuana or a controlled substance;

(D) To process or prepare marijuana or a controlled substance for introduction into the human body;

(E) To conceal any quantity of marijuana or a controlled substance; or

(F) To contain or hold marijuana or a controlled substance while it is being introduced into the human body.

This term shall not include a hypodermic needle or syringe.

(2) "Knowing" means either actual or constructive knowledge of the drug related nature of the object; and a person or corporation has constructive knowledge of the drug related nature of the object if he or it has knowledge of facts which would put a reasonable and prudent person on notice of the drug related nature of the object.

(b) Except as otherwise authorized in subsection (c) of this Code section, it shall be unlawful for any person or corporation, knowing the drug related nature of the object, to sell, lend, rent, lease, give, exchange, or otherwise distribute to any person any drug related object. It shall also be unlawful for any person or corporation, knowing the drug related nature of the object, to display for sale, or possess with the intent to distribute any drug related object. Unless stated within the body of the advertisement or notice that the object that is advertised or about which information is disseminated is not available for distribution of any sort in this state, it shall be unlawful for any person or corporation, knowing the drug related nature of the object, to distribute or disseminate in any manner to any person any advertisement of any kind or notice of any kind which gives information, directly or indirectly, on where, how, from whom, or by what means any drug related object may be obtained or made.

(c)(1) It shall be unlawful for any person or corporation, other than a licensed pharmacist, a pharmacy intern or pharmacy extern as defined in Code Section 26-4-5, a practitioner licensed to dispense dangerous drugs, or a person employed by or acting as an agent of a registered syringe services program, to sell, lend, rent, lease, give, exchange, or otherwise distribute to any person a hypodermic syringe or needle designed or marketed primarily for human use. It shall be an affirmative defense that the hypodermic syringe or needle was marketed for a legitimate medical purpose.

(2) A person employed by or acting as an agent of a registered syringe services program shall be immune from civil and criminal liability arising from the possession, distribution, or exchange of hypodermic syringes or needles and related supplies as part of such syringe services program.

(3) The Department of Public Health shall be authorized to promulgate rules and regulations for the purpose of supervising the activities of syringe services programs, including provisions for the registration of such programs.

(4) As used in this subsection, the term "syringe services program" means an organization which provides substance abuse and harm reduction counseling, education, and referral services for substance abuse disorder treatment; training and provision of naloxone to reverse opioid overdoses; screening for HIV, viral hepatitis, sexually transmitted diseases, and tuberculosis; referrals and linkage to HIV, viral hepatitis, sexually transmitted diseases, and tuberculosis prevention, treatment, and care services; safer injection supplies; and evidence based interventions to reduce negative consequences of drug related behaviors.

(d) For a first offense, any person or corporation which violates any

provision of this Code section shall be guilty of a misdemeanor. For a second offense, the defendant shall be guilty of a misdemeanor of a high and aggravated nature. For a third or subsequent offense, the defendant shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one year nor more than five years and shall be fined not more than $5,000.00.

(e) All instruments, devices, and drug related objects which are distributed or possessed in violation of this Code section and any proceeds are declared to be contraband, and no person shall have a property right in them and shall be forfeited according to the procedure set forth in Chapter 16 of Title 9. As used in this subsection, the term "proceeds" shall have the same meaning as set forth in Code Section 9-16-2.

History.

Code 1933, § 79A-811.1, enacted by Ga. L. 1978, p. 2237, § 1; Ga. L. 1980, p. 1288, § 1; Ga. L. 1996, p. 748, § 13; Ga. L. 2004, p. 488, § 2; Ga. L. 2015, p. 693, § 2-19/HB 233; Ga. L. 2019, p. 40, § 1/HB 217; Ga. L. 2022, p. 663, § 4/SB 164.

Amendments.

The 2022 amendment, effective July 1, 2022, deleted "inject," preceding "ingest," in subparagraph (a)(1)(A), and added the last sentence in paragraph (a)(1); and inserted "drug related" in the first sentence in subsection (e).

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

For article on the 2019 amendment of this Code section, see 36 Georgia St. U.L. Rev. 27 (2019).

JUDICIAL DECISIONS

Constitutionality. — See High Ol' Times, Inc. v. Busbee, 673 F.2d 1225, 1982 U.S. App. LEXIS 19863 (11th Cir. 1982).

Definition of "drug related objects" in O.C.G.A. § 16-13-32 provides adequate notice of the persons covered and the conduct proscribed and therefore does not render the section void for vagueness. High Ol' Times, Inc. v. Busbee, 673 F.2d 1225, 1982 U.S. App. LEXIS 19863 (11th Cir. 1982).

Explicit standards necessary. — If arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. High Ol' Times, Inc. v. Busbee, 515 F. Supp. 176, 1980 U.S. Dist. LEXIS 16808 (N.D. Ga. 1980), rev'd, 673 F.2d 1225, 1982 U.S. App. LEXIS 19863 (11th Cir. 1982).

Section not repealed by implication. — Despite the almost identical caption and punishment provisions, the enactment of O.C.G.A. § 16-13-32.1 was intended to be in addition to, rather than a substitute for, the existing statute (O.C.G.A. § 16-13-32); thus, O.C.G.A. § 16-13-32.1 did not repeal O.C.G.A. § 16-13-32 by implication. State v. Gill, 173 Ga. App. 848, 328 S.E.2d 561, 1985 Ga. App. LEXIS 1709 (1985).

Notice of proceeding to condemn currency. — Because O.C.G.A. § 16-13-32 does not require the notice of proceedings by publication to specify the

time within which an answer must be filed, and the party reading the notice is charged with knowledge of the legal requirements, where the plaintiff did nothing to confirm time had expired or rectify the absence of a response, plaintiff could not show prejudice other than what was self-inflicted through lack of diligence, and plaintiff's out-of-time answer was untimely. Ragland v. State, 235 Ga. App. 830, 510 S.E.2d 587, 1998 Ga. App. LEXIS 1615 (1998).

Digital scales. — Given a police officer's testimony that the drugs found at the scene came from a bag which the defendant removed from a pants pocket, the jury was authorized to find that the defendant trafficked in cocaine, possessed cocaine with intent to distribute, and possessed less than one ounce of marijuana; moreover, the amount of cocaine at issue, as well as the defendant's possession of digital scales typically used to weigh drugs for distribution, permitted the jury to discount the defendant's own testimony and find an intention to distribute the drugs. Lipsey v. State, 287 Ga. App. 835, 652 S.E.2d 870, 2007 Ga. App. LEXIS 1112 (2007).

O.C.G.A. § 16-13-32 does not exclude certain seeds, fiber, and oil from a marijuana plant as contraband. Lang v. State, 165 Ga. App. 576, 302 S.E.2d 683, 1983 Ga. App. LEXIS 1955, 1983 Ga. App. LEXIS 3092, cert. denied, 464 U.S. 937, 104 S. Ct. 346, 78 L. Ed. 2d 312, 1983 U.S. LEXIS 2128 (1983).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 19 et seq., 26, 40 et seq.

C.J.S.

28A C.J.S., Drugs and Narcotics, § 274 et seq., 286, 344.

ALR.

Conviction of possession of illicit drugs found in premises of which defendant was in nonexclusive possession, 56 A.L.R.3d 948.

Prosecutions based upon alleged illegal possession of instruments to be used in violation of narcotics laws, 92 A.L.R.3d 47.

Forfeitability of property held in marital estate under Uniform Controlled Substances Act or similar statute, 84 A.L.R.4th 620.

Construction and application of state drug paraphernalia acts, 23 A.L.R.6th 307.

What constitutes establishment of prima facie case for forfeiture of real property traceable to proceeds from sale of controlled substances under § 511(a)(6) of Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USCA § 881(a)(6)), 146 A.L.R. Fed. 597.

16-13-32.1. Transactions in drug related objects; evidence as to whether object is drug related; civil forfeiture; penalties.

(a) It shall be unlawful for any person or corporation to sell, rent, lease, give, exchange, otherwise distribute, or possess with intent to distribute any object or materials of any kind which such person or corporation intends to be used for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into the human body marijuana or a controlled substance.

(b) Unless stated within the body of the advertisement or notice that the object or materials that are advertised or about which information

is disseminated are not available for distribution of any sort in this state, it shall be unlawful for any person or corporation to sell, rent, lease, give, exchange, distribute, or possess with intent to distribute any advertisement of any kind or notice of any kind which gives information, directly or indirectly, on where, how, from whom, or by what means any object or materials may be obtained or made, which object or materials such person or corporation intends to be used for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into the human body marijuana or a controlled substance.

(c) In determining whether any object or materials are intended for any of the purposes listed in subsections (a) and (b) of this Code section, a court or other authority shall consider all logically relevant factors. In a trial under this Code section, any evidence admissible on this question under the rules of evidence shall be admitted. Subject to the rules of evidence, when they are the object of an offer of proof in a court proceeding, the following factors are among those that should be considered by a court or other authority on this question:

(1) Statements by an owner or anyone in control of the object or materials;

(2) Instructions provided with the object or materials;

(3) Descriptive materials accompanying the object or materials;

(4) National and local advertising or promotional materials concerning the object or materials;

(5) The appearance of, and any writing or other representations appearing on, the object or materials;

(6) The manner in which the object or materials are displayed for sale or other distribution;

(7) Expert testimony concerning the object or materials; and

(8) Any written or pictorial materials which are present in the place where the object is located.

(d) For a first offense, any person or corporation which violates any provision of this Code section shall be guilty of a misdemeanor. For a second offense, the defendant shall be guilty of a misdemeanor of a high and aggravated nature. For a third or subsequent offense, the defendant shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one year nor more than five years and shall be fined not more than $5,000.00.

(e) All objects and materials which are distributed or possessed in

violation of this Code section and any proceeds are declared to be contraband and no person shall have a property right in them and shall be forfeited according to the procedure set forth in Chapter 16 of Title 9. As used in this subsection, the term "proceeds" shall have the same meaning as set forth in Code Section 9-16-2.

(f) This Code section shall not apply to hypodermic needles or syringes.

History.

Code 1933, § 79A-811.2, enacted by Ga. L. 1981, p. 180, § 1; Ga. L. 1985, p. 149, § 16; Ga. L. 2015, p. 693, § 2-20/HB 233; Ga. L. 2022, p. 663, § 5/SB 164.

Amendments.

The 2022 amendment, effective July 1, 2022, deleted "injecting," preceding "ingesting," near the end of subsections (a) and (b), and added subsection (f).

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For note on the Model Drug Paraphernalia Act and the Head Shop Industry, see 16 Ga. L. Rev. 137 (1981).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

JUDICIAL DECISIONS

Analysis

General Consideration
Constitutionality

General Consideration

Section 16-13-32 not repealed by implication. — Despite the almost identical caption and punishment provisions, the enactment of O.C.G.A. § 16-13-32.1 was intended to be in addition to, rather than a substitute for, the existing statute (O.C.G.A. § 16-13-32); thus, § 16-13-32.1 did not repeal § 16-13-32 by implication. State v. Gill, 173 Ga. App. 848, 328 S.E.2d 561, 1985 Ga. App. LEXIS 1709 (1985).

State has power and authority to enact properly drawn drug paraphernalia law pursuant to the state's police power. Windfaire, Inc. v. Busbee, 523 F. Supp. 868, 1981 U.S. Dist. LEXIS 15060 (N.D. Ga. 1981).

Actions constituting violation. — Person violates O.C.G.A. § 16-13-32.1 only if the person personally intends object to be used for purpose prohibited by section. Windfaire, Inc. v. Busbee, 523 F. Supp. 868, 1981 U.S. Dist. LEXIS 15060 (N.D. Ga. 1981).

Evidence was sufficient for a jury to find defendant guilty of ingesting methamphetamine as defendant leased a house in which a widespread methamphetamine manufacturing operation took place, which created a strong chemical smell immediately apparent upon entering the house, and defendant tested positive for methamphetamine in defendant's system, circumstantially linking the defendant to the manufacturing process and undermining the claim that the defendant was unaware of the activity. Kirby v. State, 275 Ga. App. 216, 620 S.E.2d 459, 2005 Ga. App. LEXIS 933 (2005).

Constitutionality

O.C.G.A. § 16-13-32.1 is not a bill of attainder nor does the statute deny "head shops" equal protection of the law. Windfaire, Inc. v. Busbee, 523 F. Supp.

Constitutionality (Cont'd)

868, 1981 U.S. Dist. LEXIS 15060 (N.D. Ga. 1981).

Effect on "head shops." — O.C.G.A. § 16-13-32.1 is not unconstitutional on theory that the statute may be enforced only against "head shops." The statute applies to anyone who sells or advertises for sale objects which are drug-related. Windfaire, Inc. v. Busbee, 523 F. Supp. 868, 1981 U.S. Dist. LEXIS 15060 (N.D. Ga. 1981).

O.C.G.A. § 16-13-32.1 does not violate U.S. Const., Art. I, Sec. VIII, Cl. III (Commerce Clause), as the statute serves a legitimate public interest, and the statute's impact on interstate commerce is minimal inasmuch as the statute affects only objects connected with unlawful intent. Burden of new law on interstate commerce is not excessive. Windfaire, Inc. v. Busbee, 523 F. Supp. 868, 1981 U.S. Dist. LEXIS 15060 (N.D. Ga. 1981).

Advertisement provision of O.C.G.A. § 16-13-32.1 is not unconstitutional under U.S. Const., amend. 1, as it does not prohibit speech which describes or glorifies the drug culture. Windfaire, Inc. v. Busbee, 523 F. Supp. 868, 1981 U.S. Dist. LEXIS 15060 (N.D. Ga. 1981).

Void for vagueness test is satisfied as to "sale" and "advertisement" provisions set forth in O.C.G.A. § 16-13-32.1. Windfaire, Inc. v. Busbee, 523 F. Supp. 868, 1981 U.S. Dist. LEXIS 15060 (N.D. Ga. 1981).

Constitutionality of O.C.G.A. § 16-13-32.1(e), see Windfaire, Inc. v. Busbee, 523 F. Supp. 868, 1981 U.S. Dist. LEXIS 15060 (N.D. Ga. 1981).

RESEARCH REFERENCES

C.J.S.

28A C.J.S., Drugs and Narcotics, § 263 et seq.

ALR.

Construction and application of state drug paraphernalia acts, 23 A.L.R.6th 307.

16-13-32.2. Possession and use of drug related objects.

(a) It shall be unlawful for any person to use, or possess with the intent to use, any object or materials of any kind for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into the human body marijuana or a controlled substance.

(b) Any person or corporation which violates any provision of this Code section shall be guilty of a misdemeanor.

(c) This Code section shall not apply to hypodermic needles or syringes.

History.

Code 1933, § 79A-811.3, enacted by Ga. L. 1981, p. 180, § 2; Ga. L. 2022, p. 663, § 6/SB 164.

Amendments.

The 2022 amendment, effective July 1, 2022, deleted "injecting," preceding "ingesting," near the end of subsection (a), and added subsection (c).

Law reviews.

For note on the Model Drug Paraphernalia Act and the Head Shop Industry, see 16 Ga. L. Rev. 137 (1981).

JUDICIAL DECISIONS

Section is void for vagueness. — As there are no standards to guide those charged with enforcing the law, and there exists the very real possibility of discriminatory and arbitrary enforcement, O.C.G.A. § 16-13-32.2 is accordingly found to be void for vagueness, and it is declared unconstitutional. Windfaire, Inc. v. Busbee, 523 F. Supp. 868, 1981 U.S. Dist. LEXIS 15060 (N.D. Ga. 1981).

No fatal variance between indictment and evidence at trial. — With respect to a charge against the defendant of possession of a drug-related object, in violation of O.C.G.A. § 16-13-32.2, there was no fatal variance between the charge in the indictment and the evidence offered at trial, although the indictment referred to a crack cocaine smoking device and the evidence at trial showed that the defendant possessed a filter for such device, which was a mere component of such a device; the defendant was sufficiently apprised of the charge and there was no danger of further prosecution. Holloway v. State, 297 Ga. App. 81, 676 S.E.2d 445, 2009 Ga. App. LEXIS 356 (2009).

Evidence of intent. — Admission of a photocopy of a syringe which was subsequently taken from defendant and subsequently destroyed by the police did not deprive defendant of the right to an independent examination of critical evidence because defendant admitted possessing the syringe; thus, the only disputed element of the offense was defendant's intent to use it. Rogers v. State, 224 Ga. App. 359, 480 S.E.2d 368, 1997 Ga. App. LEXIS 87 (1997).

"Crack pipe" without crack residue. — Possession of a "crack pipe" is possession of a drug related object in contravention of O.C.G.A. § 16-13-32.2, regardless of whether there is any crack residue in the pipe. Jones v. State, 237 Ga. App. 847, 515 S.E.2d 841, 1999 Ga. App. LEXIS 463 (1999), cert. denied, No. S99C1249, 1999 Ga. LEXIS 751 (Ga. Sept. 17, 1999).

Methamphetamine pipe found in pat-down admissible. — Statement by a defendant who had been stopped for speeding that the defendant had a knife, and the defendant's overly-nervous demeanor, authorized a trooper to pat the defendant down for the trooper's safety. A "plain feel" of an apparent methamphetamine pipe in the defendant's pocket authorized the trooper to remove the pipe; therefore, the pipe was admissible. Hicks v. State, 293 Ga. App. 745, 667 S.E.2d 715, 2008 Ga. App. LEXIS 1068 (2008).

Methamphetamine pipe admissible. — Evidence was sufficient to support the defendant's conviction for possession of drug related objects in violation of O.C.G.A. § 16-13-32.2 because a deputy with experience investigating drug crimes testified that a pipe found on the defendant was used for smoking methamphetamine. McGhee v. State, 303 Ga. App. 297, 692 S.E.2d 864, 2010 Ga. App. LEXIS 346 (2010).

Methamphetamine pipe not admissible. — Trial court abused the court's discretion in finding that the defendant possessed the methamphetamine pipe because there was no admissible evidence showing that the defendant possessed the methamphetamine pipe, the defendant was in the back of a patrol car when the sergeant arrived at the residence, and no non-hearsay evidence showed that the defendant owned the truck where the pipe was found. Wright v. State, 355 Ga. App. 417, 844 S.E.2d 279, 2020 Ga. App. LEXIS 322 (2020).

Use of similar transaction evidence in drug possession. — With regard to the defendant's convictions for trafficking

in cocaine and possession of a drug related object, the trial court did not abuse the court's discretion by allowing the state to introduce evidence of the defendant's 2003 drug possession incident because both incidents involved the possession and concealment of cocaine and, during both incidents, the defendant described the process by which the drugs were obtained. Stover v. State, 322 Ga. App. 142, 744 S.E.2d 119, 2013 Ga. App. LEXIS 467 (2013).

Motion to suppress denied when deputy simply asked question. — Motion to suppress filed by a defendant charged with possession of marijuana and possession of a drug-related object, O.C.G.A. §§ 16-13-30(j)(1) and 16-13-32.2(a), should have been denied because a deputy's question to the defendant, whether there was anything in the vehicle the deputy needed to know about, did not elevate a first-tier police-citizen encounter to a detention. State v. Martin, 337 Ga. App. 390, 787 S.E.2d 314, 2016 Ga. App. LEXIS 330 (2016).

Merger of offenses. — Defendant's conviction for possession of drug-related objects merged as a matter of fact into defendant's felony conviction for possession of cocaine. Reddick v. State, 249 Ga. App. 678, 549 S.E.2d 151, 2001 Ga. App. LEXIS 543 (2001), cert. denied, No. S01C1352, 2001 Ga. LEXIS 802 (Ga. Oct. 1, 2001).

Trial court did not err in failing to merge the defendant's convictions for possession of drug-related objects and possession of methamphetamine, each of which required proof that the other did not. Lee v. State, 347 Ga. App. 508, 820 S.E.2d 147, 2018 Ga. App. LEXIS 559 (2018).

Felony sentence vacated. — Defendant's felony sentence for possession of drug-related objects, a misdemeanor offense, was vacated as the state conceded the impropriety of the sentence. Lewis v. State, 268 Ga. App. 547, 602 S.E.2d 278, 2004 Ga. App. LEXIS 962 (2004).

In a prosecution for the possession of tools for the commission of a crime, which was a felony, while the evidence presented against the defendant was sufficient to support the jury's verdict, because the defendant's conduct could also have been charged as a misdemeanor offense of possession of a drug related object, pursuant to O.C.G.A. § 16-13-32.2(a) and the rule of lenity, the felony conviction was reversed, and the matter was remanded for a resentencing on the misdemeanor offense. Washington v. State, 283 Ga. App. 570, 642 S.E.2d 199, 2007 Ga. App. LEXIS 118 (2007).

Resentencing required. — Because the revocation petition did not specify which Code section defendant was alleged to have violated for the drug-related objects offense and instead simply accused the defendant of possessing certain specified drug-related objects, the only violation alleged and proven fell under O.C.G.A. § 16-13-32.2, a misdemeanor, therefore, the trial court was not authorized to revoke more than two years of the defendant's outstanding probation. Henley v. State, 317 Ga. App. 776, 732 S.E.2d 836, 2012 Ga. App. LEXIS 816 (2012).

Conflicts in testimony were for jury to resolve. — There was sufficient evidence to support a conviction for possession of methamphetamine and possession of drug related objects when the defendant admitted telling officers that the defendant owned a pipe that had methamphetamine residue on the pipe, but said that the admission had been made under pressure and that a purse in which drug-related items were found was a "community purse" used by employees of the convenience store where the defendant worked; it was for the jury to resolve conflicts in the testimony and to weigh the evidence. Doyal v. State, 287 Ga. App. 667, 653 S.E.2d 52, 2007 Ga. App. LEXIS 894 (2007).

Evidence sufficient to support conviction. — There was sufficient evidence to support convictions for trafficking in cocaine and possession of a drug-related object, in violation of O.C.G.A. §§ 16-13-31(a)(1) and 16-13-32.2, against the defendant as the defendant's van contained items used as drug pipe filters, the defendant's passenger had dropped crack cocaine on the ground just prior to being apprehended, both individuals had large

amounts of cash on them, and the defendant had a criminal history of similar drug-related conduct. Holloway v. State, 297 Ga. App. 81, 676 S.E.2d 445, 2009 Ga. App. LEXIS 356 (2009).

Evidence was sufficient to convict the defendant of possession of methamphetamine, possession of methamphetamine with intent to distribute, and two counts of possession of drug-related objects as the state presented ample evidence of the defendant's constructive possession of the methamphetamine and drug paraphernalia found inside a fabric bag because the contraband was found in the defendant's residence, which authorized a jury to presume that the defendant possessed it; a witness testified that the defendant and another individual sold methamphetamine; and a law-enforcement officer testified that the items contained in the bag, such as separate baggies and a digital scale, showed an intent to distribute drugs. Duncan v. State, 346 Ga. App. 777, 815 S.E.2d 294, 2018 Ga. App. LEXIS 387 (2018), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Failure to instruct jury on lesser included offenses reversible error. — Defendant's conviction for attempted trafficking by manufacturing methamphetamine was reversed because the evidence was not overwhelming as to the charge of trafficking; thus, it could not be said that it was harmless error for the trial court to refuse to instruct the jury on the lesser included offenses requested by the defendant. Franks v. State, 325 Ga. App. 488, 758 S.E.2d 604, 2013 Ga. App. LEXIS 533 (2013).

Lesser included offense to trafficking. — Crimes set forth in O.C.G.A. §§ 16-13-30.3(b)(2) and 16-13-32.2, with regard to possessing objects or materials of any kind for the purpose of manufacturing or preparing a controlled substance, are lesser included offenses of the crime of trafficking by manufacture of methamphetamine under O.C.G.A. § 16-13-31(f). Franks v. State, 325 Ga. App. 488, 758 S.E.2d 604, 2013 Ga. App. LEXIS 533 (2013).

Because the possession of pseudoephedrine and possession of a drug-related object required proof of elements not required for the crime of trafficking, those crimes were not lesser included offenses of the crime of trafficking in methamphetamine as indicted, and the trial court did not err in denying the second defendant's requested charges on lesser-included offenses. Long v. State, 325 Ga. App. 488, 758 S.E.2d 604, 2013 Ga. App. LEXIS 1008 (2013).

RESEARCH REFERENCES

ALR.

Construction and application of state drug paraphernalia acts, 23 A.L.R.6th 307.

16-13-32.3. Use of communication facility in committing or facilitating commission of act which constitutes felony under chapter; penalty.

(a) It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under this chapter. Each separate use of a communication facility shall be a separate offense under this Code section. For purposes of this Code section, the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, computer or computer network, and all other means of communication.

(b) Any person who violates subsection (a) of this Code section shall be punished by a fine of not more than $30,000.00 or by imprisonment for not less than one nor more than four years, or both.

History.

Code 1981, § 16-13-32.3, enacted by Ga. L. 1982, p. 2359, § 1; Ga. L. 1995, p. 574, § 1.

Law reviews.

For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

For note on the 1995 amendment of this Code section, see 12 Georgia St. U.L. Rev. 130 (1995).

JUDICIAL DECISIONS

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 prose 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).

Participation in later drug sale irrelevant to charge under statute. — When a defendant was charged with using a communication facility (telephone) to facilitate a sale of cocaine, it was immaterial to guilt under O.C.G.A. § 16-13-32.3 that the defendant did not participate in the subsequent sale of cocaine that the defendant had initially facilitated; the telephone call in which the defendant participated clearly aided in the sale of the cocaine. Thus, the evidence was sufficient for a rational trier of fact to find the defendant guilty of the offense charged beyond a reasonable doubt. Hunt v. State, 196 Ga. App. 694, 396 S.E.2d 802, 1990 Ga. App. LEXIS 1006 (1990).

Use of a telephone by defendant to arrange with another to pick up packages of drugs and deliver them to defendant's apartment was sufficient evidence that defendant used a communication device to obtain possession of more than one ounce of marijuana. Russell v. State, 243 Ga. App. 378, 532 S.E.2d 137, 2000 Ga. App. LEXIS 392 (2000), cert. denied, No. S00C1237, 2000 Ga. LEXIS 634 (Ga. Sept. 11, 2000).

Use of a pager. — Because the defendant delivered cocaine to an informant and used a pager to aid in the cocaine's distribution, the evidence was sufficient to find the defendant guilty of distributing cocaine and using a communication facility to facilitate a violation of the Georgia Controlled Substance Act, specifically violations of O.C.G.A. §§ 16-13-21(11) and 16-13-32.3(a). Capers v. State, 273 Ga. App. 427, 615 S.E.2d 126, 2005 Ga. App. LEXIS 374 (2005), cert. denied, No. S05C1592, 2005 Ga. LEXIS 546 (Ga. Sept. 19, 2005).

Venue not established. — State failed to prove venue on a count for unlawful use of a communication facility; the indictment alleged that the defendant had used a cellular telephone in Long County, but the state had not set forth any evidence that the defendant used the telephone there. Maldonado v. State, 284 Ga. App. 26, 643 S.E.2d 316, 2007 Ga. App. LEXIS 248 (2007).

With regard to a defendant's trial on various drug charges, the defendant's convictions on three counts of using a communication device to commit or facilitate the commission of a designated felony, in violation of O.C.G.A. § 16-13-32.3, were reversed because the state failed to prove venue since the state submitted no proof that three related phone calls made on September 23, 24, and 25, 2003, were made in Newton County, Georgia, wherein prosecution was sought. Rogers v. State, 298 Ga. App. 895, 681 S.E.2d 693, 2009 Ga. App. LEXIS 815 (2009).

Evidence insufficient for conviction. — Transcripts of monitored telephone conversations between the

defendant and other individuals named in the indictment were insufficient to support defendant's convictions of using a communications facility to commit, cause, or facilitate a violation of the Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., since the state introduced no evidence tending to suggest that any overt act was ever carried out in furtherance of the drug transaction which had been discussed. Kelleher v. State, 185 Ga. App. 774, 365 S.E.2d 889, 1988 Ga. App. LEXIS 255 (1988).

When there was no direct evidence the defendant made a telephone call to arrange the delivery of cocaine as charged in the indictment, the circumstantial evidence was held to be insufficient as a matter of law to exclude other reasonable inferences. Britt v. State, 202 Ga. App. 689, 415 S.E.2d 492, 1992 Ga. App. LEXIS 167 (1992).

Evidence sufficient for conviction. — Because: (1) the defendant failed to sufficiently prove an entrapment defense, and hence, the need for disclosure of an informant's identity; (2) no error resulted in refusing to strike a juror for cause; and (3) the trial court's entrapment instruction was legally correct and did not mislead the jury, the defendant's convictions for trafficking in cocaine, in violation of O.C.G.A. § 16-13-31(a), possession of cocaine with intent to distribute, contrary to O.C.G.A. § 16-13-30(b), and two counts of use of communication facilities in committing a felony drug offense, under O.C.G.A. § 16-13-32.3, were affirmed on appeal. Griffiths v. State, 283 Ga. App. 176, 641 S.E.2d 169, 2006 Ga. App. LEXIS 1516 (2006), cert. denied, No. S07C0652, 2007 Ga. LEXIS 333 (Ga. Apr. 24, 2007).

Recorded conversations between an informant and a defendant proved the defendant's violation of O.C.G.A. § 16-13-32.3, the use of communication facility in committing a felony. There was circumstantial evidence that the defendant was the participant in the phone calls, and the phone calls set up drug buys between the informant and the defendant. Kimble v. State, 301 Ga. App. 237, 687 S.E.2d 242, 2009 Ga. App. LEXIS 1358 (2009), cert. denied, No. S10C0570, 2010 Ga. LEXIS 464 (Ga. May 17, 2010), cert. denied, No. S10C0569, 2010 Ga. LEXIS 466 (Ga. May 17, 2010).

16-13-32.4. Manufacturing, distributing, dispensing, or possessing controlled substances in, on, or near public or private schools.

(a) It shall be unlawful for any person to manufacture, distribute, dispense, or possess with intent to distribute a controlled substance or marijuana in, on, or within 1,000 feet of any real property owned by or leased to any public or private elementary school, secondary school, or school board used for elementary or secondary education.

(b) Any person who violates or conspires to violate subsection (a) of this Code section shall be guilty of a felony and upon conviction shall receive the following punishment:

(1) Upon a first conviction, imprisonment for not more than 20 years or a fine of not more than $20,000.00, or both; or

(2) Upon a second or subsequent conviction, imprisonment for not less than five years nor more than 40 years or a fine of not more than $40,000.00, or both. It shall be mandatory for the court to impose a minimum sentence of five years which may not be suspended unless otherwise provided by law.

A sentence imposed under this Code section shall be served consecutively to any other sentence imposed.

(c) A conviction arising under this Code section shall not merge with a conviction arising under any other provision of this article.

(d) It shall be no defense to a prosecution for a violation of this Code section that:

(1) School was or was not in session at the time of the offense;

(2) The real property was being used for other purposes besides school purposes at the time of the offense; or

(3) The offense took place on a school vehicle.

(e) In a prosecution under this Code section, a map produced or reproduced by any municipal or county agency or department for the purpose of depicting the location and boundaries of the area on or within 1,000 feet of the real property of a school board or a private or public elementary or secondary school that is used for school purposes, or a true copy of the map, shall, if certified as a true copy by the custodian of the record, be admissible and shall constitute prima-facie evidence of the location and boundaries of the area, if the governing body of the municipality or county has approved the map as an official record of the location and boundaries of the area. A map approved under this Code section may be revised from time to time by the governing body of the municipality or county. The original of every map approved or revised under this subsection or a true copy of such original map shall be filed with the municipality or county and shall be maintained as an official record of the municipality or county. This subsection shall not preclude the prosecution from introducing or relying upon any other evidence or testimony to establish any element of this offense. This subsection shall not preclude the use or admissibility of a map or diagram other than the one which has been approved by the municipality or county.

(f) A county school board may adopt regulations requiring the posting of signs designating the areas within 1,000 feet of school boards and private or public elementary and secondary schools as "Drug-free School Zones."

(g) It is an affirmative defense to prosecution for a violation of this Code section that the prohibited conduct took place entirely within a private residence, that no person 17 years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct was not carried on for purposes of financial gain. Nothing in this subsection shall be construed to establish an affirmative defense with respect to any offense under this chapter other than the offense provided for in subsection (a) of this Code section.

History.

Code 1981, § 16-13-32.4, enacted by Ga. L. 1990, p. 1097, § 1.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, "$20,000.00" was substituted for "$20,000" in paragraph (b)(1) and "$40,000.00" was substituted for "$40,000" in paragraph (b)(2).

Editor's notes.

Ga. L. 1990, p. 1097, § 2, not codified by the General Assembly, provides that this Code section shall apply to criminal offenses committed on or after July 1, 1990.

JUDICIAL DECISIONS

No application to university campus. — Because the crime for possession of marijuana and a firearm took place on a university campus, O.C.G.A. § 16-13-32.4 had no application. Carter v. State, 319 Ga. App. 609, 737 S.E.2d 714, 2013 Ga. App. LEXIS 20 (2013), cert. denied, No. S13C0836, 2013 Ga. LEXIS 525 (Ga. June 3, 2013).

Evidence of selling controlled substance sufficient. — When a police officer set up surveillance of an area located within 1,000 feet of an elementary school and 1,000 feet of a public housing project using a video camera, observed the defendant sell cocaine or marijuana in five transactions, and described the buyers to other police officers who apprehended the buyers and found the buyers in possession of the drugs which the defendant had sold the buyers, the videotape of the transactions and the testimony of the observing police officer along with the laboratory evidence regarding the drugs that were recovered from the various buyers was sufficient to sustain defendant's convictions under the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., on five counts of selling a controlled substance and additional counts of selling the drugs within 1,000 feet of a school and selling the drugs within 1,000 feet of a public housing project. Robinson v. State, 259 Ga. App. 595, 578 S.E.2d 235, 2003 Ga. App. LEXIS 181 (2003).

Sufficient evidence for conviction. — Evidence held sufficient for possessing cocaine, possessing cocaine within 1,000 feet of a housing project, and attempted bribery, where police officers observed defendant engaging in what appeared to be a drug transaction, they thereafter found cocaine on the sidewalk where defendant had been standing and cocaine in defendant's pockets, and defendant told a police officer who was counting defendant's money to take it and defendant's watch, and that defendant would pay the officer more in a week if the officer would let defendant go. Hester v. State, 261 Ga. App. 614, 583 S.E.2d 274, 2003 Ga. App. LEXIS 722 (2003).

Evidence that when a buyer went to the defendant's residence, the defendant had cocaine, which defendant then sold to the buyer, was sufficient to prove the elements of possession with intent to distribute for purposes of finding violations of O.C.G.A. §§ 16-13-32.4(a) and 16-13-32.5(a). Smith v. State, 278 Ga. App. 315, 628 S.E.2d 722, 2006 Ga. App. LEXIS 321 (2006), cert. denied, No. S06C1314, 2006 Ga. LEXIS 687 (Ga. Sept. 12, 2006).

Defendant's conviction of possession of drugs with intent to distribute within 1,000 feet of a school in violation of O.C.G.A. § 16-13-32.4(a) was supported by sufficient evidence in the form of the testimony of police who searched the defendant's home, of the evidence custodian, of the forensic chemist who tested the drugs, and of a house mate who witnessed the defendant selling drugs. Harkins v. State, 281 Ga. App. 512, 636 S.E.2d 698, 2006 Ga. App. LEXIS 1166 (2006).

In the possession of drugs with intent to distribute within 1,000 feet of a school in violation of O.C.G.A. § 16-13-32.4(a) case, the defendant's argument, that the evidence supported a reasonable hypothesis of innocence because the evidence showed that the prohibited conduct took place entirely within a private residence, failed; the reasonable

hypothesis rule was inapplicable since there was direct evidence of the defendant's guilt in the form of admissions by the defendant and the defendant's boyfriend and in the form of testimony by the defendant's house mate who witnessed the defendant selling drugs. Harkins v. State, 281 Ga. App. 512, 636 S.E.2d 698, 2006 Ga. App. LEXIS 1166 (2006).

Sufficient evidence supported the defendant's convictions of trafficking in cocaine, possession of marijuana with intent to distribute, and possession of cocaine with intent to distribute within 1,000 feet of a school, despite an argument on appeal that no evidence of either actual or constructive possession was presented, as: (1) sufficient additional evidence, albeit circumstantial, tied the defendant to said crimes and established more than the defendant's mere presence to the drugs seized; and (2) the proved facts excluded any reasonable hypotheses that a crime could have been committed by anyone else. Slaughter v. State, 282 Ga. App. 276, 638 S.E.2d 417, 2006 Ga. App. LEXIS 1365 (2006).

There was sufficient evidence to support convictions of possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30(b), possession of cocaine with intent to distribute within 1,000 feet of a housing project under O.C.G.A. § 16-13-32.5(b), and possession of cocaine with intent to distribute within 1,000 feet of a public school under O.C.G.A. § 16-13-32.4(a), based on the traffic to and from the defendant's trailer an investigator witnessed, the hand-to-hand exchanges the investigator witnessed, the 1.66 grams of crack cocaine, broken into pieces, that was recovered after one hand-to-hand exchange, and the fact that the trailer park was within 1,000 feet of a housing project and a public school. Smith v. State, 291 Ga. App. 353, 662 S.E.2d 176, 2008 Ga. App. LEXIS 495 (2008).

Given an alternative school's security officer's actual observation of a hand-to-hand exchange from a juvenile to another student at the school and the discovery of marijuana in the recipient's hand immediately thereafter, the only reasonable hypothesis was that the juvenile had just possessed the marijuana satisfying former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6). In the Interest of T. M., 303 Ga. App. 322, 693 S.E.2d 574, 2010 Ga. App. LEXIS 351 (2010).

Officer's testimony regarding the location of parks, schools, and public housing in the area, the distance of which was confirmed through use of a global positioning system, supported the defendant's convictions for possession of marijuana with the intent to distribute within 1,000 feet of public housing, within 1,000 feet of a state park, and within 1,000 feet of a school. Evans v. State, 318 Ga. App. 706, 734 S.E.2d 527, 2012 Ga. App. LEXIS 979 (2012), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Insufficient evidence. — Evidence that juvenile was in the same dressing room with another boy and departed the area just before marijuana was discovered on the other boy and that the juvenile was later found to have $269 in the juvenile's possession was not sufficient to support a delinquency adjudication for violation of O.C.G.A. § 16-13-32.4. In the Interest of A.D.C., 228 Ga. App. 829, 493 S.E.2d 38, 1997 Ga. App. LEXIS 1285 (1997).

Jury instruction. — Defendant was not entitled to an affirmative defense jury instruction under O.C.G.A. § 16-13-32.4(g), relating to prohibited conduct occurring entirely inside a private residence, in a possession of drugs with intent to distribute within 1,000 feet of a school in violation of § 16-13-32.4(a) case; there was no evidence that the affirmative defense was applicable as there was no evidence that the drug possession was not for the purpose of financial gain. Harkins v. State, 281 Ga. App. 512, 636 S.E.2d 698, 2006 Ga. App. LEXIS 1166 (2006).

Jury instruction on affirmative defense. — After the defendant was found guilty of possessing with intent to distribute methamphetamine within 1,000 feet of an elementary school, the court of appeals erred in affirming the trial court's denial of the defendant's request for a jury instruction on an affirmative defense set out in O.C.G.A. § 16-13-32.4 because a criminal defendant was not required to admit

anything, in the sense of acknowledging that any particular facts were true, in order to raise an affirmative defense; there only needed to be slight evidence supporting the theory of the charge; and the defendant did not need to present evidence to support the theory of an affirmative defense if the state's evidence raised the issue. Pennington v. State, 306 Ga. 854, 834 S.E.2d 63, 2019 Ga. LEXIS 645 (2019).

There was at least slight evidence at trial that the defendant's possession of methamphetamine took place entirely within the shed which was the defendant's residence as the traces of methamphetamine residue were found inside the shed and the setup described by witnesses as an "active methamphetamine lab" was found inside the shed and, thus, the evidence supported the instruction on the affirmative defense for when the prohibited conduct took place entirely within a private residence, when no person 17 years of age or younger was present in such private residence, and the prohibited conduct was not carried on for purposes of financial gain. Pennington v. State, 354 Ga. App. 701, 841 S.E.2d 417, 2020 Ga. App. LEXIS 212 (2020).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state statutes prohibiting sale or possession of controlled substances within specified distance of schools, 27 A.L.R.5th 593.

Validity, construction, and application of state statutes enhancing penalty for sale or possession of controlled substances within specified distance of playgrounds, 23 A.L.R.6th 679.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — marijuana offenses under 8 U.S.C.A. § 1101(a)(43)(B), 76 A.L.R. Fed. 2d 1.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — cocaine and crack cocaine offenses under 8 U.S.C.A. § 1101(a)(43)(B), 76 A.L.R. Fed. 2d 61.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — heroin offenses under 8 U.S.C.A. § 1101(a)(43)(B), 78 A.L.R. Fed. 2d 133.

What constitutes "aggravated felony" for which aliens can be deported or removed under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — illicit methamphetamine offenses under 8 U.S.C.A. § 1101(a)(43)(B), 78 A.L.R. Fed. 2d 151.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — Miscellaneous or unspecified narcotics offenses under 8 U.S.C.A. § 1101(a)(43)(B), 79 A.L.R. Fed. 2d 335.

16-13-32.5. Manufacturing, distributing, dispensing, or possessing with intent to distribute controlled substance, marijuana, or counterfeit substance near park or housing project; establishment of drug-free zones.

(a) It shall be unlawful for any person to manufacture, distribute, dispense, or possess with intent to distribute a controlled substance or marijuana or a counterfeit substance in, on, or within 1,000 feet of any real property which has been dedicated and set apart by the governing authority of any municipality, county, state authority, or the state for

use as a park, playground, recreation center, or for any other recreation purposes, unless the manufacture, distribution, or dispensing is otherwise allowed by law.

(b) It shall be unlawful for any person to manufacture, distribute, dispense, or possess with intent to distribute a controlled substance or marijuana or a counterfeit substance in, on, or within 1,000 feet of any real property of any publicly owned or publicly operated housing project, unless the manufacture, distribution, or dispensing is otherwise allowed by law. For the purposes of this Code section, the term "housing project" means any facilities under the jurisdiction of a housing authority which constitute single or multifamily dwelling units occupied by low and moderate-income families pursuant to Chapter 3 of Title 8.

(c) Any person who violates or conspires to violate subsection (a) or (b) of this Code section shall be guilty of a felony and upon conviction shall receive the following punishment:

(1) Upon a first conviction, imprisonment for not more than 20 years or a fine of not more than $20,000.00, or both; or

(2) Upon a second or subsequent conviction, imprisonment for not less than five years nor more than 40 years or a fine of not more than $40,000.00, or both. It shall be mandatory for the court to impose a minimum sentence of five years which may not be suspended unless otherwise provided by law.

A sentence imposed under this Code section shall be served consecutively to any other sentence imposed.

(d) A conviction arising under this Code section shall not merge with a conviction arising under any other provision of this article.

(e) In a prosecution under this Code section, a map produced or reproduced by any municipal or county agency or department for the purpose of depicting the location and boundaries of the area on or within 1,000 feet of the real property of any publicly owned or publicly operated housing project or the real property set apart for use as a park, playground, recreation center, or for any other recreation purposes, or a true copy of the map, shall, if certified as a true copy by the custodian of the record, be admissible and shall constitute prima-facie evidence of the location and boundaries of the area, if the governing body of the municipality or county has approved the map as an official record of the location and boundaries of the area. A map approved under this Code section may be revised from time to time by the governing body of the municipality or county. The original of every map approved or revised under this subsection or a true copy of such original map shall be filed with the municipality or county and shall be maintained as an official

record of the municipality or county. This subsection shall not preclude the prosecution from introducing or relying upon any other evidence or testimony to establish any element of this offense. This subsection shall not preclude the use or admissibility of a map or diagram other than the one which has been approved by the municipality or county.

(f) The governing authority of a municipality or county may adopt regulations requiring the posting of signs designating the areas within 1,000 feet of any lands or buildings set apart for use as parks, playgrounds, recreation centers, or any other recreation purposes as "Drug-free Recreation Zones" and designating the areas within 1,000 feet of the real property of any publicly owned or publicly operated housing project as "Drug-free Residential Zones."

(g) It is an affirmative defense to prosecution for a violation of this Code section that the prohibited conduct took place entirely within a private residence, that no person 17 years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct was not carried on for purposes of financial gain. Nothing in this subsection shall be construed to establish an affirmative defense with respect to any offense under this chapter other than the offense provided for in subsections (a) and (b) of this Code section.

History.

Code 1981, § 16-13-32.5, enacted by Ga. L. 1992, p. 2043, § 1; Ga. L. 2000, p. 1215, § 1; Ga. L. 2008, p. 600, § 1/SB 453.

Law reviews.

For note on 1992 enactment of this Code section, see 9 Georgia St. U.L. Rev. 212 (1992).

For annual survey article discussing developments in criminal law, see 51 Mercer L. Rev. 209 (1999).

JUDICIAL DECISIONS

Construed with O.C.G.A. § 16-13-30. — Convictions for selling cocaine (O.C.G.A. § 16-13-30) and selling cocaine within 1000 feet of a public housing project (O.C.G.A. § 16-13-32.5) did not merge because the latter statute contains a specific non-merger provision and the intent thereof is simply to increase the punishment for violating both statutes. Harper v. State, 213 Ga. App. 611, 445 S.E.2d 300, 1994 Ga. App. LEXIS 672 (1994), cert. denied, No. S94C1579, 1994 Ga. LEXIS 1028 (Ga. Sept. 29, 1994).

Defendant's convictions for possession of cocaine with intent to distribute and possession of a controlled substance within 1,000 feet of a housing project, in violation of O.C.G.A. §§ 16-13-30(b) and § 16-13-32.5, were based on sufficient evidence after the state proved by circumstantial evidence pursuant to former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) that the defendant had been walking back and forth to an overturned bucket when people approached from the street in what appeared to be drug transactions, and the drugs were found under the bucket; there was evidence that the amount of drugs recovered were more than one would use for personal use, such that the amount indicated an intent to distribute, and there was also evidence indicating the proximity of the bucket to a nearby public housing complex. Reason v. State, 283 Ga. App. 608, 642 S.E.2d 236, 2007 Ga. App. LEXIS 136 (2007).

Proof of violation. — When the

prosecution did not employ the statutorily authorized method to establish prima facie the location and boundaries of any housing projects, but relied on the testimony of an undercover officer that a sale of crack cocaine took place near "numerous red brick buildings located around a common, grassy area" that "we just knew that it was a — it was city — it was public — it was city owned", such evidence was not sufficient to support a conviction for a violation of O.C.G.A. § 16-13-32.5. Johnson v. State, 214 Ga. App. 77, 447 S.E.2d 74, 1994 Ga. App. LEXIS 775 (1994), cert. denied, No. S94C1738, 1994 Ga. LEXIS 1146 (Ga. Oct. 28, 1994).

Facts required to be established by O.C.G.A. § 16-13-32.5 could be proved by the testimony of police officers familiar with the area and expressly assigned to patrol public housing areas. Menefee v. State, 226 Ga. App. 725, 487 S.E.2d 489, 1997 Ga. App. LEXIS 751 (1997).

Trial court was not authorized to find the defendant intended to distribute the drugs since the state produced no evidence that the defendant had scales, guns, cash, drug packaging materials, or a large quantity of marijuana, and did not introduce any evidence of prior drug sales by the defendant, or any testimony that the defendant was observed selling or attempting to sell drugs. Clark v. State, 245 Ga. App. 267, 537 S.E.2d 742, 2000 Ga. App. LEXIS 939 (2000).

Trial court erred in convicting the defendant of selling cocaine within 1,000 feet of a housing project because there was no probative evidence that the cocaine sale took place within 1,000 feet of a public housing project property as required by O.C.G.A. § 16-13-32.5(b) since the prosecution did not rely on the authorized method under § 16-13-32.5(e) of using a map to establish that the cocaine sale occurred within 1,000 feet of a public housing project but relied on the testimony of the state's witnesses to prove the public housing element of the offense; the only evidence that the apartment complex where the sale took place was occupied by low and moderate-income families was the testimony of an officer who was a member of the narcotics task force involved in the defendant's arrest, but the officer admitted on cross-examination that the officer only knew that because that was what the officer had been told. Quarterman v. State, 305 Ga. App. 686, 700 S.E.2d 674, 2010 Ga. App. LEXIS 793 (2010).

No fatal variance between indictment and proof. — Based on evidence that the defendant's drug transactions occurred "straight across" the street from a housing authority property and that the distance between the store and the housing project was 111 feet, any variance between the indictment and the proof at trial did not misinform or mislead the defendant so as to impair the defendant's ability to prepare a defense on charges that the defendant distributed cocaine within 1,000 feet of a housing project in violation of O.C.G.A. § 16-13-32.5(b). Williams v. State, 332 Ga. App. 546, 774 S.E.2d 126, 2015 Ga. App. LEXIS 353 (2015).

Evidence to support eviction from public housing. — There was ample evidence from which a jury could find that a housing authority properly evicted a tenant from a public housing complex for the tenant's child's criminal activity as the child was arrested for violating O.C.G.A. § 16-13-32.5 after the child flagged down two undercover police officers and told them that the child could get the officers marijuana or crack cocaine from the apartments, which was consistent with the actions of a drug runner; that the child was not charged under that statute was irrelevant, as the lease allowed for termination for drug-related criminal activity without an arrest or conviction, and an attempted drug transaction, interrupted by the police, sufficed to show that the child had engaged in drug-related criminal activity by the required preponderance of the evidence, even though drugs were not found on the child when arrested. Martinez v. Hous. Auth., 264 Ga. App. 282, 590 S.E.2d 245, 2003 Ga. App. LEXIS 1465 (2003).

Failure to prove role of public housing authority. — Evidence was not sufficient to support convictions for distributing cocaine within 1,000 feet of a public housing project because the state

failed to offer any evidence establishing that the apartment complex where the sale occurred was owned or operated by a public housing authority. Cooper v. State, 324 Ga. App. 451, 751 S.E.2d 102, 2013 Ga. App. LEXIS 863 (2013).

Evidence showed substance was cocaine. — Defendant's claim that the evidence was insufficient to support the defendant's convictions because the state relied on hearsay testimony of a forensic scientist who did not personally conduct the chemical tests failed because, even assuming the testimony was inadmissible, the state submitted sufficient evidence, including testimony from the police, the informant, and the defendant, establishing that the drugs recovered, with one exception, constituted cocaine. Cooper v. State, 324 Ga. App. 451, 751 S.E.2d 102, 2013 Ga. App. LEXIS 863 (2013).

Evidence sufficient for conviction. — See Tate v. State, 230 Ga. App. 186, 495 S.E.2d 658, 1998 Ga. App. LEXIS 83 (1998); Woods v. State, 232 Ga. App. 367, 501 S.E.2d 832, 1998 Ga. App. LEXIS 647 (1998); Smith v. State, 291 Ga. App. 353, 662 S.E.2d 176, 2008 Ga. App. LEXIS 495 (2008).

Evidence supported the defendant's conviction under O.C.G.A. § 16-13-32.5 after the chief construction inspector for the housing authority testified as to the correctness and accuracy of a map showing the public housing project near where the sale occurred, and which showed that a part of the project was within 20 feet of where the sale occurred. McKay v. State, 234 Ga. App. 556, 507 S.E.2d 484, 1998 Ga. App. LEXIS 1300 (1998), cert. denied, No. S99C0220, 1999 Ga. LEXIS 205 (Ga. Feb. 19, 1999).

Evidence was sufficient to convict the defendant as there was testimony that the defendant's actions took place within 1,000 feet of the city-owned housing project and evidence that the amount of money found on the defendant's person, the specific denominations of currency, and the amount and specific packaging of the cocaine were all consistent with the intention to distribute cocaine. Haywood v. State, 248 Ga. App. 210, 546 S.E.2d 325, 2001 Ga. App. LEXIS 233 (2001).

Evidence was sufficient to support the defendant's conviction for distribution of a controlled substance within 1,000 feet of a public housing project as the evidence showed that the defendant was selling cocaine and that the sale took place less than 1,000 feet from a housing project. Dixon v. State, 252 Ga. App. 385, 556 S.E.2d 480, 2001 Ga. App. LEXIS 1289 (2001).

When a police officer set up surveillance of an area located within 1,000 feet of an elementary school and 1,000 feet of a public housing project using a video camera, observed the defendant sell cocaine or marijuana in five transactions, and described the buyers to other police officers who apprehended the buyers and found the buyers in possession of the drugs which the defendant had sold the buyers, the videotape of the transactions and the testimony of the observing police officer along with the laboratory evidence regarding the drugs that were recovered from the various buyers was sufficient to sustain defendant's convictions under the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., on five counts of selling a controlled substance and additional counts of selling the drugs within 1,000 feet of a school and selling the drugs within 1,000 feet of public housing. Robinson v. State, 259 Ga. App. 595, 578 S.E.2d 235, 2003 Ga. App. LEXIS 181 (2003).

Accomplice's testimony combined with a videotape of the defendant in the front seat of a car while talking to a confidential police informant during a drug buy was sufficient corroboration to justify the defendant's convictions for selling cocaine within 1,000 feet of a housing project. Etchison v. State, 266 Ga. App. 528, 597 S.E.2d 583, 2004 Ga. App. LEXIS 417 (2004).

Because the evidence supporting the defendant's convictions revealed that the defendant was twice caught on tape selling crack cocaine to confidential informants, and a police officer testified that the location of one of the sales was within 200 to 300 feet of a public housing project the defendant's convictions for selling cocaine and of distributing cocaine within 1,000 feet of a housing project and 1,000

feet of a school were upheld; thus, the defendant was not entitled to a directed verdict of acquittal. Banks v. State, 270 Ga. App. 221, 606 S.E.2d 34, 2004 Ga. App. LEXIS 1326 (2004).

Defendant was not entitled to a directed verdict of acquittal under O.C.G.A. § 17-9-1(a) on a charge of distributing cocaine within 1,000 feet of a public housing project in violation of O.C.G.A. § 16-13-32.5(b) because another participant in the drug transaction testified it occurred at the "Atlanta Street Apartments", and an officer familiar with the area testified that the "Atlanta Street Apartments" were owned by a housing authority and people of lower income lived there, the evidence was sufficient to show that the transaction occurred within 1,000 feet of a housing project. Barnett v. State, 276 Ga. App. 238, 623 S.E.2d 136, 2005 Ga. App. LEXIS 1216 (2005).

Evidence that when a buyer went to the defendant's residence, the defendant had cocaine, which defendant then sold to the buyer, was sufficient to prove the elements of possession with intent to distribute for purposes of finding violations of O.C.G.A. §§ 16-13-32.4(a) and 16-13-32.5(a). Smith v. State, 278 Ga. App. 315, 628 S.E.2d 722, 2006 Ga. App. LEXIS 321 (2006), cert. denied, No. S06C1314, 2006 Ga. LEXIS 687 (Ga. Sept. 12, 2006).

As the evidence was sufficient to prove the defendant possessed cocaine with intent to distribute, the testimony of police officers that the defendant's actions took place within 1,000 feet of a housing project was sufficient to convict the defendant of violating O.C.G.A. § 16-13-32.5(b). Hamilton v. State, 293 Ga. App. 297, 666 S.E.2d 630, 2008 Ga. App. LEXIS 926 (2008).

Evidence was sufficient to show that defendant sold cocaine within 1,000 feet of a public housing project in violation of O.C.G.A. § 16-13-32.5(b) because the transaction occurred behind an apartment building, which was owned by a city housing authority to provide housing for low to moderate income families. Henry v. State, 301 Ga. App. 723, 688 S.E.2d 412, 2009 Ga. App. LEXIS 1433 (2009).

Evidence was sufficient to find the defendant guilty of possession of marijuana with intent to distribute, O.C.G.A. § 16-13-30(j)(1), and possession of marijuana with intent to distribute within 1,000 feet of a housing project, O.C.G.A. § 16-13-32.5(b), because it appeared that the jury accepted that version of the events most unfavorable to the defendant after hearing all of the evidence and resolving the credibility of all of the witnesses, and the jury was solely authorized to make such determinations. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818, 2011 Ga. App. LEXIS 408 (2011).

Evidence was sufficient to sustain a defendant's conviction for possession of a controlled substance with intent to distribute within 1,000 feet of a public housing project as evidence that the public housing complex where drugs were found in the apartment of the defendant's girlfriend was under the jurisdiction of a housing authority, pursuant to O.C.G.A. §§ 8-3-1 and 8-3-2, was twice presented at trial, the evidence showed that the location consisted of dwelling units, and that these dwelling units were occupied by low and moderate income families. Robinson v. State, 314 Ga. App. 545, 724 S.E.2d 846, 2012 Ga. App. LEXIS 233 (2012).

Officer's testimony regarding the location of parks, schools, and public housing in the area, the distance of which was confirmed through use of a global positioning system, supported the defendant's convictions for possession of marijuana with the intent to distribute within 1,000 feet of public housing, within 1,000 feet of a state park, and within 1,000 feet of a school. Evans v. State, 318 Ga. App. 706, 734 S.E.2d 527, 2012 Ga. App. LEXIS 979 (2012), overruled on other grounds, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Appellate court refused to disturb the jury's verdict convicting the defendant of possession of drugs with the intent to distribute because after hearing the evidence and having the opportunity to judge the credibility of the witnesses, the jury properly concluded that the only reasonable hypothesis was that the defendant possessed the drugs found hidden in the kitchen, despite the defendant's argument

that others had equal access. King v. State, 325 Ga. App. 777, 755 S.E.2d 22, 2014 Ga. App. LEXIS 74 (2014).

Insufficient evidence to support conviction. — Conviction for selling cocaine within 1,000 feet of a public housing project was reversed on appeal because insufficient evidence existed to prove that the purported housing project was under the jurisdiction of the local housing authority and housed low to moderate income families; the testimony of the local municipality's chief of police as to the measurement was insufficient without any evidence that the purported housing project was, in fact, under the jurisdiction of the local housing authority. Collins v. State, 278 Ga. App. 103, 628 S.E.2d 148, 2006 Ga. App. LEXIS 241 (2006).

While an investigator testified that the defendant sold cocaine to an officer less than 1,000 feet from a government housing development, the investigator did not testify that the development was the property of a municipal housing authority, or that it was occupied by low and moderate-income families. Therefore, the evidence was insufficient to show that the defendant possessed cocaine within 1,000 feet of a housing project in violation of O.C.G.A. § 16-13-32.5. Mahone v. State, 296 Ga. App. 373, 674 S.E.2d 411, 2009 Ga. App. LEXIS 224 (2009).

Evidence was insufficient to convict the defendant of drug trafficking within 1,000 feet of public housing in violation of O.C.G.A. § 16-13-32.5(b) because the state failed to establish that the defendant's residence, which was where the offense occurred, was within 1,000 feet of a publicly owned and operated housing project; the state's witnesses testified that the defendant's residence was located in a housing project, but there was no evidence establishing that the housing project was publicly owned or operated, and there was no testimony that the housing project was occupied by low and moderate-income families. Williams v. State, 303 Ga. App. 222, 692 S.E.2d 820, 2010 Ga. App. LEXIS 321 (2010).

Codefendant's convictions for possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), and possession with intent to distribute a controlled substance within 1,000 feet of a housing project, O.C.G.A. § 16-13-32.5(b), was unsupportable as a matter of law, and the trial court erred by denying the codefendant's motion for a directed verdict of acquittal because the circumstantial evidence and the reasonable inferences derived therefrom were insufficient to connect the codefendant to the cocaine, which was found in an upstairs bedroom occupied by codefendants; no evidence was introduced to show that the codefendant resided in the apartment where the cocaine was found, which could authorize an inference that the codefendant possessed the property therein. Jackson v. State, 306 Ga. App. 33, 701 S.E.2d 481, 2010 Ga. App. LEXIS 737 (2010).

Instruction cured reading of wrong indictment. — Because the state presented sufficient evidence showing the defendant's involvement in the sale of cocaine and the sale of cocaine within 1,000 feet of public housing project as party to the crimes, and because the judge's instruction and explanation after reading the wrong indictment to the jury at trial cured any error, the defendant's convictions were upheld on appeal, and a mistrial based on the latter was properly denied; moreover, the defendant was properly denied a new trial. Walker v. State, 290 Ga. App. 749, 660 S.E.2d 844, 2008 Ga. App. LEXIS 407 (2008), cert. dismissed, No. S08C1701, 2008 Ga. LEXIS 776 (Ga. Sept. 22, 2008).

Challenge to sufficiency of indictment. — Defendant waived appellate review of defendant's challenge to the indictment when the defendant claimed that the indictment charging the defendant with selling marijuana within 1,000 feet of a housing project failed to allege a violation of O.C.G.A. § 16-13-32.5, which makes it unlawful only to "manufacture, distribute, dispense, or possess with intent to distribute" marijuana at such location, but the defendant failed to object to the indictment in any manner before or during trial, and the defendant did not move to arrest the judgment after the defendant's conviction. McKay v. State,

234 Ga. App. 556, 507 S.E.2d 484, 1998 Ga. App. LEXIS 1300 (1998), cert. denied, No. S99C0220, 1999 Ga. LEXIS 205 (Ga. Feb. 19, 1999).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state statutes enhancing penalty for sale or possession of controlled substances within specified distance of playgrounds, 23 A.L.R.6th 679.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — marijuana offenses under 8 U.S.C.A. § 1101(a)(43)(B), 76 A.L.R. Fed. 2d 1.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — cocaine and crack cocaine offenses under 8 U.S.C.A. § 1101(a)(43)(B), 76 A.L.R. Fed. 2d 61.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — heroin offenses under 8 U.S.C.A. § 1101(a)(43)(B), 78 A.L.R. Fed. 2d 133.

What constitutes "aggravated felony" for which aliens can be deported or removed under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — illicit methamphetamine offenses under 8 U.S.C.A. § 1101(a)(43)(B), 78 A.L.R. Fed. 2d 151.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — Miscellaneous or unspecified narcotics offenses under 8 U.S.C.A. § 1101(a)(43)(B), 79 A.L.R. Fed. 2d 335.

16-13-32.6. Manufacturing, distributing, dispensing, or possessing with intent to distribute controlled substance or marijuana in, on, or within drug-free commercial zone.

(a) It shall be unlawful for any person to illegally manufacture, distribute, dispense, or possess with intent to distribute a controlled substance or marijuana in, on, or within any real property which has been designated under this Code section as a drug-free commercial zone.

(b)(1) Any person who violates or conspires to violate subsection (a) of this Code section shall be guilty of a felony and upon conviction shall receive the following punishment:

(A) Upon a first conviction, imprisonment for not more than 20 years or a fine of not more than $20,000.00, or both; or

(B) Upon a second or subsequent conviction, imprisonment for not less than five years nor more than 40 years or a fine of not more than $40,000.00, or both.

(2) A sentence imposed under this Code section shall be served consecutively to any other sentence imposed.

(3) Any person convicted of a violation of subsection (a) of this

Code section may, as a condition of probation or parole, be required by the sentencing court or State Board of Pardons and Paroles to refrain for a period of not more than 24 months from entering or at any time being within the boundaries of the drug-free commercial zone wherein such person was arrested for a violation of this Code section. Any person arrested for violation of his or her terms of probation shall be governed by the provisions of Code Section 42-8-38 and any person arrested for a violation of his or her terms of parole shall be governed by the provisions of Article 2 of Chapter 9 of Title 42.

(c) A conviction arising under this Code section shall not merge with a conviction arising under any other provision of this article.

(d) Any municipality or county may designate one or more commercial areas where there is a high rate of drug related crime as drug-free commercial zones. A drug-free commercial zone may include only an area which the municipality or county has previously zoned commercial pursuant to its planning and zoning powers and any residential area contiguous to such commercially zoned area extending not more than one-half mile from the external boundary of any portion of the commercially zoned area. A municipality or county which designates one or more areas as drug-free commercial zones shall be required to make such designations by ordinance and shall be required to post prominent and conspicuous signs on the boundaries of and throughout any such drug-free commercial zone. A municipality or county shall be required to file with the Department of Community Affairs a copy of each ordinance which shall have attached a clearly defined map describing each drug-free commercial zone and a report evidencing all drug related crimes in such drug-free commercial zone area during the 12 months preceding the enactment of such ordinance. A municipality or county shall also be required to file with the Department of Community Affairs, during the period that a drug-free commercial zone is in effect, annual reports evidencing all drug related crimes in such drug-free commercial zone. Such ordinances, maps, and drug crime reports shall be maintained in a permanent register by such department, and copies of such ordinances, maps, and drug crime reports of drug-free commercial zones shall be made available to the public at a reasonable cost. A drug-free commercial zone shall not be effective and valid for the purposes of this Code section until it has been adopted by the General Assembly by general law. After the General Assembly has adopted one or more drug-free commercial zones, the governing authority of each municipality or county which has such a zone or zones designated and adopted shall be required to have a description of each such zone published in the legal organ of the municipality or county at least once a week for three weeks. A drug-free commercial zone adopted by the General Assembly shall remain in effect for five years and shall expire five years from the effective date of such adoption by the General

Assembly. An area which has been a drug-free commercial zone may be continued as or again designated as a drug-free commercial zone upon the enactment of an ordinance and adoption thereof by the General Assembly in accordance with the provisions of this subsection. No arrest for a violation of this Code section shall be permissible for a period of 30 days immediately following the effective date of the adoption of such drug-free commercial zone by the General Assembly.

(e) In a prosecution under this Code section, a true copy of a map produced or reproduced by any municipal or county agency or department for the purpose of depicting the location and boundaries of any drug-free commercial zone and filed and on record at the Department of Community Affairs shall, if certified as a true copy by the custodian of such records at such department, be admissible and shall constitute prima-facie evidence of the location and boundaries of such zone. A map approved under this Code section may be revised from time to time by the governing body of the municipality or county; provided, however, that a revised map shall not become effective and the revised area shall not be a drug-free commercial zone until the revised map has been filed with the Department of Community Affairs and adopted by the General Assembly by general law; provided, further, that the revision of a drug-free commercial zone shall not extend the expiration date of such a drug-free commercial zone. The original copy of every map approved or revised under this subsection or a true copy of such original map shall be filed with the Department of Community Affairs and shall be maintained as an official record of the department. This subsection shall not preclude the prosecution from introducing or relying upon any other evidence or testimony to establish any element of this offense.

(f) The General Assembly hereby adopts and incorporates into this Code section all drug-free commercial zones which have been adopted by municipal or county ordinance and entered in the register of the Department of Community Affairs as provided for in subsection (d) of this Code section on or before July 1, 2015.

History.

Code 1981, § 16-13-32.6, enacted by Ga. L. 1996, p. 1049, § 1; Ga. L. 1999, p. 556, § 1; Ga. L. 2004, p. 1070, § 1A; Ga. L. 2011, p. 308, § 1/HB 457; Ga. L. 2013, p. 778, § 1/HB 187; Ga. L. 2015, p. 616, § 1/HB 89.

Law reviews.

For review of 1996 controlled substances legislation, see 13 Georgia St. U.L. Rev. 98 (1996).

RESEARCH REFERENCES

ALR.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — marijuana offenses under 8 U.S.C.A. § 1101(a)(43)(B), 76 A.L.R. Fed. 2d 1.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — cocaine and crack cocaine offenses under 8 U.S.C.A. § 1101(a)(43)(B), 76 A.L.R. Fed. 2d 61.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — heroin offenses under 8 U.S.C.A. § 1101(a)(43)(B), 78 A.L.R. Fed. 2d 133.

What constitutes "aggravated felony" for which aliens can be deported or removed under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — illicit methamphetamine offenses under 8 U.S.C.A. § 1101(a)(43)(B), 78 A.L.R. Fed. 2d 151.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — Miscellaneous or unspecified narcotics offenses under 8 U.S.C.A. § 1101(a)(43)(B), 79 A.L.R. Fed. 2d 335.

16-13-33. Attempt or conspiracy to commit offense under this article.

Any person who attempts or conspires to commit any offense defined in this article shall be, upon conviction thereof, punished by imprisonment not exceeding the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

History.

Code 1933, § 79A-812, enacted by Ga. L. 1974, p. 221, § 1.

Law reviews.

For article surveying developments in Georgia criminal law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 95 (1981).

JUDICIAL DECISIONS

Legislative intent. — Most reasonable interpretation of the legislative intent in enacting O.C.G.A. § 16-13-33 was to supplant the general punishment provision for criminal attempt found in O.C.G.A. § 16-4-6. Davis v. State, 164 Ga. App. 633, 298 S.E.2d 615, 1982 Ga. App. LEXIS 2897 (1982).

After federal convictions, state prosecution barred on same conduct. — Threshold requirement of concurrent jurisdiction in O.C.G.A. § 16-1-8(c) was met in the defendant's state prosecution because the Georgia crimes of manufacturing, delivering, or selling a controlled substance and attempt, O.C.G.A. §§ 16-13-30(a) and 16-13-33, were counterparts to the defendant's federal convictions under 21 U.S.C. §§ 841(b)(1)(C) and 846. Calloway v. State, 303 Ga. 48, 810 S.E.2d 105, 2018 Ga. LEXIS 66 (2018).

O.C.G.A. §§ 16-4-6 and 16-13-33 are mutually exclusive. — O.C.G.A. § 16-13-33 does not affect operation of O.C.G.A. § 16-4-3, but rather it renders O.C.G.A. § 16-4-6 inapplicable in prosecutions under the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq. Davis v. State, 164 Ga. App. 633, 298 S.E.2d 615, 1982 Ga. App. LEXIS 2897 (1982).

O.C.G.A. § 16-13-33 renders O.C.G.A. § 16-4-6 inapplicable in prosecutions under the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., because if a crime is penalized by a special law, the general provisions of the penal code are not applicable; accordingly, there is no merit to the assertion that O.C.G.A.

§ 16-13-33 contravenes the rule of lenity, and the trial court did not err in imposing a sentence for marijuana convictions under that provision rather than O.C.G.A. § 16-4-6. Woods v. State, 279 Ga. 28, 608 S.E.2d 631, 2005 Ga. LEXIS 119 (2005).

Phrase, "Any person who . . . conspires," means any person who commits a conspiracy as defined by O.C.G.A. § 16-4-8. Hammock v. Zant, 244 Ga. 863, 262 S.E.2d 82, 1979 Ga. LEXIS 1443 (1979).

Overt act required. — Former Code 1933, § 79A-812 (see now O.C.G.A. § 16-13-33) required with certainty an overt act for successful prosecution. Hammock v. Zant, 244 Ga. 863, 262 S.E.2d 82, 1979 Ga. LEXIS 1443 (1979).

To be guilty of conspiracy under O.C.G.A. § 16-13-33 one or more of the conspirators must commit an overt act as required by O.C.G.A. § 16-4-8. Price v. State, 247 Ga. 58, 273 S.E.2d 854, 1981 Ga. LEXIS 607 (1981).

Only one conspiracy can result from single agreement. — Whether object of single agreement is to commit one or many crimes, it is in either case the agreement that constitutes the conspiracy, and if there is only one agreement there can be only one conspiracy. Price v. State, 247 Ga. 58, 273 S.E.2d 854, 1981 Ga. LEXIS 607 (1981).

Separate convictions under separate conspiracy statutes may be authorized. — When conspiracy contemplates commission of more than one substantive offense, and there are separate conspiracy statutes separately punishing a conspiracy to commit each offense, a separate conviction under each conspiracy statute may be authorized. Price v. State, 247 Ga. 58, 273 S.E.2d 854, 1981 Ga. LEXIS 607 (1981).

There may be multiple convictions for multiple substantive offenses committed pursuant to single conspiracy. Price v. State, 247 Ga. 58, 273 S.E.2d 854, 1981 Ga. LEXIS 607 (1981).

Lesser included offenses. — When the defendant was convicted of trafficking in marijuana, a conviction for conspiracy to traffic in marijuana cannot also stand and the jury should be instructed that a verdict of one or the other is authorized but not both. Hardin v. State, 172 Ga. App. 232, 322 S.E.2d 540, 1984 Ga. App. LEXIS 2468 (1984).

Conspiracy to possess marijuana with intent to distribute is not a lesser included offense of possession. Rowe v. State, 181 Ga. App. 492, 352 S.E.2d 813, 1987 Ga. App. LEXIS 2543 (1987).

Charging the defendant with conspiracy to sell and distribute cocaine after defendant pled guilty to a substantive crime, possession of cocaine, did not constitute double jeopardy because the second prosecution required proof of facts not required on the prior prosecution. Rogers v. State, 201 Ga. App. 426, 411 S.E.2d 289, 1991 Ga. App. LEXIS 1441 (1991).

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).

Denial of merger. — Because the defendant's convictions for attempt to sell oxycodone and possession with intent to distribute each required proof of a fact which the other did not, the trial court did not err in not merging the offenses and in sentencing the defendant on both. Crankshaw v. State, 336 Ga. App. 700, 786 S.E.2d 245, 2016 Ga. App. LEXIS 130 (2016).

Merger with substantive offense. — Offenses of conspiracy to traffic in marijuana and trafficking itself did not merge when conspirators first possessed the marijuana, since the "trafficking" charge involved sale of the marijuana, an act not yet completed. Meyers v. State, 174 Ga. App. 161, 329 S.E.2d 293, 1985 Ga. App. LEXIS 1773 (1985).

Offense of selling marijuana was not complete upon defendants' leading of undercover agents to the site of the marijuana since an agreed-upon weighing, loading, and delivering had not yet occurred; thus, the substantive trafficking offense did not merge with or extinguish the conspiracy-to-traffic offense. Meyers v.

State, 174 Ga. App. 161, 329 S.E.2d 293, 1985 Ga. App. LEXIS 1773 (1985).

Charges of conspiracy to import marijuana and trafficking in marijuana could be joined for trial where the charges arose from the same conduct. Bridges v. State, 195 Ga. App. 851, 395 S.E.2d 30, 1990 Ga. App. LEXIS 744 (1990).

Admission of character evidence held harmless error. — Evidence of conversation showing that defendant was willing to be a "bigtime" cocaine dealer was erroneously admitted, but where the evidence of defendant's guilt was ample and it was highly probable that placing defendant's character in issue did not contribute to the jury's verdict, the error was not harmful. Hargrove v. State, 188 Ga. App. 336, 373 S.E.2d 44, 1988 Ga. App. LEXIS 1030 (1988).

Evidence sufficient for criminal attempt to traffic in drugs. — Evidence that the defendant and the defendant's coconspirators arranged and attempted to purchase one kilogram of cocaine and also attempted to purchase 25 pounds of marijuana from an undercover officer and that the defendant showed the undercover officer money to make the purchases was sufficient to support the defendant's convictions for criminal attempt to traffic in cocaine and criminal attempt to traffic in marijuana. Rainey v. State, 319 Ga. App. 858, 738 S.E.2d 685, 2013 Ga. App. LEXIS 93 (2013).

Evidence sufficient for 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 entered 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).

Sentence for conspiracy to traffic in marijuana. — Sentencing provisions in O.C.G.A. § 16-13-33, not the general provisions in O.C.G.A. § 16-4-8, are applicable to the offense of conspiracy to traffic in marijuana. Raftis v. State, 175 Ga. App. 893, 334 S.E.2d 857, 1985 Ga. App. LEXIS 2198 (1985).

Maximum punishment provisions of this article apply to indictment charging conspiracy. — If defendants are indicted under general conspiracy statute, maximum punishment provisions of it apply, but if indictment charges, "Conspiracy to Possess and Sell Marijuana," a violation of provisions of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., is properly charged and maximum punishment provisions of it apply. Jones v. State, 135 Ga. App. 893, 219 S.E.2d 585, 1975 Ga. App. LEXIS 1864 (1975).

Because conspiracy to manufacture methamphetamine was a crime penalized by a special law, the general provisions of the penal code did not apply; thus, under both O.C.G.A. §§ 16-13-30 and 16-13-33, which were mutually exclusive, defendant was properly sentenced to 30 years, which was the maximum sentence allowed. McWhorter v. State, 275 Ga. App. 624, 621 S.E.2d 571, 2005 Ga. App. LEXIS 1056 (2005).

Maximum sentence appropriate. — Defendant's conviction did not have to be reversed on the ground that the indictment alleged one manner of the offense and the evidence showed another manner of the offense as the statute for trafficking in cocaine allowed possession of either pure cocaine or a cocaine mixture, and the conspiracy offense on which defendant was convicted required only that defendant conspire with others to knowingly possess cocaine and that one of the conspirators overtly acted to do so; since that evidence was present, defendant's conviction was not invalid and defendant was eligible for the maximum term for the offense which was the object of the conspiracy, trafficking in cocaine. Allison v. State, 259 Ga. App. 775, 577

S.E.2d 845, 2003 Ga. App. LEXIS 165 (2003), cert. denied, No. S03C0904, 2003 Ga. LEXIS 512 (Ga. May 5, 2003).

Mandatory term not required. — Although O.C.G.A. § 16-13-33 provides for the possible imposition of the same maximum term of imprisonment as would be applicable to the substantive crime, that section does not require the court to impose a mandatory term of imprisonment, or deny the court the discretion it would otherwise have under O.C.G.A. § 16-13-31 in determining whether the sentence it imposes is to be served entirely in prison. Raftis v. State, 175 Ga. App. 893, 334 S.E.2d 857, 1985 Ga. App. LEXIS 2198 (1985).

Fine unauthorized when sentences not probated. — Fines imposed upon convictions of conspiracy to traffic in cocaine and marijuana were unauthorized and void since no part of the sentences was probated. Gonzalez v. State, 201 Ga. App. 437, 411 S.E.2d 345, 1991 Ga. App. LEXIS 1452 (1991).

O.C.G.A. § 16-13-33 contains no provision for imposition of a fine. Gonzalez v. State, 201 Ga. App. 437, 411 S.E.2d 345, 1991 Ga. App. LEXIS 1452 (1991).

Fine as condition of probation authorized. — Even though conviction of conspiracy under O.C.G.A. § 16-13-33 did not authorize imposition of a fine, a fine up to $10,000 was authorized as a condition of probation. Washington v. State, 183 Ga. App. 422, 359 S.E.2d 198, 1987 Ga. App. LEXIS 2011 (1987).

Imposition of $100,000.00 fine as condition of probation was invalid, illegal and void for the reason that, since the offense of attempted trafficking in cocaine is punishable by imprisonment but contains no provision for a fine, the maximum fine which could be imposed as a condition of probation was $10,000.00. Holbert v. State, 177 Ga. App. 461, 340 S.E.2d 25, 1986 Ga. App. LEXIS 1462 (1986).

Imposition of fine precluded. — When the clear language of O.C.G.A. § 16-13-33 precludes the imposition of a fine in conjunction with a prison sentence for conspiracy to violate the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., the preclusion applies equally to attempt and conspiracy. Watson v. State, 276 Ga. 212, 576 S.E.2d 897, 2003 Ga. LEXIS 111 (2003).

Under O.C.G.A. § 16-13-33, a conviction for criminal attempt to violate the Georgia Controlled Substance Act, O.C.G.A. § 16-13-20 et seq., does not authorize the imposition of a fine; therefore, Watson v. State, 256 Ga. App. 789 (2002) is reversed to the extent that it holds to the contrary. Watson v. State, 276 Ga. 212, 576 S.E.2d 897, 2003 Ga. LEXIS 111 (2003).

Improper conviction of multiple conspiracy counts is harmless when sentence is within legal limits for single conspiracy. Price v. State, 247 Ga. 58, 273 S.E.2d 854, 1981 Ga. LEXIS 607 (1981).

Circumstantial evidence sufficient to convict. — Circumstantial evidence linking defendant to codefendant drug pilot, to a warehouse containing weapons, records of the criminal enterprise and aircraft equipment, and to an admitted smuggler of Colombian cocaine, was sufficient for a conviction under O.C.G.A. § 16-13-33. Parrott v. State, 206 Ga. App. 829, 427 S.E.2d 276, 1992 Ga. App. LEXIS 1818 (1992), cert. denied, No. S93C0594, 1993 Ga. LEXIS 297 (Ga. Mar. 18, 1993).

Consent order modifying original sentence was void. — Trial court properly vacated a consent order modifying the defendant's original sentence as such was based upon a mistake of law induced by the defendant personally, and hence, void; moreover, because the defendant was sentenced as a recidivist, the trial court was required to impose a sentence pursuant to O.C.G.A. § 17-10-7(a). Sosebee v. State, 282 Ga. App. 905, 640 S.E.2d 379, 2006 Ga. App. LEXIS 1543 (2006).

RESEARCH REFERENCES

ALR.
When does statute of limitations begin to run against civil action or criminal prosecution for conspiracy, 62 A.L.R.2d 1369.

16-13-34. Promulgation of rules relating to registration and control of controlled substances; registration fees.

The State Board of Pharmacy may promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

History.
Code 1933, § 79A-813, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1982, p. 3, § 16.

Administrative rules and regulations.
Rules of Georgia State Board of Pharmacy, Official Compilation of the Rules and Regulations of the State of Georgia, Rule 480-1-.01 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 21 et seq., 53, 58.

C.J.S.
28 C.J.S., Drugs and Narcotics, §§ 14 et seq., 69 et seq., 213.

U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 301.

16-13-35. General registration requirements.

(a) Every person who manufactures, distributes, or dispenses any controlled substances within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state must obtain annually a registration issued by the State Board of Pharmacy in accordance with its rules.

(b) Persons registered by the State Board of Pharmacy under this article to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with this article.

(c) The following persons need not register and may lawfully possess controlled substances under this article:

(1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouseman, or any em-

ployee thereof, whose possession of any controlled substance is in the usual course of his business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance; and

(4) Officers and employees of this state, or of a political subdivision of this state, or of the United States while acting in the course of their official duties.

(d) The State Board of Pharmacy may waive by rule the requirements for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The State Board of Pharmacy, the director of the Georgia Drugs and Narcotics Agency, or other drug agents designated by the State Board of Pharmacy for this purpose may inspect the establishment of a registrant or applicant for registration in accordance with the State Board of Pharmacy rules and the provisions of this article.

(g) The following persons are registered under this article and are exempt from the registration fee and registration application requirements of this article:

(1) Persons licensed by the State Board of Pharmacy as a pharmacist or a pharmacy under Chapter 4 of Title 26;

(2) Persons licensed as a physician, dentist, or veterinarian under the laws of the state to use, mix, prepare, dispense, prescribe, and administer drugs in connection with medical treatment to the extent provided by the laws of this state; and

(3) An employee, agent, or representative of any person described in paragraph (1) or (2) of this subsection acting in the usual course of his employment or occupation and not on his own account, provided that suspension or revocation of licensure as set forth in paragraphs (1) and (2) of this subsection shall nullify the exemption as set forth in this subsection.

History.
Code 1933, § 79A-814, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1982, p. 3, § 16.

Administrative rules and regulations.
Registration Requirements under Georgia Controlled Substances Act, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Pharmacy, Rule 480-20-.01 et seq.

JUDICIAL DECISIONS

Constitutionality. — As O.C.G.A. § 16-13-35 specifies that certain institutions and persons legally may possess controlled substances, O.C.G.A. § 16-13-20 et seq., is not constitutionally illogical or overbroad. Windfaire, Inc. v. Busbee, 523 F. Supp. 868, 1981 U.S. Dist. LEXIS 15060 (N.D. Ga. 1981).

One lawfully possessing a controlled substance may lawfully possess it out of its original container. Jones v. State, 145 Ga. App. 224, 243 S.E.2d 645, 1978 Ga. App. LEXIS 1929 (1978).

Physicians are authorized to possess controlled substances to the extent they do so as physicians, i.e., to the extent such possession is for some use connected with their medical practice. Felker v. State, 172 Ga. App. 492, 323 S.E.2d 817, 1984 Ga. App. LEXIS 3066 (1984), cert. denied, 471 U.S. 1102, 105 S. Ct. 2328, 85 L. Ed. 2d 846, 1985 U.S. LEXIS 1808 (1985).

Qualification of expert to perform drug analysis. — When at pretrial hearing to determine whether expert designated by appellant was qualified to perform analysis of alleged drugs revealed that the expert was neither licensed, registered, nor otherwise exempted pursuant to O.C.G.A. § 16-13-1 et seq., and after the trial court gave defense counsel approximately 24 hours to determine whether counsel wished to qualify this expert for any procedures which did not require reference samples of the controlled substance, or to qualify another expert, and counsel did neither, it was not an abuse of discretion to deny a motion for independent laboratory analysis. McAdoo v. State, 164 Ga. App. 23, 295 S.E.2d 114, 1982 Ga. App. LEXIS 3260 (1982).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Drugs and Controlled Substances, § 58 et seq.

C.J.S.

28 C.J.S., Drugs and Narcotics, §§ 69, 70, 210 et seq.

U.L.A.

Uniform Controlled Substances Act (U.L.A.) § 302.

ALR.

State law criminal liability of licensed physician for prescribing or dispensing drug or similar controlled substance, 13 A.L.R.5th 1.

16-13-36. Factors considered in determining whether to register manufacturer or distributor.

(a) The State Board of Pharmacy shall register an applicant to manufacture or distribute controlled substances included in Code Sections 16-13-25 through 16-13-29 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the State Board of Pharmacy shall consider the following factors:

(1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) Compliance with applicable state and local law;

(3) Any convictions of the applicant under any federal or state laws relating to any controlled substance;

(4) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against illegal diversion of controlled substances;

(5) Furnishing by the applicant of false or fraudulent material in any application filed under this article;

(6) Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law;

(7) Suspension or revocation of the applicant's registration or license to manufacture, distribute, or dispense controlled substances, drugs, or narcotics in this state or any other state of the United States; and

(8) Any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this Code section does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered under state law to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the law of this state. The State Board of Pharmacy need not require separate registration under this Code section for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this article in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the State Board of Pharmacy satisfactory evidence of that federal registration. Any practitioner conducting research with Schedule I controlled substances must obtain a separate registration with the State Board of Pharmacy.

(d) Compliance by manufacturers and distributors with the provisions of federal law respecting registration (excluding fees) entitles them to be registered under this article.

History.
Code 1933, § 79A-815, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1974, p. 221, § 1; Ga. L. 1977, p. 625, § 8; Ga. L. 1982, p. 3, § 16.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, § 66 et seq.
C.J.S.
28 C.J.S., Drugs and Narcotics, §§ 69, 70, 79 et seq., 210 et seq.
U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 303.

16-13-37. Grounds for suspending or revoking registration; disposition of controlled substances; notification to bureau.

(a) A registration under Code Section 16-13-36 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the State Board of Pharmacy upon a finding that the registrant:

(1) Has furnished false or fraudulent material information in any application filed under this article;

(2) Has been convicted of a felony under any state or federal law relating to any controlled substance;

(3) Has had his federal registration to manufacture, distribute, or dispense controlled substances suspended or revoked;

(4) Has violated any provision of this article or the rules and regulations promulgated under this article; or

(5) Has failed to maintain sufficient controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels.

(b) The State Board of Pharmacy may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the State Board of Pharmacy suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order shall be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances shall be forfeited to the state.

(d) The State Board of Pharmacy shall promptly notify the bureau of all orders suspending or revoking registration and all forfeitures of controlled substances.

History.
Code 1933, § 79A-816, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1974, p. 221, § 1; Ga. L. 1982, p. 3, § 16; Ga. L. 1992, p. 6, § 16.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 69, 70.

C.J.S.
28 C.J.S., Drugs and Narcotics, §§ 69, 70, 87 et seq., 227 et seq.

U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 304.

16-13-38. Procedure for denying, suspending, revoking, or limiting registration; automatic suspension.

(a) Before denying, suspending, revoking, or limiting registration, or refusing a renewal of registration, the State Board of Pharmacy shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, limited, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the State Board of Pharmacy at a time and place not less than 30 days after the date of service of the order; but in the case of a denial of renewal of registration the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal or registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing.

(b) The State Board of Pharmacy shall suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under Code Section 16-13-37 or where renewal of registration is refused if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the State Board of Pharmacy or dissolved by a court of competent jurisdiction.

History.
Code 1933, § 79A-817, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1982, p. 3, § 16.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 66, 67, 71.
C.J.S.
28 C.J.S., Drugs and Narcotics, §§ 69, 70, 87 et seq.

U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 305.

16-13-39. Manufacturers, distributors, and dispensers to maintain records of controlled substances.

Persons registered to manufacture, distribute, or dispense controlled substances under this article shall keep a complete and accurate record of all controlled substances on hand, received, manufactured, sold, dispensed, or otherwise disposed of and shall maintain such records and inventories in conformance with the record-keeping and inventory requirements of federal law and with any rules issued by the State Board of Pharmacy.

History.
Code 1933, § 79A-810, enacted by Ga. L. 1967, p. 296, § 1; Code 1933, § 79A-818, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1982, p. 3, § 16.

Cross references.
Section not superseded by forfeiture law, § 48-15-11.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 64 et seq., 76, 111.
C.J.S.
28 C.J.S., Drugs and Narcotics, §§ 69, 70, 225, 226.

U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 306.

16-13-40. Distribution of Schedule I and II substances.

Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with federal law respecting order forms shall be deemed compliance with this Code section.

History.
Code 1933, § 79A-819, enacted by Ga. L. 1974, p. 221, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 66, 67, 76, 168.

C.J.S.
28A C.J.S., Drugs and Narcotics, § 291 et seq., 490 et seq

U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 307.

16-13-41. Prescriptions.

(a) Except when dispensed directly by a registered practitioner, other than a pharmacy or pharmacist, to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a registered practitioner.

(b) When a practitioner writes a prescription drug order to cause the dispensing of a Schedule II substance, he or she shall include the name and address of the person for whom it is prescribed, the kind and quantity of such Schedule II controlled substance, the directions for taking, the signature, and the name, address, telephone number, and DEA registration number of the prescribing practitioner. Such prescription shall be signed and dated by the practitioner on the date when issued, and the nature of such signature shall be defined in regulations promulgated by the State Board of Pharmacy. Prescription drug orders for Schedule II controlled substances may be transmitted via facsimile machine or other electronic means only in accordance with regulations promulgated by the State Board of Pharmacy in accordance with Code Section 26-4-80 or 26-4-80.1, or in accordance with DEA regulations at 21 C.F.R. 1306.

(c) In emergency situations, as defined by rule of the State Board of Pharmacy, Schedule II drugs may be dispensed upon oral prescription of a registered practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of Code Section 16-13-39. No prescription for a Schedule II substance may be refilled.

(d)(1) Except when dispensed directly by a practitioner, other than a pharmacy or pharmacist, to an ultimate user, a controlled substance included in Schedule III, IV, or V, which is a prescription drug as determined under any law of this state or the Federal Food, Drug and Cosmetic Act, 21 U.S.C. Section 301, 52 Stat. 1040 (1938), shall not be dispensed without a written or oral prescription of a registered practitioner. The prescription shall not be filled or refilled more than six months after the date on which such prescription was issued or be refilled more than five times.

(2) When a practitioner writes a prescription drug order to cause the dispensing of a Schedule III, IV, or V controlled substance, he or she shall include the name and address of the person for whom it is prescribed, the kind and quantity of such controlled substance, the directions for taking, the signature, and the name, address, telephone number, and DEA registration number of the practitioner. Such

prescription shall be signed and dated by the practitioner on the date when issued or may be issued orally, and the nature of the signature of the prescriber shall meet the guidelines set forth in Chapter 4 of Title 26, the regulations promulgated by the State Board of Pharmacy, or both such guidelines and regulations.

(e) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a legitimate medical purpose.

(f) No person shall prescribe or order the dispensing of a controlled substance, except a registered practitioner who is:

(1) Licensed or otherwise authorized by this state to prescribe controlled substances;

(2) Acting in the usual course of his professional practice; and

(3) Prescribing or ordering such controlled substances for a legitimate medical purpose.

(g) No person shall fill or dispense a prescription for a controlled substance except a person who is licensed by this state as a pharmacist or a pharmacy intern acting under the immediate and direct personal supervision of a licensed pharmacist in a pharmacy licensed by the State Board of Pharmacy, provided that this subsection shall not prohibit a registered physician, dentist, veterinarian, or podiatrist authorized by this state to dispense controlled substances as provided in this article if such registered person complies with all record-keeping, labeling, packaging, and storage requirements regarding such controlled substances and imposed upon pharmacists and pharmacies in this chapter and in Chapter 4 of Title 26 and complies with the requirements of Code Section 26-4-130.

(h) It shall be unlawful for any practitioner to issue any prescription document signed in blank. The issuance of such document signed in blank shall be prima-facie evidence of a conspiracy to violate this article. The possession of a prescription document signed in blank by a person other than the person whose signature appears thereon shall be prima-facie evidence of a conspiracy between the possessor and the signer to violate the provisions of this article.

(i)(1) Pharmacists may dispense prescriptions from a remote location for the benefit of an institution that uses a remote automated medication system in accordance with the requirements set forth in the rules and regulations adopted by the State Board of Pharmacy pursuant to paragraph (12.1) of subsection (a) of Code Section 26-4-28.

(2) As used in this subsection, the term "institution" means a skilled nursing facility or a hospice licensed as such under Chapter 7 of Title 31.

History.

Code 1933, § 79A-820, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1979, p. 859, § 10; Ga. L. 1982, p. 3, § 16; Ga. L. 1983, p. 349, § 2; Ga. L. 1985, p. 149, § 16; Ga. L. 1985, p. 1219, § 5; Ga. L. 1986, p. 1031, § 1; Ga. L. 1999, p. 81, § 16; Ga. L. 2003, p. 349, § 7; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2011, p. 308, § 2/HB 457.

Cross references.

Georgia Pharmacy Practice Act, § 26-4-1 et seq.

Prescription drug program defined; cost sharing; denial of coverage; dispensing fees, § 33-24-59.22.

Issuance of prescription drug orders, § 43-34-25.

Medicaid Prescription Drug Bidding and Rebate Program, § 49-4-152.1.

Department contracts to require refund of prescription drug rebates, § 49-4-152.4.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1988, "Federal" was capitalized preceding "Food, Drug and Cosmetic Act" in the first sentence of paragraph (d)(1).

Administrative rules and regulations.

Opioid Treatment Program Clinical Pharmacies, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Pharmacy, Rule 480-18-.01 et seq.

JUDICIAL DECISIONS

O.C.G.A. § 16-13-41(h) was not unconstitutionally vague as applied to a defendant, a physician, who was charged with violating O.C.G.A. § 16-13-42(a)(1) by improperly providing 33 signed prescription forms in blank to the defendant's nurse practitioner in violation of § 16-13-41(h) as that provision broadly included possession of a document by any person other than the one whose signature appeared thereon; thus, a physician's staff member could not be excluded. Raber v. State, 285 Ga. 251, 674 S.E.2d 884, 2009 Ga. LEXIS 95 (2009).

Constitutionality. — Defendant's challenge to the constitutionality of O.C.G.A. §§ 16-13-41 and 16-13-42 on the basis of vagueness failed because the defendant did not contend that the statutes were vague as to the doctor with whom the defendant was charged with conspiring. Hourin v. State, 301 Ga. 835, 804 S.E.2d 388, 2017 Ga. LEXIS 711 (2017).

Pharmacy license as defense to drug possession charge. — Whether an individual has a license or is otherwise lawfully permitted to have in one's possession narcotic drugs under O.C.G.A. § 16-13-1 et seq. is a matter of defense and not an element of the offense. Woods v. State, 233 Ga. 347, 211 S.E.2d 300, 1974 Ga. LEXIS 760 (1974).

State must prove prescription was not for legitimate medical purpose. Strong v. State, 246 Ga. 612, 272 S.E.2d 281, 1980 Ga. LEXIS 1224 (1980).

Indictment did not violate equal protection. — When the defendant was indicted for unlawfully prescribing a controlled substance for other than a legitimate medical purpose by an officer of the Georgia Bureau of Investigation rather than officers of the State Board of Pharmacy or Drug and Narcotics Agency, there was no denial of equal protection of the law, there being no different treatment for some persons in defendant's circumstances. Strong v. State, 246 Ga. 612, 272 S.E.2d 281, 1980 Ga. LEXIS 1224 (1980).

Evidence sufficient for showing dependency created. — Evidence that the course of treatment the defendant, a doctor, prescribed for the victim would create a physiological dependence in any patient, even one who did not have a prior addictive tendency, and that the victim exhibited signs of drug abuse that would have been recognized by a treating physician was sufficient to support conviction under O.C.G.A. § 16-13-41(f). Chua v. State, 289 Ga. 220, 710 S.E.2d 540, 2011 Ga. LEXIS 436 (2011).

Failure to verify prescription. — Trial court erred when the court granted a family medical center's motion to dismiss for failure to file an expert affidavit as the patient's claim against the center for failing to verify the prescription after the

center was contacted by the pharmacy was not one of professional negligence for which an affidavit was required. Carter v. Cornwell, 338 Ga. App. 662, 791 S.E.2d 447, 2016 Ga. App. LEXIS 528 (2016).

OPINIONS OF THE ATTORNEY GENERAL

Nurse may relay practitioner's order by telephone. — When the registered practitioner has actually ordered a controlled substance with the nurse merely acting as the relaying link in the communication process through use of the telephone, former Code 1933, §§ 79A-102 and 79A-820 (see now O.C.G.A. § 16-13-41(f)) did not specifically proscribe this activity. 1979 Op. Att'y Gen. No. 79-32.

Nurses may not write or telephone in prescriptions by referring to written protocol. 1988 Op. Att'y Gen. No. 88-9.

Unlicensed personnel in health care institutions. — Under former Code 1933, §§ 84-906(b), 84-1012 and T. 79A (see now O.C.G.A. § 43-34-26(b), and § 16-13-1 et seq.), the administration of medications by unlicensed personnel in health care institutions would not be in violation of state law. 1975 Op. Att'y Gen. No. 75-44.

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 19 et seq., 26, 40, 77 et seq.

C.J.S.

28 C.J.S., Drugs and Narcotics, §§ 65 et seq., 99 et seq., 210 et seq.

U.L.A.

Uniform Controlled Substances Act (U.L.A.) § 308.

ALR.

Charge of illegal sale of narcotics or intoxicating liquor predicated upon defendant's issuance of prescription therefor otherwise than in the course of his professional practice, 133 A.L.R. 1140.

Construction of provision of Uniform Narcotic Drug Act requiring a physician's prescription as a prerequisite to a pharmacist's sale of narcotics, 10 A.L.R.3d 560.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 A.L.R.3d 528; 62 A.L.R.4th 16.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

16-13-42. Unauthorized distribution and dispensation; refusal or failure to keep records; refusal to permit inspection; unlawfully maintaining structure or place; penalty.

(a) It is unlawful for any person:

(1) Who is subject to the requirements of Code Section 16-13-35 to distribute or dispense a controlled substance in violation of Code Section 16-13-41;

(2) Who is a registrant to manufacture a controlled substance not authorized by his registration or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this article;

(4) To refuse an entry into any premises for any inspection authorized by this article; or

(5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place which is resorted to by persons using controlled substances in violation of this article for the purpose of using these substances, or which is used for keeping or selling them in violation of this article.

(b) Any person who violates this Code section is guilty of a felony and, upon conviction thereof, may be imprisoned for not more than five years, fined not more than $25,000.00, or both.

History.
Code 1933, § 79A-821, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1978, p. 1668, § 10.

JUDICIAL DECISIONS

O.C.G.A. § 16-13-41(h) was not unconstitutionally vague as applied to a defendant, a physician, who was charged with violating O.C.G.A. § 16-13-42(a)(1) by improperly providing 33 signed prescription forms in blank to the defendant's nurse practitioner in violation of § 16-13-41(h) as that provision broadly included possession of a document by any person other than the one whose signature appeared thereon; thus, a physician's staff member could not be excluded. Raber v. State, 285 Ga. 251, 674 S.E.2d 884, 2009 Ga. LEXIS 95 (2009).

Constitutionality. — Defendant's challenge to the constitutionality of O.C.G.A. §§ 16-13-41 and 16-13-42 on the basis of vagueness failed because the defendant did not contend that the statutes were vague as to the doctor with whom the defendant was charged with conspiring. Hourin v. State, 301 Ga. 835, 804 S.E.2d 388, 2017 Ga. LEXIS 711 (2017).

Mere possession of limited quantities of controlled substance within structure. — In order to support a conviction under O.C.G.A. § 16-13-42(a)(5) for maintaining a residence or other structure or place used for keeping controlled substances, the evidence must show that one of the purposes for maintaining the structure was the keeping of the controlled substance; thus, the mere possession of limited quantities of a controlled substance within the residence or structure is insufficient to support a conviction under paragraph (a)(5). Barnes v. State, 255 Ga. 396, 339 S.E.2d 229, 1986 Ga. LEXIS 537 (1986).

Something more than isolated instance of proscribed activity required. — In order to support a conviction under O.C.G.A. § 16-13-42 for maintaining a residence or other structure or place used for selling controlled substances, the evidence must be sufficient to support a finding of something more than a single, isolated instance of the proscribed activity. Barnes v. State, 255 Ga. 396, 339 S.E.2d 229, 1986 Ga. LEXIS 537 (1986).

Evidence found on single occasion may show continuing crime. — In prosecutions under O.C.G.A. § 16-13-42(a)(5), there is no inflexible rule that evidence found in a store, shop, etc., only on a single occasion cannot be

sufficient to show a crime of a continuing nature. Barnes v. State, 255 Ga. 396, 339 S.E.2d 229, 1986 Ga. LEXIS 537 (1986).

Evidence insufficient that home was used for drug purposes. — Conviction for knowingly keeping a dwelling place for using controlled substances was not supported by sufficient evidence since the only evidence was that the building in question was the defendant's home; there was no evidence one of the purposes of the home was to provide the defendant a place to use and keep controlled substances. Chua v. State, 289 Ga. 220, 710 S.E.2d 540, 2011 Ga. LEXIS 436 (2011).

Evidence insufficient to show defendant kept or maintained house. — Since there was no evidence that the defendant kept or maintained the house, the defendant was entitled to reversal of the conviction for knowingly keeping a dwelling for the purpose of using controlled substances. Scott v. State, 326 Ga. App. 115, 756 S.E.2d 220, 2014 Ga. App. LEXIS 133 (2014).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 19 et seq., 31, 40, 45, 168, 196.

C.J.S.

28 C.J.S., Drugs and Narcotics, §§ 188 et seq., 210 et seq. 28A C.J.S., Drugs and Narcotics, § 263 et seq.

U.L.A.

Uniform Controlled Substances Act (U.L.A.) § 402.

ALR.

What constitutes "possession" of a narcotic drug proscribed by § 2 of the Uniform Narcotic Drug Act, 91 A.L.R.2d 810.

Offense of aiding and abetting illegal possession of drugs or narcotics, 47 A.L.R.3d 1239.

Permitting unlawful use of narcotics in private home as criminal offense, 54 A.L.R.3d 1297.

Validity and construction of statute creating presumption or inference of intent to sell from possession of specified quantity of illegal drugs, 60 A.L.R.3d 1128.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 A.L.R.3d 528; 62 A.L.R.4th 16.

Narcotics conviction as crime of moral turpitude justifying disbarment or other disciplinary action against attorney, 99 A.L.R.3d 288.

Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 A.L.R.3d 854.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

Validity, construction, and application of state or local law prohibiting maintenance of vehicle for purpose of keeping or selling controlled substances, 31 A.L.R.5th 760.

16-13-43. Unauthorized distribution; penalties.

(a) It is unlawful for any person:

(1) Who is a registrant to distribute a controlled substance classified in Schedule I or II, except pursuant to an order form as required by Code Section 16-13-40;

(2) To use, in the course of the manufacture or distribution of a controlled substance, a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or theft;

(4) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document or record required to be kept or filed under this article;

(5) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing, upon any drug or container or labeling thereof so as to render the drug a counterfeit substance; or

(6) To withhold information from a practitioner that such person has obtained a controlled substance of a similar therapeutic use in a concurrent time period from another practitioner.

(b) Any person who violates this Code section is guilty of a felony and, upon conviction thereof, may be imprisoned for not more than eight years or fined not more than $50,000.00, or both.

History.

Code 1933, § 79A-819, enacted by Ga. L. 1967, p. 296, § 1; Code 1933, § 79A-822, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1978, p. 1668, § 11; Ga. L. 1985, p. 1219, § 6; Ga. L. 1987, p. 261, § 6.

JUDICIAL DECISIONS

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General Consideration
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General Consideration

Merger inappropriate when prescriptions picked up on different dates. — Although the accomplice's conduct in fraudulently representing to the pharmacist that the accomplice had a doctor's authority to call in the prescriptions for the defendant occurred in a single telephone call, the defendant's conduct of acquiring possession of that prescription by going to the pharmacy to pick up that prescription on that date and on a separate occasion 10 days later was not the same conduct for the purpose of deciding whether the offenses merged; thus, Count 8 of obtaining a controlled substance by fraud did not merge with Counts 1 or 2 for sentencing purposes. Hopkins v. State, 328 Ga. App. 844, 761 S.E.2d 896, 2014 Ga. App. LEXIS 574 (2014).

Forged Prescriptions

Acquiring possession of controlled substance through forged prescription is essence of O.C.G.A. § 16-13-43(a)(3). State v. O'Neal, 156 Ga. App. 384, 274 S.E.2d 575, 1980 Ga. App. LEXIS 2991 (1980).

O.C.G.A. § 16-13-43(a)(3) did not repeal O.C.G.A. § 16-9-1 by implication. — Repeal by implication is not favored, and if later Act does not embrace whole subject matter of prior Act and is not entirely repugnant to it, the court should apply a construction that will give the two statutes concurrent efficacy. State v. O'Neal, 156 Ga. App. 384, 274 S.E.2d 575, 1980 Ga. App. LEXIS 2991 (1980).

Prosecution for violation of paragraph (a)(3) as bar to reindictment and reprosecution. — If former Code 1933, § 79A-822 (see now O.C.G.A. § 16-13-43) was exclusive section to be applied in a given case, former Code 1933, § 26-1701 (see now O.C.G.A. § 16-9-1) still generally proscribed part of same conduct, and any

attempt to reindict and reprosecute would be barred by a plea of former jeopardy under former Code 1933, § 26-507 (see now O.C.G.A. § 16-1-8). State v. O'Neal, 156 Ga. App. 384, 274 S.E.2d 575, 1980 Ga. App. LEXIS 2991 (1980).

Evidence sufficient for obtaining controlled substance by fraud conviction. — Evidence was sufficient to convict the defendant of five counts of obtaining a controlled substance by fraud because, although only the defendant's alleged accomplice testified that the defendant possessed the requisite criminal intent to obtain possession of the controlled substances by fraud and deception, the state presented evidence of corroborating circumstances that proved the defendant's intent as the defendant went to the pharmacy on one occasion to pick up a medication that was clearly labeled as having been dispensed for the defendant, purportedly on the authority of a doctor who had never provided care for the defendant. Hopkins v. State, 328 Ga. App. 844, 761 S.E.2d 896, 2014 Ga. App. LEXIS 574 (2014).

New trial properly denied. — Since the jury was properly instructed as to the charged offense of criminal attempt to obtain possession of a controlled substance by forgery, the defendant did not request that the word "forgery" be defined, and the defendant did not take the position that forgery was a lesser-included offense of the crime of attempting to obtain possession of a controlled substance by forgery, a new trial was properly denied; further, the term "forgery" was not so obscure or technical that it required the court to sua sponte define the term for the jury. Sosebee v. State, 282 Ga. App. 905, 640 S.E.2d 379, 2006 Ga. App. LEXIS 1543 (2006).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 19 et seq., 31, 40, 45, 168, 196.

C.J.S.

28 C.J.S., Drugs and Narcotics, § 188 et seq. 28A C.J.S., Drugs and Narcotics, § 263 et seq.

U.L.A.

Uniform Controlled Substances Act (U.L.A.) § 403.

ALR.

What constitutes "possession" of a narcotic drug proscribed by § 2 of the Uniform Narcotic Drug Act, 91 A.L.R.2d 810.

Offense of aiding and abetting illegal possession of drugs or narcotics, 47 A.L.R.3d 1239.

Validity and construction of statute creating presumption or inference of intent to sell from possession of specified quantity of illegal drugs, 60 A.L.R.3d 1128.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 A.L.R.3d 528; 62 A.L.R.4th 16.

Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 A.L.R.3d 854.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

16-13-44. Penalties under other laws.

Any penalty imposed for violation of this article is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

History.

Code 1933, § 79A-823, enacted by Ga. L. 1974, p. 221, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, § 207.
C.J.S.
28A C.J.S., Drugs and Narcotics, §§ 483 et seq., 490 et seq.
U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 404.
ALR.
Liability of druggist for injury in consequence of mistake, 31 A.L.R. 1336; 44 A.L.R. 1482.
Liability of druggist for punitive damages, 31 A.L.R. 1362.
Narcotics conviction as crime of moral turpitude justifying disbarment or other disciplinary action against attorney, 99 A.L.R.3d 288.
Druggist's civil liability for injuries sustained as result of negligence in incorrectly filling drug prescriptions, 3 A.L.R.4th 270.

16-13-45. Powers of enforcement personnel.

Any officer or employee of the State Board of Pharmacy designated by the director of the Georgia Drugs and Narcotics Agency may:

(1) Carry firearms in the performance of his official duties;

(2) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state;

(3) Make arrests without warrant for any offense under this article committed in his presence or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this article which may constitute a felony;

(4) Make seizures of property pursuant to this article; or

(5) Perform other law enforcement duties as the State Board of Pharmacy or the director of the Georgia Drugs and Narcotics Agency designates.

History.
Code 1933, § 79A-824, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1982, p. 3, § 16.

Cross references.
Enforcement powers of Georgia Drugs and Narcotics Agency, § 26-4-29.

OPINIONS OF THE ATTORNEY GENERAL

Control of dangerous drugs is vested with State Board of Pharmacy and chief inspector (now director of Georgia Drugs and Narcotics Agency). 1975 Op. Att'y Gen. No. 75-23.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, § 202.
C.J.S.
22 C.J.S., Criminal Procedure and Rights of the Accused, § 15. 94 C.J.S.,

Weapons, § 51 et seq. 28 C.J.S., Drugs and Narcotics, §§ 69, 70. 79 C.J.S., Searches and Seizures, § 134 et seq. 98 C.J.S., Witnesses, § 20 et seq.

U.L.A.

Uniform Controlled Substances Act (U.L.A.) § 501.

16-13-46. Administrative inspections and warrants.

(a) Issuance and execution of inspection warrants shall be as follows:

(1) A judge of the superior, state, city, or magistrate court, or any municipal officer clothed by law with the powers of a magistrate, upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting inspections authorized by this article, or rules promulgated under this article, and seizures of property appropriate to the inspections. For the purpose of the issuance of inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this article, or rules promulgated under this article, sufficient to justify inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer, drug agent, or employee of the State Board of Pharmacy having knowledge of the facts alleged, sworn to before the judicial officer and establishing the grounds for issuing the warrant. If the judicial officer is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, registrant, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(B) Be directed to persons authorized by Code Section 16-13-45 to execute it;

(C) Command the persons to whom it is directed to inspect the area, premises, building, registrant, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(D) Identify the item or types of property to be seized, if any; and

(E) Designate the judicial officer to whom it shall be returned;

(3) A warrant issued pursuant to this Code section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If

property is seized pursuant to a warrant, a copy shall be provided upon request to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. A copy of the inventory shall be delivered upon request to the person from whom or from whose premises the property was taken and to the applicant for the warrant; and

(4) The judicial officer who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the superior court for the county in which the inspection was made.

(b) The State Board of Pharmacy, the director of the Georgia Drugs and Narcotics Agency or drug agents may make inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this Code section only, "controlled premises" means:

(A) Places where persons registered or exempted from registration requirements under this article are required to keep records; and

(B) Places, including factories, warehouses, establishments, and conveyances, in which persons registered or exempted from registration requirements under this article are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance;

(2) When authorized by an inspection warrant issued pursuant to subsection (a) of this Code section, an officer or employee designated by the State Board of Pharmacy or the director of the Georgia Drugs and Narcotics Agency, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an inspection;

(3) When authorized by an inspection warrant, an officer or employee designated by the State Board of Pharmacy or the director of the Georgia Drugs and Narcotics Agency may:

(A) Inspect and copy records required by this article to be kept;

(B) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers, and labeling found therein, and, except as provided in paragraph (5) of subsection (b) of this Code section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this article; and

(C) Inventory any stock of any controlled substance therein and obtain samples thereof;

(4) This Code section does not prevent the inspection without a warrant of books and records pursuant to an administrative inspection in accordance with subsection (c) of this Code section, nor does it prevent entries and inspections, including seizures of property, without a warrant:

(A) If the owner, operator, or agent in charge of the controlled premises consents;

(B) In situations presenting imminent danger to health or safety;

(C) In situations involving inspection of conveyance if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(D) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(E) In all other situations in which a warrant is not constitutionally required; and

(5) An inspection authorized by this Code section shall not extend to financial data, sales data other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

(c) The State Board of Pharmacy, its members, or duly authorized agents or drug agents shall have the power to inspect, without a warrant, in a lawful manner at all reasonable hours, any pharmacy or other place licensed by the State Board of Pharmacy pursuant to Chapter 4 of Title 26 for the purpose:

(1) Of determining if any of the provisions of this article or any rule or regulation promulgated under its authority is being violated;

(2) Of securing samples or specimens of any drug or medical supplies, after first paying or offering to pay for such samples or specimens; and

(3) Of securing other such evidence as may be needed for an administrative proceedings action, as provided by this article.

History.
Code 1933, § 79A-825, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1982, p. 3, § 16; Ga. L. 1983, p. 884, § 3-16; Ga. L. 1992, p. 6, § 16; Ga. L. 1999, p. 81, § 16; Ga. L. 2011, p. 752, § 16/HB 142.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, § 202.
C.J.S.
28 C.J.S., Drugs and Narcotics, §§ 69, 70, 225, 226. 79 C.J.S., Searches and Seizures, § 134 et seq.
U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 502.
ALR.
Entrapment to commit offense with respect to narcotics law, 33 A.L.R.2d 883.

16-13-47. Injunctions.

(a) The superior courts of this state may exercise jurisdiction to restrain or enjoin violations of this article.

(b) The defendant may demand a trial by jury for an alleged violation of an injunction or restraining order under this Code section.

History.
Code 1933, § 79A-826, enacted by Ga. L. 1974, p. 221, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, § 215. 47 Am. Jur. 2d, Jury, § 82.
C.J.S.
28 C.J.S., Drugs and Narcotics, § 145. 43A C.J.S., Injunctions, §§ 300, 484, 485. 50A C.J.S., Juries, § 17 et seq.
U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 503.

16-13-48. Cooperative arrangements with federal and other state agencies.

(a) The State Board of Pharmacy shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(3) Cooperate with the bureau by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records, other than medical treatment records, of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state, and local law enforcement purposes; and

(4) Conduct or promote programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the bureau relating to the regulatory functions of this article, including results of inspections conducted by it, may be relied and acted upon by the State Board of Pharmacy or drug agents in the exercise of its or their regulatory functions under this article.

History.
Code 1933, § 79A-827, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1974, p. 221, § 1; Ga. L. 1982, p. 3, § 16.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, § 216 et seq.

U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 504.

ALR.
Federal prosecutions based on manufacture, importation, transportation, possession, sale, or use of LSD, 22 A.L.R.3d 1325.

16-13-49. Declared items of contraband; forfeiture.

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

(1) "Controlled substance" shall have the same meaning as set forth in Code Section 16-13-21 and shall include marijuana, as such term is defined in Code Section 16-13-21.

(2) "Enterprise" means any person, sole proprietorship, partnership, corporation, trust, association, or other legal entity created under the laws of the United States or any foreign nation or a group of individuals associated in fact although not a legal entity and includes illicit as well as licit enterprises and governmental as well as other entities.

(3) "Proceeds" shall have the same meaning as set forth in Code Section 9-16-2.

(4) "Property" shall have the same meaning as set forth in Code Section 9-16-2.

(5) "United States" shall have the same meaning as set forth in Code Section 9-16-2.

(b) Except as provided in subsection (d) of this Code section, the following are declared to be contraband and no person shall have a property right in them:

(1) Any controlled substances, raw materials, or controlled sub-

stance analogs that have been manufactured, distributed, dispensed, possessed, or acquired in violation of this article;

(2) Any property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of this article and any proceeds;

(3) Any property located in this state which was, directly or indirectly, used or intended for use in any manner to facilitate a violation of this article or the laws of the United States relating to controlled substances that is punishable by imprisonment for more than one year and any proceeds;

(4) Any interest, security, claim, or property or contractual right of any kind affording a source of influence over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of in violation of this article or the laws of the United States relating to controlled substances that is punishable by imprisonment for more than one year and any proceeds;

(5) Any property found in close proximity to any controlled substance or other property subject to forfeiture under this Code section; and

(6) Any weapon available for any use in any manner to facilitate a violation of this article.

(c) Any property subject to forfeiture pursuant to subsection (b) of this Code section shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9.

(d) Property shall not be subject to forfeiture under this Code section for a violation involving only one gram or less of a mixture containing cocaine or four ounces or less of marijuana unless such property was used to facilitate a transaction in or a purchase of or sale of a controlled substance.

(e) In addition to persons authorized to seize property pursuant to Code Section 9-16-6, property which is subject to forfeiture under this Code section may be seized by the director of the Georgia Drugs and Narcotics Agency or by any drug agent of this state or any political subdivision thereof who has power to make arrests or execute process or a search warrant issued by any court having jurisdiction over the property.

(f) Controlled substances included in Schedule I which are contraband and any controlled substance whose owners are unknown shall be summarily forfeited to the state. The court may include in any judgment of conviction under this article an order forfeiting any controlled substance involved in the offense to the extent of the defendant's interest.

History.

Code 1981, § 16-13-49, enacted by Ga. L. 2015, p. 693, § 2-22/HB 233.

Cross references.

Civil forfeiture of proceeds and property, § 16-6-13.3.

Land bank authority, § 48-4-60 et seq.

Editor's notes.

Ga. L. 2015, p. 693, § 2-22/HB 233, repealed former Code Section 16-13-49, pertaining to forfeiture, and enacted the present Code section. The former Code section was based on Code 1933, § 79A-828, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1975, p. 919, §§ 1, 2; Ga. L. 1979, p. 879, §§ 1-3; Ga. L. 1981, p. 180, § 3; Ga. L. 1982, p. 3, § 16; Ga. L. 1982, p. 2273, § 1; Ga. L. 1982, p. 2325, § 2; Ga. L. 1983, p. 469, § 1; Ga. L. 1986, p. 451, § 1; Ga. L. 1988, p. 958, § 1; Ga. L. 1991, p. 886, § 1; Ga. L. 1992, p. 6, § 16; Ga. L. 1993, p. 1434, § 1; Ga. L. 2000, p. 1225, § 5; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 362, § 30; Ga. L. 2002, p. 1039, §§ 1A-1C; Ga. L. 2002, p. 1286, § 1; Ga. L. 2003, p. 191, § 7; Ga. L. 2004, p. 488, § 3.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For note, "Crime and Offense: Controlled Substances: Provide for the Distribution of Forfeited Real Property; Authorize the Acquisition of Forfeited Real Property by Land Bank Authorities," see 19 Georgia St. U.L. Rev. 92 (2002).

For note, "Crime and Offense: Relating to Forfeiture of Certain Contraband Property; Change Provisions Relating to Exemptions; Change Certain Provisions Relating to Forfeiture of Certain Contraband Property Relative to Controlled Substances; To Provide for Specific Repeal of Certain Related Provisions," see 19 Georgia St. U.L. Rev. 115 (2002).

For article on the 2015 enactment of this Code section, see 32 Georgia St. U. L. Rev. 1 (2015).

For article, "Crimes of Suspicion," see 72 Emory L.J. 1429 (2023).

JUDICIAL DECISIONS

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1933, § 79A-828 and former O.C.G.A. § 16-13-49 are included in the annotations for this Code section.

Purpose of former O.C.G.A. § 16-13-49 was: (1) the prompt disposition of property subject to forfeiture under the statute; and (2) the protection of property interests of innocent owners as defined by the statute. Yoder v. State, 211 Ga. App. 226, 438 S.E.2d 689, 1993 Ga. App. LEXIS 1454 (1993) (decided under former O.C.G.A. § 16-13-49).

Time requirement is a requirement for the benefit and protection of property owners. Turner v. State, 234 Ga. App. 878, 508 S.E.2d 223, 1998 Ga. App. LEXIS 1380 (1998) (decided under former O.C.G.A. § 16-13-49).

Purpose of the mandatory time requirement is to ensure a speedy resolution of contested forfeiture cases in the courts as well as a speedy resolution of property rights. Turner v. State, 234 Ga. App. 878, 508 S.E.2d 223, 1998 Ga. App. LEXIS 1380 (1998) (decided under former O.C.G.A. § 16-13-49).

Former O.C.G.A. § 16-13-49 was to be construed as directory rather than mandatory. Lang v. State, 168 Ga. App.

General Consideration (Cont'd)

693, 310 S.E.2d 276, 1983 Ga. App. LEXIS 3434 (1983); Hill v. State, 178 Ga. App. 563, 343 S.E.2d 776, 1986 Ga. App. LEXIS 1702 (1986) (decided under former O.C.G.A. § 16-13-49).

Former O.C.G.A. § 16-13-49 was directory, and substantial compliance was sufficient. State v. Jackson, 197 Ga. App. 619, 399 S.E.2d 88, 1990 Ga. App. LEXIS 1384 (1990) (decided under former O.C.G.A. § 16-13-49).

Strict construction. — Because it is a special statutory proceeding, the forfeiture statute is strictly construed. State v. Henderson, 263 Ga. 508, 436 S.E.2d 209, 1993 Ga. LEXIS 790 (1993) (decided under former O.C.G.A. § 16-13-49).

Construction of former O.C.G.A. § 16-13-49(i) and (n). — Construing former O.C.G.A. § 16-13-49(i) and (n) in pari materia, the subsections were susceptible of but one reasonable construction; namely, that the district attorney shall give notice of the seizure; that the district attorney may serve the notice upon the owner by certified mail; and that, if the owner of the property desired to file a claim, the owner must do so within 30 days of the date of the second publication of the notice; otherwise, the property is forfeited. In any event, the 30-day period in which to file a claim plainly began to run from the date of the second publication. Weaver v. State, 299 Ga. App. 718, 683 S.E.2d 361, 2009 Ga. App. LEXIS 747 (2009), cert. denied, No. S10C0024, 2010 Ga. LEXIS 128 (Ga. Feb. 1, 2010) (decided under former O.C.G.A. § 16-13-49).

Venue. — In a forfeiture proceeding, testimony that a seized vehicle was in the custody of the Lowndes County Sheriff's Department in Lowndes County, Georgia, was sufficient to prove venue because, under former O.C.G.A. § 16-13-49(c)(2), venue was proper in any county where the forfeited property was located or would be during the pendency of the action. Turner v. State of Ga., 265 Ga. App. 40, 592 S.E.2d 864, 2004 Ga. App. LEXIS 8 (2004) (decided under former O.C.G.A. § 16-13-49).

Complaint sufficient. — When the state, by amendment, included a verification, stated that the property was seized during the execution of a search warrant on a residence in a particular town, identified the police force acting as custodian of the items, stated the property was in the jurisdiction of a particular court within the county, and stated that the defendant drove the truck to the place of seizure and had filed a claim to it, thus inferentially identifying the defendant as the owner of the property, the complaint was properly held not to be deficient. Eaves v. State, 236 Ga. App. 279, 511 S.E.2d 621, 1999 Ga. App. LEXIS 131 (1999) (decided under former O.C.G.A. § 16-13-49).

Because the forfeiture statute declared as contraband property that was, directly or indirectly, used or intended for use in any manner to facilitate a drug violation, the complaint made out a prima facie case for civil forfeiture of the property as contraband; the complaint alleged that items were seized in an investigation involving the conspiracy to traffic cocaine and marijuana, which were violations of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq. Arreola-Soto v. State of Ga., 314 Ga. App. 165, 723 S.E.2d 482, 2012 Ga. App. LEXIS 141 (2012), cert. denied, No. S12C1048, 2012 Ga. LEXIS 593 (Ga. June 18, 2012) (decided under former O.C.G.A. § 16-13-49).

Applicability of default judgment statute. — Former O.C.G.A. § 16-13-49 provided a special statutory proceeding to which default was not applicable; therefore, the default judgment statute (O.C.G.A. § 9-11-55) did not apply to the forfeiture proceedings under former § 16-13-49. Hubbard v. State, 201 Ga. App. 213, 411 S.E.2d 44, 1991 Ga. App. LEXIS 1300 (1991), cert. denied, No. S92C0051, 1991 Ga. LEXIS 888 (Ga. Nov. 1, 1991); Turner v. State, 213 Ga. App. 309, 444 S.E.2d 372, 1994 Ga. App. LEXIS 572 (1994) (decided under former O.C.G.A. § 16-13-49).

Government's interest vests when property used in criminal act. — When property is subject to forfeiture for violation of the law, title vests absolutely in the government on the date of the

illegal act. English v. State, 202 Ga. App. 751, 415 S.E.2d 659, 1992 Ga. App. LEXIS 150 (1992), cert. denied, No. S92C0652, 1992 Ga. LEXIS 305 (Ga. Apr. 6, 1992) (decided under former O.C.G.A. § 16-13-49).

Payment of fine from money in custodia legis not a forfeiture. — Trial court possesses the inherent power to enter an order directing that money in custodia legis be used to pay a defendant's fine, and such order did not result in a forfeiture. Ward v. State, 195 Ga. App. 166, 393 S.E.2d 21, 1990 Ga. App. LEXIS 432 (1990) (decided under former O.C.G.A. § 16-13-49).

In rem proceeding. — Condemnation forfeiture is an in rem proceeding rather than an in personam action, and it is jurisdiction over the property rather than the owner that is essential. Lang v. State, 168 Ga. App. 693, 310 S.E.2d 276, 1983 Ga. App. LEXIS 3434 (1983) (decided under former O.C.G.A. § 16-13-49).

Forfeiture is an in rem proceeding. Hill v. State, 178 Ga. App. 563, 343 S.E.2d 776, 1986 Ga. App. LEXIS 1702 (1986) (decided under former O.C.G.A. § 16-13-49).

In rem civil forfeiture proceeding under former O.C.G.A. § 16-13-49 did not require a conviction against the property owner be proved. Orange v. State of Ga., 319 Ga. App. 516, 736 S.E.2d 477, 2013 Ga. App. LEXIS 3 (2013) (decided under former O.C.G.A. § 16-13-49).

Actual sale was not necessary to support forfeiture under former O.C.G.A. § 16-13-49(e), overruling Carr v. State, 212 Ga. App. 36, 441 S.E. 2d 85 (1994). The state does need, however, to show a strong nexus between the property and the alleged violation, such as where the property in question is being used to grow a large amount of marijuana for sale, even though no actual sale takes place. Rabern v. State, 221 Ga. App. 874, 473 S.E.2d 547, 1996 Ga. App. LEXIS 738 (1996) (decided under former O.C.G.A. § 16-13-49).

Vehicle is subject to forfeiture: (1) when it is used by its owner to facilitate the sale of controlled substances; or (2) when used by an operator to facilitate the sale of controlled substances with the owner's knowledge or consent. State v. Croom, 168 Ga. App. 145, 308 S.E.2d 427, 1983 Ga. App. LEXIS 2711 (1983) (decided under former O.C.G.A. § 16-13-49).

Defendant's vehicle was subject to forfeiture when there was evidence to support a finding that cocaine found on the ground next to the vehicle came from the truck and that the vehicle was contraband. Hinton v. State, 224 Ga. App. 49, 479 S.E.2d 424, 1996 Ga. App. LEXIS 1276 (1996), cert. denied, No. S97C0597, 1997 Ga. LEXIS 396 (Ga. Apr. 24, 1997) (decided under former O.C.G.A. § 16-13-49).

Evidence that the defendant drove the vehicle to an apartment to participate in prohibited drug activity and that the defendant intended to leave the apartment in the same manner supported a determination that the vehicle was used or was intended to be used, directly or indirectly, to facilitate a violation of the Controlled Substances Act, O.C.G.A. § 16-13-20 et seq. Bettis v. State, 228 Ga. App. 120, 491 S.E.2d 155, 1997 Ga. App. LEXIS 1048 (1997) (decided under former O.C.G.A. § 16-13-49).

Trial court did not err in ordering forfeiture of three vehicles based on evidence that over an approximate one-week period of time, the defendant was involved in three controlled buys of suspected cocaine from the vehicles. Jones v. State, 249 Ga. App. 64, 547 S.E.2d 725, 2001 Ga. App. LEXIS 448 (2001) (decided under former O.C.G.A. § 16-13-49).

There was evidence to support the trial court's finding that property found in a vehicle was used to facilitate a drug transaction involving more than four ounces of marijuana and/or found in close proximity to more than four ounces of marijuana, thereby subjecting the property to forfeiture to the State of Georgia pursuant to former O.C.G.A § 16-13-49 because the state produced evidence that 17.6 ounces of marijuana and a blunt were found in the vehicle. Sumner v. State, 306 Ga. App. 140, 701 S.E.2d 585, 2010 Ga. App. LEXIS 885 (2010) (decided under former O.C.G.A. § 16-13-49).

Trial court misinterpreted former O.C.G.A. § 16-13-49(d)(6) in holding that the defendant's vehicle, which was in close proximity to the defendant's apartment in

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which drugs were seized, was not subject to forfeiture because the state lacked evidence that the vehicle was in any way connected to the unlawful activity; no such connection was required. State of Ga. v. West, 331 Ga. App. 745, 771 S.E.2d 432, 2015 Ga. App. LEXIS 246 (2015) (decided under former O.C.G.A. § 16-13-49).

Defendant's vehicle was not subject to forfeiture since it was neither used nor intended for use to transport, hold or conceal the contraband but was used only to transport the defendant to the site where the cocaine was located and the sale eventually took place. State v. Hamm, 193 Ga. App. 184, 387 S.E.2d 344, 1989 Ga. App. LEXIS 1422 (1989) (decided under former O.C.G.A. § 16-13-49).

Personal property within dwelling. — Evidence sufficient for conviction of burglary after the defendant attempted to remove items the defendant claimed were the defendant's personal property from a house subject to forfeiture after the forfeiture order had lapsed. Underwood v. State, 221 Ga. App. 93, 470 S.E.2d 699, 1996 Ga. App. LEXIS 293 (1996) (decided under former O.C.G.A. § 16-13-49).

Proximity of money to drugs establishes prima facie case. — Showing by the state that money is in close proximity to drugs is sufficient to establish a prima facie case in an action for condemnation of the money. Moore v. State, 209 Ga. App. 89, 432 S.E.2d 597, 1993 Ga. App. LEXIS 774 (1993), cert. denied, No. S93C1506, 1993 Ga. LEXIS 990 (Ga. Oct. 8, 1993) (decided under former O.C.G.A. § 16-13-49).

Plaintiff's burden of proof in forfeiture action based upon controlled substances crime. — Plaintiff in a forfeiture action has the initial burden of presenting a prima facie case that the defendant's property is subject to forfeiture. In order to meet this burden, the plaintiff must show by a preponderance of the evidence it presents that the essential elements of a controlled substances crime are present. The plaintiff must also show by a preponderance of the evidence it presents that the defendant's property was substantially connected to the criminal activity. Georgia v. Six Hundred Forty Thousand, Seven Hundred Sixty-Eight Dollars in United States Currency, 712 F. Supp. 180, 1988 U.S. Dist. LEXIS 16289 (N.D. Ga. 1988) (decided under former O.C.G.A. § 16-13-49).

State's burden of proof. — Forfeiture action under former O.C.G.A. § 16-13-49 was a civil proceeding, and the state, as plaintiff, is required to prove its case by a preponderance of the evidence rather than by the higher burden of proof applicable to criminal cases; the state met its burden of proof after the trial court inferred the following from defendant's invocation of defendant's right against self-incrimination: (1) defendant used defendant's vehicle to transport more than four ounces of marijuana and cocaine; (2) the vehicle, the cash, and the stereo system were in close proximity to more than four ounces of marijuana and cocaine; and (3) defendant either consented to the conduct of possession of marijuana and cocaine with intent to distribute, or defendant knew or reasonably should have known of said conduct. Sanders v. State, 259 Ga. App. 422, 577 S.E.2d 94, 2003 Ga. App. LEXIS 121 (2003) (decided under former O.C.G.A. § 16-13-49).

Because the case was an in rem proceeding for property valued at more than $25,000, the pleading requirement of former O.C.G.A. § 16-13-49(o) applied, not O.C.G.A. § 16-13-49(n); the state's statutory burden, in part, was to allege the essential elements of the violation, not the essential facts supporting the alleged offense. Arreola-Soto v. State of Ga., 314 Ga. App. 165, 723 S.E.2d 482, 2012 Ga. App. LEXIS 141 (2012), cert. denied, No. S12C1048, 2012 Ga. LEXIS 593 (Ga. June 18, 2012) (decided under former O.C.G.A. § 16-13-49).

Shifting burden of proof. — Once the plaintiff has met its initial burden of presenting a prima facie case, the burden shifts to the intervenor to show that the seized property is not subject to forfeiture. Georgia v. Six Hundred Forty Thousand, Seven Hundred Sixty-Eight Dollars in United States Currency, 712 F. Supp. 180, 1988 U.S. Dist. LEXIS 16289 (N.D. Ga.

1988) (decided under former O.C.G.A. § 16-13-49).

State set forth a prima facie case. — State set out a prima facie case for forfeiture because the presence of a large amount of currency in close proximity with firearms, ammunition, and 16.3 grams of marijuana packaged in three small bags, a manner commonly used for distribution, set out a prima facie case that the marijuana was used to facilitate a transaction in or purchase of or sale of marijuana. Glenn v. State of Ga., 320 Ga. App. 214, 739 S.E.2d 692, 2013 Ga. App. LEXIS 155 (2013) (decided under former O.C.G.A. § 16-13-49).

Preserving interests of innocent owners. — Term "owner" as used in former O.C.G.A. § 16-13-49(a)(7) applied to owners to the extent of their interest in property subject to forfeiture. Thus, the state may condemn the property interests of wrongdoers, and those otherwise failing to qualify as innocent owners under the statute, while at the same time preserving the interests of innocent owners. State v. Jackson, 197 Ga. App. 619, 399 S.E.2d 88, 1990 Ga. App. LEXIS 1384 (1990) (decided under former O.C.G.A. § 16-13-49).

Trial court's order of forfeiture entered against a wife was reversed, given evidence that the wife sufficiently showed a status as an innocent owner, lacking the knowledge that the husband was selling drugs from the vehicle seized and the wife's knowledge of the husband's prior criminal activity failed to serve as notice of future criminal activity; furthermore, to hold that the wife acquired knowledge that the husband would use the vehicle in a manner giving rise to its forfeiture would misconstrue the statute and undermine the rights of innocent spouses. Love v. State of Ga., 281 Ga. App. 664, 637 S.E.2d 81, 2006 Ga. App. LEXIS 1199 (2006), cert. denied, No. S07C0203, 2006 Ga. LEXIS 944 (Ga. Nov. 6, 2006) (decided under former O.C.G.A. § 16-13-49).

Proof required of alleged innocent owner. — Co-owner who asserted the innocent owner exception under former O.C.G.A. § 16-13-49 had a two-fold burden. First, in order to establish standing to contest the forfeiture, the co-owner had the burden of proving the nature and extent of the co-owner's interest in the property. Second, the co-owner must prove by a preponderance of the evidence that the co-owner was entitled to the exception as defined by the former statute. State v. Jackson, 197 Ga. App. 619, 399 S.E.2d 88, 1990 Ga. App. LEXIS 1384 (1990) (decided under former O.C.G.A. § 16-13-49).

Claimant who appeared and demanded possession as owner of an automobile which was the subject of a civil forfeiture action established a sufficient ownership interest, as against the state, by proof of claimant's payment of valuable consideration and receipt of the certificate of title from the transferor, even though the claimant failed to register the vehicle. State v. Banks, 215 Ga. App. 828, 452 S.E.2d 533, 1994 Ga. App. LEXIS 1390 (1994) (decided under former O.C.G.A. § 16-13-49).

In a forfeiture action, the court did not cast the burden on the state of establishing that the vehicle owner had knowledge of the drug sale, whereas the burden was on the owner to establish that the owner did not have such knowledge, where the court found in favor of the owner because it found credible the owner's testimony that the owner did not have such knowledge. State v. Ledford, 217 Ga. App. 272, 456 S.E.2d 757, 1995 Ga. App. LEXIS 393 (1995) (decided under former O.C.G.A. § 16-13-49).

When there was evidence to support the conclusion that the owner of the property was not a bona fide purchaser for value, the property was subject to forfeiture. Maynard v. State, 217 Ga. App. 344, 457 S.E.2d 253, 1995 Ga. App. LEXIS 430 (1995); Salem v. State, 232 Ga. App. 886, 503 S.E.2d 62, 1998 Ga. App. LEXIS 837 (decided under former O.C.G.A. § 16-13-49).

When the evidence was that a vehicle which was the subject of forfeiture actually belonged to the defendant, and that the supposed owner was a strawman whom the defendant sought to use in order to avoid the loss of defendant's car as a result of the car's use in the transportation of drugs, it was sufficient to support a finding that the car belonged to the defendant. Mitchell v. State, 236 Ga. App.

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335, 511 S.E.2d 880, 1999 Ga. App. LEXIS 159 (1999) (decided under former O.C.G.A. § 16-13-49).

Because: (1) the state presented sufficient evidence that both parents were aware of their son's prior arrest for possession of marijuana with the intent to distribute while using the father's truck and the mother's cell phone, and knew that defendant had in fact used the truck to commit that crime; and (2) the father had been previously warned that his truck could be subject to forfeiture if his son was again caught using it while engaging in drug sales, upon the occurrence of the same, the parents failed to present clear and convincing evidence of their innocent owner status to avoid forfeiture of both their truck and the cell phone. Little v. State of Ga., 279 Ga. App. 329, 630 S.E.2d 903, 2006 Ga. App. LEXIS 536 (2006) (decided under former O.C.G.A. § 16-13-49).

To have standing to contest a forfeiture, a party must have at least some property interest in the subject matter of the condemnation proceeding. That interest may be one of ownership, lease holder, or secured party, but there must be some substantial interest greater than an asserted "superior right of possession" resulting from the mere fact that the property was seized from one's residence. Chester v. State, 168 Ga. App. 618, 309 S.E.2d 897, 1983 Ga. App. LEXIS 2869 (1983) (decided under former O.C.G.A. § 16-13-49).

Claimant did not have standing to contest forfeiture when the claimant failed to demonstrate an ownership interest in the property as recognized by former O.C.G.A. § 16-13-49. Lockett v. State, 218 Ga. App. 289, 460 S.E.2d 857, 1995 Ga. App. LEXIS 686 (1995) (decided under former O.C.G.A. § 16-13-49).

Because the claimant had a possessory interest in the claimant's child's Social Security check, as bailee of the funds, claimant had standing to contest the forfeiture of the property. Jackson v. State, 231 Ga. App. 320, 498 S.E.2d 159, 1998 Ga. App. LEXIS 434 (1998), cert. denied, No. S98C0888, 1998 Ga. LEXIS 602 (Ga. May 22, 1998) (decided under former O.C.G.A. § 16-13-49).

When the trial court found that the appellant did not own a sum of cash ordered to be forfeited and appellant did not challenge that finding, the appellant had no standing to challenge the trial court's conclusion that the cash was subject to forfeiture. Holmes v. State, 233 Ga. App. 872, 506 S.E.2d 157, 1998 Ga. App. LEXIS 1437 (1998) (decided under former O.C.G.A. § 16-13-49).

When a wife gave cash to her husband to pay an attorney, but the husband used the money to bribe a police officer, the wife relinquished control of the cash and lacked standing to challenge the forfeiture of the money. Belvin v. State, 258 Ga. App. 790, 575 S.E.2d 707, 2002 Ga. App. LEXIS 1572 (2002), cert. denied, No. S03C0537, 2003 Ga. LEXIS 220 (Ga. Feb. 24, 2003) (decided under former O.C.G.A. § 16-13-49).

Party must have at least some property interest in the subject matter of the condemnation proceeding; a person who has no interest in property cannot complain of the property's forfeiture because as a stranger to the property, that person is a mere member of the public volunteering to challenge the entitlement of the state to the property. Shepard v. State of Ga., 267 Ga. App. 604, 600 S.E.2d 691, 2004 Ga. App. LEXIS 722 (2004) (decided under former O.C.G.A. § 16-13-49).

No public record allowed a criminal defendant's parent to perfect an implied trust (based on the parent's allegation that the parent paid for cars but titled them in the son's name for insurance purposes) against a bona fide purchaser for value; so, in a former O.C.G.A. § 16-13-49 forfeiture proceeding of two cars, the parent was not the statutory "owner" or "interest holder" as those terms were defined in O.C.G.A. §§ 11-9-102 and 16-13-49 and the parent thus lacked standing to contest the forfeiture. McFarley v. State of Ga., 268 Ga. App. 621, 602 S.E.2d 341, 2004 Ga. App. LEXIS 979 (2004) (decided under former O.C.G.A. § 16-13-49).

Trial court erred in finding that a defendant and the mother had standing as claimants to assert ownership in currency

that was the subject of a civil forfeiture proceeding by the state, as it was found in close proximity to seized marijuana and other property subject to forfeiture during execution of a search warrant in defendant's apartment, as there was no showing by defendant and the mother that the funds which the mother allegedly had previously given to defendant to use on college expenses of defendant's brother were the same funds that were the seized currency. State of Ga. v. Richardson, 276 Ga. App. 784, 625 S.E.2d 52, 2005 Ga. App. LEXIS 1320 (2005), cert. denied, No. S06C0758, 2006 Ga. LEXIS 299 (Ga. May 8, 2006), cert. denied, 549 U.S. 1054, 127 S. Ct. 688, 166 L. Ed. 2d 517, 2006 U.S. LEXIS 9052 (2006) (decided under former O.C.G.A. § 16-13-49).

Innocent ownership not proven. — In a civil forfeiture action under former O.C.G.A. § 16-13-49, a wife did not show that she was an innocent owner of money and a pickup truck. There was no evidence either that the money was given solely to the husband or that the money belonged jointly to the spouses, and although the truck was in the wife's name, there was evidence that the truck was held jointly in that the husband drove the truck. Webb v. State, 300 Ga. App. 29, 684 S.E.2d 115, 2009 Ga. App. LEXIS 1031 (2009).

While the defendant's parent produced evidence that the parent was the title owner of the vehicle that was forfeited to the state and that the parent had allowed the defendant to use the vehicle for the weekend, the evidence supported the trial court's findings that the parent held the vehicle jointly, in common, or in community with the defendant based on their shared ownership and use of the vehicle; the defendant installed a "boom box" in the trunk of the vehicle, which occupied the entire trunk, the defendant installed custom tires and rims on the vehicle, which the parent admitted belonged to the defendant, the defendant painted the vehicle a few days before the defendant's arrest, and the defendant's personal effects were in the vehicle. Sumner v. State, 306 Ga. App. 140, 701 S.E.2d 585, 2010 Ga. App. LEXIS 885 (2010) (decided under former O.C.G.A. § 16-13-49).

Trial court erred in denying the state's in rem forfeiture action and adjudicating a husband an innocent owner of a vehicle the state seized when his wife was arrested for possessing methamphetamine and other crimes because the husband lacked title to the car, and any other interest he could have had was in community with the wife since the husband assigned his interest in the car to the wife and the certificate itself listed the purchase date as one day before the seizure; thus, pursuant to the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-32, the assignment to the wife was completed one day before the seizure, and the husband had no ownership interest in the vehicle on that day. State v. Centers, 310 Ga. App. 413, 713 S.E.2d 479, 2011 Ga. App. LEXIS 586 (2011) (decided under former O.C.G.A. § 16-13-49).

Bailee of seized property has a possessory interest in the property and has standing to contest the forfeiture thereof. Lawrence v. State, 231 Ga. App. 739, 501 S.E.2d 254, 1998 Ga. App. LEXIS 532 (1998) (decided under former O.C.G.A. § 16-13-49).

Question for jury. — Although agent did not observe manner in which defendant arrived with cocaine, either prior to meeting inside restaurant or from inside motor home, it would be reasonable to infer, since defendant owned the motor home, that defendant drove it into the parking lot while the cocaine was in defendant's physical possession; and resolution of use or intended use of motor home for transportation or facilitation of transportation of the cocaine was duty of jury. State v. Belcher, 165 Ga. App. 139, 299 S.E.2d 57, 1983 Ga. App. LEXIS 1793 (1983) (decided under former O.C.G.A. § 16-13-49).

State in forfeiture proceeding does not occupy status of creditor or lienholder so that security interest of intervenor, where not properly recorded, is subordinated to it. Hallman v. State, 141 Ga. App. 527, 233 S.E.2d 839, 1977 Ga. App. LEXIS 1977 (1977) (decided under former O.C.G.A. § 16-13-49).

State in forfeiture proceeding is not in position of creditor or lienholder. State v. Sewell, 155 Ga. App. 734, 272 S.E.2d 514, 1980 Ga. App. LEXIS 2766 (1980) (decided under former O.C.G.A. § 16-13-49).

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State's interest in forfeiture proceeding is only to prevent guilty party from further misusing property. State v. Sewell, 155 Ga. App. 734, 272 S.E.2d 514, 1980 Ga. App. LEXIS 2766 (1980) (decided under former O.C.G.A. § 16-13-49).

Collateral attack of legality of underlying search. — Collateral attack on the legality of the underlying search may be made in the context of forfeiture proceedings pursuant to former O.C.G.A. § 16-13-49 when the validity of the search has not been previously adjudicated in a criminal action. Pitts v. State, 207 Ga. App. 606, 428 S.E.2d 650, 1993 Ga. App. LEXIS 310 (1993) (decided under former O.C.G.A. § 16-13-49).

Postjudgment attack on forfeiture. — Defendant's motion in a criminal proceeding for return of money that was forfeited in civil proceeding was properly denied since the proper method of making a postjudgment attack on a forfeiture is through O.C.G.A. § 9-11-60. Youree v. State, 220 Ga. App. 453, 469 S.E.2d 208, 1996 Ga. App. LEXIS 25 (1996) (decided under former O.C.G.A. § 16-13-49).

Security interest not forfeited when secured party unaware of illegal use of vehicle. — Since there was no evidence that secured party was aware that car subject to security interest was used for illegal transport of marijuana, security interest was not forfeited. State v. Sewell, 155 Ga. App. 734, 272 S.E.2d 514, 1980 Ga. App. LEXIS 2766 (1980) (decided under former O.C.G.A. § 16-13-49).

Failure to file security agreement concerning airplane with FAA. — Fact that security agreement concerning airplane had not been registered or recorded with the FAA, an agency of the department of transportation, did not bar the secured party from protecting its security interest in a condemnation proceeding pursuant to former O.C.G.A. § 16-13-49. F & M Bank v. State, 167 Ga. App. 77, 306 S.E.2d 11, 1983 Ga. App. LEXIS 2398 (1983) (decided under former O.C.G.A. § 16-13-49).

Participation in preliminary hearing constitutes notice. — Assistant district attorney's participation in the preliminary hearing at which testimony concerning the seizure was elicited, constituted notice to the district attorney. State v. Luke, 183 Ga. App. 182, 358 S.E.2d 272, 1987 Ga. App. LEXIS 1927 (1987), superseded by statute as stated in Robinson v. State, 209 Ga. App. 446, 433 S.E.2d 707, 1993 Ga. App. LEXIS 910 (1993), superseded by statute as stated in Turner v. State, 213 Ga. App. 309, 444 S.E.2d 372, 1994 Ga. App. LEXIS 572 (1994) (decided under former O.C.G.A. § 16-13-49).

Notice held sufficient for out-of-state residents. — Publication of forfeiture proceedings for two weeks in a newspaper with local circulation in Lowndes County, as provided for in former O.C.G.A. § 16-13-49(e), was not insufficient notice to the defendants as out-of-state residents so as to be violative of the due process provisions of the state and federal constitutions. Not only did the state publish notice of the proceedings, but it also attempted, unsuccessfully, personal service, at addresses which were supplied by the defendants themselves to drug agents at the time of arrest. Pack v. State, 187 Ga. App. 210, 369 S.E.2d 530, 1988 Ga. App. LEXIS 556 (1988) (decided under former O.C.G.A. § 16-13-49).

No standing for general unsecured creditor. — General unsecured creditor does not have a legally cognizable interest sufficient to grant the creditor standing to challenge a forfeiture action against seized currency. Crenshaw v. State, 206 Ga. App. 271, 425 S.E.2d 660, 1992 Ga. App. LEXIS 1606 (1992), cert. denied, No. S93C0383, 1993 Ga. LEXIS 85 (Ga. Jan. 14, 1993) (decided under former O.C.G.A. § 16-13-49).

No retroactive application of former O.C.G.A. § 16-13-49(o)(3). — See Jones v. State, 210 Ga. App. 140, 435 S.E.2d 507, 1993 Ga. App. LEXIS 1099 (1993) (decided under former O.C.G.A. § 16-13-49).

Forfeiture inappropriate. — Forfeiture provisions of former O.C.G.A. § 16-13-49 did not apply to transactions involving counterfeit controlled substances. State v. White, 216 Ga. App. 183, 454 S.E.2d 542, 1995 Ga. App. LEXIS 58 (1995) (decided under former O.C.G.A. § 16-13-49).

Forfeiture of 5.1 acres of land, including a house, based on the recovery of a few immature marijuana plants growing on a small portion of the property was excessive under U.S. Const., amend 8, and mitigation of the forfeiture was not practicable. State v. Evans, 225 Ga. App. 402, 484 S.E.2d 70, 1997 Ga. App. LEXIS 407 (1997) (decided under former O.C.G.A. § 16-13-49).

Forfeiture appropriate. — When it was probable defendant would have left the site with the marijuana in the pickup had defendant not been arrested, even though the arrest prevented the pickup from actually being used to transport the contraband, the court did not err in ordering the truck's forfeiture. Lanier v. State, 212 Ga. App. 51, 441 S.E.2d 87, 1994 Ga. App. LEXIS 127 (1994) (decided under former O.C.G.A. § 16-13-49).

Evidence of defendant's possession of methamphetamine was sufficient to support the forfeiture of defendant's truck. Gearin v. State, 218 Ga. App. 390, 461 S.E.2d 562, 1995 Ga. App. LEXIS 743 (1995) (decided under former O.C.G.A. § 16-13-49).

Evidence that marijuana was to be transported in defendant's vehicle and that money found in defendant's pocket was to be used to pay defendant's drug courier was sufficient to show that the items were contraband subject to forfeiture. Michael v. State, 226 Ga. App. 288, 486 S.E.2d 406, 1997 Ga. App. LEXIS 584 (1997) (decided under former O.C.G.A. § 16-13-49).

A CD and checking account found in close proximity to marijuana in a private residence were subject to forfeiture after the owner could not prove acquisition thereof as a bona fide purchaser. Salem v. State, 232 Ga. App. 886, 503 S.E.2d 62, 1998 Ga. App. LEXIS 837 (decided under former O.C.G.A. § 16-13-49).

State showed a strong nexus between currency and the claimant's activity of selling marijuana sufficient to support forfeiture of the currency since the currency was seized at the time the defendant was arrested for possession of marijuana, and although no actual drug transaction was observed, the arresting officers had received a tip that the defendant was selling drugs, the defendant fled with a paper bag in defendant's hands when the officers stopped the defendant, the officers later found the bag containing currency some ten feet away from where the officers arrested the defendant, and 1.1 ounces of bagged marijuana were found in the defendant's car. Morris v. State, 234 Ga. App. 683, 507 S.E.2d 532, 1998 Ga. App. LEXIS 1337 (1998), cert. denied, No. S99C0229, 1999 Ga. LEXIS 204 (Ga. Feb. 19, 1999) (decided under former O.C.G.A. § 16-13-49).

Trial court's judgment of condemnation was supported by a preponderance of the evidence including: authentication by a forensic chemist that a sample submitted was cocaine, and the laboratory report showed 67.2 grams of the cocaine to have 78 percent purity; testimony by an officer that the cocaine was field tested and by the drug's color, the officer knew that the drugs were going to be a good purity; evidence showed that defendant was able to supply a kilo of cocaine on very short notice, leading to an inference that defendant was regularly engaged in the drug trade; defendant's explanations for the presence of the large amount of cash in defendant's apartment were not reasonable given the earnings defendant reported to the Internal Revenue Service; defendant's explanation for having a bulletproof vest and the gun was not reasonable, and defendant had no explanation for the presence of cocaine in a vehicle owned by the defendant. Davis v. State, 256 Ga. App. 299, 568 S.E.2d 161, 2002 Ga. App. LEXIS 891 (2002) (decided under former O.C.G.A. § 16-13-49).

In a civil in rem forfeiture proceeding, because the trial court agreed that due process required a judicial finding of some degree of criminal responsibility on the part of the owner of contraband before the government could constitutionally take title to the property, the trial court properly found as a factual matter that the owner at issue possessed the requisite degree of criminal responsibility to justify a forfeiture, and could not, therefore, demonstrate reversible error on appeal. Walden v. State of Ga., 283 Ga. 148, 656 S.E.2d 801, 2008 Ga. LEXIS 37 (2008) (decided under former O.C.G.A. § 16-13-49).

General Consideration (Cont'd)

Trial court's order of forfeiture was upheld on appeal and thus was not subject to dismissal as: (1) the trial court was presented with testimony from witnesses other than the affiant, as well as sufficient other evidence, to support the order; (2) the alleged property owner waived any defense of insufficient service; and (3) an alternative code section did not afford the owner relief. McDowell v. State of Ga., 290 Ga. App. 538, 660 S.E.2d 24, 2008 Ga. App. LEXIS 268 (2008) (decided under former O.C.G.A. § 16-13-49).

In a civil forfeiture proceeding, the trial court properly entered an order of forfeiture and disposition of seized property as the challenging claimant failed to file a claim to the property within 30 days from the second publication notice. Therefore, the claim was untimely. Weaver v. State, 299 Ga. App. 718, 683 S.E.2d 361, 2009 Ga. App. LEXIS 747 (2009), cert. denied, No. S10C0024, 2010 Ga. LEXIS 128 (Ga. Feb. 1, 2010) (decided under former O.C.G.A. § 16-13-49).

Trial court's innocent owner finding upheld. — Because the plain language of former O.C.G.A. § 16-13-49 supported the trial court's conclusion that the owner was permitted under former § 16-13-49(o)(3) to file an answer in the state's in rem proceeding seeking forfeiture of a truck the state seized, and as to which the owner claimed "innocent owner" status, and the owner filed a timely claim, the appeal court rejected the state's contrary contention. State of Ga. v. Howell, 288 Ga. App. 176, 653 S.E.2d 330, 2007 Ga. App. LEXIS 1082 (2007), cert. denied, No. S08C0454, 2008 Ga. LEXIS 224 (Ga. Feb. 25, 2008) (decided under former O.C.G.A. § 16-13-49).

Double jeopardy. — Forfeiture proceeding under former O.C.G.A. § 16-13-49 was legitimately a civil sanction and did not constitute punishment for purposes of double jeopardy. Murphy v. State, 267 Ga. 120, 475 S.E.2d 907, 1996 Ga. LEXIS 712 (1996); Lundy v. State, 226 Ga. App. 197, 482 S.E.2d 516, 1997 Ga. App. LEXIS 282 (1997) (decided under former O.C.G.A. § 16-13-49).

Constructive notice permissible. — Property owner was not entitled to relief under Fed. R. Civ. P. 60(b)(4) on the ground that the court's judgment was inconsistent with due process of law because: (1) the court did not improperly invoke the fugitive disentitlement doctrine; (2) Supp. R. Adm. or Mar. Cl. & Asset Forfeiture Actions G(4)(a)(iii)-(iv) required publication of the forfeiture proceeding once a week for three consecutive weeks in a newspaper generally circulated in the district where the action was filed, and those procedures were fully complied with as written notice was served upon petitioner's property by the United States Marshals and was printed for three weeks in the Atlanta Journal Constitution, a local newspaper in general circulation in the district; and (3) the notice was sufficient under CAFRA, 18 U.S.C. § 985 since a copy of the complaint was posted on the defendant's property by the United States Marshals and because at the time of the original forfeiture action, there were serious criminal charges pending against the property owner, and law enforcement officers were actively attempting to locate the defendant, the government therefore exercised due diligence attempting to locate petitioner, and thus, constructive notice under Georgia law, former O.C.G.A. § 16-13-49(i)(2), was permissible. United States v. 5054 Stoney Point Lake, 731 F. Supp. 2d 1345, 2010 U.S. Dist. LEXIS 92036 (N.D. Ga. 2010) (decided under former O.C.G.A. § 16-13-49).

Constitutionality

Former O.C.G.A. § 16-13-49 did not violate Ga. Const. 1983, Art. III, Sec. V, Para. III, which forbid treatment of more than one subject matter in a single statute. Lang v. State, 168 Ga. App. 693, 310 S.E.2d 276, 1983 Ga. App. LEXIS 3434 (1983) (decided under former O.C.G.A. § 16-13-49).

Former O.C.G.A. § 16-13-49 afforded adequate notice and hearing so as to comport with due process require-

ments of federal Constitution and the Georgia Constitution. Tant v. State, 247 Ga. 264, 275 S.E.2d 312, 1981 Ga. LEXIS 596 (1981) (decided under former O.C.G.A. § 16-13-49).

Contrary to a firearms owner's assertion, the publication method selected by the Georgia General Assembly did not need to ensure actual notice in order for former O.C.G.A. § 16-13-49(n) to comport with due process, and former O.C.G.A. § 16-13-49(n) was not required to provide for notice to be printed in the county's legal organ in order to satisfy due process; publication in a newspaper of general circulation was sufficient to satisfy the requirements of due process. Brewer v. State of Ga., 281 Ga. 283, 637 S.E.2d 677, 2006 Ga. LEXIS 976 (2006) (decided under former O.C.G.A. § 16-13-49).

Former O.C.G.A. § 16-13-49(c) did not violate the equal protection and due process clauses of the United States Constitution. Porter v. State, 196 Ga. App. 31, 395 S.E.2d 360, 1990 Ga. App. LEXIS 800 (1990) (decided under former O.C.G.A. § 16-13-49).

Constitutional prohibition against excessive fines applies to civil in rem forfeitures. Shook v. State, 221 Ga. App. 151, 470 S.E.2d 535, 1996 Ga. App. LEXIS 400 (1996) (decided under former O.C.G.A. § 16-13-49).

Finding that forfeited currency was used in the purchase of cocaine was supported by the evidence; thus, the forfeiture did not violate the excessive fines clause. Lundy v. State, 226 Ga. App. 197, 482 S.E.2d 516, 1997 Ga. App. LEXIS 282 (1997) (decided under former O.C.G.A. § 16-13-49).

Direction of the Court of Appeals upon remand of a forfeiture proceeding requiring the trial court to hold a hearing to determine whether the forfeiture violated the constitutional prohibition against excessive fines was mandatory, and the trial court had no discretion to refuse to comply with the direction. Rabern v. State, 231 Ga. App. 84, 497 S.E.2d 631, 1998 Ga. App. LEXIS 381 (1998) (decided under former O.C.G.A. § 16-13-49).

Finding that a portion of real property was used to facilitate drug activities did not make the entire tract of land contraband and, thus, forfeiture of a residence and the 5.2 acres of land upon which the residence stood was excessive. Rabern v. State, 242 Ga. App. 804, 531 S.E.2d 373, 2000 Ga. App. LEXIS 354 (2000) (decided under former O.C.G.A. § 16-13-49).

Former O.C.G.A. § 16-13-49 did not violate excessive fines provision. — Based on a property owner's willful blindness to the illegal growing of marijuana on the subject property, and the owner's knowledge of the past use of the property for criminal purposes, the forfeiture did not amount to an unconstitutional excessive fine; moreover, the harshness of the forfeiture was not grossly disproportionate to the gravity of the offense on which it was based or to the owner's own culpability. Howell v. State of Ga., 283 Ga. 24, 656 S.E.2d 511, 2008 Ga. LEXIS 41 (2008) (decided under former O.C.G.A. § 16-13-49).

Right against self-incrimination. — Defendant failed to show how requiring the defendant to conform to the pleading requirements of former O.C.G.A. § 16-13-49(o)(3) violated the defendant's Fifth Amendment right against self-incrimination. Jett v. State, 230 Ga. App. 655, 498 S.E.2d 274, 1998 Ga. App. LEXIS 250 (1998) (decided under former O.C.G.A. § 16-13-49).

Defendant was not forced to be a witness against self in criminal case when the trial court allowed admission of certain answers defendant gave in a petition filed in a related civil forfeiture proceeding that defendant owned certain property, including illegal drugs seized at defendant's residence, as defendant had the option of seeking a stay of the civil forfeiture proceeding while the criminal case was going on, but chose not to do so. Clemons v. State, 257 Ga. App. 96, 574 S.E.2d 535, 2002 Ga. App. LEXIS 1059 (2002) (decided under former O.C.G.A. § 16-13-49).

Statute does not violate the confrontation clause. — Trial court did not err in admitting hearsay evidence in a forfeiture hearing, pursuant to former O.C.G.A. § 16-13-49(s)(1), where officers who testified therein were not called upon to prove that defendant violated the law but for the limited purpose of explaining

Constitutionality (Cont'd)

the basis for seeking a warrant; therefore, the trial court correctly rejected defendant's challenge that the statute violated defendant's constitutional right to face defendant's accusers. Banks v. State of Ga., 277 Ga. 543, 592 S.E.2d 668, 2004 Ga. LEXIS 71 (2004) (decided under former O.C.G.A. § 16-13-49).

Procedural due process does not require a preseizure hearing in cases of contraband condemnation. State v. Bailey, 233 Ga. 795, 213 S.E.2d 661, 1975 Ga. LEXIS 1446 (1975) (decided under former Code 1933, § 79A-828).

Former language "or possessed in violation of § 16-13-32.2" was invalid. Windfaire, Inc. v. Busbee, 523 F. Supp. 868, 1981 U.S. Dist. LEXIS 15060 (N.D. Ga. 1981) (decided under former O.C.G.A. § 16-13-49).

Provisions mandating proceedings without jury trial. — Former O.C.G.A. § 16-13-49(o)(5) and (p)(6), mandating drug forfeiture proceedings "without a jury trial," violate neither the Seventh Amendment to the federal Constitution, whose range is over federal drug forfeiture actions, nor Ga. Const. 1983, Art. I, Sec. I, Para. XI, as the right to jury trial in drug forfeiture proceedings did not exist in 1798. Swails v. State, 263 Ga. 276, 431 S.E.2d 101, 1993 Ga. LEXIS 489, cert. denied, 510 U.S. 1011, 114 S. Ct. 602, 126 L. Ed. 2d 567, 1993 U.S. LEXIS 7657 (1993) (decided under former O.C.G.A. § 16-13-49).

No unconstitutional taking resulted from lawful forfeiture. — Because a forfeiture of real property was not made under the power of eminent domain, and the trial court properly ruled that the forfeiture was proper, no takings clause issue was presented which entitled the property owner to just compensation. Howell v. State of Ga., 283 Ga. 24, 656 S.E.2d 511, 2008 Ga. LEXIS 41 (2008) (decided under former O.C.G.A. § 16-13-49).

Procedure

Applicability of subsection (e). — Former O.C.G.A. § 16-13-49(e) had no application where it was the federal government, and not the state, which brought the forfeiture proceeding. Freeman v. City of Atlanta, 195 Ga. App. 641, 394 S.E.2d 784, 1990 Ga. App. LEXIS 658 (1990), superseded by statute as stated in Turner v. State, 213 Ga. App. 309, 444 S.E.2d 372, 1994 Ga. App. LEXIS 572 (1994) (decided under former O.C.G.A. § 16-13-49).

Applicability of § 17-5-54. — When the claimant asserted a right to property which was the subject of a forfeiture proceeding under former O.C.G.A. § 16-13-49, the state's filing of a dismissal did not terminate the proceeding, and the sheriff was not authorized to apply for an order disposing of the property as "abandoned" pursuant to O.C.G.A. § 17-5-54. Boone v. Sheriff of Lowndes County, 232 Ga. App. 601, 502 S.E.2d 535, 1998 Ga. App. LEXIS 768 (1998) (decided under former O.C.G.A. § 16-13-49).

Libel condemnation proceeding was a special statutory proceeding governed by former O.C.G.A. § 16-13-49, which must be strictly construed. Lang v. State, 168 Ga. App. 693, 310 S.E.2d 276, 1983 Ga. App. LEXIS 3434 (1983) (decided under former O.C.G.A. § 16-13-49).

Failure to initiate proceedings. — Claimant's sole remedy for failure by the district attorney to initiate forfeiture action within sixty days of seizure of the property was to request return of the property pending further proceeding under former O.C.G.A. § 16-13-49 and, absent such request, any error made by the superior court in determining if or when seizure of the property had occurred prior to the final order in the forfeiture proceeding was harmless. Turner v. State, 213 Ga. App. 309, 444 S.E.2d 372, 1994 Ga. App. LEXIS 572 (1994) (decided under former O.C.G.A. § 16-13-49).

Although the state failed to bring proceedings in a timely manner for forfeiture of a car and money seized when drugs were found in the car, the car owner was not entitled to have the forfeiture proceedings dismissed; the property was always subject to further forfeiture proceedings, which took place, and since the car owner failed to show any harm resulting from the state's failure to initiate the proceed-

ings in a timely manner, the order upholding the seizure was affirmed. Johnson v. State of Ga., 266 Ga. App. 171, 596 S.E.2d 693, 2004 Ga. App. LEXIS 330 (2004), cert. denied, No. S04C1212, 2004 Ga. LEXIS 572 (Ga. June 28, 2004) (decided under former O.C.G.A. § 16-13-49).

Condemnation proceeding is designed to be expeditious and a party may not belatedly tender an answer to petition under general rules of civil practice. State v. Britt Caribe, Ltd., 154 Ga. App. 476, 268 S.E.2d 702, 1980 Ga. App. LEXIS 2236 (1980), overruled in part, Ford v. State, 271 Ga. 162, 516 S.E.2d 778, 1999 Ga. LEXIS 504 (1999) (decided under former Code 1933, § 79A-828).

Proceedings were timely when it was shown that the state commenced the forfeiture proceedings within 60 days of the seizure. Owens v. State, 241 Ga. App. 140, 525 S.E.2d 150, 1999 Ga. App. LEXIS 1490 (1999), cert. denied, No. S00C0477, 2000 Ga. LEXIS 345 (Ga. Apr. 28, 2000) (decided under former O.C.G.A. § 16-13-49).

In a forfeiture action, the trial court did not abuse its discretion in finding that the 60-day time requirement to conduct a hearing under former O.C.G.A. § 16-13-49(o)(5) did not commence until the date that the claimant's father was served with the complaint and summons and not the date when the claimant was served; claimant's acknowledgment of service was ineffective to operate as a waiver of service because it was not served upon the prosecutor. Mitchell v. State, 255 Ga. App. 507, 566 S.E.2d 24, 2002 Ga. App. LEXIS 554, cert. denied, 255 Ga. App. 553, 565 S.E.2d 877, 2002 Ga. App. LEXIS 693 (2002) (decided under former O.C.G.A. § 16-13-49).

Trial court did not err in denying an owner's motion to dismiss the state's complaint in rem for forfeiture of property pursuant to former O.C.G.A. § 16-13-49 because the state invoked a hearing within 60 days of service of the state's complaint as required by former § 16-13-49(o)(5), and the hearing was continued for good cause; the state invoked a hearing within 60 days of service of the state's complaint by forwarding a blank rule nisi to the trial court and asking that the trial court fix a hearing, and the trial court did not, or could not, set a hearing within the 60-day statutory period because of the court's crowded docket, which constituted good cause for a continuance of the requested hearing. Sims v. State, 299 Ga. App. 738, 683 S.E.2d 686, 2009 Ga. App. LEXIS 960 (2009) (decided under former O.C.G.A. § 16-13-49).

Proceedings were untimely. — In a civil forfeiture case, the state improperly seized cash from the plaintiff because the requirements of former O.C.G.A. § 16-13-49(o)(5) were not met since the hearing on the forfeiture complaint was conducted more than 60 days after the prior continuance, and nothing in the record indicated that the plaintiff consented to re-scheduling the hearing outside the statutory period; the hearing took place 69 days after the last continuance, the plaintiff appeared ready for the hearing on two occasions, and through no fault of the plaintiff's own, the hearing was continued both times. Williams v. State, 302 Ga. App. 617, 691 S.E.2d 385, 2010 Ga. App. LEXIS 198 (2010) (decided under former O.C.G.A. § 16-13-49).

It was undisputed that the initial hearing on the state's forfeiture complaint was not scheduled until 63 days after the defendant was served with the complaint, and the state neither moved for, nor did the trial court grant, a continuance within the statutorily imposed 60-day time period. Because the mandatory statutory time limitations contained within former O.C.G.A. § 16-13-49(o)(5) were not met, the court was constrained to reverse the trial court's judgment of forfeiture. Goodwin v. State of Ga., 321 Ga. App. 548, 739 S.E.2d 814, 2013 Ga. App. LEXIS 196 (2013), cert. denied, No. S13C1281, 2013 Ga. LEXIS 833 (Ga. Oct. 7, 2013) (decided under former O.C.G.A. § 16-13-49).

Trial court should have dismissed an in rem civil forfeiture action because no timely hearing on the underlying forfeiture complaint was held. After the trial court granted the state's motion to stay the proceedings, approximately one year passed before either a hearing or another continuance. Bourassa v. State of Ga., 323 Ga. App. 435, 746 S.E.2d 815, 2013 Ga.

Procedure (Cont'd)

App. LEXIS 656 (2013), cert. denied, No. S13C1819, 2014 Ga. LEXIS 151 (Ga. Feb. 24, 2014) (decided under former O.C.G.A. § 16-13-49).

Fact that car is subject to forfeiture does not excuse failure to institute forfeiture proceedings. — Mere fact that car used in transporting drugs was subject to forfeiture proceedings under former O.C.G.A. § 16-13-49 would not insulate police officers from liability if the officers detained the car or caused the car to be detained without instituting forfeiture proceedings. Jonas v. City of Atlanta, 647 F.2d 580, 1981 U.S. App. LEXIS 12348 (5th Cir. 1981) (decided under former O.C.G.A. § 16-13-49).

State cannot, through notice to produce, achieve results the state unsuccessfully sought. — State may not, by using notice to produce pursuant to the Evidence Code attempt to secure indirectly the same disposition of property which would have obtained in accordance with former Code 1933, § 79A-828 had its libel for condemnation been successful. Johnson v. State, 156 Ga. App. 496, 274 S.E.2d 837, 1980 Ga. App. LEXIS 3091 (1980) (decided under former Code 1933, § 79A-828).

Unconstitutional self-incrim- ination would be result of compliance with such notice. Johnson v. State, 156 Ga. App. 496, 274 S.E.2d 837, 1980 Ga. App. LEXIS 3091 (1980) (decided under former Code 1933, § 79A-828).

Time specification in summons constituting mere surplusage. — In a case under former O.C.G.A. § 16-13-49, the summons issued by the clerk of the trial court and attached to the process directed defendant to answer the complaint "within 30 days after service of this summons upon you, exclusive of the day of service," and defendant's "answer" was timely filed in accordance with the clerk's summons, albeit not timely filed pursuant to the court's order contained in the process. The summons attached by the clerk was surplusage, as former O.C.G.A. § 16-13-49 did not require process upon the alleged owner, merely notice to the alleged owner of the proposed condemnation. Farley v. State, 180 Ga. App. 694, 350 S.E.2d 263, 1986 Ga. App. LEXIS 2245 (1986) (decided under former O.C.G.A. § 16-13-49).

Failure to comply with time requirement of former O.C.G.A. § 16-13-49 does not result in dismissal of forfeiture action. State v. Luke, 183 Ga. App. 182, 358 S.E.2d 272, 1987 Ga. App. LEXIS 1927 (1987), superseded by statute as stated in Robinson v. State, 209 Ga. App. 446, 433 S.E.2d 707, 1993 Ga. App. LEXIS 910 (1993), superseded by statute as stated in Turner v. State, 213 Ga. App. 309, 444 S.E.2d 372, 1994 Ga. App. LEXIS 572 (1994) (decided under former O.C.G.A. § 16-13-49).

Dismissal of the state's forfeiture action against the property owner was reversed because the property owner was not entitled to have the forfeiture proceedings dismissed despite its untimely initiation since former O.C.G.A. § 16-13-49(h)(3) provided the sole remedy and case law established that if the state failed to initiate a timely forfeiture, the property had to be released at the owner's request pending further forfeiture proceedings, unless the property was being held as evidence. State of Ga. v. Brooks, 333 Ga. App. 769, 777 S.E.2d 54, 2015 Ga. App. LEXIS 523 (2015) (decided under former O.C.G.A. § 16-13-49).

Defendant may obtain return of property when state failed to comply with former O.C.G.A. § 16-13-49(e). State v. Ellis, 156 Ga. App. 779, 275 S.E.2d 361, 1980 Ga. App. LEXIS 3198 (1980), superseded by statute as stated in Robinson v. State, 209 Ga. App. 446, 433 S.E.2d 707, 1993 Ga. App. LEXIS 910 (1993); State v. Waters, 173 Ga. App. 274, 326 S.E.2d 243, 1985 Ga. App. LEXIS 1501 (1985), superseded by statute as stated in Turner v. State, 213 Ga. App. 309, 444 S.E.2d 372, 1994 Ga. App. LEXIS 572 (1994) (decided under former O.C.G.A. § 16-13-49).

Relation back of amended claim. — Amended claim against the property seized by the state filed after the 30-day deadline did not relate back to the date of the original answer so as to resurrect the claims. Roberts v. State, 226 Ga. App. 824, 487 S.E.2d 667, 1997 Ga. App. LEXIS 781

(1997) (decided under former O.C.G.A. § 16-13-49).

Service on the defendant was proper when, to cure defendant's initial complaints about service, the judge allowed the state to serve the defendant personally in open court and then delayed acting on the matter until the defendant had more than 30 days to respond. Owens v. State, 241 Ga. App. 140, 525 S.E.2d 150, 1999 Ga. App. LEXIS 1490 (1999), cert. denied, No. S00C0477, 2000 Ga. LEXIS 345 (Ga. Apr. 28, 2000) (decided under former O.C.G.A. § 16-13-49).

State was required to perfect service of complaint of forfeiture within 60 days of the seizure of property. Griffin v. State, 250 Ga. App. 93, 550 S.E.2d 138, 2001 Ga. App. LEXIS 697 (2001) (decided under former O.C.G.A. § 16-13-49).

State properly initiated a forfeiture action under former O.C.G.A. § 16-13-49 because: (1) it posted notice at the courthouse, served the parties with a copy, and published the notice in a local newspaper for three weeks running; and (2) the notice specified the date and extent of the seizure and asserted that the seized property was used or intended for use to facilitate a violation of Georgia's anti-drug statutes. Germain v. State of Ga., 269 Ga. App. 846, 605 S.E.2d 441, 2004 Ga. App. LEXIS 1317 (2004), cert. denied, No. S05C0313, 2005 Ga. LEXIS 63 (Ga. Jan. 10, 2005) (decided under former O.C.G.A. § 16-13-49).

Dismissal of complaint. — Once the trial court dismissed the state's complaint, there was no action pending, and the state's amendment of the complaint was ineffective. Franklin v. State, 227 Ga. App. 30, 488 S.E.2d 109, 1997 Ga. App. LEXIS 826 (1997) (decided under former O.C.G.A. § 16-13-49).

After dismissal of a forfeiture proceeding by the state, all that remained pending was a claim of ownership which was uncontested because it was not shown that the property was evidence or subject to future forfeiture proceedings, and the property was properly returned to the claimant. Boone v. Sheriff of Lowndes County, 232 Ga. App. 601, 502 S.E.2d 535, 1998 Ga. App. LEXIS 768 (1998) (decided under former O.C.G.A. § 16-13-49).

Contents of claim in response to notice of seizure. — When an interest holder was responding to a notice of seizure authorized by former O.C.G.A. § 16-13-49(n)(1), the claim to property subject to forfeiture must satisfy not only the general pleading rules applicable to all civil actions, but must also specifically set forth with particularity the elements enumerated at former § 16-13-49(n)(4). Jackson v. State, 218 Ga. App. 437, 461 S.E.2d 594, 1995 Ga. App. LEXIS 736 (1995); Roberts v. State, 226 Ga. App. 824, 487 S.E.2d 667, 1997 Ga. App. LEXIS 781 (1997) (decided under former O.C.G.A. § 16-13-49).

Even though more details could have been included, a claim in response to a notice of seizure of a savings passbook adequately set forth the required elements where it stated the sources of the money in the account, denied that the money was contraband, and stated that the funds were not in close proximity to any property which was subject to forfeiture. Harris v. State, 222 Ga. App. 267, 474 S.E.2d 201, 1996 Ga. App. LEXIS 755 (1996) (decided under former O.C.G.A. § 16-13-49).

Failure to file answer. — Use of the word "may" in former O.C.G.A. § 16-13-49(o)(3) was only permissive insofar as the word recognized that a claimant cannot be forced to claim an interest in seized property; however, a claimant who failed to file an answer must suffer the consequence of forfeiting the claimant's property to the state. Jett v. State, 230 Ga. App. 655, 498 S.E.2d 274, 1998 Ga. App. LEXIS 250 (1998) (decided under former O.C.G.A. § 16-13-49).

If no answer is made within 30 days after service of the summons and complaint, the trial court is required to order the disposition of the property; a hearing is required only when an answer is filed. Wilson v. State, 240 Ga. App. 578, 525 S.E.2d 708, 1999 Ga. App. LEXIS 1340 (1999) (decided under former O.C.G.A. § 16-13-49).

The 60-day requirement for holding a hearing is conditioned on the filing of a timely and sufficient answer and, if no answer is filed, no hearing is required, and the court is required to order the disposition of the seized property. Owens v. State, 241 Ga. App. 140, 525 S.E.2d 150,

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1999 Ga. App. LEXIS 1490 (1999), cert. denied, No. S00C0477, 2000 Ga. LEXIS 345 (Ga. Apr. 28, 2000) (decided under former O.C.G.A. § 16-13-49).

Because an accused failed to appear or otherwise file an answer in a condemnation proceeding filed against the accused in connection with the accused's arrest for possession of methamphetamine, and the accused failed to show that the accused's counsel was ineffective in failing to file an answer, the state was properly granted judgment. Walters v. State of Ga., 269 Ga. App. 883, 605 S.E.2d 458, 2004 Ga. App. LEXIS 1324 (2004) (decided under former O.C.G.A. § 16-13-49).

Contents of answer. — Claimant's motion to dismiss the complaint in a forfeiture action was not a responsive pleading in the nature of an answer since it did not raise an assertion that the property was not subject to forfeiture as required by former O.C.G.A. § 16-13-49(o)(3), nor did it contain even a general denial of the averments of the allegations of the complaint as would have satisfied O.C.G.A. § 9-11-8(b). Turner v. State, 213 Ga. App. 309, 444 S.E.2d 372, 1994 Ga. App. LEXIS 572 (1994) (decided under former O.C.G.A. § 16-13-49).

Answer to forfeiture complaint was insufficient when the claimant falsely stated that another person did not have a security interest in the vehicle, failed to state the extent of claimant's own interest, and did not cite any provision of former O.C.G.A. § 16-13-49 relied on in support of claimant's assertion that the vehicle was not subject to forfeiture. Mitchell v. State, 217 Ga. App. 282, 457 S.E.2d 237, 1995 Ga. App. LEXIS 397 (1995).

When the claimant's response alleged sufficient facts within the claimant's personal knowledge, and not merely conclusory allegations, to establish a triable issue as to innocent ownership, a ruling that the claim was procedurally insufficient was vacated and the case remanded to allow the claimant reasonable time to supplement the claimant's response with the material fact of the claimant's acquittal of drug charges. Knodel v. State, 222 Ga. App. 514, 474 S.E.2d 700, 1996 Ga. App. LEXIS 886 (1996) (decided under former O.C.G.A. § 16-13-49).

In a procedure for forfeiture of a vehicle, the claimant's answer was sufficient to meet the pleading requirements of former O.C.G.A. § 16-13-49 when the answer incorporated copies of the certificate of title and the tag registration and included the date of the purchase, the name of the dealership, and information that the car was financed by the seller. Williams v. State, 222 Ga. App. 270, 474 S.E.2d 98, 1996 Ga. App. LEXIS 756 (1996) (decided under former O.C.G.A. § 16-13-49).

Answer by person claiming to be the owner of household furnishings was sufficient even though it failed to indicate when the claimant acquired the items or the identity of their respective transferors; to require such information when an entire complement of household furnishings has been seized would fail to protect the interests of innocent owners. Dennis v. State, 224 Ga. App. 11, 479 S.E.2d 380, 1996 Ga. App. LEXIS 1226 (1996) (decided under former O.C.G.A. § 16-13-49).

Claimant's answer to a notice of seizure of currency did not satisfy the requirements of former O.C.G.A. § 16-13-49(n)(4) where it stated simply that the currency "represents money saved by the Claimant from numerous jobs that he has held." Tuggle v. State, 224 Ga. App. 353, 480 S.E.2d 353, 1997 Ga. App. LEXIS 69 (1997) (decided under former O.C.G.A. § 16-13-49).

Answer to forfeiture complaint covering a large number of guns was insufficient because claimant simply stated that claimant had obtained them through lawful means — through inheritance or purchase, or as gifts — without any dates, identity of transferors, or any other circumstances of claimant's acquisition. Morrell v. State, 226 Ga. App. 16, 486 S.E.2d 611, 1997 Ga. App. LEXIS 521 (1997) (decided under former O.C.G.A. § 16-13-49).

Trial court did not err in holding that the claimant's answer did not comply with the strict pleading requirements prescribed in former O.C.G.A. § 16-13-49(n)(4). Serchion v. State, 230 Ga. App. 336, 496 S.E.2d 333, 1998 Ga. App. LEXIS 130 (1998) (decided under former O.C.G.A. § 16-13-49).

Sufficiency of the claimants' answer under former O.C.G.A. § 16-13-49(o)(3) was satisfied when the answer referenced a paragraph in the forfeiture complaint that incorporated a prior consent judgment involving the same property, and the consent judgment designated the claimants as owners of the property in question. Bell v. State, 234 Ga. App. 693, 507 S.E.2d 535, 1998 Ga. App. LEXIS 1338 (1998) (decided under former O.C.G.A. § 16-13-49).

Claimant's answer pertaining to the claimant's interest in money claimed to have been earned from house cleaning was not sufficient to meet the pleading requirements of former O.C.G.A. § 16-13-49 when the claimant did not offer any specifics regarding the method of payment for the claimant's work, nor set forth any information regarding the amount of house cleaning the claimant did to earn the money. Dearing v. State, 243 Ga. App. 198, 532 S.E.2d 751, 2000 Ga. App. LEXIS 431 (2000) (decided under former O.C.G.A. § 16-13-49).

Claimant's answer pertaining to the claimant's interest in a rifle, stating that the claimant's father gave the claimant the rifle on a certain date, asserted specific facts of the claimant's ownership, not mere conclusory allegations, and was sufficient to meet the pleading requirements of former O.C.G.A. § 16-13-49. Dearing v. State, 243 Ga. App. 198, 532 S.E.2d 751, 2000 Ga. App. LEXIS 431 (2000) (decided under former O.C.G.A. § 16-13-49).

Property owners' claims, asserting only that their property was not directly or indirectly used or intended for use in violation of Georgia's anti-drug statutes, and that the property was not part of the proceeds of such illegal activity, were not the responsive pleadings required by former O.C.G.A. § 16-13-49(n)(4) because they gave no essential facts about where, how, and from whom the property was obtained; the state had no responsibility to proceed further after the property owners' factually deficient claims were submitted and, thus, the trial court could not reach the property owners' claims regarding the insufficiency of the evidence and did not err in entering an order of disposition on the state's motion. Germain v. State of Ga., 269 Ga. App. 846, 605 S.E.2d 441, 2004 Ga. App. LEXIS 1317 (2004), cert. denied, No. S05C0313, 2005 Ga. LEXIS 63 (Ga. Jan. 10, 2005) (decided under former O.C.G.A. § 16-13-49).

Trial court properly struck defendant's answer in the state's civil forfeiture action against certain items seized from defendant and others' property pursuant to a search warrant, as defendant's answer merely indicated the source of the funds for obtaining the property, and did not indicate the nature and extent of defendant's interest in the seized property, how defendant had acquired the property, the statutory provision that protected the property from forfeiture, and the relief sought by defendant; further, the answer was not verified, and in the absence of statutory compliance, pursuant to former O.C.G.A. § 16-13-49(o)(3), (5), no hearing was required. Holmes v. State of Ga., 270 Ga. App. 882, 608 S.E.2d 325, 2004 Ga. App. LEXIS 1619 (2004) (decided under former O.C.G.A. § 16-13-49).

In an action for in rem forfeiture of an owner's vehicle for purposes of former O.C.G.A. § 16-13-49(o)(3), the vehicle owner's failure to meet the pleadings requirements, including the necessity of verification, meant that a hearing did not have to be held within 60 days pursuant to former § 16-13-49(o)(5). Portee v. State of Ga., 277 Ga. App. 536, 627 S.E.2d 63, 2006 Ga. App. LEXIS 79 (2006) (decided under former O.C.G.A. § 16-13-49).

Claimant's answer was insufficient under former O.C.G.A. § 16-13-49(o)(3) in a civil forfeiture proceeding because while the claimant asserted that the currency at issue was pay from various employers, the answer did not identify each employer, the dates worked, the amounts received, the nature of the claimant's duties, or any other similar information. Gravley v. State of Ga., 285 Ga. App. 691, 647 S.E.2d 372, 2007 Ga. App. LEXIS 622 (2007) (decided under former O.C.G.A. § 16-13-49).

While an answer to an in rem complaint by the owner of a truck seized by the state failed to reference evidence, namely the transferred title, supporting an interest in the truck, but clearly stated that: (1) the interest was in the amount of $5,000; (2) the interest originated through the own-

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er's payment of that amount to the creditor; and (3) the interest continued, the owner's answer set forth the nature and extent of the owner's interest in the property as required by former O.C.G.A. § 16-13-49(o)(3)(C) with sufficient particularity. State of Ga. v. Howell, 288 Ga. App. 176, 653 S.E.2d 330, 2007 Ga. App. LEXIS 1082 (2007), cert. denied, No. S08C0454, 2008 Ga. LEXIS 224 (Ga. Feb. 25, 2008) (decided under former O.C.G.A. § 16-13-49).

In a forfeiture case involving $20,620 found in a footlocker in the home of a drug defendant's grandparent, the grandparent's answer asserting a claim to the cash did not satisfy former O.C.G.A. § 16-13-49. It did not adequately explain how the grandparent had obtained the money in question, which was found in the same room with drugs and with clothing belonging to the grandchild. Edwards v. State of Ga., 290 Ga. App. 467, 659 S.E.2d 852, 2008 Ga. App. LEXIS 349 (2008) (decided under former O.C.G.A. § 16-13-49).

Trial court did not err by striking appellants answer to the state's complaint for forfeiture and dismissing appellants' claims as to some items because the entries did not contain sufficient information to satisfy the pleading requirement under former O.C.G.A. § 16-13-49(o)(3)(D); for those entries there was a blank or no information describing appellants' property interest, and certain additional items were listed with only vague information. Arreola-Soto v. State of Ga., 314 Ga. App. 165, 723 S.E.2d 482, 2012 Ga. App. LEXIS 141 (2012), cert. denied, No. S12C1048, 2012 Ga. LEXIS 593 (Ga. June 18, 2012) (decided under former O.C.G.A. § 16-13-49).

Trial court erred in striking appellants' answer to the state's complaint for forfeiture as to certain items because the information appellants provided in the answer was sufficient to plead an interest in the property under former O.C.G.A. § 16-13-49(o)(3)(D); appellants' ownership interest was described with the name of the transferor and a year of purchase. Arreola-Soto v. State of Ga., 314 Ga. App. 165, 723 S.E.2d 482, 2012 Ga. App. LEXIS 141 (2012), cert. denied, No. S12C1048, 2012 Ga. LEXIS 593 (Ga. June 18, 2012) (decided under former O.C.G.A. § 16-13-49).

In a forfeiture action, a trial court properly struck the answer of one of the four claimants to the seized property because the answer was insufficient by setting forth only conclusory allegations of ownership. Morgan v. State of Ga., 323 Ga. App. 852, 748 S.E.2d 491, 2013 Ga. App. LEXIS 761 (2013) (decided under former O.C.G.A. § 16-13-49).

Under Georgia law, the sufficiency of an answer to a forfeiture petition must be judged in light of the specific statutory requirements. Furthermore, while a claimant must satisfy each of the pleading requirements contained in former O.C.G.A. § 16-13-49(o)(3), the trial court must consider the claimant's compliance with those requirements in a reasonable manner. Morgan v. State of Ga., 323 Ga. App. 852, 748 S.E.2d 491, 2013 Ga. App. LEXIS 761 (2013) (decided under former O.C.G.A. § 16-13-49).

In a forfeiture action, a trial court erred by striking three answers from claimants of the seized property because each set forth the nature and extent of their interest in the property, the date and identity of transferors, the circumstances of acquisition, and that they were innocent owners under former O.C.G.A. § 16-13-49(e)(1)(B), though two cited the wrong statute subsection. Morgan v. State of Ga., 323 Ga. App. 852, 748 S.E.2d 491, 2013 Ga. App. LEXIS 761 (2013) (decided under former O.C.G.A. § 16-13-49).

In a civil forfeiture case under former O.C.G.A. § 16-13-49, the trial court erred by granting the State of Georgia's motion to strike the answers of the defendants and thereafter entering an order of disposition and distribution of the seized property because, while the defendants' answer was inartfully drafted and poorly presented, it was sufficient as a whole with attachments to survive a motion to strike. Crimley v. State of Ga., 330 Ga. App. 639, 768 S.E.2d 813, 2015 Ga. App. LEXIS 32 (2015) (decided under former O.C.G.A. § 16-13-49).

Condemnation of two amounts of cash and other personal property was affirmed

because the claimant did not include in the answer the date of the transfer of the cash, the identity of the transferor, or the circumstances of the claimant acquiring the cash; thus, the claimant failed to satisfy the specific statutory pleading requirements and the trial court, therefore, did not err by striking the claimant's answer as legally insufficient and by entering a default judgment of forfeiture. Loveless v. State of Ga., 337 Ga. App. 250, 786 S.E.2d 899, 2016 Ga. App. LEXIS 306 (2016) (decided under former O.C.G.A. § 16-13-49).

In a civil in rem forfeiture action, a claimant's answer must be in strict compliance with the special pleading requirements of former O.C.G.A. § 16-13-49(o)(3). A forfeiture action under former § 16-13-49 was a civil proceeding; when the answer did not contain the requisite facts to support the claimant's ownership assertions, the answer did not comply with the statute's specific pleading requirements. Loveless v. State of Ga., 337 Ga. App. 250, 786 S.E.2d 899, 2016 Ga. App. LEXIS 306 (2016) (decided under former O.C.G.A. § 16-13-49).

Under former O.C.G.A. § 16-13-49(o)(3)(D), the answer filed by an owner of property subject to a civil forfeiture proceeding which asserted a claim against the property must set forth: the date, identity of the transferor, and circumstances of the claimant's acquisition of the interest in the property. Loveless v. State of Ga., 337 Ga. App. 250, 786 S.E.2d 899, 2016 Ga. App. LEXIS 306 (2016) (decided under former O.C.G.A. § 16-13-49).

State must respond to answer. — Because the trial court found the state had failed to prosecute the complaint and had failed to show good cause as to why the hearing should be continued for a second time, the trial court did not err in dismissing the forfeiture complaint on the grounds that no hearing was conducted within 60 days as required by former O.C.G.A. § 16-13-49. State v. Gonzales, 213 Ga. App. 661, 445 S.E.2d 808, 1994 Ga. App. LEXIS 694 (1994). (but see Alford v. State, 208 Ga. App. 595, 431 S.E.2d 393 (1993)).

Dismissal of a forfeiture proceeding was not required where the state attempted to schedule a hearing 43 days after service of the complaint, and a continuance beyond the 60-day period was caused by the court's crowded calendar. Hinton v. State, 224 Ga. App. 49, 479 S.E.2d 424, 1996 Ga. App. LEXIS 1276 (1996), cert. denied, No. S97C0597, 1997 Ga. LEXIS 396 (Ga. Apr. 24, 1997) (decided under former O.C.G.A. § 16-13-49).

Refusal to answer alleging self incrimination. — Considerable authority that in a civil forfeiture action, the court may as a matter of law draw inferences from a property claimant's invocation of the right against self-incrimination, and such inferences may constitute admissions unfavorable to them; the burden is on the individual claiming the self incrimination privilege to state the general reason for their refusal to answer and to specifically establish that a real danger of incrimination existed with respect to each question. Loveless v. State of Ga., 337 Ga. App. 250, 786 S.E.2d 899, 2016 Ga. App. LEXIS 306 (2016) (decided under former O.C.G.A. § 16-13-49).

Attachment of deed to correct deficiencies in answer. — Claimants in a forfeiture action corrected any deficiencies in their answer when the claimants filed an amended answer that incorporated by reference a recorded warranty deed, which provided necessary information and corrected the lack of verification by one of the claimants. Bell v. State, 234 Ga. App. 693, 507 S.E.2d 535, 1998 Ga. App. LEXIS 1338 (1998) (decided under former O.C.G.A. § 16-13-49).

Amendment to correct error in filing answer. — When the failure to file a legally sufficient answer under former O.C.G.A. § 16-13-49(o)(3) was clearly the result of a mistake, an amendment to correct the mistake should have been allowed. Lee v. State, 225 Ga. App. 733, 484 S.E.2d 777, 1997 Ga. App. LEXIS 478 (1997) (decided under former O.C.G.A. § 16-13-49).

Since the claimant contesting the forfeiture of property was authorized to amend claimant's answer to a forfeiture complaint, the court erred in granting the state's motion to strike the amendment. Jackson v. State, 231 Ga. App. 320, 498

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S.E.2d 159, 1998 Ga. App. LEXIS 434 (1998), cert. denied, No. S98C0888, 1998 Ga. LEXIS 602 (Ga. May 22, 1998) (decided under former O.C.G.A. § 16-13-49).

An amended answer could relate back to a timely-filed but insufficient initial answer. Rojas v. State, 269 Ga. 121, 498 S.E.2d 735, 1998 Ga. LEXIS 271 (1998) (decided under former O.C.G.A. § 16-13-49).

Defendant waived the issue of whether the trial court improperly forbade amending defendant's answer by failing to take any action to amend the answer for almost 30 days before the court's order was entered, despite defendant's ability to do so as a matter of right. Waters v. State, 239 Ga. App. 897, 522 S.E.2d 493, 1999 Ga. App. LEXIS 1189 (1999) (decided under former O.C.G.A. § 16-13-49).

Trial court did not abuse the court's discretion by striking the claimants' answers to the complaint in a forfeiture proceeding because the claimants were permitted by law to amend the claimants answers to correct the lack of verification, but never did so and although the claimants claim that the trial court failed to afford the claimants an opportunity to amend the claimants' pleadings, the claimants failed to show that the trial court refused to consider such an amendment or did anything to preclude or bar the filing thereof. Howard v. State of Ga., 321 Ga. App. 881, 743 S.E.2d 540, 2013 Ga. App. LEXIS 428 (2013) (decided under former O.C.G.A. § 16-13-49).

Answer begins running of 60-day period. — The 60-day time period in former O.C.G.A. § 16-13-49(o)(5), within which the state was to hold a hearing on the issue of forfeiture, did not commence to run until the filing of a sufficient answer, as determined by the requirements of former § 16-13-49(o)(3) prescribing what must be set forth in the answer. State v. Alford, 264 Ga. 243, 444 S.E.2d 76, 1994 Ga. LEXIS 447 (1994) (decided under former O.C.G.A. § 16-13-49).

When the defendant's answer did not comply with the specific pleading requirements of former O.C.G.A. § 16-13-49(o)(3), it was insufficient to commence the 60-day time period for holding a hearing; reversing in part State v. Adams, 212 Ga. App. 309, 444 S.E.2d 372 (1994). State v. Adams, 264 Ga. 842, 452 S.E.2d 117, 1995 Ga. LEXIS 25 (1995) (decided under former O.C.G.A. § 16-13-49).

Verification of answer. — Answers including verifications signed under oath before a notary public satisfied the requirements of former O.C.G.A. § 16-13-49(o)(3). Dearing v. State, 243 Ga. App. 198, 532 S.E.2d 751, 2000 Ga. App. LEXIS 431 (2000) (decided under former O.C.G.A. § 16-13-49).

Vehicle owner failed to sufficiently support the claim that, while incarcerated, the owner was denied access to legal information and to an individual who would notarize an answer to the state's civil in rem forfeiture proceeding; it was not error to deny a continuance in order to have the answer verified, as required by former O.C.G.A. § 16-13-49(o)(3), or in striking the owner's answer. Portee v. State of Ga., 277 Ga. App. 536, 627 S.E.2d 63, 2006 Ga. App. LEXIS 79 (2006) (decided under former O.C.G.A. § 16-13-49).

Legally insufficient answer tolls 60-day period. — State's forfeiture complaint did not have to be held within the 60-day deadline imposed by former O.C.G.A. § 16-13-49 since the claimant's answer was legally insufficient when the claimant's verification was not executed under penalty of perjury, and the complaint did not satisfy the specific pleading requirements as required to substantiate claimant's claims of ownership of the seized property. State v. Miller, 234 Ga. App. 650, 507 S.E.2d 521, 1998 Ga. App. LEXIS 1327 (1998), cert. denied, No. S99C0189, 1999 Ga. LEXIS 132 (Ga. Feb. 5, 1999), overruled in part, Dearing v. State, 243 Ga. App. 198, 532 S.E.2d 751, 2000 Ga. App. LEXIS 431 (2000) (decided under former O.C.G.A. § 16-13-49).

Time period of former O.C.G.A. § 16-13-49(h)(2). — By failing to request the return of seized currency prior to the entry of judgment, the owners were precluded from asserting a claim to the property, even though the state did not file

its complaint for civil forfeiture within 60 days after the seizure. Yoder v. State, 211 Ga. App. 226, 438 S.E.2d 689, 1993 Ga. App. LEXIS 1454 (1993) (decided under former O.C.G.A. § 16-13-49).

Actual date of the seizure is not counted for purposes of determining the running of the 60-day limitation period. Nash v. State, 243 Ga. App. 800, 534 S.E.2d 492, 2000 Ga. App. LEXIS 567 (2000) (decided under former O.C.G.A. § 16-13-49).

Time provisions. — Time provisions of former O.C.G.A. § 16-13-49(n) operate independently of the 60-day requirement of former § 16-13-49(h)(2) and provide an alternative procedure for cases which involve personal property with a value of $25,000 or less. If the provisions of former subsection (n) are followed, the 60-day period outlined in former paragraph (h)(2) may be extended. Robinson v. State, 209 Ga. App. 446, 433 S.E.2d 707, 1993 Ga. App. LEXIS 910 (1993); State v. Profitt, 213 Ga. App. 270, 444 S.E.2d 356, 1994 Ga. App. LEXIS 547 (1994), cert. denied, No. S94C1361, 1994 Ga. LEXIS 950 (Ga. Sept. 9, 1994) (decided under former O.C.G.A. § 16-13-49).

In the forfeiture complaint, described in former O.C.G.A. § 16-13-49(o)(1), the state was not required to plead essential facts. Hinton v. State, 224 Ga. App. 49, 479 S.E.2d 424, 1996 Ga. App. LEXIS 1276 (1996), cert. denied, No. S97C0597, 1997 Ga. LEXIS 396 (Ga. Apr. 24, 1997) (decided under former O.C.G.A. § 16-13-49).

Hearing on in rem proceedings. — Requirement of former O.C.G.A. § 16-13-49(o)(5) that a hearing be held within 60 days of service of a complaint was mandatory, not directory. Henderson v. State, 205 Ga. App. 542, 422 S.E.2d 666, 1992 Ga. App. LEXIS 1251 (1992), aff'd, 263 Ga. 508, 436 S.E.2d 209, 1993 Ga. LEXIS 790 (1993); State v. Henderson, 263 Ga. 508, 436 S.E.2d 209, 1993 Ga. LEXIS 790 (1993); Blanks v. State, 240 Ga. App. 175, 522 S.E.2d 770; State v. Carter, 244 Ga. App. 560, 536 S.E.2d 230, 2000 Ga. App. LEXIS 791 (2000); Griffin v. State, 250 Ga. App. 93, 550 S.E.2d 138, 2001 Ga. App. LEXIS 697 (2001).

Failure to make findings in response to excessiveness argument. — In an in rem civil forfeiture action, a trial court erred by ordering the defendant's truck forfeited without making findings of fact and conclusions of law on the record as to whether the court considered the mandatory guidelines set forth in case law as to whether the forfeiture was excessive. Buchanan v. State of Ga., 319 Ga. App. 525, 737 S.E.2d 321, 2013 Ga. App. LEXIS 5 (2013) (decided under former O.C.G.A. § 16-13-49).

In a civil in rem forfeiture action, the trial court erred in entering an order granting the forfeiture because the record did not indicate whether the trial court considered whether the forfeiture was constitutionally excessive under the Eighth Amendment as the trial court did not make findings of fact and conclusions of law on the record as required by the case law. Mikell v. State of Ga., 329 Ga. App. 830, 766 S.E.2d 233, 2014 Ga. App. LEXIS 786 (2014) (decided under former O.C.G.A. § 16-13-49).

Continuance inappropriate. — It was error to grant a continuance to the state where the state failed to comply with the statutory time requirements applicable to the hearing on a forfeiture complaint and where the only "cause" for granting the continuance was the claimant's refusal to go forward with a hearing about which they had prior notice. Jackson v. State, 212 Ga. App. 340, 441 S.E.2d 811, 1994 Ga. App. LEXIS 251 (1994) (decided under former O.C.G.A. § 16-13-49).

Continuance appropriate. — Trial court did not abuse the court's discretion in granting the State of Georgia's motion for a continuance beyond the 60-day limit of a hearing in a civil forfeiture action in order that the state would have more time to perfect service on a second claimant so that one forfeiture proceeding could be held to resolve the matter as to all potential claimants; such constituted good cause for a continuance pursuant to former O.C.G.A. § 16-13-49(o)(5). State of Ga. v. Richardson, 276 Ga. App. 784, 625 S.E.2d 52, 2005 Ga. App. LEXIS 1320 (2005), cert. denied, No. S06C0758, 2006 Ga. LEXIS 299 (Ga. May 8, 2006), cert. denied, 549 U.S. 1054, 127 S. Ct. 688, 166

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L. Ed. 2d 517, 2006 U.S. LEXIS 9052 (2006) (decided under former O.C.G.A. § 16-13-49).

Trial court required to give notice of order denying application to recover seized currency. — In an application to recover seized currency under former O.C.G.A. § 16-13-49(q)(4), a trial court erred in denying the owner's motion to set aside the order denying the application without making the finding required by O.C.G.A. § 15-6-21(c) as to whether the owner or the owner's counsel had received notice of the order. Remand was required. Grant v. State, 302 Ga. App. 739, 691 S.E.2d 623, 2010 Ga. App. LEXIS 221 (2010) (decided under former O.C.G.A. § 16-13-49).

Former O.C.G.A. § 16-13-49 was a special statutory proceeding which must be strictly construed and complied with, and as such, not all provisions of the Civil Practice Act apply including O.C.G.A. § 9-11-55, the default judgment statute. Fulton v. State, 183 Ga. App. 570, 359 S.E.2d 726, 1987 Ga. App. LEXIS 2034 (1987) (decided under former O.C.G.A. § 16-13-49).

Dismissal for failure to respond appropriate. — Uniform Superior Court Rule 14 provides for dismissal of a pleading (not a final adjudication on the merits) "where appropriate" for failure to respond to a calendar call. Because a proceeding for forfeiture is a special statutory proceeding to which default is not applicable, this would not be "appropriate." Fulton v. State, 183 Ga. App. 570, 359 S.E.2d 726, 1987 Ga. App. LEXIS 2034 (1987) (decided under former O.C.G.A. § 16-13-49).

Dismissal of an appeal was not justified when a losing party in a drug-related forfeiture proceeding failed to take affirmative action to prevent enforcement of the complained-of judgment prior to the expiration of the 30-day period for filing a notice of appeal. State v. Vurgess, 182 Ga. App. 544, 356 S.E.2d 273, 1987 Ga. App. LEXIS 1716 (1987) (decided under former O.C.G.A. § 16-13-49).

Dismissal of appeal denied when notice timely. — In a civil forfeiture proceeding, the state's motion to dismiss a claimant's appeal was denied since the claimant's notice of appeal was timely filed within 30 days following the entry of the order of distribution. Weaver v. State, 299 Ga. App. 718, 683 S.E.2d 361, 2009 Ga. App. LEXIS 747 (2009), cert. denied, No. S10C0024, 2010 Ga. LEXIS 128 (Ga. Feb. 1, 2010) (decided under former O.C.G.A. § 16-13-49).

It was error to enter protective order suspending discovery indefinitely in a forfeiture condemnation case based on statements of the district attorney which were conclusional and bereft of facts. Christopher v. State, 185 Ga. App. 532, 364 S.E.2d 905, 1988 Ga. App. LEXIS 169 (1988) (decided under former O.C.G.A. § 16-13-49).

In petitions for condemnation, district attorney's verification that allegations are true and correct to the best of the district attorney's knowledge and belief is a proper verification "by a duly authorized agent of the state." Chester v. State, 168 Ga. App. 618, 309 S.E.2d 897, 1983 Ga. App. LEXIS 2869 (1983) (decided under former O.C.G.A. § 16-13-49).

Substantial compliance sufficed. — Consistent with former O.C.G.A. § 16-13-49(z), where the state amended its complaint to include the requisite verification and, therefore, substantially complied with that section, the trial court did not err in failing to grant plaintiff's motion to dismiss. McMichen v. State, 209 Ga. App. 169, 433 S.E.2d 92, 1993 Ga. App. LEXIS 816 (1993) (decided under former O.C.G.A. § 16-13-49).

Document insufficient. — Document filed by claimant was not sufficient for the purpose of meeting the 30-day requirement for the filing of claims in former O.C.G.A. § 16-13-49(n). State v. Cannon, 214 Ga. App. 897, 449 S.E.2d 519, 1994 Ga. App. LEXIS 1094 (1994) (decided under former O.C.G.A. § 16-13-49).

Failure of claim filed. — Failure of purported claim filed rendered it ineffective as a trigger to require the district attorney to file a complaint under former O.C.G.A. § 16-13-49(n)(5) in response to it. State v. Cannon, 214 Ga. App. 897, 449 S.E.2d 519, 1994 Ga. App. LEXIS 1094 (1994) (decided under former O.C.G.A. § 16-13-49).

When claimant's answer was deficient under former O.C.G.A. § 16-13-49(n), the trial court could not reach the claimant's claims regarding the sufficiency of the evidence and did not err in entering an order of forfeiture. Greene v. State, 220 Ga. App. 292, 469 S.E.2d 428, 1996 Ga. App. LEXIS 172 (1996).

To raise a valid double jeopardy claim based on an earlier in rem forfeiture, a defendant must first file an effective answer claiming an interest in the property forfeited. Eaton v. State, 220 Ga. App. 578, 469 S.E.2d 740, 1996 Ga. App. LEXIS 192 (1996) (decided under former O.C.G.A. § 16-13-49).

Hearsay information from informant allowed into evidence. — Trial court did not err in allowing hearsay testimony into evidence, i.e., information from an informant which eventually led to obtaining a search warrant for the defendant's property. Rabern v. State, 221 Ga. App. 874, 473 S.E.2d 547, 1996 Ga. App. LEXIS 738 (1996) (decided under former O.C.G.A. § 16-13-49).

Criminal prosecution not barred by double jeopardy. — Civil forfeiture proceeding in a drug case was not a criminal prosecution for purposes of double jeopardy. Sutton v. State, 223 Ga. App. 721, 478 S.E.2d 910, 1996 Ga. App. LEXIS 1285 (1996), cert. denied, No. S97C0522, 1997 Ga. LEXIS 344 (Ga. Mar. 7, 1997); Murphy v. State, 219 Ga. App. 474, 465 S.E.2d 497, 1995 Ga. App. LEXIS 1076 (1995), aff'd, 267 Ga. 120, 475 S.E.2d 907, 1996 Ga. LEXIS 712 (1996); Rojas v. State, 226 Ga. App. 688, 487 S.E.2d 455, 1997 Ga. App. LEXIS 744 (1997), cert. denied, No. S97C1646, 1997 Ga. LEXIS 971 (Ga. Oct. 31, 1997); Cuellar v. State, 230 Ga. App. 203, 496 S.E.2d 282, 1998 Ga. App. LEXIS 102 (1998) (decided under former O.C.G.A. § 16-13-49).

Proving weight of cocaine. — Evidence that a 1.8-gram sample tested "positive" for cocaine did not meet the state's burden of proving that the contraband involved more than a gram of cocaine. State v. Foote, 225 Ga. App. 222, 483 S.E.2d 628, 1997 Ga. App. LEXIS 328 (1997) (decided under former O.C.G.A. § 16-13-49).

Because evidence established probable cause that defendant possessed cocaine with the intent to distribute, it was unnecessary for the state to establish possession of more than one gram of cocaine merely because defendant had pled guilty to possession of cocaine rather than possession with intent to distribute. Wilson v. State, 240 Ga. App. 578, 525 S.E.2d 708, 1999 Ga. App. LEXIS 1340 (1999) (decided under former O.C.G.A. § 16-13-49).

Evidence that a seized substance tested positive for cocaine and that it weighed 6.8 grams was insufficient to show that the substance constituted more than one gram of cocaine because it was not tested for purity. Bell v. State, 249 Ga. App. 296, 548 S.E.2d 35, 2001 Ga. App. LEXIS 490 (2001) (decided under former O.C.G.A. § 16-13-49).

In a forfeiture proceeding, expert testimony that 1.2 grams of cocaine were seized from defendant's vehicle was sufficient to support the trial court's finding that more than one gram of cocaine was involved in the case. Furthermore, it was not necessary to prove the purity of the cocaine seized from defendant's vehicle as such a showing was not required under former O.C.G.A. § 16-13-49(e)(2) because the statute specifically referenced "mixtures." Turner v. State of Ga., 265 Ga. App. 40, 592 S.E.2d 864, 2004 Ga. App. LEXIS 8 (2004) (decided under former O.C.G.A. § 16-13-49).

Automatic stay. — Pending civil forfeiture action against the property of bankruptcy debtors' estate was subject to automatic stay, notwithstanding the "police or regulatory power" stay exception of 11 U.S.C. § 362(b). In re Bell v. Bell (In re Bell), 215 B.R. 266, 1997 Bankr. LEXIS 1932 (Bankr. N.D. Ga. 1997), superseded by statute as stated in United States v. Klein (In re Chapman), 264 B.R. 565, 2001 Bankr. LEXIS 931 (9th Cir. 2001) (decided under former O.C.G.A. § 16-13-49).

Determining whether a forfeiture is excessive requires the trial court to consider Thorp v. State, 264 Ga. 712, 450 S.E.2d 416, 1994 Ga. LEXIS 910 (1994), vacated, 217 Ga. App. 275, 457 S.E.2d 234, 1995 Ga. App. LEXIS 395 (1995), and to make findings on the three factors required by that decision. Salmon v. State, 249 Ga. App. 591, 549 S.E.2d 421, 2001

Procedure (Cont'd)

Ga. App. LEXIS 565 (2001) (decided under former O.C.G.A. § 16-13-49).

Evidence insufficient for forfeiture. — Because it was determined that a parcel of land which contained defendant's residence was subject to forfeiture, but the state failed to prove which of the parcels described in the complaint contained the residence, the evidence was insufficient to support forfeiture. Stancil v. State, 230 Ga. App. 240, 495 S.E.2d 870, 1998 Ga. App. LEXIS 95 (1998) (decided under former O.C.G.A. § 16-13-49).

Trial court could not order the forfeiture of a piece of property and thereafter receive evidence in order to determine which piece of property the court had ordered forfeited. Stancil v. State, 230 Ga. App. 240, 495 S.E.2d 870, 1998 Ga. App. LEXIS 95 (1998) (decided under former O.C.G.A. § 16-13-49).

Evidence other than confidential informant's testimony was ample. — Trial court's finding that, except for the description the confidential informant gave of the vehicle and occupants, no other evidence was presented, was error as a matter of fact since there was an ample amount of other evidence to establish the informant's reliability and basis of knowledge. State v. Tucker, 242 Ga. App. 3, 528 S.E.2d 523, 2000 Ga. App. LEXIS 75 (2000), cert. denied, No. S00C0909, 2000 Ga. LEXIS 712 (Ga. Sept. 29, 2000), cert. denied, No. S00C0891, 2000 Ga. LEXIS 713 (Ga. Sept. 29, 2000) (decided under former O.C.G.A. § 16-13-49).

Failure to show harm. — When the claimant did not show how the claimant was harmed by the state's mere recitation in its forfeiture notice of the applicable provision for filing answers, without expressly informing the claimant of the 30-day period within which a claim must be submitted, the trial court did not err by failing to dismiss the state's notice. Serchion v. State, 230 Ga. App. 336, 496 S.E.2d 333, 1998 Ga. App. LEXIS 130 (1998) (decided under former O.C.G.A. § 16-13-49).

Dismissal not appropriate even though state filed complaint late. — Claimant was not entitled to dismissal of a former O.C.G.A. § 16-13-49(n) forfeiture action, even though the complaint was not timely filed by the state, because the claimant's remedy—return of the car pending further forfeiture proceedings—served no useful purpose since a hearing on the merits of the forfeiture claim was pending when the claimant filed the motion. Smith v. State, 301 Ga. App. 870, 690 S.E.2d 208, 2010 Ga. App. LEXIS 11 (2010) (decided under former O.C.G.A. § 16-13-49).

Seizure

Extent of property subject to forfeiture. — Legislature did not intend that all of the property on which a drug violation occurred was subject to forfeiture. State v. Wilbanks, 208 Ga. App. 422, 430 S.E.2d 668, 1993 Ga. App. LEXIS 485 (1993), cert. denied, No. S93C1153, 1993 Ga. LEXIS 871 (Ga. Sept. 20, 1993) (decided under former O.C.G.A. § 16-13-49).

Seized property cannot be assigned to a third party. — Condemnee's attempt to assign property seized after a civil forfeiture action is against legislative intent because the legislature did not intend that property owners of seized property be allowed to execute a post-seizure assignment of that property to a third party. Allmond v. State, 202 Ga. App. 902, 415 S.E.2d 924, 1992 Ga. App. LEXIS 216 (1992) (decided under former O.C.G.A. § 16-13-49).

Property improperly seized. — Forfeiture order for property seized during a search of defendant's home was reversed as there were no exigent circumstances justifying a warrantless entry into defendant's home after drugs, drug-related items, and a weapon were found in defendant's car during a traffic stop, even though defendant did not end a cell phone call immediately as instructed by a police officer; the state did not show

that the warrantless entry was required to prevent the destruction of contraband or that securing the home until a warrant could be obtained was not sufficient. Curry v. State, 271 Ga. App. 672, 610 S.E.2d 635, 2005 Ga. App. LEXIS 133 (2005) (decided under former O.C.G.A. § 16-13-49).

Abandoned cocaine properly seized. — After law officers observed the defendant throw a paper napkin containing a quantity of cocaine from a car, defendant affirmatively abandoned the cocaine by throwing the cocaine from the vehicle as the officers approached, and placed the cocaine within plain view on the public highway. Since neither abandoned property nor items in plain view of law enforcement officers who are where the officers have a right to be can be the subject of a motion to suppress when the abandonment of the evidence and the simultaneous placing of the evidence in plain view occurs during the course of a legal stop, the trial court erred in granting the defendant's motion to suppress. State v. Howell, 180 Ga. App. 449, 349 S.E.2d 476, 1986 Ga. App. LEXIS 2183 (1986) (decided under former O.C.G.A. § 16-13-49).

Pursuit and seizure found reasonable. — Once law enforcement officers made one unsuccessful attempt to apprehend a car and the car's driver as the car left the scene of an earlier narcotic "buy" and when defendant came to the parked vehicle while officers had the car under observation as the officers awaited the arrival of paperwork authorizing seizure of the car, it became necessary, once authorization to make a warrantless seizure was received, to devise a practical means of seizing the car (and the car's driver) before the car left the jurisdiction, calling for a marked police car, equipped with lights and sirens, to effect the actual pursuit and seizure was reasonable, and the state had probable cause to effect a seizure of the vehicle. State v. Howell, 180 Ga. App. 449, 349 S.E.2d 476, 1986 Ga. App. LEXIS 2183 (1986) (decided under former O.C.G.A. § 16-13-49).

There was substantial compliance with former O.C.G.A. § 16-13-49 after the supervisor of the seizing officer, rather than the seizing officer personally, signed the letter notifying the district attorney of the seizure. State v. Battise, 177 Ga. App. 583, 340 S.E.2d 240, 1986 Ga. App. LEXIS 1477 (1986) (decided under former O.C.G.A. § 16-13-49).

Seizure not pursuant to judicial process. — Since a Georgia county investigator did not take possession of a vehicle pursuant to judicial process, but simply took the vehicle from the custody of the Tennessee authorities, who had allegedly seized the vehicle pursuant to a search warrant; although former O.C.G.A. § 16-13-49 allowed for the seizure of property without benefit of judicial process under certain specified circumstances, reliance on the search warrant exception was misplaced because the Georgia officials did not seize the vehicle under the authority of the Tennessee warrant and also because there was not evidence to support the allegation that the seizure of the vehicle was authorized by the Tennessee warrant, and reliance on the "probable cause" exception was also misplaced, as that provision clearly did not purport to authorize Georgia law enforcement officers to seize property located outside of the state, nor, in any event, would such authorization be of any legal effect. Morrow v. State, 186 Ga. App. 615, 367 S.E.2d 854, 1988 Ga. App. LEXIS 396 (1988) (decided under former O.C.G.A. § 16-13-49).

Reasonable suspicion found for Terry stop thereby allowing forfeiture. — Civil forfeiture order was affirmed and suppression motion was properly denied as drugs were found in defendant's possession after an arrest following a Terry stop as the officer had a reasonable suspicion of criminal activity where the officer had been advised of defendant's banishment, which defendant acknowledged to be violating; the officer was charged with enforcing court orders and, although the banishment was illegal, the order had not been challenged at the time of the Terry stop. Sanders v. State, 259 Ga. App. 422, 577 S.E.2d 94, 2003 Ga. App. LEXIS 121 (2003) (decided under former O.C.G.A. § 16-13-49).

Unpublished decision: In an in rem forfeiture case in which: (1) the federal gov-

Seizure (Cont'd)

ernment lawfully seized the currency under 18 U.S.C. § 981(b)(2)(A)-(C) since the search and seizure of a van's contents were lawful under the Fourth Amendment; (2) the seizure was lawful under former O.C.G.A. § 16-13-49(e)(2); and (3) the claimant argued that the federal government did not have standing to initiate the forfeiture proceeding because Georgia did not lawfully seize the currency, the claimant's argument failed. United States v. $ 175,722.77, in United States Currency, 307 Fed. Appx. 257, 2007 U.S. App. LEXIS 10899 (11th Cir. 2007) (decided under former O.C.G.A. § 16-13-49).

Forfeiture of funds recovered from the owner's vehicle was proper as the officer was authorized to conduct a brief investigative stop after observing illegally tinted windows, the search was proper after the officer observed that the owner was nervous, a strong odor of air freshener was coming from the vehicle, and a drug dog alerted, and the determination that the currency was used or intended for use in a drug transaction was supported by expert testimony as to the bundling of large amounts of cash, the use of multiple cell phones by those in the drug trade, and the drug dog alert indicating that a controlled substance had recently been in the car. Mordica v. State of Ga., 319 Ga. App. 149, 736 S.E.2d 153, 2012 Ga. App. LEXIS 1045 (2012) (decided under former O.C.G.A. § 16-13-49).

Law enforcement officers. — Former O.C.G.A. § 16-13-49(j) did not apply to a law enforcement officer who, in the performance of the officer's official duty, supplied information leading to the seizure of property which the state may cause to be forfeited under that section. Palmer v. State, 250 Ga. 219, 297 S.E.2d 22, 1982 Ga. LEXIS 1024 (1982).

Property need only fall into one subsection (d) category. — State need only prove that the property as to which forfeiture was sought fell within one of the six categories listed in former O.C.G.A. § 16-13-49(d) in order to prevail. Pitts v. State, 207 Ga. App. 606, 428 S.E.2d 650, 1993 Ga. App. LEXIS 310 (1993) (decided under former O.C.G.A. § 16-13-49).

Company owner of truck could not claim "innocent ownership" because the company offered no evidence to meet the burden of showing by a preponderance of the evidence that, with the exercise of ordinary care, the company could not reasonably have known of defendant's conduct or that the conduct was likely to occur. State v. Tucker, 242 Ga. App. 3, 528 S.E.2d 523, 2000 Ga. App. LEXIS 75 (2000), cert. denied, No. S00C0909, 2000 Ga. LEXIS 712 (Ga. Sept. 29, 2000), cert. denied, No. S00C0891, 2000 Ga. LEXIS 713 (Ga. Sept. 29, 2000) (decided under former O.C.G.A. § 16-13-49).

In a forfeiture action, a relative failed to prove that the relative was an innocent owner under former O.C.G.A. § 16-13-49(e)(1)(A) of two luxury vehicles seized from a relation, who was arrested for drug violations, as the evidence showed that the relative did not acquire title to the vehicles until after the relation's arrest and, therefore, the relative was merely a "straw man" set up to hold the cars and prevent the seizure. Martin v. State, 291 Ga. App. 902, 663 S.E.2d 307, 2008 Ga. App. LEXIS 673 (2008) (decided under former O.C.G.A. § 16-13-49).

Search of vehicle subject to forfeiture. — Defendants' vehicle became subject to forfeiture when law enforcement officers witnessed an illegal transaction therein and defendants then had no property right in the vehicle or right to object to its search and seizure. United States v. Major, 915 F. Supp. 384, 1996 U.S. Dist. LEXIS 1274 (M.D. Ga. 1996) (decided under former O.C.G.A. § 16-13-49).

Money found on defendant's person. — Money found on defendant's person, which was not in close proximity to the areas in which the contraband was found, which was not shown to have directly or indirectly used or intended for use in a manner to facilitate a violation of the Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., and which was not shown to have been subject to forfeiture under any other provision of the Act was not subject to forfeiture. Pitts v. State, 207 Ga. App. 606, 428 S.E.2d 650, 1993 Ga. App. LEXIS 310 (1993) (decided under former O.C.G.A. § 16-13-49).

Proximity of money and contraband close enough. — Evidence

factually established proximity close enough to warrant forfeiture of the money where the $4,010 was located in the cab of the pickup truck, and the contraband was located in the bed of the same pickup truck. State v. Tucker, 242 Ga. App. 3, 528 S.E.2d 523, 2000 Ga. App. LEXIS 75 (2000), cert. denied, No. S00C0909, 2000 Ga. LEXIS 712 (Ga. Sept. 29, 2000), cert. denied, No. S00C0891, 2000 Ga. LEXIS 713 (Ga. Sept. 29, 2000) (decided under former O.C.G.A. § 16-13-49).

Transaction involving an imitation controlled substance. — Forfeiture statute did not apply to a transaction involving an imitation controlled substance; reversing State v. White, 210 Ga. App. 876, 437 S.E.2d 826 (1993). White v. State, 264 Ga. 547, 448 S.E.2d 354, 1994 Ga. LEXIS 765 (1994) (decided under former O.C.G.A. § 16-13-49).

Impoundment and subsequent inventory search of a vehicle were valid since the vehicle was subject to possible seizure as property used to facilitate illegal drug distribution. Hightower v. State, 249 Ga. App. 495, 548 S.E.2d 473, 2001 Ga. App. LEXIS 544 (2001) (decided under former O.C.G.A. § 16-13-49).

Vehicles properly forfeited. — Denial of the owner's motion to suppress was proper since the police officer was rightfully on the premises to ask questions about an anonymous letter; the owner's vehicles were properly forfeited because they facilitated, or were in close proximity to, illegal drug activity. Hodge v. State, 257 Ga. App. 203, 570 S.E.2d 666, 2002 Ga. App. LEXIS 1107 (2002) (decided under former O.C.G.A. § 16-13-49).

Forfeiture of a pickup truck and a trailer used to commit a burglary was upheld since: (1) the state's burden of proof was "by a preponderance of the evidence" and not "beyond a reasonable doubt" as alleged by the property owner; (2) the state was not required to prove a burglary conviction under O.C.G.A. § 16-7-1, or that charges were even filed; and (3) whether a burglary took place without the owner's knowledge or consent was a fact question to be resolved by the court, which as the trier of fact, was not obligated to believe a witness even if the testimony was uncontradicted. Walker v. State of Ga., 281 Ga. App. 526, 636 S.E.2d 705, 2006 Ga. App. LEXIS 1156 (2006) (decided under former O.C.G.A. § 16-13-49).

Lien for towing service. — Because former O.C.G.A. § 16-13-49 had no clear and explicit terms providing a lien for towing and storing a vehicle at the request of a law enforcement agency, it provided the operator of a towing business no lien for the services. Purser Truck Sales, Inc. v. Horton, 276 Ga. App. 17, 622 S.E.2d 405, 2005 Ga. App. LEXIS 1141 (2005) (decided under former O.C.G.A. § 16-13-49).

Security interest not barred. — After a father sold a truck to the son in exchange for the son's personal pledge and acknowledgement of a security interest in the truck, although a security interest or lien was never filed, the trial court erred in the state's forfeiture proceeding in denying enforcement of the father's security interest after the truck was seized due to the son's possession of drugs, as the father's evidence that the father had no actual or constructive knowledge of the son's illegal activities was uncontradicted; the fact that the security interest was never perfected did not bar the father's assertion of the interest or the enforcement thereof pursuant to former O.C.G.A. § 16-13-49(e)(1). Tolliver v. State of Ga., 276 Ga. App. 755, 625 S.E.2d 403, 2005 Ga. App. LEXIS 1001 (2005), cert. denied, No. S06C0703, 2006 Ga. LEXIS 316 (Ga. May 8, 2006) (decided under former O.C.G.A. § 16-13-49).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions rendered under former O.C.G.A. § 16-13-49 are included in the opinions under this Code section.

Full-time peace officer not entitled to proceeds. — Full-time peace officer who, while acting within the scope of the officer's official duties, played a part in the seizure of property which was later

forfeited under former O.C.G.A. § 16-13-49 was not entitled to receive a portion from the proceeds of the sale of such property pursuant to former O.C.G.A. § 16-13-49(j). 1983 Op. Att'y Gen. No. U83-14 (decided under former O.C.G.A. § 16-13-49).

Payment of salary of prosecuting attorney prohibited. — Former O.C.G.A. § 16-13-49(u)(4)(D)(i) and (ii) prohibited the use of the proceeds of forfeited and condemned property to pay the salary of the Executive Director/Prosecuting Attorney of the Multi-Agency Narcotics Squad in a circuit. 1992 Op. Att'y Gen. No. U92-22 (decided under former O.C.G.A. § 16-13-49).

National Guard was eligible to share in proceeds of drug-related forfeitures with respect to statutorily authorized activities. 1995 Op. Att'y Gen. No. 95-29 (decided under former O.C.G.A. § 16-13-49).

Georgia Aviation Authority was not a law enforcement agency within the meaning of former O.C.G.A. § 16-13-49 for the purpose of sharing in forfeiture funds. 2011 Op. Att'y Gen. No. 11-3 (decided under former O.C.G.A. § 16-13-49).

National Guard was eligible to share in proceeds of drug-related forfeitures. — Even under the new Georgia Uniform Civil Forfeiture Procedure Act, O.C.G.A. § 9-16-1 et seq., the analysis of whether the Georgia National Guard may be designated as a "law enforcement agency" for purposes of sharing in proceeds of drug related property forfeitures made available under federal and state law remains unchanged; thus, the Georgia National Guard is a law enforcement agency eligible to share in proceeds of drug related forfeitures. 2018 Op. Att'y Gen. No. 18-2.

Payment of salaries of law enforcement officers. — Under O.C.G.A. §§ 16-13-48.1 and former 16-13-49(u)(4)(D)(i), federal forfeiture funds may not be used to pay the salaries of law enforcement officers including overtime pay and other benefits. 2002 Op. Att'y Gen. No. 2002-5 (decided under former O.C.G.A. § 16-13-49).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Drugs and Controlled Substances, § 221 et seq.

C.J.S.

28 C.J.S., Drugs and Narcotics, § 233 et seq. 79 C.J.S., Searches and Seizures, § 226.

U.L.A.

Uniform Controlled Substances Act (U.L.A.) § 505.

ALR.

Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 A.L.R.3d 473.

Forfeiture of money to state or local authorities based on its association with or proximity to other contraband, 38 A.L.R.4th 496.

Necessity of conviction of offense associated with property seized in order to support forfeiture of property to state or local authorities, 38 A.L.R.4th 515.

Forfeitability of property held in marital estate under Uniform Controlled Substances Act or similar statute, 84 A.L.R.4th 620.

Validity and construction of provisions of Uniform Controlled Substances Act providing for forfeiture hearing before law enforcement officer, 84 A.L.R.4th 637.

Real property as subject of forfeiture under Uniform Controlled Substances Act or similar statutes, 86 A.L.R.4th 995.

Timeliness of institution of proceedings for forfeiture under Uniform Controlled Substances Act or similar statute, 90 A.L.R.4th 493.

Effect of forfeiture proceedings under Uniform Controlled Substances Act or similar statute on lien against property subject to forfeiture, 1 A.L.R.5th 317.

Forfeitability of property, under Uniform Controlled Substances Act or similar statute, where property or evidence supporting forfeiture was illegally seized, 1 A.L.R.5th 346.

Application of forfeiture provisions of

Uniform Controlled Substances Act or similar statute where drugs were possessed for personal use, 1 A.L.R.5th 375.

Forfeitability of property under Uniform Controlled Substances Act or similar statute where amount of controlled substances seized is small, 6 A.L.R.5th 652.

Delay in setting hearing date or in holding hearing as affecting forfeitability under Uniform Controlled Substances Act or similar statute, 6 A.L.R.5th 711.

Validity, construction, and application of state or local law prohibiting maintenance of vehicle for purpose of keeping or selling controlled substances, 31 A.L.R.5th 760.

Propriety of civil or criminal forfeiture of computer hardware or software, 39 A.L.R.5th 87.

Burden of proof and presumptions in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law, 104 A.L.R.5th 229.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — Proximity of asset to drugs, paraphernalia, or records, 115 A.L.R.5th 403.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — Odor of drugs, 116 A.L.R.5th 325.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — Explanation or lack thereof, 4 A.L.R.6th 113.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — factors other than proximity, explanation, amount, packaging, and odor, 101 A.L.R.6th 1.

Validity, construction, and application of criminal forfeiture provisions of Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USCS § 853), 88 A.L.R. Fed. 189.

Seizure or forfeiture of real property used in illegal possession, manufacture, processing, purchase, or sale of controlled substances under § 511(a)(7) of Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USCS § 881(a)(7)), 104 A.L.R. Fed. 288.

Who is exempt from forfeiture of drug proceeds under "innocent owner" provision of 21 USCS § 881(a)(6), 109 A.L.R. Fed. 322.

What constitutes establishment of prima facie case for forfeiture of real property traceable to proceeds from sale of controlled substances under § 511(a)(6) of Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USCA § 881(a)(6)), 146 A.L.R. Fed. 597.

16-13-50. Burden of proof; liability of enforcement officers in lawful performance of duties.

(a) It is not necessary for the state to negate any exemption or exception in this article in any complaint, accusation, indictment, or other pleading or in any trial, hearing, or other proceeding under this article. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this article, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

(c) No liability is imposed by this article upon any authorized state,

county, or municipal officer engaged in the lawful performance of his duties.

History.
Code 1933, § 79A-829, enacted by Ga. L. 1974, p. 221, § 1.

JUDICIAL DECISIONS

Former Code 1933, § 79A-829 (see now O.C.G.A. § 16-13-50) was not unconstitutional upon the statute's face. Strong v. State, 246 Ga. 612, 272 S.E.2d 281, 1980 Ga. LEXIS 1224 (1980).

Defendant need not prove prescription was written for legitimate medical purpose. — Former Code 1933, § 79A-829 (see now O.C.G.A. § 16-13-50) would be unconstitutionally applied if the trial court were to charge that the statute required the defendant to prove that medical prescriptions were written for legitimate medical purpose within the meaning of former Code 1933, § 79A-820 (see now O.C.G.A. § 16-13-41(f)(3)) rather than charging that the state was required to prove beyond a reasonable doubt those allegations of the indictment. Strong v. State, 246 Ga. 612, 272 S.E.2d 281, 1980 Ga. LEXIS 1224 (1980).

Qualification of expert to perform drug analysis. — When a pretrial hearing to determine whether an expert designated by appellant was qualified to perform analysis of alleged drugs revealed that the expert was neither licensed, registered, nor otherwise exempted pursuant to O.C.G.A. § 16-13-1 et seq., and when the trial court gave defense counsel approximately 24 hours to determine whether counsel wished to qualify this expert for any procedures which did not require reference samples of the controlled substance, or to qualify another expert, and counsel did neither, it was not an abuse of discretion to deny the motion for independent laboratory analysis. McAdoo v. State, 164 Ga. App. 23, 295 S.E.2d 114, 1982 Ga. App. LEXIS 3260 (1982).

Court must instruct jury on specific exemption raised as sole defense. — Question of fact was presented as to the applicability of statutory exception, and it was error to fail to instruct jury on specific exemption raised by defendant as defendant's sole defense. Bryan v. State, 157 Ga. App. 635, 278 S.E.2d 177, 1981 Ga. App. LEXIS 1946 (1981).

State not required to allege non-existence of affirmative defenses. — Defendant's indictment for possessing and selling XLR11 withstood a general demurrer because the indictment alleged the essential elements of the offenses under O.C.G.A. § 16-13-30(b); under O.C.G.A. § 16-13-50(a), the state was not required to allege the affirmative defenses in O.C.G.A. § 16-13-25(12) such as that the XLR11 was intended for human consumption. Budhani v. State, 306 Ga. 315, 830 S.E.2d 195, 2019 Ga. LEXIS 448 (2019).

Co-owner who asserts the innocent owner exception under the statute has a two-fold burden. First, in order to establish standing to contest the forfeiture, the co-owner has the burden of proving the nature and extent of the co-owner's interest in the property. Second, the co-owner must prove by a preponderance of the evidence that the co-owner is entitled to the exception as defined by the statute. State v. Jackson, 197 Ga. App. 619, 399 S.E.2d 88, 1990 Ga. App. LEXIS 1384 (1990).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 204, 205.

C.J.S.
28 C.J.S., Drugs and Narcotics, §§ 249, 256. 28A C.J.S., Drugs and Narcotics,

§ 344 et seq. 67 C.J.S., Officers and Public Employees, § 302.

U.L.A.

Uniform Controlled Substances Act (U.L.A.) § 506.

ALR.

Instruction applying rule of reasonable doubt specifically to particular matter or defense as curing instruction placing burden of proof upon defendant in that regard, 120 A.L.R. 591.

Burden of proof and presumptions in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law, 104 A.L.R.5th 229.

16-13-51. Judicial review of administrative determinations, findings, and conclusions.

All final determinations, findings, and conclusions of the State Board of Pharmacy under this article are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the Superior Court of Fulton County. Findings of fact by the State Board of Pharmacy, if supported by substantial evidence, are conclusive.

History.

Code 1933, § 79A-830, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1982, p. 3, § 16.

RESEARCH REFERENCES

C.J.S.

28 C.J.S., Drugs and Narcotics, §§ 213, 219. 73A C.J.S., Public Administrative Law and Procedure, § 374 et seq.

U.L.A.

Uniform Controlled Substances Act (U.L.A.) § 507.

ALR.

Review for excessiveness of sentence in narcotics case, 55 A.L.R.3d 812.

16-13-52. Programs and research on prevention of abuse of controlled substances; confidentiality of research; exemption from penalties.

(a) The State Board of Pharmacy and the Georgia Drugs and Narcotics Agency shall carry out programs designed to prevent and deter misuse and abuse of controlled substances.

(b) The State Board of Pharmacy and the Georgia Drugs and Narcotics Agency shall encourage research on misuse and abuse of controlled substances. In connection with the research and in furtherance of the enforcement of this article, they may:

(1) Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) Make studies and undertake programs of research to:

(A) Develop new or improved approaches, techniques, systems,

equipment, and devices to strengthen the enforcement of this article;

(B) Determine patterns of misuse and abuse of controlled substances and the social effects thereof;

(C) Improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and

(3) Enter into agreements with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The State Board of Pharmacy, in the public interest, may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not to be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(d) The State Board of Pharmacy may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

History.
Code 1933, § 79A-831, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1982, p. 3, § 16.

RESEARCH REFERENCES

C.J.S.
28 C.J.S., Drugs and Narcotics, §§ 211, 212, 219.

U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 508.

16-13-53. [Reserved] Pending proceedings.

History.
Code 1933, § 79A-832, enacted by Ga. L. 1974, p. 221, § 1; repealed by Ga. L. 2015, p. 693, § 2-23/HB 233, effective July 1, 2015.

Editor's notes.
Ga. L. 2015, p. 693, § 2-23/HB 233, repealed and reserved this Code section, effective July 1, 2015.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.
For article on the 2015 repeal of this Code section, see 32 Georgia St. U. L. Rev. 1 (2015).

16-13-54. Orders and rules promulgated prior to July 1, 1974.

Any orders and rules promulgated under any law affected by this article and in effect on July 1, 1974, and not in conflict with it shall continue in effect until modified, superseded, or repealed.

History.
Code 1933, § 79A-833, enacted by Ga. L. 1974, p. 221, § 1.

RESEARCH REFERENCES

U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 602.

16-13-54.1. Weight or quantity of controlled substance or marijuana not essential element of offense.

When an offense in this part measures a controlled substance or marijuana by weight or quantity, the defendant's knowledge of such weight or quantity shall not be an essential element of the offense, and the state shall not have the burden of proving that a defendant knew the weight or quantity of the controlled substance or marijuana in order to be convicted of an offense.

History.
Code 1981, § 16-13-54.1, enacted by Ga. L. 2013, p. 222, § 6/HB 349.
Editor's notes.
Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."
Law reviews.
For article, "Appeal and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Georgia St. U.L. Rev. 17 (2013).

16-13-55. Construction of article.

This article shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this article among those states which enact it.

History.
Code 1933, § 79A-834, enacted by Ga. L. 1974, p. 221, § 1.

RESEARCH REFERENCES

C.J.S.
82 C.J.S., Statutes, §§ 468 et seq., 586 et seq.

U.L.A.
Uniform Controlled Substances Act (U.L.A.) § 603.

16-13-56. Penalty for violation of article; restitution to the state for cleanup of environmental hazards; other remedies.

(a) Unless otherwise specified with respect to a particular offense, any person who violates any provision of this article shall be guilty of a misdemeanor.

(b) In addition to any other penalty imposed by law for a violation of this article, if the sentencing court finds that in committing a violation of this article, the defendant contributed to a release of hazardous waste, a hazardous constituent, or a hazardous substance as such terms are defined by Code Sections 12-8-62 and 12-8-92, the court shall require such defendant to make restitution to the State of Georgia pursuant to subsection (a) of Code Section 12-8-96.1 for the reasonable costs of activities associated with the cleanup of environmental hazards, including legal expenses incurred by the state. Restitution made pursuant to this Code section shall not preclude the State of Georgia from obtaining any other civil or criminal remedy available under any other provision of law. The restitution authorized by this Code section is supplemental and not exclusive.

History.
Code 1981, § 16-13-56, enacted by Ga. L. 1985, p. 1219, § 7; Ga. L. 2001, p. 816, § 2.

Cross references.
Hazardous waste, § 12-8-60 et seq.

16-13-56.1. Opioids; notification of addictive risks.

(a) As used in this Code section, the term "opioids" means opiates, opioids, opioid analgesics, and opioid derivatives.

(b) A prescriber who issues a prescription for an opioid shall provide the patient receiving the prescription information on the addictive risks of using opioids and information on options available for safely disposing of any unused opioids where such options exist. Such information may be provided verbally or in writing.

History.
Code 1981, § 16-13-56.1, enacted by Ga. L. 2017, p. 319, § 2-1/HB 249.

Law reviews.
For article on the 2017 enactment of this Code section, see 34 Georgia St. U.L. Rev. 143 (2017).

Part 2

Prescription Drug Monitoring Program Data Base

Law reviews.
For article on the 2011 enactment of this part, see 28 Georgia St. U.L. Rev. 269 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Access to database. — Registered nurses and licensed practical nurses cannot access the GAPDMP database as dispensers or as practitioners authorized to dispense under the Georgia Prescription Drug Monitoring Program, but nurses may be able to access the GAPDMP database as delegates of physicians who do have the authority to prescribe or dispense. 2016 Op. Att'y Gen. No. 16-7.

16-13-57. Program to record prescription information into electronic data base; administration and oversight.

(a) As used in this part, the term:

(1) "Department" means the Department of Public Health.

(2) "PDMP" means the prescription drug monitoring program data base.

(b) Subject to funds as may be appropriated by the General Assembly or otherwise available for such purpose, the department shall, in consultation with members of the Georgia Composite Medical Board, the State Board of Pharmacy, and the agency, establish and maintain a program to electronically record into an electronic PDMP prescription information resulting from the dispensing of Schedule II, III, IV, or V controlled substances and to electronically review such prescription information that has been entered into such data base. The purpose of such PDMP shall be to assist in the reduction of the abuse of controlled substances; to improve, enhance, and encourage a better quality of healthcare by promoting the proper use of medications to treat pain and terminal illness; to reduce duplicative prescribing and overprescribing of controlled substance practices for health oversight purposes; and to gather data for epidemiological research. The PDMP shall be administered by the department.

(c)(1) Each prescriber who has a DEA registration number shall enroll to become a user of the PDMP as soon as possible, and no later than January 1, 2018; provided, however, that prescribers who attain a DEA registration number after such date shall enroll within 30 days of attaining such credentials. A prescriber who violates this subsection shall be held administratively accountable to the state regulatory board governing such prescriber for such violation.

(2) Any state regulatory board governing prescribers shall have the discretion to rescind any consent orders or other disciplinary actions that were entered into or imposed prior to April 26, 2019, for a violation of paragraph (1) of this subsection after review based on, but not limited to, the following factors: subsequent compliance with paragraph (1) of this subsection; compliance with the terms of the consent order or other disciplinary action; and whether such pre-

scriber has had previous infractions of other laws or regulations relating to his or her licensure. The authority granted under this paragraph shall expire on December 31, 2019.

(3) On and after April 26, 2019, for purposes of this subsection, the term "administratively accountable" shall mean a warning or the imposition of a fine, but any such fine shall not be considered a disciplinary action against the licensee.

(d) Between January 1, 2018, and May 31, 2018, the department shall randomly test the PDMP to determine if it is accessible and operational 99.5 percent of the time. If the department determines that the PDMP meets such standard, then between June 1, 2018, and June 20, 2018, the department shall certify in writing to each board that governs prescribers that it is operational. Each board that governs prescribers shall publish such information on its website.

History.

Code 1981, § 16-13-57, enacted by Ga. L. 2011, p. 659, § 2/SB 36; Ga. L. 2017, p. 319, § 1-2/HB 249; Ga. L. 2018, p. 1112, § 16/SB 365; Ga. L. 2019, p. 273, § 1A/HB 551; Ga. L. 2020, p. 493, § 16/SB 429; Ga. L. 2024, p. 1052, § 3(11)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "healthcare" for "health care" in the second sentence of subsection (b).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2019, "April 26, 2019" was substituted for "the effective date of this Act" near the beginning of paragraph (c)(3).

Editor's notes.

Ga. L. 2017, p. 319, § 1-1/HB 249, not codified by the General Assembly, provides: "This part shall be known and may be cited as the 'Jeffrey Dallas Gay, Jr., Act.'"

Law reviews.

For article, "Crimes and Offenses: Controlled Substances," see 28 Georgia St. U.L. Rev. 269 (2011).

For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 143 (2017).

For annual survey on healthcare law, see 70 Mercer L. Rev. 1053 (2019).

16-13-58. Funds for development and maintenance of program; granting of funds to dispensers.

(a) The department shall be authorized to apply for available grants and may accept any gifts, grants, donations, and other funds to assist in developing and maintaining the PDMP; provided, however, that neither the department nor any other state entity shall accept a grant that requires as a condition of the grant any sharing of information that is inconsistent with this part.

(b) The department shall be authorized to grant funds to dispensers for the purpose of covering costs for dedicated equipment and software for dispensers to use in complying with the reporting requirements of Code Section 16-13-59. Such grants to dispensers shall be funded by gifts, grants, donations, or other funds received by the department for the operation of the PDMP. The department shall be authorized to

establish standards and specifications for any equipment and software purchased pursuant to a grant received by a dispenser pursuant to this Code section. Nothing in this part shall be construed to require a dispenser to incur costs to purchase equipment or software to comply with this part.

(c) Nothing in this part shall be construed to require any appropriation of state funds.

History.

Code 1981, § 16-13-58, enacted by Ga. L. 2011, p. 659, § 2/SB 36; Ga. L. 2015, p. 693, § 2-24/HB 233; Ga. L. 2017, p. 319, § 1-2/HB 249.

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Ga. L. 2017, p. 319, § 1-1/HB 249, not codified by the General Assembly, provides: "This part shall be known and may be cited as the 'Jeffrey Dallas Gay, Jr., Act.'"

Law reviews.

For article, "Crimes and Offenses: Controlled Substances," see 28 Georgia St. U.L. Rev. 269 (2011).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 143 (2017).

16-13-59. Information to include for each Schedule II, III, IV, or V controlled substance prescription; compliance.

(a) For purposes of the PDMP, each dispenser shall submit to the department by electronic means information regarding each prescription dispensed for a Schedule II, III, IV, or V controlled substance. The information submitted for each prescription shall include at a minimum, but shall not be limited to:

(1) DEA permit number or approved dispenser facility controlled substance identification number;

(2) Date the prescription was dispensed;

(3) Prescription serial number;

(4) If the prescription is new or a refill;

(5) National Drug Code (NDC) for drug dispensed;

(6) Quantity and strength dispensed;

(7) Number of days' supply of the drug;

(8) Patient's name;

(9) Patient's address;

(10) Patient's date of birth;

(11) Patient gender;

(12) Method of payment;

(13) Approved prescriber identification number or prescriber's DEA permit number;

(14) Date the prescription was issued by the prescriber; and

(15) Other data elements consistent with standards established by the American Society for Automation in Pharmacy, if designated by regulations of the department.

(b) Each dispenser shall submit the prescription information required in subsection (a) of this Code section in accordance with transmission methods established by the department at least every 24 hours. If a dispenser is temporarily unable to comply with this subsection due to an equipment failure or other circumstances, such dispenser shall immediately notify the board and department.

(c) The department may issue a waiver to a dispenser that is unable to submit prescription information by electronic means acceptable to the department. Such waiver may permit the dispenser to submit prescription information to the department by paper form or other means, provided all information required in subsection (a) of this Code section is submitted in this alternative format and in accordance with the frequency requirements established pursuant to subsection (b) of this Code section. Requests for waivers shall be submitted in writing to the department.

(d) The department shall not revise the information required to be submitted by dispensers pursuant to subsection (a) of this Code section more frequently than annually. Any such change to the required information shall neither be effective nor applicable to dispensers until six months after the adoption of such changes.

(e) The department shall not access or allow others to access any identifying prescription information from the PDMP after five years from the date such information was originally received by the department. The department may retain prescription information that has been processed to remove personal identifiers from the health information in compliance with the standard and implementation rules of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, P.L. 104-191, for more than five years but shall promulgate regulations and procedures that will ensure that any identifying information the department receives from any dispenser or reporting entity that is five years old or older is deleted or destroyed on an ongoing basis in a timely and secure manner.

(f) A dispenser may apply to the department for an exemption to be excluded from compliance with this Code section if compliance would

impose an undue hardship on such dispenser. The department shall provide guidelines and criteria for what constitutes an undue hardship.

(g) For purposes of this Code section, the term "dispenser" shall include any pharmacy or facility physically located in another state or foreign country that in any manner ships, mails, or delivers a dispensed controlled substance into this state.

History.

Code 1981, § 16-13-59, enacted by Ga. L. 2011, p. 659, § 2/SB 36; Ga. L. 2013, p. 127, § 10/HB 209; Ga. L. 2016, p. 202, § 1/HB 900; Ga. L. 2017, p. 319, § 1-2/HB 249; Ga. L. 2019, p. 933, § 1/SB 121; Ga. L. 2024, p. 1052, § 3(12)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "days' supply" for "days supply" in paragraph (a)(7).

Editor's notes.

Ga. L. 2017, p. 319, § 1-1/HB 249, not codified by the General Assembly, provides: "This part shall be known and may be cited as the 'Jeffrey Dallas Gay, Jr., Act.'"

Law reviews.

For article, "Crimes and Offenses: Controlled Substances," see 28 Georgia St. U.L. Rev. 269 (2011).

For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 143 (2017).

16-13-60. Privacy and confidentiality; use of data; security program.

(a) Except as otherwise provided in subsections (c), (c.1), and (d) of this Code section, prescription information submitted pursuant to Code Section 16-13-59 shall be confidential and shall not be subject to open records requirements as contained in Article 4 of Chapter 18 of Title 50.

(b) The department, in conjunction with the board, shall establish and maintain strict procedures to ensure that the privacy and confidentiality of patients, prescribers, and patient and prescriber information collected, recorded, transmitted, and maintained pursuant to this part are protected. Such information shall not be disclosed to any person or entity except as specifically provided in this part and only in a manner which in no way conflicts with the requirements of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, P.L. 104-191. Nothing in this subsection shall be construed to prohibit the agency or department from accessing prescription information as a part of an investigation into suspected or reported abuses or regarding illegal access of the data. Such information may be used in the prosecution of an offender who has illegally obtained prescription information.

(c) The department shall be authorized to provide requested prescription information collected pursuant to this part only as follows:

(1) To persons authorized to prescribe or dispense controlled substances for the sole purpose of providing medical or pharmaceutical care to a specific patient;

(2) Upon the request of a patient, prescriber, or dispenser about whom the prescription information requested concerns or upon the request on his or her behalf of his or her attorney;

(3) To local or state law enforcement or prosecutorial officials pursuant to the issuance of a search warrant from an appropriate court or official in the county in which the office of such law enforcement or prosecutorial officials are located; to federal law enforcement or prosecutorial officials as allowed by federal law by the issuance of a search warrant, a grand jury subpoena, an administrative subpoena, or a civil investigative demand; or to the Attorney General's Medicaid Fraud Control Unit by the issuance of an administrative subpoena;

(4) To the agency, the Georgia Composite Medical Board or any other state regulatory board governing prescribers or dispensers in this state, or the Department of Community Health for purposes of the state Medicaid program, for health oversight purposes, or upon the issuance of a subpoena by such agency, board, or Department of Community Health pursuant to their existing subpoena power or to the federal Centers for Medicare and Medicaid Services upon the issuance of a subpoena by the federal government pursuant to its existing subpoena power;

(5)(A) To not more than two individuals who are members per shift or rotation of the prescriber's or dispenser's staff;

(B) Such individuals may retrieve and review such information strictly for the purpose of:

(i) Providing medical or pharmaceutical care to a specific patient; or

(ii) Informing the prescriber or dispenser of a patient's potential use, misuse, abuse, or underutilization of prescribed medication;

(C) All information retrieved and reviewed by such individuals shall be maintained in a secure and confidential manner in accordance with the requirements of subsection (f) of this Code section; and

(D) The delegating prescriber or dispenser may be held civilly liable and criminally responsible for the misuse of the prescription information obtained by such individuals;

(6) To not more than two individuals, per shift or rotation, who are employed or contracted by the healthcare facility in which the prescriber is practicing so long as the medical director of such healthcare facility has authorized the particular individuals for such access;

(7) In any hospital which provides emergency services, each prescriber may designate two individuals, per shift or rotation, who are employed or contracted by such hospital so long as the medical director of such hospital has authorized the particular individuals for such access; and

(8) To a prescription drug monitoring program operated by a government entity in another state or an electronic medical records system operated by a prescriber or healthcare facility, provided the program or system, as determined by the department, contains legal, administrative, technical, and physical safeguards that meet or exceed the security measures of the department for the operation of the PDMP pursuant to this part.

(c.1) An individual authorized to access PDMP prescription information pursuant to this part may:

(1) Communicate concerns about a patient's potential usage, misuse, abuse, or underutilization of a controlled substance with prescribers and dispensers that are involved in the patient's healthcare;

(2) Report potential violations of this article to the agency for review or investigation. Following such review or investigation, the agency shall:

(A) Refer instances of a patient's possible personal misuse or abuse of controlled substances to the patient's primary prescriber to allow for potential intervention and impairment treatment;

(B) Refer probable violations of controlled substances being acquired for illegal distribution, and not solely for a patient's personal use, to the appropriate authorities for further investigation and potential prosecution; or

(C) Refer probable regulatory violations by prescribers or dispensers to the regulatory board governing such person; or

(3) Include PDMP prescription information in a patient's electronic health or medical record.

(d) The department may provide data that has been processed to remove personal identifiers from the health information in compliance with the standard and implementation rules of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, P.L. 104-191, to government entities and other entities for statistical, research, educational, instructional, drug abuse prevention, or grant application purposes after removing information that could be used to identify prescribers.

(e) Any person or entity that receives PDMP prescription information or related reports relating to this part from the department shall

not disclose such information or reports to any other person or entity except by order of a court of competent jurisdiction or as otherwise permitted pursuant to this part.

(f) Any permissible user identified in this part who directly accesses PDMP prescription information shall implement and maintain a comprehensive information security program that contains administrative, technical, and physical safeguards that are substantially equivalent to the security measures of the department. The permissible user shall identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, or other compromise of the information and shall assess the sufficiency of any safeguards in place to control the risks.

(g) No provision in this part shall be construed to modify, limit, diminish, or impliedly repeal any authority of a licensing or regulatory board or any other entity so authorized to obtain prescription information from sources other than the PDMP maintained pursuant to this part; provided, however, that the department shall be authorized to release information from the PDMP only in accordance with the provisions of this part.

History.

Code 1981, § 16-13-60, enacted by Ga. L. 2011, p. 659, § 2/SB 36; Ga. L. 2016, p. 202, § 2/HB 900; Ga. L. 2017, p. 319, § 1-2/HB 249; Ga. L. 2018, p. 550, § 4-5/SB 407; Ga. L. 2018, p. 1112, § 16/SB 365; Ga. L. 2019, p. 933, § 2/SB 121; Ga. L. 2024, p. 1052, § 3(13)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "healthcare" for "health care" throughout paragraphs (c)(6), (c)(8), and (c.1)(1).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2017, "of" was inserted following "subsection (a)" in divisions (c)(5)(A)(iii) and (c)(5)(A)(iv).

Editor's notes.

Ga. L. 2017, p. 319, § 1-1/HB 249, not codified by the General Assembly, provides: "This part shall be known and may be cited as the 'Jeffrey Dallas Gay, Jr., Act.'"

Law reviews.

For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 143 (2017).

For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018).

For article, "Privacy for Student-Patients: A Call to Action," see 73 Emory L.J. 83 (2023).

16-13-61. Electronic Database Review Advisory Committee; members; terms; officers; procedure; compensation.

(a) There is established an Electronic Database Review Advisory Committee for the purposes of consulting with and advising the department on matters related to the establishment, maintenance, and operation of how prescriptions are electronically reviewed pursuant to this part. This shall include, but shall not be limited to, data collection, regulation of access to data, evaluation of data to identify benefits and

outcomes of the reviews, communication to prescribers and dispensers as to the intent of the reviews and how to use the PDMP, and security of data collected.

(b) The advisory committee shall consist of 12 members as follows:

(1) A representative from the agency;

(2) A representative from the Georgia Composite Medical Board;

(3) A representative from the Georgia Board of Dentistry;

(4) A representative with expertise in personal privacy matters, appointed by the president of the State Bar of Georgia;

(5) A representative from a specialty profession that deals in addictive medicine, appointed by the Georgia Composite Medical Board;

(6) A pain management specialist, appointed by the Georgia Composite Medical Board;

(7) An oncologist, appointed by the Georgia Composite Medical Board;

(8) A representative from a hospice or hospice organization, appointed by the Georgia Composite Medical Board;

(9) A representative from the State Board of Optometry;

(10) The consumer member appointed by the Governor to the State Board of Pharmacy pursuant to subsection (b) of Code Section 26-4-21;

(11) A pharmacist from the State Board of Pharmacy; and

(12) A representative from the Department of Public Health.

(c) Each member of the advisory committee shall serve a three-year term or until the appointment and qualification of such member's successor.

(d) The advisory committee shall elect a chairperson and vice chairperson from among its membership to serve a term of one year. The vice chairperson shall serve as the chairperson at times when the chairperson is absent.

(e) The advisory committee shall meet at the call of the chairperson or upon request by at least three of the members and shall meet at least one time per year. Five members of the committee shall constitute a quorum.

(f) The members shall receive no compensation or reimbursement of expenses from the state for their services as members of the advisory committee.

History.
Code 1981, § 16-13-61, enacted by Ga. L. 2011, p. 659, § 2/SB 36; Ga. L. 2017, p. 319, § 1-2/HB 249.
Editor's notes.
Ga. L. 2017, p. 319, § 1-1/HB 249, not codified by the General Assembly, provides: "This part shall be known and may be cited as the 'Jeffrey Dallas Gay, Jr., Act.'"
Law reviews.
For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 143 (2017).

16-13-62. Rules and regulations.

The department shall establish rules and regulations to implement the requirements of this part. Nothing in this part shall be construed to authorize the department to establish policies, rules, or regulations which limit, revise, or expand or purport to limit, revise, or expand any prescription or dispensing authority of any prescriber or dispenser subject to this part. Nothing in this part shall be construed to impede, impair, or limit a prescriber from prescribing pain medication in accordance with the pain management guidelines developed and adopted by the Georgia Composite Medical Board.

History.
Code 1981, § 16-13-62, enacted by Ga. L. 2011, p. 659, § 2/SB 36; Ga. L. 2017, p. 319, § 1-2/HB 249.
Editor's notes.
Ga. L. 2017, p. 319, § 1-1/HB 249, not codified by the General Assembly, provides: "This part shall be known and may be cited as the 'Jeffrey Dallas Gay, Jr., Act.'"
Law reviews.
For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 143 (2017).

16-13-63. Liability; review of PDMP data when filling certain prescriptions; cause of action for civil damages.

(a)(1) Nothing in this part shall require a dispenser to obtain information about a patient from the PDMP; provided, however, that dispensers are encouraged to obtain such information while keeping in mind that the purpose of such data base includes reducing duplicative prescribing and overprescribing of controlled substances. A dispenser shall not have a duty and shall not be held civilly liable for damages to any person in any civil or administrative action or criminally responsible for injury, death, or loss to person or property on the basis that the dispenser did or did not seek or obtain information from the PDMP.

(2)(A) On and after July 1, 2018, when a prescriber is prescribing a controlled substance listed in paragraph (1) or (2) of Code Section 16-13-26 or benzodiazepines, he or she shall seek and review information from the PDMP the first time he or she issues such prescription to a patient and thereafter at least once every 90 days, unless the:

(i) Prescription is for no more than a three-day supply of such substance and no more than 26 pills;

(ii) Patient is in a hospital or healthcare facility, including, but not limited to, a nursing home, an intermediate care home, a personal care home, or a hospice program, which provides patient care and prescriptions to be administered and used by a patient on the premises of the facility;

(iii) Patient has had outpatient surgery at a hospital or ambulatory surgical center and the prescription is for no more than a ten-day supply of such substance and no more than 40 pills;

(iv) Patient is terminally ill or under the supervised care of an outpatient hospice program; or

(v) Patient is receiving treatment for cancer.

(B) This paragraph shall not become effective unless the department's certification required by subsection (d) of Code Section 16-13-57 has been issued.

(C) A prescriber who violates this paragraph shall be held administratively accountable to the state regulatory board governing such prescriber but shall not be held civilly liable for damages to any person in any civil or administrative action or criminally responsible for injury, death, or loss to person or property on the basis that such prescriber did or did not seek or obtain information from such data base when prescribing such substance.

(3) A prescriber who has reviewed information from the PDMP shall make or cause to be made a notation in the patient's medical record stating the date and time upon which such inquiry was made and identifying the individual's name who made such search and review. If the PDMP does not allow access to such individual, a notation to that effect shall also be made containing the same information of date, time, and individual's name.

(4) Nothing in this part shall require a prescriber to obtain information from the PDMP when he or she is prescribing a controlled substance that is classified as a Schedule II, III, IV, or V controlled substance for a patient other than those controlled substances listed in paragraph (1) or (2) of Code Section 16-13-26 and benzodiazepines. Such prescriber shall not have a duty and shall not be held civilly liable for damages to any person in any civil or administrative action or criminally responsible for injury, death, or loss to person or property on the basis that the prescriber did or did not seek or obtain information from such data base when prescribing such a substance.

(b) Except as provided in paragraphs (2) and (4) of subsection (a) of this Code section, a person who is injured by reason of any violation of

this part shall have a cause of action for the actual damages sustained and, when appropriate, punitive damages; provided, however, that a dispenser or prescriber acting in good faith shall not be held civilly liable for damages to any person in any civil or administrative action or criminally responsible for injury, death, or loss to person or property for receiving or using information from the PDMP. Such injured person may also recover attorney's fees in the trial and appellate courts and the costs of investigation and litigation reasonably incurred.

History.

Code 1981, § 16-13-63, enacted by Ga. L. 2011, p. 659, § 2/SB 36; Ga. L. 2016, p. 202, § 3/HB 900; Ga. L. 2017, p. 319, § 1-2/HB 249; Ga. L. 2024, p. 1052, § 3(14)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "healthcare" for "health care" in division (a)(2)(A)(ii).

Editor's notes.

Ga. L. 2017, p. 319, § 1-1/HB 249, not codified by the General Assembly, provides: "This part shall be known and may be cited as the 'Jeffrey Dallas Gay, Jr., Act.'"

Paragraph (a)(2), as set out above, became effective upon certification according to the terms of Code Section 16-13-57. On June 12, 2018, this certification contingency was met.

Law reviews.

For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 143 (2017).

16-13-64. Violations; criminal penalties.

(a) A dispenser who knowingly and intentionally fails to submit prescription information to the department as required by this part or knowingly and intentionally submits incorrect prescription information shall be guilty of a felony and, upon conviction thereof, shall be punished for each such offense by imprisonment for not less than one year nor more than five years, a fine not to exceed $50,000.00, or both, and such actions shall be reported to the licensing board responsible for issuing such dispenser's dispensing license for action to be taken against such dispenser's license.

(b) An individual authorized to access PDMP prescription information pursuant to this part who negligently uses, releases, or discloses such information in a manner or for a purpose in violation of this part shall be guilty of a misdemeanor. Any person who is convicted of negligently using, releasing, or disclosing such information in violation of this part shall, upon the second or subsequent conviction, be guilty of a felony and shall be punished by imprisonment for not less than one nor more than three years, a fine not to exceed $5,000.00, or both.

(c)(1) An individual authorized to access PDMP prescription information pursuant to this part who knowingly obtains or discloses such information in a manner or for a purpose in violation of this part shall be guilty of a felony and, upon conviction thereof, shall be punished

by imprisonment for not less than one year nor more than five years, a fine not to exceed $50,000.00, or both.

(2) Any person who knowingly obtains, attempts to obtain, or discloses PDMP prescription information pursuant to this part under false pretenses shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than five years, a fine not to exceed $100,000.00, or both.

(3) Any person who obtains or discloses PDMP prescription information not specifically authorized in this part with the intent to sell, transfer, or use such information for commercial advantage, personal gain, or malicious harm shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than two years nor more than ten years, a fine not to exceed $250,000.00, or both.

(d) The penalties provided by this Code section are intended to be cumulative of other penalties which may be applicable and are not intended to repeal such other penalties.

History.
Code 1981, § 16-13-64, enacted by Ga. L. 2011, p. 659, § 2/SB 36; Ga. L. 2017, p. 319, § 1-2/HB 249.

Editor's notes.
Ga. L. 2017, p. 319, § 1-1/HB 249, not codified by the General Assembly, provides: "This part shall be known and may be cited as the 'Jeffrey Dallas Gay, Jr., Act.'"

Law reviews.
For article, "Crimes and Offenses: Controlled Substances," see 28 Georgia St. U.L. Rev. 269 (2011).

For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 143 (2017).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 16-13-64 are offenses for which fingerprinting is required. 2011 Op. Att'y Gen. No. 11-5.

16-13-65. Exceptions.

(a) This part shall not apply to any veterinarian.

(b) This part shall not apply to any drug, substance, or immediate precursor classified as an exempt over-the-counter (OTC) Schedule V controlled substance pursuant to this chapter or pursuant to board rules established in accordance with Code Section 16-13-29.2.

History.
Code 1981, § 16-13-65, enacted by Ga. L. 2011, p. 659, § 2/SB 36; Ga. L. 2017, p. 319, § 1-2/HB 249; Ga. L. 2024, p. SB 448, § 3(15)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "over-the-counter" for "over the counter" in subsection (b).

Editor's notes.
Ga. L. 2017, p. 319, § 1-1/HB 249, not codified by the General Assembly, provides: "This part shall be known and may be cited as the 'Jeffrey Dallas Gay, Jr., Act.'"

Law reviews.
For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 143 (2017).

ARTICLE 3

DANGEROUS DRUGS

Cross references.
Disciplinary action for student of public educational institution convicted of controlled substance offense, § 20-1-23.

Disciplinary action for student of nonpublic educational institution convicted of controlled substance abuse, § 20-1-24.

Enforcement powers of Georgia Drugs and Narcotics Agency and drug agents, § 26-4-29.

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 16-13-70 et seq. is not unconstitutionally vague, nor does it constitute illegal delegation of legislative authority for failing to list or codify which drugs are dangerous. Ward v. State, 248 Ga. 60, 281 S.E.2d 503, 1981 Ga. LEXIS 900 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Enforcement of article. — Georgia State Board of Pharmacy lacks discretion to refrain from enforcing O.C.G.A. Art. 3, Ch. 13, T. 16. 1982 Op. Att'y Gen. No. 82-44.

Applicability to state and local agencies. — State and local agencies are subject to the requirements of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., but are not subject to the requirements of the Dangerous Drug Act, O.C.G.A. § 16-13-70 et seq., since there is no definition of "person" specifically applicable to the Dangerous Drug Act. 1986 Op. Att'y Gen. No. 86-28.

RESEARCH REFERENCES

ALR.
Conviction of possession of illicit drugs found in premises of which defendant was in nonexclusive possession, 56 A.L.R.3d 948.

Conviction of possession of illicit drugs found in automobile of which defendant was not sole occupant, 57 A.L.R.3d 1319.

16-13-70. Short title.

This article shall be known and may be cited as the "Dangerous Drug Act."

History.
Code 1933, § 79A-701, enacted by Ga. L. 1967, p. 296, § 1.

16-13-70.1. Definition of terms.

Any term used in this article and not defined in this article but defined in Code Section 16-13-21 shall have the meaning provided for that term in Code Section 16-13-21.

History.
Code 1981, § 16-13-70.1, enacted by Ga. L. 2001, p. 816, § 3.

16-13-71. Dangerous drug.

(a) A "dangerous drug" means any drug other than a drug contained in any schedule of Article 2 of this chapter, which, under the federal Food, Drug, and Cosmetic Act (52 Stat. 1040 (1938)), 21 U.S.C. Section 301, et seq., as amended, may be dispensed only upon prescription. In any civil or criminal action or other proceedings, a certification from the Food and Drug Administration of the United States Department of Health and Human Services attesting to the fact that a drug other than a drug contained in any schedule of Article 2 of this chapter involved in the action or proceeding is a dangerous drug that federal law prohibits dispensing of without a prescription pursuant to the federal Food, Drug, and Cosmetic Act shall be admissible as prima-facie proof that such drug is a "dangerous drug."

(b) In addition to subsection (a) of this Code section, a "dangerous drug" means any other drug or substance declared by the General Assembly to be a dangerous drug; to include any of the following drugs, chemicals, or substances; salts, isomers, esters, ethers, or derivatives of such drugs, chemicals, or substances which have essentially the same pharmacological action; all other salts, isomers, esters, ethers, and compounds of such drugs, chemicals, or substances unless specifically exempted and the following devices, identified as "dangerous drugs":

(.03) Abacavir;

(.031) Abaloparatide;

(.033) Abametapir;

(.035) Abarelix;

(.037) Abatacept;

(.04) Abciximab;

(.041) Abemaciclib;

(.042) Abiraterone;

(.043) AbobotulinumtoxinA;

(.0435) Abrocitinib;

(.044) Acalabrutinib;

(.045) Acamprostate;

(.05) Acarbose;

(.1) Acebutolol;

(1) Acecarbromal;

(2) Acenocoumarol;

(3) Acetazolamide;

(3.5) Reserved;

(4) Acetohexamide;

(4.1) Aceto-hydroxamic acid;

(5) Acetophenazine;

(6) Acetosulfone;

(7) Acetyl sulfamethoxypyridazine;

(8) Acetyl sulfisoxazole;

(9) Acetylcarbromal;

(10) Acetylcholine;

(11) Acetylcysteine;

(12) Acetyldigitoxin;

(12.1) Acitretin;

(12.5) Aclidinium bromide;

(13) Acrisorcin;

(13.3) Acrivastine;

(13.5) Acyclovir;

(13.52) Adagrasib;

(13.53) Adalimumab;

(13.531) Adalimumab-atto;

(13.54) Adamts13, recombinant-krhn;

(13.55) Adapalene — See exceptions;

(13.6) Adenosine;

(14) Adenosine 5-monophosphate;

(14.5) Adenovirus;

(15) Adenylic acid;

(16) Adiphenine hydrochloride;

(16.5) Ado-trastuzumab;

(17) Adrenal cortex extracts;

(17.03) Aducanumab-avwa;

(17.05) Afamelanotide;

(17.1) Afatinib;

(17.3) Aflibercept;

(17.4) Air polymer-type A;

(17.5) Albendazole;

(17.6) Albiglutide;

(17.7) Albiraterone;

(18) Albumin, normal human serum;

(18.1) Albuterol;

(19) Albutonium;

(19.3) Alcaftadine — See exceptions;

(19.5) Alclometasone dipropionate;

(19.57) Alectinib;

(19.58) Alemtuzumab;

(19.6) Alendronate;

(19.65) Alfuzosin;

(19.7) Alglucerase;

(19.75) Alglucosidase alfa;

(19.76) Alirocumab;

(19.77) Aliskiren;

(19.8) Alitretinoin;

(20) Alkaverir;

(21) Alkavervir;

(21.1) Alkyl nitrites;

(21.3) Allogeneic cultured keratinocytes and dermal fibroblasts in murine collagen-dsat;

(21.5) Allogeneic processed thymus tissue-agdc;

(22) Allopurinol;

(22.2) Almotriptan;

(22.3) Alogliptin;

(22.5) Alosetron;

(22.7) Alpelisib;

(23) Alpha amylase;

(23.1) Alprostadil;

(24) Alseroxylon;

(24.1) Altenodol;

(24.6) Altretamine;

(25) Aluminum nicotinate;

(26) Alverine;

(26.5) Alvimopan;

(27) Amantadine;

(28) Ambenonium chloride;

(28.5) Ambrisentan;

(29) Ambrosiacae follens;

(30) Amcinonide;

(30.1) Amdinocillin;

(30.4) Amifampridine;

(30.5) Amifostine;

(31) Amikacin;

(31.1) Amiloride;

(32) Aminacrine;

(33) 4-amino-N-methyl-pteroylglutamic acid;

(34) Amino acid preparations for injection or vaginal use;

(35) Aminocaproic acid;

(36) Aminohippurate;

(36.5) Aminolevulinic acid;

(37) Aminophylline;

(38) Aminosalicylate — See exceptions;

(39) Aminosalicylate calcium — See exceptions;

(40) Aminosalicylate potassium — See exceptions;

(41) Aminosalicylate sodium — See exceptions;

(42) Aminosalicylic acid — See exceptions;

(42.1) Amiodarone;

(43) Amisometradine;

(43.5) Amisulpride;

(44) Amitriptyline;

(44.1) Amivantamab-vmjw;

(44.3) Amlexanox;

(44.5) Amlodipine;

(44.6) Ammonia, N-13;

(44.7) Ammonium lactate;

(45) Amodiaquin;

(45.5) Amoxapine;

(46) Amoxicillin;

(47) Amphotericin B;

(48) Ampicillin;

(48.2) Amprenavir;

(48.6) Amrinone;

(49) Amyl nitrite;

(50) Amylolytic enzymes;

(50.1) Anabolic steroids, if listed in Code Section 16-13-27.1 as being exempt as Schedule III controlled substances;

(50.2) Anacaulase-bcdb;

(50.3) Anagrelide;

(50.4) Anakinra;

(50.5) Anastrozole;

(51) Androgens, except those androgens listed in paragraph (6) of Code Section 16-13-27;

(51.5) Angiotensin II;

(52) Angiotensin amide;

(52.5) Anidulafungin;

(52.7) Anifrolumab-fnia;

(53) Anisindione;

(54) Anisotropine;

(54.5) Ansuvimab-zykl;

(55) Antazoline;

(56) Anterior pituitary hormones;

(57) Anthralin;

(57.5) Anthrax Vaccine Adsorbed, Adjuvanted;

(58) Anti-coagulant acid:

(A) Citrate dextrose;

(58.5) Anticoagulant sodium citrate 4 percent solution;

(59) Antigens:

(A) Alternaria tenius;

(B) Aqua ivy;

(C) Ash mix;

(D) Aspergillus fumigatus;

(E) Bacterial, Staphylococcus aureus, Type 1;

(F) Bacterial, Staphylococcus aureus, Type 3;

(G) Bacterial, Undenatured;

(H) Bee;

(I) Beech;

(J) Bermuda grass;

(K) Birch;

(L) California live oak;

(M) Candida albicans;

(N) Careless weed;

(O) Cat epithelia;

(P) Cattle epithelia;

(Q) Coccidioides immitis;

(R) Cottonwood fremont;

(S) Dog epithelia;

(T) Elm mix;

(U) English plantain;

(V) Feather mix;

(W) Gram negative bacterial;

(X) Helminthosporium sativum;

(Y) Hickory;

(Z) Hormodendrum hordei;

(AA) Hornet;

(BB) House dust;

(BB.5) House Dust Mite Allergen Extract;

(CC) House dust mix;

(DD) Insects;

(EE) Intradermal or scratching test;

(FF) Johnson grass;

(GG) Kentucky blue grass;

(HH) Kochia;

(II) Lamb quarters;

(JJ) Maple;

(KK) Mesquite;

(LL) Mixed epidermals;

(MM) Mixed grass, ragweeds (spring-fall);

(NN) Mixed grasses (spring);

(OO) Mixed inhalants;

(PP) Mixed molds;

(QQ) Mixed ragweed;

(RR) Mixed ragweed — mixed weeds (fall);

(SS) Mixed weeds;

(TT) Molds;

(UU) Mountain cedar;

(VV) Mugwort common;

(WW) National weed mix;

(XX) Oak mix;

(YY) Olive;

(ZZ) Orchard grass;

(AAA) Pecan;

(BBB) Penicillium notatum;

(CCC) Perennial rye;

(DDD) Poison oak and poison ivy;

(EEE) Pollens;

(FFF) Poplar mix;

(GGG) Prescription;

(HHH) Ragweed mix;

(III) Red top grass;

(JJJ) Respiratory bacterial;

(KKK) Rough pigweed;

(LLL) Russian thistle;

(MMM) Sagebrush common;

(NNN) Scale mix;

(OOO) Short ragweed;

(PPP) Simplified allergy screening set;

(QQQ) Skin bacterial;

(RRR) Southern grass;

(SSS) Staphylococcal;

(TTT) Stinging insect mix;

(UUU) Stinging insects;

(VVV) Sweet vernal;

(WWW) Sycamore;

(XXX) Tall ragweed;

(YYY) Timothy;

(ZZZ) Tree mix;

(AAAA) Trees (early spring);

(BBBB) Walnut;

(CCCC) Wasp;

(DDDD) West ragweed;

(EEEE) West weed mix;

(FFFF) Yellow jacket;

(60) Antihemophilic factor, Human;

(60.3) Antihemophilic factor (recombinant), Fc-VWF-XTEN fusion protein-ehtl;

(60.5) Anti-human globulin;

(61) Antirabies serum;

(62) Antivenin;

(62.03) Apalutamide;

(62.05) Apixaban;

(62.1) Apomorphine;

(62.3) Apraclonidine;

(62.38) Apremilast;

(62.4) Aprepitant;

(62.5) Aprotinin;

(62.7) Ardeparin;

(62.75) Arformoterol tartrate;

(62.8) Argatroban;

(63) Arginine, L-;

(63.5) Aripiprazole;

(64) Arsenic — Preparation for human use;

(64.1) Arsenic trioxide;

(65) Artegraft;

(65.5) Artemether;

(65.7) Artesunate;

(65.8) Asciminib;

(66) Ascorbate sodium — Injection;

(66.5) Asenapine;

(66.7) Asfotase;

(67) Asparaginase;

(67.3) Asparaginase erwinia chrysanthemi (recombinant)-rywn;

(67.6) Astemizole;

(67.67) Astenajavol;

(67.72) Atazanavir;

(68.1) Atenolol;

(68.13) Atezolizumab;

(68.135) Atogepant;

(68.14) Atoltivimab;

(68.15) Atomoxetine;

(68.2) Atorvastatin;

(68.3) Atovaquone;

(68.4) Atracurium besylate;

(68.5) Atropine — See exceptions;

(68.6) Auranofin;

(69) Aurothioglucose;

(69.02) Avacincaptad pegol;

(69.03) Avacopan;

(69.05) Avalglucosidase alfa-ngpt;

(69.07) Avanafil;

(69.10) Avatrombopag;

(69.105) Avapritinib;

(69.11) Avelumab;

(69.2) Avibactam;

(69.25) Axicabtagene ciloleucel;

(69.3) Axitinib;

(69.5) Azacitidine;

(70) Azapetine;

(71) Azatadine maleate;

(72) Azathioprine;

(72.3) Azelaic acid;

(72.4) Azelastine — See exceptions;

(72.43) Azficel-T;

(72.45) Azilsartan;

(72.5) Azithromycin;

(72.7) Azlocillin;

(73) Azo-sulfisoxazole;

(73.5) Aztreonam;

(74) Azuresin;

(75) Bacitracin — See exceptions;

(76) Baclofen;

(76.3) Baloxavir marboxil;

(76.5) Balsalazide;

(76.8) Baricitinib;

(77) Barium — See exceptions;

(77.3) Bazedoxifene;

(77.5) Beclomethasone;

(78) Bedaquiline;

(78.2) Belantamab mafodotin-blmf;

(78.3) Belatacept;

(78.5) Belimumab;

(78.7) Belinostat;

(79) Belladonna;

(80) Belladonna alkaloids;

(81) Belladonna extracts;

(81.2) Belumosudil;

(81.4) Belzutifan;

(81.5) Bempedoic acid;

(82) Benactyzine;

(82.5) Benazepril;

(82.7) Bendamustine;

(83) Bendroflumethiazide;

(83.1) Benoxaprofen;

(83.11) Benralizumab;

(83.2) Bentiromide;

(83.5) Bentoquatam — See exceptions;

(84) Benzestrol;

(84.1) Benznidazole;

(85) Benzonatate;

(86) Benzoylpas;

(87) Benzquinamide;

(88) Benzthiazide;

(89) Benztropine;

(90) Benzylpenicilloyl - polylysine;

(91) Bephenium hydroxynaphthoate;

(91.3) Bepotastine;

(91.5) Bepridil;

(91.7) Beractant;

(91.72) Berdazimer;

(91.73) Beremagene geperpavec-svdt;

(91.75) Berotralstat;

(91.8) Besifloxacin;

(92) Beta-carotene — See exceptions;

(93) Betadine vaginal gel;

(94) Betahistine;

(94.5) Betaine, anhydrous;

(95) Betamethasone;

(95.1) Betaxolol;

(96) Betazole;

(97) Bethanechol;

(97.1) Bethanidine sulfate;

(97.105) Betibeglogene autotemcel;

(97.11) Betrixaban;

(97.2) Bevacizumab;

(97.25) Bexagliflozin;

(97.3) Bexarotene;

(97.4) Bezlotoxumab;

(97.5) Bicalutamide;

(97.7) Bictegravir sodium;

(98) Bile extract;

(98.2) Bimatoprost;

(98.4) Bimekizumab;

(98.6) Binimetinib;

(99) Biperiden;

(99.5) Birch triterpenes;

(100) Bisacodyl tannex;

(101) Bishydroxycoumarin;

(101.5) Biskalcitrate;

(102) Bismuth sodium tartrate — See exceptions;

(102.05) Bisoprolol;

(102.1) Bitolterol mesylate;

(102.5) Bivalirudin;

(103) Blastomycine;

(104) Bleomycin;

(104.3) Blinatumomab;

(104.5) Boceprevir;

(105) Boroglycerin glycerite;

(105.3) Bortezomib;

(105.5) Bosentan;

(105.6) Bosutinib;

(105.7) Botulinum toxin (B);

(106) Botulism antitoxin;

(106.3) Bremelanotide;

(106.5) Brentuxima vedotin;

(107) Bretylium;

(107.1) Reserved;

(107.2) Brexpaprazole;

(107.3) Briazolamide;

(107.4) Brigatinib;

(107.45) Brilliant blue G ophthalmic solution;

(107.5) Brimonidine;

(107.6) Brodalumab;

(107.7) Brolucizumab-dbll;

(108) Bromelains — See exceptions;

(108.5) Bromfenac;

(109) Bromisovalum;

(110) Bromocriptine;

(111) Bromodiphenhydramine;

(112) Brompheniramine — See exceptions;

(113) Brucella antigen;

(114) Brucella protein nucleate;

(115) Buclizine;

(115.3) Budesonide — See exceptions;

(115.5) Bumetanide;

(116) Bupivacaine;

(116.1) Bupropion;

(116.3) Burosumab-twza;

(116.5) Buspirone;

(117) Busulfan;

(118) Butacaine;

(119) Butaperazine;

(119.05) Butenafine — See exceptions;

(119.1) Butoconazole — See exceptions;

(120) Reserved;

(121) Butyl nitrite;

(122) Butyrophenone;

(122.3) Cabazitaxel;

(122.5) Cabergoline;

(122.6) Cabotegravir;

(122.7) Cabozantinib;

(123) Cadmium sulfide — See exceptions;

(124) Caffeine sodium benzoate;

(124.1) Calaspargase pegol-mknl;

(124.3) Calcifediol;

(124.7) Calcipotriene;

(125) Calcitonin, Salmon;

(126) Calcitriol;

(127) Calcium disodium edetate — See exceptions;

(128) Calcium gluconogalactogluconate;

(129) Calcium levulinate;

(129.5) Calfactant;

(130) Calusterone;

(130.1) Canagliflozin;

(130.3) Canakinumab;

(130.5) Candesartan;

(131) Candicidin;

(131.5) Cangrelor;

(132) Cantharidin;

(132.5) Capecitabine;

(132.6) Capivasertib;

(132.7) Caplacizumab-yhdp;

(132.9) Capmatinib;

(133) Capreomycin;

(133.05) Capsaicin — See exceptions;

(133.1) Captopril;

(134) Capyodiame;

(135) Caramiphen;

(136) Carbachol;

(137) Carbamazepine;

(138) Carbazochrome;

(139) Carbenicillin;

(140) Carbetapentane;

(141) Carbidopa;

(142) Carbinoxamine;

(142.5) Carboplatin;

(142.7) Carfilzomib;

(143) Carglumic Acid;

(143.5) Cariprazine;

(144) Carmustine;

(144.1) Carnitine;

(145) Carphenazine;

(145.6) Carteolol;

(145.8) Carvedilol;

(146) Casein hydrolysate;

(146.3) Casimersen;

(146.6) Caspofungin;

(147) Catarrhalis combined vaccine;

(148) Catarrhalis vaccine mixed;

(148.5) Cedazuridine;

(149) Cefaclor;

(150) Cefadroxil;

(151) Cefamandole;

(151.3) Cefazolin;

(151.4) Cefdinir;

(151.45) Cefditoren;

(151.5) Cefepime;

(151.55) Cefiderocol;

(151.6) Cefixime;

(151.7) Cefmetazole;

(151.8) Cefonicid;

(152) Cefoperazone;

(152.1) Ceforanide;

(152.2) Cefotaxime;

(152.3) Cefotetan;

(152.7) Cefotiam;

(152.9) Cefoxitin;

(153.1) Cefpiramide;

(153.2) Cefpodoxime;

(153.3) Cefprozil;

(153.35) Ceftaroline;

(153.4) Ceftazidime;

(153.5) Ceftibuten;

(153.6) Ceftizoxime;

(153.7) Ceftolozane;

(153.8) Ceftriaxone;

(153.9) Cefuroxime;

(153.95) Celecoxib;

(154) Cellulose, Oxadized, Regenerated — See exceptions;

(154.3) Cemiplimab-rwlc;

(154.4) Cenegermin-bkbj;

(154.45) Reserved;

(154.5) Centruroides [Scorpion] Immune;

(155) Cephalexin;

(156) Cephaloglycin;

(157) Cephaloridine;

(158) Cephalothin;

(159) Cephapirin;

(159.3) Cephradine;

(159.6) Ceretec;

(159.7) Ceritinib;

(159.8) Cerivastatin;

(159.9) Cerliponase alfa;

(160) Certolizumab;

(160.1) Ceruletide;

(160.15) Cetirizine — See exceptions;

(160.16) Cetrorelix;

(160.165) Cetuximab;

(160.17) Cevimeline;

(160.20) Chenodiol;

(160.5) Chikungunya Vaccine, Live;

(161) Chlophedianol;

(162) Chlorambucil;

(163) Chloramphenicol;

(164) Chloranil — See exceptions;

(165) Chlordantoin;

(166) Chlordiazepoxide in combination with clidinium bromide or water soluble esterified estrogens;

(166.5) Chlorhexidine — See exceptions;

(167) Chlormadinone;

(168) Chlormerodrin;

(169) Chlormezanone;

(170) Chloroacetic acid — See exceptions;

(171) Chlorobutanol — See exceptions;

(172) Chloroform — See exceptions;

(173) Chloroguanide;

(174) Chloroprocaine;

(175) Chloroquine;

(176) Chlorothiazide;

(177) Chlorotrianisene;

(178) Chloroxine;

(179) Chlorphenesin;

(180) Chlorpheniramine — See exceptions;

(181) Chlorphenoxamine;

(182) Chlorpromazine;

(183) Chlorpropamide;

(184) Chlorprothixene;

(185) Chlorquinaldol;

(186) Chlortetracycline;

(187) Chlorthalidone;

(188) Chlorzoxazone;

(189) Cholera vaccine;

(190) Cholestyramine resin;

(190.3) Cholic Acid;

(190.5) Choline C 11;

(191) Chondroitin;

(191.5) Chymopapain;

(192) Chymotrypsin;

(192.02) Ciclesonide;

(192.03) Ciclopirox;

(192.05) Cidofovir;

(192.1) Cilastatin;

(192.4) Cilexetil;

(192.7) Cilostazol;

(192.8) Ciltacabtagene autoleucel;

(193) Cimetidine — See exceptions;

(193.5) Cinacalcet;

(194) Cinoxacin;

(194.2) Cipaglucosidase alfa-atga;

(194.5) Ciprofloxacin;

(194.7) Cisapride;

(194.8) Cisatracurium;

(195) Cisplatin;

(195.2) Citalopram;

(195.3) Cladribine;

(195.5) Clarithromycin;

(195.6) Clascoterone;

(195.7) Clavulanate;

(196) Clemastine — See exceptions;

(196.5) Clevidipine;

(197) Clidinium bromide;

(198) Clindamycin;

(198.1) Clobetasol propionate;

(199) Clocortolone pivalate;

(200) Clofibrate;

(201) Clomiphene;

(201.5) Clomipramine;

(202) Clonidine;

(203) Clopidogrel;

(204) Clostridiopeptidase;

(205) Clotrimazole — See exceptions;

(206) Cloxacillin;

(206.5) Clozapine;

(206.7) Coagulation Factor X, (human);

(207) Coal tar solution topical;

(207.5) Cobicistat;

(207.7) Cobimetinib;

(208) Cobra venom;

(208.5) Coccidioides immitis;

(209) Colchicine — See exceptions;

(209.5) Colesevelam;

(210) Colestipol;

(211) Colistimethate;

(212) Colistin;

(213) Collagenase;

(213.1) Collagenase clostridium histolyticum;

(213.3) Conivaptan;

(213.4) Copanlisib;

(213.45) Copper dotatate Cu-64;

(213.5) Corticorelin;

(214) Corticotropin;

(215) Corticotropin, Respository;

(216) Cortisone;

(217) Cosyntropin;

(217.2) COVID-19 Vaccine, mRNA;

(217.4) Crisaborole;

(217.5) Crixivan;

(217.7) Crizanlizumab-tmca;

(217.8) Crizotinib;

(217.9) Crofelemer;

(218) Cromolyn — See exceptions;

(219) Crotaline antivenin, Polyvalent;

(220) Crotamiton;

(221) Cryptenamine;

(221.5) Cupric chloride — injectable;

(222) Cyanide antidote;

(223) Cyclacillin;

(224) Cyclandelate;

(225) Reserved;

(226) Cyclobenzaprine;

(227) Cyclomethycaine;

(228) Cyclopentamine;

(229) Cyclopentolate;

(230) Cyclophosphamide;

(231) Cycloserine;

(231.5) Cyclosporine;

(232) Cyclothiazide;

(233) Cycrimine;

(234) Cyproheptadine;

(234.5) Cysteamine;

(235) Cytarabine;

(235.5) Dabigatran;

(235.7) Dabrafenib;

(236) Dacarbazine;

(236.5) Daclatasvir;

(236.6) Daclizumab;

(236.8) Dacomitinib;

(237) Dactinomycin;

(237.05) Dalbavancin;

(237.1) Dalfampridine;

(237.2) Dalfopristin;

(237.5) Dalteparin;

(237.7) Danaparoid;

(238) Danazol;

(239) Dantrolene;

(239.4) Dapagliflozin;

(239.5) Dapiprazole;

(239.7) Daprodustat;

(240) Dapsone — See exceptions;

(240.3) Daptomycin;

(240.4) Daratumumab;

(240.5) Darbepoetin alfa;

(240.6) Darifenacin;

(240.65) Darolutamide;

(240.7) Darunavir;

(240.8) Dasabuvir;

(240.9) Dasatinib;

(240.95) Dasiglucagon;

(241) Daunorubicin;

(241.5) DaxibotulinumtoxinA-lanm;

(242) Deanol;

(243) Decamethonium;

(243.3) Decitabine;

(243.5) Deferasirox;

(243.7) Deferiprone;

(244) Deferoxamine;

(244.2) Defibrotide;

(244.3) Deflazacort;

(244.4) Degarelix;

(244.41) Delafloxacin;

(244.45) Delandistrogene moxeparvovec-rokl;

(244.5) Delavirdine;

(245) Demecarium;

(246) Demeclocycline;

(247) Demethylchlortetracycline;

(247.4) Dengue Tetravalent Vaccine, Live;

(247.7) Denosumab;

(247.8) Deoxycholic Acid;

(248) Deoxyribonuclease, Pancreatic;

(249) Deserpidine;

(249.5) Desflurane;

(250) Desipramine;

(250.5) Desirudin;

(251) Deslanoside;

(251.5) Desloratadine;

(252) Desmopressin;

(252.5) Desogestrel;

(253) Desonide;

(254) Desoximetasone;

(255) Desoxycorticosterone;

(256) Desoxyribonuclease;

(256.5) Desvenlafaxine;

(256.55) Deucravacitinib;

(256.6) Deutetrabenazine;

(257) Dexamethasone;

(258) Dexbrompheniramine — See exceptions;

(259) Dexchlorpheniramine;

(259.5) Dexlansoprazole;

(260) Dexpanthenol;

(260.5) Dexrazoxane;

(261) Dextran;

(262) Reserved;

(263) Dextriferron;

(264) Dextroisoephedrine;

(265) Dextrothyroxine;

(265.5) Dezocine;

(266) Diatrizoate;

(267) Diazoxide;

(268) Dibucaine;

(269) Dichloralphenazone;

(270) Dichlorphenamide;

(270.5) Diclofenac — See exceptions;

(271) Dicloxacillin;

(272) Dicyclomine;

(272.5) Didanosine;

(273) Dienestrol;

(273.5) Dienogest;

(274) Diethylcarbamazine;

(275) Diethylstilbestrol;

(276) Difelikefalin;

(277) Diflorasone diacetate;

(277.5) Diflunisal;

(277.57) Difluprednate;

(278) Digitalis;

(279) Digitoxin;

(280) Digoxin;

(281) Dihydroergocornine;

(282) Dihydroergocristine;

(283) Dihydroergocryptine;

(284) Dihydroergotamine;

(285) Dihydrostreptomycin;

(286) Dihydrotachysterol;

(287) Diiodohydroxyquin;

(287.5) Diltiazem;

(288) Dimenhydrinate — Injection or suppositories;

(289) Dimercaprol;

(290) Dimethindene;

(291) Dimethisterone;

(291.5) Dimethyl fumarate;

(292) Dimethyl sulfoxide — See exceptions;

(293) Dimethyl tubocurarine;

(293.5) Dimyristoyl;

(294) Dinoprost;

(295) Dinoprostone;

(295.5) Dinutuximab;

(296) Dioxyline;

(297) Diphemanil;

(298) Diphenadione;

(299) Diphenhydramine — See exceptions;

(300) Diphenidol;

(301) Diphenylhydantoin;

(302) Diphenylpyraline;

(303) Diphtheria antitoxin;

(304) Diphtheria and tetanus toxoids;

(305) Diphtheria and tetanus toxoids and pertussis vaccine;

(306) Diphtheria and tetanus toxoids, Absorbed;

(307) Diphtheria and tetanus toxoids, Pertussis;

(308) Diphtheria toxoid;

(309) Dipivefrin;

(310) Dipyridamole;

(311) Dipyron;

(311.3) Dirithromycin;

(311.5) Disibind;

(312) Disodium edetate — See exceptions;

(313) Disopyramide;

(314) Disulfiram;

(314.5) Divalproex;

(315) Dobutamine;

(315.5) Docetaxel;

(315.7) Docosanol — See exceptions;

(316) Doderlein bacilli;

(316.2) Dofetilide;

(316.3) Dolasetron;

(316.4) Dolutegravir;

(316.5) Donepezil;

(316.7) Donislecel-jujn;

(317) Dopamine;

(317.1) Doravirine;

(317.2) Doripenem;

(317.3) Dornase Alpha;

(317.4) Dorzolamide;

(317.45) Dostarlimab-gxly;

(317.5) Doxacurium;

(318) Doxapram;

(318.5) Doxazosin mesylate;

(319) Doxepin;

(319.5) Doxercalciferol;

(320) Doxorubicin;

(321) Doxycycline;

(322) Reserved;

(323) Doxylamine;

(324) Dromostanolone;

(324.5) Dronedarone;

(325) Droperidol;

(325.3) Drospirenone;

(325.4) Drotrecogin alfa;

(325.43) Droxidopa;

(325.44) Dulaglutide;

(325.45) Duloxetine;

(325.46) Dupilumab;

(325.465) Durlobactam;

(325.47) Durvalumab;

(325.5) Dutasteride;

(325.8) Duvelisib;

(326) Dyclonine;

(327) Dydrogesterone;

(328) Dyphylline;

(328.3) Ebola Zaire Vaccine, Live;

(328.5) Ecallantide;

(329) Echothiophate;

(329.5) Econazole;

(330) Ectylurea;

(330.3) Eculizumab;

(330.4) Edaravone;

(330.5) Edetate — See exceptions;

(330.7) Edoxaban;

(331) Edrophonium;

(331.03) Efavirenz;

(331.033) Efbemalenograstim alfa-vuxw;

(331.035) Efgartigimod alfa-fcab;

(331.04) Efinaconazole;

(331.045) Eflapegrastim;

(331.05) Eflornithine;

(331.0502) Elacestrant;

(331.051) Elagolix sodium;

(331.052) Elapegademase-lvlr;

(331.053) Elbasvir;

(331.0535) Elecsys HIV Duo;

(331.0536) Elecsys HTLV-I/II;

(331.054) Elexacaftor;

(331.055) Eliglustat;

(331.056) Elivaldogene autotemcel;

(331.058) Elosulfase;

(331.059) Elotuzumab;

(331.0595) Elranatamab-bcmm;

(331.06) Eltrombopag;

(331.065) Elvitegravir;

(331.068) Emapalumab-lzsg;

(331.07) Emedastine;

(331.0701) Emicizumab;

(331.071) Empagliflozin;

(331.072) Emtricitabine;

(331.1) Enalapril;

(331.6) Enalaprilat;

(331.7) Enasidenib;

(331.9) Encorafenib;

(332) Enflurane;

(332.1) Enfortumab vedotin-ejfv;

(332.2) Enfuvirtide;

(332.5) Enoxacin;

(332.7) Enoxaparin;

(332.8) Entacapone;

(332.85) Entecavir;

(332.86) Entrectinib;

(332.87) Enzalutamide;

(332.875) Epcoritamab-bysp;

(332.88) Epidiolex: A drug product in finished dosage formulation in its original container that has been approved by and labeled in compliance with the United States Food and Drug Administration (FDA) that contains cannabidiol (CBD) derived from cannabis and contains no more than 0.1 percent (w/w) residual tetrahydrocannabinols;

(332.9) Epinastine;

(333) Epinephrine — See exceptions;

(334) Epinephryl borate;

(334.3) Epirubicin;

(334.4) Eplerenone;

(334.42) Eplontersen;

(334.45) Epoetin alfa;

(334.5) Epoprostenol;

(334.7) Eprosartan;

(334.8) Eptifibatide;

(334.85) Eptinezumab-jjmr;

(334.9) Eravacycline;

(334.91) Erdafitinib;

(334.92) Erenumab-aooe;

(335) Ergocalciferol — See exceptions;

(335.5) Ergoloid mesylates;

(336) Ergonovine;

(337) Ergotamine;

(338) Ergosine;

(339) Ergocristine;

(340) Ergocryptine;

(341) Ergocornine;

(342) Ergotaminine;

(343) Ergosinine;

(344) Ergocristinine;

(345) Ergocryptinine;

(346) Ergocorninine;

(346.05) Eribulin;

(346.1) Erlotinib;

(346.5) Ertapenem;

(346.7) Ertugliflozin;

(347) Erythrityl tetranitrate;

(348) Erythromycin;

(348.722) Escitalopram;

(349) Eserine;

(349.3) Eslicarbazepine;

(349.4) Esmolol;

(349.7) Esomeprazole — See exceptions;

(350) Esterified estrogens;

(350.5) Estetrol;

(351) Estradiol;

(352) Estriol;

(353) Estrogens;

(354) Estrogenic substances;

(355) Estrone;

(355.5) Estropipate;

(355.55) Etanercept;

(355.6) Etanercept-szzs;

(355.7) Etelcalcetide;

(355.8) Eteplirsen;

(356) Ethacrynate;

(357) Ethacrynic acid;

(358) Ethambutol;

(359) Ethamivan;

(359.5) Ethanolamine oleate;

(360) Ethaverine;

(361) Ether — See exceptions;

(361.5) Reserved;

(362) Ethinyl estradiol;

(363) Ethiodized oil;

(364) Ethionamide;

(365) Ethisterone;

(366) Ethoheptazine;

(367) Ethopropazine;

(368) Ethosuximide;

(369) Ethotoin;

(370) Ethoxazene — See exceptions;

(371) Ethoxyzolamide;

(372) Ethyl biscoumacetate;

(373) Ethyl chloride — See exceptions;

(374) Ethyl nitrite spirit;

(375) Reserved;

(376) Ethylnorepinephrine;

(377) Ethynodiol diacetate;

(378) Etidocaine;

(379) Etidronate;

(379.05) Etodolac;

(379.07) Etomidate;

(379.09) Etonogestrel;

(379.1) Etoposide;

(379.4) Etrasimod;

(379.5) Etravirine;

(380) Eucatropine;

(380.3) Everolimus;

(380.35) Evinacumab-dgnb;

(380.4) Evolocumab;

(380.5) Exemestane;

(380.6) Exenatide;

(380.7) Ezetimibe;

(381) Factor IX complex, Human;

(381.1) Famciclovir;

(381.2) Famotidine — See exceptions;

(381.23) Faricimab-svoa;

(381.24) Fecal microbiota spores, live-brpk;

(381.25) Fedratinib;

(381.3) Felbamate;

(381.5) Felodipine;

(381.55) Fenfibrate;

(381.57) Fenfluramine;

(381.6) Fenofenadine;

(381.7) Fenofibrate;

(381.75) Fenofibric acid;

(381.8) Fenoldopam;

(382) Fenoprofen;

(382.25) Febuxostat;

(383) Ferric cacodylate;

(383.15) Ferric Hexacyanoferrate;

(383.2) Ferric maltol;

(383.3) Ferumoxides;

(383.4) Ferumoxsil;

(383.43) Ferumoxytol;

(383.45) Fesoterodine;

(383.47) Fexinidazole;

(383.5) Fexofenadine — See exceptions;

(383.7) Fezolinetant;

(384) Fibrinogen;

(385) Fibrinogen/antihemophilic factor, Human;

(386) Fibrinolysin, Human;

(386.05) Fidaxomicin;

(386.1) Filgrastim-SNDZ;

(386.3) Reserved;

(386.5) Filgrastim;

(386.6) Finafloxacin;

(386.63) Finasteride;

(386.65) Finerenone;

(386.7) Fingolimod;

(386.9) Fish oil triglycerides;

(387) Flavoxate;

(387.1) Flecainide acetate;

(387.7) Flibanserin;

(388) Florantyrone;

(388.3) Florbetapir F 18;

(388.4) Flortaucipir F 18;

(388.5) Flosequinan;

(388.7) Flotufolastat F 18;

(389) Floxuridine;

(389.5) Fluconazole;

(390) Flucytosine;

(390.5) Fludarabine;

(390.7) Fludeoxyglucose;

(391) Fludrocortisone;

(391.5) Flumazenil;

(392) Flumethasone;

(392.1) Flunisolide;

(393) Fluocinonide;

(394) Fluocinolone;

(395) Fluorescein;

(396) Fluoride — See exceptions;

(396.3) Fluorodopa F 18;

(396.4) Fluoroestradiol F 18;

(396.5) Fluorometholone;

(397) Fluorophosphates;

(398) Fluorouracil;

(399) Fluoxetine;

(399.5) Fluoxymesterone;

(400) Fluphenazine;

(401) Fluprednisolone;

(402) Flurandrenolide;

(402.2) Flurbiprofen;

(402.5) Flutamide;

(402.6) Flutemetamol F18;

(402.7) Fluticasone — See exceptions;

(402.8) Fluvastatin;

(402.9) Fluvoxamine;

(403) Folate sodium;

(404) Folic acid — See exceptions;

(404.3) Follitropin;

(404.5) Fomivirsen;

(404.7) Fondaparinux;

(405) Foreign protein;

(406) Formaldehyde — See exceptions;

(406.2) Formoterol;

(406.3) Fosamprenavir;

(406.35) Fosaprepitant;

(406.4) Foscarnet;

(406.45) Fosdenopterin;

(406.5) Fosfomycin;

(406.7) Fosinopril;

(406.9) Fosphenytoin;

(406.93) Fostamatinib;

(406.935) Fostemsavir;

(406.94) Fremanezumab-vfrm;

(406.95) Frovatriptan;

(406.97) Fruquintinib;

(407) Furazolidone;

(408) Furosemide;

(408.05) Futibatinib;

(408.1) Ga-68-DOTATOC;

(408.2) Gabapentin;

(408.25) Gadobenate;

(408.27) Gadobutrol;

(408.3) Gadodiamide;

(408.35) Gadofosveset;

(408.4) Gadopentetate dimeglumine;

(408.45) Gadopiclenol;

(408.5) Gadoterate meglumine;

(408.6) Gadoteridol;

(408.8) Gadoversetamide;

(408.85) Gadoxetate;

(408.9) Galantamine;

(408.95) Galcanezumab-gnlm;

(409) Gallamine triethiodide;

(409.1) Gallium 68 PSMA-11;

(409.3) Gallium citrate;

(409.5) Gallium nitrate;

(409.8) Galsulfase;

(410) Gamma benzene hexachloride;

(411) Gamma globulin;

(411.5) Ganciclovir;

(411.7) Ganirelix;

(412) Gas gangrene polyvalent antitoxin;

(412.03) Gatifloxacin;

(412.04) Gefitinib;

(412.05) Gemcitabine;

(412.1) Gemfibrozil;

(412.2) Gemifloxacin;

(412.3) Gemtuzumab ozogamicin;

(412.5) Genotropin;

(413) Gentamicin;

(414) Gentian violet vaginal suppositories;

(414.3) Gepirone;

(414.5) Gilteritinib;

(415) Gitalin;

(415.01) Givosiran;

(415.02) Glasdegib;

(415.03) Glatiramer;

(415.04) Glecaprevir;

(415.05) Glimepiride;

(415.1) Glipizide;

(415.6) Glofitamab-gxbm;

(416) Glucagon;

(416.5) Glucarpidase;

(417) Gluceptate;

(418) Gluconate magnesium;

(419) Gluconate potassium — See exceptions;

(420) Glutamate arginine;

(420.1) Glyburide;

(420.2) Glycerol phenylbutyrate;

(420.5) Glycine — See exceptions;

(421) Glycobiarsol;

(422) Glycopyrrolate;

(423) Gold sodium thiomalate;

(424) Gold thiosulfate — See exceptions;

(424.4) Golimumab;

(424.6) Golodirsen;

(425) Gomenol Solution;

(425.5) Gonadorelin acetate;

(426) Gonadotropin, Chorionic;

(427) Gonadotropin, Chorionic, Anti-human serum;

(428) Gonadotropin, Serum;

(428.5) Goserelin;

(429) Gramicidin;

(430) Gramineae pollens;

(430.3) Gramosetron;

(430.5) Granisetron;

(430.7) Grazoprevir;

(431) Griseofulvin;

(431.5) Guanabenz;

(432) Guanethidine;

(432.4) Guanadrel;

(432.7) Guanfacine;

(432.9) Guanidine;

(432.91) Guselkumab;

(433) Halcinonide;

(433.5) Halobetasol Propionate;

(433.7) Halofantrine;

(434) Haloperidol;

(435) Haloprogin;

(436) Halothane;

(437) Hartman's solution;

(438) Heparin;

(438.3) Hepatitis C virus (E. coli, recombinant) NS3 helicase antigens and synthetic core peptide;

(438.5) Hepatitis vaccine;

(439) Hetacillin;

(440) Hexachlorophene — See exceptions;

(441) Hexafluorenium;

(442) Hexocyclium;

(443) Hexylcaine;

(444) Histamine;

(445) Histoplasmin;

(445.5) Histrelin acetate;

(446) Homatropine;

(446.2) Human Papillomavirus 9-valent Vaccine, Recombinant;

(446.4) Human secretin;

(446.6) Hyaluronan;

(446.7) Hyaluronic acid;

(447) Hyaluronidase;

(448) Hydralazine;

(449) Hydrocalciferol;

(450) Hydrochlorothiazide;

(451) Hydrocortamate;

(452) Hydrocortisone — See exceptions;

(453) Hydroflumethiazide;

(454) Hydroquinone;

(455) Hydroxocobalamin — See exceptions;

(456) Hydroxyamphetamine;

(457) Hydroxychloroquine;

(458) Hydroxyprogesterone;

(459) Hydroxyurea;

(460) Hydroxyzine;

(461) Hyoscyamine;

(462) Hyoscyamus alkaloids;

(462.5) Hyperpolarized Xe-129;

(463) Hypophamine;

(463.01) Ibalizumab-uiyk;

(463.03) Ibandronate;

(463.3) Ibrexafungerp;

(463.5) Ibrutinib;

(464) Ibuprofen — See exceptions;

(464.05) Ibutilide;

(464.07) Icatibant;

(464.1) Idarubicin;

(464.15) Idarucizumab;

(464.17) Idecabtagene vicleucel;

(464.2) Idelalisib;

(464.3) Idoxuridine;

(464.5) Idursulfase;

(464.6) Ifosfamide;

(464.67) Iloperidone;

(464.7) Iloprost;

(464.8) Imatinib;

(465) Imiglucerase;

(465.1) Imipenem/cilastatin;

(466) Imipramine;

(466.5) Imiquimod;

(467) Immune hepatitis B globulin, Human;

(468) Immune poliomyelitis globulin, Human;

(469) Immune serum globulin, Human;

(469.03) Inclisiran;

(469.05) IncobotulinumtoxinA;

(469.07) Indacaterol;

(469.1) Indapamide;

(469.5) Indecainide;

(470) Indigotindisulfonate;

(470.05) Indinavir;

(470.1) Indium IN-III oxyquinolone;

(470.3) Indium IN-III pentetreotide;

(471) Indocyanine green;

(472) Indomethacin;

(472.3) Inebilizumab-cdon;

(472.4) Infigratinib;

(472.5) Infliximab;

(472.51) Infliximab-dyyb;

(473) Influenza virus vaccines;

(473.5) Ingenol mebutate;

(474) Injections, All substances for human use — See exceptions;

(474.01) Inotersen;

(474.1) Inotuzumab ozogamicin;

(474.2) Insulin aspart;

(474.3) Insulin degludec;

(474.4) Insulin glargine;

(474.45) Insulin glulisine;

(474.5) Interferon;

(475) Intrinsic factor concentrate manufactured for human use;

(475.3) Inulin;

(475.5) Iobenguane;

(476) Iocetamic acid;

(477) Iodamide;

(478) Iodinated I-125 serum albumin;

(479) Iodinated I-131 serum albumin;

(480) Iodinated glycerol-theophylline;

(481) Iodine solution, Strong oral;

(482) Iodipamide;

(482.5) Iodixanol;

(483) Iodized oil;

(484) Iodobenzoic acid — See exceptions;

(485) Iodobrassid;

(485.1) Iodohippurate sodium;

(486) Iodopyracet;

(487) Iodothiouracil;

(487.05) Iofetamine;

(487.06) Ioflupane;

(487.08) Iohexol;

(487.1) Iopamidol;

(488) Iopanoic acid — See exceptions;

(489) Iophendylate;

(489.1) Iopromide;

(489.2) Iothalamate;

(489.3) Iothiouracil;

(489.5) Iotrolan;

(489.6) Ioversol;

(490.1) Ioxaglate;

(490.5) Ioxilan;

(490.7) Ipilimumab;

(491) Ipodate;

(491.5) Ipratropium;

(491.55) Iptacopan;

(491.6) Irbesartan;

(491.7) Irinotecan;

(492) Iron cacodylate;

(493) Iron dextran injection;

(494) Iron peptonized;

(495) Iron sorbitex;

(495.3) Isatuximab;

(495.5) Isavuconazonium;

(496) Isocarboxazid;

(497) Isoetharine;

(498) Isoflurane;

(499) Isoflurophate;

(500) Isometheptene;

(501) Isoniazid;

(502) Isopropamide;

(503) Isoproterenol;

(504) Isosorbide dinitrate;

(504.05) Isosorbide mononitrate;

(504.1) Isosulfan blue;

(505) Isothipendyl;

(505.5) Isotretinoin;

(506) Isoxsuprine;

(506.5) Isradipine;

(506.6) Istradefylline;

(506.7) Itraconazole;

(506.72) Ivabradine;

(506.75) Ivacaftor;

(506.8) Ivermectin — See exceptions;

(506.85) Ivosidenib;

(506.9) Ixabepilone;

(506.95) Ixazomib;

(506.97) Ixekizumab;

(507) Kanamycin;

(508) Reserved;

(509) Ketocholanic acids;

(509.1) Ketoconazole — See exceptions;

(509.15) Ketoprofen — See exceptions;

(509.17) Ketorolac tromethamine;

(509.18) Ketotifen — See exceptions;

(509.2) Labetalol;

(509.7) Reserved;

(510) Lactated ringers solution;

(510.5) Lactitol;

(511) Lactulose;

(511.3) Lamivudine;

(511.5) Lamotrigine;

(511.55) Lanadelumab;

(512) Lanatoside C;

(512.3) Lanreotide;

(512.5) Lansoprazole — See exceptions;

(512.6) Lanthanum;

(512.67) Lapatinib;

(512.69) Larotrectinib;

(512.691) Reserved;

(512.7) Latanoprost;

(512.8) Latanoprostene bunod;

(513) Latrodectus mactans;

(513.1) Lecanemab-irmb;

(513.3) Ledipasvir;

(513.4) Lefamulin;

(513.5) Leflunomide;

(513.6) Lenacapavir;

(513.7) Lenalidomide;

(513.72) Leniolisib;

(513.74) Lenvatinib;

(513.77) Lesinurad;

(513.78) Letermovir;

(513.8) Letrozole;

(514) Leucovorin;

(514.1) Leuprolide;

(514.5) Levalbuterol;

(515) Reserved;

(515.5) Levamisole;

(516) Levarterenol;

(516.05) Levetiracetam;

(516.07) Levobetaxolol;

(516.1) Levobunolol;

(516.3) Levobupivacine;

(516.5) Levocabastine;

(516.7) Levocarnitine;

(516.75) Levocetirizine dihydrochloride — See exceptions;

(517) Levodopa;

(517.2) Levofloxacin;

(517.25) Levoleucovorin;

(517.3) Levomethadyl;

(517.35) Levomilnacipran;

(517.4) Levonordefrin;

(518) Levopropoxyphene;

(519) Levothyroxine;

(520) Lidocaine — See exceptions;

(520.2) Lifitegrast;

(520.3) Linaclotide;

(520.5) Linagliptin;

(521) Lincomycin;

(522) Lindane — See exceptions;

(522.5) Linezolid;

(523) Linolenic acid;

(524) Liothyronine;

(525) Liotrix;

(525.2) Liraglutide;

(525.5) Lisinopril;

(525.7) Lisocabtagene maraleucel;

(526) Lithium carbonate — See exceptions;

(527) Lithium citrate;

(528) Liver extract;

(528.1) Lixisenatide;

(528.3) Lodoxamide;

(528.4) Lofexidine hydrochloride;

(528.5) Lomefloxacin;

(528.7) Lomitapide;

(529) Lomustine;

(529.05) Lonafarnib;

(529.07) Lonapegsomatropin-tcgd;

(529.08) Loncastuximab tesirine-lpyl;

(529.1) Loperamide — See exceptions;

(529.5) Lopinavir;

(529.7) Loracarbef;

(529.9) Loratadine — See exceptions;

(529.93) Reserved;

(529.94) Lorlatinib;

(529.95) Losartan;

(529.97) Loteprednol;

(529.98) Lotilaner;

(530) Lovastatin;

(530.5) Loxapine;

(530.7) Lubiprostone;

(530.8) Lucinactant;

(531) Lugols solution;

(531.3) Luliconazole;

(531.4) Lumacaftor;

(531.43) Lumasiran;

(531.45) Lumateperone tosylate;

(531.5) Lumefantrine;

(531.7) Lurasidone;

(531.73) Lurbinectedin;

(531.75) Luspatercept-aamt;

(531.8) Lusutrombopag;

(531.9) Lutetium Lu 177 dotatate;

(531.95) Lutetium (177Lu) vipivotide tetraxetan;

(532) Lututrin;

(533) Lymphogranuloma venereum antigen;

(534) Lypressin synthetic;

(534.3) Macimorelin;

(534.5) Macitentan;

(535) Mafenide;

(535.5) Maftivimab;

(536) Magnesium gluconate — See exceptions;

(537) Magnesium salicylate;

(538) Mandelic acid — See exceptions;

(539) Mannitol — See exceptions;

(540) Mannitol hexanitrate;

(540.1) Maprotiline;

(540.2) Maralixibat;

(540.3) Maraviroc;

(540.4) Margetuximab — anti HER2 mAb;

(540.45) Maribavir;

(540.5) Masoprocol;

(540.7) Mavacamten;

(541) Measles immune globulin, Human;

(542) Measles virus vaccines;

(543) Mebendazole for human use;

(544) Mecamylamine;

(544.5) Mecasermin;

(545) Mechlorethamine;

(546) Meclizine — See exceptions;

(546.5) Meclocycline;

(547) Meclofenamate;

(548) Medroxyprogesterone;

(549) Medrysone;

(550) Mefenamic acid;

(550.5) Mefloguine;

(551) Megestrol;

(552) Meglumine;

(552.5) Meloxicam;

(553) Melphalan;

(553.5) Memantine;

(554) Menadiol;

(555) Menadione;

(556) Meningococcal vaccine;

(557) Menotropins;

(558) Mepenzolate;

(559) Mephenesin;

(560) Mephentermine;

(561) Mephenytoin;

(562) Mepivacaine;

(562.5) Mepolizumab;

(563) Meprednisone;

(563.5) Mequinol;

(564) Meralluride;

(565) Mercaptomerin;

(566) Mercaptopurine;

(567) Mercury bichloride — See exceptions;

(567.1) Meropenem;

(567.2) Mersalyl;

(567.3) Mesalamine;

(567.5) Mesna;

(568) Mesoridazine;

(569) Mestranol;

(570) Metaproterenol;

(571) Metaraminol;

(572) Metaxalone;

(572.5) Metformin;

(573) Methacholine;

(574) Methacycline;

(575) Methallenestril;

(576) Reserved;

(577) Reserved;

(578) Methantheline;

(579) Methazolamide;

(580) Methdilazine;

(581) Methenamine hippurate;

(582) Methenamine mandelate;

(583) Methenamine sulfosalicylate;

(584) Methicillin;

(585) Methimazole;

(586) Methiodal;

(587) Methionine;

(588) Methixene;

(589) Methocarbamol;

(590) Methotrexate;

(591) Methotrimeprazine;

(592) Methoxamine;

(593) Methoxsalen;

(594) Methoxyflurane;

(595) Methoxyphenamine;

(595.5) Methoxy polyethylene glycol-epoetin beta;

(596) Methscopolamine;

(597) Methsuximide;

(598) Methyclothiazide;

(599) Methylandrostenediol;

(600) Methylatropine;

(601) Methyldopa;

(602) Methyldopate;

(603) Methylene blue, Oral;

(604) Methylergonovine;

(604.5) Methylnaltrexone;

(605) Methylprednisolone;

(606) Reserved;

(607) Methysergide;

(608) Metoclopramide;

(609) Metocurine iodide injection;

(610) Metolazone;

(611) Metoprolol;

(611.5) Metreleptin;

(612) Metrizamide;

(612.5) Metrizoate;

(613) Metronidazole;

(614) Metyrapone;

(615) Metyrosine;

(615.01) Mexiletine;

(615.1) Mezlocillin;

(615.6) Mibefradil;

(615.9) Micafungin;

(616) Miconazole — See exceptions;

(617) Microfibrillar collagen hemostat;

(617.1) Midodrine;

(617.2) Midostaurin;

(617.22) Midubosathol;

(617.3) Mifepristone;

(617.35) Migalastat;

(617.4) Miglitol;

(617.44) Miglustat;

(617.47) Milnacipran;

(617.5) Milrinone;

(617.7) Miltefosine;

(618) Minocycline;

(619) Minoxidil — See exceptions;

(619.05) Mipomersen;

(619.1) Mirabegron;

(619.2) Mirikizumab-mrkz;

(619.3) Mirtazapine;

(619.4) Mirvetuximab soravtansine-gynx;

(619.5) Misoprostol;

(619.7) Mitapivat;

(620) Mithramycin;

(621) Mitomycin;

(622) Mitotane;

(622.3) Mitoxantrone;

(622.5) Mivacurium;

(622.6) Mobocertinib;

(622.7) Moexipril;

(622.8) Mogamulizumab;

(623) Molindone;

(623.2) Momelotinib;

(623.5) Mometasone — See exceptions;

(624) Monobenzone;

(624.1) Monooctanoin;

(624.5) Montelukast;

(624.7) Moricizine;

(625) Morrhuate;

(625.05) Mosunetuzumab-axgb;

(625.07) Motixafortide;

(625.1) Moxalactam;

(625.2) Moxetumomab pasudotox-tdfk;

(625.3) Moxidectin;

(625.5) Moxifloxacin;

(626) Mumps virus vaccines;

(626.5) Mupirocin;

(627) Mushroom spores which, when mature, contain either psilocybin or psilocin;

(627.5) Mycophenolate;

(628) N-acetyl-1-cysteine;

(629) N. cattarhalis antigen;

(629.5) Nabumetone;

(630) Nadolol;

(630.5) Nafarelin;

(631) Nafcillin;

(631.5) Naftifine;

(632) Nalbuphine;

(632.1) Naldemedine;

(633) Reserved;

(634) Nalidixic acid;

(634.5) Nalmefene;

(634.7) Naloxegol;

(635) Naloxone — See exceptions;

(635.1) Naltrexone;

(636) Reserved;

(637) Naphazoline — See exceptions;

(638) Naproxen — See exceptions;

(638.3) Naratriptan;

(638.4) Natalizumab;

(638.43) Naxitamab-gqgk;

(638.45) Nebivolol;

(638.47) Necitumumab;

(638.5) Nedocromil;

(638.6) Nedosiran;

(638.7) Nefazodone;

(638.75) Nelarabine;

(638.8) Nelfinavir;

(639) Neomycin — See exceptions;

(640) Neostigmine;

(640.1) Nepafenac;

(640.11) Neratinib maleate;

(640.2) Nesiritide;

(640.25) Netarsudil;

(640.3) Netilmicin;

(640.35) Netupitant;

(640.4) Nevirapine;

(640.5) Niacinamide — See exceptions;

(640.7) Nicardipine;

(640.8) Niclosamide;

(641.1) Nicotine resin complex (polacrilex) — See exceptions;

(641.15) Nicotine transdermal system — See exceptions;

(642) Nicotinyl alcohol;

(642.1) Nifedipine;

(643) Nifuroximine;

(643.5) Nifurtimox;

(644) Nikethamide;

(644.3) Nilotinib;

(644.4) Nilutamide;

(644.5) Nimodipine;

(644.6) Nintedanib;

(644.61) Niraparib;

(644.63) Nirmatrelvir;

(644.64) Nirogacestat;

(644.65) Nirsevimab-alip;

(644.7) Nisoldipine;

(644.72) Nitazoxanide;

(644.8) Nitisinone;

(644.9) Nitric oxide — for use in humans;

(645) Nitrofurantoin;

(646) Nitrofurazone;

(647) Nitroglycerin;

(648) Nitroprusside — See exceptions;

(648.3) Nitrous oxide — See exceptions;

(648.5) Nivolumab;

(648.6) Nizatidine — See exceptions;

(649.1) Nomifensine maleate;

(650) Nonoxynol — See exceptions;

(651) Norepinephrine;

(652) Norethindrone;

(653) Norethynodrel;

(653.5) Norfloxacin;

(654) Norgestrel — See exceptions;

(655) Normal serum albumin, Human;

(656) Nortriptyline;

(657) Nositol;

(658) Novobiocin;

(658.7) Nusinersen;

(659) Nux vomica;

(660) Nylidrin;

(661) Nystatin;

(661.03) Obeticholic acid;

(661.05) Obiltoxaximab;

(661.1) Obinutuzumab;

(661.15) Ocilizumab;

(661.2) Ocrelizumab;

(661.3) Ocriplasmin;

(661.5) Octreotide acetate;

(661.55) Odesivimab-ebgn;

(661.57) Odevixibat;

(661.6) Ofatumumab;

(661.7) Ofloxacin;

(661.8) Olanzapine;

(661.9) Olaparib;

(661.96) Olaratumab;

(662) Old tuberculin;

(663) Oleandomycin;

(663.05) Olipudase alfa;

(663.1) Olmesartan;

(663.15) Olodaterol;

(663.2) Olopatadine — See exceptions;

(663.3) Olsalazine Sodium;

(663.32) Olutasidenib;

(663.35) Omacetaxine mepesuccinate;

(663.355) Omadacycline;

(663.36) Omalizumab;

(663.365) Omaveloxolone;

(663.37) Ombitasvir;

(663.4) Omega-3-acid;

(663.5) Omeprazole — See exceptions;

(663.55) Omidenepag isopropyl;

(663.57) Omidubicel-onlv;

(663.6) OnabotulinumtoxinA;

(663.7) Ondansetron;

(663.71) Opicapone;

(663.73) Oritavancin;

(663.75) Orlistat — See exceptions;

(664) Orphenadrine;

(665) Orthoiodobenzoic acid;

(665.5) Oseltamivir;

(665.53) Osilodrostat;

(665.55) Osimertinib;

(665.6) Ospemifene;

(665.65) Oteseconazole;

(665.7) Ovine hyaluronidase;

(666) Oxacillin;

(666.4) Oxaliplatin;

(666.6) Oxamniquine;

(667) Oxaprozin;

(667.5) Oxcarbazepine;

(668) Oxethazaine;

(668.5) Oxiconazole;

(669) Oxolinic acid;

(669.1) Oxprenolol;

(670) Oxtriphylline;

(671) Oxybutynin — See exceptions;

(672) Oxygen for human use — See exceptions;

(673) Oxymetazoline;

(674) Oxyphenbutazone;

(675) Oxyphencyclimine;

(676) Oxyphenisatin;

(677) Oxyphenonium;

(678) Oxyquinoline;

(679) Oxytetracycline;

(680) Oxytocin;

(680.1) Ozanimod;

(680.3) Ozenoxacin;

(680.5) Ozogamicin;

(681) P-nitrosulfathiazole;

(681.3) Paclitaxel;

(681.32) Pacritinib;

(681.33) Pafolacianine;

(681.35) Palbociclib;

(681.4) Palifermin;

(681.45) Paliperidone;

(681.5) Palonosetron;

(681.6) Palovarotene;

(681.7) Pamidronate;

(682) Pancreatin dornase;

(683) Pancreatic enzyme;

(684) Pancrelipase;

(685) Pancuronium;

(685.5) Panidronate;

(685.6) Panitumumab;

(685.65) Panobinostat;

(685.7) Pantoprazole;

(686) Papaverine;

(687) Paramethadione;

(688) Paramethasone;

(689) Paranitrosulfathiazole;

(690) Parathyroid injection;

(691) Pargyline;

(691.5) Paricalcitol;

(691.7) Paritaprevir;

(692) Paromomycin;

(692.2) Paroxetine;

(692.25) Pasereotide;

(692.28) Pasireotide;

(692.29) Patiromer;

(692.295) Patisiran;

(692.3) Pazopanib;

(692.4) Pegademase bovine;

(692.5) Pegaspargase;

(692.505) Pegcetacoplan;

(692.51) Pegfilgrastim;

(692.513) Peginesatide;

(692.515) Peginterferon;

(692.517) Pegloticase;

(692.518) Pegunigalsidase alfa-iwxj;

(692.519) Pegvaliase-pqpz;

(692.52) Pegvisomant;

(692.53) Pembrolizumab;

(692.54) Pemetrexed;

(692.545) Pemigatinib;

(692.55) Pemirolast;

(692.6) Penbutolol;

(692.8) Penciclovir;

(693) Penicillamine;

(694) Penicillin;

(695) Penicillin G;

(696) Penicillin O;

(697) Penicillin V;

(698) Penicillinase;

(699) Pentaerythritol tetranitrate;

(700) Pentagastrin;

(700.1) Pentamidine isethionate;

(701) Pentapiperide;

(701.5) Pentetate calcium trisodium;

(701.7) Pentetate zinc trisodium;

(702) Penthienate;

(703) Pentolinium;

(703.03) Pentosan;

(703.05) Pentostatin;

(703.1) Pentoxifylline;

(703.4) Pentylenetetrazol;

(703.42) Peramivir;

(703.43) Reserved;

(703.45) Perflexane;

(703.5) Perflubron;

(703.6) Perfluoroalkylpolyether;

(703.63) Perfluorohexyloctane;

(703.65) Perflutren;

(703.7) Pergolide;

(704) Perindopril;

(704.1) Permethrin — See exceptions;

(705) Perphenazine;

(706) Pertussis immune globulin, Human;

(706.5) Pertuzumab;

(706.7) Pexidartinib;

(707) Phenacemide;

(708) Phenaglycodol;

(709) Phenaphthazine;

(710) Phenazopyridine — See exceptions;

(711) Phenelzine;

(712) Phenethicillin;

(713) Phenformin;

(714) Phenindamine;

(715) Phenindione;

(716) Pheniramine — See exceptions;

(717) Phenitramin;

(718) Phenothiazine derivatives;

(719) Phenoxybenzamine;

(720) Phenoxymethyl penicillin;

(721) Phenuprocoumon;

(722) Phensuximide;

(723) Phentolamine;

(724) Phenylbutazone;

(725) Phenylmercuric acetate;

(726) Phenylmercuric nitrate;

(726.5) Phenylpropanolamine;

(727) Phenyltoloxamine dihydrogen citrate;

(727.2) Phenytoin;

(728) Phthalylsulfacetamide;

(729) Phthalylsulfathiazole;

(730) Physostigmine;

(731) Phytonadione;

(731.01) Pibrentasvir;

(731.05) Piflufolastat F 18;

(731.1) Reserved;

(732) Pilocarpine;

(732.1) Pimecrolimus;

(732.2) Pimozide;

(732.3) Pinacidil;

(732.7) Pindolol;

(732.8) Pioglitazone;

(732.9) Reserved;

(733) Pipazethate;

(733.5) Pipecuronium;

(734) Pipenzolate;

(735) Piperacetazine;

(735.1) Piperacillin;

(736) Piperazine;

(737) Piperidolate;

(738) Piperocaine;

(739) Pipobraman;

(740) Pipradrol;

(740.05) Pirbuterol;

(740.07) Pirfenidone;

(740.1) Piroxicam;

(740.3) Pirtobrutinib;

(740.5) Pitavastatin;

(740.7) Pitolisant;

(741) Plague vaccine;

(742) Plasma protein fraction;

(742.03) Plasminogen, human-tvmh;

(742.05) Plazomicin;

(742.1) Plecanatide;

(742.3) Plerixafor;

(742.5) Plicamycin;

(743) Pneumococcal vaccine;

(743.3) Podofilox;

(743.5) Podophyllotoxin;

(744) Poison ivy extract;

(745) Poison ivy oak extract;

(746) Poison ivy oak, sumac extract;

(746.5) Polatuzumab vedotin-piiq;

(747) Poldine methylsulfate;

(747.4) Polidocanol;

(748) Poliomyelitis vaccine;

(749) Poliovirus vaccine, Live, Oral, All;

(750) Polyestradiol;

(751) Polymyxin B — See exceptions;

(751.5) Polytetrafluoroethylene;

(752) Polythiazide;

(752.05) Pomalidomide;

(752.1) Ponatinib;

(752.15) Ponesimod;

(752.2) Poractant alfa;

(752.5) Porfimer;

(752.7) Posaconazole;

(753) Posterior pituitary;

(754) Potassium acetate injection;

(755) Potassium acid phosphate — See exceptions;

(756) Potassium p-aminobenzoate — See exceptions;

(757) Potassium aminosalicylate — See exceptions;

(758) Potassium arsenite — See exceptions;

(759) Potassium bicarbonate — See exceptions;

(760) Potassium carbonate — See exceptions;

(761) Potassium chloride — See exceptions;

(762) Potassium citrate — See exceptions;

(763) Potassium gluconate — See exceptions;

(764) Potassium hetacillin;

(765) Potassium iodide — See exceptions;

(766) Reserved;

(767) Potassium permanganate — See exceptions;

(768) Povidone — Iodine — See exceptions;

(768.3) Pozelimab-bbfg;

(768.5) PrabotulinumtoxinA-xvfs;

(768.8) Pralatrexate;

(769) Pralidoxime;

(769.1) Pralsetinib;

(769.2) Pramipexole;

(769.3) Pramlintide;

(769.33) Prasterone;

(769.35) Prasugrel;

(769.4) Pravastatin;

(769.7) Praziquantel;

(770) Prazosin;

(770.5) Prednicarbate;

(771) Prednisolone;

(772) Prednisone;

(772.5) Pretomanid;

(773) Prilocaine;

(774) Primaquine;

(775) Primidone;

(776) Probenecid;

(777) Probucol;

(778) Procainamide;

(779) Procaine;

(780) Procaine penicillin;

(781) Procaine penicillin G;

(782) Procarbazine;

(783) Prochlorperazine;

(784) Procyclidine;

(785) Progesterone;

(785.5) Proguanil;

(786) Promazine;

(787) Promethazine;

(788) Promethestrol;

(788.5) Propafenone;

(789) Propantheline;

(790) Proparacaine;

(791) Prophenpyridamine — See exceptions;

(792) Propiolactone;

(793) Propiomazine;

(794) Propoxycaine;

(795) Propranolol;

(795.5) Propylhexedrine;

(796) Propylparaben;

(797) Propylthiouracil;

(798) Protamine sulfate injection;

(799) Protein hydrolysate injection;

(800) Protein, Foreign injection;

(801) Proteolytic enzyme;

(801.5) Prothrombin complex concentrate, human-lans;

(802) Protirelin;

(803) Protokylol;

(804) Protoveratrine A and B;

(805) Protriptyline;

(805.3) Prucalopride;

(805.5) Prussian blue;

(806) Reserved;

(807) Pseudomonas polysaccharide complex;

(808) P-ureidobenzenearsonic acid;

(809) Purified protein derivatives of tuberculin;

(810) Pyrantel;

(811) Pyrazinamide;

(812) Pyrazolon;

(813) Pyridostigmine;

(814) Pyrimethamine;

(815) Pyrrobutamine;

(816) Pyrvinium;

(816.5) Quetiapine;

(817) Quinacrine;

(817.5) Quinapril;

(818) Quinestrol;

(819) Quinethazone;

(820) Quinidine;

(821) Quinine hydrochloride;

(822) Quinine and urea hydrochloride;

(822.3) Quinupristin;

(822.4) Quizartinib;

(822.5) Rabeprazole;

(823) Rabies anti-serum;

(824) Rabies immune globulin, Human;

(825) Rabies vaccine;

(826) Radio-iodinated compounds;

(827) Radio-iodine;

(828) Radio-iron;

(829) Radioisotopes;

(830) Radiopaque media;

(831) Ragweed pollen extract;

(831.02) Raloxifene;

(831.03) Raltegravir;

(831.04) Ramelteon;

(831.05) Ramipril;

(831.06) Ramucirumab;

(831.07) Ranibizumab;

(831.1) Ranitidine — See exceptions;

(831.3) Ranolazine;

(831.5) Rapacuronium;

(831.7) Rasagiline;

(832) Rauwolfia serpentina;

(832.05) Ravulizumab;

(832.1) Raxibacumab;

(832.2) Reboparhamil;

(832.5) Regadenoson;

(832.7) Regorafenib;

(832.8) Relatlimab-rmbw;

(832.9) Relebactam;

(832.95) Relugolix;

(832.97) Remdesivir;

(832.98) Repotrectinib;

(833) Rescinnamine;

(834) Reserpine;

(835) Reserpine alkaloids;

(835.5) Reslizumab;

(836) Resorcinol monoacetate — See exceptions;

(836.1) Respiratory Syncytial Virus Vaccine;

(836.3) Retapamulin;

(836.4) Retifanlimab-dlwr;

(836.5) Retinoic acid, all-trans;

(836.7) Revefenacin;

(836.8) Rezafungin;

(837) Rhus toxicodendron antigen;

(838) Rh D immune globulin, Human;

(838.5) Ribavirin;

(838.6) Ribociclib;

(839) Riboflavin — See exceptions;

(840) Ricinoleic acid;

(840.5) Rifabutin;

(841) Reserved;

(842) Rifampin;

(842.05) Rifamycin;

(842.1) Rifapentine;

(842.15) Rifaximin;

(842.17) Rilonacept;

(842.18) Rilpivirine;

(842.2) Riluzole;

(842.4) Rimantadine;

(842.5) Rimegepant;

(842.7) Rimexolone;

(843) Ringer's injection;

(843.1) Riociguat;

(843.13) Ripretinib;

(843.15) Risankizumab-rzaa;

(843.17) Risdiplam;

(843.2) Risedronate;

(843.3) Risperidone;

(843.4) Ritlecitinib;

(843.7) Ritodrine;

(843.8) Ritonavir;

(843.82) Rituximab;

(843.825) Rivaroxaban;

(843.83) Rivastigmine;

(843.9) Rizatritpan;

(844) Rocky mountain spotted fever vaccine;

(844.5) Rocuronium;

(844.7) Rofecoxib;

(844.75) Roflumilast;

(844.8) Rolapitant;

(845) Rolitetracycline;

(845.1) Romidepsin;

(845.15) Romiplostim;

(845.2) Romosozumab-aqqg;

(845.25) Ropeginterferon alfa-2b-njft;

(845.3) Ropinirole;

(845.5) Ropivacaine;

(845.7) Rosiglitazone;

(845.8) Rosuvastatin;

(845.9) Rotavirus vaccine;

(845.95) Rotigotine;

(846) Rotoxamine;

(846.3) Rozanolixizumab-noli;

(846.5) RSVIGIV;

(847) Rubella and mumps virus vaccine;

(848) Rubella virus vaccine;

(848.2) Rucaparib;

(848.5) Rufinamide;

(849) Rutin — See exceptions;

(849.3) Sacituzumab govitecan-hziy;

(849.5) Sacrosidase;

(849.7) Sacubitril;

(849.8) Safinamide;

(850) Salicylazosulfapyridine;

(850.5) Salmeterol;

(851) Salmonella typhosa, Killed;

(851.02) Reserved;

(851.03) Samarium SM 153 lexidronam;

(851.035) Samidorphan;

(851.04) Saneromazile;

(851.045) Sapropterin;

(851.05) Saquinavir;

(851.1) Saralasin acetate;

(851.15) Sarecycline;

(851.2) Sarilumab;

(851.5) Satralizumab-mwge;

(851.7) Saxagliptin;

(852) Scopolamine;

(852.05) Sebelipase;

(852.06) Secnidazole;

(852.1) Secretin;

(852.4) Secukinumab;

(852.5) Segesterone acetate;

(852.6) Selegiline;

(853) Selenium sulfide — See exceptions;

(853.5) Selenomethionine;

(853.7) Selexipag;

(853.8) Selinexor;

(853.85) Selpercatinib;

(853.87) Selumetinib;

(853.9) Semaglutide;

(854) Senecio cineraria extract ophthalmic solution;

(855) Senega fluid extract;

(855.3) Seractide acetate;

(855.5) Sermorelin Acetate;

(855.6) Sertaconazole;

(855.7) Sertraline;

(855.73) Setmelanotide;

(855.74) Sevelamer;

(855.8) Sevoflurane;

(855.85) Sildenafil;

(855.9) Silodosin;

(855.95) Siltuximab;

(856) Silver nitrate ophthalmic solutions or suspensions;

(857) Silver sulfadiazine cream;

(857.1) Simeprevir;

(857.3) Simethicone coated cellulose suspension;

(857.5) Simvastatin;

(858) Sincalide;

(858.3) Sinecatechins;

(858.4) Siponimod;

(858.5) Sirolimus;

(858.7) Sitagliptin;

(859) Sitosterols;

(860) Solutions for injections, All;

(861) Smallpox vaccine;

(862) Sodium acetate injection;

(863) Sodium acetrizoate;

(864) Sodium ascorbate injection;

(865) Sodium biphosphate — See exceptions;

(866) Sodium cacodylate;

(867) Sodium chloride injection — See exceptions;

(868) Sodium dehydrocholate;

(869) Sodium dextrothyroxine;

(870) Sodium estrone;

(871) Sodium fluorescein — See exceptions;

(872) Sodium fluoride — See exceptions;

(873) Sodium iothalamate;

(873.5) Sodium nitroprusside;

(873.7) Sodium phenylbutyrate;

(873.8) Sodium picosulfate;

(874) Sodium polystyrene sulfonate;

(875) Sodium propionated vaginal cream;

(876) Sodium sulfacetamide;

(877) Sodium sulfadiazine;

(878) Sodium sulfobromophthalein;

(879) Sodium sulfoxone;

(880) Sodium tetradecyl;

(880.5) Sodium thiosulfate;

(881) Sodium tyropanoate;

(881.01) Sodium zirconium cyclosilicate;

(881.03) Sofosbuvir;

(881.05) Solifenacin;

(881.07) Somapacitan-beco;

(881.1) Somatrem;

(881.5) Somatrogon-ghla;

(882) Somatropin;

(882.3) Sonidegib;

(882.5) Sorafenib;

(883) Sorbus extract;

(883.3) Sotagliflozin;

(883.5) Sotalol;

(883.6) Sotorasib;

(883.8) Sparfloxacin;

(883.9) Sparsentan;

(884) Sparteine;

(885) Spectinomycin;

(885.3) Spesolimab-sbzo;

(885.5) Spinosad;

(886) Spirapril;

(887) Spironolactone;

(888) Staphage lysate bacterial antigen;

(889) Staphylococcus and streptococcus vaccine;

(890) Staphylococcus toxoid;

(890.5) Stavudine;

(891) Stibophen;

(892) Stinging insect antigens — Combined;

(892.5) Stiripentol;

(893) Stockes expectorant;

(894) Stramonium;

(895) Streptococcus antigen;

(896) Streptokinase-streptodornase;

(897) Streptomycin;

(898) Strontium — See exceptions;

(899) Strophanthin-G;

(900) Strychnine — See exceptions;

(901) Succimer;

(902) Succinylchloline;

(903) Succinylsulfathiazole;

(903.1) Sucralfate;

(903.15) Sucroferric oxyhydroxide;

(903.17) Sugammadex;

(903.18) Sulbactam;

(903.2) Sulconazole;

(904) Sulfabenzamide vaginal preparations;

(905) Sulfacetamide;

(906) Sulfachlorpyridazine;

(907) Sulfacytine;

(908) Sulfadiazine;

(909) Sulfadimethoxine;

(909.1) Sulfadoxine;

(910) Sulfaethidole;

(911) Sulfaguanidine;

(912) Sulfamerazine;

(913) Sulfameter;

(914) Sulfamethazine;

(915) Sulfamethizole;

(916) Sulfamethoxazole;

(917) Sulfamethoxypyridazine;

(918) Sulfanilamide;

(919) Sulfaphenazole;

(920) Reserved;

(921) Sulfapyridine;

(922) Sulfasalazine;

(922.5) Sulfathiazole;

(923) Sulfinpyrazone;

(924) Sulfisomidine;

(925) Sulfisoxazole;

(926) Sulfur thioglycerol;

(927) Sulindac;

(927.5) Sumatriptan;

(927.7) Sunitinib;

(928) Superinone;

(928.1) Suprofen;

(929) Sutilains;

(929.5) Sutimlimab-jome;

(930) Syrosingopine;

(930.5) Tacrine;

(930.7) Tacrolimus;

(930.9) Tadalafil;

(930.901) Tafamidis meglumine;

(930.905) Tafasitamab-cxix;

(930.91) Tafenoquine;

(930.93) Tafluprost;

(930.97) Tagliglucerase alfa;

(930.975) Tagraxofusp-erzs;

(930.976) Talazoparib;

(930.98) Talimogene;

(930.99) Talquetamab-tgvs;

(931) Tamoxifen;

(931.1) Tamsulosin;

(931.15) Tapinarof;

(931.2) Tasimelteon;

(931.203) Taurolidine;

(931.205) Taurursodiol;

(931.21) Tavaborole;

(931.3) Tazarotene;

(931.33) Tazemetostat;

(931.35) Tazobactam;

(931.37) Tbo-filgrastim;

(931.4) Tebentafusp-tebn;

(931.5) Technetium;

(931.505) Teclistamab-cqyv;

(931.51) Tecovirimat;

(931.52) Tedizolid;

(931.53) Teduglutide;

(931.55) Tegaserod;

(931.553) Telaprevir;

(931.555) Telavancin;

(931.56) Telbivudine;

(931.57) Telithromycin;

(931.6) Telmisartan;

(931.61) Telotristat ethyl;

(931.7) Temafloxacin;

(931.75) Temozolomide;

(931.77) Temsirolimus;

(931.79) Tenapanor;

(931.8) Teniposide;

(931.81) Teplizumab-mzwv;

(931.82) Tepotinib;

(931.83) Teprotumumab-trbw;

(931.85) Terazosin;

(931.9) Tenofovir;

(931.95) Terbinafine — See exceptions;

(932) Terbutaline;

(932.05) Terconazole;

(932.1) Terfenadine;

(932.2) Teriflunomide;

(932.3) Teriparatide;

(932.5) Terlipressin;

(933) Terpin hydrate with codeine;

(934) Reserved;

(935) Tesamorelin;

(936) Tetanus and diphtheria toxoids;

(937) Tetanus antitoxin;

(938) Tetanus immune globulin;

(939) Tetanus toxoids;

(939.5) Tetrabenazine;

(940) Tetracaine;

(941) Tetracycline;

(942) Tetraethylammonium chloride;

(943) Tetrahydrozoline — See exceptions;

(943.3) Tezacaftor;

(943.4) Tezepelumab-ekko;

(943.5) Thalidomide;

(944) Thallous chloride;

(945) Theobromide;

(945.5) Reserved;

(946) Theobromine magnesium oleate;

(947) Theophylline — See exceptions;

(948) Theophylline sodium glycinate;

(949) Thiabendazole;

(950) Thiamylal;

(951) Thiethylperazine;

(952) Thiopropazate;

(953) Thioguanine;

(954) Thioridazine;

(955) Thiosalicylate;

(956) Thiotepa;

(957) Thiothixene;

(958) Thiphenamil;

(959) Thrombin;

(960) Thyroglobulin;

(961) Thyroid;

(962) Thyrotropin;

(963) Thyroxine;

(964) Thyroxine fraction;

(964.5) Tiagabine;

(964.7) Ticagrelor;

(965) Ticarcillin;

(965.3) Tick-borne encephalitis vaccine;

(965.5) Ticlopidine;

(966) Ticrynafen;

(966.3) Tigecycline;

(966.5) Tildrakizumab;

(966.6) Tiludronate;

(967) Timolol;

(967.1) Tinidazole;

(967.2) Tinzaparin;

(967.3) Tioconazole — See exceptions;

(967.5) Tiopronin;

(967.55) Tiotropium;

(967.56) Tipiracil;

(967.57) Tipranavir;

(967.58) Tirbanibulin;

(967.6) Tirofiban;

(967.61) Tirzepatide;

(967.62) Tisagenlecleucel;

(967.63) Tisotumab vedotin-tftv;

(967.67) Tivozanib;

(967.7) Tizanidine;

(968) Tobramycin;

(968.1) Tocainide;

(969) Tocamphyl;

(969.6) Tocilizumab;

(969.8) Tofacitinib;

(969.9) Tofersen;

(970) Tolazamide;

(971) Tolazoline;

(972) Tolbutamide;

(972.5) Tolcapone;

(973) Tolmetin;

(973.05) Tolterodine;

(973.07) Tolvaptan;

(973.1) Topiramate;

(973.3) Topotecan;

(973.4) Toremifene;

(973.45) Toripalimab-tpzi;

(973.5) Torsemide;

(973.6) Trabectedin;

(973.65) Tralokinumab-ldrm;

(973.7) Trametinib;

(973.8) Trandolapril;

(973.9) Tranexamic acid;

(974) Tranylcypromine;

(974.2) Trastuzumab;

(974.4) Travoprost;

(974.5) Trazodone;

(974.6) Tremelimumab-actl;

(974.7) Treprostinil;

(975) Tretinoin;

(976) Triamcinolone — See exceptions;

(977) Triamterene;

(978) Trichlormethiazide;

(979) Trichloroacetic acid — See exceptions;

(980) Trichloroethylene — See exceptions;

(981) Trichlobisonium;

(981.5) Triclabendazole;

(982) Triclofos;

(983) Tridihexethyl chloride;

(983.1) Trientine;

(984) Triethanolamine polypeptides;

(985) Triethylenethiophosphoramide;

(985.5) Trifarotene;

(986) Trifluoperazine;

(987) Triflupromazine;

(988) Trifluridine;

(988.5) Triheptanoin;

(989) Trihexyphenidyl;

(990) Triiodothyronine;

(990.05) Trilaciclib;

(990.1) Trilostane;

(991) Trimeprazine;

(992) Trimethadione;

(993) Trimethaphan cansylate;

(994) Trimethobenzamide;

(995) Trimethoprim;

(995.5) Trimetrexate;

(996) Trimipramine;

(997) Triolein;

(998) Trioxsalen;

(999) Tripelennamine — See exceptions;

(1000) Triphenyltetrazolium;

(1001) Triple sulfas;

(1002) Triprolidine — See exceptions;

(1002.5) Triptorelin;

(1003) Trisulfapyrimidines;

(1003.3) Trofinetide;

(1003.5) Troglitazone;

(1004) Troleandomycin;

(1005) Trolnitrate;

(1006) Tromethamine;

(1007) Tropicamide;

(1007.3) Trospium;

(1007.5) Trovafloxacin;

(1008) Trypsin;

(1009) Trypsin-chymotrypsin;

(1010) Tuaminoheptane;

(1011) Tuberculin, Purified protein derivatives;

(1012) Tuberculin tine test;

(1013) Tuberculin, Old;

(1014) Tubocurarine;

(1014.5) Tucatinib;

(1015) Tybamate;

(1016) Typhoid and paratyphoid vaccine;

(1017) Typhus vaccine;

(1018) Tyropanoate;

(1018.2) Ublituximab-xiiy;

(1018.3) Ubrogepant;

(1018.5) Ulipristal;

(1018.7) Umbralisib;

(1018.8) Umeclidinium;

(1019) Undecoylium;

(1019.5) Unoprostone;

(1019.7) Upadacitinib;

(1020) Uracil;

(1021) Urea — See exceptions;

(1021.1) Uridine;

(1021.3) Urofollitropin;

(1021.5) Ursodiol;

(1021.6) Ustekinumab;

(1021.61) Vaborbactam;

(1021.7) Valacyclovir;

(1021.71) Valbenazine;

(1021.8) Valdecoxib;

(1022) Valethamate;

(1022.2) Valganciclovir;

(1022.5) Valoctocogene roxaparvovec-rvox;

(1023) Valproate;

(1024) Valproic acid — See exceptions;

(1024.3) Valrubicin;

(1024.5) Valsartan;

(1024.8) Vamorolone;

(1025) Vancomycin;

(1025.2) Vandetanib;

(1025.5) Vardenafil;

(1025.7) Varenicline;

(1025.8) Varicella Virus Vaccine Live;

(1026) Vasopressin;

(1027) VDRL antigen;

(1027.1) Vecuronium bromide;

(1027.2) Vedolizumab;

(1027.3) Velaglucerase;

(1027.4) Velmanase alfa-tycv;

(1027.5) Velnacrine;

(1027.53) Velpatasvir;

(1027.55) Vemuranfenib;

(1027.57) Venetoclax;

(1027.6) Venlafaxine;

(1027.7) Verapamil;

(1028) Veratrum viride;

(1028.5) Vericiguat;

(1029) Versenate;

(1029.5) Verteporfin;

(1029.6) Vestronidase alfa-vjbk;

(1029.8) Vibegron;

(1030) Vidarabine;

(1030.3) Vigabatrin;

(1030.4) Vilanterol;

(1030.5) Vilazodone;

(1030.6) Viloxazine;

(1030.7) Viltolarsen;

(1031) Vinblastine;

(1032) Vincristine;

(1032.5) Vinorelbine;

(1033) Vinyl ethyl — See exceptions;

(1034) Viomycin;

(1034.5) Vismodegib;

(1035) Vitamin K;

(1036) Vitamin B12 injection;

(1037) Vitamine with fluoride;

(1037.2) Voclosporin;

(1037.23) von Willebrand factor;

(1037.27) Vonoprazan;

(1037.3) Vorapaxar;

(1037.5) Voriconazole;

(1037.7) Vorinostat;

(1037.8) Vortioxetine;

(1037.83) Vosoritide;

(1037.85) Voxelotor;

(1037.9) Voxilaprevir;

(1037.95) Vutrisiran;

(1038) Warfarin;

(1039) Wargarin;

(1039.1) Xylocaine;

(1040) Yellow fever vaccine;

(1041) Yohimbine;

(1042) 4-chloro-3, 5-xylenol — See exceptions;

(1042.01) Zafirlukast;

(1042.02) Zalcitabine;

(1042.03) Zanamivir;

(1042.04) Zanubrutinib;

(1042.045) Zavegepant;

(1042.05) Zidovudine;

(1042.4) Zileuton;

(1042.6) Zilucoplan;

(1042.7) Zinc acetate — See exceptions;

(1042.75) Ziprasidone;

(1042.78) Ziv-aflibercept;

(1042.8) Zoledronic Acid;

(1042.9) Zolmitriptan;

(1042.92) Zonisamide;

(1042.95) Zoster Vaccine Recombinant, Adjuvanted;

(1043) Devices that require a prescription:

(A) Cellulose, Oxadized, Regenerated (surgical absorbable hemostat) — See exceptions;

(B) Diaphragms for vaginal use;

(C) Hemodialysis solutions;

(D) Hemodialysis kits;

(E) Lippes loop intrauterine;

(F) Saf-T-Coil intrauterine device;

(G) Intrauterine devices, All;

(H) Absorbable hemostat;

(I) Gonorrhea test kit.

(b.1) A "restricted dangerous drug" means any other drug or substance declared by the General Assembly to have no medical use, which cannot be legally prescribed by a practitioner, and which cannot be manufactured, grown, produced, distributed, used, or otherwise possessed in this state; to include any of the following drugs, chemicals, or substances; salts, isomers, esters, ethers, or derivatives of such drugs, chemicals, or substances which have essentially the same pharmacological action; and all other salts, isomers, esters, ethers, and compounds of such drugs, chemicals, or substances unless specifically exempted, identified as "restricted dangerous drugs":

(1) Salvinorin A; and

(2) Salvia divinorum — except as otherwise provided for in paragraph (4.3) of Code Section 16-13-72.

This subsection shall not prohibit a person from possessing a restricted dangerous drug for the purpose of conducting research approved by the federal Food and Drug Administration.

(c) The following are exceptions to and exemptions from subsection (b) of this Code section:

(0.5) Adapalene — when used with a strength up to 0.1 percent in a topical skin product;

(0.7) Alcaftadine — when used in a concentration of 0.25 percent or less in an ophthalmic solution;

(1) Atropine sulfate — where the oral dose is less than 1/200 gr. per unit;

(1.5) Azelastine hydrochloride — when used in a concentration of 0.15 percent or less in a nasal spray or nasal solution;

(2) Bacitracin cream or ointment for topical use;

(3) Belladonna or belladonna alkaloids when in combination with other drugs and the dosage unit is less than 0.1 mg. of the alkaloids or its equivalent;

(3.5) Bentoquatam — when used with a strength of 5 percent or less in topical preparations;

(4) Beta carotene — all forms occurring in food products or lotions;

(5) Bromelain, pancreatic enzymes, trypsin and bile extract — when labeled properly as digestive aids with appropriate dosage and in compliance with FDA labeling and restrictions;

(6) Brompheniramine — where a single dosage unit is 4 mg. or less but with no more than 3 mg. of the dextrorotary optical isomer of racemic brompheniramine per released dose;

(6.1) Budesonide — when used as a nasal spray in doses up to 32 mcg. per spray;

(6.2) Butenafine — when used with a strength of 1 percent or less as a topical preparation;

(6.4) Butoconazole — when used with a strength up to 2 percent in a vaginal preparation;

(6.45) Capsaicin — when in an external analgesic with concentration of 0.25 percent or less;

(6.5) Cetirizine — when a single dosage unit is either 1 mg. per 1 ml. or less or 10 mg. or less;

(6.7) Chlorhexadine — when used with a strength up to 4 percent in a topical skin product;

(7) Chlorpheniramine — where a single dosage unit is 12 mg. or less;

(7.1) Cimetidine — when a single dosage unit is 200 mg. or less;

(7.3) Clemastine — where a single dose is 1.34 mg. or less;

(7.5) Clotrimazole — when a single vaginal insert is 200 mg. or less or with a strength up to 2 percent in a topical skin, topical vaginal, or vaginal product;

(7.8) Cromolyn — when used as cromolyn sodium in a nasal solution of 4 percent or less in strength;

(7.9) Dexbrompheniramine — when a single dosage unit is 6 mg. or less;

(7.95) Diclofenac Sodium — When used with a strength of 1 percent or less in a topical gel;

(8) Diphenhydramine — up to 12.5 mg. in each 5 cc's when used in cough preparations and up to 50 mg. per single dose when used as a

nighttime sleep aid or used as an antihistamine and labeled in compliance with FDA requirements;

(8.5) Docosanol — when used in 10 percent topical preparation to treat fever blisters, cold sores, or fever blisters and cold sores.

(9) Doxylamine succinate — where a single dosage form is 25 mg. or less and when labeled to be used as a nighttime sedative;

(9.3) Edetate — when used in any form other than an oral or parenteral;

(9.33) Epinephrine — when used in a device that delivers a metered spray of 0.125 mg. of epinephrine or less to provide temporary relief for symptoms of mild, intermittent asthma and is a product in finished dosage formulation in its original container that has been approved by and labeled in compliance with the U.S. Food and Drug Administration (FDA);

(9.4) Esomeprazole — when a single dosage unit is 20 mg. or less;

(9.5) Famotidine — when a single dosage unit is 20 mg. or less;

(9.6) Fexofenadine — when packaged for distribution as an over-the-counter (OTC) drug product;

(9.7) Fluoride — when used with a strength up to 1,500 parts per million in an oral care or dentifrice product;

(9.75) Fluticasone — when available in a device that delivers a metered spray of 0.05 mg. and to be used for the temporary relief of symptoms due to hay fever or other upper respiratory allergies;

(9.8) Glycine — when used with a strength up to 1.5 percent in an irrigation solution, when used in a topical skin product;

(10) Hydrocortisone topical skin preparations up to 1 percent in strength;

(11) Hydroxocobalamin, riboflavin, niacinamide, ergocalciferol (maximum of 400 I.U. per day), Folic acid (maximum of 0.4 mg. per day), and magnesium gluconate — when as a source of vitamins and dietary supplement but must bear such labels and adhere to such restrictions of FDA regulations;

(11.1) Ibuprofen — where a single dose is 200 mg. or less;

(11.6) Reserved;

(12) Insulin — all injectable products which do not require a prescription drug order and bear a label which indicates "Rx Use Only" or are otherwise listed under subsection (b) of this Code section; and no injectable insulin product may be sold except by a

pharmacy issued a permit by the State Board of Pharmacy or by a medical practitioner authorized to dispense medications;

(12.1) Ivermectin — When used with a strength of 0.5 percent or less in a topical lotion;

(12.3) Ketoconazole — when used with a strength of 1 percent or less in topical preparations;

(12.5) Ketoprofen — when a single dosage unit is 12.5 mg. or less;

(12.7) Ketotifen — when used with a strength of 0.025 percent or less in an ophthalmic solution;

(12.9) Lansoprazole — when a single dosage unit is 15 mg. or less;

(12.91) Levocetirizine — when a single dose unit is either 2.5 mg. per 5 ml. or less or 5 mg. or less;

(12.95) Levocetirizine dihydrochloride — when used in a single dose of 5 mg. or less;

(13) Lidocaine topical, 40 mg./gm. (4 percent) or less;

(13.5) Loperamide — where a single dose is either 1 mg. per 5 ml. or 2 mg. per dosage unit;

(13.7) Loratadine — when used in a single dose of 10 mg. or less, including doses used in combination with other drugs provided for under this subsection;

(14) Meclizine — 25 mg. or less;

(14.1) Miconazole — when used as antifungal powder or cream, or both, and containing not more than 4 percent of miconazole, or when used as a vaginal insert and containing not more than 1,200 mg. of miconazole;

(14.2) Minoxidil — when used with a strength of 5 percent or less in topical preparations;

(14.23) Mometasone — when used as mometasone furoate in a nasal spray in doses up to 50 mcg per spray;

(14.25) Naloxone — shall also be exempt from subsections (a) and (b) of this Code section when used for drug overdose prevention as follows:

(A) Nasal adaptor rescue kits containing a minimum of two prefilled 2 ml. luer-lock syringes with each containing 1 mg./ml. of naloxone;

(B) Prepackaged nasal spray rescue kits containing single-use spray devices with each containing a minimum of 4 mg./0.1 ml. of naloxone;

(C) Muscle rescue kits containing a 10 ml. multidose fliptop vial or two 1 ml. vials with a strength of 0.4 mg./ml. of naloxone when supplied by a dispenser or licensed distributor or wholesaler; or

(D) Prepackaged kits of two muscle autoinjectors with each containing a minimum of 0.4 mg./ml. of naloxone when supplied by a dispenser or licensed distributor or wholesaler;

(14.3) Naphazoline — when used in an ophthalmic solution in a concentration of 0.027 percent or less in combination with a pheniramine concentration of 0.315 percent or less;

(14.5) Naproxen — where a single dosage unit is 220 mg. or less;

(15) Neomycin sulfate ointment or cream for topical use;

(15.5) Nicotine resin complex (polacrilex) — when used as oral chewing gum where a single dose (piece of gum) is 4 mg. or less;

(15.55) Nicotine transdermal system — when used in a strength of 21 mg. or less per transdermal patch (transdermal delivery system);

(16) Nitrous oxide — air products suppliers shall not sell medical grade nitrous oxide to other than licensed practitioners or medical suppliers; industrial grade nitrous oxide shall only be sold when mixed with not less than 100 parts per million of sulfur dioxide and used as a fuel additive for combustion engines or when used in industrial laboratory equipment;

(16.3) Nizatidine — when a single dosage unit is 75 mg. or less;

(16.8) Nonoxynol — when used with a strength up to 12.5 percent or 1 gram per dose in a vaginal product;

(16.83) Norgestrel — 0.075 mg. tablet when used for the prevention of pregnancy;

(16.85) Olopatadine hydrochloride — When used with a strength of 0.7 percent or less in an ophthalmic solution;

(16.9) Omeprazole — when a single dosage unit is 20.6 mg. or less;

(16.92) Any opioid antagonist, as defined in Code Section 26-4-116.2, shall also be exempt from subsections (a) and (b) of this Code section when used for drug overdose prevention and when supplied by a dispenser or an authorized wholesale distributor.

(16.95) Orlistat — when a single dosage unit is 60 mg. or less;

(16.97) Oxybutynin — when a single dose is delivered as 3.9 mg. per day using a transdermal system patch;

(17) Oxygen — compressed oxygen which is not labeled "CAUTION: Federal law prohibits dispensing without prescription" or similar wording;

(17.3) Permethrin — when used as a topical preparation in a strength of 1 percent or less;

(17.5) Phenazopyridine — where a single dose is 100 mg. or less, as approved by the federal Food and Drug Administration;

(18) Pheniramine — when the oral dose is 25 mg. or less, or when used in an ophthalmic solution in a concentration of 0.315 percent or less in combination with a naphazoline concentration of 0.027 percent or less;

(19) Polymyxin B when in combination with other drugs in an ointment or cream for topical use;

(20) Any potassium electrolyte when manufactured for use as a dietary supplement, food additive for industrial, scientific, or commercial use, or when added to other drug products when the product is not intended as a potassium supplement but must bear such labels and adhere to such restrictions of FDA regulations;

(21) Povidone — Iodine solutions and suspensions;

(22) Reserved;

(23) Reserved;

(23.5) Ranitidine — when a single dosage unit is 150 mg. or less;

(24) Rutin — where the dosage unit is less than 60 mg.;

(25) Selenium sulfide suspension 1 percent or less in strength;

(25.05) Sodium chloride injection — when in quantities of 10 cc or less and used as a catheter flush solution to act by physically occupying space within a catheter and exerting pressure on the patient's circulating blood;

(25.1) Strychnine — when used in combination with other active ingredients in a rodent killer, and when not bearing a label containing the words "CAUTION: Federal law prohibits dispensing without prescription" or other similar wording;

(25.5) Terbinafine — when used with a strength of 1 percent or less in a topical antifungal cream;

(26) Tetrahydrozoline for ophthalmic or topical use;

(27) Theophylline preparations alone or in combination with other drugs prepared for and approved for OTC (over the counter) sale by FDA; example — tedral tablets (plain) or oral suspension;

(27.5) Tioconazole — when used with a strength of 1 percent or less in topical preparations or when used with a strength of 6.5 percent or less in vaginal preparations;

(27.7) Triamcinolone acetonide — when used in a nasal spray that delivers 55 mcg. per spray or less;

(28) Tripelennamine cream or ointment for topical use;

(28.5) Triprolidine — when a single dose is 5 mg. or less when combined in the same preparation as one or more other drug products for use as an antihistamine or decongestant or an antihistamine and decongestant;

(29) Urea — except when the manufacturer's label contains the wording "CAUTION: Federal law prohibits dispensing without prescription" or similar wording;

(29.5) Zinc acetate — when used in topical preparations;

(30) Any drug approved by FDA for animal use and the package does not bear the statement "CAUTION: Federal law prohibits dispensing without prescription" or similar wording; or

(31) Loperamide Oral Liquid (1.00 mg./5.00 ml.).

(d) The following list of compounds or preparations may be purchased without a prescription, provided the products are manufactured for industrial, scientific, or commercial sale or use, unless they are intended for human use or contain on the label "CAUTION: Federal law prohibits dispensing without prescription" or similar wording:

(1) Aminosalicylate;

(2) Aminosalicylate calcium;

(3) Aminosalicylate potassium;

(4) Aminosalicylate sodium;

(5) Aminosalicylic acid;

(6) Barium;

(7) Beta-carotene;

(8) Bismuth sodium tartrate;

(9) Cadmium sulfide;

(10) Calcium disodium edetate;

(11) Cellulose, Oxadized, Regenerated;

(12) Chlorabutanol;

(13) Chloranil;

(14) Chloroacetic acid;

(15) Chloroform;

(16) Colchicine;

(17) Dapsone;

(18) Dimethyl sulfoxide;

(19) Disodium edetate;

(20) Edetate disodium;

(21) Ether;

(22) Ethoxazene;

(23) Ethyl chloride;

(24) Fluoride;

(25) Formaldehyde;

(26) Gold thiosulfate;

(27) Hexachlorophene;

(28) Iodobenzoic acid;

(29) Iopanoic acid;

(30) Lindane;

(31) Lithium carbonate;

(32) Mandelic acid;

(33) Mannitol;

(34) Mercury bichloride;

(35) Nitroprusside;

(36) Potassium aminosalicylate;

(37) Potassium p-aminobenzoate;

(37.5) Potassium perchlorate;

(38) Potassium permanganate;

(39) Resorcinol monoacetate;

(40) Selenium sulfide;

(41) Sodium biphosphate;

(42) Sodium fluorescein;

(43) Sodium fluoride;

(44) Strontium;

(45) Trichloroacetic acid;

(46) Trichloroethylene;

(47) Valproic acid;

(48) Vinyl ether;

(49) 4-chloro-3, 5-xylenol.

(e) The State Board of Pharmacy may delete drugs from the dangerous drug list set forth in this Code section. In making such deletions the board shall consider, with respect to each drug, the following factors:

(1) The actual or relative potential for abuse;

(2) The scientific evidence of its pharmacological effect, if known;

(3) The state of current scientific knowledge regarding the drug;

(4) The history and current pattern of abuse, if any;

(5) The scope, duration, and significance of abuse;

(6) Reserved;

(7) The potential of the drug to produce psychic or physiological dependence liability; and

(8) Whether such drug is included under the federal Food, Drug, and Cosmetic Act, 52 Stat. 1040 (1938), 21 U.S.C. Section 301, et seq., as amended.

History.

Code 1933, § 79A-702, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1972, p. 948, § 1; Ga. L. 1976, p. 631, § 1; Ga. L. 1978, p. 1668, § 5; Ga. L. 1979, p. 859, § 3; Ga. L. 1980, p. 1746, § 2; Ga. L. 1981, p. 557, § 2; Ga. L. 1982, p. 3, § 16; Ga. L. 1982, p. 2403, §§ 3–8, 20.; Ga. L. 1983, p. 3, § 13; Ga. L. 1983, p. 349, §§ 3–6; Ga. L. 1984, p. 22, § 16; Ga. L. 1984, p. 1019, §§ 3–5; Ga. L. 1985, p. 1219, §§ 8, 9; Ga. L. 1986, p. 1555, §§ 6, 7; Ga. L. 1987, p. 261, § 7; Ga. L. 1989, p. 233, §§ 7, 8; Ga. L. 1990, p. 640, §§ 2, 3; Ga. L. 1991, p. 312, § 2; Ga. L. 1992, p. 6, § 16; Ga. L. 1992, p. 1131, §§ 5–7; Ga. L. 1993, p. 590, §§ 4–7; Ga. L. 1994, p. 169, §§ 6, 7; Ga. L. 1994, p. 849, § 1; Ga. L. 1996, p. 356, §§ 3–5; Ga. L. 1997, p. 1311, §§ 6–10; Ga. L. 1998, p. 778, §§ 3–6; Ga. L. 1999, p. 81, § 16; Ga. L. 1999, p. 643, §§ 2–5; Ga. L. 2000, p. 1317, §§ 4–6; Ga. L. 2001, p. 816, §§ 4–6; Ga. L. 2003, p. 349, §§ 8–11; Ga. L. 2004, p. 488, §§ 4–7; Ga. L. 2005, p. 1028, §§ 2, 3/SB 89; Ga. L. 2006, p. 219, §§ 3-5/HB 1054; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2007, p. 605, §§ 3–5/HB 286; Ga. L. 2008, p. 169, §§ 6, 7, 8/HB 1090; Ga. L. 2009, p. 126, § 5/HB 368; Ga. L. 2010, p. 860, §§ 5, 6, 7/SB 353; Ga. L. 2010, p. 905, § 1/HB 1021; Ga. L. 2011, p. 656, §§ 7–10/SB 93; Ga. L. 2012, p. 40, § 5/SB 370; Ga. L. 2013, p. 71, §§ 3, 4, 5/HB 302; Ga. L. 2014, p. 217, §§ 6, 7/HB 835; Ga. L. 2014, p. 866, § 16/SB 340; Ga. L. 2015, p. 5, § 16/HB 90; Ga. L. 2015, p. 883, §§ 5, 6/HB 211; Ga. L. 2016, p. 798, §§ 5–7, 8/HB 783; Ga. L. 2016, p. 864, § 16/HB 737; Ga. L. 2017, p. 14, §§ 9–11/HB 231; Ga. L. 2017, p. 22, §§ 2, 3/SB 121; Ga. L.

2017, p. 319, §§ 1-3, 1-4/HB 249; Ga. L. 2017, p. 774, § 16/HB 323; Ga. L. 2018, p. 314, §§ 6-9/HB 830; Ga. L. 2019, p. 820, §§ 4–12/HB 483; Ga. L. 2020, p. 16, §§ 2–4/HB 759; Ga. L. 2020, p. 55, § 1/SB 372; Ga. L. 2020, p. 493, § 16/SB 429; Ga. L. 2021, p. 386, §§ 8–10/HB 367; Ga. L. 2021, p. 922, § 16/HB 497; Ga. L. 2022, p. 803, §§ 7–9/HB 963; Ga. L. 2023, p. 137, §§ 5–7/HB 332, effective May 1, 2023; Ga. L. 2024, p. 161, §§ 7–11/HB 1326, effective April 22, 2024; Ga. L. 2024, p. 293, § 1/SB 395, effective July 1, 2024.

Amendments.

The 2022 amendment, effective May 13, 2022, added paragraphs (b)(17.03), (b)(21.3), (b)(21.5), (b)(44.1), (b)(52.7), (b)(65.8), (b)(67.3), (b)(68.135), (b)(69.03), (b)(69.05), (b)(69.07), (b)(81.2), (b)(81.4), (b)(122.6), (b)(146.3), (b)(217.2), (b)(240.95), (b)(317.45), (b)(331.035), (b)(350.5), (b)(380.35), (b)(383.47), (b)(386.63), (b)(386.65), (b)(406.45), (b)(438.5), (b)(463.3), (b)(464.17), (b)(472.4), (b)(525.7), (b)(529.07), (b)(529.08), (b)(540.2), (b)(540.45), (b)(622.6), (b)(661.57), (b)(681.33), (b)(692.505), (b)(731.05), (b)(732.1), (b)(732.2), (b)(742.03), (b)(752.15), (b)(845.25), (b)(851.035), (b)(883.6), (b)(931.82), (b)(943.4), (b)(965.3), (b)(967.63), (b)(967.67), (b)(990.05), (b)(1018.7), (b)(1028.5), (b)(1030.6), (b)(1037.2), (b)(1037.83), (c)(0.7), and (c)(1.5); repealed paragraph (69.1); added " – See exceptions" to the end of paragraphs (b)(19.3) and (b)(72.4); substituted "Difelikefalin" for "Reserved" in paragraph (b)(276); substituted "Reserved" for "Finasteride" in paragraph (b)(386.3), substituted "Reserved" for "Pimozide" in paragraph (b)(731.1), and, substituted "Reserved" for "Pimecrolimus" in paragraph (b)(732.9).

The 2023 amendment, effective May 1, 2023, in subsection (b), added paragraphs (b)(.0435), (b)(13.52), (b)(50.2), (b)(58.5), (b)(60.5), (b)(69.25), (b)(97.105), (b)(97.25), (b)(192.8), (b)(241.5), (b)(256.55), (b)(331.045), (b)(331.056), (b)(334.45), (b)(355.55), (b)(381.23), (b)(381.57), (b)(408.05), (b)(408.45), (b)(438.3), (b)(462.5), (b)(469.03), (b)(513.1), (b)(513.6), (b)(531.95), (b)(540.7), (b)(619.4), (b)(619.7), (b)(625.05), (b)(663.05), (b)(663.32), (b)(663.55), (b)(665.65), (b)(681.32), (b)(832.8), (b)(885.3), (b)(929.5), (b)(931.15), (b)(931.205), (b)(931.4), (b)(931.505), (b)(931.81), (b)(932.5), (b)(967.61), (b)(967.62), (b)(973.65), (b)(974.6), (b)(1018.2), (b)(1037.23), (b)(1037.27), and (b)(1037.95); substituted "Filgrastim" for "Filgrastin" in paragraph (b)(386.5); inserted "— See exceptions" in paragraph (b)(623.5); and substituted "Pegfilgrastim" for "Pegfilgrastin" in paragraph (b)(629.51); and added paragraph (c)(14.23).

The first 2024 amendment, effective April 22, 2024, deleted "polysaccharide" preceding "vaccine" in paragraph (b)(556); added "- See exceptions" at the end of paragraph (b)(654); deleted "polyvalent" preceding "vaccine" in paragraph (b)(743); added paragraphs (b)(13.54), (b)(57.5), (b)(60.3), (b)(69.02), (b)(91.72), (b)(91.73), (b)(98.4), (b)(99.5), (b)(132.6), (b)(160.5), (b)(194.2), (b)(206.7), (b)(239.7), (b)(244.45), (b)(247.4), (b)(316.7), (b)(325.465), (b)(328.3), (b)(331.033), (b)(331.0502), (b)(331.0535), (b)(331.0536), (b)(331.0595), (b)(332.875), (b)(334.42), (b)(379.4), (b)(381.24), (b)(383.7), (b)(388.7), (b)(406.97), (b)(414.3), (b)(415.6), (b)(446.2), (b)(491.55), (b)(513.72), (b)(529.98), (b)(619.2), (b)(623.2), (b)(625.07), (b)(638.6), (b)(644.63) through (b)(644.65), (b)(663.365), (b)(663.57), (b)(681.6), (b)(692.518), (b)(703.63), (b)(740.3), (b)(768.3), (b)(801.5), (b)(822.4), (b)(832.98), (b)(836.1), (b)(836.4), (b)(836.8), (b)(843.4), (b)(846.3), (b)(881.5), (b)(883.3), (b)(883.9), (b)(903.18), (b)(930.99), (b)(931.203), (b)(969.9), (b)(973.45), (b)(1003.3), (b)(1022.5), (b)(1024.8), (b)(1025.8), (b)(1027.4), (b)(1042.045), (b)(1042.6), (b)(1042.95); added subparagraph (b)(59)(BB.5);deleted "and when supplied by a dispenser or licensed distributor or wholesaler" preceding "as follows:" in paragraph (c)(14.25); inserted "when supplied by a dispenser or licensed distributor or wholesaler" near the end of subparagraphs (c)(14.25)(C) and (c)(14.25)(D); and added paragraph (c)(16.83).

The second 2024 amendment, effective July 1, 2024, added paragraph (c)(16.92).

Cross references.

Schools authorized to stock supply of auto-injectable epinephrine, § 20-2-776.2.

Authority of Georgia Drugs and Narcotics Agency to compile list of known dangerous drugs or devices, § 26-4-29.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1985, paragraph designated (509.1) in subsection (b) was correctly redesignated as (509.2).

Pursuant to Code Section 28-9-5, in 1986, in the first sentence of subsection (a) "U.S.C." was substituted for "USC".

Pursuant to Code Section 28-9-5, in 1988, a colon was substituted for a period at the end of subsection (c).

Pursuant to Code Section 28-9-5, in 1989, a period was substituted for the semicolon at the end of paragraph (c)(31).

Pursuant to Code Section 28-9-5, in 1990, a semicolon was substituted for a period at the end of paragraph (c)(11.6).

Pursuant to Code Section 28-9-5, in 1996, in subsection (a) and in paragraph (e)(8), "21 U.S.C. Section 301, et seq." was substituted for "21 U.S.C. 301 et seq."; a semicolon was substituted for a colon at the end of paragraphs (b)(402.8) and (b)(402.9); "mg." was substituted for "mg" in paragraphs (c)(7.1), (c)(9.5), and (c)(12.5).

Pursuant to Code Section 28-9-5, in 1997, "Reserved" was substituted for "Potassium perchlorate" in paragraph (b)(766).

Pursuant to Code Section 28-9-5, in 1998, paragraph (b)(66) was redesignated as paragraph (b)(68.5), paragraph (b)(67) was redesignated as paragraph (b)(66), paragraph (b)(67.3) was redesignated as paragraph (b)(67), new paragraph (b)(68.13) was redesignated as paragraph (b)(68.2), paragraph (b)(68.15) was redesignated as paragraph (b)(68.3), former paragraph (b)(68.2) was redesignated as present paragraph (b)(68.4), and former paragraph (b)(68.3) was redesignated as present paragraph (b)(68.6).

Pursuant to Code Section 28-9-5, in 2001, paragraph (b)(160.2) was redesignated as paragraph (b)(160.20).

Pursuant to Code Section 28-9-5, in 2007, paragraph (b)(616.05) was redesignated as paragraph (b)(615.9) and a misspelling of "solution" was corrected in paragraph (c)(12.7).

Pursuant to Code Section 28-9-5, in 2017, paragraph (b)(769.37), as added by Ga. L. 2017, HB 231, § 9/HB 231, was redesignated as paragraph (b)(769.33).

Pursuant to Code Section 28-9-5, in 2018, a semicolon was added at the end of paragraphs (b)(346.7), (b)(640.25), and (b)(731.01).

Editor's notes.

Ga. L. 2012, p. 40, § 1/SB 370, not codified by the General Assembly, which provides for the annual update of the identity of controlled substances and dangerous drugs, is dedicated to the memory of Chase Corbitt Burnett and shall be known and may be cited as "Chase's Law."

Ga. L. 2017, p. 22, § 1/SB 121, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jeffrey Dallas Gay, Jr., Act.'"

Ga. L. 2017, p. 319, § 1-1/HB 249, not codified by the General Assembly, provides: "This part shall be known and may be cited as the 'Jeffrey Dallas Gay, Jr., Act.'"

Ga. L. 2023, p. 137, § 5/HB 332, which amended this Code section, inadvertently omitted reference to subsection (b) in the directory language.

Law reviews.

For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

For note on 2000 amendment of this Code section, see 17 Georgia St. U.L. Rev. 85 (2000).

For article on the 2017 amendment of this Code section, see 34 Georgia St. U.L. Rev. 143 (2017).

For annual survey on healthcare law, see 70 Mercer L. Rev. 1053 (2019).

JUDICIAL DECISIONS

Former Code 1933, § 79A-9915 plainly and specifically made the offenses charged, possession, sale, and delivery of an amphetamine, a felony and former Code 1933, § 79A-702 (see now O.C.G.A. § 16-13-71) did not require a different conclusion. Gee v. State, 225 Ga. 669, 171 S.E.2d 291, 1969 Ga. LEXIS 606 (1969).

In event of uncertainty, lesser of two penalties applies. — When uncertainty develops regarding which penal clause applies, an accused is entitled to have the lesser of two penalties administered. Hartley v. State, 159 Ga. App. 157, 282 S.E.2d 684, 1981 Ga. App. LEXIS 2531 (1981).

State's expert guess not competent evidence. — In the prosecution of a juvenile for possession of Diphenhydramine, the state's expert, who had not weighed the drug and could not testify, based on accurate measurements, whether the amount of the drug was less than the amount excepted in O.C.G.A. § 16-13-71(c)(8), was not competent to testify, and the evidence adduced was insufficient for conviction. In re L.L., 207 Ga. App. 785, 429 S.E.2d 156, 1993 Ga. App. LEXIS 347 (1993).

Jury was authorized to conclude that the defendant intended to possess a dangerous drug in violation of the Dangerous Drug Act, O.C.G.A. § 16-13-70 et seq., even if the defendant was subjectively unaware of the precise chemical compound in the bottle and its regulated nature, because there was evidence supporting an inference that the defendant used a dangerous drug to sedate the defendant's sexual battery victim, and that conduct demonstrated the defendant's knowledge of the harmful effect of the compound; the term "dangerous drug" was defined to include alkyl nitrite, which was the compound the defendant possessed. Serna v. State, 308 Ga. App. 518, 707 S.E.2d 904, 2011 Ga. App. LEXIS 222 (2011).

Trial court did not err in convicting the defendant of possession of dangerous drugs in violation of the Dangerous Drug Act, O.C.G.A. § 16-13-70 et seq., because the variance between the allegations in the indictment and the proof at trial was not fatal since even though the indictment accused the defendant of possessing amyl nitrate, which was not included in the list of dangerous drugs, the bottle the defendant possessed contained alkyl nitrite, which was classified as a dangerous drug under the Act, O.C.G.A. § 16-13-71(b)(21.1); the defense was not compromised at trial, and the defendant was protected from a second prosecution for the same offense because the name of the indicted chemical and the proven chemical were similar, the indictment notified the defendant of the date of the offense, the type of offense, and the basis for the offense, and the defendant was convicted of the same offense listed in the indictment. Serna v. State, 308 Ga. App. 518, 707 S.E.2d 904, 2011 Ga. App. LEXIS 222 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Control of dangerous drugs is vested with the State Board of Pharmacy and the chief drug inspector (now director of Georgia Drugs and Narcotics Agency). 1975 Op. Att'y Gen. No. 75-23.

State Board of Pharmacy is empowered to regulate dispensing of drugs in hospitals. — Dispensing of drugs in hospitals by machine or otherwise is a matter which the legislature has left to the State Board of Pharmacy to regulate through its rule-making power. 1969 Op. Att'y Gen. No. 69-85.

16-13-72. Sale, distribution, or possession of dangerous drugs.

Except as provided for in this article, it shall be unlawful for any person, firm, corporation, or association to sell, give away, barter,

exchange, distribute, or possess in this state any dangerous drug, except under the following conditions:

(1) A drug manufacturer, wholesaler, distributor, or supplier holding a license or registration issued in accordance with the Federal Food, Drug, and Cosmetic Act and authorizing the holder to possess dangerous drugs may possess dangerous drugs within this state but may not distribute, sell, exchange, give away, or by any other means supply dangerous drugs without a permit issued by the State Board of Pharmacy. Any drug manufacturer, wholesaler, distributor, or supplier holding a permit issued by the State Board of Pharmacy may sell, give away, exchange, or distribute dangerous drugs within this state, but only to a pharmacy, pharmacist, a practitioner of the healing arts, and educational institutions licensed by the state, or to a drug wholesaler, distributor, or supplier, and only if such distribution is made in the normal course of employment;

(2) A pharmacy may possess dangerous drugs, but the same shall not be sold, given away, bartered, exchanged, or distributed except by a licensed pharmacist in accordance with this article;

(3) A pharmacist may possess dangerous drugs but may sell, give away, barter, exchange, or distribute the same only when he compounds or dispenses the same upon the prescription of a practitioner of the healing arts. No such prescription shall be refilled except upon the authorization of the practitioner who prescribed it;

(4) A practitioner of the healing arts may possess dangerous drugs and may sell, give away, barter, exchange, or distribute the same in accordance with Code Section 16-13-74;

(4.1) A physician in conformity with Code Section 43-34-23 may delegate to a nurse or a physician assistant the authority to possess vaccines and such other drugs as specified by the physician for adverse reactions to those vaccines, and a nurse or physician assistant may possess such drugs pursuant to that delegation; provided, however, that nothing in this paragraph shall be construed to restrict any authority of nurses or physician assistants existing under other provisions of law;

(4.2) A registered professional nurse licensed under Article 1 of Chapter 26 of Title 43 who is employed or engaged by a licensed home health agency may possess sterile saline, sterile water, and diluted heparin for use as intravenous maintenance for use in a home health setting, and such nurse may administer such items to patients of the home health agency upon the order of a licensed physician. The State Board of Pharmacy shall be authorized to adopt regulations governing the storage, quantity, use, and administration of such items; provided, however, that nothing in this paragraph or in such regula-

tions shall be construed to restrict any authority of nurses existing under other provisions of law;

(4.3) Possession, planting, cultivation, growing, or harvesting of Salvia divinorum or Salvia divinorum A strictly for esthetic, landscaping, or decorative purposes;

(5) A manufacturer's sales representative may distribute a dangerous drug as a complimentary sample only upon the written request of a practitioner. The request must be made for each distribution and shall contain the names and addresses of the supplier and the requestor and the name and quantity of the specific dangerous drug requested. The written request shall be preserved by the manufacturer for a period of two years; and

(6) Such person, firm, corporation, or association shall keep a complete and accurate record of all dangerous drugs received, purchased, manufactured, sold, dispensed, or otherwise disposed of and shall maintain such records for at least two years or in conformance with any other state or federal law or rule issued by the State Board of Pharmacy.

History.

Code 1933, § 79A-703, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1972, p. 948, § 2; Ga. L. 1975, p. 690, § 1; Ga. L. 1982, p. 3, § 16; Ga. L. 1996, p. 356, § 6; Ga. L. 1998, p. 219, § 1; Ga. L. 1999, p. 643, § 5.2; Ga. L. 2003, p. 140, § 16; Ga. L. 2009, p. 859, § 5/HB 509; Ga. L. 2010, p. 905, § 2/HB 1021; Ga. L. 2024, p. 1052, § 3(16)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "however, that" for "however," in the last sentence of paragraph (4.2) and substituted "esthetic," for "aesthetic," in paragraph (4.3).

Cross references.

Pharmacists and pharmacies generally, § 26-4-1 et seq.

Reward for furnishing information leading to arrest and conviction of person charged with selling dangerous drugs, § 45-12-37.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, "Federal Food, Drug, and Cosmetic Act" was substituted for "Federal Food, Drug and Cosmetic Act" in paragraph (1).

Pursuant to Code Section 28-9-5, in 2011, "Georgia" was deleted preceding "State Board of Pharmacy" at the end of paragraph (6).

JUDICIAL DECISIONS

Pharmacy license as defense to drug possession charge. — Whether an individual has a license or is otherwise lawfully permitted to have in the individual's possession narcotic drugs under O.C.G.A. § 16-13-1 et seq. is matter of defense and not an element of the offense. Woods v. State, 233 Ga. 347, 211 S.E.2d 300, 1974 Ga. LEXIS 760 (1974).

Selling and possessing prohibited drugs are separate offenses. — Neither offense of selling or possessing prohibited drugs is a necessary element in, or constitutes an essential part of, the other

offense. They are in law separate and distinct offenses, and may be punished as separate crimes. Gee v. State, 225 Ga. 669, 171 S.E.2d 291, 1969 Ga. LEXIS 606 (1969).

Sale proscribed under this article is not included offense of sale under Article 2 of chapter. — Offense of sale of methaqualone as proscribed and made a misdemeanor by O.C.G.A. § 16-13-70 et seq. is not an included offense of sale of methaqualone as proscribed and made a felony by O.C.G.A. § 16-13-20 et seq. (Controlled Substances Act), since purposes of the two Acts and legislative intent in enacting them are different. Different facts and elements must be proved when proving offense under either Act even though sale of methaqualone is gravamen of each offense. Head v. State, 160 Ga. App. 4, 285 S.E.2d 735, 1981 Ga. App. LEXIS 2852 (1981).

Trial court did not err in convicting the defendant of possession of dangerous drugs in violation of the Dangerous Drug Act, O.C.G.A. § 16-13-70 et seq., because the variance between the allegations in the indictment and the proof at trial was not fatal since even though the indictment accused the defendant of possessing amyl nitrate, which was not included in the list of dangerous drugs, the bottle the defendant possessed contained alkyl nitrite, which was classified as a dangerous drug under the Act, O.C.G.A. § 16-13-71(b)(21.1); the defense was not compromised at trial, and the defendant was protected from a second prosecution for the same offense because the name of the indicted chemical and the proven chemical were similar, the indictment notified the defendant of the date of the offense, the type of offense, and the basis for the offense, and the defendant was convicted of the same offense listed in the indictment. Serna v. State, 308 Ga. App. 518, 707 S.E.2d 904, 2011 Ga. App. LEXIS 222 (2011).

Evidence was insufficient for drug possession charge. — Evidence was insufficient to support a conviction for possession of diphenhydramine under O.C.G.A. § 16-13-72 where the forensic chemist did not testify as to the amount contained in the diphenhydramine pills, nor did the chemist testify that the pills failed to comply with Food and Drug Administration labeling requirements. Jackson v. State, 251 Ga. App. 781, 555 S.E.2d 136, 2001 Ga. App. LEXIS 1146 (2001), cert. dismissed, No. S02C0343, 2002 Ga. LEXIS 213 (Ga. Mar. 11, 2002).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 19 et seq., 26, 40, 87.

C.J.S.

28 C.J.S., Drugs and Narcotics, §§ 25, 65 et seq.

ALR.

Charge of illegal sale of narcotics or intoxicating liquor predicated upon defendant's issuance of prescription therefor otherwise than in the course of his professional practice, 133 A.L.R. 1140.

Construction and effect of "sale" or "sell" in Uniform Narcotic Drug Act, 93 A.L.R.2d 1008.

Admissibility, in prosecution for illegal sale of narcotics, of evidence of other sales, 93 A.L.R.2d 1097.

Free exercise of religion as defense to prosecution for narcotic or psychedelic drug offense, 35 A.L.R.3d 939.

Permitting unlawful use of narcotics in private home as criminal offense, 54 A.L.R.3d 1297.

Conviction of possession of illicit drugs found in premises of which defendant was in nonexclusive possession, 56 A.L.R.3d 948.

Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury, 94 A.L.R.3d 1080.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 A.L.R.3d 528; 62 A.L.R.4th 16.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

16-13-72.1. Revocation of dangerous drug permit; forfeiture.

(a) A permit issued by the State Board of Pharmacy under paragraph (1) of Code Section 16-13-72 may be suspended or revoked by the State Board of Pharmacy upon a finding that the drug manufacturer, wholesaler, distributor, or supplier:

(1) Has furnished false or fraudulent material information in any application filed under this article;

(2) Has been convicted of a felony under any state or federal law relating to any controlled substance or has been convicted of a felony or misdemeanor under any state or federal law relating to any dangerous drug;

(3) Has violated any provision of this article or the rules and regulations promulgated under this article; or

(4) Has failed to maintain sufficient controls against diversion of dangerous drugs into other than legitimate medical, scientific, or industrial channels.

(b) The State Board of Pharmacy may limit revocation or suspension of a permit to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(c) Instead of suspending or revoking a permit as authorized by subsection (a) or (b) of this Code section, the State Board of Pharmacy may impose a fine in an amount not to exceed $1,500.00.

(d) If the State Board of Pharmacy suspends or revokes a permit, all dangerous drugs owned or possessed by the permittee at the time of suspension or the effective date of the revocation order shall be placed under seal. No disposition may be made of drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs shall be forfeited to the state.

History. Code 1981, § 16-13-72.1, enacted by Ga. L. 1986, p. 421, § 1; Ga. L. 1999, p. 81, § 16.

16-13-73. Labeling prescription containers of dangerous drugs.

(a) Whenever a pharmacist dispenses a dangerous drug, he shall, in each case, place upon the container the following information:

(1) Name of the patient;

(2) Name of the practitioner prescribing the drug;

(3) The expiration date, if any, of the drug;

(4) Name and address of the pharmacy from which the drug was dispensed; and

(5) The date of the prescription.

(b) Any pharmacist who dispenses a dangerous drug and fails to place the label required by subsection (a) of this Code section upon the container of such drug shall be guilty of a misdemeanor.

History.
Ga. L. 1939, p. 288, § 3; Code 1933, §§ 79A-705, 79A-9908, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1971, p. 406, § 1; Ga. L. 1989, p. 14, § 16; Ga. L. 2015, p. 883, § 7/HB 211.

RESEARCH REFERENCES

C.J.S.
28 C.J.S., Drugs and Narcotics, §§ 103, 104, 135 et seq.
ALR.
Constitutionality of statutes requiring notice by label or otherwise of the fact that product is imported, or as to place of production, 124 A.L.R. 572.

16-13-74. Written prescriptions for dangerous drugs; content; signature.

(a) All written prescription drug orders for dangerous drugs shall be dated as of, and be signed on, the date when issued and shall bear the name and address of the patient, together with the name and strength of the drug, the quantity to be dispensed, complete directions for administration, the printed name, address, and telephone number of the practitioner, and the number of permitted refills. A prescription drug order for a dangerous drug is not required to bear the DEA permit number of the prescribing practitioner. A prescription drug order for a dangerous drug may be prepared by the practitioner or the practitioner's agent. The practitioner's signature must appear on each prescription prepared by the practitioner or the practitioner's agent and the nature of the practitioner's signature must meet the guidelines set forth in Chapter 4 of Title 26, the regulations promulgated by the State Board of Pharmacy, or both such guidelines and regulations. Any practitioner who shall dispense dangerous drugs shall comply with the provisions of Code Section 16-13-73.

(b) Any practitioner of the healing arts who fails to comply with subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1939, p. 288, § 4; Code 1933, §§ 79A-706, 79A-9909, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1982, p. 2403, §§ 9, 21; Ga. L. 2003, p. 349, § 12.

RESEARCH REFERENCES

C.J.S.
28 C.J.S., Drugs and Narcotics, §§ 103, 104, 135

16-13-75. Drugs to be kept in original container; exception.

(a) Possession and control of controlled substances or dangerous drugs by anyone other than the individuals specified in Code Section 16-13-35 or 16-13-72 shall be legal only if such drugs are in the original container in which they were dispensed by the pharmacist or the practitioner of the healing arts and are labeled according to Code Section 26-3-8.

(b) The possession, filling, and use of canisters for remote automated medication systems pursuant to subsection (i) of Code Section 16-13-41 shall not be considered a violation of this Code section.

History.
Ga. L. 1939, p. 288, § 5; Code 1933, § 79A-707, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1996, p. 356, § 7; Ga. L. 2011, p. 308, § 3/HB 457.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1996, "Code Section 16-13-35" was substituted for "Code Sections 16-13-35" (now subsection (a)).

JUDICIAL DECISIONS

Search and seizure; pill box not immediately identifiable as contraband. — State failed to prove that an officer's opening of a pill container found in the defendant's pocket was justified based on consent when the defendant only consented to the removal of the pill box from the defendant's pocket, and the box was not immediately identifiable as contraband. The defendant's convictions on controlled substances charges were reversed. McCormack v. State, 325 Ga. App. 183, 751 S.E.2d 904, 2013 Ga. App. LEXIS 985 (2013).

RESEARCH REFERENCES

ALR.
Construction of provision of Uniform Narcotic Drug Act requiring a physician's prescription as a prerequisite to a pharmacist's sale of narcotics, 10 A.L.R.3d 560.

16-13-76. Use of fictitious name or false address when obtaining drugs.

No person shall obtain or attempt to obtain any dangerous drug by use of a fictitious name or by the giving of a false address.

History.
Ga. L. 1939, p. 288, § 5; Code 1933, § 79A-708, enacted by Ga. L. 1967, p. 296, § 1.

RESEARCH REFERENCES

C.J.S.
28A C.J.S., Drugs and Narcotics, § 269.

16-13-77. Applicability of article to practitioner of the healing arts.

Nothing in this article shall be construed to prohibit the administration of dangerous drugs by or under the direction of a practitioner of the healing arts.

History.
Code 1933, § 79A-704, enacted by Ga. L. 1967, p. 296, § 1.
Cross references.
Further provisions regarding applicability of article to practitioners of healing arts, § 26-4-130.

16-13-78. Obtaining or attempting to obtain dangerous drugs by fraud, forgery, or concealment of material fact.

(a) No person shall obtain or attempt to obtain any dangerous drug or attempt to procure the administration of any such drug by:

(1) Fraud, deceit, misrepresentation, or subterfuge;

(2) The forgery or alteration of any prescription or of any written order;

(3) The concealment of a material fact; or

(4) The use of a false name or the giving of a false address.

(b) Any person violating subsection (a) of this Code section shall be guilty of a misdemeanor.

(c) Nothing in this Code section shall apply to drug manufacturers or their agents or employees when such manufacturers or their agents or employees are authorized to engage in and are actually engaged in investigative activities directed toward the safeguarding of the manufacturer's trademark.

History.
Code 1933, § 79A-9910, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1970, p. 461, § 1.

JUDICIAL DECISIONS

Failure of evidence to sustain conviction. — When the defendant was indicted for obtaining or attempting to obtain "dangerous drugs" by fraud, forgery, or concealment of a material fact, but the drugs were actually "Halcion" and "Lortab," both controlled substances, conviction of the defendant for violations involving controlled substances was not supported by the evidence because it was for a different offense than originally charged and the trial court erred in failing

to direct a verdict of acquittal. Tibbs v. State, 211 Ga. App. 250, 438 S.E.2d 706, 1993 Ga. App. LEXIS 1458 (1993).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 196, 197, 203, 204, 205.
C.J.S.
28 C.J.S., Drugs and Narcotics, § 169.
ALR.
Procuring signature by fraud as forgery, 11 A.L.R.3d 1074.
Construction of provision of Uniform Narcotic Drug Act or similar statute dealing with obtaining or procuring the administration of a narcotic drug by fraud or deceit, 25 A.L.R.3d 1118.
Marijuana, psilocybin, peyote, or similar drugs of vegetable origin as narcotics for purposes of drug prosecution, 50 A.L.R.3d 1164.
LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution, 50 A.L.R.3d 1284.

16-13-78.1. Prescribing or ordering dangerous drugs.

(a) No person shall prescribe or order the dispensing of a dangerous drug, except a registered practitioner who is:

(1) Licensed or otherwise authorized by this state to prescribe dangerous drugs;

(2) Acting in the usual course of his professional practice; and

(3) Prescribing or ordering such dangerous drug for a legitimate medical purpose.

(b) Any person violating subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Code 1981, § 16-13-78.1, enacted by Ga. L. 1985, p. 1219, § 10.

OPINIONS OF THE ATTORNEY GENERAL

Nurses may not write or telephone in prescriptions by referring to a written protocol. 1988 Op. Att'y Gen. No. 88-9.

16-13-78.2. Possession, manufacture, delivery, distribution, or sale of counterfeit substances.

Except as authorized by this article, it is unlawful for any person to possess, have under his control, manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute a counterfeit substance. Any person who violates this Code section shall be guilty of a misdemeanor.

History.
Code 1981, § 16-13-78.2, enacted by Ga. L. 1985, p. 1219, § 11.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1985, the term "subsection" in the second sentence of this Code section was changed to "Code section".

JUDICIAL DECISIONS

Evidence in other prosecutions. — In a proceeding against defendant for possession of cocaine, the trial court erred in admitting similar transaction evidence of defendant's possession of counterfeit cocaine when defendant was not given notice of the state's intent to introduce evidence of that crime. Crawford v. State, 230 Ga. App. 568, 497 S.E.2d 45, 1998 Ga. App. LEXIS 216 (1998), cert. denied, No. S98C0853, 1998 Ga. LEXIS 597 (Ga. May 22, 1998).

16-13-79. Violations.

(a) Except as provided in subsections (b), (c), and (d) of this Code section, any person who violates this article shall be guilty of a misdemeanor.

(b) Any person who distributes or possesses with the intent to distribute nitrous oxide for any use other than for a medical treatment prescribed by the order of a licensed medical practitioner, except as provided for by paragraph (16) of subsection (c) of Code Section 16-13-71, shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not less than one year nor more than three years or by a fine not to exceed $5,000.00 or both.

(c) Any person who distributes or possesses with the intent to distribute to any person under 18 years of age nitrous oxide for any use other than for a medical treatment prescribed by the order of a licensed medical practitioner, except as provided for by paragraph (16) of subsection (c) of Code Section 16-13-71, shall be guilty of a felony and upon conviction thereof shall be punished for not less than two years nor more than six years or by a fine not to exceed $10,000.00 or both.

(d) This article shall not apply to any person who possesses, distributes, sells, or uses nitrous oxide for food preparation in a restaurant, for food service, or in household products.

(e) Any person who knowingly distributes or resells any nonprescription injectable insulin product which was first obtained through an over-the-counter sale made to a patient from any pharmacy, practitioner, or other source shall be guilty of a misdemeanor. All such injectable insulin distributed or sold in this manner is considered to be an adulterated dangerous drug and unsalable, making it subject to seizure under the laws of this state.

History.
Code 1933, § 79A-9907, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1989, p. 238, § 2; Ga. L. 1991, p. 312, § 4; Ga. L. 1996, p. 356, § 8; Ga. L. 1998, p. 778, § 7; Ga. L. 2008, p. 169, § 9/HB 1090; Ga. L. 2016, p. 798, § 9/HB 783.

Law reviews.
For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

For note on 1989 amendment to this Code section, see 6 Georgia St. U.L. Rev. 204 (1989).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising under O.C.G.A. § 16-13-79(e) are designated as offenses for which those charged are to be fingerprinted. 2017 Op. Att'y Gen. No. 17-1.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 196, 197, 203, 204, 205.
C.J.S.
28A C.J.S., Drugs and Narcotics, § 344 et seq.
ALR.
Marijuana, psilocybin, peyote, or similar drugs of vegetable origin as narcotics for purposes of drug prosecution, 50 A.L.R.3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution, 50 A.L.R.3d 1284.

ARTICLE 4

SALE, POSSESSION, TRANSFER, OR INHALATION OF MODEL GLUE

RESEARCH REFERENCES

ALR.
Penal offense of sniffing glue or similar volatile intoxicants, 32 A.L.R.3d 1438.

Products liability: recovery for injury or death resulting from intentional inhalation of product's fumes or vapors to produce intoxicating or similar effect, 50 A.L.R.5th 275.

16-13-90. "Model glue" defined.

As used in this article, the term "model glue" means any glue, cement, solvent, or chemical substance containing one or more of the following chemicals: acetone, amyl chloride (iso- and tertiary), benzene, carbon disulfide, carbon tetrachloride, chloroform, ether, ethyl acetate, ethyl alcohol, ethylene dichloride, isopropyl acetate, isopropyl alcohol, isopropyl ether, methyl acetate, methyl alcohol, propylene dichloride, propylene oxide, trichlorethylene, amyl acetate, amyl alcohol, butyl acetate, butyl alcohol, butyl ether, diethylcarbonate, diethylene oxide (dioxane), dipropyl ketone, ethyl butyrate, ethylene glycol monoethyl ether (cellosolve), ethylene glycol monomethyl ether acetate (methyl cellosolve acetate), isobutyl alcohol, methyl amyl acetate, methyl amyl alcohol, methyl isobutyl ketone, or toluene.

History.
Ga. L. 1968, p. 1194, § 2; Ga. L. 1983, p. 3, § 13.

JUDICIAL DECISIONS

Butane not listed. — Trial court properly granted summary judgment in favor of a drug store in a wrongful death suit brought by the parents of a teenager who died while huffing butane and in a suit brought by the parents of two other teens who were injured since: the teens assumed the risk; the expert's affidavit presented by the parents was not based on personal knowledge from interviewing the teens and was conclusory and speculative; to the extent that the expert's affidavit fit within former O.C.G.A. § 24-9-67 (see now O.C.G.A. § 24-7-707), the expert's generalizations about the beliefs of adolescents about death or the propensity of adolescents to exercise poor judgment and behave irresponsibly were not appropriate yardsticks for assessing the minors' knowledge of the risk; the parents' claim that the drug store knew that the teens were going to misuse the butane was based on hearsay; and the parents' public policy claims were rejected as O.C.G.A. § 16-13-90 created a list of dangerous substances not to be sold to minors, butane was not on the list, and any change in the law had to be legislatively enacted. Garner v. Rite Aid of Ga., Inc., 265 Ga. App. 737, 595 S.E.2d 582, 2004 Ga. App. LEXIS 243 (2004).

OPINIONS OF THE ATTORNEY GENERAL

City may not adopt ordinance prohibiting glue sniffing, already denounced by state statute. 1970 Op. Att'y Gen. No. U70-59.

16-13-91. Intentional inhalation of model glue; application of article to anesthesia.

No person shall, for the purpose of causing a condition of intoxication, stupefaction, euphoria, excitement, exhilaration, or dulling of the senses or nervous system, intentionally smell or inhale the fumes from any model glue, provided that this Code section shall not apply to the inhalation of any anesthesia for medical or dental purposes.

History.
Ga. L. 1968, p. 1194, § 1.

JUDICIAL DECISIONS

Evidence of violation. — Spray paint containing acetone was within the definition of model glue and evidence of the defendant's possession was sufficient to support an adjudication of delinquency for having inhaled model glue. In re T.S., 211 Ga. App. 46, 438 S.E.2d 159, 1993 Ga. App. LEXIS 1405 (1993).

Presence of toluene in spray paint, an essential element of the crime, was not proven because the contents label was hearsay and, absent a recognized exception, could not prove the truth of the matter asserted. Ledford v. State, 239 Ga. App. 237, 520 S.E.2d 225, 1999 Ga. App. LEXIS 926 (1999), cert. denied, No. S99C1706, 2000 Ga. LEXIS 61 (Ga. Jan. 14, 2000), superseded by statute as stated in Childers v. State, 358 Ga. App. 568, 855 S.E.2d 766, 2021 Ga. App. LEXIS 96 (2021), superseded by statute as stated in Bryan v. State, No. A24A0048, 2024 Ga. App. LEXIS 217 (Ga. Ct. App. June 5, 2024).

OPINIONS OF THE ATTORNEY GENERAL

City may not adopt ordinance prohibiting glue sniffing, already denounced by state statute. 1970 Op. Att'y Gen. No. U70-59.

16-13-92. Possession, sale, or transfer of model glue.

No person shall intentionally possess, buy, sell, transfer possession, or receive possession of any model glue for the purpose of violating or aiding another person to violate this article.

History.
Ga. L. 1968, p. 1194, § 3.

16-13-93. Sale or transfer of model glue to minors.

No person shall sell or transfer possession of any model glue to another person under 18 years of age, nor shall any person under 18 years of age possess or buy any model glue unless the purchase is for model building or other lawful use and the person under 18 years of age has in his possession and exhibits to the seller or transferor the written consent of his parent or legal guardian to make such purchase or take possession of the model glue, provided any minor who shall transfer possession of model glue to another minor for model building or other lawful purpose shall not be held criminally liable for failing to require exhibition of the written consent of the transferee-minor's parents or for failing to keep same available for inspection by law enforcement officials.

History.
Ga. L. 1968, p. 1194, § 4.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1988, a hyphen was deleted between the words "law enforcement" near the end of the Code section.

16-13-94. Maintenance of records of sales to minors.

The person making a sale or transfer of possession of model glue to a person under 18 years of age must require the purchaser to exhibit the written consent of his parent or guardian and the name and address of the consenting parent or guardian. All data required by this Code section shall be kept available by the seller for inspection by law enforcement officials for a period of six months.

History.
Ga. L. 1968, p. 1194, § 5.

16-13-95. Effect of article on laws or ordinances of counties and municipalities.

No provisions in this article shall be construed to repeal or limit laws or ordinances of the governing authority of any county or municipality

regulating, restricting, or prohibiting the sale of model glue to any person under the age of 18, nor shall this article restrict the governing authority of any county or municipality from enacting ordinances or regulations governing the regulation of model glue not inconsistent with this article.

History.
Ga. L. 1968, p. 1194, § 7.

16-13-96. Penalty for violation of article; separate offenses.

Any person who violates this article shall be guilty of a misdemeanor. Each violation of this article shall be deemed a separate and distinct offense.

History.
Ga. L. 1968, p. 1194, § 6.

OPINIONS OF THE ATTORNEY GENERAL

City may not adopt ordinance prohibiting glue sniffing, already denounced by state statute. 1970 Op. Att'y Gen. No. U70-59.

RESEARCH REFERENCES

ALR.
Penal offense of sniffing glue or similar volatile intoxicants, 32 A.L.R.3d 1438.

ARTICLE 5

SANCTIONS AGAINST LICENSED PERSONS FOR OFFENSES INVOLVING CONTROLLED SUBSTANCES OR MARIJUANA

Law reviews.
For note on 1990 enactment of this article, see 7 Georgia St. U.L. Rev. 371 (1990).

16-13-110. Definitions.

(a) As used in this article, the term:

(1) "Controlled substance" means any drug, substance, or immediate precursor included in the definition of the term "controlled substance" in paragraph (4) of Code Section 16-13-21.

(2) "Convicted" or "conviction" refers to a final conviction in a court of competent jurisdiction, or the acceptance of a plea of guilty or nolo contendere or affording of first offender treatment by a court of competent jurisdiction.

(3) "Licensed individual" means any individual to whom any department, agency, board, bureau, or other entity of state govern-

ment has issued any license, permit, registration, certification, or other authorization to conduct a licensed occupation.

(4) "Licensed occupation" means any occupation, profession, business, trade, or other commercial activity which requires for its lawful conduct the issuance to an individual of any license, permit, registration, certification, or other authorization by any department, agency, board, bureau, or other entity of state government.

(5) "Licensing authority" means any department, agency, board, bureau, or other entity of state government which issues to individuals any license, permit, registration, certification, or other authorization to conduct a licensed occupation.

(6) "Marijuana" means any substance included in the definition of the term "marijuana" in paragraph (16) of Code Section 16-13-21.

(b) Without limiting the generality of the provisions of subsection (a) of this Code section, the practice of law shall constitute a licensed occupation for purposes of this article and the Supreme Court of Georgia shall be the licensing authority for the practice of law.

History.
Code 1981, § 16-13-110, enacted by Ga. L. 1990, p. 2009, § 1.

16-13-111. Notification of conviction of licensed individual to licensing authority; reinstatement of license; imposition of more stringent sanctions.

(a) Any licensed individual who is convicted under the laws of this state, the United States, or any other state of any criminal offense involving the manufacture, distribution, trafficking, sale, or possession of a controlled substance or marijuana shall notify the appropriate licensing authority of the conviction within ten days following the conviction.

(b) Upon being notified of a conviction of a licensed individual, the appropriate licensing authority shall suspend or revoke the license, permit, registration, certification, or other authorization to conduct a licensed occupation of such individual as follows:

(1) Upon the first conviction, the licensed individual shall have his or her license, permit, registration, certification, or other authorization to conduct a licensed occupation suspended for a period of not less than three months; provided, however, that in the case of a first conviction for a misdemeanor the licensing authority shall be authorized to impose a lesser sanction or no sanction upon the licensed individual; and

(2) Upon the second or subsequent conviction, the licensed indi-

vidual shall have his or her license, permit, registration, certification, or other authorization to conduct a licensed occupation revoked.

(c) The failure of a licensed individual to notify the appropriate licensing authority of a conviction as required in subsection (a) of this Code section shall be considered grounds for revocation of his or her license, permit, registration, certification, or other authorization to conduct a licensed occupation.

(d) A licensed individual sanctioned under subsection (b) or (c) of this Code section may be entitled to reinstatement of his or her license, permit, registration, certification, or other authorization to conduct a licensed occupation upon successful completion of a drug abuse treatment and education program approved by the licensing authority.

(e) The suspension and revocation sanctions prescribed in this Code section are intended as minimum sanctions, and nothing in this Code section shall be construed to prohibit any licensing authority from establishing and implementing additional or more stringent sanctions for criminal offenses and other conduct involving the unlawful manufacture, distribution, trafficking, sale, or possession of a controlled substance or marijuana.

History.
Code 1981, § 16-13-111, enacted by Ga. L. 1990, p. 2009, § 1.

Administrative rules and regulations.
Substantive Regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Real Estate Appraisers Board, Rule 539-1-.01 et seq.

16-13-112. Applicability of administrative procedures.

Administrative procedures for the implementation of this article for each licensed occupation shall be governed by the appropriate provisions applicable to each licensing authority.

History.
Code 1981, § 16-13-112, enacted by Ga. L. 1990, p. 2009, § 1.

16-13-113. Article as supplement to power of licensing authority.

The provisions of this article shall be supplemental to and shall not operate to prohibit any licensing authority from acting pursuant to those provisions of law which may now or hereafter authorize other sanctions and actions for that particular licensing authority.

History.
Code 1981, § 16-13-113, enacted by Ga. L. 1990, p. 2009, § 1.

16-13-114. Period of applicability of article.

This article shall apply only with respect to criminal offenses committed on or after July 1, 1990; provided, however, that nothing in this Code section shall prevent any licensing authority from implementing sanctions additional to or other than those provided for in this article with respect to offenses committed prior to July 1, 1990.

History.
Code 1981, § 16-13-114, enacted by Ga. L. 1990, p. 2009, § 1.

ARTICLE 6

KRATOM

16-13-120. (Effective January 1, 2025.) Definitions.

As used in this article, the term:

(1) "Adulterated" has the same meaning as in Code Section 26-2-26.

(2) "Kratom" means the tropical evergreen known as Mitragyna speciosa, which is native to Southeast Asia and contains the alkaloid mitragynine or metabolite 7-hydroxymitragynine.

(3) "Kratom extract" means a kratom product that has been modified, processed, or otherwise manufactured with a food-grade solvent.

(4) "Kratom product" means a product containing any part of the leaf of the plant mitragyna whether sold as a powder, capsule, pill, beverage, extract, or other form.

(5) "Processor" means a person or entity that prepares, manufactures, distributes, or maintains kratom products or that advertises, represents, or holds itself out as preparing, manufacturing, distributing, or maintaining kratom products.

(6) "Retailer" means a person or entity that sells or holds itself out as selling kratom products at retail to the general public; provided, however, that such person or entity shall also be included within the definition of "processor" as set forth in this Code section to the extent that he or she engages in the business of a processor. Such term shall not include a store employee at a retailer's place of business.

History.
Code 1981, § 16-13-120, enacted by Ga. L. 2019, p. 273, § 1/HB 551; Ga. L. 2024, p. 544, § 1/HB 181, effective January 1, 2025.

Delayed effective date.
Code Section 16-13-120 is set out twice in this Code. This version is effective January 1, 2025. For version effective

until January 1, 2025, see the preceding version.

Amendments.

The 2024 amendment, effective January 1, 2025, rewrote this Code section, which read: "As used in this article, the term 'kratom' means the tropical evergreen known as Mitragyna speciosa, which is native to Southeast Asia and contains the alkaloid mitragynin." See Editor's notes for applicability.

Editor's notes.

Ga. L. 2024, p. 544, § 4/HB 181, not codified by the General Assembly, makes the amendment of this Code section applicable to offenses committed on or after January 1, 2025.

16-13-121. (Effective until January 1, 2025.) Possession by individual under age 18; penalty.

No person shall sell or transfer possession of kratom to another person under 18 years of age, nor shall any person under 18 years of age possess kratom. A person who is convicted of violating this Code section shall be guilty of a misdemeanor.

History.

Code 1981, § 16-13-121, enacted by Ga. L. 2019, p. 273, § 1/HB 551.

Delayed effective date.

Code Section 16-13-121 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 16-13-121 are offenses for which fingerprinting is required. 2019 Op. Att'y Gen. No. 19-3.

16-13-121. (Effective January 1, 2025.) Possession by individual under age 21; sale; penalty.

(a)(1) No person shall knowingly sell or transfer possession of any kratom, kratom product, or kratom extract to another person under 21 years of age, nor shall any person under 21 years of age purchase or possess any kratom, kratom product, or kratom extract.

(2)(A) The prohibition contained in paragraph (1) of this subsection shall not apply with respect to the sale or transfer of possession of kratom, kratom product, or kratom extract by a person when such person has been furnished with proper identification showing that the individual to whom the kratom, kratom product, or kratom extract is sold or transferred is 21 years of age or older.

(B) In any case when a reasonable or prudent person could reasonably be in doubt as to whether or not the individual to whom kratom, kratom product, or kratom extract is to be sold or

transferred is actually 21 years of age or older, it shall be the duty of such person to request to see and to be furnished with proper identification. The failure to make such request and verification may be considered by the trier of fact in determining whether such person did knowingly sell or transfer possession in violation of paragraph (1) of this subsection.

(b) No person shall ingest kratom in a manner that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor in a solution or other form, including, but not limited to, any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of kratom in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

(c) No person shall sell, deliver, cause to be delivered, or assist in the delivery of any kratom in or to this state that can be ingested in a manner that violates subsection (b) of this Code section.

(d) No person shall offer for sale kratom in this state unless such product is behind a counter in an area only accessible to store employees or in a secured display which is only accessible with the intervention of a store employee.

(e) Any person that commits an act in violation of this Code section shall be guilty of a misdemeanor; provided, however, that, for a conviction of a first offense, such individual shall be punished by a fine not to exceed $250.00; for a conviction of a second offense, such individual shall be punished by a fine of up to $500.00; and for a conviction of a third offense and each subsequent offense, such individual shall be punished by a fine of up to $1,000.00.

History.

Code 1981, § 16-13-121, enacted by Ga. L. 2019, p. 273, § 1/HB 551; Ga. L. 2024, p. 544, § 2/HB 181, effective January 1, 2025.

Delayed effective date.

Code Section 16-13-121 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

Amendments.

The 2024 amendment, effective January 1, 2025, rewrote this Code section, which read: "No person shall sell or transfer possession of kratom to another person under 18 years of age, nor shall any person under 18 years of age possess kratom. A person who is convicted of violating this Code section shall be guilty of a misdemeanor." See Editor's notes for applicability.

Editor's notes.

Ga. L. 2024, p. 544, § 4/HB 181, not codified by the General Assembly, makes the amendment of this Code section applicable to offenses committed on or after January 1, 2025.

16-13-122. (Effective until January 1, 2025.) Required labeling.

Kratom packaging shall be accompanied by a label bearing the following information prior to its sale in this state:

(1) Clearly labeled ingredients;

(2) That the sale or transfer possession of kratom to another person under 18 years of age is prohibited;

(3) The amount of mitragynine and 7-hydroxymitragynine contained in such product;

(4) The amount of mitragynine and 7-hydroxymitragynine contained in the packaging for such product;

(5) The common or usual name of each ingredient used in the manufacture of such product, listed in descending order of predominance;

(6) The name and the principal mailing address of the manufacturer or the person responsible for distributing such product;

(7) Clear and adequate directions for the consumption and safe and effective use of such product; and

(8) Any precautionary statements as to the safety and effectiveness of such product.

History.
Code 1981, § 16-13-122, enacted by Ga. L. 2019, p. 273, § 1/HB 551.

Delayed effective date.
Code Section 16-13-122 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

16-13-122. (Effective January 1, 2025.) Content of kratom; required labeling.

(a) All kratom products sold in, or delivered to, this state shall be derived from the natural kratom plant, and any manufactured or processed kratom product, including kratom extracts, shall not be modified, chemically or otherwise, processed, synthesized, or otherwise treated in any way that increases the levels of mitragynine or 7-hydroxymitragynine, beyond those described in subsection (b) of this Code section.

(b) No kratom product sold in, or delivered to, this state shall have a concentration ratio that is:

(1) Greater than 150 mg of mitragynine per serving;

(2) Greater than 0.5 mg 7-hydroxymitragynine per gram; or

(3) Greater than 1 mg 7-hydroxymitragynine per serving.

(c) A processor or retailer shall not prepare, distribute, sell, or expose for sale any of the following:

(1) A kratom product that is adulterated;

(2) A kratom product that contains or uses in its processing or manufacturing a food substance that is not generally recognized as safe in food products;

(3) A kratom product containing any synthetic alkaloids or metabolite including synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compounds of the kratom plant; or

(4) A kratom product in a form that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor in a solution or other form, including, but not limited to, any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of kratom in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

(d) A processor shall maintain a registered agent in this state for service of process for the entire duration of such entity's engagement in the business of a processor.

(e) Kratom packaging shall be accompanied by a label bearing the following information prior to its sale in this state:

(1) Clearly labeled ingredients;

(2) That the sale or transfer possession of kratom to another person under 21 years of age is prohibited;

(3) The amount of mitragynine and 7-hydroxymitragynine contained in such product;

(4) The total amount of mitragynine and 7-hydroxymitragynine contained in the packaging for such product;

(5) The common or usual name of each ingredient used in the manufacture of such product, listed in descending order of predominance;

(6) The name, physical address, and principal mailing address of the manufacturer or the person responsible for distributing such product;

(7) Clear and adequate directions for the consumption of such

product, including the recommended serving size and the time frame within which safe consumption should occur;

(8) Any precautionary statements as to the safety and effectiveness of such product, including a warning that a consumer should consult their physician on questions about use of kratom, and state that the kratom product is not intended to "diagnose, treat, cure or prevent any disease"; and

(9) A statement that a kratom product label is prohibited from making any therapeutic claims unless approved by the United States Food and Drug Administration.

(f)(1) A processor who knowingly or with criminal negligence commits an act in violation of this Code section shall, upon a first conviction thereof, be guilty of a misdemeanor of a high and aggravated nature, and upon a subsequent conviction, be guilty of a felony, and shall be punished by imprisonment for not less than one year nor more than 15 years, by a fine not to exceed $100,000.00, or both.

(2) A processor who negligently commits an act in violation of this Code section shall be guilty of a misdemeanor and subject to a fine not to exceed $1,000.00.

(g)(1) A retailer who knowingly or with criminal negligence commits an act in violation of subsection (a), (b), (c), or (e) of this Code section shall, upon a first conviction thereof, be guilty of a misdemeanor of a high and aggravated nature, and upon a subsequent conviction, be guilty of a felony, and shall be punished by imprisonment for not less than one year nor more than 15 years, by a fine not to exceed $100,000.00, or both.

(2) A retailer who negligently commits an act in violation of subsection (a), (b), (c), or (e) of this Code section shall be guilty of a misdemeanor; provided, however, that, for a conviction of a first offense, such individual shall be punished by a fine not to exceed $250.00; for a conviction of a second offense, such individual shall be punished by a fine of up to $500.00; and for a conviction of a third offense, such individual shall be punished by a fine of up to $1,000.00; provided, further, that upon each subsequent conviction after a third conviction, such individual shall be guilty of a high and aggravated misdemeanor and shall be imprisoned for not less than ten days nor more than 12 months and punished by a fine of not less than $1,000.00 nor more than $5,000.00.

(3) A retailer shall have a defense to prosecution under this subsection if such retailer proves by a preponderance of the evidence that the retailer relied in good faith upon the representations of a processor that the kratom, kratom product, or kratom extract and labeling complied with the provisions of this Code section.

History.

Code 1981, § 16-13-122, enacted by Ga. L. 2019, p. 273, § 1/HB 551; Ga. L. 2024, p. 544, § 3/HB 181, effective January 1, 2025.

Delayed effective date.

Code Section 16-13-122 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

Amendments.

The 2024 amendment, effective January 1, 2025, rewrote this Code section, which read: "Kratom packaging shall be accompanied by a label bearing the following information prior to its sale in this state:

"(1) Clearly labeled ingredients;

"(2) That the sale or transfer possession of kratom to another person under 18 years of age is prohibited;

"(3) The amount of mitragynine and 7-hydroxymitragynine contained in such product;

"(4) The amount of mitragynine and 7-hydroxymitragynine contained in the packaging for such product;

"(5) The common or usual name of each ingredient used in the manufacture of such product, listed in descending order of predominance;

"(6) The name and the principal mailing address of the manufacturer or the person responsible for distributing such product;

"(7) Clear and adequate directions for the consumption and safe and effective use of such product; and

"(8) Any precautionary statements as to the safety and effectiveness of such product." See Editor's notes for applicability.

Editor's notes.

Ga. L. 2024, p. 544, § 4/HB 181, not codified by the General Assembly, makes the amendment of this Code section applicable to offenses committed on or after January 1, 2025.

CHAPTER 14

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec.		Sec.	
16-14-1.	Short title.	16-14-9.	Civil remedies as supplemental and not mutually exclusive.
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16-14-5.	Criminal penalties for violation of Code Section 16-14-4.		
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16-14-8.	Period of limitations as to criminal proceedings or civil actions under this chapter.		

Cross references.

National Crime Prevention and Privacy Compact; ratification; criminal history records repository, § 35-3-39.1.

Law reviews.

For article, "Private RICO Litigation Based Upon Fraud in the Sale of Securities," see 18 Ga. L. Rev. 43 (1983).

For article, "Georgia Racketeer Influenced & Corrupt Organizations Act," see 20 Ga. St. B.J. 34 (1983).

For article, "The Money Laundering Control Act of 1986: Will Attorneys Be Taken to The Cleaners?," see 24 Ga. St. B.J. 186 (1988).

For article, "Georgia's Baby RICO Comes of Age," see 25 Ga. St. B.J. 153 (1989).

For comment, "The Pattern Requirement of Civil RICO: H. J. Inc. v. Northwestern Bell Telephone Co.," see 7 Georgia St. U.L. Rev. 111 (1990).

For article on the Traps of Federal and Georgia RICO, see 28 Ga. St. B.J. 134 (1992).

For annual survey article on the law of torts, see 45 Mercer L. Rev. 403 (1993).

For annual survey article discussing developments in construction law, see 51 Mercer L. Rev. 181 (1999).

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

JUDICIAL DECISIONS

Sufficient showing of predicate facts. — Testimony by defendant's cousin that the cousin saw defendant deliver packages to defendant's mother on several occasions corroborated defendant's mother's testimony that defendant supplied cocaine for sale by family members and was sufficient to sustain defendant's conviction under the Georgia Racketeer Influenced and Corrupt Organization Act, O.C.G.A. § 16-14-1 et seq. McGee v. State, 255 Ga. App. 708, 566 S.E.2d 431, 2002 Ga. App. LEXIS 745 (2002), cert. denied, No. S02C1566, 2002 Ga. LEXIS 802 (Ga. Sept. 6, 2002), cert. denied, 537 U.S. 1058, 123 S. Ct. 633, 154 L. Ed. 2d 539, 2002 U.S. LEXIS 8872 (2002).

Insufficient showing of predicate acts. — Predicate acts alleged by plaintiffs were so vaguely and ambiguously recited as to fail to demonstrate even a factual relationship to one another, much less a threat of continuing activity. The plaintiff failed to satisfy the pattern-of-activity element by failing to allege facts sufficient to fulfill the "continuity plus relationship"

requirement between the predicate acts pleaded in the complaint. Mills v. Fitzgerald, 668 F. Supp. 1554, 1987 U.S. Dist. LEXIS 7938 (N.D. Ga. 1987).

Defendant, county school superintendent, correctly argued that trial court erred in denying defendant's motion for directed verdict as to two predicate acts of theft by taking committed by defendant's two assistants because insufficient evidence was presented from which the jury could find defendant guilty of these two acts. Purvis v. State, 208 Ga. App. 653, 433 S.E.2d 58, 1993 Ga. App. LEXIS 563 (1993), cert. denied, No. S93C1348, 1993 Ga. LEXIS 980 (Ga. Oct. 8, 1993).

RESEARCH REFERENCES

Am. Jur. 2d.

31A Am. Jur. 2d, Extortion, Blackmail and Threats, § 104 et seq.

Am. Jur. Proof of Facts.

"Pattern of Racketeering Activity" Under the Racketeer Influenced and Corrupt Organizations Act (RICO), 10 POF3d 289.

ALR.

Civil action for damages under state Racketeer Influenced and Corrupt Organizations Act (RICO) for losses from racketeering activity, 62 A.L.R.4th 654.

Recovery of damages for personal injuries in civil action for damages under Racketeer Influenced and Corrupt Organizations Act (18 USCS § 1964(c)), 96 A.L.R. Fed. 881.

Liability, under Racketeer Influenced and Corrupt Organizations Act (RICO) (18 USCS §§ 1961-1968), for retaliation against employee for disclosing or refusing to commit wrongful act, 100 A.L.R. Fed. 667.

Construction and application of § 2J1.3 of United States sentencing guidelines (18 USCS Appx 1.3 § 2J), pertaining to sentencing for perjury, subornation of perjury, witness bribery, and departures therefrom, 131 A.L.R. Fed. 269.

Extraterritorial Application of Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C.A. §§ 1961 et seq., 20 A.L.R. Fed. 3d 2.

16-14-1. Short title.

This chapter shall be known and may be cited as the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act."

History.

Code 1933, § 26-3401, enacted by Ga. L. 1980, p. 405, § 1; Ga. L. 2015, p. 693, § 2-25/HB 233.

Cross references.

Venue for the offense of money laundering, § 7-1-917.

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For survey article on trial practice and procedure, see 59 Mercer L. Rev. 423 (2007).

For survey article on tort law, see 60 Mercer L. Rev. 375 (2008).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

JUDICIAL DECISIONS

Proof of theft by deception as predicate act. — Civil fraud and theft by deception have different elements and showing that there are jury issues as to fraud does not necessarily show that there are jury issues as to theft by deception; a

failure to show the level of intent needed for proving theft by deception would preclude a jury issue on that crime as a predicate act for RICO purposes, defeating a RICO claim. Avery v. Chrysler Motors Corp., 214 Ga. App. 602, 448 S.E.2d 737, 1994 Ga. App. LEXIS 986 (1994).

Unconstitutionality of in personam forfeiture proceeding. — In an in personam forfeiture proceeding, pursuant to the Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., a trial court erred by finding that the civil procedural rules set forth in the Georgia Civil Practice Act, O.C.G.A. § 9-11-1 et seq., were an adequate substitute for the substantive constitutional rights to which the property owners were entitled. As a result, the Supreme Court of Georgia held that former O.C.G.A. § 16-14-7(m) was unconstitutional because the law deprived in personam forfeiture defendants of the safeguards of criminal procedure guaranteed by the United States and Georgia Constitutions. Cisco v. State, 285 Ga. 656, 680 S.E.2d 831, 2009 Ga. LEXIS 317 (2009).

Standing. — *Unpublished decision:* In a case arising from a settlement and release agreement in which an insured appealed a district court's entry of summary judgment in favor of a former insurer because the insured could not show the purported conspiracy harmed the insured in any cognizable manner, the insured did not have standing for a conspiracy claim under Georgia's RICO Act, O.C.G.A. § 16-14-1 et seq. Rosen v. Am. Guar. & Liab. Ins. Co., 503 Fed. Appx. 768, 2013 U.S. App. LEXIS 529 (11th Cir. 2013).

Statute of limitations violated. — Defendant's convictions for theft by conversion and a RICO violation were reversed because the state failed to carry the state's burden to prove that the defendant was indicted on the counts within the applicable statutes of limitation as the evidence showed that the victims, and therefore the state, had actual knowledge of the offenses more than five years prior to the June 12, 2009 indictment, and the state produced no evidence or argument to the contrary. Jannuzzo v. State, 322 Ga. App. 760, 746 S.E.2d 238, 2013 Ga. App. LEXIS 606 (2013).

Preponderance of evidence required. — Trial court erred in a bifurcated suit asserting a claim of illegal insurance sales under the Georgia Racketeer Influenced and Corrupt Organizations Act (Georgia RICO), O.C.G.A. § 16-14-1 et seq., by instructing the jury that the suing passenger of a cab was required to prove the asserted Georgia RICO claims against two cab companies by clear and convincing evidence as the proper standard of proof to have been applied was a preponderance of the evidence. Am. Ass'n of Cab Cos. v. Parham, 291 Ga. App. 33, 661 S.E.2d 161, 2008 Ga. App. LEXIS 329 (2008), cert. denied, No. S08C1409, 2008 Ga. LEXIS 690 (Ga. Sept. 8, 2008).

Elements of claim sufficiently pled. — Creditor sufficiently pled federal and state (Georgia) RICO claim based on the debtor having conducted or participated, directly or indirectly, in the conduct or affairs of an enterprise when, generally, it was alleged that the debtor used legitimate residential and commercial construction companies as a means of inducing unsuspecting customers to pay over large monthly wire transfers that were purportedly being used to pay subcontractors and suppliers but that instead were wrongfully misdirected for benefit of the enterprise with those funds being laundered through placement companies. Vanbenschoten v. Turner (In re Turner), No. 15-40525-EJC, No. 16-04004-EJC, 2017 Bankr. LEXIS 918 (Bankr. S.D. Ga. Mar. 31, 2017).

Indictment insufficient. — Sparse allegations in the indictment for violation of the Georgia Racketeer Influence and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., which said nothing at all about the nature of the connection, was insufficient to enable the defendants to prepare for trial; accordingly, the special demurrers by the defendants ought to have been sustained. Kimbrough v. State, 300 Ga. 878, 799 S.E.2d 229, 2017 Ga. LEXIS 230 (2017).

Amended complaint alleging violation of Georgia RICO Act granted. — In an action in which an

interexchange carrier asserted it was not obligated to pay fees to a local carrier for misrepresented toll-free cell calls, it's amendment to add claims alleging violations under the Georgia RICO Act, O.C.G.A. § 16-14-1 et seq., common law fraud, and the Uniform Deceptive Trade Practices Act, O.C.G.A. § 10-1-370 et seq., was not futile given the court's denial of summary judgment on the local carrier's counterclaims; thus, amendment under Fed. R. Civ. P. 15 was granted. ITC Deltacom Communs. v. US LEC Corp., No. 3:02-CV-116-JTC, 2004 U.S. Dist. LEXIS 27557 (N.D. Ga. Mar. 15, 2004).

Amended complaint related back. — Creditor's federal and state (Georgia) racketeering claims related back to the creditor's original complaint, which attempted to set forth allegations regarding the debtor's fraudulent misappropriation of funds that should have been used to pay the subcontractors that had performed work on the creditor's home. Although the amended complaint alleged fraudulent conduct on a larger scale, it still arose out of the same operative facts set forth in the original complaint, and the initial allegations of fraud provided sufficient notice that the debtor's alleged conduct could result in a related racketeering claim. Vanbenschoten v. Turner (In re Turner), No. 15-40525-EJC, No. 16-04004-EJC, 2017 Bankr. LEXIS 918 (Bankr. S.D. Ga. Mar. 31, 2017).

Action against transferee of franchise failed. — Trial court erred by failing to grant a succeeding franchisee's motion for summary judgment in a fraud suit brought by car dealership consumers as the consumers failed to establish the succeeding franchisee's participation or involvement in any of the complained of transactions; thus, no unfair business violations were established, and no direct claim against a transferee was permitted under the Bulk Transfer Act, former O.C.G.A. § 11-6-101 et seq. Additionally, the consumers' claims under Georgia's Racketeer Influenced and Corrupt Organizations statute, O.C.G.A. § 16-14-1 et seq., likewise failed since the uncontroverted evidence established without question that the succeeding franchisee did not make any misrepresentations to the consumers nor participated in any of the transactions that formed the basis of the consumers' claims. Summit Auto. Group, LLC v. Clark Kia Motors Ame., Inc., 298 Ga. App. 875, 681 S.E.2d 681, 2009 Ga. App. LEXIS 821 (2009).

Action against land bank grantee failed. — Developer's Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., claim against a grantee of property from the Land Bank failed. Even taking all the allegations of bribery, fraudulent statements, and other misdeeds as true, the developer was a mere applicant for a grant of the property so the developer could not show direct harm from the Land Bank's transfer of the property to the grantee instead. Tribeca Homes, LLC v. Marathon Inv. Corp., 322 Ga. App. 596, 745 S.E.2d 806, 2013 Ga. App. LEXIS 569 (2013).

RICO claim against non-debtor defendants not property of bankruptcy estate. — Bankruptcy court properly lifted the automatic stay so that a creditor could pursue a Georgia Racketeer Influenced and Corrupt Organizations Act (Georgia RICO), O.C.G.A. § 16-14-1 et seq., action against the non-debtor defendants because the trustee was barred by the doctrine of in pari delicto from asserting a Georgia RICO claim against the non-debtor defendants, so the creditor's Georgia RICO claim against the non-debtor defendants was not property of the bankruptcy estate under 11 U.S.C. § 541(a); further, because the Georgia RICO claim was neither actual nor potential property of the bankruptcy estate, 11 U.S.C. § 544 did not authorize the trustee to bring such a claim against the non-debtor defendants. Flatau v. Stewart, 339 B.R. 524, 2006 U.S. Dist. LEXIS 11356 (M.D. Ga. 2006).

Claim against insurer not moot. — Conclusion that the insured party's claims alleging fraud, breach of contract, and violations of the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., were rendered moot by application of the

appraisal clause was contrary to law; this would have converted the appraisal clause into an arbitration clause, which would have been impermissible under O.C.G.A. § 9-9-2(c)(3) in contracts between insured parties and insurers. McGowan v. Progressive Preferred Ins. Co., 281 Ga. 169, 637 S.E.2d 27, 2006 Ga. LEXIS 884 (2006).

Failure to establish claims upon which racketerring claims were predicated. — Because a contractor failed to establish claims of fraud and conversion upon which the contractor's racketeering claims were predicated, the contractor's racketeering claims failed as a matter of law. J. Kinson Cook of Ga., Inc. v. Heery/Mitchell, 284 Ga. App. 552, 644 S.E.2d 440, 2007 Ga. App. LEXIS 365 (2007).

Plaintiff mortgage company's motion to remand the company's action to state court was granted because the company's assertion of violations of federal criminal law as predicate acts to a Georgia RICO Act claim were not sufficiently substantial to confer federal question jurisdiction. Neighborhood Mortg., Inc. v. Fegans, No. 1:06-CV-1984-JOF, 2007 U.S. Dist. LEXIS 63241 (N.D. Ga. Aug. 28, 2007).

Unpublished decision: Plaintiff subcontractor's Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., claims against defendants, plaintiff's supplier, a competitor, and a government procuring agent, based on wire fraud, mail fraud, and Hobbs Act violations failed on causation since a fraud in bids to the government did not proximately cause the injury the subcontractor sustained by being at a competitive disadvantage. G&G TIC, LCC v. Ala. Controls, Inc., 324 Fed. Appx. 795, 2009 U.S. App. LEXIS 8723 (11th Cir. 2009).

Mortgage borrower failed to state a claim against a loan servicer under Georgia's Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq.; the borrower failed to plead any predicate act with the required specificity. Stroman v. Bank of Am. Corp., 852 F. Supp. 2d 1366, 2012 U.S. Dist. LEXIS 54677 (N.D. Ga. 2012).

Unpublished decision: In a case arising from a settlement and release agreement in which an insured appealed a district court's entry of summary judgment in favor of a former insurer, because the insured was unable to create a genuine issue of material fact that the insurer had the lesser intent to commit civil fraud, it followed that the insured was also unable to create a genuine issue of material fact that the insurer had the intent to commit any predicate acts under Georgia's RICO Act, O.C.G.A. § 16-14-1 et seq. Rosen v. Am. Guar. & Liab. Ins. Co., 503 Fed. Appx. 768, 2013 U.S. App. LEXIS 529 (11th Cir. 2013).

Fifth Amendment claim denied. — Denial of an accused's motion for a protective order under O.C.G.A. § 9-11-26(c) was affirmed as the Fifth Amendment could not be used to justify a protective order to stay all discovery in the accused's civil forfeiture proceeding under O.C.G.A. § 16-14-7 pending the conclusion of the accused's criminal Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., case; while the privilege against self-incrimination extends to answers creating a "real and appreciable" danger of establishing a link in the chain of evidence needed to prosecute, the trial court has to determine if the answers could incriminate the witness, and if the trial court determines that the answers could not incriminate the witness, the witness has to testify or be subject to the court's sanction. Chumley v. State of Ga., 282 Ga. App. 117, 637 S.E.2d 828, 2006 Ga. App. LEXIS 1318 (2006).

Contracts and merger clauses. — *Unpublished decision:* While plaintiff borrower's complaint alleged an alleged tax-favorable loan was represented as long-term but defendant lenders called it after one year, all oral representations forming the basis of a Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., claim merged into the contract by a merger clause and were not binding since the contract reserved a right to demand repayment annually. Curtis Inv. Co., LLC v. Bayerische Hypo-Und Vereinsbank, AG, 341 Fed. Appx. 487, 2009 U.S. App. LEXIS 17469 (11th Cir. 2009).

Fraudulent transfer not predicate act. — Trial court erred by failing to dismiss the plaintiff's claim for theft as a

predicate offense under the Georgia RICO statute, O.C.G.A. § 16-14-1 et seq., because a fraudulent transfer was not an enumerated predicate offense under the Georgia RICO statute, but instead, a civil tort governed by the Uniform Voidable Transactions Act, O.C.G.A. § 18-2-70 et seq. Z-Space, Inc. v. Dantanna's CNN Center, LLC, 349 Ga. App. 248, 825 S.E.2d 628, 2019 Ga. App. LEXIS 142 (2019).

RICO not violated by hospitals using chargemaster rates. — Supreme court overrules Clouthier v. Med. Center of Central Ga., Inc., 351 Ga. App. 883 (2019), and Aguila v. Kennestone Hosp., 353 Ga. App. 17 (2019), to the extent that those cases hold that viable claims for fraud, negligent representation, and violations of the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., can be maintained against hospitals that properly file liens based on standard chargemaster rates that reflect true market considerations such as hospital costs. Bowden v. Medical Ctr., Inc., 309 Ga. 188, 845 S.E.2d 555, 2020 Ga. LEXIS 464 (2020).

RESEARCH REFERENCES

ALR.

Criminal prosecutions under state RICO statutes for engaging in organized criminal activity, 89 A.L.R.5th 629.

Validity of criminal state Racketeer Influenced and Corrupt Organizations Acts and similar acts related to gang activity and the like, 58 A.L.R.6th 385.

Validity, construction, and application of RICO Act, Supreme Court cases, 171 A.L.R. Fed. 1.

Construction and application of enhanced sentencing provision of Armed Career Criminal Act (ACCA), 18 U.S.C.A. § 924(e) — United States Supreme Court cases, 67 A.L.R. Fed. 2d 1.

Statute of limitations in civil actions for damages under the Racketeer Influence and Corrupt Organizations Act (RICO), 18 USCA §§ 1961-1968, 156 A.L.R. Fed. 361.

16-14-2. Findings and intent of General Assembly.

(a) The General Assembly finds that a severe problem is posed in this state by the increasing sophistication of various criminal elements and the increasing extent to which the state and its citizens are harmed as a result of the activities of these elements.

(b) The General Assembly declares that the intent of this chapter is to impose sanctions against those who violate this chapter and to provide compensation to persons injured or aggrieved by such violations. It is not the intent of the General Assembly that isolated incidents of misdemeanor conduct or acts of civil disobedience be prosecuted under this chapter. It is the intent of the General Assembly, however, that this chapter apply to an interrelated pattern of criminal activity motivated by or the effect of which is pecuniary gain or economic or physical threat or injury. This chapter shall be liberally construed to effectuate the remedial purposes embodied in its operative provisions.

History.

Code 1933, § 26-3401, enacted by Ga. L. 1980, p. 405, § 1; Ga. L. 1997, p. 672, § 1; Ga. L. 2015, p. 693, § 2-25/HB 233.

Editor's notes.

Ga. L. 1997, p. 672, § 2, not codified by the General Assembly, provides that the Act shall have retroactive application to

the fullest extent permitted by the Constitutions of Georgia and the United States.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article, "A Comprehensive Analysis of Georgia RICO," see 9 Georgia St. U.L. Rev. 537 (1993).

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 90 (1997).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

JUDICIAL DECISIONS

Not element of civil cause of action. — Expression of legislative purpose in enacting O.C.G.A. § 16-14-1 et seq. is not an element of a civil cause of action under the Georgia RICO Act, O.C.G.A. § 16-14-1 et seq. State v. Shearson Lehman Bros., 188 Ga. App. 120, 372 S.E.2d 276, 1988 Ga. App. LEXIS 895 (1988).

O.C.G.A. Ch. 14, T. 16 requires the plaintiff to allege an organized crime nexus. Georgia Gulf Corp. v. Ward, 701 F. Supp. 1556, 1987 U.S. Dist. LEXIS 14352 (N.D. Ga. 1987).

Allegations of enterprise and racketeering not necessary. — Plaintiff's failure to separately allege that defendants were engaged in an "enterprise" as well as a pattern of racketeering did not preclude issuance of a preliminary injunction against the defendants. Cotton, Inc. v. Phil-Dan Trucking, Inc., 270 Ga. 95, 507 S.E.2d 730, 1998 Ga. LEXIS 1042 (1998).

Nexus between organized crime and the economy. — Plaintiff's failure to allege a nexus between organized crime and the economy is of no consequence. Cotton, Inc. v. Phil-Dan Trucking, Inc., 270 Ga. 95, 507 S.E.2d 730, 1998 Ga. LEXIS 1042 (1998).

Securing debt. — Because the General Assembly did not intend to proscribe a bank's attempts to secure payment of a debt through legal means, the trial court did not err in finding that the debtors failed to offer evidence of a pattern of racketeering to support a RICO claim. All Fleet Refinishing, Inc. v. W. Ga. Nat'l Bank, 280 Ga. App. 676, 634 S.E.2d 802, 2006 Ga. App. LEXIS 845 (2006).

Intent to cause harm. — Evidence sufficient to show a racketeer influenced and corrupt organization violation necessarily also demonstrates the "intent to cause harm" that removes the cap to a punitive damage award. Speir v. Krieger, 235 Ga. App. 392, 509 S.E.2d 684, 1998 Ga. App. LEXIS 1519 (1998).

Credit company to which retail installment contract assigned. — Credit company to which automobile dealer assigned retail installment contract was not a member of the "organized criminal elements" at which the Georgia Racketeer Influenced and Corrupt Organization Act is aimed. Doxie v. Ford Motor Credit Co., 603 F. Supp. 624, 1984 U.S. Dist. LEXIS 22662 (S.D. Ga. 1984).

Repeated sale of non-existent insurance. — While the illegal sale of insurance is not in and of itself a basis for a racketeer influenced and corrupt organization (RICO) action absent further evidence of fraud rising to the level of theft by deception, the repeated sale to unsuspecting consumers of non-existent insurance was the very essence of such fraud and was exactly the type of criminally fraudulent activity masquerading as "business" that RICO was designed to address. Speir v. Krieger, 235 Ga. App. 392, 509 S.E.2d 684, 1998 Ga. App. LEXIS 1519 (1998).

Preponderance of evidence required. — In a civil action under the Georgia RICO Act, O.C.G.A. § 16-14-1 et seq., given the similarities in the purpose and language of the federal and Georgia RICO statutes, together with the General

Assembly's mandate to liberally construe the Act to effectuate its remedial purposes, under O.C.G.A. § 16-14-2(b), the applicable standard of proof in state civil RICO actions was held to be a preponderance of the evidence; thus, the Supreme Court of Georgia overruled Simpson Consulting, Inc. v. Barclays Bank PLC, 227 Ga. App. 648 (490 SE2d 184) (1997), and those other cases holding to the contrary, specifically, Blanton v. Bank of America, 256 Ga. App. 103 (2002), In re Copelan, 250 Ga. App. 856 (2001), and Tronitec, Inc. v. Shealy, 249 Ga. App. 442 (2001). Williams Gen. Corp. v. Stone, 279 Ga. 428, 614 S.E.2d 758, 2005 Ga. LEXIS 445 (2005).

16-14-3. Definitions.

As used in this chapter, the term:

(1) "Civil forfeiture proceeding" shall have the same meaning as set forth in Code Section 9-16-2.

(2) "Criminal proceeding" means any criminal proceeding commenced by the Department of Law or the office of any district attorney under any provision of this chapter.

(3) "Enterprise" means any person, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity; or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental as well as other entities.

(4) "Pattern of racketeering activity" means:

(A) Engaging in at least two acts of racketeering activity in furtherance of one or more incidents, schemes, or transactions that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such acts occurred after July 1, 1980, and that the last of such acts occurred within four years, excluding any periods of imprisonment, after the commission of a prior act of racketeering activity; or

(B) Engaging in any one or more acts of domestic terrorism as described in paragraph (2) of Code Section 16-11-220 or any criminal attempt, criminal solicitation, or criminal conspiracy related thereto.

(5)(A) "Racketeering activity" means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit any crime which is chargeable by indictment under the laws of this state involving:

(i) Unlawful distillation, manufacture, and transportation of alcoholic beverages in violation of Code Section 3-3-27;

(ii) Records and reports of currency transactions in violation of Article 11 of Chapter 1 of Title 7;

(iii) The "Georgia Uniform Securities Act of 2008" in violation of Chapter 5 of Title 10;

(iv) Homicide in violation of Article 1 of Chapter 5 of this title;

(v) Assault and battery in violation of Article 2 of Chapter 5 of this title;

(vi) Kidnapping, false imprisonment, and related offenses in violation of Article 3 of Chapter 5 of this title;

(vii) Prostitution, keeping a place of prostitution, pimping, and pandering in violation of Code Sections 16-6-9 through 16-6-12;

(viii) Burglary in violation of Code Section 16-7-1;

(ix) Smash and grab burglary in violation of Code Section 16-7-2;

(x) Arson and explosives in violation of Article 3 of Chapter 7 of this title;

(xi) Bombs, explosives, and chemical and biological weapons in violation of Article 4 of Chapter 7 of this title;

(xii) Theft in violation of Article 1 of Chapter 8 of this title;

(xiii) Robbery in violation of Article 2 of Chapter 8 of this title;

(xiv) Criminal reproduction and sale of recorded material in violation of Article 3 of Chapter 8 of this title;

(xv) The "Georgia Residential Mortgage Fraud Act" in violation of Article 5 of Chapter 8 of this title;

(xvi) Forgery in any degree in violation of Code Section 16-9-1;

(xvii) Illegal use of financial transaction cards in violation of Code Sections 16-9-31, 16-9-32, 16-9-33, and 16-9-34;

(xviii) Use of an article with an altered identification mark in violation of Code Section 16-9-70;

(xix) The "Georgia Computer Systems Protection Act" in violation of Article 6 of Chapter 9 of this title;

(xx) Identity fraud in violation of Article 8 of Chapter 9 of this title;

(xxi) Bribery in violation of Code Section 16-10-2;

(xxii) False statements and writings or false lien statements against public officers or public employees in violation of Code Section 16-10-20 or 16-10-20.1;

(xxiii) Impersonating a public officer or employee in violation of Code Section 16-10-23;

(xxiv) Attempted murder or threatening of witnesses in official proceedings in violation of Code Section 16-10-32;

(xxv) Perjury and other related offenses in violation of Article 4 of Chapter 10 of this title;

(xxvi) Embracery in violation of Code Section 16-10-91;

(xxvii) Influencing witnesses in violation of Code Section 16-10-93;

(xxviii) Tampering with evidence in violation of Code Section 16-10-94;

(xxix) Intimidation or injury of grand or trial juror or court officer in violation of Code Section 16-10-97;

(xxx) Terroristic threats and acts in violation of Code Section 16-11-37;

(xxxi) The "Georgia Firearms and Weapons Act" in violation of Part 2 of Article 4 of Chapter 11 of this title;

(xxxii) Commercial gambling in violation of Code Section 16-12-22;

(xxxiii) Distributing obscene materials in violation of Code Section 16-12-80;

(xxxiv) The "Georgia Controlled Substances Act" in violation of Article 2 of Chapter 13 of this title;

(xxxv) The "Dangerous Drug Act" in violation of Article 3 of Chapter 13 of this title;

(xxxvi) Marijuana in violation of subsection (j) of Code Section 16-13-30;

(xxxvii) Payday loans in violation of Chapter 17 of this title;

(xxxviii) Insurance fraud in violation of Code Section 33-1-9;

(xxxix) Certain felonies involving certificates of title, security interest, or liens in violation of Code Section 40-3-90;

(xl) Removal or falsification of identification numbers in violation of Code Section 40-4-21;

(xli) Possession of motor vehicle parts from which the identification has been removed in violation of Code Section 40-4-22;

(xlii) Article 8 of Chapter 5 of this title, relating to protection of elder persons; or

(xliii) Offenses enumerated in Code Section 16-12-37.

(B) "Racketeering activity" shall also mean any act or threat involving murder, kidnapping, gambling, arson, robbery, theft, receipt of stolen property, bribery, extortion, obstruction of justice, dealing in narcotic or dangerous drugs, or dealing in securities which is chargeable under the laws of the United States, any territory of the United States, or any state and which is punishable by imprisonment for more than one year.

(C) "Racketeering activity" shall also mean any conduct defined as "racketeering activity" under 18 U.S.C. Section 1961 (1), any violation of 18 U.S.C. Section 1028, or any violation of 31 U.S.C. Sections 5311 through 5330.

(6) "Real property" means any real property situated in this state or any interest in such real property, including, but not limited to, any lease of or mortgage upon such real property.

History.

Code 1933, § 26-3402, enacted by Ga. L. 1980, p. 405, § 1; Ga. L. 1982, p. 1385, §§ 2, 8; Ga. L. 1983, p. 3, § 13; Ga. L. 1984, p. 22, § 16; Ga. L. 1989, p. 14, § 16; Ga. L. 1990, p. 8, § 16; Ga. L. 1994, p. 1625, § 4; Ga. L. 1996, p. 416, § 8; Ga. L. 1998, p. 128, § 16; Ga. L. 1998, p. 270, § 7; Ga. L. 1999, p. 81, § 16; Ga. L. 2001, p. 858, § 1; Ga. L. 2002, p. 551, § 3; Ga. L. 2002, p. 1284, § 3; Ga. L. 2003, p. 387, § 1; Ga. L. 2004, p. 60, § 2; Ga. L. 2004, p. 161, § 4; Ga. L. 2005, p. 199, § 5/SB 62; Ga. L. 2005, p. 848, § 3/SB 100; Ga. L. 2006, p. 69, § 2/HB 804; Ga. L. 2008, p. 381, § 9/SB 358; Ga. L. 2010, p. 1147, § 8/HB 1104; Ga. L. 2011, p. 59, § 1-64/HB 415; Ga. L. 2011, p. 752, § 16/HB 142; Ga. L. 2012, p. 90, § 2/HB 997; Ga. L. 2012, p. 637, § 2/HB 1114; Ga. L. 2012, p. 899, § 8-6/HB 1176; Ga. L. 2015, p. 5, § 16/HB 90; Ga. L. 2015, p. 598, § 1-4/HB 72; Ga. L. 2015, p. 693, § 2-25/HB 233; Ga. L. 2019, p. 74, § 2-5/SB 158; Ga. L. 2020, p. 493, § 16/SB 429; Ga. L. 2023, p. 302, § 1/SB 68, effective July 1, 2023; Ga. L. 2024, p. 1052, § 3(17)/SB 448, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, deleted "or" at the end of division (5)(A)(xli), substituted "; or" for a period at the end of division (5)(A)(xlii), and added division (5)(A)(xliii).

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "this title," for "Title 16," in division (5)(A)(xlii).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2022, "paragraph (2)" was substituted for "subsection (a)" in subparagraph (4)(B).

Editor's notes.

Ga. L. 1994, p. 1625, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Anti-motor Vehicle Hijacking Act of 1994.'"

Ga. L. 2001, p. 858, § 2, not codified by the General Assembly, provides that this Act shall apply with respect to a pattern of racketeering activity where at least one act of racketeering activity occurs on or after July 1, 2001. Prior law shall continue to apply with respect to a pattern of

racketeering activity which does not include at least one act of racketeering activity occurring on or after July 1, 2001.

Ga. L. 2002, p. 1284, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Georgia's Homeland Defense Act.'"

Ga. L. 2002, p. 1284, § 4, not codified by the General Assembly, provides, in part, that the provisions of this Act defining, redefining, or changing the punishment for crimes shall apply with respect to acts committed on or after May 16, 2002; and in these respects prior law shall continue to apply with respect to acts committed prior to May 16, 2002.

Ga. L. 2004, p. 161, § 16, not codified by the General Assembly, provides: "All appointments of guardians of the person or property made pursuant to former Title 29 shall continue in effect and shall thereafter be governed by the provisions of this Act."

Ga. L. 2005, p. 199, § 1/SB 62, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Slam Spam E-mail Act.'"

Ga. L. 2005, p. 199, § 2/SB 62, not codified by the General Assembly, provides: "The General Assembly finds and declares that electronic mail has become an important and popular means of communication, relied on by millions of Georgians on a daily basis for personal and commercial purposes. The low cost and global reach of electronic mail make it convenient and efficient. Electronic mail serves as a catalyst for economic development and frictionless commerce. The General Assembly further finds that the convenience and efficiency of electronic mail is threatened by an ever-increasing glut of deceptive commercial electronic mail. The senders of these electronic messages engage in a variety of fraudulent and deceptive practices to hide their identities, to disguise the true source of their electronic mail, and to evade the criminal and civil consequences of their actions. Deceptive commercial electronic mail imposes costs upon its ultimate recipients who are forced to receive, review, and delete unwanted messages and upon the electronic mail service providers forced to carry the messages. The General Assembly further finds that our state has a paramount interest in protecting its businesses and citizens from the deleterious effects of deceptive commercial electronic mail, including the impermissible shifting of cost and economic burden that results from the false and fraudulent nature of deceptive commercial electronic mail. Georgia's enforcement of this interest imposes no additional burden upon the senders of such electronic mails in relation to the laws of any other state, in that such enforcement requires nothing more than the senders' forbearance from active deception."

Ga. L. 2005, p. 848, § 1/SB 100, not codified by the General Assembly, provides: "The General Assembly finds and declares that fraud involving residential mortgages is at an all-time high in the United States and in Georgia. Mortgage lending institutions and borrowers have suffered hundreds of millions of dollars in losses due to residential mortgage fraud. Homeowners in neighborhoods plagued by mortgage fraud have witnessed the deterioration of their neighborhoods. Fraudulently inflated property values in their neighborhoods have resulted in substantial increases in property taxes. The General Assembly therefore concludes that for the protection of the general public, and particularly for the protection of borrowers, homeowners, lending institutions, and the integrity of the mortgage lending process, the 'Georgia Residential Mortgage Fraud Act' shall be enacted."

Ga. L. 2011, p. 59, § 1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Ga. L. 2012, p. 637, § 4/HB 1114, not codified by the General Assembly, provides that: "This Act shall not apply to any offense committed before the effective date of this Act." This Act became effective May 1, 2012.

Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly,

provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Ga. L. 2015, p. 5, § 54(e)/HB 90, not codified by the General Assembly, provides: "In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2015 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendment to this Code section by Ga. L. 2015, p. 5, § 16/HB 90, was not given effect.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Ga. L. 2019, p. 74, § 1-1/SB 158, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Anti-Human Trafficking Protective Response Act.'"

Ga. L. 2019, p. 74, § 3-1/SB 158, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2019, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2019, shall be governed by the statute in effect at the time of such offense, and any resulting conviction shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction."

Law reviews.

For annual survey on criminal law and procedure, see 42 Mercer L. Rev. 141 (1990).

For note on the 1994 amendment of this Code section, see 11 Georgia St. U.L. Rev. 99 (1994).

For review of 1998 legislation relating to crimes and offenses, see 15 Georgia St. U.L. Rev. 80 (1998).

For note on the 2002 amendment of this Code section, see 19 Georgia St. U.L. Rev. 95 (2002).

For article on 2004 amendment of this Code section, see 21 Georgia St. U.L. Rev. 59 (2004).

For article on 2005 amendment of this Code section, see 22 Georgia St. U.L. Rev. 49 (2005).

For article, "Crimes and Offenses," see 27 Georgia St. U.L. Rev. 209 (2011).

For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 278 (2012).

For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 290 (2012).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 63 (2015).

For article on the 2019 amendment of this Code section, see 36 Georgia St. U.L. Rev. 63 (2019).

JUDICIAL DECISIONS

Analysis

General Consideration
Application

General Consideration

Constitutionality. — Paragraphs defining "enterprise" and "pattern of racketeering" are not unconstitutionally vague or overbroad. Chancey v. State, 256 Ga. 415, 349 S.E.2d 717, 1986 Ga. LEXIS

General Consideration (Cont'd)

920 (1986), cert. denied, 481 U.S. 1029, 107 S. Ct. 1954, 95 L. Ed. 2d 527, 1987 U.S. LEXIS 1854 (1987).

Federal jurisdiction. — Jurisdiction under 28 U.S.C. § 1331 did not exist in a borrower's suit asserting various claims against a lender and an appraiser in connection with a loan that encumbered the borrower's property with a debt that exceeded the property's value. Although the borrower alleged that the lender violated 18 U.S.C. §§ 1341, 1343 as predicate acts under former paragraph (9)(A) of O.C.G.A. § 16-14-3 of Georgia's Racketeer Influenced and Corrupt Organizations (RICO) Act, O.C.G.A. § 16-14-1 et seq., that did not require the court to interpret the federal statutes; further, the borrower also asserted that the lender violated state statutes that could serve as predicate acts under Georgia's RICO law. Austin v. Ameriquest Mortg. Co., 510 F. Supp. 2d 1218, 2007 U.S. Dist. LEXIS 14248 (N.D. Ga. 2007).

Under the look-through rule, a hypothetical coercive claim was the basis for federal jurisdiction over petitioner bank's Federal Arbitration Act petition, but petitioner payday loan companies' arbitration petition was precluded by a related underlying state court judgment holding the companies in contempt and, striking the companies' arbitration defenses under O.C.G.A. § 9-11-37(b)(2) to respondent borrower's suit alleging violations of Georgia's usury statute, O.C.G.A. § 7-4-1, et seq.; Georgia's Industrial Loan Act, O.C.G.A. § 7-3-1 et seq.; and Georgia's Racketeer Influenced and Corrupt Organizations statute, O.C.G.A. § 16-14-1 et seq. Cmty. State Bank v. Strong, 651 F.3d 1241, 2011 U.S. App. LEXIS 17767 (11th Cir. 2011), cert. denied, 568 U.S. 813, 133 S. Ct. 101, 184 L. Ed. 2d 22, 2012 U.S. LEXIS 7369 (2012).

Legislative intent as to scope. — Legislature intended to subject to the coverage of the Racketeer Influenced Corrupt Organizations (RICO) statute two crimes, included in the statute as designated predicate acts, which are part of the same scheme, without the added burden of showing that defendant would continue the conduct or had been guilty of like conduct before the incidents charged as a RICO violation. Dover v. State, 192 Ga. App. 429, 385 S.E.2d 417, 1989 Ga. App. LEXIS 1056 (1989).

Definition of pattern of racketeering satisfied. — Definition of a "pattern of racketeering activity" as set forth in former paragraph (8) of O.C.G.A. § 16-14-3 of "at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents" was satisfied when the state established a number of interrelated incidents of racketeering activity that had the same intents and results (monetary gain) and the same accomplices (the defendants and other members of the group). Overton v. State, 295 Ga. App. 223, 671 S.E.2d 507, 2008 Ga. App. LEXIS 1358 (2008), cert. denied, No. S09C0654, 2009 Ga. LEXIS 212 (Ga. Apr. 20, 2009).

As a defendant was only charged with racketeering, in violation of O.C.G.A. § 16-14-4(a), based on the predicate offense of forgery, in violation of O.C.G.A. § 16-9-1, the defendant's requested jury instruction of a lesser-included offense of forgery was properly denied by the trial court; if the jury had not found a "pattern of racketeering activity" under O.C.G.A. § 16-14-3, the jury could not have convicted the defendant of forgery. Redford v. State, 309 Ga. App. 118, 710 S.E.2d 197, 2011 Ga. App. LEXIS 322 (2011).

Trial court erred by failing to dismiss the plaintiff's claim for theft as a predicate offense under the Georgia RICO statute, O.C.G.A. § 16-14-1 et seq., because a fraudulent transfer was not an enumerated predicate offense under the Georgia RICO statute, but instead, a civil tort governed by the Uniform Voidable Transactions Act, O.C.G.A. § 18-2-70 et seq. Z-Space, Inc. v. Dantanna's CNN Center, LLC, 349 Ga. App. 248, 825 S.E.2d 628, 2019 Ga. App. LEXIS 142 (2019).

Legitimate corporation or enterprise. — In an action against the corporate operator of a treatment

program for violations of the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., the fact that the operator was a legitimate corporation did not insulate the corporation from liability under the act. Reaugh v. Inner Harbour Hosp., 214 Ga. App. 259, 447 S.E.2d 617, 1994 Ga. App. LEXIS 1437 (1994), cert. denied, No. S94C1817, 1994 Ga. LEXIS 1179 (Ga. Dec. 2, 1994).

Predicate acts under RICO shown. — When the predicate acts necessary to prove a pattern of racketeering activity were proved as a matter of law through the superior court's conclusive, factual determination that the company of which defendant was an officer was operated in such a manner as "to perpetrate fraud and injustice upon Georgia consumers, of which the plaintiff was one," the appellate court presumed the correctness of this finding and the sufficiency of the factual basis therefor. Speir v. Krieger, 235 Ga. App. 392, 509 S.E.2d 684, 1998 Ga. App. LEXIS 1519 (1998).

Evidence was sufficient to support the conclusion that defendant committed at least two of the predicate acts charged against defendant after it was shown that defendant's possession of items commonly used in connection with drug distribution schemes was similar or related to other predicate acts. Davitte v. State, 238 Ga. App. 720, 520 S.E.2d 239, 1999 Ga. App. LEXIS 925 (1999).

To prove a RICO violation, the state had to show that the defendant committed two or more predicate criminal acts indictable under the RICO statute as part of an enterprise engaging in a pattern of racketeering activity. Jones v. State, 252 Ga. App. 332, 556 S.E.2d 238, 2001 Ga. App. LEXIS 1276 (2001).

To prove a violation of the Racketeer Influence and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., the state is required to show that a defendant engaged in at least two predicate criminal acts that would amount to racketeering activity as defined in former paragraph (9) of O.C.G.A. § 16-14-3; thus, evidence was sufficient to sustain defendant's conviction under RICO for selling fake badges for a golf tournament to a ticket agency because the evidence revealed at least four predicate acts as defined in former paragraph (9) of O.C.G.A. § 16-14-3— three incidents of theft by deception for defendant receiving money on three different occasions for various sets of fake badges, O.C.G.A. §§ 16-8-3 and 16-14-3, and one incident of first-degree forgery for making the fake badges and delivering them to the ticket agency for payment, O.C.G.A. §§ 16-9-1(a) and 16-14-3. Davis v. State, 264 Ga. App. 128, 589 S.E.2d 700, 2003 Ga. App. LEXIS 1414 (2003).

In a prosecution under the Georgia Racketeering Influenced and Corrupt Organizations Act O.C.G.A. § 16-14-1 et seq., the trial court properly allowed attempt and solicitation of murder to be used as predicate offenses, as the offenses clearly fell within the scope of former subdivisions (9)(A) and (9)(B) of O.C.G.A. § 16-14-3 and the defendant's merger argument was rejected as the two RICO offenses contained different elements and required independent proof of each element. Dorsey v. State, 279 Ga. 534, 615 S.E.2d 512, 2005 Ga. LEXIS 449 (2005).

Evidence was sufficient to convict the defendant on 29 counts of theft by taking and racketeering because the defendant, while the director and a fiduciary of the animal shelter, transferred a series of donations intended for the animal shelter into the defendant's own personal bank accounts; the defendant expressly admitted that the subject transactions involved donation money intended for and belonging to the animal shelter; two members of the Board of Directors of the animal shelter testified unequivocally that the defendant was never authorized to solicit funds and deposit the funds into the defendant's personal bank accounts; and the racketeering charge was predicated upon four separate indicted incidents of theft by taking. Kilby v. State, 335 Ga. App. 238, 780 S.E.2d 411, 2015 Ga. App. LEXIS 714 (2015), cert. denied, No. S16C0653, 2016 Ga. LEXIS 437 (Ga. June 20, 2016).

Ample evidence supported the defendant's convictions of two predicate acts of theft or money laundering to support RICO charges because the victim testified that the victim never authorized the de-

General Consideration (Cont'd)

fendant to take $3.5 million and the victim's court appointed conservator also testified that the defendant engaged in egregious transactions whereby multiple checks were written to the defendant from the widow's accounts with no clear purpose or benefit to the widow. Carr v. State, 350 Ga. App. 461, 829 S.E.2d 641, 2019 Ga. App. LEXIS 324 (2019), cert. denied, No. S19C1422, 2020 Ga. LEXIS 15 (Ga. Jan. 13, 2020).

Sufficiency of complaint. — When a complaint alleged that the defendants conducted an enterprise through a pattern of racketeering activity, the requisite predicate acts for showing a "pattern of racketeering activity" were set forth in detail in the complaint, and the complaint further alleged that these offenses were not committed as an occasional practice but were part of a systematic and ongoing pattern over a number of years concealed by a scheme of subterfuge and intimidation, the trial court properly denied the defendant's motion for judgment on the pleadings or for summary judgment. Larson v. Smith, 194 Ga. App. 698, 391 S.E.2d 686, 1990 Ga. App. LEXIS 295 (1990).

Sale of timber from a single parcel of real property, by means of a single deed, in one isolated transaction, could not be broken down into two predicate acts by separately charging the sale and the filing of the deed. Raines v. State, 219 Ga. App. 893, 467 S.E.2d 217, 1996 Ga. App. LEXIS 53 (1996), cert. denied, No. S96C0785, 1996 Ga. LEXIS 649 (Ga. May 10, 1996).

Trial court erred by dismissing the plaintiff's mail and wire fraud claims as a predicate offense under the RICO statute because the proper remedy was allowing the plaintiff to file a more definite statement as to those claims. Z-Space, Inc. v. Dantanna's CNN Center, LLC, 349 Ga. App. 248, 825 S.E.2d 628, 2019 Ga. App. LEXIS 142 (2019).

To the extent that plaintiff's claims against defendant for overzealously litigating an Open Records action were predicated on federal and state racketeering statutes, none of the alleged violations of Georgia law supported his claim, as he did not allege that defendant committed, attempted to commit, or induced anyone else to commit a predicate offense while litigating the Open Records Act suit, and he did not allege that defendant committed a crime punishable by imprisonment for more than one year. Chua v. Ekonomou, 1 F.4th 948, 2021 U.S. App. LEXIS 17755 (11th Cir. 2021).

Venue. — Venue for charges under the Georgia Racketeer and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., was proper against one of the three defendants in Cobb County pursuant to O.C.G.A. § 16-14-11, even though the defendant was acquitted of a conspiracy charge and the defendant personally committed no acts in Cobb County. Lowery v. State, 347 Ga. App. 26, 815 S.E.2d 625, 2018 Ga. App. LEXIS 435 (2018).

Application

Mail fraud is a predicate act under Georgia RICO. — See Georgia ex rel. Bowers v. Dairymen, Inc., 813 F. Supp. 1580, 1991 U.S. Dist. LEXIS 21004 (S.D. Ga. 1991).

In a case in which the beneficiaries of two life insurance policies could not directly recover civil damages under 18 U.S.C. §§ 1341, 1342, or 1343, pursuant to O.C.G.A. § 16-14-3, the beneficiaries could rely on the insurance company's alleged violation of the federal mail and wire fraud statutes to supply the necessary predicate acts to support a Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., claim. Am. Gen. Life & Accident Ins. Co. v. Ward, 509 F. Supp. 2d 1324, 2007 U.S. Dist. LEXIS 18420 (N.D. Ga. 2007).

Federal mail and wire fraud are predicate acts of racketeering under the Georgia civil RICO statute, O.C.G.A. § 16-14-1 et seq. Ayres v. GMC, 234 F.3d 514, 2000 U.S. App. LEXIS 30719 (11th Cir. 2000).

Fraud in stock purchase contract. — In an action for a RICO violation, plaintiffs presented evidence to create a material issue of fact as to whether defendant engaged in predicate acts of criminal fraud, i.e., theft by deception,

arising from defendant's purchase of plaintiff's stock in a software development company. Willis v. First Data Pos, Inc., 245 Ga. App. 121, 536 S.E.2d 198, 2000 Ga. App. LEXIS 774 (2000), rev'd, 273 Ga. 792, 546 S.E.2d 781, 2001 Ga. LEXIS 329 (2001).

Predicate acts under RICO not shown. — Failure of an insurance company to file a policy with the Georgia Insurance Department and the failure of its agent to have a certificate of authority issued by the company before selling the policy to insureds were not predicate acts for purposes of the Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq. Security Life Ins. Co. v. Clark, 229 Ga. App. 593, 494 S.E.2d 388, 1997 Ga. App. LEXIS 1546 (1997), aff'd in part and rev'd in part, 270 Ga. 165, 509 S.E.2d 602, 1998 Ga. LEXIS 997 (1998). But see Clark v. Security Life Ins. Co. of Am., 270 Ga. 165, 509 S.E.2d 602. See also Security Life Ins. Co. of Am. v. Clark, 273 Ga. 44, 535 S.E.2d 234, 2000 Ga. LEXIS 627 (2000); Williams General Corporation v. Stone, 280 Ga. 631, 632 S.E.2d 376, 2006 Ga. LEXIS 409 (2006).

When, in neither the complaint nor the evidence in opposition to a motion for summary judgment, did the plaintiffs produce evidence raising the issue that the defendants committed two predicate criminal acts indictable under state or federal law and within one of the categories allowing an action under the Racketeer Influenced Corrupt Organization statute, O.C.G.A. § 16-14-1 et seq., summary judgment for the defendant was proper. Roth v. Connor, 235 Ga. App. 866, 510 S.E.2d 550, 1998 Ga. App. LEXIS 1603 (1998), cert. denied, No. S98C1921, 1999 Ga. LEXIS 40 (Ga. Jan. 8, 1999).

Plaintiff's Racketeer Influenced and Corrupt Organization allegations against defendants were predicated on misleading press releases, which were public statements by another person not shown to be acting on defendant's behalf, and, even if assumed to be true, would not constitute two separate and distinct, criminal "predicate acts" committed by the defendant. Hedquist v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 236 Ga. App. 181, 511 S.E.2d 558, 1999 Ga. App. LEXIS 111 (1999), rev'd, 272 Ga. 209, 528 S.E.2d 508, 2000 Ga. LEXIS 252 (2000), vacated in part, 243 Ga. App. 555, 533 S.E.2d 757, 2000 Ga. App. LEXIS 486 (2000).

In a product liability action against an auto manufacturer claiming Racketeer Influenced and Corrupt Organizations Act (O.C.G.A. § 16-14-1 et seq.) violations, plaintiffs failed to establish violations of O.C.G.A. § 16-10-20 and 18 USC §§ 1341 or 1343 as predicate offenses. Gentry v. Volkswagen of Am., Inc., 238 Ga. App. 785, 521 S.E.2d 13, 1999 Ga. App. LEXIS 939 (1999).

Because there was no evidence that a broker obtained a manufacturer's bond premium by deceitful means with the intention of depriving the manufacturer of those funds, or that the broker knowingly converted the funds to its own use in violation of the oral agreement, the evidence showed that once the broker received the premium, it instructed an insurance company to proceed with posting the bonds, and it was only after being contacted by the manufacturer that the broker was put on notice that there was a problem with the posting of the bonds, the manufacturer's claims of theft were not supported by the record, and the manufacturer failed to show two predicate acts to support a pattern of racketeering activity; therefore, the trial court did not err in granting summary judgment to the broker on the manufacturer's claim under Georgia's Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq. Aon Risk Servs. v. Commercial & Military Sys. Co., 270 Ga. App. 510, 607 S.E.2d 157, 2004 Ga. App. LEXIS 1423 (2004), cert. denied, No. S05C0582, 2005 Ga. LEXIS 270 (Ga. Mar. 28, 2005).

Poultry growers failed to prove a claim against poultry processing companies under the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., because the growers failed to prove the two alleged predicate acts of mail fraud and theft by deception. Adkins v. Cagle Foods JV, L.L.C., 411 F.3d 1320, 2005 U.S. App. LEXIS 11049 (11th Cir. 2005).

Financial planner failed to demonstrate that the insurance company committed any predicate acts to support a claim

Application (Cont'd)

under the Georgia Racketeer Influenced and Corrupt Organizations (RICO) Act O.C.G.A. § 16-14-1 et seq.,, specifically O.C.G.A. § 16-14-3, and the planner's RICO claim against the insurance company was necessarily dismissed because the planner did not claim that the insurance company even knew about the "no detriment to the planner" provision in the settlement agreement, and thus, the insurance company could not have intended to aid the parent company and the subsidiary in stealing the planner's chose of action, the planner had not alleged facts sufficient to state a plausible claim for theft on the claim's face, and an accessory after the fact could not be an accomplice to the crime. Rosen v. Protective Life Ins. Co., No. 1:09-cv-03620-WSD, 2010 U.S. Dist. LEXIS 50392 (N.D. Ga. May 20, 2010).

Trial court did not err in granting a seller summary judgment on purchasers' RICO claim based on mail fraud because any injury was not proximately caused by the alleged misrepresentations of the seller but by the purchasers' decision to go forward with the purchase despite knowledge of the facts as to which the purchasers were supposedly misled; multiple transactions arising out of a pattern of racketeering activity were not alleged, only the sale of a single townhome unit to the purchasers. Pollman v. Swan, 314 Ga. App. 5, 723 S.E.2d 290, 2011 Ga. App. LEXIS 1131 (2011), cert. denied, No. S12C1002, 2012 Ga. LEXIS 810 (Ga. Oct. 15, 2012).

Unpublished decision: Former employee's Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., claim, alleging the former employer was defrauding customers and engaging in racial discrimination, failed because there was no evidence the employee was injured by the commission of any predicate acts, and despite the employee's apparent argument to the contrary, racial discrimination was not listed under former paragraph (9) of O.C.G.A. § 16-14-3 as a predicate act. Giles v. BellSouth Telecomms., Inc., 542 Fed. Appx. 756, 2013 U.S. App. LEXIS 20231 (11th Cir. 2013).

District court did not err by granting the company summary judgment on the probationer's Georgia RICO claim because the company produced three sworn statements asserting that the two letters demanding payment and threatening the probationer's arrest were sent because of a clerical error and not with the intent to deceive the probationer into paying money the probationer did not owe. The probationer failed to allege or present any evidence that an employee of the company acted with specific intent to commit theft by deception. McGee v. Sentinel Offender Servs., LLC, 719 F.3d 1236, 2013 U.S. App. LEXIS 11390 (11th Cir. 2013).

Employee's civil claim against an employer for failure to pay agreed-upon severance under the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., based on theft by deception, O.C.G.A. § 16-8-3(a), failed because there was no evidence that the employee relied on the allegedly inadequate severance checks sent to the employee or that the employee was actually deceived by the checks. Vernon v. Assurance Forensic Accounting, LLC, 333 Ga. App. 377, 774 S.E.2d 197, 2015 Ga. App. LEXIS 381 (2015), cert. denied, No. S15C1837, 2015 Ga. LEXIS 864 (Ga. Nov. 2, 2015).

Unpublished decision: Court properly dismissed the claim under O.C.G.A. § 16-14-3 after dismissing the wrongful foreclosure claim because the mortgagors had to successfully plead wrongful foreclosure to move forward. Duncan v. CitiMortgage, Inc., 617 Fed. Appx. 958, 2015 U.S. App. LEXIS 10111 (11th Cir. 2015).

Owner of rental properties failed to show that a mortgage loan servicer engaged in a pattern of racketeering activity since the servicer's continuing refusal to correct a significant and evident error in escrow payments constituted a single extended transaction, even if two separate crimes could be implicated in the transaction. McGinnis v. Am. Home Mortg. Servicing, Inc., 817 F.3d 1241, 2016 U.S. App. LEXIS 5321 (11th Cir. 2016).

Unpublished decision: Prosecuting attorney failed to allege RICO claims in

either the attorney's first or proposed second amended complaint with the specificity required by Fed. R. Civ. P. 9(b) as both of the complaints consisted of mostly vague and conclusory allegations which failed to assert the "when, where, by whom, or specifically what" of the predicate offenses alleged. Jannuzzo v. Glock, Inc., 721 Fed. Appx. 880, 2018 U.S. App. LEXIS 204 (11th Cir. 2018).

Conviction of only some defendants. — Trial court did not err in refusing to direct a verdict in favor of the defendants as to a RICO count after the court directed a verdict for one of defendants' codefendants who was alleged in the indictment to comprise "the enterprise", as the dismissal of the codefendant did not result in a fatal variance between the allegation and the proof. Sparkman v. State, 209 Ga. App. 763, 434 S.E.2d 564, 1993 Ga. App. LEXIS 986 (1993), cert. denied, No. S93C1811, 1993 Ga. LEXIS 1080 (Ga. Nov. 4, 1993).

Reelection campaigns. — By its express terms, the Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., includes as a crime a reelection campaign by the holder of public office in which two or more similar or interrelated predicate offenses specified in the Act are committed. Caldwell v. State, 253 Ga. 400, 321 S.E.2d 704, 1984 Ga. LEXIS 956 (1984).

Repeated sale of non-existent insurance. — While the illegal sale of insurance is not in and of itself a basis for a racketeer influenced and corrupt organization (RICO) action absent further evidence of fraud rising to the level of theft by deception, the repeated sale to unsuspecting consumers of non-existent insurance was the very essence of such fraud and was exactly the type of criminally fraudulent activity masquerading as "business" that RICO was designed to address. Speir v. Krieger, 235 Ga. App. 392, 509 S.E.2d 684, 1998 Ga. App. LEXIS 1519 (1998).

Nexus between predicate acts and injuries. — Trial court erred when the court denied a motion to dismiss employees' Georgia Racketeer Influenced and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., claims against the employees' former employer and a former supervisor when the allegations of the employees' complaint showed the employees could not satisfy the proximate cause element of a civil RICO claim and lacked standing to bring the allegations because there was no direct nexus between the predicate acts directed at third parties (which included fraud, forgery, and money laundering) and the employees' injuries (the loss of the employees' jobs). Wylie v. Denton, 323 Ga. App. 161, 746 S.E.2d 689, 2013 Ga. App. LEXIS 663 (2013).

Internet fraud. — In a RICO action based on federal and state laws, a civil judgment of over $ 16 million dollars was entered in favor of an Internet service provider against an individual who stole Internet accounts and used them in conducting the individual's spamming and spoofing activities over a two-year period. Earthlink, Inc. v. Carmack, No. 1:02-CV-3041-TWT, 2003 U.S. Dist. LEXIS 9963 (N.D. Ga. May 7, 2003).

Racketeering activity supportive of conviction for participation in criminal street gang activity. — Defendant juvenile was properly found to have committed the crime of participation in criminal street gang activity under O.C.G.A. § 16-15-4(a) because the evidence supported a finding that the defendant was part of a criminal street gang under O.C.G.A. § 16-15-3(2) (now paragraph (3)) based on the colors the defendant wore and the statement as to the removal of a gang tattoo and because the defendant committed the enumerated offenses of carrying a concealed weapon and theft by shoplifting as referenced by O.C.G.A. §§ 16-14-3 and 16-15-3(1)(A), (J) and apparently stole a flare gun with the intent to further gang activity. In the Interest of C.P., 296 Ga. App. 572, 675 S.E.2d 287, 2009 Ga. App. LEXIS 269 (2009).

Civil forfeiture action. — Trial court did not err in issuing interlocutory injunctions and continuing receiverships over store property seized pursuant to O.C.G.A. § 16-14-7 based on alleged video gambling activity in violation of O.C.G.A. § 16-12-22 and racketeering activity under O.C.G.A. § 16-14-3. Remand was

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required, however, for consideration of whether the forfeitures were excessive fines in violation of U.S. Const., amend. VIII. Patel v. State, 289 Ga. 479, 713 S.E.2d 381, 2011 Ga. LEXIS 548 (2011).

Default operates to admit well-pled allegations of the complaint. — After the defendants failed to repay a loan to the plaintiff, the trial court erred in allowing the defendant to dispute liability for fraud, civil RICO, and punitive damages, and introduce evidence that the defendant was not criminally prosecuted, despite defendant's default, because the striking of the defendant's answers as a sanction for discovery violations operated as an admission of the complaint's factual allegations. Hansford v. Veal, 369 Ga. App. 641, 894 S.E.2d 215, 2023 Ga. App. LEXIS 505 (2023).

Racketeering activity not supportive of conviction for participation in criminal street gang activity. — Defendant's conviction under the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., had to be reversed as the state did not present evidence of the necessary nexus between the defendant's drug crimes and an intent to further gang interests because, while the defendant might have intended, by distributing marijuana, to further the interests of individual gang members in obtaining small quantities of marijuana for personal use, the state did not show that the defendant meant to further the interests of the gang as an entity; and there was no evidence that the defendant's distribution of personal-use amounts of marijuana to individual gang members benefitted the gang itself through monetary profit, enhanced reputation, or other means. Randolph v. State, 334 Ga. App. 475, 780 S.E.2d 19, 2015 Ga. App. LEXIS 719 (2015).

Plaintiffs' claimed that the medical center charged the plaintiffs unreasonable rates for their medical care, which rates the center then used as a basis for filing hospital liens against any potential tort recovery by the plaintiffs, the plaintiffs' claims of wire and mail fraud, extortion, perjury, and false statements under Georgia's Racketeer Influenced and Corrupt Organizations Act failed as a matter of law because the filing of liens consistent with chargemaster rates did not constitute fraudulent activity. Bowden v. Medical Ctr., Inc., 309 Ga. 188, 845 S.E.2d 555, 2020 Ga. LEXIS 464 (2020).

OPINIONS OF THE ATTORNEY GENERAL

"Alien corporations." — Territorial and District of Columbia corporations are organized under the laws of the United States and do not fall within the meaning of "alien corporation" as defined in former paragraph (1) of O.C.G.A. § 16-14-3. 1982 Op. Att'y Gen. No. 82-89.

RESEARCH REFERENCES

ALR.

Validity of criminal state Racketeer Influenced and Corrupt Organizations Acts and similar acts related to gang activity and the like, 58 A.L.R.6th 385.

16-14-4. Prohibited activities.

(a) It shall be unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money.

(b) It shall be unlawful for any person employed by or associated

with any enterprise to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.

(c) It shall be unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (a) or (b) of this Code section. A person violates this subsection when:

(1) He or she together with one or more persons conspires to violate any of the provisions of subsection (a) or (b) of this Code section and any one or more of such persons commits any overt act to effect the object of the conspiracy; or

(2) He or she endeavors to violate any of the provisions of subsection (a) or (b) of this Code section and commits any overt act to effect the object of the endeavor.

History.

Code 1933, § 26-3403, enacted by Ga. L. 1980, p. 405, § 1; Ga. L. 1982, p. 1385, §§ 3, 9; Ga. L. 1984, p. 22, § 16; Ga. L. 2015, p. 693, § 2-25/HB 233.

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article, "A Comprehensive Analysis of Georgia RICO," see 9 Georgia St. U.L. Rev. 537 (1993).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

JUDICIAL DECISIONS

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General Consideration

Former Code 1933, § 26-3403 (see now O.C.G.A. § 16-14-4) prohibited acquisition even of legitimate businesses with proceeds of racketeering. Western Bus. Sys. v. Slaton, 492 F. Supp. 513, 1980 U.S. Dist. LEXIS 12298 (N.D. Ga. 1980).

Subsection (b) not unconstitutional. — O.C.G.A. § 16-14-4(b) puts a person of ordinary intelligence on notice that he or she is committing a crime and is therefore not unconstitutionally vague or overbroad. Chancey v. State, 256 Ga. 415, 349 S.E.2d 717, 1986 Ga. LEXIS 920 (1986), cert. denied, 481 U.S. 1029, 107 S. Ct. 1954, 95 L. Ed. 2d 527, 1987 U.S. LEXIS 1854 (1987).

When both alleged conspiracy and actual violation of O.C.G.A. § 16-14-4(b) charged same acts, committed at the same time, by the same persons, as part of the same transactions, the court subjected defendant to one conviction and one punishment.

General Consideration (Cont'd)

Washington v. State, 183 Ga. App. 422, 359 S.E.2d 198, 1987 Ga. App. LEXIS 2011 (1987).

Use of predicate offenses as basis for conviction on separate offenses. — Convictions on 75 counts of stealing public records could not stand, where state, by choosing gratuitously to include as predicates for a Racketeer Influenced and Corrupt Organization (RICO) violation all of the instances of the prohibited acts recited in the counts, "used up" the evidence, so that there was none left to form the basis for the separate offenses enumerated in the counts. Martin v. State, 189 Ga. App. 483, 376 S.E.2d 888, 1988 Ga. App. LEXIS 1463 (1988).

"Enterprise" and "pattern of racketeering" may be proved by same evidence. — State may use the same evidence to prove both the separate elements of an enterprise and a pattern of racketeering. While proof of one of the elements does not necessarily establish the other, the proof used to establish these separate elements may in particular cases coalesce. Martin v. State, 189 Ga. App. 483, 376 S.E.2d 888, 1988 Ga. App. LEXIS 1463 (1988).

Recruiting services not included in definition of term of services. — 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., 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).

Legislative intent as to scope. — Legislature intended to subject to the coverage of the Racketeer Influenced Corrupt Organizations (RICO) statute two crimes, included in the statute as designated predicate acts, which are part of the same scheme, without the added burden of showing that the defendant would continue the conduct or had been guilty of like conduct before the incidents charged as a RICO violation. Dover v. State, 192 Ga. App. 429, 385 S.E.2d 417, 1989 Ga. App. LEXIS 1056 (1989).

Evidence not rendered inadmissible by lack of commonality for class action. — Fact that separate claims against defendants were determined not to have sufficient commonality so as to be appropriate for class action did not render the evidence of these other transactions irrelevant or inadmissible in establishing elements of a single plaintiff's claims of fraud, unfair business practices, and Racketeer Influenced and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., violations. Brown Realty Assocs. v. Thomas, 193 Ga. App. 847, 389 S.E.2d 505, 1989 Ga. App. LEXIS 1683 (1989).

Sufficiency of complaint. — Trial court properly ruled that the basis for treble damages under RICO had not been proved as only principal damage award supported by record was $5,960.63 amount reflected in check attached to the complaint and the complaint otherwise did not break down the award by claim. Stewart Ausband Enters. v. Holden, 349 Ga. App. 295, 826 S.E.2d 138, 2019 Ga. App. LEXIS 153 (2019).

Predicate acts. — Racketeer Influenced Corrupt Organizations (RICO) claim alleging only mail and wire fraud as a predicate act may be dismissed for failure to adequately allege a pattern of racketeering activity because such predicate acts were not enumerated in former § 16-14-3 paragraphs (3)(A) or (3)(B) of O.C.G.A. J.G. Williams, Inc. v. Regency Properties, Ltd., 672 F. Supp. 1436, 1987 U.S. Dist. LEXIS 10459 (N.D. Ga. 1987).

When a complaint alleged that the defendant conducted an enterprise through a pattern of racketeering activity, the requisite predicate acts for showing a "pattern of racketeering activity" were set forth in detail in the complaint, and the complaint further alleged that these offenses were not committed as an occasional practice but were part of a systematic and ongoing pattern over a number of years concealed by a scheme of subterfuge and intimidation, the trial court properly denied the defendant's motion for judg-

ment on the pleadings or for summary judgment. Larson v. Smith, 194 Ga. App. 698, 391 S.E.2d 686, 1990 Ga. App. LEXIS 295 (1990).

In an action against the corporate operator of a treatment program for violations of the Georgia Racketeer Influenced and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., evidence that by committing mail fraud, the defendant was the perpetrator and direct beneficiary of a pattern of racketeering activity and not merely a victim or passive instrumentality, would subject defendant to RICO liability. Reaugh v. Inner Harbour Hosp., 214 Ga. App. 259, 447 S.E.2d 617, 1994 Ga. App. LEXIS 1437 (1994), cert. denied, No. S94C1817, 1994 Ga. LEXIS 1179 (Ga. Dec. 2, 1994).

In an action against the corporate operator of a treatment program for violations of the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., evidence that the operator through a pattern of racketeering activity, i.e., mail fraud, acquired an interest in or control of money was sufficient to find liability. Reaugh v. Inner Harbour Hosp., 214 Ga. App. 259, 447 S.E.2d 617, 1994 Ga. App. LEXIS 1437 (1994), cert. denied, No. S94C1817, 1994 Ga. LEXIS 1179 (Ga. Dec. 2, 1994).

Aggravated battery as a predicate act was not established where the acts alleged were not indictable under the criminal statute. Mullen v. Nezhat, 223 Ga. App. 278, 477 S.E.2d 417, 1996 Ga. App. LEXIS 1140 (1996).

Failure of an insurance company to file a policy with the Georgia Insurance Department and the failure of its agent to have a certificate of authority issued by the company before selling the policy to insureds were not predicate acts for purposes of the Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq. Security Life Ins. Co. v. Clark, 229 Ga. App. 593, 494 S.E.2d 388, 1997 Ga. App. LEXIS 1546 (1997), aff'd in part and rev'd in part, 270 Ga. 165, 509 S.E.2d 602, 1998 Ga. LEXIS 997 (1998). But see Clark v. Security Life Ins. Co. of Am., 270 Ga. 165, 509 S.E.2d 602. See also Security Life Ins. Co. of Am. v. Clark, 273 Ga. 44, 535 S.E.2d 234, 2000 Ga. LEXIS 627 (2000); Williams General Corporation v. Stone, 280 Ga. 631, 632 S.E.2d 376, 2006 Ga. LEXIS 409 (2006).

Trial court erred in failing to grant defendant's demurrer to ten predicate acts of racketeering activity involving the filing of false deeds because the deed transactions were part of 14 theft by taking transactions and therefore could not form the basis of separate predicate acts. Adams v. State, 231 Ga. App. 279, 499 S.E.2d 105, 1998 Ga. App. LEXIS 427 (1998).

House purchasers failed to establish a pattern of racketeering activity by a lender that held a mortgage on property at the time of its sale to the purchasers, even though the lender had the first mortgage on over 100 properties owned by the seller. Ali v. Fleet Fin., Inc., 232 Ga. App. 13, 500 S.E.2d 914, 1998 Ga. App. LEXIS 565 (1998).

Claim of theft by deception as a predicate act failed where provisions of a contract affirmed by plaintiffs foreclosed such claim and an unrealized diminution in the value of property purchased by plaintiffs did not equate to the defendant obtaining the property as plaintiffs were still the owners. Markowitz v. Wieland, 243 Ga. App. 151, 532 S.E.2d 705, 2000 Ga. App. LEXIS 424 (2000).

When an alleged predicate act is mail fraud, the plaintiff must have been the target of the scheme to defraud and must have relied to plaintiff's detriment on misrepresentations made in furtherance of that scheme. Markowitz v. Wieland, 243 Ga. App. 151, 532 S.E.2d 705, 2000 Ga. App. LEXIS 424 (2000).

Crime of influencing witnesses as a predicate act was not established by a claim that the witness was threatened with a lawsuit and changed the witness's testimony as a result because the threat of a lawsuit does not amount to conduct prohibited by O.C.G.A. § 16-10-93. Markowitz v. Wieland, 243 Ga. App. 151, 532 S.E.2d 705, 2000 Ga. App. LEXIS 424 (2000).

District court properly granted summary judgment under Fed. R. Civ. P. 56 in favor of a Georgia golf cart manufacturer on a Canadian golf cart distributor's claim under the Georgia Racketeer Influenced

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and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., specifically O.C.G.A. § 16-14-4(a), since the distributor did not offer any proof of specific intent to defraud with respect to mail fraud, 18 U.S.C. § 1341, in the manufacturer's collection and payment of the debt. Quebec Provincial Sales Tax. Club Car, Inc. v. Club Car (Quebec) Imp., Inc., 362 F.3d 775, 2004 U.S. App. LEXIS 4832 (11th Cir.), cert. denied, 543 U.S. 1002, 125 S. Ct. 618, 160 L. Ed. 2d 461, 2004 U.S. LEXIS 7728 (2004).

In a prosecution of defendant, a sheriff, for murder and violations of Georgia Racketeering Influenced and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., even if the trial court erred in not quashing theft allegations as predicate RICO acts, the other predicate offenses, including bribery, solicitation of murder, murder, and witness tampering supported the RICO convictions. Dorsey v. State, 279 Ga. 534, 615 S.E.2d 512, 2005 Ga. LEXIS 449 (2005).

Class action suit by legal workers of a Georgia rug manufacturer adequately stated a state law RICO claim under O.C.G.A. § 16-14-4(a) because, under 18 U.S.C. § 1961(1)(F), the term "racketeering activity" included the manufacturer's widespread pattern of fraud under 18 U.S.C. § 1546, i.e., the misuse of visas, permits, and other documents to hire illegal aliens in order to depress the hourly wages of the manufacturer's workers. Williams v. Mohawk Indus., 465 F.3d 1277, 2006 U.S. App. LEXIS 24306 (11th Cir. 2006), cert. denied, 549 U.S. 1260, 127 S. Ct. 1381, 167 L. Ed. 2d 174, 2007 U.S. LEXIS 2798 (2007).

Unpublished decision: Former employee's Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., claim, alleging the former employer was defrauding customers and engaging in racial discrimination, failed because there was no evidence the employee was injured by the commission of any predicate acts, and despite the employee's apparent argument to the contrary, racial discrimination was not listed under former paragraph (9) of O.C.G.A. § 16-14-3 as a predicate act. Giles v. BellSouth Telecomms., Inc., 542 Fed. Appx. 756, 2013 U.S. App. LEXIS 20231 (11th Cir. 2013).

There was no showing of racketeering by a creditor since the creditor's misinterpretation of bankruptcy law which indicated that a debt was no longer owed did not establish the specific intent to commit the alleged predicate acts of racketeering. Goodwyn v. Capital One, N.A., No., 127 F. Supp. 3d 1367, 2015 U.S. Dist. LEXIS 114786 (M.D. Ga. 2015).

Trial court erred by failing to dismiss the plaintiff's claim for theft as a predicate offense under the Georgia RICO statute, O.C.G.A. § 16-14-1 et seq., because a fraudulent transfer was not an enumerated predicate offense under the Georgia RICO statute, but instead, a civil tort governed by the Uniform Voidable Transactions Act, O.C.G.A. § 18-2-70 et seq. Z-Space, Inc. v. Dantanna's CNN Center, LLC, 349 Ga. App. 248, 825 S.E.2d 628, 2019 Ga. App. LEXIS 142 (2019).

To the extent that plaintiff's claims against defendant for overzealously litigating an Open Records action were predicated on federal and state racketeering statutes, none of the alleged violations of Georgia law supported his claim, as he did not allege that defendant committed, attempted to commit, or induced anyone else to commit a predicate offense while litigating the Open Records Act suit, and he did not allege that defendant committed a crime punishable by imprisonment for more than one year. Chua v. Ekonomou, 1 F.4th 948, 2021 U.S. App. LEXIS 17755 (11th Cir. 2021).

In a civil RICO claim, summary judgment was properly granted in favor of the decedent's estate because there was no evidence that the decedent acted with specific intent to harm the lodge and commit theft as the decedent did not receive any of the lodge's funds and there was no evidence the decedent concealed the alleged loans to the lodge's treasurer; no other lodge officers ever requested to see the tax returns or any other financial documents; and the estate offered uncontroverted expert testimony that the dece-

dent correctly accounted for and reported the treasurer's loans, and that, had any officer other than the treasurer reviewed the financial documents, they would have been aware of the loans as reported by the decedent. Benevolent Lodge No. 3 v. Davis, 365 Ga. App. 564, 878 S.E.2d 760, 2022 Ga. App. LEXIS 478 (2022).

Transaction occurring after action filed. — In a Racketeer Influenced and Corrupt Organizations action, the mere fact that at least one of the transactions occurred subsequent to the filing of plaintiff's suit, evidence of it was not barred merely because it was later in time, where the incident on trial would constitute one of the acts upon which the cause of action is predicated. Interagency, Inc. v. Danco Fin. Corp., 203 Ga. App. 418, 417 S.E.2d 46, 1992 Ga. App. LEXIS 443 (1992).

Violation of O.C.G.A. § 16-10-20, prohibiting the making of false statements, constitutes "racketeering activity" for purposes of a Racketeer Influenced and Corrupt Organizations (RICO), O.C.G.A. § 16-14-1 et seq., claim. Maddox v. Southern Eng'g Co., 216 Ga. App. 6, 453 S.E.2d 70, 1994 Ga. App. LEXIS 1415 (1994).

Nexus with organized crime is not necessary to prevail on a Racketeer Influenced and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., claim. Dee v. Sweet, 218 Ga. App. 18, 460 S.E.2d 110, 1995 Ga. App. LEXIS 634 (1995), cert. denied, No. S95C1718, 1995 Ga. LEXIS 1087 (Ga. Oct. 13, 1995).

Proof of "enterprise" not required. — Violation of O.C.G.A. § 16-14-4(a) does not require proof of an "enterprise," but only that the accused acquired any real or personal property, including money, through a pattern of racketeering activity. Cobb County v. Jones Group, 218 Ga. App. 149, 460 S.E.2d 516, 1995 Ga. App. LEXIS 665 (1995).

Commonality satisfied. — In RICO cases, an alleged scheme to defraud which affects a class of people is a common question of law and/or fact, regardless of the characteristics of the scheme's intended victims. Buford v. H & R Block, Inc., 168 F.R.D. 340, 1996 U.S. Dist. LEXIS 11058 (S.D. Ga. 1996), aff'd sub nom. Jones v. H & R Block Tax Servs., 117 F.3d 1433, 1997 U.S. App. LEXIS 15148 (11th Cir. 1997).

Because plaintiff employees alleged defendant employer engaged in fraud and misuse of visas under 18 U.S.C. § 1546, as a predicate offense under O.C.G.A. § 16-14-3, commonality under former paragraph (9) of Fed. R. Civ. P. 23(a)(2) was satisfied as to the state racketeering claims under O.C.G.A. § 16-14-4 and under 18 U.S.C. § 1692 of the federal Racketeer Influence and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq. Williams v. Mohawk Indus., 568 F.3d 1350, 2009 U.S. App. LEXIS 11391 (11th Cir.), cert. denied, 558 U.S. 991, 130 S. Ct. 500, 175 L. Ed. 2d 348, 2009 U.S. LEXIS 7794 (2009).

Conspiracy is not an essential element of a RICO claim brought under O.C.G.A. § 16-14-4(a) or (b) and may not be an essential element of subsection (c), depending upon the allegations. Patterson v. Proctor, 237 Ga. App. 244, 514 S.E.2d 37, 1999 Ga. App. LEXIS 267 (1999), cert. denied, No. S99C1083, 1999 Ga. LEXIS 707 (Ga. Sept. 10, 1999).

Telecommunication providers. — In an action in which an interexchange carrier asserted it was not obligated to pay fees to a local carrier for misrepresented toll-free cell calls, it's amendment to add claims alleging violations under the Georgia RICO Act, O.C.G.A. § 16-14-1 et seq., common law fraud, and the Uniform Deceptive Trade Practices Act, O.C.G.A. § 10-1-370 et seq., was not futile given the court's denial of summary judgment on the local carrier's counterclaims; amendment under Fed. R. Civ. P. 15 was granted. ITC Deltacom Communs. v. US LEC Corp., No. 3:02-CV-116-JTC, 2004 U.S. Dist. LEXIS 27557 (N.D. Ga. Mar. 15, 2004).

Lesser included offense charge not warranted. — As a defendant was only charged with racketeering, in violation of O.C.G.A. § 16-14-4(a), based on the predicate offense of forgery, in violation of O.C.G.A. § 16-9-1, the defendant's requested jury instruction of a lesser-included offense of forgery was properly denied by the trial court; if the jury had not found a "pattern of

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racketeering activity" under former paragraph (8)(a) of O.C.G.A. § 16-14-3, the jury could not have convicted the defendant of forgery. Redford v. State, 309 Ga. App. 118, 710 S.E.2d 197, 2011 Ga. App. LEXIS 322 (2011).

Statute of limitations five years. — Trial court did not err by dismissing an indictment charging the defendants with racketeering violations and conspiracy as the state failed to prove that an overt act in furtherance of the conspiracy occurred less than five years from the date of the indictment. State v. Conzo, 293 Ga. App. 72, 666 S.E.2d 404, 2008 Ga. App. LEXIS 812 (2008).

Defendant's convictions for theft by conversion and a RICO violation were reversed because the state failed to carry the state's burden to prove that the defendant was indicted on the counts within the applicable statutes of limitation as the evidence showed that the victims, and therefore the state, had actual knowledge of the offenses more than five years prior to the June 12, 2009 indictment, and the state produced no evidence or argument to the contrary. Jannuzzo v. State, 322 Ga. App. 760, 746 S.E.2d 238, 2013 Ga. App. LEXIS 606 (2013).

Resitution proper following theft of investors' money. — Following the defendant's guilty plea to O.C.G.A. § 16-14-4(a) (RICO), an order of $725,000 restitution pursuant to O.C.G.A. § 17-14-3(a) was supported by evidence that the defendant had the capacity for gainful employment, notwithstanding the defendant's claim that the defendant was disabled; that the defendant had possessed hundreds of thousands of dollars of the victims' money; and that the defendant had a venture in which the defendant claimed $4.8 million. Nelson v. State, 329 Ga. App. 300, 764 S.E.2d 883, 2014 Ga. App. LEXIS 671 (2014).

Sentence in violation of plea agreement. — Following the state agreeing to dismiss the RICO and theft charges against the defendant in exchange for a guilty plea to one misdemeanor count of hindering and obstructing a law enforcement officer conditioned upon the defendant testifying truthfully at the trial against the co-defendants, the trial court erred by imposing a sentence upon the defendant which differed from the understood terms of the negotiated plea. Lewis v. State, 330 Ga. App. 412, 767 S.E.2d 771, 2014 Ga. App. LEXIS 683 (2014), aff'd, 298 Ga. 126, 779 S.E.2d 643, 2015 Ga. LEXIS 879 (2015).

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Telemarketing practices. — Court properly denied the defendants' motion for summary judgment in a bank's state RICO action because a genuine issue of fact remained as to the defendants' participation in a pattern of racketeering activity sufficient to ground liability under O.C.G.A. § 16-14-4(a); the jury could reasonably find that the defendants' scheme was to obtain fraudulent charges from customers, to defraud the bank into approving the charges in the first instance, to forestall the collapse of the scheme by never contesting chargebacks and by concealing their volume for as long as possible, and to use the time thus gained to transform their telemarketing entity's grosses into personal assets. Faillace v. Columbus Bank & Trust Co., 269 Ga. App. 866, 605 S.E.2d 450, 2004 Ga. App. LEXIS 1312 (2004).

Failure to strike offenses held harmless error. — Failure to strike from a Racketeer Influenced and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., indictment, as predicate offenses, three thefts which had been formerly prosecuted was harmless error, where there was no reason to infer that defendant's guilty pleas to other offenses were tainted or otherwise affected by the superfluous addition of predicate offenses which had formerly been prosecuted. Bethune v. State, 198 Ga. App. 490, 402 S.E.2d 276, 1991 Ga. App. LEXIS 96 (1991).

"Salting" coin boxes. — When laundromat purchasers alleged the vendor added money to washer and dryer coin boxes in order to persuade the purchasers to purchase the business, the

alleged addition or "salting" of coins did not constitute a "pattern of racketeering activity" within the meaning of O.C.G.A. § 16-14-4. Waldschmidt v. Crosa, 177 Ga. App. 707, 340 S.E.2d 664, 1986 Ga. App. LEXIS 1506 (1986).

Falsely accusing customers of shoplifting, even if it constituted a pattern of criminal activity, was not conduct intended to derive pecuniary gain as required by O.C.G.A. § 16-14-4. Sevcech v. Ingles Mkts., 222 Ga. App. 221, 474 S.E.2d 4, 1996 Ga. App. LEXIS 630 (1996), cert. denied, No. S96C1747, 1996 Ga. LEXIS 1100 (Ga. Oct. 31, 1996).

Defendant's indictment and sentence in a prior case were admissible, where such evidence, when combined with other evidence introduced at trial, showed the requisite pattern of racketeering activity. Brown v. State, 191 Ga. App. 76, 381 S.E.2d 101, 1989 Ga. App. LEXIS 486 (1989).

Use of prior guilty pleas to prove pattern of illegal activities. — Trial court did not err in admitting into evidence two indictments from the superior court in another county, in which the defendant had been similarly charged with identity fraud, financial-transaction-card fraud, and exploitation of an elder person, relating to some of the elderly victims the defendant had targeted in that county, and the defendant's guilty pleas to those offenses given that the state was required to prove a series or pattern of illegal activities for a conviction under the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq. Roberts v. State, 344 Ga. App. 324, 810 S.E.2d 169, 2018 Ga. App. LEXIS 28 (2018).

Indictment sufficiently specific. — Indictment for criminal racketeering alleged the offense with sufficient specificity when the indictment set forth specific timber transactions involving specific persons, places, acreages, deals, and owners. Grant v. State, 227 Ga. App. 88, 488 S.E.2d 79, 1997 Ga. App. LEXIS 1152 (1997); Adams v. State, 231 Ga. App. 279, 499 S.E.2d 105, 1998 Ga. App. LEXIS 427 (1998).

Indictment charging a conspiracy to violate Georgia's Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., was sufficient because there was no requirement that the state prove that a defendant personally committed the underlying predicate offenses personally. Pasha v. State, 273 Ga. App. 788, 616 S.E.2d 135, 2005 Ga. App. LEXIS 616 (2005), cert. denied, No. S05C1757, 2005 Ga. LEXIS 671 (Ga. Oct. 3, 2005).

Allegation of predicate offenses sufficient. — Allegations against mortgage loan servicer were sufficient to state a claim of theft by taking, deception, and conversion because despite being told that the mortgage loan was fraudulent the servicer kept the borrowers' money and continuously threatened the borrowers with foreclosure; however, the complaint failed to state a violation of mail and wire fraud as the borrowers did not identify any specific deceptive content in the communications made by the servicer, nor how such content misled the borrowers. Kerfoot v. FNF Servicing, Inc., No. 1:13-cv-33, 2013 U.S. Dist. LEXIS 153849 (M.D. Ga. Oct. 25, 2013).

Indictment not sufficiently specific. — Indictment charging the defendants with violating the Georgia Racketeer Influenced and Corrupt Organizations (RICO) Act, O.C.G.A. § 16-14-1 et seq., did not give the defendants enough information about the RICO charge to prepare their defense intelligently because the sparse allegations in the indictment, which said nothing about the nature of the connection between the enterprise and the pattern of racketeering activity, were insufficient to enable the defendants to prepare for trial; and the nature of that connection was not apparent from the identification of the enterprise, the general description of the racketeering activity in Count 1, or the subsequent counts charging more particularly the predicate acts of racketeering. Kimbrough v. State, 300 Ga. 878, 799 S.E.2d 229, 2017 Ga. LEXIS 230 (2017).

Evidence sufficient for conviction. — See Brown v. State, 191 Ga. App. 76, 381 S.E.2d 101, 1989 Ga. App. LEXIS 486 (1989); Thompson v. State, 211 Ga. App. 887, 440 S.E.2d 670, 1994 Ga. App. LEXIS

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118 (1994), cert. denied, No. S94C0805, 1994 Ga. LEXIS 514 (Ga. Mar. 25, 1994), cert. denied, No. S94C0804, 1994 Ga. LEXIS 567 (Ga. Mar. 25, 1994).

Evidence showing that cocaine chronically used by defendant was taken from shipments of cocaine imported by defendant and others into the state was sufficient to sustain defendant's conviction, where such evidence established a connection between the cocaine possession offense and the alleged "enterprise." Chancey v. State, 256 Ga. 415, 349 S.E.2d 717, 1986 Ga. LEXIS 920 (1986), cert. denied, 481 U.S. 1029, 107 S. Ct. 1954, 95 L. Ed. 2d 527, 1987 U.S. LEXIS 1854 (1987).

Trial court's failure to suppress jewelry in prosecution under O.C.G.A. § 16-14-4 was harmless error, as there was sufficient evidence to convict the defendant absent the jewelry; the state introduced voluminous documentary evidence, supported by testimony from coworkers and bank employees, concerning the forgery scheme. Henry v. State, 277 Ga. App. 302, 626 S.E.2d 511, 2006 Ga. App. LEXIS 6 (2006).

Defendants' RICO convictions under O.C.G.A. § 16-14-4 were upheld on appeal, as: (1) both the defendants were placed on sufficient notice regarding the conspiracy nature of the charges; (2) jury instructions and the trial court's recharge on the issues of conspiracy and knowledge were properly given; and (3) neither defendant preserved error as to an alleged violation of O.C.G.A. § 17-8-57 by either raising a contemporaneous objection or moving for a mistrial based on the trial court's alleged improper comments. Graham v. State, 282 Ga. App. 576, 639 S.E.2d 384, 2006 Ga. App. LEXIS 1479 (2006).

There was sufficient evidence to support a defendant's conviction under the Georgia Racketeering Influenced and Corrupt Organization Act, O.C.G.A. § 16-4-1 et seq., as contrary to the defendant's contention that the crimes were isolated incidents, the acts involving the abduction and murder of a store manager and various thefts and interrelated crimes set forth at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise were interrelated by distinguishing characteristics and were not isolated incidents. The state established a number of interrelated incidents of racketeering activity that had the same intents and results (monetary gain) and the same accomplices (the defendant and other members of the group) and the evidence also established that those were not isolated incidents, but a continuing pattern of criminal activity. Overton v. State, 295 Ga. App. 223, 671 S.E.2d 507, 2008 Ga. App. LEXIS 1358 (2008), cert. denied, No. S09C0654, 2009 Ga. LEXIS 212 (Ga. Apr. 20, 2009).

Evidence was sufficient to convict the defendant on 29 counts of theft by taking and racketeering because the defendant, while the director and a fiduciary of the animal shelter, transferred a series of donations intended for the animal shelter into the defendant's own personal bank accounts; the defendant expressly admitted that the subject transactions involved donation money intended for and belonging to the animal shelter; two members of the Board of Directors of the animal shelter testified unequivocally that the defendant was never authorized to solicit funds and deposit the funds into the defendant's personal bank accounts; and the racketeering charge was predicated upon four separate indicted incidents of theft by taking. Kilby v. State, 335 Ga. App. 238, 780 S.E.2d 411, 2015 Ga. App. LEXIS 714 (2015), cert. denied, No. S16C0653, 2016 Ga. LEXIS 437 (Ga. June 20, 2016).

Trial court did not err in denying the defendant's motion for a new trial on the basis that the evidence was insufficient to support the conviction under Georgia's Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., as the defendant's contention that the amount of money used for the defendant's benefit was small did not render the evidence insufficient and, as a co-conspirator, the racketeering activity underlying the defendant's conviction included that of the defendant's

co-conspirator. Whaley v. State, 343 Ga. App. 701, 808 S.E.2d 88, 2017 Ga. App. LEXIS 555 (2017).

Since the defendant's conviction for violation of the Georgia Racketeer Influenced and Corrupt Organizations (RICO) Act, O.C.G.A. § 16-14-1 et seq., was predicated on the defendant's commission of theft by receiving and, because the evidence was sufficient to sustain the convictions for those predicate acts, the evidence was also sufficient to sustain the RICO conviction. Akintoye v. State, 340 Ga. App. 777, 798 S.E.2d 720, 2017 Ga. App. LEXIS 141 (2017).

Evidence was sufficient to convict the defendant of identity fraud, financial-transaction-card fraud, and exploitation of an elder person and the defendant's convictions for those predicate acts was sufficient to convict the defendant of violating the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., because the defendant participated in a scheme, in which the defendant and the defendant's cohorts obtained elderly victims' credit card, banking, and other financial and personal information by telephoning the victims and informing the victims that the victims' power would be cut off if the victims did not immediately provide such information; and the defendant used the cards or the account numbers to make purchases and to obtain cash advances. Roberts v. State, 344 Ga. App. 324, 810 S.E.2d 169, 2018 Ga. App. LEXIS 28 (2018).

Ample evidence supported the defendant's convictions of two predicate acts of theft or money laundering to support RICO charges because the victim testified that the victim never authorized the defendant to take $3.5 million and the victim's court appointed conservator also testified that the defendant engaged in egregious transactions whereby multiple checks were written to the defendant from the widow's accounts with no clear purpose or benefit to the widow. Carr v. State, 350 Ga. App. 461, 829 S.E.2d 641, 2019 Ga. App. LEXIS 324 (2019), cert. denied, No. S19C1422, 2020 Ga. LEXIS 15 (Ga. Jan. 13, 2020).

Evidence insufficient for conviction. — Single RICO count conviction required reversal since though evidence was presented that the defendant, a county school superintendent, knew or should have known that the source of funds was improper or illegal, no evidence was presented that before the superintendent's assistants confessed to theft of funds, the defendant had knowledge that the source of the funds was theft as opposed to some other source such as illegal kickbacks or contributions from third parties. Purvis v. State, 208 Ga. App. 653, 433 S.E.2d 58, 1993 Ga. App. LEXIS 563 (1993), cert. denied, No. S93C1348, 1993 Ga. LEXIS 980 (Ga. Oct. 8, 1993).

Trial court properly granted summary judgment on the ground that there was no genuine issue of material fact as to whether the executor committed a predicate act for purposes of Georgia's RICO Act, O.C.G.A. § 16-14-1 et seq., as a result of concluding that alleged misrepresentations by the executor — the alleged predicate offenses — were not the proximate cause of the lodge's loss or damages since it failed to have in place any reasonable measures to check the treasurer's work. Benevolent Lodge No. 3 v. Davis, 365 Ga. App. 564, 878 S.E.2d 760, 2022 Ga. App. LEXIS 478 (2022).

Evidence of pattern of racketeering activity sufficient to withstand summary judgment. — In an action alleging that the defendants cut and removed timber from the plaintiffs' property without their consent, the defendants were not entitled to summary judgment on the basis that the plaintiffs failed to show that the defendants engaged in a pattern of racketeering activity where the plaintiffs alleged that the defendants cut and removed timber from two other properties without the owners' consent. Patterson v. Proctor, 237 Ga. App. 244, 514 S.E.2d 37, 1999 Ga. App. LEXIS 267 (1999), cert. denied, No. S99C1083, 1999 Ga. LEXIS 707 (Ga. Sept. 10, 1999).

Defendant's knowledge of all aspects of the enterprise not required in RICO action. — In a RICO case, the state was not required to show that each defendant in the enterprise had full knowledge of all facets and elements of the enterprise and all its members or

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actors; the trial court did not err in charging the jury on deliberate ignorance, when one defendant's suspicions of the scheme to acquire unoccupied homes by living in the homes and claiming adverse possession. Lowery v. State, 347 Ga. App. 26, 815 S.E.2d 625, 2018 Ga. App. LEXIS 435 (2018).

Evidence insufficient to establish pattern of proscribed activity. — Evidence showing merely two joint victims of one isolated transaction was not sufficient to establish a pattern of proscribed activity. Emrich v. Winsor, 198 Ga. App. 333, 401 S.E.2d 76, 1991 Ga. App. LEXIS 14 (1991).

Because there was no evidence that a broker obtained a manufacturer's bond premium by deceitful means with the intention of depriving the manufacturer of those funds, or that the broker knowingly converted the funds to its own use in violation of the oral agreement, the evidence showed that once the broker received the premium, it instructed an insurance company to proceed with posting the bonds, and it was only after being contacted by the manufacturer that the broker was put on notice that there was a problem with the posting of the bonds, the manufacturer's claims of theft were not supported by the record, and the manufacturer failed to show two predicate acts to support a pattern of racketeering activity; therefore, the trial court did not err in granting summary judgment to the broker on the manufacturer's claim under Georgia's Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq. Aon Risk Servs. v. Commercial & Military Sys. Co., 270 Ga. App. 510, 607 S.E.2d 157, 2004 Ga. App. LEXIS 1423 (2004), cert. denied, No. S05C0582, 2005 Ga. LEXIS 270 (Ga. Mar. 28, 2005).

Unpublished decision: In a case in which a property owner did not focus on the substantive claim under the Racketeering Influence and Corrupt Organization Act (RICO) and O.C.G.A. § 16-14-4 as decided by the district court, but rather challenged an earlier district court order indicating that the property owner did not have standing to allege RICO violations with respect to any conduct during the original state civil action, as the property owner was not a party to that action, the district court's entry of summary judgment against the property owner on the RICO claims was affirmed. The property owner's argument did not go beyond mere accusations unsupported by evidence, and the property owner pointed to no evidence that an enterprise existed for the purposes of RICO. Sun v. Girardot, 237 Fed. Appx. 415, 2007 U.S. App. LEXIS 10630 (11th Cir. 2007).

Plaintiff failed to state claim for which relief could be granted based on fraud or violations of Georgia's Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., because the plaintiff's allegations of fraud were limited to broad allegations that the plaintiff was fraudulently induced into a mortgage and that papers were fabricated, without specific information about the specific substance of the fraudulent activity, and the plaintiff failed to allege with particularity the necessary pattern of illegal activity necessary for a Georgia RICO claim. Ghee v. J.P. Morgan Chase Bank, No. 18-13230-E, 2019 U.S. App. LEXIS 1509 (11th Cir. Jan. 16, 2019).

Connection between injury and predicate acts required in civil action. — When the evidence did not show that the defendant's misrepresentations in violation of O.C.G.A. § 16-10-20, prohibiting the making of false statements, were the proximate cause of the plaintiff's injuries, the plaintiff lacked standing to assert claims under the Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq. Maddox v. Southern Eng'g Co., 231 Ga. App. 802, 500 S.E.2d 591, 1998 Ga. App. LEXIS 480 (1998).

Unpublished decision: Shareholder of a corporation lacked standing to assert that allegedly fraudulent transfers of intellectual property constituted racketeering since the property belonged to the corporation and the shareholder had no actionable interest in the property distinguishable from the interest of the corporation. Harris v. Orange S.A., 636 Fed. Appx. 476, 2015 U.S. App. LEXIS 22905 (11th Cir. 2015).

Trial court did not err by dismissing plaintiffs' RICO claims because they failed to show the required causal connection between the predicate acts and their injuries, as defendants, churches that hired the scoutmasters who abused plaintiffs, did not join the scheme by the scoutmasters to commit sexual abuse against children. McArthur v. Beech Haven Baptist Church of Athens, 368 Ga. App. 525, 890 S.E.2d 427, 2023 Ga. App. LEXIS 352 (2023).

Civil remedy for violation of RICO. — LLC ("debtor") that declared Chapter 11 bankruptcy was awarded default judgment on the debtor's claims alleging that the debtor could recover damages from another LLC because the other LLC's members violated the Georgia Racketeer Influenced and Corrupt Organizations Act ("RICO"), O.C.G.A. § 16-14-1, specifically O.C.G.A. § 16-14-4, when those members engaged in a scheme to wrongfully acquire property that belonged to the debtor; however, the debtor was denied default judgment on the debtor's claims that the debtor had a right to recover damages from the other LLC under Georgia RICO because its members violated those statutes when the members brought stolen property into Georgia and committed bank fraud because there was no evidence that the LLC's members brought stolen property into Georgia or committed bank fraud. Citrus Tower Blvd. Imaging Ctr., LLC v. Trell (In re Citrus Tower Blvd. Imaging Ctr., LLC), 525 B.R. 816, 2015 Bankr. LEXIS 534 (Bankr. N.D. Ga. 2015).

Creditor's federal and state (Georgia) RICO conspiracy claims against the debtor failed as there were no allegations of the existence of an illicit agreement between the debtor and others to violate RICO. Vanbenschoten v. Turner (In re Turner), No. 15-40525-EJC, No. 16-04004-EJC, 2017 Bankr. LEXIS 918 (Bankr. S.D. Ga. Mar. 31, 2017).

Creditor's federal and state (Georgia) RICO claims were dismissed since the complaint did not allege that the debtor took or exercised control of an enterprise through racketeering activity and did not allege any injury from the debtor's acquisition or control of an interest in a RICO enterprise. Rather, the only injuries alleged were those that resulted from the predicate acts themselves. Vanbenschoten v. Turner (In re Turner), No. 15-40525-EJC, No. 16-04004-EJC, 2017 Bankr. LEXIS 918 (Bankr. S.D. Ga. Mar. 31, 2017).

Creditor's federal and state (Georgia) RICO conspiracy claims against the debtor failed as there were no allegations of the existence of an illicit agreement between the debtor and others to violate RICO. Harlander v. Turner (In re Turner), No. 15-40525-EJC, No. 15-04037-EJC, 2017 Bankr. LEXIS 917 (Bankr. S.D. Ga. Mar. 31, 2017).

Survival of tort action following death. — In a case in which the intended beneficiaries of two life insurance policies alleged violations of Georgia's Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-4-1 et seq., the representative of the decedent's estate may be able to recover in a representative capacity for acts directed toward, or harm incurred by, the decedent. Under O.C.G.A. § 9-2-41, a tort action did not abate by the death of the injured party, but survived to the personal representative of the decedent. Am. Gen. Life & Accident Ins. Co. v. Ward, 509 F. Supp. 2d 1324, 2007 U.S. Dist. LEXIS 18420 (N.D. Ga. 2007).

Scheme to defraud entrepreneurs. — On claims by plaintiff buyers of distributorships against defendants, the seller and the seller's principal and relatives and other corporate entities, the Racketeering Influenced and Corrupt Organizations Act's reliance element did not destroy predominance for Fed. R. Civ. P. 23(b)(3), and, the allegations were that defendants undertook a single scheme to defraud would-be entrepreneurs. Brenner v. Future Graphics, LLC, 258 F.R.D. 561, 2007 U.S. Dist. LEXIS 98493 (N.D. Ga. 2007).

Theft by deception and residential mortgage fraud predicate acts. — Trial court erred in dismissing a mortgagor's RICO claim because the complaint alleged that the mortgagor was injured by at least two predicate acts (theft by deception and residential mortgage fraud) which could constitute a

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pattern of racketeering activity and the mortgagee did not show that the mortgagor could not possibly introduce evidence within the framework of the complaint sufficient to grant relief on the RICO claim. Mbigi v. Wells Fargo Home Mortg., 336 Ga. App. 316, 785 S.E.2d 8, 2016 Ga. App. LEXIS 173 (2016).

Falsity in election. — Plaintiff seemed to be alleging that defendant news network committed fraud by not sufficiently acknowledging the other candidates running in the primary election. But the news network had no affirmative obligation to name other candidates and the plaintiff cited no law suggesting otherwise. Nor did the plaintiff show that the news network's and another primary candidate's "false" statements were "knowingly" made or made "with reckless indifference to their truth or falsity." Thus, because the plaintiff could not point to any precise misrepresentations that amounted to fraudulent conduct committed by the defendants, the plaintiff failed to allege the predicate acts of mail and wire fraud with the heightened specificity required by Fed. R. Civ. P. 9(b). Wayne Johnson for Cong., Inc. v. Hunt, No. 23-10460, 2024 U.S. App. LEXIS 2850 (11th Cir. Feb. 7, 2024).

Chicken growers. — *Unpublished decision:* Chicken grower's O.C.G.A. § 16-14-4 claim failed because the grower produced no evidence specific to that claim, and the grower failed to create a genuine issue of material fact for the same reasons the grower failed to create an issue in the grower's fraud claims (the grower could not produce evidence that the chicken processing company underpaid the grower for the grower's flocks). Mims v. Cagle Foods JV, LLC, 148 Fed. Appx. 762, 2005 U.S. App. LEXIS 11579 (11th Cir. 2005).

Fraudulent borrowing scheme from parishioners. — Indictment, which described a scheme of fraudulent borrowing from the parishioners of one defendant, a pastor, to benefit the pastor and the other defendant, a banker, sufficiently described the RICO crimes and predicate acts under O.C.G.A. § 16-14-4(a) and (c) so as to inform the defendants of the charges against the defendants and protect the defendants against another prosecution for the same offense. State v. Pittman, 302 Ga. App. 531, 690 S.E.2d 661, 2010 Ga. App. LEXIS 74 (2010).

2. Companies and Employees

Offenses committed by agents or employees of corporation. — In an action against the corporate operator of a treatment program for violations of the Georgia Racketeer Influenced and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., since there was evidence that agents or employees of the operator committed predicate offenses alleged in the pleadings, and there were material issues of fact as to whether the operator was a party to or involved in commission of the offenses, the RICO enterprise could consist of the corporation and its agents or employees with respect to such offenses. Reaugh v. Inner Harbour Hosp., 214 Ga. App. 259, 447 S.E.2d 617, 1994 Ga. App. LEXIS 1437 (1994), cert. denied, No. S94C1817, 1994 Ga. LEXIS 1179 (Ga. Dec. 2, 1994).

Corporation could be held liable in a civil action for RICO predicate acts performed by the corporation's employees within the scope of their employment. Cobb County v. Jones Group, 218 Ga. App. 149, 460 S.E.2d 516, 1995 Ga. App. LEXIS 665 (1995).

Corporation's liability for activities prior to incorporation. — Corporation could be held responsible for racketeering activity completed prior to incorporation when the activity provided benefits to the corporation. Cobb County v. Jones Group, 218 Ga. App. 149, 460 S.E.2d 516, 1995 Ga. App. LEXIS 665 (1995).

Claims against employer in connection with hiring illegal aliens. — On remand from the U.S. Supreme Court, a class action suit filed by legal employees of a Georgia rug manufacturer, alleging state RICO violations based on the widespread hiring of illegal aliens in order to depress the hourly wages of the manufacturer's workers, survived a

motion to dismiss for failure to state a claim; the federal appellate court deferred to the Supreme Court of Georgia's holding that O.C.G.A. § 16-14-4, when read in conjunction with O.C.G.A. §§ 1-3-3(14) and 16-1-3(12) provided that "any person" could be sued under the Georgia RICO statute, including corporations such as the rug manufacturer. Williams v. Mohawk Indus., 465 F.3d 1277, 2006 U.S. App. LEXIS 24306 (11th Cir. 2006), cert. denied, 549 U.S. 1260, 127 S. Ct. 1381, 167 L. Ed. 2d 174, 2007 U.S. LEXIS 2798 (2007).

Law firms. — Racketeering claim against a law firm failed when there was no evidence to support proximate causation. Smith v. Morris, Manning & Martin, LLP, 293 Ga. App. 153, 666 S.E.2d 683, 2008 Ga. App. LEXIS 860 (2008), cert. denied, No. S08C2077, 2008 Ga. LEXIS 992 (Ga. Nov. 17, 2008).

Civil complaint against company failed to state RICO violation. — Plaintiffs, residents, sued the defendants, a chemical plant and a laboratory, alleging the plaintiffs were injured due to chemical fires at the laboratory's facility. As the complaint failed to allege a pattern of two or more of the 37 predicate acts listed in Georgia's Racketeer Influenced and Corrupt Organization (RICO) statute, O.C.G.A. § 16-4-1 et seq., the defendants were properly granted summary judgment on the RICO claim. Smith v. Chemtura Corp., 297 Ga. App. 287, 676 S.E.2d 756, 2009 Ga. App. LEXIS 311 (2009).

Action against transferee of franchisee failed. — Trial court erred by failing to grant a succeeding franchisee's motion for summary judgment in a fraud suit brought by car dealership consumers as the consumers failed to establish the succeeding franchisee's participation or involvement in any of the complained of transactions; thus, no unfair business violations were established, and no direct claim against a transferee was permitted under the Bulk Transfer Act, former O.C.G.A. § 11-6-101 et seq. Additionally, the consumers' claims under Georgia's Racketeer Influenced and Corrupt Organizations statute, O.C.G.A. § 16-14-1 et seq., likewise failed since the uncontroverted evidence established without question that the succeeding franchisee did not make any misrepresentations to the consumers nor participated in any of the transactions that formed the basis of the consumers' claims. Summit Auto. Group, LLC v. Clark Kia Motors Ame., Inc., 298 Ga. App. 875, 681 S.E.2d 681, 2009 Ga. App. LEXIS 821 (2009).

Cause of action stated. — Corporate officer stated a cause of action for a violation of O.C.G.A. § 16-14-4 in an action arising from the officer's discharge when the officer alleged (1) the obstruction of justice by the defendants, (2) a pattern consisting of the officer being placed on administrative leave, the termination of the officer's employment, and the similar and interrelated termination of another person, and (3) that the defendants acted to deter the plaintiff and the other person from freely giving truthful testimony before a court or to injure them because they did so testify. O'Neal v. Garrison, 263 F.3d 1317, 2001 U.S. App. LEXIS 19264 (11th Cir.), amended, 270 F.3d 1323, 2001 U.S. App. LEXIS 22750 (11th Cir. 2001).

Class action complaint by carpet manufacturing workers adequately pleaded civil federal and Georgia RICO violations based on employer's widespread practice of hiring, harboring, encouraging, and inducing illegal aliens in violation of 8 U.S.C. § 1324 of the Immigration and Nationality Act, causing reductions in the manufacturer's legal workers' hourly wages; by paying recruiters to find illegal workers and bring the illegal workers to Georgia, the employer engaged in a prohibited "enterprise" under 18 U.S.C. § 1962(c). Williams v. Mohawk Indus., 465 F.3d 1277, 2006 U.S. App. LEXIS 24306 (11th Cir. 2006), cert. denied, 549 U.S. 1260, 127 S. Ct. 1381, 167 L. Ed. 2d 174, 2007 U.S. LEXIS 2798 (2007).

Purchaser under an agricultural sales contract sufficiently showed that the seller violated federal and state racketeering laws since the purchaser established on deemed admitted facts that the seller obtained money from unsuspecting victims, including the purchaser, for agricultural products that were not delivered and

Application (Cont'd)
2. Companies and Employees (Cont'd)

were never intended to be delivered. Functional Prods. Trading, S.A. v. JITC, LLC, No. 1:12-cv-0355-WSD, 2014 U.S. Dist. LEXIS 102775 (N.D. Ga. July 29, 2014).

Purchaser under an agricultural sales contract sufficiently showed that a limited liability company (LLC) and its members conspired to violate state racketeering laws since the LLC and members were shown to have knowingly and willfully acted in concert and joined in a racketeering conspiracy to obtain money from unsuspecting victims for agricultural products that were not delivered and were never intended to be delivered. Functional Prods. Trading, S.A. v. JITC, LLC, No. 1:12-cv-0355-WSD, 2014 U.S. Dist. LEXIS 102775 (N.D. Ga. July 29, 2014).

Nexus between predicate acts and employees' injuries. — Trial court erred when the court denied a motion to dismiss employees' Georgia Racketeer Influenced and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., claims against the employees' former employer and a former supervisor when the allegations of the employees' complaint showed the employees could not satisfy the proximate cause element of a civil RICO claim and lacked standing to bring the allegations because there was no direct nexus between the predicate acts directed at third parties (which included fraud, forgery, and money laundering) and the employees' injuries (the loss of the employees' jobs). Wylie v. Denton, 323 Ga. App. 161, 746 S.E.2d 689, 2013 Ga. App. LEXIS 663 (2013).

Employee falsifying overtime. — Evidence that the defendant conspired with other employees to falsify overtime records in exchange for payment by the employees, including both direct evidence of the defendant's unlawful acts, corroborated by non-accomplice witnesses, as well as a recording of the defendant's own incriminating statement, was sufficient to support the defendant's conviction for violating the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., specifically O.C.G.A. § 16-14-4(a). Brown v. State, 321 Ga. App. 198, 739 S.E.2d 118, 2013 Ga. App. LEXIS 228 (2013).

3. Lending Institutions

Loan practices. — Because loan practices of charging discount points and other interest charges during the first month of a loan were legal, the plaintiffs' Georgia Racketeer Influenced and Corrupt Organizations (RICO), O.C.G.A. § 16-14-1 et seq., specifically O.C.G.A. § 16-14-4, claims failed. Johnson v. Fleet Fin., Inc., 785 F. Supp. 1003, 1992 U.S. Dist. LEXIS 2586 (S.D. Ga. 1992).

Racketeering by a loan servicer and a note holder was sufficiently shown since notices were mailed to a bankruptcy debtor misrepresenting an ability to foreclose against the debtor's property after the foreclosure occurred, and statements were mailed showing a balance due which was not reduced by the proceeds of the foreclosure. Gordon v. Bank of Am., N.A. (In re Merriweather), No. 13-53022-BEM, No. 15-5096-BEM, 2015 Bankr. LEXIS 3664 (Bankr. N.D. Ga. Aug. 28, 2015).

Misrepresentations by loan servicer. — Although a loan servicer filed a Fed. R. Civ. P. 12(b)(6) motion to dismiss, the borrowers alleged sufficient facts to satisfy the causation requirement; as a result of relying on the servicer's misrepresentations, the borrowers suffered the injuries complained of, which were the loss of the borrowers' home as well as physical, emotional, and financial hardship. Quasebarth v. Green Tree Servicing, LLC, 90 F. Supp. 3d 1373, 2015 U.S. Dist. LEXIS 25684 (M.D. Ga. 2015).

Usurious interest rate. — Trial court properly granted summary judgment to the defendant regarding the plaintiff's claim that the defendant violated the RICO Act by knowingly employing a scheme to charge usurious interest since the evidence showed that the inappropriate interest charges made by the defendant were the result of a programming error in software and that such programming error was not requested by the defendant, and the defendant had no prior knowledge of the

problem. Jordan v. Tri County Ag, Inc., 248 Ga. App. 661, 546 S.E.2d 528, 2001 Ga. App. LEXIS 243 (2001), cert. denied, No. S01C1065, 2001 Ga. LEXIS 664 (Ga. Sept. 7, 2001).

4. Insurance

Insurance policy. — Defendant insurers were entitled to summary judgment because plaintiff insured's affirmance of a disability income policy with a merger clause precluded any reliance on the alleged pre-contractual misrepresentations and barred the claims for fraud and for violations of O.C.G.A. § 16-14-4(a)-(c), and because the insured alleged no facts to show that the insurers had a duty independent of their contract duties to state a claim for tortious interference with property rights. Worsham v. Provident Cos., 249 F. Supp. 2d 1325, 2002 U.S. Dist. LEXIS 26372 (N.D. Ga. 2002).

Illegal sale of insurance is not in and of itself a basis for a civil RICO action, but it may serve as such if it was conducted in violation of federal mail and wire fraud statutes or if it was proven to have been a fraud amounting to theft. Olukoya v. American Ass'n of Cab Cos., 219 Ga. App. 508, 465 S.E.2d 715, 1995 Ga. App. LEXIS 1081 (1995), cert. denied, No. S96C0658, 1996 Ga. LEXIS 613 (Ga. Apr. 12, 1996).

Recovery not available. — Even if an insurance company engaged in a mail and wire fraud scheme to avoid compliance with state laws and illegally sell insurance without properly appointing agents, an insured could not recover in a civil action under the Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., without showing a connection between an insured's injury and the predicate acts. Security Life Ins. Co. v. Clark, 229 Ga. App. 593, 494 S.E.2d 388, 1997 Ga. App. LEXIS 1546 (1997), aff'd in part and rev'd in part, 270 Ga. 165, 509 S.E.2d 602, 1998 Ga. LEXIS 997 (1998).

Evidence insufficient for conspiracy by insurance company. — Financial planner's cause of action against the insurance company for conspiracy to commit violations of the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., specifically O.C.G.A. § 16-14-4(c), was dismissed because: (1) the planner's allegations were insufficient to allege that the insurance company knowingly and willfully joined a conspiracy which intended to commit two predicate acts in furtherance of a common, unlawful scheme; (2) the insurance company could not have knowingly and willfully conspired to steal the planner's chose of action because the company was not even aware of the terms of the settlement agreement; and (3) the planner failed to allege particular facts which demonstrated that the insurance company knowingly and willfully conspired with the parent company and the subsidiary to commit mail fraud in order to steal from the planner. Rosen v. Protective Life Ins. Co., No. 1:09-cv-03620-WSD, 2010 U.S. Dist. LEXIS 50392 (N.D. Ga. May 20, 2010).

RESEARCH REFERENCES

Am. Jur. Trials.

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ALR.

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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.

What Matters Not Contained in Pleadings may be Considered in Ruling on Motion to Dismiss Under Rule 12(b)(6) of Federal Rules of Civil Procedure or Motion for Judgment on Pleadings Under Rule 12(c) without Conversion to Motion for Summary Judgment — Sixth Circuit, 77 A.L.R. Fed. 3d 2.

Application of Fed. R. Civ. Proc. 15(c)(1)(C) to Doe or Unknown Defendant Substitutions After Limitations Period — Post-Krupski, 81 A.L.R. Fed. 3d 7.

16-14-5. Criminal penalties for violation of Code Section 16-14-4.

(a) Any person convicted of the offense of engaging in activity in violation of Code Section 16-14-4 shall be guilty of a felony and shall be punished by not less than five nor more than 20 years' imprisonment or the fine specified in subsection (b) of this Code section, or both.

(b) In lieu of any fine otherwise authorized by law, any person convicted of the offense of engaging in conduct in violation of Code Section 16-14-4 may be sentenced to pay a fine that does not exceed the greater of $25,000.00 or three times the amount of any pecuniary value gained by him or her from such violation.

(c) The court shall hold a hearing to determine the amount of the fine authorized by subsection (b) of this Code section.

(d) For the purposes of subsection (b) of this Code section, the term "pecuniary value" means:

(1) Anything of value in the form of money, a negotiable instrument, a commercial interest, or anything else, the primary significance of which is economic advantage; or

(2) Any other property or service that has a value in excess of $100.00.

History.
Code 1933, § 26-3404, enacted by Ga. L. 1980, p. 405, § 1; Ga. L. 1985, p. 149, § 16; Ga. L. 2015, p. 693, § 2-25/HB 233.

Editor's notes.
Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.
For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

JUDICIAL DECISIONS

When both alleged conspiracy and actual violation of O.C.G.A. § 16-14-4(b) charged the same acts, committed at the same time, by the same persons, as part of the same transactions, the count subjected the defendant to one conviction and one punishment. Washington v. State, 183 Ga. App. 422, 359 S.E.2d 198, 1987 Ga. App. LEXIS 2011 (1987).

RESEARCH REFERENCES

ALR.
Construction and Application of Federal Racketeer and Corrupt Organization Act's (RICO) Remedial Provision, 18 U.S.C.A. § 1964(a), 23 A.L.R. Fed. 3d 6.

16-14-6. Civil remedies.

(a) Any superior court may, after making due provisions for the rights of innocent persons, enjoin violations of Code Section 16-14-4 by issuing appropriate orders and judgments, including, but not limited to:

(1) Ordering any defendant to divest himself or herself of any interest in any enterprise, real property, or personal property;

(2) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he or she was engaged in violation of Code Section 16-14-4;

(3) Ordering the dissolution or reorganization of any enterprise;

(4) Ordering the suspension or revocation of any license, permit, or prior approval granted to any enterprise by any agency of the state; or

(5) Ordering the forfeiture of the charter of a corporation organized under the laws of this state or the revocation of a certificate authorizing a foreign corporation to conduct business within this state upon a finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting affairs of the corporation, has authorized or engaged in conduct in violation of Code Section 16-14-4 and that, for the prevention of future criminal activity, the public interest requires that the charter of the corporation be forfeited and that the corporation be dissolved or the certificate be revoked.

(b) Any aggrieved person or the state may institute a civil action under subsection (a) of this Code section. In such civil action, relief shall be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, provided that no showing of special or irreparable damage to the person shall have to be made. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order and a preliminary injunction may be issued in any such action before a final determination on the merits.

(c) Any person who is injured by reason of any violation of Code Section 16-14-4 shall have a cause of action for three times the actual damages sustained and, where appropriate, punitive damages. Such person shall also recover attorney's fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred. The defendant or any injured person may demand a trial by jury in any civil action brought pursuant to this Code section.

(d) Any injured person shall have a right or claim to forfeited property or to the proceeds derived therefrom as set forth in Code Section 9-16-16.

(e) A conviction in any criminal proceeding shall estop the defendant in any subsequent civil action or civil forfeiture proceeding under this chapter as to all matters proved in the criminal proceeding.

History.

Code 1933, § 26-3406, enacted by Ga. L. 1980, p. 405, § 1; Ga. L. 2015, p. 693, § 2-25/HB 233.

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article, "The Civil Jurisdiction of State and Magistrate Courts," see 24 Ga. St. B. J. 29 (1987).

For article, "A Comprehensive Analysis of Georgia RICO," see 9 Georgia St. U.L. Rev. 537 (1993).

For article, "Theories of Stockbroker and Brokerage Firm Liability," see 9 Ga. St. B. J. 12 (2004).

For article, "Overcoming Under-Compensation and Under-Deterrence in Intentional Tort Cases: Are Statutory Multiple Damages the Best Remedy?," see 62 Mercer L. Rev. 449 (2011).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

JUDICIAL DECISIONS

Constitutionality. — Trial court's dismissal of the claims against the in personam defendant was reversed because since the equitable remedies allowed by O.C.G.A. § 16-14-6(a) were available to other aggrieved parties as well as to the state, an action for such remedies was uncharacteristic of a criminal matter. As such, such a claim was not unconstitutional. State v. Singh, 291 Ga. 525, 731 S.E.2d 649, 2012 Ga. LEXIS 691 (2012).

Legislative purpose not element of cause of action. — Expression of legislative purpose in enacting O.C.G.A. Ch. 14, T. 16 is not an element of a civil cause of action under RICO. State v. Shearson Lehman Bros., 188 Ga. App. 120, 372 S.E.2d 276, 1988 Ga. App. LEXIS 895 (1988); Reaugh v. Inner Harbour Hosp., 214 Ga. App. 259, 447 S.E.2d 617, 1994 Ga. App. LEXIS 1437 (1994), cert. denied, No. S94C1817, 1994 Ga. LEXIS 1179 (Ga. Dec. 2, 1994).

O.C.G.A. Ch. 14, T. 16 requires the plaintiff to allege an organized crime nexus. Georgia Gulf Corp. v. Ward, 701 F. Supp. 1556, 1987 U.S. Dist. LEXIS 14352 (N.D. Ga. 1987).

Claim for attorney fees based on bad faith. — Loan servicer's argument that the borrowers' claim for attorney fees should be dismissed lacked merit because regardless of whether the loan servicer had acted in bad faith, the court could not, at a motion to dismiss stage, rule on whether the loan servicer had been stubbornly litigious or whether it had caused the borrowers unnecessary trouble and expense. Kerfoot v. FNF Servicing, Inc., No. 1:13-cv-33, 2013 U.S. Dist. LEXIS 153849 (M.D. Ga. Oct. 25, 2013).

Subsection (c). — Authorization of recovery of post-trial attorney fees and costs in O.C.G.A. § 16-14-6(c) does not violate equal protection, due process, or chill the rights of litigants seeking appellate review. Dee v. Sweet, 268 Ga. 346, 489 S.E.2d 823, 1997 Ga. LEXIS 509 (1997).

Standing. — Party indirectly injured by Racketeer Influenced and Corrupt

Organizations (RICO), O.C.G.A. § 16-14-1 et seq., offense lacks standing to bring a RICO claim. Morast v. Lance, 631 F. Supp. 474, 1986 U.S. Dist. LEXIS 27392 (N.D. Ga. 1986), aff'd, 807 F.2d 926, 1987 U.S. App. LEXIS 1016 (11th Cir. 1987).

National bank vice president, who was discharged for reporting an irregular transaction to the comptroller of the currency, was not entitled to relief under O.C.G.A. § 16-14-1 et seq., since the vice president was not fired because of a refusal to participate in the bank's illegal scheme and, consequently, the vice president's injury did not flow directly from the banking violations. Morast v. Lance, 807 F.2d 926, 1987 U.S. App. LEXIS 1016 (11th Cir. 1987).

Forfeiture. — Trial court properly allowed only individual members of a class to assert their claims against forfeited funds or property because the members were trying to use the property or funds forfeited in the Georgia Racketeer Influenced and Corrupt Organizations (RICO) Act, O.C.G.A. § 16-14-1 et seq., proceeding as a recovery "superfund" for their federal class action claims; the members cited no authority supporting the members' contention that a federally certified class in a federal class action case had to be considered to be an "injured person," as that term was used in RICO, O.C.G.A. § 16-14-6(d), in proceedings instituted under a state RICO forfeiture provision. Smith v. Cisco, 316 Ga. App. 871, 730 S.E.2d 583, 2012 Ga. App. LEXIS 671 (2012), cert. denied, No. S12C1922, 2012 Ga. LEXIS 976 (Ga. Nov. 19, 2012).

While the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., specifically O.C.G.A. § 16-14-6(d), allows an injured person to intervene and to make a claim to the forfeited property and that claim is superior to that of the state, there is nothing in the statute that gives injured persons the right to dictate to the state which property should be forfeited to the state; thus, nothing in the statute prevents the state from making a "unilateral decision" concerning which property it will pursue in the forfeiture proceedings. Smith v. Cisco, 316 Ga. App. 871, 730 S.E.2d 583, 2012 Ga. App. LEXIS 671 (2012), cert. denied, No. S12C1922, 2012 Ga. LEXIS 976 (Ga. Nov. 19, 2012).

Bond. — Because officers failed to move in the trial court for the state to post a bond under the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., specifically O.C.G.A. § 16-14-6(b), the officers' claim that the trial court erred in not requiring the state to post a bond would not be considered on appeal; the officers did move for the receiver to post a bond, but the trial court had discretion whether or not to require the receiver to give a bond conditioned for the faithful discharge of the trust reposed, O.C.G.A. § 9-8-10, and the trial court did not abuse that discretion. Pittman v. State, 288 Ga. 589, 706 S.E.2d 398, 2011 Ga. LEXIS 149 (2011).

Sufficiency of complaint. — Complaint which alleges that the plaintiff was injured as a result of the defendant having committed at least two similar or interrelated predicate offenses shall survive a motion to dismiss for failure to state a claim. State v. Shearson Lehman Bros., 188 Ga. App. 120, 372 S.E.2d 276, 1988 Ga. App. LEXIS 895 (1988).

Unpublished decision: Former employee's Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., claim, alleging the former employer was defrauding customers and engaging in racial discrimination, failed because there was no evidence the employee was injured by the commission of any predicate acts, and despite the employee's apparent argument to the contrary, racial discrimination was not listed under former paragraph (9) of O.C.G.A. § 16-14-3 as a predicate act. Giles v. BellSouth Telecomms., Inc., 542 Fed. Appx. 756, 2013 U.S. App. LEXIS 20231 (11th Cir. 2013).

Trial court properly ruled that the basis for treble damages under RICO had not been proved as only the principal damage award supported by the record was the $5,960.63 amount reflected in the check attached to the complaint and the complaint otherwise did not break down an

award by claim. Stewart Ausband Enters. v. Holden, 349 Ga. App. 295, 826 S.E.2d 138, 2019 Ga. App. LEXIS 153 (2019).

Preponderance of evidence required. — In a civil action under the Georgia RICO Act, O.C.G.A. § 16-14-1 et seq., given the similarities in the purpose and language of the federal and Georgia RICO statutes, together with the General Assembly's mandate to liberally construe the Act to effectuate its remedial purposes, under O.C.G.A. § 16-14-2(b), the applicable standard of proof in state civil RICO actions was held to be a preponderance of the evidence; thus, the Supreme Court of Georgia overruled Simpson Consulting, Inc. v. Barclays Bank PLC, 227 Ga. App. 648 (490 SE2d 184) (1997), and those other cases holding to the contrary, specifically, Blanton v. Bank of America, 256 Ga. App. 103 (2002), In re Copelan, 250 Ga. App. 856 (2001), and Tronitec, Inc. v. Shealy, 249 Ga. App. 442 (2001). Williams Gen. Corp. v. Stone, 279 Ga. 428, 614 S.E.2d 758, 2005 Ga. LEXIS 445 (2005).

Trial court erred in a bifurcated suit asserting a claim of illegal insurance sales under the Georgia Racketeer Influenced and Corrupt Organizations Act (Georgia RICO), O.C.G.A. § 16-14-1 et seq., by instructing the jury that the suing passenger of a cab was required to prove the asserted Georgia RICO claims against two cab companies by clear and convincing evidence as the proper standard of proof to have been applied was a preponderance of the evidence. Am. Ass'n of Cab Cos. v. Parham, 291 Ga. App. 33, 661 S.E.2d 161, 2008 Ga. App. LEXIS 329 (2008), cert. denied, No. S08C1409, 2008 Ga. LEXIS 690 (Ga. Sept. 8, 2008).

Trial court properly granted summary judgment on the ground that there was no genuine issue of material fact as to whether the executor committed a predicate act for purposes of Georgia's RICO Act, O.C.G.A. § 16-14-1 et seq., as a result of concluding that alleged misrepresentations by the executor — the alleged predicate offenses — were not the proximate cause of the lodge's loss or damages since it failed to have in place any reasonable measures to check the treasurer's work. Benevolent Lodge No. 3 v. Davis, 365 Ga. App. 564, 878 S.E.2d 760, 2022 Ga. App. LEXIS 478 (2022).

Preclusion. — When victims of a fraudulent scheme who sued the perpetrator of the fraud under the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., had previously unsuccessfully sued the perpetrator for fraud and related claims, judgment n.o.v. was properly entered in favor of the perpetrator because the victims' claim was barred by res judicata and collateral estoppel, as it should have been raised in their previous suits against the perpetrator, which involved the same parties and the same subject matter. Austin v. Cohen, 268 Ga. App. 650, 602 S.E.2d 146, 2004 Ga. App. LEXIS 877 (2004), cert. denied, No. S04C2018, 2004 Ga. LEXIS 981 (Ga. Oct. 25, 2004).

Remedy at law does not preclude injunctive relief. — Even if the plaintiff had a remedy at law in the form of money damages for breach of contract, a preliminary injunction was proper when issued in accordance with O.C.G.A. § 16-14-6. Cotton, Inc. v. Phil-Dan Trucking, Inc., 270 Ga. 95, 507 S.E.2d 730, 1998 Ga. LEXIS 1042 (1998).

Proof required for treble damages. — In an action based on a violation of O.C.G.A. § 16-10-20, prohibiting the making of false statements, even though plaintiff had to show the defendants' criminal acts injured plaintiff to recover treble damages, plaintiff's inability to show that plaintiff was actually misled by the false statements was not fatal. Maddox v. Southern Eng'g Co., 216 Ga. App. 6, 453 S.E.2d 70, 1994 Ga. App. LEXIS 1415 (1994).

Admission of facts by default estopped introducing evidence to rebut the admission of liability.— Admitted facts supported the defendant's liability on plaintiff's claims of fraud and a civil RICO violation, thus, defendant was estopped from arguing liability on those claims and was precluded from introducing evidence to rebut the admission of liability; therefore, the trial court erred by denying the plaintiff's motion in limine on that topic. Hansford v. Veal, 369 Ga. App. 641, 894 S.E.2d 215, 2023 Ga. App. LEXIS 505 (2023).

Attorney fees. — In light of the practical difficulties required in allocating attorney fees to specific claims in Racketeer Influenced and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., cases, it will not be required unless the unsuccessful claims and those not receiving awards of attorney fees are distinctly different claims for relief, based on different facts and legal theories. Dee v. Sweet, 218 Ga. App. 18, 460 S.E.2d 110, 1995 Ga. App. LEXIS 634 (1995), cert. denied, No. S95C1718, 1995 Ga. LEXIS 1087 (Ga. Oct. 13, 1995).

Damages award of $1.00 was sufficient to justify the award of attorney fees. Dee v. Sweet, 218 Ga. App. 18, 460 S.E.2d 110, 1995 Ga. App. LEXIS 634 (1995), cert. denied, No. S95C1718, 1995 Ga. LEXIS 1087 (Ga. Oct. 13, 1995).

Prevailing plaintiffs in a RICO action could recover attorney fees and costs related to the investigation and litigation of actions necessary to collect on the RICO judgment they were awarded. Dee v. Sweet, 268 Ga. 346, 489 S.E.2d 823, 1997 Ga. LEXIS 509 (1997).

Plain language of O.C.G.A. § 16-14-6(c) makes it clear that the statutory award of attorneys' fees represents a separate and distinct interest awarded to compensate each injured plaintiff individually. Darden v. Ford Consumer Fin. Co., 200 F.3d 753, 2000 U.S. App. LEXIS 376 (11th Cir. 2000).

Each plaintiff's share of the attorneys' fees recoverable under Georgia's RICO statute, O.C.G.A. § 16-14-1 et seq., may not be aggregated to satisfy the amount-in-controversy requirement because under Georgia law each individual plaintiff has a separate and distinct statutory right or claim to recover those attorneys' fees, and Georgia law provides that those fees are to compensate the injured plaintiff. Darden v. Ford Consumer Fin. Co., 200 F.3d 753, 2000 U.S. App. LEXIS 376 (11th Cir. 2000).

Arbitration agreements' class action waiver was valid and enforceable because the arbitration agreements expressly permitted the borrower/plaintiff and the other consumers to recover attorneys' fees and expenses "if allowed by statute or applicable law" and such relief was available under the applicable law, Georgia's Racketeering Influenced and Corrupt Organizations Act, specifically O.C.G.A. § 16-14-6(c). Jenkins v. First Am. Cash Advance of Ga., LLC, 400 F.3d 868, 2005 U.S. App. LEXIS 2922 (11th Cir. 2005), cert. denied, 546 U.S. 1214, 126 S. Ct. 1457, 164 L. Ed. 2d 132, 2006 U.S. LEXIS 1842 (2006).

Exhaustion of administrative remedies. — Allegation of Insurance Code violations does not transform a civil RICO complaint into a cause of action which must be pursued exclusively through administrative channels, particularly when numerous other predicate acts are alleged in the complaint including fraud. Provident Indem. Life Ins. Co. v. James, 234 Ga. App. 403, 506 S.E.2d 892, 1998 Ga. App. LEXIS 1258 (1998), cert. denied, No. S99C0074, 1999 Ga. LEXIS 72 (Ga. Jan. 15, 1999).

Bankruptcy. — State racketeering action against the family of a debtor based on a property transfer to avoid debt collection was not property of a bankruptcy estate because a trustee stood in the shoes of the debtor, who could not have asserted the action against the family due to a role as a coconspirator. Johnson v. Flatau, 329 B.R. 910, 2005 Bankr. LEXIS 543 (Bankr. M.D. Ga. 2005), aff'd, 339 B.R. 524, 2006 U.S. Dist. LEXIS 11356 (M.D. Ga. 2006).

Automatic stay did not prohibit a state racketeering action brought against the family of a debtor relating to the transfer of property to avoid debt collection because a judgment against the family would not have been in effect a judgment against the estate; the family was not entitled to indemnity from the estate. Johnson v. Flatau, 329 B.R. 910, 2005 Bankr. LEXIS 543 (Bankr. M.D. Ga. 2005), aff'd, 339 B.R. 524, 2006 U.S. Dist. LEXIS 11356 (M.D. Ga. 2006).

Treble damages and attorneys fees awarded. — Internet service provider's success on both the provider's federal and state RICO claims each independently mandated the trebling of the provider's damages, including the provider's attorneys fees, under 18 U.S.C. § 1964(c) and O.C.G.A. § 16-14-6(c), respectively,

against an individual who had stolen Internet accounts in order to engage in unlawful spamming and spoofing activities. Earthlink, Inc. v. Carmack, No. 1:02-CV-3041-TWT, 2003 U.S. Dist. LEXIS 9963 (N.D. Ga. May 7, 2003).

Estoppel to contest liability following criminal conviction. — Trial court erred in denying an investor's motion for partial summary judgment as to the business person's liability on the investor's civil Georgia Racketeer Influenced and Corrupt Organization Act (RICO), O.C.G.A. § 16-14-1 et seq., claim against the business person because the business person's criminal conviction estopped the business person from contesting civil liability pursuant to RICO, O.C.G.A. § 16-14-6(c). Cox v. Mayan Lagoon Estates Ltd., 319 Ga. App. 101, 734 S.E.2d 883, 2012 Ga. App. LEXIS 1032 (2012).

RESEARCH REFERENCES

ALR.

Construction and application of Racketeer Influenced and Corrupt Organizations Act (RICO) nationwide service of process provision, 18 U.S.C.A. § 1965, 65 A.L.R. Fed. 2d 21.

Construction and Application of Federal Racketeer and Corrupt Organization Act's (RICO) Remedial Provision, 18 U.S.C.A. § 1964(a), 23 A.L.R. Fed. 3d 6.

16-14-7. Civil forfeiture proceedings.

(a) All property of every kind used or intended for use in the course of, derived from, or realized through a pattern of racketeering activity shall be subject to forfeiture to the state. The Attorney General shall be specifically authorized to commence any civil forfeiture proceeding under this chapter in matters arising under Code Section 45-15-10.

(b) Any property subject to forfeiture pursuant to subsection (a) of this Code section and any proceeds are declared to be contraband and no person shall have a property right in them and shall be forfeited in accordance with the procedure set forth in Chapter 16 of Title 9.

History.

Code 1933, § 26-3405, enacted by Ga. L. 1980, p. 405, § 1; Ga. L. 1982, p. 1385, §§ 4, 5, 10, 11; Ga. L. 1984, p. 22, § 16; Ga. L. 1992, p. 6, § 16; Ga. L. 2000, p. 1114, § 1; Ga. L. 2002, p. 532, § 4; Ga. L. 2015, p. 693, § 2-25/HB 233.

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For articles discussing attorney fee forfeitures under federal RICO provisions, see 36 Emory L.J. 755 et seq. (1987).

For article, "A Comprehensive Analysis of Georgia RICO," see 9 Georgia St. U.L. Rev. 537 (1993).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 16-14-7 is constitutional on its face, as the search must be pursuant to a warrant, incident to a lawful arrest, or in the

presence of other exigent circumstances which would render the search or inspection "lawful." Waller v. State, 251 Ga. 124, 303 S.E.2d 437, 1983 Ga. LEXIS 721 (1983), rev'd, 467 U.S. 39, 104 S. Ct. 2210, 81 L. Ed. 2d 31, 1984 U.S. LEXIS 86 (1984).

Law enforcement officials are not given unbridled discretion to search for evidence of illegal activity under O.C.G.A. § 16-14-7, and seizure of documents under that section presented no conflicts with warrant requirements or the Fourth Amendment since the documents were instrumentalities of crime; as such, § 16-14-7 is not unconstitutional on the statute's face. Ledesma v. State, 251 Ga. 885, 311 S.E.2d 427, 1984 Ga. LEXIS 549, cert. denied, 467 U.S. 1241, 104 S. Ct. 3510, 82 L. Ed. 2d 819, 1984 U.S. LEXIS 2565 (1984).

In an in personam forfeiture proceeding, pursuant to the Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., specifically former O.C.G.A. § 16-14-7(m), a trial court erred by finding that the civil procedural rules set forth in the Georgia Civil Practice Act, O.C.G.A. § 9-11-1 et seq., were an adequate substitute for the substantive constitutional rights to which the property owners were entitled. As a result, the Supreme Court of Georgia held that former § 16-14-7(m) was unconstitutional because the law deprived in personam forfeiture defendants of the safeguards of criminal procedure guaranteed by the United States and Georgia Constitutions. Cisco v. State, 285 Ga. 656, 680 S.E.2d 831, 2009 Ga. LEXIS 317 (2009).

Temporary injunction. — Trial court did not err in finding that Racketeer Influenced Corrupt Organizations indictment provided reasonable cause to believe that property identified in the indictment was subject to forfeiture and in entering a temporary injunction because the existence of an indictment charging the defendant with a RICO violation is both a fact and a finding by the grand jury that there is probable cause to believe that a crime in violation of RICO has been committed by the defendant. Caldwell v. State, 253 Ga. 400, 321 S.E.2d 704, 1984 Ga. LEXIS 956 (1984).

Trial court erred in not granting defendant's motion to dissolve a temporary injunction and dismiss a receiver where Racketeer Influenced Corrupt Organizations, O.C.G.A. § 16-14-1 et seq., counts in indictments were dismissed, and prosecutor declined to present evidence of RICO violations sufficient to allow trial court to make a finding of reasonable cause to believe the property at issue was subject to forfeiture. Caldwell v. State, 253 Ga. 400, 321 S.E.2d 704, 1984 Ga. LEXIS 956 (1984).

Trial court did not err in issuing interlocutory injunctions and continuing receiverships over store property seized pursuant to O.C.G.A. § 16-14-7 based on alleged video gambling activity in violation of O.C.G.A. § 16-12-22 and racketeering activity under former paragraphs (8) and (9) of O.C.G.A. § 16-14-3. Remand was required, however, for consideration of whether the forfeitures were excessive fines in violation of U.S. Const., amend. VIII. Patel v. State, 289 Ga. 479, 713 S.E.2d 381, 2011 Ga. LEXIS 548 (2011).

Property acquired with racketeering proceeds is subject to forfeiture though inoffensive of itself. Western Bus. Sys. v. Slaton, 492 F. Supp. 513, 1980 U.S. Dist. LEXIS 12298 (N.D. Ga. 1980).

Seizure of gambling equipment and proceeds. — As expressly stated in a subsequently adopted statute, O.C.G.A. § 16-1-12, Georgia public policy prohibited a special assistant district attorney appointed in a forfeiture action under O.C.G.A. § 16-14-7(a), from being compensated on a contingency basis by a percentage of the assets recovered, as creating an impermissible conflict of interest. Amusement Sales, Inc. v. State of Ga., 316 Ga. App. 727, 730 S.E.2d 430, 2012 Ga. App. LEXIS 646 (2012), cert. denied, No. S12C1882, 2012 Ga. LEXIS 890 (Ga. Nov. 5, 2012).

Fuel equipment used in theft not forfeited when no pattern of racketeering shown. — Because fuel equipment used in the defendant's crime of theft of diesel fuel did not constitute contraband per se, and there was no statutory authority supporting retention by the sheriff of the equipment after the

defendant was discharged, the equipment was ordered returned to the defendant pursuant to O.C.G.A. § 17-5-54(a)(1), (d). The racketeering statute did not authorize forfeiture because the state did not allege or prove a pattern of racketeering activity. Norman v. Yeager, 335 Ga. App. 470, 781 S.E.2d 580, 2016 Ga. App. LEXIS 10 (2016).

Seizure of property unrelated to its character or content. — Forfeiture can apply to any chattel whatever, if the chattel was acquired with the proceeds of racketeering; thus, if items seized are books or movie films, the seizure is totally unrelated to their contents; the books or films would be forfeited under the statute not because of any likelihood of obscenity, but because the books or films were personal property realized through or derived from crime. Western Bus. Sys. v. Slaton, 492 F. Supp. 513, 1980 U.S. Dist. LEXIS 12298 (N.D. Ga. 1980).

Seizure prior to filing complaint must be based on probable cause. — Law enforcement officer authorized by O.C.G.A. § 16-14-7 to seize materials prior to filing of complaint, seizes them upon probable cause to believe that they were subject to forfeiture, and not upon the officer's personal judgment that objects are obscene. Western Bus. Sys. v. Slaton, 492 F. Supp. 513, 1980 U.S. Dist. LEXIS 12298 (N.D. Ga. 1980).

Allegation that defendant has an association with organized crime unnecessary. — Because the Georgia Racketeering Influenced and Corrupt Organizations (RICO) Act, O.C.G.A. § 16-14-1 et seq., was enacted after the federal RICO Act and contains substantially the same language as the federal act, the United States District Court, N.D. Georgia, concludes that a Georgia court, if confronted with the issue, would follow federal court decisions interpreting the federal RICO Act and decide that failure to allege an association with organized crime is not fatal to a Georgia RICO claim. Stanton v. Shearson Lehman/American Express, Inc., 622 F. Supp. 293, 1985 U.S. Dist. LEXIS 12995 (N.D. Ga. 1985).

Prerequisite to destruction of contraband under paragraph (k)(1). — Destruction of contraband authorized by former Code 1933, § 26-3405 (see now O.C.G.A. § 16-14-7(k)(1)) must follow a judgment of forfeiture and an additional determination by the court that items in question were contraband, possession of which was illegal. Western Bus. Sys. v. Slaton, 492 F. Supp. 513, 1980 U.S. Dist. LEXIS 12298 (N.D. Ga. 1980).

Seized property subsequently released by state. — State began proceedings to condemn certain property, pursuant to the provisions of the Georgia Racketeer Influenced and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., and specifically O.C.G.A. § 16-14-7, but subsequently filed a release of the state's RICO lien. There was no cognizable claim under the theory that private property was taken or damaged for public purposes without just and adequate compensation being first paid. The state did not apply any of the property to public use during the period it was in the state's possession and, even assuming arguendo that the seizure resulted in a violation of state and/or federal constitutional rights, there was no basis upon which the state itself, as opposed to the state's officers, could be held liable for monetary damages on the basis of it. Kelleher v. State, 187 Ga. App. 64, 369 S.E.2d 341, 1988 Ga. App. LEXIS 570 (1988).

Fifth Amendment claim denied. — Denial of an accused's motion for a protective order under O.C.G.A. § 9-11-26(c) was affirmed as the Fifth Amendment could not be used to justify a protective order to stay all discovery in the accused's civil forfeiture proceeding under O.C.G.A. § 16-14-7 pending the conclusion of the accused's criminal Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., case; while the privilege against self-incrimination extends to answers creating a "real and appreciable" danger of establishing a link in the chain of evidence needed to prosecute, the trial court has to determine if the answers could incriminate the witness, and if the trial court determines that the answers could not incriminate the witness, the witness has to testify or be subject to the court's sanction. Chumley v. State of Ga., 282 Ga. App. 117, 637 S.E.2d 828, 2006 Ga. App. LEXIS 1318 (2006).

Forfeiture. — Trial court did not err by finding that customers lacked standing to participate in the state's decision-making process or negotiations concerning which property would be forfeited because pursuant to RICO, O.C.G.A. § 16-14-1 et seq, specifically O.C.G.A. § 16-14-7, it was the state, and only the state, acting through the appropriate district attorney, that had the right to institute and prosecute forfeiture proceedings, and the property was specifically forfeited to the state, not to the injured or aggrieved person or persons. Smith v. Cisco, 316 Ga. App. 871, 730 S.E.2d 583, 2012 Ga. App. LEXIS 671 (2012), cert. denied, No. S12C1922, 2012 Ga. LEXIS 976 (Ga. Nov. 19, 2012).

RESEARCH REFERENCES

ALR.

Necessity of conviction of offense associated with property seized in order to support forfeiture of property to state or local authorities, 38 A.L.R.4th 515.

Forfeiture of homestead based on criminal activity conducted on premises—state cases, 16 A.L.R.5th 855.

Propriety of civil or criminal forfeiture of computer hardware or software, 39 A.L.R.5th 87.

Validity of criminal state Racketeer Influenced and Corrupt Organizations Acts and similar acts related to gang activity and the like, 58 A.L.R.6th 385.

16-14-8. Period of limitations as to criminal proceedings or civil actions under this chapter.

Notwithstanding any other provision of law setting forth a statute of limitations, a criminal proceeding or civil action brought pursuant to Code Section 16-14-6 shall be commenced up until five years after the conduct in violation of a provision of this chapter terminates. If a criminal proceeding or civil forfeiture proceeding is brought by the state pursuant to this chapter, then the running of this period of limitations, with respect to any cause of action arising under subsection (b) or (c) of Code Section 16-14-6 which is based upon any matter complained of in such criminal proceeding or civil forfeiture proceeding by the state, shall be suspended during the pendency of the criminal proceeding or civil forfeiture proceeding by the state and for two years thereafter.

History.

Code 1933, § 26-3407, enacted by Ga. L. 1980, p. 405, § 1; Ga. L. 2015, p. 693, § 2-25/HB 233.

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article, "A Comprehensive Analysis of Georgia RICO," see 9 Georgia St. U.L. Rev. 537 (1993).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

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Limitations start for state racketeering suit. — In a state civil RICO suit, the statute of limitations begins to run from the time that the cause

of action accrues, and not from the time that the racketeering activity terminates. Blalock v. Anneewakee, Inc., 206 Ga. App. 676, 426 S.E.2d 165, 1992 Ga. App. LEXIS 1742 (1992), cert. denied, No. S92C0520, 1993 Ga. LEXIS 163 (Ga. Feb. 5, 1993).

Civil RICO cause of action accrues when the plaintiff discovers, or reasonably should have discovered, that plaintiff has been injured and that plaintiff's injury is part of a pattern. Cobb County v. Jones Group, 218 Ga. App. 149, 460 S.E.2d 516, 1995 Ga. App. LEXIS 665 (1995).

Tolling of statute. — Pursuant to O.C.G.A. § 17-3-2(2), the statute of limitation for criminal prosecution of RICO violations was tolled up to the time the victim and the state first learned of the predicate offenses. Adams v. State, 231 Ga. App. 279, 499 S.E.2d 105, 1998 Ga. App. LEXIS 427 (1998).

Trial court erred by applying O.C.G.A. § 17-3-2.2 to the RICO and theft charges against defendants because it was necessary for the state to show that the victim was over 65 years of age, was the principal stockholder of the corporation, was the owner of the property allegedly stolen, not the corporation, to determine the date the crime became known to the victim. Harper v. State, 292 Ga. 557, 738 S.E.2d 584, 2013 Ga. LEXIS 145 (2013).

Unpublished decision: Court did not err in dismissing the tax advisor's claims as time-barred because the advisor filed the complaint long after the limitations periods governing the fraud, breach of fiduciary duty, and Georgia RICO claims expired, and the advisor had not plausibly alleged that the advisor exercised reasonable diligence in discovering the causes of action and thus could not have invoked tolling because the advisor received direct information that conflicted with the bank entities' representation that the tax shelter transactions at issue had economic substance, the advisor did not explain how the advisor exercised reasonable diligence in light of that notice, and the advisor did not explain why the advisor could not have sued earlier. Klopfenstein v. Deutsche Bank Sec., Inc., 592 Fed. Appx. 812, 2014 U.S. App. LEXIS 22077 (11th Cir. 2014).

Claim time-barred. — Claim by a partnership against the partnership's former managing partner was time-barred under O.C.G.A. § 16-14-8 since the partnership should have known about the alleged racketeering by 1993 at the latest, when several partners began to question the former partner about partnership checks that the former partner had written to the former partner; the "separate accrual rule" did not apply because there was no new and independent injury. Cochran Mill Assocs. v. Stephens, 286 Ga. App. 241, 648 S.E.2d 764, 2007 Ga. App. LEXIS 764 (2007).

Trial court did not err by dismissing an indictment charging the defendants with racketeering violations and conspiracy as the state failed to prove that an overt act in furtherance of the conspiracy occurred less than five years from the date of the indictment. State v. Conzo, 293 Ga. App. 72, 666 S.E.2d 404, 2008 Ga. App. LEXIS 812 (2008).

Trial court erred in denying the defendants' motion to dismiss the plaintiff's civil RICO claims based on the statute of limitation as the statute contained no language imperatively requiring retroactive application of the revised limitation period, and nothing in the act as a whole demanded a conclusion that the legislature intended such. Glock, Inc. v. Harper, 340 Ga. App. 65, 796 S.E.2d 304, 2017 Ga. App. LEXIS 9 (2017).

In the six plaintiffs' lawsuit alleging sexual abuse by two scoutmasters, whose troop meetings were hosted on the churches' property from the 1950s to the 1980s, the plaintiffs' Racketeer Influenced and Corrupt Organizations, O.C.G.A. § 16-14-1 et seq., claims were time-barred by the five-year statute of limitation in the pre-July 1, 2015, version of O.C.G.A. § 16-14-8 as the plaintiffs knew they were injured by a pattern of misconduct when the sexual abuse began and continued for months and years while the churches did not intervene; and the statute of limitations ceased tolling when they reached the age of majority. McArthur v. Beech Haven Baptist Church of Athens, 361 Ga. App. 877, 864 S.E.2d 189, 2021 Ga. App. LEXIS 517 (2021).

Claim not time barred. — Defendant's action was not time-barred as checks were written to the defendant from

a co-conspirator less than five years before the action was filed. Whaley v. State, 343 Ga. App. 701, 808 S.E.2d 88, 2017 Ga. App. LEXIS 555 (2017).

Criminal prosecution time barred. — Defendant's convictions for theft by conversion and a RICO violation were reversed because the state failed to carry the state's burden to prove that the defendant was indicted on the counts within the applicable statutes of limitation as the evidence showed that the victims, and therefore the state, had actual knowledge of the offenses more than five years prior to the June 12, 2009 indictment, and the state produced no evidence or argument to the contrary. Jannuzzo v. State, 322 Ga. App. 760, 746 S.E.2d 238, 2013 Ga. App. LEXIS 606 (2013).

RESEARCH REFERENCES

ALR.

Commencement of limitation period for criminal prosecution under Racketeer Influenced and Corrupt Organizations Act (RICO), (18 USCS §§ 1961-1968), 89 A.L.R. Fed. 887.

16-14-9. Civil remedies as supplemental and not mutually exclusive.

The application of one civil remedy under this chapter shall not preclude the application of any other remedy, civil or criminal, under this chapter or any other provision of law. Civil remedies under this chapter are supplemental and not mutually exclusive.

History.

Code 1933, § 26-3408, enacted by Ga. L. 1980, p. 405, § 1; Ga. L. 2015, p. 693, § 2-25/HB 233.

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

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Fraud and RICO actions. — Since the requisite predicate acts in the insureds' Racketeer Influenced and Corrupt Organizations (RICO) Act, O.C.G.A. § 16-14-1 et seq., claim could stand alone as a separate cause of action for fraud, the jury found the insurer guilty of both fraud and RICO violations, and because the insurer did not challenge the form of the verdict on appeal, its claim that the insureds' fraud claim was barred by the election of remedies doctrine was rejected. St. Paul Fire & Marine Ins. Co. v. Clark, 255 Ga. App. 14, 566 S.E.2d 2, 2002 Ga. App. LEXIS 475 (2002), cert. denied, No. S02C1266, 2002 Ga. LEXIS 779 (Ga. Sept. 6, 2002), cert. denied, No. S02C1180, 2002 Ga. LEXIS 780 (Ga. Sept. 6, 2002).

When each of the victims of a fraudulent scheme sued the perpetrator for fraud and related claims, the victims could have also sued the perpetrator under the Georgia Racketeer Influenced and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., in the same action, and the victims should have raised such a claim in those actions because, when the victims did not, and lost the victims' suits against the perpetrator, the victims were barred by collateral estoppel and res judicata from filing RICO claims against the perpetrator at a later time. Austin v. Cohen, 268 Ga. App. 650, 602 S.E.2d 146, 2004 Ga. App. LEXIS 877 (2004), cert. denied, No. S04C2018, 2004 Ga. LEXIS 981 (Ga. Oct. 25, 2004).

16-14-10. Recognition and enforcement of judgments of other states; reciprocal agreements with other states.

(a) A valid judgment rendered by a court of a jurisdiction having a law substantially similar to this chapter shall be recognized and enforced by the courts of this state to the extent that a judgment rendered by a court of this state pursuant to this chapter would be enforced in such other jurisdiction.

(b) The Attorney General shall be authorized to enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any jurisdiction having a law substantially similar to this chapter so as to further the purposes of this chapter.

History.
Code 1933, § 26-3409, enacted by Ga. L. 1982, p. 1385, § 6; Code 1981, § 16-14-10, enacted by Ga. L. 1982, p. 1385, § 12; Ga. L. 2015, p. 693, § 2-25/HB 233.

Editor's notes.
Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.
For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

JUDICIAL DECISIONS

Legislative intent. — General Assembly's intent is to foster cooperation between law enforcement agencies as necessary to the prosecution of organized crime. Waller v. State, 251 Ga. 124, 303 S.E.2d 437, 1983 Ga. LEXIS 721 (1983), rev'd, 467 U.S. 39, 104 S. Ct. 2210, 81 L. Ed. 2d 31, 1984 U.S. LEXIS 86 (1984).

16-14-11. Venue.

In any criminal proceeding, the crime shall be considered to have been committed in any county in which an incident of racketeering occurred or in which an interest or control of an enterprise or real or personal property is acquired or maintained.

History.
Code 1933, § 26-3410, enacted by Ga. L. 1982, p. 1385, § 6; Code 1981, § 16-14-11, enacted by Ga. L. 1982, p. 1385, § 12; Ga. L. 2015, p. 693, § 2-25/HB 233.

Editor's notes.
Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.
For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

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Venue adequately shown. — Defendants' RICO convictions under O.C.G.A. § 16-14-4 were upheld on appeal as sufficient evidence was presented that at least one predicate act of the conspiracy took place in Newton County, Georgia; moreover, any error in instructing the jury that the jury could find venue in any county where interest or control of an enterprise or property was acquired or maintained lacked merit. Graham v. State, 282 Ga. App. 576, 639 S.E.2d 384, 2006 Ga. App. LEXIS 1479 (2006).

Venue for charges under the Georgia Racketeer and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., was proper against one of the three defendants in Cobb County pursuant to O.C.G.A. § 16-14-11, even though the defendant was acquitted of a conspiracy charge and the defendant personally committed no acts in Cobb County. Lowery v. State, 347 Ga. App. 26, 815 S.E.2d 625, 2018 Ga. App. LEXIS 435 (2018).

16-14-12. Cases of special public importance.

The state may, in any civil action or civil forfeiture proceeding brought pursuant to this chapter, file with the clerk of the court a certificate stating that the case is of special public importance. A copy of such certificate shall be furnished immediately by such clerk to the chief judge or, in his or her absence, the presiding chief judge of the court in which such civil action or civil forfeiture proceeding is pending; and, upon receipt of such certificate, the judge shall immediately designate a judge to hear and determine such civil action or civil forfeiture proceeding. The judge so designated shall promptly assign such civil action or civil forfeiture proceeding for hearing, participate in the hearings and determination, and cause such civil action or civil forfeiture proceeding to be expedited.

History.

Code 1933, § 26-3411, enacted by Ga. L. 1982, p. 1385, § 6; Code 1981, § 16-14-12, enacted by Ga. L. 1982, p. 1385, § 12; Ga. L. 2015, p. 693, § 2-25/HB 233.

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

CHAPTER 15

STREET GANG TERRORISM AND PREVENTION

Sec.
16-15-1. Short title.
16-15-2. Legislative findings and intent.
16-15-3. Definitions.
16-15-4. Participation in criminal gang activity prohibited; prosecution.
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Cross references.
Domestic terrorism, § 16-11-220 et seq.

Law reviews.
For note on 1992 enactment of this chapter, see 9 Georgia St. U.L. Rev. 219 (1992).

For article, "The School to Deportation Pipeline," see 34 Georgia St. U.L. Rev. 697 (2018).

16-15-1. Short title.

This chapter shall be known and may be cited as the "Georgia Street Gang Terrorism and Prevention Act."

History.
Code 1981, § 16-15-1, enacted by Ga. L. 1992, p. 3236, § 1; Ga. L. 1998, p. 270, § 8.

Cross references.
Reporting of gang activity by hospital peace officers, § 31-54-3.

JUDICIAL DECISIONS

No constitutional right to be in a gang. — Appellant, a juvenile, was not entitled to the dismissal of two counts of street gang criminal activity based on the juvenile's contention that the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., was overbroad because the statute criminalized the constitutionally protected freedom of association; criminal gang activity was not a protected activity even when committed by a group exercising the group's constitutional right to free association. In re K.R.S., 284 Ga. 853, 672 S.E.2d 622, 2009 Ga. LEXIS 26 (2009).

Constitutionality. — Trial court properly denied the appellants' motion to dismiss various counts charging the appellants with gang-related crimes under the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., since properly construed O.C.G.A. § 16-15-4(a) did not directly or indirectly infringe upon the First Amendment right to freedom of association as, to support a

conviction, gang conduct or participation was required. Further, reading § 16-15-4(a) according to the natural and obvious import of the statute's language and in conjunction with the specific definitions in O.C.G.A. § 16-15-3, the statute provided a sufficiently definite warning to persons of ordinary intelligence of the prohibited conduct and was not susceptible to arbitrary and discriminatory enforcement and did not reach a substantial amount of constitutionally protected conduct, thus, the statute was not unconstitutionally vague or overbroad. Rodriguez v. State, 284 Ga. 803, 671 S.E.2d 497, 2009 Ga. LEXIS 14 (2009).

Construction with O.C.G.A. § 42-9-39. — There is no legal authority to support the proposition that the Georgia Street Gang and Terrorism Prevention Act, O.C.G.A. § 16-15-1 et seq., and O.C.G.A. § 42-9-39, two very differently worded statutory provisions, are equivalent; thus, defendant's argument that, as a matter of law, if the armed robbery of September 17, 1999, and the murder of December 28, 1999, are considered as part of the "pattern of criminal street gang activity" for purposes of violating the Street Gang Act, the actions must necessarily also be considered "offenses occurring in the same series of acts" within the meaning of O.C.G.A. § 42-9-39(c) failed. Seabolt v. State, 279 Ga. 518, 616 S.E.2d 448, 2005 Ga. LEXIS 450 (2005).

Co-conspirator statements properly admitted. — Defendants' murder convictions were upheld on appeal because the trial court did not err by admitting or refusing to strike a fellow gang member's testimony since the statements were admissible as co-conspirator statements under O.C.G.A. § 24-8-801(d)(2)(E) as the statements were found to have been made in the course of and in furtherance of a conspiracy of being a part of a criminal street gang. Kemp v. State, 303 Ga. 385, 810 S.E.2d 515, 2018 Ga. LEXIS 107 (2018).

Evidence sufficient for conviction. — Evidence was sufficient to convict the defendant of aggravated assault and a violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., because various gang members including the defendant's brother and their associate were on the dance floor flashing gang hand signs and dancing roughly, purposefully bumping into other club patrons, and an altercation ensued; the defendant's brother struck the victim in the back of the victim's head with a beer bottle; the defendant's associate and several others struck the victim and punched the victim in the head; when the victim walked toward the exit door, the defendant hit the victim across the face with a bottle; and the victim was taken by ambulance to a hospital. Dowdell v. State, 325 Ga. App. 593, 754 S.E.2d 383, 2014 Ga. App. LEXIS 28 (2014).

Evidence demonstrated that "MPRC 300" was a "criminal street gang," as defined in O.C.G.A. § 16-15-3(2) (now paragraph (3)), based on the defendant's and other members' conspiracy to commit armed robbery, expert testimony that "MPRC" stood for "Money Power Respect Click" and the "300" related to the Smyrna ZIP codes where the group operated, and evidence of the group's "jumpoff" or "freak" meeting before the group embarked on the robbery. Hayes v. State, 298 Ga. 339, 781 S.E.2d 777, 2016 Ga. LEXIS 76 (2016).

Evidence showing the defendant and the co-defendants were associated with a criminal street gang and that the planned robbery was intended to further the gang's interests authorized the trier of fact to find beyond a reasonable doubt that the defendant was guilty of violating the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq. Blackledge v. State, 299 Ga. 385, 788 S.E.2d 353, 2016 Ga. LEXIS 462 (2016).

Sufficient evidence, including expert testimony, supported the appellants' convictions because the evidence established that the appellants were associated with a criminal street gang and that the armed robbery and aggravated assault the appellants engaged in constituted criminal street gang activity and were intended to further the interests of the gang. Lupoe v. State, 300 Ga. 233, 794 S.E.2d 67, 2016 Ga. LEXIS 769 (2016).

Evidence presented against the defendant, including testimony that the defendant had a gun and was shooting at another person, was sufficient to authorize a rational jury to find beyond a reasonable doubt that the defendant was guilty of the offenses that served as a predicate for the convictions for violation of the Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq. Allen v. State, 361 Ga. App. 300, 864 S.E.2d 149, 2021 Ga. App. LEXIS 478 (2021).

Evidence insufficient for conviction. — Conviction for violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., was reversed because there was no evidence beyond the bandanas and a notebook to link the juveniles to membership in a criminal street gang. To sustain a conviction, the state had to prove that the criminal gang activity or plans for its continuation was ongoing at the time of the commission of the indicted offenses; in other words, the commission of an enumerated offense by the juveniles was not itself sufficient to prove the existence of a criminal street gang. In the Interest of A. G., 317 Ga. App. 165, 730 S.E.2d 187, 2012 Ga. App. LEXIS 639 (2012).

Evidence was not sufficient to support the defendant's conviction for violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., because the state failed to adduce any evidence that the defendant was associated with a gang or that the aggravated assault was intended in any way to further the interests of a gang. No witnesses testified that the defendant was in a gang or that those accompanying the defendant were members of a gang, and no evidence was presented that the defendant or any of the defendant's accomplices displayed gang symbols or colors on the day of the incident or at any other time. Jones v. State, 292 Ga. 656, 740 S.E.2d 590, 2013 Ga. LEXIS 296 (2013).

Charge did not omit nexus between violence and gang activity. — With regard to the defendant's convictions for aggravated assault and gang-related crimes, the trial court did not commit plain error with regard to the court's jury instructions because the trial court correctly stated the law by using the statutory language in the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-4(a), in the court's charge to the jury, so the charge did not omit a nexus between the violence, and it was not possible for the jury to convict the defendant without finding that nexus. Skinner v. State, 318 Ga. App. 217, 733 S.E.2d 506, 2012 Ga. App. LEXIS 882 (2012).

Merger of counts erroneous. — Trial court erred by merging the guilty verdicts for armed robbery, burglary, and two counts of gang activity as armed robbery and burglary did not merge into malice murder. Lupoe v. State, 300 Ga. 233, 794 S.E.2d 67, 2016 Ga. LEXIS 769 (2016).

Tort action for damages from injuries received from gang activity. — Trial court did not err denying the property owners' motion to dismiss a tenant's claims seeking damages for injuries the tenant received in a shooting at the tenant's apartment complex because the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., provided a cause of action for treble damages to persons injured by reason of criminal gang activity and the tenant made sufficient allegations in the complaint that the tenant received a violent injury from the type of conduct the Act contemplated. Star Residential, LLC v. Hernandez, 354 Ga. App. 629, 841 S.E.2d 392, 2020 Ga. App. LEXIS 208 (2020), rev'd, 311 Ga. 784, 860 S.E.2d 726, 2021 Ga. LEXIS 482 (2021), vacated in part, 363 Ga. App. 461, 871 S.E.2d 462, 2022 Ga. App. LEXIS 173 (2022).

16-15-2. Legislative findings and intent.

(a) The General Assembly finds and declares that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individu-

als. It is not the intent of this chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The General Assembly recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to associate lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(b) The General Assembly, however, further finds that the State of Georgia is in a state of crisis which has been caused by violent criminal street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.

(c) The General Assembly finds that there are criminal street gangs operating in Georgia and that the number of gang related murders is increasing. It is the intent of the General Assembly in enacting this chapter to seek the eradication of criminal activity by criminal street gangs by focusing upon criminal gang activity and upon the organized nature of criminal street gangs which together are the chief source of terror created by criminal street gangs.

(d) The General Assembly further finds that an effective means of punishing and deterring the criminal activities of criminal street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by criminal street gangs.

History.

Code 1981, § 16-15-2, enacted by Ga. L. 1992, p. 3236, § 1; Ga. L. 1995, p. 933, § 13; Ga. L. 1996, p. 6, § 16; Ga. L. 1998, p. 270, § 8; Ga. L. 2010, p. 230, § 1/HB 1015.

JUDICIAL DECISIONS

Tort action for damages from injuries received from gang activity. — Trial court did not err denying the property owners' motion to dismiss a tenant's claims seeking damages for injuries the tenant received in a shooting at the tenant's apartment complex because the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., provided a cause of action for treble damages to persons injured by reason of criminal gang activity and the tenant made sufficient allegations in the complaint that the tenant received a violent injury from the type of conduct the Act contemplated. Star Residential, LLC v. Hernandez, 354 Ga. App. 629, 841 S.E.2d 392, 2020 Ga. App. LEXIS 208 (2020), rev'd, 311 Ga. 784, 860 S.E.2d 726, 2021 Ga. LEXIS 482 (2021), vacated in part, 363 Ga. App. 461, 871 S.E.2d 462, 2022 Ga. App. LEXIS 173 (2022).

16-15-3. Definitions.

As used in this chapter, the term:

(1) "Criminal gang activity" means the commission, attempted commission, conspiracy to commit, or the solicitation, coercion, or intimidation of another person to commit any of the following offenses on or after July 1, 2006:

(A) Any offense defined as racketeering activity by Code Section 16-14-3, or any offense defined in Code Section 16-15-4.1;

(B) Any offense defined in Article 7 of Chapter 5 of this title, relating to stalking;

(C) Any offense defined in Code Section 16-6-1 as rape, 16-6-2 as aggravated sodomy, 16-6-3 as statutory rape, or 16-6-22.2 as aggravated sexual battery;

(D) Any offense defined in Article 3 of Chapter 10 of this title, relating to escape and other offenses related to confinement;

(E) Any offense defined in Article 4 of Chapter 11 of this title, relating to dangerous instrumentalities and practices;

(F) Any offense defined in Code Section 42-5-15, 42-5-16, 42-5-17, 42-5-18, or 42-5-19, relating to the security of state or county correctional facilities;

(G) Any offense defined in Code Section 49-4A-11, relating to aiding or encouraging a child to escape from custody;

(H) Any offense of criminal trespass or criminal damage to property resulting from any act of gang related painting on, tagging, marking on, writing on, or creating any form of graffiti on the property of another;

(I) Any criminal offense committed in violation of the laws of the United States or its territories, dominions, or possessions, any of the several states, or any foreign nation which, if committed in this state, would be considered criminal gang activity under this Code section; and

(J) Any criminal offense in the State of Georgia, any other state, or the United States that involves violence, possession of a weapon, or use of a weapon, whether designated as a felony or not, and regardless of the maximum sentence that could be imposed or actually was imposed.

(2) "Criminal gang activity" on and after April 18, 2019, shall also mean the commission, attempted commission, conspiracy to commit, or the solicitation, coercion, or intimidation of another person to commit on and after April 18, 2019, any offense defined in Code Section 16-5-46 as trafficking persons for labor servitude or sexual servitude, 16-6-10 as keeping a place of prostitution, 16-6-11 as pimping, or 16-6-12 as pandering.

(3) "Criminal street gang" means any organization, association, or group of three or more persons associated in fact, whether formal or informal, which engages in criminal gang activity as defined in paragraph (1) of this Code section. The existence of such organization, association, or group of individuals associated in fact may be established by evidence of a common name or common identifying signs, symbols, tattoos, graffiti, or attire or other distinguishing characteristics, including, but not limited to, common activities, customs, or behaviors. Such term shall not include three or more persons, associated in fact, whether formal or informal, who are not engaged in criminal gang activity.

History.

Code 1981, § 16-15-3, enacted by Ga. L. 1992, p. 3236, § 1; Ga. L. 1998, p. 270, § 8; Ga. L. 1999, p. 81, § 16; Ga. L. 2006, p. 519, § 1/HB 1302; Ga. L. 2010, p. 230, § 2/HB 1015; Ga. L. 2019, p. 81, § 4/HB 424; Ga. L. 2024, p. 528, § 1-3/SB 421, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, added ", or any offense defined in Code Section 16-15-4.1" at the end of subparagraph (1)(A).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2019, "April 18, 2019" was substituted for "the effective date of this paragraph" in two places in paragraph (2).

Editor's notes.

Ga. L. 2006, p. 519, § 7/HB 1302, not codified by the General Assembly, provided that the 2006 amendment shall be effective July 1, 2006, and shall be applicable to all crimes committed on or after such date, and also provided that: "Any offense committed before July 1, 2006, shall be punishable as provided by the statute in effect at the time the offense was committed."

Ga. L. 2019, p. 81, § 8/HB 424, not codified by the General Assembly, provides, in part: "Sections 4 and 5 of this Act shall apply to any motion made or hearing or trial commenced on or after the effective date of this Act."

JUDICIAL DECISIONS

Provision not unconstitutionally vague. — O.C.G.A. § 16-15-3(1)(I) is not unconstitutionally vague as a plain reading of the subsection indicates that a defendant charged with violating the provision has to do more than commit a criminal offense; the defendant's conduct must also come within one of the defined categories of criminal gang activity enumerated in § 16-15-3(1)(A)-(H), (J), and the description of those crimes together with their correlating statutory provisions in the criminal code provide sufficient notice to the ordinary citizen and clear guidance to law enforcement authorities as to what conduct is forbidden. In re K.R.S., 284 Ga. 853, 672 S.E.2d 622, 2009 Ga. LEXIS 26 (2009).

Constitutionality. — Trial court properly denied the appellants' motion to dismiss various counts charging the appellants with gang-related crimes under the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., since properly construed O.C.G.A. § 16-15-4(a) did not directly or indirectly infringe upon the First Amendment right to freedom of association as, to support a conviction, gang conduct or participation was required. Further, reading § 16-15-4(a) according to the natural and obvious import of the statute's language and in conjunction with the specific definitions in O.C.G.A. § 16-15-3, the statute provided a sufficiently definite warning to persons of ordinary intelligence of the prohibited conduct and was not susceptible to arbitrary and discriminatory enforcement and did not reach a substantial amount of

constitutionally protected conduct, thus, the statute was not unconstitutionally vague or overbroad. Rodriguez v. State, 284 Ga. 803, 671 S.E.2d 497, 2009 Ga. LEXIS 14 (2009).

Affray in violation of O.C.G.A. § 16-11-32 meets the definition of criminal gang activity in O.C.G.A. § 16-15-3(1)(J). — Offense of affray meets the definition of criminal gang activity under O.C.G.A. § 16-15-3(1)(J) because the fact that the combatants consent to fight does not negate that fighting is an act of violence. In re X. W., 301 Ga. App. 625, 688 S.E.2d 646, 2009 Ga. App. LEXIS 1315 (2009), cert. denied, No. S10C0492, 2010 Ga. LEXIS 335 (Ga. Apr. 19, 2010).

No nexus between other act and an intent to further gang activity required. — Plain language of O.C.G.A. § 24-4-418 was held not to require proof of a nexus between the other act and an intent to further gang activity as § 24-4-418 references the definition of "criminal gang activity" in the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-3, which does not contain such a nexus requirement. McKinney v. State, 318 Ga. 566, 899 S.E.2d 121, 2024 Ga. LEXIS 66 (2024).

Indictment insufficient when state unable to identify dates. — Trial court did not err in granting the defendants' special demurrer to an indictment charging the defendants with participating in criminal street gang activity in violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., because absent some showing by the state that the state's evidence did not permit the state to identify the exact dates the gang came into existence, the indictment was imperfect and subject to special demurrer; although in most cases of this type it may not be possible for the state to show an exact date a criminal street gang came into existence, it is nevertheless incumbent upon the state to make some showing as to why the state can not determine that date, and ultimately, while the state may in fact be unable to pinpoint the particular dates of the alleged crimes, an appellate court cannot speculate about such a matter, but instead, the appellate court, like the trial court, is bound by the record before the court. State v. Hood, 307 Ga. App. 439, 706 S.E.2d 566, 2010 Ga. App. LEXIS 1145 (2010).

Proof of a pattern of criminal gang activity was not established by the testimony of a police officer whose information was not based on first hand knowledge and by the testimony of another witness concerning crimes that were not shown to have been committed during the relevant time period. Green v. State, 266 Ga. 237, 466 S.E.2d 577, 1996 Ga. LEXIS 70 (1996).

Charge did not omit nexus between violence and gang activity. — With regard to the defendant's convictions for aggravated assault and gang-related crimes, the trial court did not commit plain error with regard to the court's jury instructions because the trial court correctly stated the law by using the statutory language in the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., specifically O.C.G.A. § 16-15-4(a), in the court's charge to the jury, so the charge did not omit a nexus between the violence, and it was not possible for the jury to convict the defendant without finding that nexus. Skinner v. State, 318 Ga. App. 217, 733 S.E.2d 506, 2012 Ga. App. LEXIS 882 (2012).

Admissibility of evidence of gang authority. — Trial court did not abuse the court's discretion by admitting evidence of the defendant's alleged membership in a gang because the evidence of gang membership was relevant to and probative of motive based on two witnesses testifying as to the defendant's gang affiliation. Anglin v. State, 302 Ga. 333, 806 S.E.2d 573, 2017 Ga. LEXIS 890 (2017).

Admission of prior criminal streeet gang activity proper. — There was no error in the admission of the defendant's prior acts because each prior act was committed while the defendant was a gang member and either an expert or police officer explained that the prior offenses reflected gang behaviors. Lopez v. State, 350 Ga. App. 662, 829 S.E.2d 862, 2019 Ga. App. LEXIS 352 (2019), cert.

denied, No. S19C1467, 2020 Ga. LEXIS 123 (Ga. Feb. 10, 2020), cert. denied, No. S19C1482, 2020 Ga. LEXIS 121 (Ga. Feb. 10, 2020).

Evidence of gang association. — State presented evidence that the defendant juvenile was associated with a criminal street gang, including evidence of hand symbols, references to gang affiliations, and colors worn. In the Interest of K. S., 348 Ga. App. 440, 823 S.E.2d 536, 2019 Ga. App. LEXIS 23 (2019).

Trial court did not abuse the court's discretion when the court admitted extrinsic evidence of gang activity because the lawyer's statements during opening that the defendant was a member of a gang and that the defendant was in a bind with that gang were not evidence, and the state still had to prove that the defendant was a member of a criminal street gang as well as a connection between that gang and the crimes at issue. Jordan v. State, 307 Ga. 450, 836 S.E.2d 86, 2019 Ga. LEXIS 801 (2019).

Evidence that the defendant displayed signs, symbols, and tattoos of a gang and the state's expert testimony that the gang "absolutely" had more than three members was sufficient to support the defendant's conviction for violation of the Street Gang Act, O.C.G.A. § 16-15-1 et seq., by proving the existence of the gang. Chavez v. State, 307 Ga. 804, 837 S.E.2d 766, 2020 Ga. LEXIS 10 (2020).

Trial court did not err denying defendant's motion for directed verdict as evidence presented at trial showed that, at all relevant times, defendant was in leadership position of subset of criminal street gang and that co-defendants were also members, but they were in different subsets of gang. Monroe v. State, 315 Ga. 767, 884 S.E.2d 906, 2023 Ga. LEXIS 50 (2023).

Co-appellants' convictions for violating the Street Gang Act, O.C.G.A. § 16-15-1 et seq., were upheld because they were shown to be members of a criminal street gang and participated in a murder together based on testimony of a witness from their neighborhood and a police sergeant. Muse v. State, 316 Ga. 639, 889 S.E.2d 885, 2023 Ga. LEXIS 128 (2023).

Out-of-court statements of a codefendant's associate were properly admitted under the hearsay exception for statements in furtherance of a conspiracy because the evidence was sufficient to establish that the codefendant and the associate conspired to commit the murders and to participate in a criminal street gang. Henderson v. State, 317 Ga. 66, 891 S.E.2d 884, 2023 Ga. LEXIS 179 (2023).

Gang activity evidence sufficient. — Evidence was sufficient to convict defendant on a charge of gang activity as it showed the commission of two or more enumerated offenses, including robbery and terroristic threats, that the offenses occurred after a specified statutory date, and that the offenses were committed by two or more persons after defendant and two other assailants abducted the victim, robbed the victim, and threatened to commit a violent act on the victim. Fulcher v. State, 259 Ga. App. 648, 578 S.E.2d 264, 2003 Ga. App. LEXIS 223 (2003).

Defendant juvenile was properly found to have committed the crime of participation in criminal street gang activity under O.C.G.A. § 16-15-4(a) because the evidence supported a finding that the defendant was part of a criminal street gang under O.C.G.A. § 16-15-3(2) (now paragraph (3)) based on the colors the defendant wore and the statement as to the removal of a gang tattoo and because the defendant committed the enumerated offenses of carrying a concealed weapon and theft by shoplifting as referenced by O.C.G.A. §§ 16-14-3 and 16-15-3 and apparently stole a flare gun with the intent to further gang activity. In the Interest of C.P., 296 Ga. App. 572, 675 S.E.2d 287, 2009 Ga. App. LEXIS 269 (2009).

Delinquency petition properly charged that a juvenile participated in criminal street gang activity pursuant to O.C.G.A. § 16-15-4(e) because the petition stated that the juvenile did engage in, directly or indirectly, criminal gang activity, a crime of violence in the State of Georgia, as defined in O.C.G.A. § 16-15-3(1)(J), and the juvenile was also adjudicated delinquent for organizing and promoting an affray in violation of O.C.G.A. § 16-11-32, which fell within the criminal conduct contemplated by O.C.G.A.

§ 16-15-3(1)(J); the juvenile instructed a student on becoming a gang member, organized a fight for the student, and gave the student a booklet containing gang history and jargon, and there was also evidence that the student paid the juvenile a "gang tax" and that the juvenile referenced being a lieutenant in the gang. In re X. W., 301 Ga. App. 625, 688 S.E.2d 646, 2009 Ga. App. LEXIS 1315 (2009), cert. denied, No. S10C0492, 2010 Ga. LEXIS 335 (Ga. Apr. 19, 2010).

Evidence was sufficient to support the juvenile court's finding that a juvenile committed an act which, had the juvenile been an adult, would have resulted in a conviction of participation in criminal street gang activity because the juvenile and gang investigator for a police department testified about the juvenile's familiarity with the gang and stated that there were more than three members of the gang, and a student testified that the juvenile facilitated an affray to further a gang activity, specifically the student's membership in the gang. In re X. W., 301 Ga. App. 625, 688 S.E.2d 646, 2009 Ga. App. LEXIS 1315 (2009), cert. denied, No. S10C0492, 2010 Ga. LEXIS 335 (Ga. Apr. 19, 2010).

Evidence was sufficient to support the defendant's conviction of participation in criminal street gang activity. The evidence showed that the defendant was a member of an established street gang; additionally, the evidence that the defendant committed simple battery and less than a week later committed aggravated assault and aggravated battery against rival gang members showed a pattern of criminal gang activity. Lopez v. State, 297 Ga. App. 618, 677 S.E.2d 776, 2009 Ga. App. LEXIS 492 (2009), overruled in part, State v. Gardner, 286 Ga. 633, 690 S.E.2d 164, 2010 Ga. LEXIS 121 (2010).

On a charge of criminal street gang activity, the state was properly allowed to admit videotapes seized from the defendants' home that were made two years earlier as the videotapes depicted gang-related images and activities; the videotapes were relevant to show the existence of the gang and the defendants' affiliation with the gang. Sifuentes v. State, 293 Ga. 441, 746 S.E.2d 127, 2013 Ga. LEXIS 612 (2013).

Evidence supported the second defendant's conviction for gang activity as the evidence allowed a jury to find a nexus between the defendants' actions in seeking out and beating up the victim and their intent to further gang activity by ensuring that the gang responded strongly to the victim's disrespect of the gang. Zamudio v. State, 332 Ga. App. 37, 771 S.E.2d 733, 2015 Ga. App. LEXIS 261 (2015), overruled in part, Priester v. State, 309 Ga. 330, 845 S.E.2d 683, 2020 Ga. LEXIS 465 (2020), overruled in part as stated in Marshall v. State, 309 Ga. 698, 848 S.E.2d 389, 2020 Ga. LEXIS 608 (2020).

Sufficient evidence, including expert testimony, supported the appellants' convictions because the evidence established that the appellants were associated with a criminal street gang and that the armed robbery and aggravated assault the appellants engaged in constituted criminal street gang activity and were intended to further the interests of the gang. Lupoe v. State, 300 Ga. 233, 794 S.E.2d 67, 2016 Ga. LEXIS 769 (2016).

Trial court did not err in admitting evidence that several months prior to the incident in the current case, the defendant was in possession of one or two guns because the evidence of the incident was relevant to show that while a member of a gang the defendant committed a criminal offense involving possession of a weapon as the defendant was a convicted felon at the time of the prior incident. Lang v. State, 344 Ga. App. 623, 812 S.E.2d 16, 2018 Ga. App. LEXIS 99 (2018).

Evidence that GMC gang members drove though the neighborhood shouting "GMC" and got out of their cars trying to fight the residents was evidence that the gang engaged in criminal street gang activity under O.C.G.A. § 16-15-3(1)(J), including attempting or conspiring to commit a criminal offense that involves violence, such as simple assault (O.C.G.A. § 16-5-20), simple battery (O.C.G.A. § 16-5-23), or battery (O.C.G.A. § 16-5-23.1). Parks v. State, 304 Ga. 313, 818 S.E.2d 502, 2018 Ga. LEXIS 548 (2018).

Sufficient evidence supported the appellant's conviction for a conspiracy offense

that served as a predicate for conviction for violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., based on the appellant's rank in the gang, statements to fellow gang members about killing violators of gang rules, communications with gang members who were critical of the victim, coupled with statements that somebody's got to die, and the appellant's trip to meet with gang members about the victim. Chavers v. State, 304 Ga. 887, 823 S.E.2d 283, 2019 Ga. LEXIS 21 (2019).

Evidence was sufficient to support the Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., convictions as the defendant participated in criminal gang activity through the commission of a malice murder and an aggravated assault because the jury was authorized to conclude that the defendant shot and killed the victim, who was a member of a rival gang, in retaliation for the victim's shooting at a member of the defendant's gang. Jackson v. State, 306 Ga. 706, 832 S.E.2d 809, 2019 Ga. LEXIS 599 (2019).

Indictment specifically alleging the date of the offense, the county where the offense occurred, the gang with which the defendant was associated, that gang's status as a criminal street gang, the predicate act of criminal street gang activity, the identity of the victim of that act, and the manner in which that act was done provided enough information that the indictment was not susceptible to a special demurrer. Bullard v. State, 307 Ga. 482, 837 S.E.2d 348, 2019 Ga. LEXIS 843 (2019).

State presented sufficient evidence that the defendant and three others conspired to engage in criminal street gang activity as defined by O.C.G.A. § 16-15-3(1); one member ordered the defendant and another to conduct a sale of methamphetamine, and they enlisted a fourth member to drive them to get drugs and to the site of the sale, where the defendant and the others shot and robbed the victims. Boyd v. State, 306 Ga. 204, 830 S.E.2d 160, 2019 Ga. LEXIS 439 (2019).

Evidence was sufficient to convict the defendant of participating in criminal gang activity through the commission of the offenses of malice murder, aggravated assault, and possession of a handgun by an underaged person because the evidence authorized the jury to find that the defendant was associated with a set of a criminal street gang, and that the defendant participated in criminal gang activity with other associates and members of that set, such as initiating new members through beatings; and that the defendant committed the offenses to retaliate for the first victim's verbal and physical conduct that the defendant viewed as disrespectful of the defendant's gang. Dixon v. State, 309 Ga. 28, 843 S.E.2d 806, 2020 Ga. LEXIS 360 (2020).

Evidence was sufficient to find that the defendants violated the Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., because the defendants were high-ranking members of a criminal gang; the gang had a history of violent criminal activity; the gang employed prostitution as a primary means of funding the gang's operations and had in the past used women to lure clients to rob the clients; the female accomplices connected with the victims through a dating website the females used to set up prostitution meetings; and the defendants were present with the female accomplices immediately before and after the shootings and were in communication with the females throughout the period during which the shootings took place. Butler v. State, 310 Ga. 892, 855 S.E.2d 551, 2021 Ga. LEXIS 75 (2021).

Introduction of a video regarding the depiction of gang symbols, tattoos, and colors did not contribute to the verdict because, in addition to the video, the state presented expert testimony regarding the gang, the gang's colors, symbols, and activities; photographs were introduced of the defendant displaying gang hand signals, wearing gang colors, and with tattoos depicting gang symbols, as well as photographs of the defendant's co-indictees with tattoos of gang symbols; the defendant admitted that the defendant was a member of the gang; and the defendant admitted the defendant's participation in the crimes and that the defendant acted at the behest of other gang members in com-

mitting the crimes. Dunn v. State, 312 Ga. 471, 863 S.E.2d 159, 2021 Ga. LEXIS 623 (2021).

Evidence was sufficient to convict the defendant of violating the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-16-1 et seq., because an officer's testimony and the photographs and video from the defendant's social media page satisfied the requirements that the defendant was associated with a criminal street gang; that the defendant committed the predicate acts of aggravated assault and armed robbery; and that the commission of those offenses was intended to further the interests of the gang. Mahogany v. State, 366 Ga. App. 750, 884 S.E.2d 141, 2023 Ga. App. LEXIS 76 (2023).

Evidence of gang beating of murder victim. — Trial court did not abuse the court's discretion by admitting into evidence a video recording of gang members beating the murder victim, who was a person that left the gang, despite the appellant not appearing in the video because the video of the gang beat-in was highly probative to establish the appellant's motive for the murder and its relationship to gang activity. Carston v. State, 310 Ga. 797, 854 S.E.2d 684, 2021 Ga. LEXIS 19 (2021).

Gang activity evidence insufficient. — State failed to establish that a "criminal street gang" was involved in a battery for purposes of O.C.G.A. § 16-15-4(a). The investigating officer's testimony merely established that the juveniles were members of gangs, not the gangs' activities, and therefore was insufficient to show that the gangs were involved in criminal gang activity. In the Interest of A. D., 311 Ga. App. 384, 715 S.E.2d 787, 2011 Ga. App. LEXIS 735 (2011).

Conviction for violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., was reversed because there was no evidence beyond the bandanas and a notebook to link the juveniles to membership in a criminal street gang. To sustain a conviction, the state had to prove that the criminal gang activity or plans for the gang's continuation was ongoing at the time of the commission of the indicted offenses; in other words, the commission of an enumerated offense by the juveniles was not itself sufficient to prove the existence of a criminal street gang. In the Interest of A. G., 317 Ga. App. 165, 730 S.E.2d 187, 2012 Ga. App. LEXIS 639 (2012).

Defendant's conviction under the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., had to be reversed as the state did not present evidence of the necessary nexus between the defendant's drug crimes and an intent to further gang interests because, while the defendant might have intended, by distributing marijuana, to further the interests of individual gang members in obtaining small quantities of marijuana for personal use, the state did not show that the defendant meant to further the interests of the gang as an entity; and there was no evidence that the defendant's distribution of personal-use amounts of marijuana to individual gang members benefitted the gang itself through monetary profit, enhanced reputation, or other means. Randolph v. State, 334 Ga. App. 475, 780 S.E.2d 19, 2015 Ga. App. LEXIS 719 (2015).

Evidence was insufficient to adjudicate the defendant juvenile delinquent based on the offense of participation in criminal street gang activity because the only evidence that the defendant was involved with a criminal street gang was that the defendant was in the presence of two people who had previously been adjudicated as gang members and that the defendant possessed a gun that belonged to a gang member; and the state presented no evidence that the defendant was wearing any colors or attire that were uniquely associated with the gang, that the defendant had ever displayed signs or symbols affiliated with gang membership, or that the defendant had previously spent time with members of the gang. In the Interest of T. W., 344 Ga. App. 338, 810 S.E.2d 582, 2018 Ga. App. LEXIS 25 (2018).

Jury instructions. — Trial court's charge regarding the Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., counts fairly covered the essential elements of the offense because

the trial court instructed the jury that a person violated the Act if the defendant was proven to be a gang member and participated in criminal gang activity through a predicate act and the charge did not omit essential elements of the offense. Jackson v. State, 306 Ga. 706, 832 S.E.2d 809, 2019 Ga. LEXIS 599 (2019).

Imposition of multiple sentences proper. — Trial court did not err in imposing two sentences for criminal street gang activity as the defendant committed two offenses separately enumerated at different locations and different times against different victims. Veal v. State, 298 Ga. 691, 784 S.E.2d 403, 2016 Ga. LEXIS 243 (2016), overruled in part, Jones v. Mississippi, 593 U.S. 98, 141 S. Ct. 1307, 209 L. Ed. 2d 390, 2021 U.S. LEXIS 2110 (2021), overruled in part as stated in Holmes v. State, 311 Ga. 698, 859 S.E.2d 475, 2021 Ga. LEXIS 296 (2021).

RESEARCH REFERENCES

ALR.

Validity of criminal state Racketeer Influenced and Corrupt Organizations Acts and similar acts related to gang activity and the like, 58 A.L.R.6th 385.

16-15-4. Participation in criminal gang activity prohibited; prosecution.

(a) It shall be unlawful for any person employed by or associated with a criminal street gang to conduct or participate in criminal gang activity through the commission of any offense enumerated in paragraph (1) of Code Section 16-15-3.

(b) It shall be unlawful for any person to commit any offense enumerated in paragraph (1) of Code Section 16-15-3 with the intent to obtain or earn membership or maintain or increase his or her status or position in a criminal street gang.

(c) It shall be unlawful for any person to acquire or maintain, directly or indirectly, through criminal gang activity or proceeds derived therefrom any interest in or control of any real or personal property of any nature, including money.

(d) It shall be unlawful for any person who occupies a position of organizer, supervisory position, or any other position of management or leadership with regard to a criminal street gang to engage in, directly or indirectly, or conspire to engage in criminal gang activity.

(e) It shall be unlawful for any person to directly, or through another acting upon such person's direction, cause, encourage, solicit, recruit, or coerce another to become a member or associate of a criminal street gang, to participate in a criminal street gang, or to conduct or participate in criminal gang activity.

(f) It shall be unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or of any associate or relative of the other person with the intent to deter such person from assisting a member or

associate of a criminal street gang to withdraw from such criminal street gang.

(g) It shall be unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or of any associate or relative of the other person with the intent to punish or retaliate against such person for having withdrawn from a criminal street gang.

(h) It shall be unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or of any associate or relative of the other person with the intent to punish or retaliate against such person for refusing to or encouraging another to refuse to become or obtain the status of a member or associate of a criminal street gang.

(i) It shall be unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or of any associate or relative of the other person with the intent to punish or retaliate against such person for providing statements or testimony against criminal street gangs or any criminal street gang member or associate.

(j) In addition to the prohibitions set forth in Code Section 16-10-93, it shall be unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or of any associate or relative of the other person with the intent to intimidate, deter, or prevent such person from communicating to any law enforcement or corrections officer, prosecuting attorney, or judge information relating to criminal street gangs, criminal street gang members or associates, or criminal gang activity.

(k)(1) As used in this subsection, the term:

(A) "Dangerous weapon" shall have the same meaning as provided for under Code Section 16-11-121.

(B) "Firearm" means any handgun, rifle, shotgun, or other weapon which will or can be converted to expel a projectile by the action of an explosive or electrical charge and which is not a dangerous weapon.

(C) "Hazardous object" shall have the same meaning as set forth in Code Section 20-2-751.

(D) "Leader" means a person who planned and organized others and acted as a guiding force in order to achieve a common goal.

(2) Except as otherwise provided in this subsection, any person who violates this Code section shall be guilty of a felony and upon

conviction thereof, in addition to any other penalty imposed, shall be sentenced to a mandatory minimum term of imprisonment of five years but not more than 20 years which shall be served consecutively to any other sentence imposed, and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court.

(3)(A) Any person who violates subsection (e) of this Code section and such violation involves another who is under 17 years of age at the time of the violation, or who has a disability as defined in Code Section 34-6A-2, shall be guilty of a felony and upon conviction thereof, in addition to any other penalty imposed, shall be punished as follows:

(i) Upon the first conviction thereof, such person shall be sentenced to a mandatory minimum term of imprisonment of ten years but not more than 20 years which shall be served consecutively to any other sentence imposed, and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court; and

(ii) Upon the second or subsequent conviction thereof, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years but not more than 25 years which shall be served consecutively to any other sentence imposed, and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court.

(B) A mandatory minimum sentence imposed pursuant to this paragraph shall not be reduced, suspended, or otherwise departed from pursuant to paragraph (4) or (5) of this subsection.

(4) The district attorney or the Attorney General may move the sentencing court to impose a reduced or suspended sentence upon any person who is convicted of a violation of this Code section who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, leaders, or principals. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may impose a reduced or suspended sentence if he or she finds that the defendant has rendered such substantial assistance.

(5)(A) In the court's discretion, a judge may depart from the mandatory minimum sentence specified for a person who is convicted of a violation of this Code section as set forth in paragraph (2) of this subsection if the judge concludes that:

(i) The defendant was not a leader of the criminal conduct;

(ii) The defendant did not possess or use a firearm, dangerous weapon, or hazardous object during the crime;

(iii) The criminal conduct did not result in death or serious bodily injury to a person other than to a person who was a party to the crime;

(iv) The defendant has no prior felony conviction; and

(v) The interests of justice will not be served by the imposition of the prescribed mandatory minimum sentence.

(B) If a judge departs from the mandatory minimum sentence pursuant to this paragraph, the judge shall specify on the record the circumstances for the reduction and the interests served by such departure. Any such order shall be appealable by the State of Georgia pursuant to Code Section 5-7-1.

(l) In addition to any other penalty provided by this Code section, all sentences imposed under this Code section shall require as a special condition of the sentence that the person sentenced shall not knowingly have contact of any kind or character with any other member or associate of a criminal street gang, shall not participate in any criminal gang activity, and, in cases involving a victim, shall not knowingly have contact of any kind or character with any such victim or any member of any such victim's family or household.

(m) Any crime committed in violation of this Code section shall be considered a separate offense.

(n) 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. 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.

History.

Code 1981, § 16-15-4, enacted by Ga. L. 1992, p. 3236, § 1; Ga. L. 1998, p. 270, § 8; Ga. L. 2006, p. 519, § 2/HB 1302; Ga. L. 2010, p. 230, § 3/HB 1015; Ga. L. 2011, p. 752, § 16/HB 142; Ga. L. 2016, p. 811, § 4/HB 874; Ga. L. 2022, p. 99, § 1/HB 1134; Ga. L. 2023, p. 64, § 2/SB 44, effective July 1, 2023.

Amendments.

The 2022 amendment, effective July 1, 2022, added subsection (n).

The 2023 amendment, effective July 1, 2023, inserted "directly, or through another acting upon such person's direction," near the beginning of subsection (e); and rewrote subsection (k), which read: "(k)(1) Any person who violates subsection (a), (b), or (c) of this Code section shall be guilty of a felony and upon conviction thereof, in addition to any other penalty imposed, shall be sentenced to imprisonment for five years but not more than 20 years or pay a fine of not less than $10,000.00 nor more than $15,000.00, or both.

"(2) Any person who violates subsection (a) of this Code section through the com-

mission of a violation of Code Section 42-5-18 shall be guilty of a felony and upon conviction thereof, in addition to any other penalty imposed, shall be sentenced to a mandatory minimum term of imprisonment of two years but not more than 20 years which shall be served consecutively to any other sentence imposed, and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court.

"(3) Any person who violates subsection (d) of this Code section shall be guilty of a felony and upon conviction thereof, in addition to any other penalty imposed, shall be sentenced to imprisonment for five years but not more than 20 years which shall be served consecutively to any other sentence imposed.

"(4) Any person who violates subsection (e), (f), (g), (h), (i), or (j) of this Code section shall be guilty of a felony and upon conviction thereof, in addition to any other penalty imposed, shall be sentenced to imprisonment for five years but not more than 20 years." See Editor's note for applicability.

Cross references.

Admission of criminal gang activity evidence, § 24-4-418.

Editor's notes.

Ga. L. 2006, p. 519, § 7/HB 1302, not codified by the General Assembly, provided that the 2006 amendment shall be effective July 1, 2006, and shall be applicable to all crimes committed on or after such date, and also provided that: "Any offense committed before July 1, 2006, shall be punishable as provided by the statute in effect at the time the offense was committed."

Ga. L. 2023, p. 64, § 5/SB 44, not codified by the General Assembly, provides that the 2023 amendment applies to all offenses committed on or after July 1, 2023.

Law reviews.

For annual survey of criminal law, see 56 Mercer L. Rev. 153 (2004).

For annual survey on criminal law, see 68 Mercer L. Rev. 93 (2016).

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

Analysis

General Consideration
Indictment
Application
Sentence

General Consideration

Constitutionality. — Trial court properly denied the appellants' motion to dismiss various counts charging the appellants with gang-related crimes under the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., since properly construed O.C.G.A. § 16-15-4(a) did not directly or indirectly infringe upon the First Amendment right to freedom of association as, to support a conviction, gang conduct or participation was required. Further, reading § 16-15-4(a) according to the natural and obvious import of the statute's language and in conjunction with the specific definitions in O.C.G.A. § 16-15-3, the statute provided a sufficiently definite warning to persons of ordinary intelligence of the prohibited conduct and was not susceptible to arbitrary and discriminatory enforcement and did not reach a substantial amount of constitutionally protected conduct, thus, the statute was not unconstitutionally vague or overbroad. Rodriguez v. State, 284 Ga. 803, 671 S.E.2d 497, 2009 Ga. LEXIS 14 (2009).

Construction with O.C.G.A. § 42-9-39. — There is no legal authority to support the proposition that the Georgia Street Gang and Terrorism Prevention Act, O.C.G.A. § 16-15-1 et seq., and O.C.G.A. § 42-9-39, two very

General Consideration (Cont'd)

differently worded statutory provisions, are equivalent; thus, defendant's argument that, as a matter of law, if the armed robbery of September 17, 1999, and the murder of December 28, 1999, are considered as part of the "pattern of criminal street gang activity" for purposes of violating the Street Gang Act, they must necessarily also be considered "offenses occurring in the same series of acts" within the meaning of O.C.G.A. § 42-9-39(c) failed. Seabolt v. State, 279 Ga. 518, 616 S.E.2d 448, 2005 Ga. LEXIS 450 (2005).

Statute is not unconstitutionally vague. — Appellant, a juvenile, was not entitled to the dismissal of two counts of street gang activity based on the juvenile's assertion that O.C.G.A. § 16-15-4(a) failed to inform ordinary citizens of what associations with a criminal street gang were prohibited under the statute; the statute required that a defendant's association with a group be active and include the commission of an enumerated offense under former O.C.G.A. § 16-15-13(1), and that provided a sufficiently definite warning to persons of ordinary intelligence of the prohibited conduct. In re K.R.S., 284 Ga. 853, 672 S.E.2d 622, 2009 Ga. LEXIS 26 (2009).

O.C.G.A. § 16-5-9, allowing absent gang members convictions to serve as proof of gang, violated confrontation right. — O.C.G.A. § 16-15-9 was declared unconstitutional on the statute's face under the Sixth Amendment's confrontation clause to the extent that the statute authorized the admission of the convictions of non-testifying non-parties as evidence of a criminal street gang; the exclusion of other alleged gang members' convictions in the defendant's trial was upheld. State v. Jefferson, 302 Ga. 435, 807 S.E.2d 387, 2017 Ga. LEXIS 931 (2017).

No nexus between other act and intent to further gang activity required. — Plain language of O.C.G.A. § 24-4-418 was held not to require proof of a nexus between the other act and an intent to further gang activity as § 24-4-418 references the definition of "criminal gang activity" in the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-3, which does not contain such a nexus requirement. McKinney v. State, 318 Ga. 566, 899 S.E.2d 121, 2024 Ga. LEXIS 66 (2024).

Bifurcation of trial was not necessary. — Bifurcation was not necessary since evidence of the defendant's gang affiliation would have been admissible in a separate trial for murder and for the charged offenses other than violations of the Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., as there was no requirement that the state charge a defendant with violating the prohibition of participation in criminal street gang activity in order to admit otherwise relevant evidence of gang activity. Bullard v. State, 307 Ga. 482, 837 S.E.2d 348, 2019 Ga. LEXIS 843 (2019).

Jury instructions. — Trial court's charge regarding the Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., counts fairly covered the essential elements of the offense because the trial court instructed the jury that a person violated the Act if the defendant was proven to be a gang member and participated in criminal gang activity through a predicate act and the charge did not omit essential elements of the offense. Jackson v. State, 306 Ga. 706, 832 S.E.2d 809, 2019 Ga. LEXIS 599 (2019).

Indictment

Indictment sufficient. — It was not necessary for an indictment for violations of O.C.G.A. § 16-15-4(a) of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., to contain a specific allegation that the gang existed prior to the commission of any of the enumerated offenses; the indictment tracked the language of the statute and gave a date certain for each of the enumerated offenses. State v. Hood, 307 Ga. App. 439, 706 S.E.2d 566, 2010 Ga. App. LEXIS 1145 (2010).

Indictment specifically alleging the date of the offense, the county where the offense occurred, the gang with which the defendant was associated, that gang's status as a criminal street gang, the predi-

cate act of criminal street gang activity, the identity of the victim of that act, and the manner in which that act was done provided enough information that the indictment was not susceptible to a special demurrer. Bullard v. State, 307 Ga. 482, 837 S.E.2d 348, 2019 Ga. LEXIS 843 (2019).

Indictment insufficient when state unable to identify dates. — Trial court did not err in granting the defendants' special demurrer to an indictment charging the defendants with participating in criminal street gang activity in violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., specifically O.C.G.A. § 16-15-4, because absent some showing by the state that the state's evidence did not permit the state to identify the exact dates the gang came into existence, the indictment was imperfect and subject to special demurrer; although in most cases of this type it may not be possible for the state to show an exact date a criminal street gang came into existence, it is nevertheless incumbent upon the state to make some showing as to why the state can not determine that date, and ultimately, while the state may in fact be unable to pinpoint the particular dates of the alleged crimes, an appellate court cannot speculate about such a matter, but instead, the appellate court, like the trial court, is bound by the record before the court. State v. Hood, 307 Ga. App. 439, 706 S.E.2d 566, 2010 Ga. App. LEXIS 1145 (2010).

Indictment not required to allege date the gang came into existence. — Indictment for criminal street gang activity under O.C.G.A. § 16-15-4(a) was sufficient to withstand 12 defendants' general and special demurrers. Although the indictment did not allege a date that the gang came into existence, the indictment sufficiently alleged that the gang existed at the time of each of the enumerated predicate offenses. State v. Hood, 307 Ga. App. 439, 706 S.E.2d 566, 2010 Ga. App. LEXIS 1145 (2010).

Application

Evidence of connection to gang. — State presented sufficient evidence to connect the defendant to a gang, including extensive evidence of the defendant's association with other gang members and Facebook posts which displayed distinguishing characteristics associated with the gang, such as hand signs, language, and tattoos. Morris v. State, 340 Ga. App. 295, 797 S.E.2d 207, 2017 Ga. App. LEXIS 62 (2017).

Trial court did not abuse the court's discretion by admitting evidence of the defendant's alleged membership in a gang because the evidence of gang membership was relevant to and probative of motive based on two witnesses testifying as to the defendant's gang affiliation. Anglin v. State, 302 Ga. 333, 806 S.E.2d 573, 2017 Ga. LEXIS 890 (2017).

Evidence was sufficient to convict the three defendants of unlawful participation in criminal gang activity through the commission of an aggravated assault and an aggravated battery and felony murder predicated upon criminal gang activity involving a simple battery because the defendants wore red clothing and were associated with a criminal street gang; the victim waved a blue bandana and started talking about a rival gang; the three defendants participated in beating the victim; they followed the victim into the road, and beat the victim until the victim lost consciousness; the victim was almost immediately struck by a car and killed; and the witnesses testified that the three defendants were among the men who left the victim lying on the road. Anthony v. State, 303 Ga. 399, 811 S.E.2d 399, 2018 Ga. LEXIS 184 (2018).

Sufficient evidence supported the appellant's conviction for a conspiracy offense that served as a predicate for conviction for violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., based on the appellant's rank in the gang, statements to fellow gang members about killing violators of gang rules, communications with gang members who were critical of the victim, coupled with statements that somebody's got to die, and the appellant's trip to meet with gang members about the victim. Chavers v. State, 304 Ga. 887, 823 S.E.2d 283, 2019 Ga. LEXIS 21 (2019).

Evidence that the defendant displayed gang signs alongside other known gang

Application (Cont'd)

members, wore a red bandana to represent an association with a gang, had a tattoo associated with the Goodfellaz gang, and had previously pled guilty to participation in criminal street gang activity, and telephone recordings between the defendant and other gang members discussing violent crimes supported the defendant's conviction for criminal street gang activity. Redding v. State, 354 Ga. App. 525, 841 S.E.2d 192, 2020 Ga. App. LEXIS 194 (2020).

Defendant's convictions for violating the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., were supported by evidence that the defendant was in a gang and committed the home invasion and armed robbery in furtherance of the gang. Overstreet v. State, 312 Ga. 565, 864 S.E.2d 14, 2021 Ga. LEXIS 645 (2021).

Evidence was sufficient to support defendant's conviction for participation in criminal street gang activity because it showed that he was a member of the gang, he had frequent contact with the gang members, and he had participated in violent crimes with them, including on three specific occasions. Defendant's activities, including the attempted robbery of the victim, furthered the gang's goal of collecting money, drugs, jewelry, and guns. Drennon v. State, 314 Ga. 854, 880 S.E.2d 139, 2022 Ga. LEXIS 282 (2022).

Evidence was sufficient to support defendants' convictions of criminal street gang crimes because experts testified that the defendants' gang was a traditional gang and that members committed an array of criminal activity, defendants sent an email using gang symbols and terminology and made hand signs associated with the gang, another gang member threatened the victim, and a gang member orchestrated the victim's killing with defendants. Rooks v. State, 317 Ga. 743, 893 S.E.2d 899, 2023 Ga. LEXIS 230 (2023).

Evidence sufficient to show party to gang activity. — Evidence was sufficient to show the defendant's participation in gang activity as a party to the crime under O.C.G.A. § 16-2-20(a) and (b)(4): the defendant and other gang members drove cars into a neighborhood, exited the cars, and began fighting with the residents; the defendant shouted "bust that sh*t," and another gang member fired a gun, killing the victim. Parks v. State, 304 Ga. 313, 818 S.E.2d 502, 2018 Ga. LEXIS 548 (2018).

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 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).

Unlawful participation in criminal gang activity through commission of simply battery. — When the three defendants were found guilty of felony murder predicated on the defendants' unlawful participation in criminal gang activity through the commission of a simple battery, and the defendants were also found guilty of voluntary manslaughter, the trial court properly convicted the defendants of felony murder because unlawful participation in criminal gang activity through the commission of a simple battery was not just a simple battery as it involved a nexus between the simple battery and the activities of the criminal street gang; and the culpability for unlawful participation in criminal gang activity was generally not susceptible of mitigation by the sort of provocation and passion that voluntary manslaughter involved. Anthony v. State, 303 Ga. 399, 811 S.E.2d 399, 2018 Ga. LEXIS 184 (2018).

Merger of criminal gang activity convictions. — After the three defendants were properly found guilty of felony murder predicated upon criminal gang activity involving a simple battery, the trial court erred when the court failed

to merge the defendants' criminal gang activity involving an aggravated assault and criminal gang activity involving an aggravated battery convictions into the felony murder conviction because all of the unlawful participation in criminal gang activity of which the three defendants were found guilty occurred at the same location, occurred at the same time, and was directed against the same victim. Anthony v. State, 303 Ga. 399, 811 S.E.2d 399, 2018 Ga. LEXIS 184 (2018).

Merger required. — Trial court erred sentencing defendant on two counts in violation of O.C.G.A. § 16-15-4(b) because there was no statutory basis to conclude that the legislature intended that proof of intent to maintain status or position in a gang would constitute a separate unit of prosecution in § 16-15-4(b) from proof of intent to increase status or position in a gang. Monroe v. State, 315 Ga. 767, 884 S.E.2d 906, 2023 Ga. LEXIS 50 (2023).

Evidence sufficient for conviction. — Evidence was sufficient for conviction under former paragraph (b)(1) based on defendant's statement at the sheriff's office that the robbery and killing of the victim was undertaken in furtherance of defendant's participation in a criminal street gang, for the purpose of increasing defendant's own rank and influence within the gang, and to perpetuate the gang and its rank structure. Jackson v. State, 272 Ga. 191, 528 S.E.2d 232, 2000 Ga. LEXIS 256 (2000), overruled in part, Clark v. State, 315 Ga. 423, 883 S.E.2d 317, 2023 Ga. LEXIS 13 (2023); Warren v. State, 245 Ga. App. 768, 538 S.E.2d 840, 2000 Ga. App. LEXIS 1077 (2000).

Defendant juvenile was properly found to have committed the crime of participation in criminal street gang activity under O.C.G.A. § 16-15-4(a) because the evidence supported a finding that the defendant was part of a criminal street gang under O.C.G.A. § 16-15-3(2) (now paragraph (3)) based on the colors the defendant wore and the statement as to the removal of a gang tattoo and because the defendant committed the enumerated offenses of carrying a concealed weapon and theft by shoplifting as referenced by O.C.G.A. §§ 16-14-3 and 16-15-3(1)(A), (J) and apparently stole a flare gun with the intent to further gang activity. In the Interest of C.P., 296 Ga. App. 572, 675 S.E.2d 287, 2009 Ga. App. LEXIS 269 (2009).

Evidence was sufficient to support the defendant's conviction of participation in criminal street gang activity. The evidence showed that the defendant was a member of an established street gang; additionally, the evidence that the defendant committed simple battery and less than a week later committed aggravated assault and aggravated battery against rival gang members showed a pattern of criminal gang activity. Lopez v. State, 297 Ga. App. 618, 677 S.E.2d 776, 2009 Ga. App. LEXIS 492 (2009), overruled in part, State v. Gardner, 286 Ga. 633, 690 S.E.2d 164, 2010 Ga. LEXIS 121 (2010).

Evidence was sufficient to support the defendant's convictions for felony murder, aggravated assault, possession of a firearm during the commission of a crime, and participation in criminal street gang activity. The defendant and fellow gang members walked toward a group of teenagers in a front yard while yelling and making gang signals; the defendant fired once into the crowd, killing the victim, who was unarmed; and the defendant, who fled the scene, was the only person who fired a weapon and was identified to police as the shooter by witnesses who knew the defendant by name. Jackson v. State, 291 Ga. 25, 727 S.E.2d 120, 2012 Ga. LEXIS 366 (2012).

Testimony that the defendant was a member of a gang and that the defendant touted that affiliation with the gang to two of the victims a few weeks earlier, permitted the jury to find that the defendant was a member of a street gang and supported the defendant's conviction for participating in criminal street-gang activity. Jones v. State, 318 Ga. App. 26, 733 S.E.2d 72, 2012 Ga. App. LEXIS 841 (2012).

Evidence including testimony as to the gang's criminal activities, corroborating the defendant's participation in the armed robberies; the defendant's admission to participating in two murders; and a gun the defendant used in the attempted armed robbery of the first victim was sufficient to support the defendant's convictions for criminal street gang activity,

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criminal attempt to commit armed robbery, two counts of aggravated assault, and possession of a firearm during the commission of a felony. Morris v. State, 322 Ga. App. 682, 746 S.E.2d 162, 2013 Ga. App. LEXIS 589 (2013).

Evidence that the defendant admitted to associating with a gang; the defendant referenced gangs on a Facebook page associated with the defendant's street name; the defendant possessed a firearm, the defendant was found near the residence of the suspected shooter shortly after the shooting; and that gang members were often sought to retaliate for prior acts of violence supported the conviction for participation in criminal gang activity. In the Interest of L. P., 324 Ga. App. 78, 749 S.E.2d 389, 2013 Ga. App. LEXIS 798 (2013).

Testimony that the defendants wore colors associated with a criminal street gang at the time of the robbery, talked about the defendants' gang membership and indicated that the defendants wanted to do some robberies to make money to get back home, and that the defendants continued to communicate about the crimes in jail was sufficient to support the defendants' convictions for criminal street gang activity. Alston v. State, 329 Ga. App. 44, 763 S.E.2d 504, 2014 Ga. App. LEXIS 617 (2014).

Evidence was sufficient to support the defendant's conviction for participation in criminal gang activity because the defendant claimed affiliation with a gang by hanging out with the gang, and the defendant and several others took guns with them to a rival gang neighborhood where a shooting erupted. Taylor v. State, 331 Ga. App. 577, 771 S.E.2d 224, 2015 Ga. App. LEXIS 199 (2015).

State introduced evidence from which a jury would be authorized to find a nexus between the defendants' actions in seeking out and beating up the victim and the defendants' intent to further gang activity by ensuring that the gang responded strongly to the victim's disrespect of a gang member's offer of association and, thus, the evidence supported the gang activity convictions. Zamudio v. State, 332 Ga. App. 37, 771 S.E.2d 733, 2015 Ga. App. LEXIS 261 (2015), overruled in part, Priester v. State, 309 Ga. 330, 845 S.E.2d 683, 2020 Ga. LEXIS 465 (2020), overruled in part as stated in Marshall v. State, 309 Ga. 698, 848 S.E.2d 389, 2020 Ga. LEXIS 608 (2020).

Evidence that the defendant met with the codefendants and set forth a plan to rob the victim, the defendant directed the plan to rob the victim to get respect from the victim and take over the victim's marijuana territory, and a codefendant was supposed to get an increase in rank in the gang for driving a car occupied by the defendant was sufficient to support the defendant's convictions for conducting criminal gang activity. Nolley v. State, 335 Ga. App. 539, 782 S.E.2d 446, 2016 Ga. App. LEXIS 32 (2016).

Sufficient evidence, including expert testimony, supported the appellants' convictions because the evidence established that the appellants were associated with a criminal street gang and that the armed robbery and aggravated assault the appellants engaged in constituted criminal street gang activity and were intended to further the interests of the gang. Lupoe v. State, 300 Ga. 233, 794 S.E.2d 67, 2016 Ga. LEXIS 769 (2016).

Evidence was sufficient to support the Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., convictions as the defendant participated in criminal gang activity through the commission of a malice murder and an aggravated assault because the jury was authorized to conclude that the defendant shot and killed the victim, who was a member of a rival gang, in retaliation for the victim's shooting at a member of the defendant's gang. Jackson v. State, 306 Ga. 706, 832 S.E.2d 809, 2019 Ga. LEXIS 599 (2019).

Evidence was sufficient to convict the defendant of participating in criminal gang activity through the commission of the offenses of malice murder, aggravated assault, and possession of a handgun by an underaged person because the evidence authorized the jury to find that the defendant was associated with a set of a criminal street gang, and that the defendant participated in criminal gang activ-

ity with other associates and members of that set, such as initiating new members through beatings; and that the defendant committed the offenses to retaliate for the first victim's verbal and physical conduct that the defendant viewed as disrespectful of the defendant's gang. Dixon v. State, 309 Ga. 28, 843 S.E.2d 806, 2020 Ga. LEXIS 360 (2020).

Defendant was properly convicted of violating the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., as the jury was authorized to weigh the evidence and to credit the testimony of the defendant's fellow inmate that the defendant said the defendant was acting at the behest of other gang members, as the defendant had at other times before, when the defendant approached the victim to rob the victim. Dunn v. State, 312 Ga. 471, 863 S.E.2d 159, 2021 Ga. LEXIS 623 (2021).

Evidence was sufficient to convict the defendant of violating the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., because an officer's testimony and the photographs and video from the defendant's social media page satisfied the requirements that the defendant was associated with a criminal street gang; that the defendant committed the predicate acts of aggravated assault and armed robbery; and that the commission of those offenses was intended to further the interests of the gang. 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 because defendant told officers that defendant's friend, who was a gang member, offered to pay defendant a substantial sum of money to help the friend resolve an internal gang dispute by killing the victim and that defendant had agreed to her terms. Blocker v. State, 316 Ga. 568, 889 S.E.2d 824, 2023 Ga. LEXIS 133 (2023).

Evidence insufficient for conviction. — Evidence was insufficient to adjudicate a juvenile a delinquent for actively and willingly causing or coercing another to participate in a gang in the commission of a felony, with knowledge that the gang's members had engaged in a pattern of criminal street gang activity, under O.C.G.A. § 16-15-4(d), because there was no evidence the juvenile caused or coerced another person to participate in the commission of a crime. In the Interest of N.L.G., 267 Ga. App. 428, 600 S.E.2d 401, 2004 Ga. App. LEXIS 674 (2004).

Defendant's adjudication of juvenile delinquency based on a charge that the defendant was violating the terms of probation by associating with gang members had to be reversed; the state failed to prove the predicate acts of a count charging the defendant with participation in criminal street gang activity, and the state admitted that the probation violation count did not contain sufficient factual details to inform the defendant of the nature of the offense charged. In the Interest of L.J.L., 284 Ga. App. 801, 645 S.E.2d 371, 2007 Ga. App. LEXIS 411 (2007).

State failed to establish that a "criminal street gang" was involved in a battery for purposes of O.C.G.A. § 16-15-4(a). The investigating officer's testimony merely established that the juveniles were members of gangs, not the gangs' activities, and therefore was insufficient to show that the gangs were involved in criminal gang activity. In the Interest of A. D., 311 Ga. App. 384, 715 S.E.2d 787, 2011 Ga. App. LEXIS 735 (2011).

Conviction for violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., was reversed because there was no evidence beyond the bandanas and a notebook to link the juveniles to membership in a criminal street gang. To sustain a conviction, the state had to prove that the criminal gang activity or plans for the gang's continuation was ongoing at the time of the commission of the indicted offenses; in other words, the commission of an enumerated offense by the juveniles was not itself sufficient to prove the existence of a criminal street gang. In the Interest of A. G., 317 Ga. App. 165, 730 S.E.2d 187, 2012 Ga. App. LEXIS 639 (2012).

Defendant's conviction under the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., had to be

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reversed as the state did not present evidence of the necessary nexus between the defendant's drug crimes and an intent to further gang interests because, while the defendant might have intended, by distributing marijuana, to further the interests of individual gang members in obtaining small quantities of marijuana for personal use, the state did not show that the defendant meant to further the interests of the gang as an entity; and there was no evidence that the defendant's distribution of personal-use amounts of marijuana to individual gang members benefitted the gang itself through monetary profit, enhanced reputation, or other means. Randolph v. State, 334 Ga. App. 475, 780 S.E.2d 19, 2015 Ga. App. LEXIS 719 (2015).

Evidence was insufficient to support the defendant's conviction for engaging in a criminal street gang because the state did not present any evidence that the defendant committed the burglary to further the interest of a gang it was alleged the defendant was a part of, nor did the state present any evidence showing that the victims of the burglary or any witnesses were aware that the crime was committed by gang members. In the Interest of W. B., 342 Ga. App. 277, 801 S.E.2d 595, 2017 Ga. App. LEXIS 242 (2017).

Evidence was insufficient to sustain the three defendants' conviction for criminal gang activity involving an affray because an affray requires a fight between willing participants; and there was no evidence that the victim willingly fought the assailants, only that the victim was beaten by the assailants, tried to retreat, and then was beaten some more. Anthony v. State, 303 Ga. 399, 811 S.E.2d 399, 2018 Ga. LEXIS 184 (2018).

Evidence was insufficient to adjudicate the defendant juvenile delinquent based on the offense of participation in criminal street gang activity because the only evidence that the defendant was involved with a criminal street gang was that the defendant was in the presence of two people who had previously been adjudicated as gang members and that the defendant possessed a gun that belonged to a gang member; and the state presented no evidence that the defendant was wearing any colors or attire that were uniquely associated with the gang, that the defendant had ever displayed signs or symbols affiliated with gang membership, or that the defendant had previously spent time with members of the gang. In the Interest of T. W., 344 Ga. App. 338, 810 S.E.2d 582, 2018 Ga. App. LEXIS 25 (2018).

Evidence of gang activity. — State's failure to indict defendant under the statute did not bar the introduction of gang related evidence. There is no requirement that the state charge a defendant with violating the prohibition of participation in criminal street gang activity in order to admit otherwise relevant evidence of gang activity. Wolfe v. State, 273 Ga. 670, 544 S.E.2d 148, 2001 Ga. LEXIS 256 (2001).

Delinquency petition properly charged that a juvenile participated in criminal street gang activity pursuant to O.C.G.A. § 16-15-4(e) because the petition stated that the juvenile did engage in, directly or indirectly, criminal gang activity, a crime of violence in the State of Georgia, as defined in O.C.G.A. § 16-15-3(1)(J), and the juvenile was also adjudicated delinquent for organizing and promoting an affray in violation of O.C.G.A. § 16-11-32, which fell within the criminal conduct contemplated by O.C.G.A. § 16-15-3(1)(J); the juvenile instructed a student on becoming a gang member, organized a fight for the student, and gave the student a booklet containing gang history and jargon, and there was also evidence that the student paid the juvenile a "gang tax" and that the juvenile referenced being a lieutenant in the gang. In re X. W., 301 Ga. App. 625, 688 S.E.2d 646, 2009 Ga. App. LEXIS 1315 (2009), cert. denied, No. S10C0492, 2010 Ga. LEXIS 335 (Ga. Apr. 19, 2010).

Evidence was sufficient to support the juvenile court's finding that a juvenile committed an act which, had the juvenile been an adult, would have resulted in a conviction of participation in criminal street gang activity because the juvenile and gang investigator for a police department testified about the juvenile's familiarity with the gang and stated that there

were more than three members of the gang, and a student testified that the juvenile facilitated an affray to further a gang activity, specifically the student's membership in the gang. In re X. W., 301 Ga. App. 625, 688 S.E.2d 646, 2009 Ga. App. LEXIS 1315 (2009), cert. denied, No. S10C0492, 2010 Ga. LEXIS 335 (Ga. Apr. 19, 2010).

There was sufficient evidence to support the defendant juvenile's adjudication of delinquency for participation in criminal street gang activity in violation of O.C.G.A. § 16-15-4 because the evidence established that the defendant was a gang member and that there was a nexus between the shooting and an intent to further gang activity; the defendant admitted that the defendant was a member of the gang, and a police detective, who was qualified as an expert in gang investigations, testified that the defendant was a known member of the gang, that the defendant had previously admitted to the detective that the defendant was a member of that gang, that a black bandana was attire associated with the gang, and that wearing such a bandana during a shooting was particularly significant because the bandana proclaimed to the world that the defendant was a member and that the shooting was a gang act. In the Interest of D. M., 307 Ga. App. 751, 706 S.E.2d 683, 2011 Ga. App. LEXIS 66 (2011).

Gang-related evidence was admissible because the defendants were charged with engaging in criminal street gang activity under O.C.G.A. § 16-15-4; moreover, even though the statements of gang activity placed the defendants' character in issue, the statements were admissible as res gestae of the crimes of gang activity and aggravated assault and battery. Morey v. State, 312 Ga. App. 678, 719 S.E.2d 504, 2011 Ga. App. LEXIS 960 (2011), cert. denied, No. S12C0451, 2012 Ga. LEXIS 592 (Ga. June 18, 2012).

On a charge of criminal street gang activity, the state was properly allowed to admit videotapes seized from the defendants' home that were made two years earlier as the videotapes depicted gang-related images and activities; the videotapes were relevant to show the existence of the gang and the defendants' affiliation with the gang. Sifuentes v. State, 293 Ga. 441, 746 S.E.2d 127, 2013 Ga. LEXIS 612 (2013).

Trial court did not abuse the court's discretion by admitting evidence of the defendant's alleged membership in a gang because the evidence of gang membership was relevant to and probative of motive based on two witnesses testifying as to the defendant's gang affiliation. Anglin v. State, 302 Ga. 333, 806 S.E.2d 573, 2017 Ga. LEXIS 890 (2017).

When the defendant was convicted of possession of a firearm by a convicted felon and participation in criminal gang activity, the trial court did not err in admitting evidence that a police investigator, who was qualified as a gang expert, had seized a "book of knowledge" from the house of another gang member as the evidence was relevant to a material issue in the case because a conviction required that there be some nexus between the enumerated act and an intent to further street gang activity; and, based on the book and other information, gang members were required to possess firearms. Lang v. State, 344 Ga. App. 623, 812 S.E.2d 16, 2018 Ga. App. LEXIS 99 (2018).

In the defendants' trial for criminal gang activity under O.C.G.A. § 16-15-4(a), a photograph taken inside the courtroom and posted on social media by friends of the defendants with the caption "Free my FAM" was relevant to show that the defendants were members of a gang under O.C.G.A. § 24-4-401 and was not unduly prejudicial under O.C.G.A. § 24-4-403. Anthony v. State, 2018 Ga. LEXIS 143.

Nexus between crime and furtherance of gang interest shown. — Two defendants were convicted of malice murder and other crimes in violation of O.C.G.A. § 16-15-4(a) in connection with the shooting death of a drug dealer in the defendants' gang territory; the evidence established a nexus between the robbery of the drug dealer and an intent to further the interests of the gang, based on expert testimony that the gang made most of the gang's money through armed robberies. Stripling v. State, 304 Ga. 131, 816 S.E.2d 663, 2018 Ga. LEXIS 454 (2018).

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State presented sufficient evidence that the defendant and three others conspired to engage in criminal street gang activity as defined by O.C.G.A. § 16-15-3(1); one member ordered the defendant and another to conduct a sale of methamphetamine, and they enlisted a fourth member to drive them to get drugs and to the site of the sale, where the defendant and the others shot and robbed the victims. Boyd v. State, 306 Ga. 204, 830 S.E.2d 160, 2019 Ga. LEXIS 439 (2019).

Inadequate definition of criminal gang activity. — Trial court's pre-trial ruling pursuant to O.C.G.A. §§ 16-15-4 and 24-4-418 (Rule 418), excluding two alleged prior acts of criminal gang activity committed by the defendant was reversed because the trial court's order confused the definition of criminal gang activity and the elements of proof of crime of participation in criminal street gang activity, thus, improperly requiring the state to prove the elements under O.C.G.A. § 16-15-4, even though that was not the standard. State v. McKinney, 366 Ga. App. 251, 881 S.E.2d 699, 2022 Ga. App. LEXIS 545 (2022), aff'd, 318 Ga. 566, 899 S.E.2d 121, 2024 Ga. LEXIS 66 (2024).

Charge did not omit nexus between violence and gang activity. — With regard to the defendant's convictions for aggravated assault and gang-related crimes, the trial court did not commit plain error with regard to the court's jury instructions because the trial court correctly stated the law by using the statutory language in the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-4(a), in the court's charge to the jury, so the charge did not omit a nexus between the violence, and it was not possible for the jury to convict the defendant without finding that nexus. Skinner v. State, 318 Ga. App. 217, 733 S.E.2d 506, 2012 Ga. App. LEXIS 882 (2012).

Trial court's instruction on participation in criminal gang activity was a correct and complete statement of the law, and did not constitute plain error because the instruction did not fail to limit the scope of the jury's inquiry to the specific predicate criminal acts alleged in the indictment; and the instruction listed the four elements of the offense. Dixon v. State, 309 Ga. 28, 843 S.E.2d 806, 2020 Ga. LEXIS 360 (2020).

Sentence

Sentence not void. — Defendant's 10-year sentence for violation of the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., and aggravated assault was not void as the sentence fell within the range of permitted sentences and, thus, did not amount to a punishment that the law did not allow. Garza v. State, 325 Ga. App. 505, 753 S.E.2d 651, 2014 Ga. App. LEXIS 2 (2014), cert. denied, No. S14C0656, 2014 Ga. LEXIS 422 (Ga. May 19, 2014).

Sentence not cruel and unusual punishment. — Defendant's sentences of 20 years in confinement for the aggravated assault on the deceased victim, followed by 20 years for the aggravated assault on the second victim (with five years in confinement and the remainder on probation), followed by an additional 15 years of probation for the charge of participation in criminal street gang activity and another five years' probation for the possession of a firearm during the commission of a felony, to run consecutively to the other sentences, were within the statutory range for those crimes, and did not constitute cruel and unusual punishment. Taylor v. State, 331 Ga. App. 577, 771 S.E.2d 224, 2015 Ga. App. LEXIS 199 (2015).

Merger of counts required. — Counts 3 and 13 charged the defendant under the same statute, O.C.G.A. § 16-15-14, with gang activity accomplishing the same goal of acquiring an interest in the victim's marijuana and cell phone, by two different means of armed robbery and aggravated assault, based on the same course of conduct of using a gun on the victim; thus, because there was no element of aggravated assault with a deadly weapon that was not contained in an armed robbery, that form of aggravated assault merged into armed robbery since the crimes were part

of the same act or transaction. Salaam v. State, 367 Ga. App. 549, 887 S.E.2d 392, 2023 Ga. App. LEXIS 184 (2023).

Merger of counts erroneous. — Trial court erred by merging the guilty verdicts for armed robbery, burglary, and two counts of gang activity as armed robbery and burglary did not merge into malice murder. Lupoe v. State, 300 Ga. 233, 794 S.E.2d 67, 2016 Ga. LEXIS 769 (2016).

RESEARCH REFERENCES

ALR.

Validity of criminal state Racketeer Influenced and Corrupt Organizations Acts and similar acts related to gang activity and the like, 58 A.L.R.6th 385.

16-15-4.1. Offense of drive-by shooting.

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

(1) "Dwelling" shall have the same meaning as provided in Code Section 16-7-1.

(2) "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.

(b) A person commits the offense of drive-by shooting when he or she, while in a motor vehicle or close to the motor vehicle that was used to transport the shooter or the firearm, or both, with intent to injure another, or damage the property of another, discharges a firearm at or toward:

(1) An occupied dwelling, building, or motor vehicle;

(2) A dwelling, building, or motor vehicle such person knew or should have known to be occupied; or

(3) A person.

(c) A person convicted of the offense of drive-by shooting shall be punished by imprisonment for not less than five nor more than 20 years.

History.

Code 1981, § 16-15-4.1, enacted by Ga. L. 2024, p. 528, § 1-4/SB 421, effective July 1, 2024.

Effective date.

This Code section became effective July 1, 2024.

16-15-5. Civil forfeiture.

(a) As used in this Code section, the terms "proceeds" and "property" shall have the same meanings as set forth in Code Section 9-16-2.

(b) Any property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of this chapter and proceeds

are declared to be contraband and no person shall have a property right in them.

(c) Any property subject to forfeiture pursuant to subsection (b) of this Code section shall be forfeited in accordance with Chapter 16 of Title 9.

History.
Code 1981, § 16-15-5, enacted by Ga. L. 1992, p. 3236, § 1; Ga. L. 1993, p. 91, § 16; Ga. L. 1998, p. 270, § 8; Ga. L. 2015, p. 693, § 2-26/HB 233.
Editor's notes.
Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."
Law reviews.
For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

16-15-6. Local ordinances not preempted by state law.

Nothing in this chapter shall prevent a local governing body from adopting and enforcing ordinances relating to gangs and gang violence which are consistent with this chapter. Where local laws duplicate or supplement the provisions of this chapter, this chapter shall be construed as providing alternative remedies and not as preempting the field.

History.
Code 1981, § 16-15-6, enacted by Ga. L. 1992, p. 3236, § 1; Ga. L. 1998, p. 270, § 8.
Editor's notes.
Ga. L. 1998, p. 270, § 8, effective April 1, 1998, repealed former Code Section 16-15-6, pertaining to exemption of labor organization activities, and renumbered former Code Section 16-15-7 as present Code Section 16-15-6. The former Code section was based on Ga. L. 1992, p. 3236, § 1.

16-15-7. Real property used by criminal street gangs declared public nuisance; abatement; persons injured by gangs entitled to treble damages.

(a) Any real property which is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal gang activity shall constitute a public nuisance and may be abated as provided by Title 41, relating to nuisances.

(b) An action to abate a nuisance pursuant to this Code section may be brought by the district attorney, solicitor-general, prosecuting attorney of a municipal court or city, or county attorney in any superior, state, or municipal court.

(c) Any person who is injured by reason of criminal gang activity shall have a cause of action for three times the actual damages

sustained and, where appropriate, punitive damages; provided, however, that no cause of action shall arise under this subsection as a result of an otherwise legitimate commercial transaction between parties to a contract or agreement for the sale of lawful goods or property or the sale of securities regulated by Chapter 5 of Title 10 or by the federal Securities and Exchange Commission. Such person shall also recover attorney's fees in the trial and appellate court and costs of investigation and litigation reasonably incurred. All averments of a cause of action under this subsection shall be stated with particularity. No judgment shall be awarded unless the finder of fact determines that the action is consistent with the intent of the General Assembly as set forth in Code Section 16-15-2.

(d) The state, any political subdivision thereof, or any person aggrieved by a criminal street gang or criminal gang activity may bring an action to enjoin violations of this chapter in the same manner as provided in Code Section 16-14-6.

History.

Code 1981, § 16-15-7, enacted by Ga. L. 1998, p. 270, § 8; Ga. L. 2010, p. 230, § 4/HB 1015.

Editor's notes.

Ga. L. 1998, p. 270, § 8, effective April 1, 1998, renumbered former Code Section 16-15-7 as present Code Section 16-15-6, and enacted this Code section.

JUDICIAL DECISIONS

Tort action for damages from injuries received from gang activity. — Trial court did not err in denying the property owners' motion to dismiss a tenant's claims seeking damages for injuries the tenant received in a shooting at the tenant's apartment complex because the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., provided a cause of action for treble damages to persons injured by reason of criminal gang activity and the tenant made sufficient allegations in the complaint that the tenant received a violent injury from the type of conduct the Act contemplated. Star Residential, LLC v. Hernandez, 354 Ga. App. 629, 841 S.E.2d 392, 2020 Ga. App. LEXIS 208 (2020), rev'd, 311 Ga. 784, 860 S.E.2d 726, 2021 Ga. LEXIS 482 (2021), vacated in part, 363 Ga. App. 461, 871 S.E.2d 462, 2022 Ga. App. LEXIS 173 (2022).

In a case in which plaintiff was shot and seriously injured by unknown assailants as plaintiff approached the doorway to plaintiff's apartment, plaintiff could not pursue any form of damages or abatement in connection with a public nuisance created by criminal gang activity under the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-1 et seq., because the first two subsections of the Act did not mention the availability of civil damages or abatement by a private individual; and, for purposes of the third subsection, there was no allegation that the apartment complex or its operator committed, attempted to commit, conspired to commit, or solicited, coerced, or intimidated another person to commit any of the criminal gang activity that injured plaintiff. Star Residential v. Hernandez, 311 Ga. 784, 860 S.E.2d 726, 2021 Ga. LEXIS 482 (2021).

16-15-8. Matters proved in criminal trial.

A conviction of an offense defined as criminal gang activity shall estop the defendant in any subsequent civil action or proceeding as to matters proved in the criminal proceeding.

History.
Code 1981, § 16-15-8, enacted by Ga. L. 1998, p. 270, § 8.

16-15-9. Commission of offense admissible as evidence of existence of criminal street gang.

For the purpose of proving the existence of a criminal street gang and criminal gang activity, the commission, adjudication, or conviction of any offense enumerated in paragraph (1) of Code Section 16-15-3 by any member or associate of a criminal street gang shall be admissible in any trial or proceeding. Evidence offered under this Code section shall not be subject to the restrictions in paragraph (22) of Code Section 24-8-803.

History.
Code 1981, § 16-15-9, enacted by Ga. L. 2006, p. 519, § 3/HB 1302; Ga. L. 2010, p. 230, § 5/HB 1015; Ga. L. 2016, p. 811, § 5/HB 874.

Editor's notes.
Ga. L. 2006, p. 519, § 7/HB 1302, not codified by the General Assembly, provided that this Code section shall be effective July 1, 2006, and shall be applicable to all crimes committed on or after such date, and also provided that: "Any offense committed before July 1, 2006, shall be punishable as provided by the statute in effect at the time the offense was committed."

Law reviews.
For annual survey on criminal law, see 68 Mercer L. Rev. 93 (2016).
For annual survey on criminal law, see 70 Mercer L. Rev. 63 (2018).

JUDICIAL DECISIONS

O.C.G.A. § 16-15-9 was declared unconstitutional on the statute's face under the Sixth Amendment's confrontation clause to the extent that the statute authorized the admission of the convictions of non-testifying non-parties as evidence of a criminal street gang; the exclusion of other alleged gang members' convictions in the defendant's trial was upheld. State v. Jefferson, 302 Ga. 435, 807 S.E.2d 387, 2017 Ga. LEXIS 931 (2017).

Admission of prior criminal street gang activity proper. — Trial court did not err by admitting into evidence the defendant's prior conviction for criminal street gang activity as the jury was instructed that the evidence could only be considered for the determination of whether the defendant was currently guilty of criminal gang activity, and not the remaining counts of the indictment. Brown v. State, 300 Ga. 446, 796 S.E.2d 283, 2017 Ga. LEXIS 29 (2017).

Trial court did not err in admitting evidence that several months prior to the incident in the current case, the defendant was in possession of one or two guns because the evidence of the incident was relevant to show that while a member of a gang the defendant committed a criminal offense involving possession of a weapon as the defendant was a convicted felon at the time of the prior incident. Lang v. State, 344 Ga. App. 623, 812 S.E.2d 16, 2018 Ga. App. LEXIS 99 (2018).

There was no error in the admission of the defendant's prior acts because each prior act was committed while the defendant was a gang member and either an expert or police officer explained that the prior offenses reflected gang behaviors. Lopez v. State, 350 Ga. App. 662, 829 S.E.2d 862, 2019 Ga. App. LEXIS 352 (2019), cert. denied, No. S19C1467, 2020 Ga. LEXIS 123 (Ga. Feb. 10, 2020), cert. denied, No. S19C1482, 2020 Ga. LEXIS 121 (Ga. Feb. 10, 2020).

Evidence sufficient for conviction. — Sufficient evidence, including expert testimony, supported the appellants' convictions because the evidence established that the appellants were associated with a criminal street gang and that the armed robbery and aggravated assault the appellants engaged in constituted criminal street gang activity and were intended to further the interests of the gang. Lupoe v. State, 300 Ga. 233, 794 S.E.2d 67, 2016 Ga. LEXIS 769 (2016).

16-15-10. Criminal Street Gang Reward Fund.

There shall be established as part of the Prosecuting Attorneys' Council of the State of Georgia the Criminal Street Gang Reward Fund. The chief of police, sheriff, or chairperson of any county governing authority may request the posting of up to a $5,000.00 reward for information leading to the arrest and conviction of any person involved in criminal gang activity that leads to the death or maiming of another person or property damage in the amount of $2,500.00 or more.

History.

Code 1981, § 16-15-10, enacted by Ga. L. 2006, p. 519, § 3/HB 1302; Ga. L. 2010, p. 230, § 6/HB 1015.

Editor's notes.

Ga. L. 2006, p. 519, § 7/HB 1302, not codified by the General Assembly, provided that this Code section shall be effective July 1, 2006, and shall be applicable to all crimes committed on or after such date, and also provided that: "Any offense committed before July 1, 2006, shall be punishable as provided by the statute in effect at the time the offense was committed."

16-15-11. Georgia Criminal Street Gang Database; uniform reporting format; confidentiality.

(a) Subject to funds as may be appropriated by the General Assembly or otherwise available for such purpose, the Georgia Bureau of Investigation shall be authorized to establish, develop, manage, and maintain a state-wide criminal street gang data base, to be known as the Georgia Criminal Street Gang Database, to facilitate the exchange of information between federal, state, county, and municipal law enforcement, prosecution and corrections agencies, offices, and departments. The Georgia Bureau of Investigation shall be authorized to solicit input from law enforcement and prosecuting attorneys in determining useful information for such data base so that information may be used by law enforcement, prosecution and corrections agencies, and other agencies, offices, and departments for investigative, prosecutorial, and corrections purposes.

(b) Once the Georgia Criminal Street Gang Database is created and operational, the Georgia Bureau of Investigation shall be authorized to notify all federal, state, county, and municipal law enforcement, prosecution and corrections agencies, offices, and departments located in this state that information regarding criminal street gangs and their members and associates shall be entered into the Georgia Criminal Street Gang Database.

(c) The Georgia Bureau of Investigation shall be authorized to create and promulgate a uniform reporting format for the entry of pertinent information received from law enforcement, prosecution and corrections agencies, offices, and departments for use in the Georgia Criminal Street Gang Database.

(d) All state, county, and municipal law enforcement, prosecution and corrections agencies, offices, and departments may timely furnish information acquired relating to criminal street gangs and criminal gang activity to the Georgia Bureau of Investigation to be included in the Georgia Criminal Street Gang Database according to the reporting format developed by the Georgia Bureau of Investigation.

(e) Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50, the information and related records associated with the Georgia Criminal Street Gang Database shall not be open to inspection by or made available to the public.

History.
Code 1981, § 16-15-11, enacted by Ga. L. 2010, p. 230, § 7/HB 1015.

CHAPTER 16

CIVIL FORFEITURE OF PROPERTY USED IN BURGLARY, ARMED ROBBERY, OR HOME INVASION

Sec.
16-16-1. Definitions.
16-16-2. Civil forfeiture of property used to commit property related offenses.

Cross references.

Payment and disposition of fines and forfeitures, § 15-21-1 et seq.

Lien of state for costs of prosecution, § 44-5-210.

Law reviews.

For note on the 1995 enactment of this chapter, see 12 Georgia St. U.L. Rev. 108 (1995).

16-16-1. Definitions.

As used in this chapter, the term:

(1) "Armed robbery" means the offense defined in subsection (a) of Code Section 16-8-41.

(2) "Burglary" means the offense defined in Code Section 16-7-1 in any degree.

(3) "Home invasion" means the offense defined in Code Section 16-7-5 in any degree.

History.

Code 1981, § 16-16-1, enacted by Ga. L. 1995, p. 1051, § 4; Ga. L. 2012, p. 899, § 8-7/HB 1176; Ga. L. 2014, p. 426, § 7/HB 770.

Editor's notes.

Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Law reviews.

For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 290 (2012).

16-16-2. Civil forfeiture of property used to commit property related offenses.

(a) As used in this Code section, the terms "proceeds" and "property" shall have the same meanings as set forth in Code Section 9-16-2.

(b) Any property which is, directly or indirectly, used or intended for use in any manner to facilitate the commission of a burglary, home invasion, or armed robbery and any proceeds are declared to be contraband and no person shall have a property right in them.

(c) Any property subject to forfeiture pursuant to subsection (b) of this Code section shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9.

History.

Code 1981, § 16-16-2, enacted by Ga. L. 2015, p. 693, § 2-27/HB 233.

Editor's notes.

Ga. L. 2015, p. 693, § 2-27/HB 233, repealed former Code Section 16-16-2, pertaining to forfeiture, and enacted the present Code section. The former Code section was based on Code 1981, § 16-16-2, enacted by Ga. L. 1995, p. 1051, § 4; Ga. L. 2012, p. 1285, § 1/SB 350; Ga. L. 2014, p. 426, § 8/HB 770.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 1 (2015).

JUDICIAL DECISIONS

Editor's note. — In light of the similarity of the statutory provisions, annotations decided under former O.C.G.A. § 16-6-2 are included in the annotations for this Code section.

Forfeiture order. — Forfeiture of a pickup truck and a trailer used to commit a burglary was upheld as the state's burden of proof was "by a preponderance of the evidence" and not "beyond a reasonable doubt" as alleged by the property owner; furthermore, the state was not required to prove a burglary conviction under O.C.G.A. § 16-7-1, or that charges were even filed, and whether a burglary took place without the owner's knowledge or consent was a fact question to be resolved by the court, which as the trier of fact, was not obligated to believe a witness even if the testimony was uncontradicted. Walker v. State of Ga., 281 Ga. App. 526, 636 S.E.2d 705, 2006 Ga. App. LEXIS 1156 (2006) (decided under former O.C.G.A. § 16-6-2).

CHAPTER 17

PAYDAY LENDING

Sec.		Sec.	
16-17-1.	Payday lending; legislative findings; prohibited activity; no impairment of agencies with concurrent jurisdiction.	16-17-5.	Tax on loans.
16-17-2.	Prohibition on loans of less than $3,000.00; exceptions; penalty for violations.	16-17-6.	Evidence and investigation in pursuit of prosecutions.
16-17-3.	Collection of indebtedness barred; civil action permitted by borrowers.	16-17-7.	Prohibition against issuance of certificate of authority from Secretary of State.
16-17-4.	Liability for civil penalty to state; distribution of proceeds.	16-17-8.	Site of payday lending is public nuisance.
		16-17-9.	Special provisions for borrowers who are members of the military or their respective spouses.
		16-17-10.	Severability.

Law reviews.
For article on 2004 enactment of this chapter, see 21 Georgia St. U.L. Rev. 59 (2004).

RESEARCH REFERENCES

Am. Jur. 2d.
53A Am. Jur. 2d, Moneylenders and Pawnbrokers, § 1 et seq.

16-17-1. Payday lending; legislative findings; prohibited activity; no impairment of agencies with concurrent jurisdiction.

(a) Without limiting in any manner the scope of this chapter, "payday lending" as used in this chapter encompasses all transactions in which funds are advanced to be repaid at a later date, notwithstanding the fact that the transaction contains one or more other elements and a "payday lender" shall be one who engages in such transactions. This definition of "payday lending" expressly incorporates the exceptions and examples contained in subsections (a) and (b) of Code Section 16-17-2.

(b) Despite the fact that the Attorney General of the State of Georgia has opined in Official Opinion 2002-3 entered on June 27, 2002, that payday lending is in violation of Georgia law and despite the fact that cease and desist orders against various payday lenders in the State of Georgia have been issued, the General Assembly has determined that payday lending continues in the State of Georgia and that there are not

sufficient deterrents in the State of Georgia to cause this illegal activity to cease.

(c) The General Assembly has determined that various payday lenders have created certain schemes and methods in order to attempt to disguise these transactions or to cause these transactions to appear to be "loans" made by a national or state bank chartered in another state in which this type of lending is unregulated, even though the majority of the revenues in this lending method are paid to the payday lender. The General Assembly has further determined that payday lending, despite the illegality of such activity, continues to grow in the State of Georgia and is having an adverse effect upon military personnel, the elderly, the economically disadvantaged, and other citizens of the State of Georgia. The General Assembly has further determined that substantial criminal and civil penalties over and above those currently existing under state law are necessary in order to prohibit this activity in the State of Georgia and to cause the cessation of this activity once and for all. The General Assembly further declares that these types of loans are currently illegal and are in violation of Code Section 7-4-2. The General Assembly declares that the use of agency or partnership agreements between in-state entities and out-of-state banks, whereby the in-state agent holds a predominant economic interest in the revenues generated by payday loans made to Georgia residents, is a scheme or contrivance by which the agent seeks to circumvent Chapter 3 of Title 7, the "Georgia Installment Loan Act," and the usury statutes of this state.

(d) Payday lending involves relatively small loans and does not encompass loans that involve interstate commerce. Certain payday lenders have attempted to use forum selection clauses contained in payday loan documents in order to avoid the courts of the State of Georgia, and the General Assembly has determined that such practices are unconscionable and should be prohibited.

(e) Without limiting in any manner the scope of this chapter, the General Assembly declares that it is the general intent of this chapter to reiterate that in the State of Georgia the practice of engaging in activities commonly referred to as payday lending, deferred presentment services, or advance cash services and other similar activities are currently illegal and to strengthen the penalties for those engaging in such activities.

(f) This chapter in no way impairs or restricts the authority granted to the commissioner of banking and finance or any other regulatory authority with concurrent jurisdiction over the matters stated in this chapter.

History.

Code 1981, § 16-17-1, enacted by Ga. L. 2004, p. 60, § 3; Ga. L. 2005, p. 60, § 16/HB 95; Ga. L. 2020, p. 156, § 5/SB 462.

Law reviews.

For annual survey of law of business associations, see 56 Mercer L. Rev. 77 (2004).

JUDICIAL DECISIONS

Enforcement. — Request by creditors for a preliminary injunction blocking the enforcement of O.C.G.A. § 16-17-1 et seq., which prohibited payday loans, was moot because the creditors were no longer offering those loans; thus, the creditors no longer had a legally cognizable interest in obtaining the injunction and there was no longer an actual adversarial context for a ruling. BankWest, Inc. v. Baker, 446 F.3d 1358, 2006 U.S. App. LEXIS 10580 (11th Cir. 2006).

Constitutionality. — Trial court did not err in rejecting both the defendants' equal protection and vagueness challenges to O.C.G.A. § 16-17-1 et seq., after the defendants were charged with violating O.C.G.A. § 16-17-2, as both the defendants, as in-state lenders, were not similarly situated with out-of-state banks designated in O.C.G.A. § 16-17-2(a)(3), and hence were subject to state regulation restricting high interest rates on loans, whereas the out-of-state banks were not; the Georgia legislature had a rational basis for creating a class based on those in-state payday lenders who were subject to state regulation, and moreover the prohibition against payday loans in whatever form transacted was sufficiently definite to satisfy due process standards. Glenn v. State, 282 Ga. 27, 644 S.E.2d 826, 2007 Ga. LEXIS 346 (2007).

Injunctive relief upheld. — Trial court did not manifestly abuse the court's discretion in granting the state a modified injunction in a suit against payday lenders because the state presented sufficient evidence to demonstrate it was entitled to injunctive relief, namely, that it would prevail at trial since a substantial judgment was issued against a lender, the lenders failed to produce financial information during discovery, and serious concerns as to the lenders insolvency existed. W. Sky Fin., LLC v. State of Ga. ex rel. Olens, 300 Ga. 340, 793 S.E.2d 357, 2016 Ga. LEXIS 783 (2016).

Construction of period of limitation. — Supreme Court of Georgia is not persuaded that the Georgia legislature intended the period of limitation for bringing an enforcement action pursuant to the Payday Lending Act, O.C.G.A. § 16-17-1 et seq., to be governed by the one-year limitation period for forfeiture actions pursuant to the usury laws; instead, the Court concludes the remedies set forth in the Payday Lending Act are governed by the 20-year statute of limitation set forth in O.C.G.A. § 9-3-1. W. Sky Fin., LLC v. State of Ga. ex rel. Olens, 300 Ga. 340, 793 S.E.2d 357, 2016 Ga. LEXIS 783 (2016).

Construction. — Georgia Supreme Court concludes that the Payday Lending Act, O.C.G.A. § 16-17-1 et seq., including the statement that payday lending does not encompass loans that involve interstate commerce, is merely a legislative finding of fact to which the Court is not bound; to exempt loans that involve interstate commerce from the prohibitions of the Act would create such a contradiction and absurdity as to demonstrate that the Georgia legislature did not mean it to create such a limitation. W. Sky Fin., LLC v. State of Ga. ex rel. Olens, 300 Ga. 340, 793 S.E.2d 357, 2016 Ga. LEXIS 783 (2016).

District court correctly found that forum selection clauses in class borrowers' payday lending agreements were unenforceable as against Georgia public policy in the borrowers' suit alleging usury violations because the Payday Lending Act, O.C.G.A. § 16-17-1 et seq., articulated a clear public policy against enforcing such clauses as a remedy for those aggrieved by predatory lenders. Davis v. Oasis Legal

Fin. Operating Co., LLC, 936 F.3d 1174, 2019 U.S. App. LEXIS 26064 (11th Cir. 2019).

Legality of payday lending contracts was issue for arbitrator. — Borrower's argument that the payday lending contracts that the borrower entered into were illegal and void ab initio under Georgia law, O.C.G.A. § 16-17-1, challenged the content of these contracts and not their existence and was an issue for an arbitrator, not the court, to decide. Jenkins v. First Am. Cash Advance of Ga., LLC, 400 F.3d 868, 2005 U.S. App. LEXIS 2922 (11th Cir. 2005), cert. denied, 546 U.S. 1214, 126 S. Ct. 1457, 164 L. Ed. 2d 132, 2006 U.S. LEXIS 1842 (2006).

Sale/leaseback transactions deemed illegal payday loans. — Sale/leaseback transactions engaged in by consumer cash advance businesses violated the anti-payday lending statute, O.C.G.A. § 16-17-1 et seq., and the Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., since the state proved that the purported lease back of personal property to the consumer was not based on the actual appraised market value of the personal property but directly corresponded to the loan amount; the state proved that the businesses were requiring customers to be released from the loan agreement by paying the principal amount advanced to them plus a 25 to 27 percent fee, which amounted to an annual percentage rate of 650 to 702 percent. Clay v. Oxendine, 285 Ga. App. 50, 645 S.E.2d 553, 2007 Ga. App. LEXIS 356 (2007), cert. denied, No. S07C1247, 2007 Ga. LEXIS 556 (Ga. July 12, 2007).

Prospective operation. — Request by creditors for a preliminary injunction blocking the enforcement of O.C.G.A. § 16-17-1 et seq., (the Act), which prohibited payday loans, did not address a case or controversy because the Act did not apply retroactively to loans made before the effective date of the Act; even if the Georgia Attorney General had not explicitly conceded this point, O.C.G.A. § 1-3-5 prohibited the retroactive application to impair the obligation of existing contracts. BankWest, Inc. v. Baker, 446 F.3d 1358, 2006 U.S. App. LEXIS 10580 (11th Cir. 2006).

Lender's 49 percent economic interest. — In a class action suit seeking to hold a lender liable for payday loans, the trial court did not err in concluding that genuine issues of material fact existed as to whether the lender was the true lender of the loans made after May 14, 2004, because evidence was presented sufficient to create a genuine issue of material fact regarding whether the lender actually received only a 49 percent economic interest for the lender's services and even if the lender did so, whether the lender nevertheless, by contrivance, device, or scheme, attempted to avoid the provisions of O.C.G.A. § 16-17-2(a). Ga. Cash Am. v. Greene, 318 Ga. App. 355, 734 S.E.2d 67, 2012 Ga. App. LEXIS 914 (2012), cert. denied, No. S13C0436, 2013 Ga. LEXIS 165 (Ga. Feb. 18, 2013).

Funding agreements were investment contracts, not loans. — After the defendants entered into separate funding agreements with the plaintiffs, the defendant's motion to dismiss a putative class action for damages premised on violations of the Georgia Industrial Loan Act (GILA), O.C.G.A. § 7-3-1 et seq., was properly granted, but the defendant's motion with regard to the Payday Lending Act (PLA), O.C.G.A. § 16-17-1 et seq., was improperly denied as the funding agreements were not loans, but rather were investments in the plaintiffs' litigation, because the repayment requirement was completely contingent upon the recovery of proceeds from the plaintiffs' related legal claims; thus, instead of being loans that were regulated by the GILA and the PLA, the funding agreements were investment contracts to which the GILA and the PLA did not apply. Cherokee Funding LLC v. Ruth, 342 Ga. App. 404, 802 S.E.2d 865, 2017 Ga. App. LEXIS 313 (2017), aff'd, 304 Ga. 574, 820 S.E.2d 704, 2018 Ga. LEXIS 681 (2018).

RESEARCH REFERENCES

ALR.
State regulation of payday loans, 29 A.L.R.6th 461.

16-17-2. Prohibition on loans of less than $3,000.00; exceptions; penalty for violations.

(a) It shall be unlawful for any person to engage in any business, in whatever form transacted, including, but not limited to, by mail, electronic means, the internet, or telephonic means, which consists in whole or in part of making, offering, arranging, or acting as an agent in the making of loans of $3,000.00 or less unless:

(1) Such person is engaging in financial transactions permitted pursuant to:

(A) The laws regulating financial institutions as defined under Chapter 1 of Title 7, the "Financial Institutions Code of Georgia";

(B) The laws regulating state and federally chartered credit unions;

(C) Article 13 of Chapter 1 of Title 7, relating to Georgia residential mortgages;

(D) Chapter 3 of Title 7, the "Georgia Installment Loan Act";

(E) Chapter 4 of Title 7, relating to interest and usury;

(F) Chapter 5 of Title 7, "The Credit Card and Credit Card Bank Act," including financial institutions and their assignees who are not operating in violation of said chapter; or

(G) Paragraph (2) of subsection (a) of Code Section 7-4-2 in which the simple interest rate is not greater than 16 percent per annum;

(2) Such loans are lawful under the terms of:

(A) Article 1 of Chapter 1 of Title 10, "The Retail Installment and Home Solicitation Sales Act";

(B) Article 2 of Chapter 1 of Title 10, the "Motor Vehicle Sales Finance Act"; or

(C) Part 5 of Article 3 of Chapter 12 of Title 44, relating to pawnbrokers;

(3) Subject to the provisions of paragraph (4) of subsection (b) of this Code section, such person is a bank or thrift chartered under the laws of the United States, a bank chartered under the laws of another

state and insured by the Federal Deposit Insurance Corporation, or a credit card bank and is not operating in violation of the federal and state laws applicable to its charter; or

(4) Such loan is made as a tax refund anticipation loan. In order to be exempt under this paragraph the tax refund anticipation loan must be issued using a borrower's filed tax return and the loan cannot be for more than the amount of the borrower's anticipated tax refund. Tax returns that are prepared but not filed with the proper government agency will not qualify for a loan exemption under this paragraph.

(b) Subject to the exceptions in subsection (a) of this Code section, this Code section shall apply with respect to all transactions in which funds are advanced to be repaid at a later date, notwithstanding the fact that the transaction contains one or more other elements. Without limiting the generality of the foregoing, the advance of funds to be repaid at a later date shall be subject to this Code section, notwithstanding the fact that the transaction also involves:

(1) The cashing or deferred presentment of a check or other instrument;

(2) The selling or providing of an item, service, or commodity incidental to the advance of funds;

(3) Any other element introduced to disguise the true nature of the transaction as an extension of credit; or

(4) Any arrangement by which a de facto lender purports to act as the agent for an exempt entity. A purported agent shall be considered a de facto lender if the entire circumstances of the transaction show that the purported agent holds, acquires, or maintains a predominant economic interest in the revenues generated by the loan.

(c)(1) A payday lender shall not include in any loan contract made with a resident of this state any provision by which the laws of a state other than Georgia shall govern the terms and enforcement of the contract, nor shall the loan contract designate a court for the resolution of disputes concerning the contract other than a court of competent jurisdiction in and for the county in which the borrower resides or the loan office is located.

(2) An arbitration clause in a payday loan contract shall not be enforceable if the contract is unconscionable. In determining whether the contract is unconscionable, the court shall consider the circumstances of the transaction as a whole, including but not limited to:

(A) The relative bargaining power of the parties;

(B) Whether arbitration would be prohibitively expensive to the borrower in view of the amounts in controversy;

(C) Whether the contract restricts or excludes damages or remedies that would be available to the borrower in court, including the right to participate in a class action;

(D) Whether the arbitration would take place outside the county in which the loan office is located or any other place that would be unduly inconvenient or expensive in view of the amounts in controversy; and

(E) Any other circumstance that might render the contract oppressive.

(d) Any person who violates subsection (a) or (b) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and upon conviction thereof shall be punished by imprisonment for not more than one year or by a fine not to exceed $5,000.00 or both. Each loan transaction shall be deemed a separate violation of this Code section. Any person who aids or abets such a violation, including any arbiter or arbitration company, shall likewise be guilty of a misdemeanor of a high and aggravated nature and shall be punished as set forth in this subsection. If a person has been convicted of violations of subsection (a) or (b) of this Code section on three prior occasions, then all subsequent convictions shall be considered felonies punishable by a fine of $10,000.00 or five years' imprisonment or both.

History.

Code 1981, § 16-17-2, enacted by Ga. L. 2004, p. 60, § 3; Ga. L. 2005, p. 60, § 16/HB 95; Ga. L. 2020, p. 156, § 9/SB 462; Ga. L. 2024, p. 1052, § 3(18)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised capitalization in subsection (a).

Law reviews.

For annual survey of law of business associations, see 56 Mercer L. Rev. 77 (2004).

JUDICIAL DECISIONS

Constitutionality. — Trial court did not err in rejecting both the defendants' equal protection and vagueness challenges to O.C.G.A. § 16-17-1 et seq., after the defendants were charged with violating O.C.G.A. § 16-17-2, as both the defendants, as in-state lenders, were not similarly situated with out-of-state banks designated in O.C.G.A. § 16-17-2(a)(3), and hence were subject to state regulation restricting high interest rates on loans, whereas the out-of-state banks were not; the Georgia legislature had a rational basis for creating a class based on those in-state payday lenders who were subject to state regulation, and moreover the prohibition against payday loans in whatever form transacted was sufficiently definite to satisfy due process standards. Glenn v. State, 282 Ga. 27, 644 S.E.2d 826, 2007 Ga. LEXIS 346 (2007).

Construction concerning interstate commerce. — Georgia Supreme Court concludes that the Payday Lending Act, O.C.G.A. § 16-17-1, specifically subsection (d), including the statement that payday lending does not encompass loans that involve interstate commerce, is merely a legislative finding of fact to which the Court is not bound; to exempt

loans that involve interstate commerce from the prohibitions of the Act would create such a contradiction and absurdity as to demonstrate that the Georgia legislature did not mean it to create such a limitation. W. Sky Fin., LLC v. State of Ga. ex rel. Olens, 300 Ga. 340, 793 S.E.2d 357, 2016 Ga. LEXIS 783 (2016).

District court correctly found that forum selection clauses in class borrowers' payday lending agreements were unenforceable as against Georgia public policy in the borrowers' suit alleging usury violations because the Payday Lending Act (PLA), O.C.G.A. § 16-17-1 et seq., articulated a clear public policy against enforcing such clauses as a remedy for those aggrieved by predatory lenders, and interpreting the statute to exclude any loans involving interstate commerce would have made the PLA virtually meaningless. Davis v. Oasis Legal Fin. Operating Co., LLC, 936 F.3d 1174, 2019 U.S. App. LEXIS 26064 (11th Cir. 2019).

Sale/leaseback transactions deemed illegal payday loans. — Sale/leaseback transactions engaged in by consumer cash advance businesses violated the anti-payday lending statute, O.C.G.A. § 16-17-1 et seq., and the Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., since the state proved that the purported lease back of personal property to the consumer was not based on the actual appraised market value of the personal property but directly corresponded to the loan amount; the state proved that the businesses were requiring customers to be released from the loan agreement by paying the principal amount advanced to the customers plus a 25 to 27 percent fee, which amounted to an annual percentage rate of 650 to 702 percent. Clay v. Oxendine, 285 Ga. App. 50, 645 S.E.2d 553, 2007 Ga. App. LEXIS 356 (2007), cert. denied, No. S07C1247, 2007 Ga. LEXIS 556 (Ga. July 12, 2007).

Limitations period. — Supreme Court of Georgia is not persuaded that the Georgia legislature intended the period of limitation for bringing an enforcement action pursuant to the Payday Lending Act, O.C.G.A. § 16-17-1 et seq., to be governed by the one-year limitation period for forfeiture actions pursuant to the usury laws; instead, the Court concludes the remedies set forth in the Payday Lending Act are governed by the 20-year statute of limitation set forth in O.C.G.A. § 9-3-1. W. Sky Fin., LLC v. State of Ga. ex rel. Olens, 300 Ga. 340, 793 S.E.2d 357, 2016 Ga. LEXIS 783 (2016).

Summary judgment properly denied. — In a class action suit seeking to hold a lender liable for payday loans, the trial court did not err in concluding that genuine issues of material fact existed as to whether the lender was the true lender of the loans made after May 14, 2004, because evidence was presented sufficient to create a genuine issue of material fact regarding whether the lender actually received only a 49 percent economic interest for the lender's services and even if the lender did so, whether the lender nevertheless, by contrivance, device, or scheme, attempted to avoid the provisions of O.C.G.A. § 16-17-2(a). Ga. Cash Am. v. Greene, 318 Ga. App. 355, 734 S.E.2d 67, 2012 Ga. App. LEXIS 914 (2012), cert. denied, No. S13C0436, 2013 Ga. LEXIS 165 (Ga. Feb. 18, 2013).

Funding agreements were investment contracts, not loans. — After the defendants entered into separate funding agreements with the plaintiffs, the defendant's motion to dismiss a putative class action for damages premised on violations of the Georgia Industrial Loan Act (GILA), O.C.G.A. § 7-3-1 et seq., was properly granted, but the defendant's motion with regard to the Payday Lending Act (PLA), O.C.G.A. § 16-17-1 et seq., was improperly denied as the funding agreements were not loans, but rather were investments in the plaintiffs' litigation, because the repayment requirement was completely contingent upon the recovery of proceeds from the plaintiffs' related legal claims; thus, instead of being loans that were regulated by the GILA and the PLA, the funding agreements were investment contracts to which the GILA and the PLA did not apply. Cherokee Funding LLC v. Ruth, 342 Ga. App. 404, 802 S.E.2d 865, 2017 Ga. App. LEXIS 313 (2017), aff'd, 304 Ga. 574, 820 S.E.2d 704, 2018 Ga. LEXIS 681 (2018).

16-17-3. Collection of indebtedness barred; civil action permitted by borrowers.

Any person who violates subsection (a) or (b) of Code Section 16-17-2 shall be barred from the collection of any indebtedness created by said loan transaction and said transaction shall be void ab initio, and any person violating the provisions of subsection (a) or (b) of Code Section 16-17-2 shall in addition be liable to the borrower in each unlawful transaction for three times the amount of any interest or other charges to the borrower. A civil action under Code Section 16-17-2 may be brought on behalf of an individual borrower or on behalf of an ascertainable class of borrowers. In a successful action to enforce the provisions of this chapter, a court shall award a borrower, or class of borrowers, costs including reasonable attorneys' fees.

History.
Code 1981, § 16-17-3, enacted by Ga. L. 2004, p. 60, § 3.

JUDICIAL DECISIONS

Interstate commerce. — Georgia Supreme Court concludes that the Payday Lending Act, O.C.G.A. § 16-17-1(d), including the statement that payday lending does not encompass loans that involve interstate commerce, is merely a legislative finding of fact to which the Court is not bound; to exempt loans that involve interstate commerce from the prohibitions of the Act would create such a contradiction and absurdity as to demonstrate that the Georgia legislature did not mean it to create such a limitation. W. Sky Fin., LLC v. State of Ga. ex rel. Olens, 300 Ga. 340, 793 S.E.2d 357, 2016 Ga. LEXIS 783 (2016).

Limitations period. — Supreme Court of Georgia is not persuaded that the Georgia legislature intended the period of limitation for bringing an enforcement action pursuant to the Payday Lending Act, O.C.G.A. § 16-17-1, et seq., to be governed by the one-year limitation period for forfeiture actions pursuant to the usury laws; instead, the Court concludes the remedies set forth in the Payday Lending Act are governed by the 20-year statute of limitation set forth in O.C.G.A. § 9-3-1. W. Sky Fin., LLC v. State of Ga. ex rel. Olens, 300 Ga. 340, 793 S.E.2d 357, 2016 Ga. LEXIS 783 (2016).

16-17-4. Liability for civil penalty to state; distribution of proceeds.

(a) Any person who violates subsection (a) or (b) of Code Section 16-17-2 shall be liable to the state for a civil penalty equal to three times the amount of any interest or charges to the borrowers in the unlawful transactions.

(b) A civil action under Code Section 16-17-2 may be brought by the Attorney General, any district attorney, or a private party. Where a successful civil action is brought by a district attorney, one-half of the damages recovered on behalf of the state shall be distributed to the office of the district attorney of the judicial circuit of such district

attorney to be used by the district attorney in order to fund the budget of that office.

History.
Code 1981, § 16-17-4, enacted by Ga. L. 2004, p. 60, § 3; Ga. L. 2005, p. 60, § 16/HB 95.

JUDICIAL DECISIONS

Construction. — Georgia Supreme Court concludes that the Payday Lending Act, O.C.G.A. § 16-17-1(d), including the statement that payday lending does not encompass loans that involve interstate commerce, is merely a legislative finding of fact to which the Court is not bound; to exempt loans that involve interstate commerce from the prohibitions of the Act would create such a contradiction and absurdity as to demonstrate that the Georgia legislature did not mean it to create such a limitation. W. Sky Fin., LLC v. State of Ga. ex rel. Olens, 300 Ga. 340, 793 S.E.2d 357, 2016 Ga. LEXIS 783 (2016).

Limitations period. — Supreme Court of Georgia is not persuaded that the Georgia legislature intended the period of limitation for bringing an enforcement action pursuant to the Payday Lending Act, O.C.G.A. § 16-17-1 et seq., to be governed by the one-year limitation period for forfeiture actions pursuant to the usury laws; instead, the Court concludes the remedies set forth in the Payday Lending Act are governed by the 20-year statute of limitation set forth in O.C.G.A. § 9-3-1. W. Sky Fin., LLC v. State of Ga. ex rel. Olens, 300 Ga. 340, 793 S.E.2d 357, 2016 Ga. LEXIS 783 (2016).

Injunctive relief upheld. — Trial court did not manifestly abuse the court's discretion in granting the state a modified injunction in a suit against payday lenders because the state presented sufficient evidence to demonstrate the state was entitled to injunctive relief, namely, that the state would prevail at trial since a substantial judgment was issued against a lender, the lenders failed to produce financial information during discovery, and serious concerns as to the lenders insolvency existed. W. Sky Fin., LLC v. State of Ga. ex rel. Olens, 300 Ga. 340, 793 S.E.2d 357, 2016 Ga. LEXIS 783 (2016).

16-17-5. Tax on loans.

(a) There is imposed a state tax on all loans made in violation of this chapter. Such tax shall be administered and collected in connection with the Georgia income taxation of the person making such loans and shall be in addition to any other tax liability of such person.

(b) The tax imposed by this Code section shall be at the rate of 50 percent of all proceeds received by a person from loans made in violation of this chapter.

(c) A person making loans in violation of this chapter shall declare and return the proceeds subject to taxation under this Code section as a part of such person's Georgia income tax return.

(d) The state revenue commissioner shall retain returns under this Code section apart from all other returns and shall not disclose any part of such a return for any purpose other than the collection of tax owed or a criminal prosecution involving tax matters. In a criminal proceeding under this chapter, a person's return of proceeds under this Code

section and any evidence derived as a result of such return shall not be admissible.

History.
Code 1981, § 16-17-5, enacted by Ga. L. 2004, p. 60, § 3.

16-17-6. Evidence and investigation in pursuit of prosecutions.

In regard to any loan transaction that is alleged to be in violation of subsection (a) of Code Section 16-17-2, the trial court shall be authorized to review the terms of the transaction in their entirety in order to determine if there has been any contrivance, device, or scheme used by the lender in order to avoid the provisions of subsection (a) of Code Section 16-17-2. The trial court shall not be bound in making such determination by the parol evidence rule or by any written contract but shall be authorized to determine exactly whether the loan transaction includes the use of a scheme, device, or contrivance and whether in reality the loan is in violation of the provisions of subsection (a) of Code Section 16-17-2 based upon the facts and evidence relating to that transaction and similar transactions being made in the State of Georgia. If any entity involved in soliciting or facilitating the making of payday loans purports to be acting as an agent of a bank or thrift, then the court shall be authorized to determine whether the entity claiming to act as agent is in fact the lender. Such entity shall be presumed to be the lender if, under the totality of the circumstances, it holds, acquires, or maintains a predominant economic interest in the revenues generated by the loan. Furthermore, the trial court shall further be authorized to investigate all transactions involving gift cards, telephone cards, the sale of goods or services, computer services, or the like which may be tied to such loan transactions and are an integral part thereof in order to determine whether any such transaction is in fact a contrivance, scheme, or device used by the payday lender in order to evade the provisions of subsection (a) of Code Section 16-17-2.

History.
Code 1981, § 16-17-6, enacted by Ga. L. 2004, p. 60, § 3.

JUDICIAL DECISIONS

Sale/leaseback transactions deemed illegal payday loans. — Sale/leaseback transactions engaged in by consumer cash advance businesses violated the anti-payday lending statute, O.C.G.A. § 16-17-1 et seq., and the Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., since the state proved that the purported lease back of personal property to the consumer was not based on the actual appraised market value of the personal property but directly corresponded to the loan amount; the state proved that the businesses were requiring customers to be released from the loan agreement by paying the principal amount advanced to the customers plus a 25 to 27 percent fee,

which amounted to an annual percentage rate of 650 to 702 percent. Clay v. Oxendine, 285 Ga. App. 50, 645 S.E.2d 553, 2007 Ga. App. LEXIS 356 (2007), cert. denied, No. S07C1247, 2007 Ga. LEXIS 556 (Ga. July 12, 2007).

16-17-7. Prohibition against issuance of certificate of authority from Secretary of State.

All corporations, limited liability companies, and other business entities which are engaged in payday lending in the State of Georgia are prohibited from obtaining any certificate of authority from the Secretary of State or from the Department of Banking and Finance, and engaging in such payday lending activity in the State of Georgia shall result in the revocation of any existing certificate of authority.

History.
Code 1981, § 16-17-7, enacted by Ga. L. 2004, p. 60, § 3; Ga. L. 2005, p. 60, § 16/HB 95.

16-17-8. Site of payday lending is public nuisance.

The site or location of a place of business where payday lending takes place in the State of Georgia is declared a public nuisance.

History.
Code 1981, § 16-17-8, enacted by Ga. L. 2004, p. 60, § 3.

16-17-9. Special provisions for borrowers who are members of the military or their respective spouses.

(a) In addition to the other obligations and duties required under this chapter, if the customer is a member of the military services of the United States or a spouse of a member of the military services of the United States, the following duties and obligations apply to any payday lender:

(1) The lender is prohibited from garnishment of any military wages or salaries;

(2) The lender is prohibited from conducting any collection activity against a military customer or his or her spouse when the military member has been deployed to a combat or combat support posting for the duration of the deployment;

(3) The lender is prohibited from contacting the commanding officer of a military customer in an effort to collect on a loan to the military member or his or her spouse;

(4) The lender agrees to be bound by the terms of any repayment agreement that it negotiates through military counselors or third-party credit counselors; and

(5) The lender agrees to honor any statement or proclamation by

a military base commander that a specific payday lender branch location has been declared off limits to military personnel and their spouses.

(b) If the customer is a member of the military services of the United States or a spouse of a member of the military services of the United States, the following disclosures shall be made in writing by the payday lender:

(1) A notice that the lender is prohibited from garnishment of any military wages or salaries;

(2) A notice that the lender is prohibited from conducting any collection activity against a military customer or his or her spouse when the military member has been deployed to a combat or combat support posting for the duration of the deployment;

(3) A notice that the lender is prohibited from contacting the commanding officer of a military customer in an effort to collect on a loan to the military member or his or her spouse;

(4) A notice that the lender agrees to be bound by the terms of any repayment agreement that it negotiates through military counselors or third-party credit counselors; and

(5) A notice that the lender agrees to honor any statement or proclamation by a military base commander that a specific payday lending branch location has been declared off limits to military personnel and their spouses.

History.
Code 1981, § 16-17-9, enacted by Ga. L. 2004, p. 60, § 3.

16-17-10. Severability.

If any provision of this chapter or the application of such provision is found by a court of competent jurisdiction in the United States to be invalid or is found to be superseded by federal law, then the remaining provisions of this chapter shall not be affected, and this chapter shall continue to apply to any other person or circumstance.

History.
Code 1981, § 16-17-10, enacted by Ga. L. 2004, p. 60, § 3.

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Making lawful arrest as defense, §16-3-20.
Assault.
Simple assault.
Abusive language, §16-5-25.
Opprobrious or abusive language, §16-5-25.

DEFENSES —Cont'd
Assistance to law enforcement officers, §16-3-22.
Attempts to commit crimes.
Abandonment of effort to commit crime, §16-4-5.
Impossibility as a defense, §16-4-4.
Battery.
Simple battery.
Abusive language, §16-5-25.
Bigamy, §16-6-20.
Marrying a bigamist, §16-6-21.
Carrying concealed weapons.
Absolute defense to violation of part, §16-11-138.
Carrying weapon on aircraft, buses or rail vehicles.
Prior notice to law enforcement, §16-12-127.
Child in need of services, causing minor to be, §16-12-1.
Computer or electronic pornography and child exploitation.
Undercover operative or law enforcement officer.
Involvement in investigating offense not defense to prosecution, §16-12-100.2.
Consent.
Improper sexual contact by employee or agent.
Not viable defense, §16-6-5.1.
Conspiracies.
Withdrawal by coconspirator of agreement to commit crime, §16-4-9.
Contributing to delinquency or dependency of a minor, §16-12-1.
Controlled substances.
Noncontrolled drugs.
Unlawful manufacture, delivery, distribution, etc., §16-13-30.1.
Schools and school areas.
Manufacturing, distributing, possessing, etc., §16-13-32.4.
Criminal law and procedure, §§16-3-1 to 16-3-40.
Criminal solicitation, §16-4-7.
Defense of habitation, §16-3-23.
No duty to retreat, §16-3-23.1.
Defense of others, §16-3-21.
Carrying concealed weapons.
Absolute defense to violation of part, §16-11-138.

DEFENSES —Cont'd
Defense of others —Cont'd
Immunity from prosecution, §16-3-24.2.
Machine guns, sawed-off shotguns, sawed-off rifles or firearms with silencers used in committing certain offenses.
Enhanced criminal penalty.
Exemption for use of force in defense of others, §16-11-162.
No duty to retreat, §16-3-23.1.
Public transportation safety violations, §16-12-129.
Stand your ground law, §16-3-23.1.
Defense of property, §16-3-24.
Delusional compulsion, §16-3-3.
Employer parking lot for employees or invited guests.
Privacy rights regarding locked vehicles containing firearms locked out of sight.
Employer attempting to comply with provisions, §16-11-135.
Entrapment, §16-3-25.
False identification.
Manufacturing, selling or distributing, §16-9-4.
Financial transaction fraud, §16-9-33.
Gambling device or parts.
Possession, manufacture or transfer.
Antique slot machines, §16-12-24.
Justification.
Simple assault.
Opprobrious or abusive language, §16-5-25.
Murder.
Delusional compulsion, §16-3-3.
Insanity, §16-3-2.
Obscene materials.
Distributing, §16-12-80.
Public transportation safety violations.
Self-defense or defense of others, §16-12-129.
Rape.
Victim wife of defendant not defense to charge, §16-6-1.
Self-defense, §16-3-21.
Carrying concealed weapons.
Absolute defense to violation of part, §16-11-138.
Immunity from prosecution, §16-3-24.2.
DEFENSES —Cont'd
Self-defense —Cont'd
Machine guns, sawed-off shotguns, sawed-off rifles or firearms with silencers used in committing certain offenses.
Enhanced criminal penalty.
Exemption for use of force in defense of others, §16-11-162.
No duty to retreat, §16-3-23.1.
Public transportation safety violations, §16-12-129.
Stand your ground law, §16-3-23.1.
Sexual battery, consent not a defense, §§16-6-22.1, 16-6-22.2.
Sodomy.
Person sodomized.
Spouse of defendant not defense to charge of aggravated sodomy, §16-6-2.
Theft.
Affirmative defenses for particular offenses, §16-8-10.
Claim of right, §16-8-10.
Extortion, §16-8-16.
Stealing, embezzling, etc., trade secrets, §16-8-13.
Trafficking disabled adults, elder persons or residents, §16-5-102.1.
Wire or oral transmissions intercepted by law enforcement officers, §16-11-64.

DEFERRED PROSECUTION.
Bombs, explosives and chemical or biological weapons.
Violation with intent to cause death or bodily injury or damage to public buildings.
Deferred sentence prohibited, §16-7-88.
Conditional discharge for possession of controlled substances as first offense, §16-13-2.

DEFINED TERMS.
Abortion.
Crimes and offenses, §16-12-141.
Abuse of access.
Neglect of disabled adult, elder person or resident of long-term care facility, §16-5-100.
Acquirer.
Illegal use of financial transaction cards, §16-9-30.
Addiction.
Controlled substances, §16-13-21.

DEFINED TERMS —Cont'd
Administer.
Controlled substances, §16-13-21.
Adult entertainment establishment.
Human trafficking hotline information to be posted in certain establishments, §16-5-47.
Advertisement.
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Advertiser.
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Affirmative defense.
Criminal code, §16-1-3.
Agencies.
Controlled substances, §16-13-21.
Criminal code, §16-1-3.
Agent.
Controlled substances, §16-13-21.
Crimes, improper sexual contact by employee or agent, §16-6-5.1.
Agricultural products.
Human trafficking hotline information to be posted in certain establishments, §16-5-47.
Air bags.
Counterfeit, nonfunctional, etc, airbags, criminal offenses, §16-9-111.
Alternative nicotine product.
Sales, possession, etc., of tobacco related objects by underage individuals, §16-12-170.
Alzheimer's disease.
Neglect of disabled adult, elder person or resident of long-term care facility, §16-5-100.
Anhydrous ammonia.
Criminal law and procedure, §16-11-111.
Animal.
Cruelty to animals, §16-12-4.
Another.
Criminal code, §16-1-3.
Antique slot machine, §16-12-24.
Any officer in or of any court.
Intimidation or injury to court officer, §16-10-97.
Applicant.
Medical cannabis, access, §16-12-200.
Armed forces.
Carrying concealed weapon, license, §16-11-129.
Armed forces of the United States.
Fraud and deceit, deception as to veteran status or military decoration award, §16-9-63.

DEFINED TERMS —Cont'd
Armed robbery.
Forfeiture of property from crimes, §16-16-1.
Artful practice.
Theft by deception, §16-8-3.
Article.
Theft of trade secrets, §16-8-13.
Assist.
Assisted suicide, §16-5-5.
Attorney general.
Identity fraud, §16-9-120.
Audiovisual recording devices.
Film piracy, §16-8-62.
Authorized user.
Computer security act of 2005, §16-9-151.
Automated banking device.
Illegal use of financial transaction cards, §16-9-30.
Automated sales suppression device, §16-9-62.
Automatic technical process.
Spam email, §16-9-100.
Available capital.
Medical cannabis, access, §16-12-200.
Bacteriological weapons.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Bank.
Deposit account fraud, §16-9-20.
Forgery, §16-9-1.
Bar.
Human trafficking hotline information to be posted in certain establishments, §16-5-47.
Bet.
Gambling, §16-12-20.
Bingo game, §16-12-51.
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Biological agents.
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Biological weapon.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Biomedical waste.
Waste control law, §16-7-51.
Bulletin board services.
Electronically furnishing obscene material, §16-12-100.1.
Bureau.
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DEFINED TERMS —Cont'd
Bus, §16-12-122.
Business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns, §16-11-80.
Business victim.
Identity fraud, §16-9-120.
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Carrying weapons within, §16-11-127.1.
School personnel, §16-11-130.1.
Buyer.
Operation of credit repair services organization, §16-9-59.
Call.
Unlawful conduct during 9-1-1 call, §16-11-39.2.
Cardholder.
Illegal use of financial transaction cards, §16-9-30.
Carnal knowledge.
Rape, §16-6-1.
Cause to be copied.
Computer security act of 2005, §16-9-151.
CD-ROM.
Electronically furnishing obscene material, §16-12-100.1.
Center.
Firearms transfers or purchases subject to NICS, §16-11-171.
Charter.
Transportation passenger safety, §16-12-122.
Check.
Forgery, §16-9-1.
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Methamphetamine, §16-5-73.
Chief administrative officer.
Unit of university system, §16-11-35.
Child.
Computer pornography and child exploitation, §16-12-100.2.
Custodial interference, §16-5-45.
Methamphetamine, §16-5-73.
Child-placing agency.
Crimes, improper sexual contact by employee or agent, §16-6-5.1.
Child welfare and youth services.
Crimes, improper sexual contact by employee or agent, §16-6-5.1.
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Cigarette.
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DEFINED TERMS —Cont'd
Cigar wraps.
Sales, possession, etc., of tobacco related objects by underage individuals, §16-12-170.
Civil family violence order, §16-5-95.
Civil forfeiture proceeding.
Trafficking of persons for labor or sexual servitude, §16-5-46.
Civil proceeding.
Racketeer influenced and corrupt organizations, §16-14-3.
Class 1 production license.
Medical cannabis, access, §16-12-200.
Class 2 production license.
Medical cannabis, access, §16-12-200.
Coerce.
Sexual extortion, coercion to distribute sexually explicit image of individual, §16-11-92.
Coercion.
Defense to sexual crimes committed while person being trafficked for sexual servitude, §16-3-6.
Trafficking of disabled adults, elder persons or residents, §16-5-102.1.
Trafficking of persons for labor or sexual servitude, §16-5-46.
Commercial email.
Spam email, §16-9-100.
Commercial purpose.
Waste control law, §16-7-51.
Commercial service airport.
Weapons, carrying in certain areas of airport, §16-11-130.2.
Commercial social networking website.
Social networking websites, access by high-risk sexual offenders, §16-12-100.4.
Commission.
Medical cannabis, access, §16-12-200.
Committed person.
Custodial interference, §16-5-45.
Communication facility.
Use in committing or facilitating controlled substances felonies, §16-13-32.3.
Community service.
Sales, possession, etc., of tobacco related objects by underage individuals, §16-12-170.
Company.
Transportation passenger safety, §16-12-122.

DEFINED TERMS —Cont'd
Compensation.
Pyramid promotional schemes, §16-12-38.
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Computer network.
Criminal offenses, §16-9-92.
Computer operation.
Criminal offenses, §16-9-92.
Computer program.
Criminal offenses, §16-9-92.
Computer software.
Computer security act of 2005, §16-9-151.
Computer virus.
Computer security act of 2005, §16-9-151.
Concealed.
Postsecondary education, carrying weapons within public technical schools, vocational schools, college, university or other public institution of postsecondary education, §16-11-127.1.
Consideration.
Pyramid promotional schemes, §16-12-38.
Consumer.
Computer security act of 2005, §16-9-151.
Consumer victim.
Identity fraud, §16-9-120.
Controlled substance, §§16-13-1, 16-13-21.
Armed robbery, §16-8-41.
Carrying concealed weapon, license, §16-11-129.
Controlled substance forfeitures, §16-13-49.
Sanctions against licensed persons for certain violations, §16-13-110.
Trafficking of disabled adults, elder persons or residents, §16-5-102.1.
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Conveyance.
Controlled substances, §16-13-21.
Convicted.
Carrying concealed weapon, license, §16-11-129.
Controlled substances, §16-13-110.
Conviction.
Bombs, explosives and chemical or biological weapons, §16-7-80.

DEFINED TERMS —Cont'd
Conviction —Cont'd
Controlled substances, §16-13-110.
Criminal code, §16-1-3.
Deposit account fraud, §16-9-20.
Gambling, §16-12-24.
Refund fraud, §16-8-14.1.
Shoplifting, §16-8-14.
Copy.
Theft of trade secrets, §16-8-13.
Correctional officer.
Assault and battery definitions, §16-5-19.
Counterfeit air bags.
Counterfeit, nonfunctional, etc, airbags, criminal offenses, §16-9-111.
Counterfeit substance.
Controlled substances, §16-13-21.
Courthouse.
Concealed weapons in unauthorized location, §16-11-127.
Knives, local government limitation on restrictions of sale or transfer, §16-11-136.
Covered entity.
Medical marijuana, licensee operations in proximity to covered entities, §16-12-215.
Covered file-sharing program.
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Credit repair services organization.
Operation of, §16-9-59.
Crime.
Criminal code, §16-2-1.
Criminal family violence order, §16-5-95.
Criminal gang activity, §16-15-3.
Criminal negligence.
Criminal code, §16-2-1.
Criminal proceeding.
Racketeer influenced and corrupt organizations, §16-14-3.
Criminal street gangs, §16-15-3.
Critical infrastructure.
Criminal damage to property in first degree, §16-7-22.
Domestic terrorism, §16-11-220.
Interference with government property, §16-7-25.
Unlawful request for emergency services assistance, §16-10-28.
Damages.
Computer security act of 2005, §16-9-151.

DEFINED TERMS —Cont'd
Dangerous drug, §§16-13-1, 16-13-21, 16-13-71.
Carrying concealed weapon, license, §16-11-129.
Dangerous weapon, §16-11-121.
Criminal gang activity, participation, §16-15-4.
Sale, possession or other offenses associated with ecstasy, §16-13-31.1.
Trafficking in cocaine, illegal drugs or marijuana, §16-13-31.
Data.
Criminal offenses, §16-9-92.
Day hauler.
Human trafficking hotline information to be posted in certain establishments, §16-5-47.
DEA.
Controlled substances, §16-13-21.
Dealer.
Firearms transfers or purchases subject to NICS, §16-11-171.
Deceitful means.
Theft by deception, §16-8-3.
Deception.
Defense to sexual crimes committed while person being trafficked for sexual servitude, §16-3-6.
Trafficking of disabled adults, elder persons or residents, §16-5-102.1.
Trafficking of persons for labor or sexual servitude, §16-5-46.
Delinquent act.
Contributing to delinquency or dependency of a minor, §16-12-1.
Deliver.
Controlled substances, §16-13-21.
Delivery.
Controlled substances, §16-13-21.
Dementia.
Neglect of disabled adult, elder person or resident of long-term care facility, §16-5-100.
Department.
Prescription drug monitoring program (PDMP) data base, §16-13-57.
Dependency.
Controlled substances, §16-13-21.
Dependent.
Controlled substances, §16-13-21.
Deprive.
Theft, §16-8-1.
Designated universities.
Medical cannabis, access, §16-12-200.
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Designated university license.
Medical cannabis, access, §16-12-200.
Destructive device.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Theft, §16-8-12.
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Detectable human heartbeat.
Abortion, criminal, §16-12-141.
Detonator.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Developmental disability.
Trafficking of persons for labor or sexual servitude, §16-5-46.
Devices.
Criminal invasions of privacy, §16-11-60.
Filming underneath or through clothing, criminal invasion of privacy, §16-11-91.
Direct consent.
Spam email, §16-9-100.
Disability.
Crimes, improper sexual contact by employee or agent, §16-6-5.1.
Disabled adult.
Neglect of disabled adult, elder person or resident of long-term care facility, §16-5-100.
Dispense.
Controlled substances, §16-13-21.
Medical cannabis, access, §16-12-200.
Dispenser.
Controlled substances, §16-13-21.
Electronic database of prescription information, §16-13-59.
Dispensing licenses.
Medical cannabis, access, §16-12-200.
Distribute.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Controlled substances, §16-13-21.
Sexual extortion, coercion to distribute sexually explicit image of individual, §16-11-92.
Distributor.
Controlled substances, §16-13-21.
Document.
Filing false documents, §16-10-20.1.
Dog.
Dogfighting, §16-12-37.
Domain.
Spam email, §16-9-100.

DEFINED TERMS —Cont'd
Domain owner.
Spam email, §16-9-100.
Domestic terrorism, §16-11-220.
Drug overdose.
Immunity from arrest or prosecution for person seeking medical assistance for overdose, §16-13-5.
Drug related objects, §§16-13-1, 16-13-32.
Drug violation.
Immunity from arrest or prosecution for person seeking medical assistance for overdose, §16-13-5.
Dump.
Waste control law, §16-7-51.
Dwelling.
Burglary, §16-7-1.
Home invasion, §16-7-5.
Eavesdropping device.
Criminal invasion of privacy, §16-11-63.
Egregious litter.
Waste control law, §16-7-51.
Elder person.
Neglect of disabled adult, elder person or resident of long-term care facility, §16-5-100.
Electronically furnishes.
Electronically furnishing obscene material, §16-12-100.1.
Electronic cash register.
Sales suppression devices, §16-9-62.
Electronic communication.
Computer offenses, §16-9-92.
Electronic communication service.
Computer offenses, §16-9-92.
Electronic communications system.
Computer offenses, §16-9-92.
Electronic device.
Computer pornography and child exploitation, §16-12-100.2.
Electronic means.
Computer offenses, §16-9-92.
Criminal damage to property in first degree, §16-7-22.
Electronic monitoring device.
Home arrest program, §16-7-29.
Electronic storage.
Computer offenses, §16-9-92.
Electroshock weapons.
Carrying within school safety zones, at school functions or on school property, §16-11-127.1.
Email.
Spam email, §16-9-100.

DEFINED TERMS —Cont'd
Email address.
Spam email, §16-9-100.
Email message.
Use of Internet or email to induce person to provide personal information by posing as a business, §16-9-109.1.
Email service provider.
Spam email, §16-9-100.
Emergency health workers.
Assault and battery definitions, §16-5-19.
Emergency medical professional.
Obstructing or hindering, §16-10-24.2.
Emergency medical technician (EMT).
Criminal obstruction or hindering, §16-10-24.2.
Employees.
Computer security act of 2005, §16-9-156.
Crimes, improper sexual contact by employee or agent, §16-6-5.1.
Employer.
Use of Internet or email to induce person to provide personal information by posing as a business, §16-9-109.1.
End user.
Telephone records privacy protection, §16-11-70.
Enterprise.
Controlled substance forfeitures, §16-13-49.
Racketeer influenced and corrupt organizations, §16-14-3.
EOD technician.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Ephedrine.
Ephedrine and pseudoephedrine, possession of substances containing, §16-13-30.3.
Essential services.
Neglect of disabled adult, elder person or resident of long-term care facility, §16-5-100.
Execute.
Computer security act of 2005, §16-9-151.
Expired financial transaction card, §16-9-30.
Exploit.
Neglect of disabled adult, elder person or resident of long-term care facility, §16-5-100.

DEFINED TERMS —Cont'd
Exploitation.
Trafficking of disabled adults, elder persons or residents, §16-5-102.1.
Explosive ordinance disposal technician.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Explosives.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Theft, §16-8-12.
Express malice.
Murder, §16-5-1.
Extension of credit.
Operation of credit repair services organization, §16-9-59.
Facility.
Film piracy, §16-8-62.
Group care facility operators, §16-12-1.1.
False or misleading.
Spam email, §16-9-100.
False or secret compartment.
Vehicles with, §16-11-112.
False report.
Unlawful conduct during 9-1-1 call, §16-11-39.2.
Farm labor contractor.
Human trafficking hotline information to be posted in certain establishments, §16-5-47.
FDA.
Controlled substances, §16-13-21.
Felony.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Contributing to delinquency or dependency of a minor, §16-12-1.
Criminal code, §16-1-3.
Possession of firearms by convicted felons and first offender probationers, §16-11-131.
Three time loser statute, §16-11-133.
Fetus.
Partial-birth abortions, §16-12-144.
Fifth wheel.
Cargo theft, use of fifth wheel to commit, §16-8-23.
Financial institutions.
Deposit account fraud, §16-9-20.
Theft, §16-8-1.
Financial instruments.
Computer related offenses, §16-9-92.
Financial loss.
Chop shops, §16-8-83.

DEFINED TERMS —Cont'd
Financial transaction card, §16-9-30.
Financial transaction card account number.
Illegal use of financial transaction card, §16-9-30.
Firearm.
Aggravated assault, §16-5-21.
Criminal gang activity, participation, §16-15-4.
Criminal use with altered identification mark, §16-9-70.
Discharge of firearm on or near public highway, §16-11-103.
Ecstasy, sale, possession or other associated offenses, §16-13-31.1.
Firearms transfers or purchases subject to NICS, §16-11-171.
Hijacking motor vehicle, §16-5-44.1.
Possession by convicted felons and first offender probationers, §16-11-131.
Possession during commission of or attempt to commit certain crimes, §16-11-106.
Theft, §16-8-12.
Theft of weapon from peace officer, correction officer, etc., §16-10-33.
Theft penalties, §16-8-12.
Three time loser statute, §16-11-133.
Trafficking in cocaine, illegal drugs or marijuana, §16-13-31.
Firefighters.
Criminal obstruction or hindering, §16-10-24.1.
Fire service.
False representation as representative of fire service organization, §16-9-57.
Forcible felony.
Criminal code, §16-1-3.
Possession of firearms by convicted felons and first offender probationers, §16-11-131.
Forcible misdemeanor.
Criminal code, §16-1-3.
Foreclosure fraud, §16-9-60.
Foreign government.
Sedition and subversive activities, §16-11-6.
Foreign object.
Aggravated sexual battery, §16-6-22.2.
Foreign subversive organizations.
Sedition and subversive activities, §16-11-6.

DEFINED TERMS —Cont'd
Foster care home.
Crimes, improper sexual contact by employee or agent, §16-6-5.1.
Foster parent or parents.
Crimes, improper sexual contact by employee or agent, §16-6-5.1.
FTC.
Illegal use of financial transaction cards, §16-9-30.
Gambling device, §16-12-20.
Gambling place, §16-12-20.
Georgia Meth Watch.
Ephedrine and pseudoephedrine, possession of substances containing, §16-13-30.3.
Government.
Criminal code, §16-1-3.
Illegal use of financial transaction cards, §16-9-30.
Government buildings.
Concealed weapons in unauthorized location, §16-11-127.
Knives, local government limitation on restrictions of sale or transfer, §16-11-136.
Government building with public access.
Human trafficking hotline information to be posted in certain establishments, §16-5-47.
Government entity.
Concealed weapons in unauthorized location, §16-11-127.
Human trafficking hotline information to be posted in certain establishments, §16-5-47.
Grow.
Medical cannabis, access, §16-12-200.
Habitation.
Defense of habitation, §16-3-24.1.
Handgun.
Carrying and possession of weapons, §16-11-125.1.
Harass.
Guide dogs and hearing dogs, §16-11-107.1.
Unlawful conduct during 9-1-1 call, §16-11-39.2.
Wild animal, criminal trespass involving, §16-7-21.2.
Harassing.
Unlawful conduct during 9-1-1 call, §16-11-39.2.
Harassment.
Nude or sexually explicit electronic transmissions, §16-11-90.

DEFINED TERMS —Cont'd
Harbor.
Concealing, harboring or shielding illegal alien from detection, §16-11-201.
Harboring.
Concealing, harboring or shielding illegal alien from detection, §16-11-201.
Harmful to minors.
Electronically furnishing obscene material, §16-12-100.1.
Sale, distribution, etc., of harmful materials to minors, §16-12-102.
Hazardous object.
Criminal gang activity, participation, §16-15-4.
Sale, possession or other offenses associated with ecstasy, §16-13-31.1.
Trafficking in cocaine, illegal drugs or marijuana, §16-13-31.
Hazardous substance.
Terroristic threats or acts, §16-11-37.
Unlawful request for emergency services assistance, §16-10-28.
Waste control law, §16-7-51.
Hazardous waste.
Waste control law, §16-7-51.
Haze, §16-5-61.
Header information.
Spam email, §16-9-100.
Healthcare provider.
Assisted suicide, §16-5-5.
Health care records.
Identity fraud, §16-9-120.
Health care worker.
Assault and battery definitions, §16-5-19.
High-risk sex offender.
Social networking websites, access by high-risk sexual offenders, §16-12-100.4.
Highway emergency response operator.
Assault and battery definitions, §16-5-19.
Hoax device.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Home invasion.
Forfeiture of property from crimes, §16-16-1.
Hotel.
Human trafficking hotline information to be posted in certain establishments, §16-5-47.

DEFINED TERMS —Cont'd
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Littering control law, §16-7-47.
Household members.
Family violence battery, §16-5-23.1.
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Computer pornography and child exploitation, §16-12-100.2.
Identification document.
Forgery, §16-9-4.
Identifying information.
Identity fraud, §16-9-120.
Use of Internet or email to induce person to provide personal information by posing as a business, §16-9-109.1.
Illegal alien.
Concealing, harboring or shielding illegal alien from detection, §16-11-201.
Inducing illegal alien to enter into state, §16-11-202.
Transporting or moving illegal alien for purpose of furthering illegal presence, §16-11-200.
Imitation controlled substance, §16-13-21.
Immediate precursor.
Controlled substances, §16-13-21.
Incendiary.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Incident.
Spam email, §16-9-100.
Initiate.
Spam email, §16-9-100.
Initiator.
Spam email, §16-9-100.
Institution.
Remote dispensing of prescription drugs, §16-13-41.
Instrument.
Deposit account fraud, §16-9-20.
Intentionally deceptive.
Computer security act of 2005, §16-9-151.
Intent to manufacture.
Methamphetamine, §16-5-73.
Internet.
Computer security act of 2005, §16-9-151.
Use of Internet or email to induce person to provide personal information by posing as a business, §16-9-109.1.

DEFINED TERMS —Cont'd
Intimate parts.
Crimes, improper sexual contact by employee or agent, §16-6-5.1.
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Sexual battery, §16-6-22.1.
Inventory.
Pyramid promotional schemes, §16-12-38.
Inventory loading.
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Involuntarily hospitalized.
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Isolation.
Trafficking of disabled adults, elder persons or residents, §16-5-102.1.
Isomers.
Controlled substances, §16-13-21.
Issuer.
Illegal use of financial transaction cards, §16-9-30.
Jail officer.
Assault and battery definitions, §16-5-19.
Juvenile correctional officer.
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Knife.
Carrying and possession of weapons, §16-11-125.1.
Knives, local government limitation on restrictions of sale or transfer, §16-11-136.
Knowing.
Drug related objects, §16-13-32.
Knowingly.
Controlled substances, §16-13-1.
Materials harmful to minors, §16-12-102.
Kratom.
Crimes, controlled substances, §16-13-120.
Labor servitude.
Trafficking of persons for labor or sexual servitude, §16-5-46.
Laser.
Laser, projecting or aiming at aircraft or flight path, §16-11-45.
Laser device.
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DEFINED TERMS —Cont'd
Laser pointer.
Laser, projecting or aiming at aircraft or flight path, §16-11-45.
Law enforcement officer.
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Law enforcement unit.
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Lawful custody.
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Lawful owner.
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Lawful weapons carrier.
Carrying and possession of weapons, §16-11-125.1.
Leader.
Criminal gang activity, participation, §16-15-4.
Sale, possession or other offenses associated with ecstasy, §16-13-31.1.
Trafficking in cocaine, illegal drugs or marijuana, §16-13-31.
License.
Carrying and possession of weapons, §16-11-125.1.
Licensed individual.
Controlled substances, §16-13-110.
Licensed occupation.
Controlled substances, §16-13-110.
Licensee.
Medical cannabis, access, §16-12-200.
License holder.
Carrying and possession of weapons, §16-11-125.1.
Licensing authority.
Controlled substances.
Sanctions against licensed persons for certain violations, §16-13-110.
Litter, §16-7-42.
Livestock.
Theft, §16-8-20.
Long gun.
Carrying and possession of weapons, §16-11-125.1.
Long-term care facility.
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Machine gun, §16-11-121.
Mail.
Theft by possession of stolen mail, §16-8-24.
Major airline carriers.
Weapons, carrying in certain areas of airport, §16-11-130.2.
Malice.
Cruelty to animals, §16-12-4.
Manufacture.
Controlled substances, §16-13-21.
Medical cannabis, access, §16-12-200.
Marijuana.
Controlled substances, §16-13-21.
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Massage therapist.
Human trafficking hotline information to be posted in certain establishments, §16-5-47.
Masseur, §16-6-17.
Masseuse, §16-6-17.
Medical assistance.
Immunity from arrest or prosecution for person seeking medical assistance for overdose, §16-13-5.
Medical emergency.
Abortion, criminal, §16-12-141.
Medically futile.
Abortion, criminal, §16-12-141.
Mentally or physically incapacitated.
Neglect of disabled adult, elder person or resident of long-term care facility, §16-5-100.
Methamphetamine.
Controlled substances, §16-5-73.
Military decoration.
Fraud and deceit, deception as to veteran status or military decoration award, §16-9-63.
Military medal award.
Fraud and deceit, deception as to veteran status or military decoration award, §16-9-63.
Military veteran.
Fraud and deceit, deception as to veteran status or military decoration award, §16-9-63.
Minor.
Causing minor to be identified as individual in obscene depiction, §16-11-40.1.

DEFINED TERMS —Cont'd
Minor —Cont'd
Contributing to delinquency or dependency of a minor, §16-12-1.
Controlled substances, §16-13-1.
Electronically furnishing obscene material, §16-12-100.1.
Materials harmful to minors, §16-12-102.
Sexual exploitation of children, §16-12-100.
Spam email, §16-9-100.
Weapons.
Furnishing handgun to minor, §16-11-101.1.
Misdemeanor.
Criminal code, §16-1-3.
Misdemeanor of a high and aggravated nature.
Criminal code, §16-1-3.
Model glue.
Controlled substances, §16-13-90.
Mortgage lending process.
Residential mortgage fraud, §16-8-101.
Motor vehicle.
Chop shop, §16-8-82.
Hijacking motor vehicle, §16-5-44.1.
Transporting or moving illegal alien for purpose of furthering illegal presence, §16-11-200.
Narcotic drug.
Controlled substances, §16-13-21.
NICS.
Firearms transfers or purchases subject to NICS, §16-11-171.
9-1-1.
Unlawful conduct during 9-1-1 call, §16-11-39.2.
Noncontrolled substance, §16-13-21.
Nonfunctional air bags.
Counterfeit, nonfunctional, etc, airbags, criminal offenses, §16-9-111.
Nonprofit, tax-exempt organization.
Bingo, §16-12-51.
Raffles, §16-12-22.1.
Nudity.
Causing minor to be identified as individual in obscene depiction, §16-11-40.1.
Distribution of material depicting, §16-12-81.
Nude or sexually explicit electronic transmissions, §16-11-90.
Sexual extortion, coercion to distribute sexually explicit image of individual, §16-11-92.

DEFINED TERMS —Cont'd
Obscene depiction.
Causing minor to be identified as individual in obscene depiction, §16-11-40.1.
Obscene material, §16-12-80.
Officer of the court.
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Official proceedings.
Intimidation of witness, §16-10-32.
Official rating.
Offense of failure to display on video movies, §16-8-61.
Operate.
Bingo, §16-12-51.
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Operated.
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Operating.
Bingo, §16-12-51.
Operator.
Group care facility operators, §16-12-1.1.
Opiate.
Controlled substances, §16-13-21.
Opium poppy.
Controlled substances, §16-13-21.
Organization.
Advocating overthrow of government, §16-11-4.
Sedition and subversive activities, §16-11-6.
Organized militia.
Fraud and deceit, deception as to veteran status or military decoration award, §16-9-63.
Over-pressure device.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Owners.
Criminal code, §16-1-3.
Medical cannabis, access, §16-12-200.
Parking facility.
Concealed weapons in unauthorized location, §16-11-127.
Park ranger.
Criminal obstruction or hindering, §16-10-24.4.
Partial-birth abortion, §16-12-144.
Participant.
Pyramid promotional schemes, §16-12-38.
Passenger.
Transportation passenger safety, §16-12-122.

DEFINED TERMS —Cont'd
Patient.
Controlled substances, §16-13-21.
Criminal destruction, alteration, etc., of records, §16-10-94.1.
Pattern of racketeering activity, §16-14-3.
Pattern of residential mortgage fraud, §16-8-101.
P-card.
Illegal use of financial transaction cards, §16-9-30.
PDMP.
Prescription drug monitoring program (PDMP) data base, §16-13-57.
Peace officer.
Criminal code, §16-1-3.
False representation as representative of peace officer organization, §16-9-57.
Trafficking of persons for labor or sexual servitude, §16-5-46.
Pecuniary value.
Racketeering activity, §16-14-5.
Penal institution.
Violent or tumultuous acts in penal institution, criminal offense, §16-10-56.
Pen register.
Criminal invasions of privacy, §16-11-60.
Performance.
Sexual exploitation of children, §16-12-100.
Person.
Chop shop, §16-8-82.
Computer security act of 2005, §16-9-151.
Controlled substances, §16-13-21.
Criminal code, §16-1-3.
Dangerous weapons possession, §16-11-121.
Pyramid promotional schemes, §16-12-38.
Residential mortgage fraud, §16-8-101.
Sale, possession, etc., of tobacco related objects by underage individuals, §16-12-170.
Spam email, §16-9-100.
Personal identification code.
Illegal use of financial transaction cards, §16-9-30.
Personally identifiable information.
Computer security act of 2005, §16-9-151.

DEFINED TERMS —Cont'd
Personal property.
Defense of property, §16-3-24.1.
Theft by conversion, §16-8-4.
Person in a position of trust.
Crimes, improper sexual contact by employee or agent, §16-6-5.1.
Person living with HIV, §16-5-60.
Phantom-ware.
Sales suppression devices, §16-9-62.
Pharmacy.
Armed robbery, §16-8-41.
Physical dependency.
Controlled substances, §16-13-21.
Pistol or revolver.
Furnishing to minor, §16-11-101.1.
Poison gas.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Poppy straw.
Controlled substances, §16-13-21.
Possesses stolen mail.
Theft by possession of stolen mail, §16-8-24.
Potential for abuse.
Controlled substances, §16-13-21.
Practitioner.
Controlled substances, §16-13-21.
Preexisting or current address.
Spam email, §16-9-100.
Preschool or childcare space.
Postsecondary education, carrying weapons within public technical schools, vocational schools, college, university or other public institution of postsecondary education, §16-11-127.1.
Prescriber.
Controlled substances, §16-13-21.
Present consideration.
Deposit account fraud, §16-9-20.
Presenting.
Illegal use of financial transaction cards, §16-9-30.
Primary airport.
Human trafficking hotline information to be posted in certain establishments, §16-5-47.
Private place.
Criminal invasions of privacy, §16-11-60.
Probation officer.
Assault and battery definitions, §16-5-19.
Proceeds.
Trafficking of persons for labor or sexual servitude, §16-5-46.

DEFINED TERMS —Cont'd
Producing.
Sexual exploitation of children, §16-12-100.
Product.
Medical cannabis, access, §16-12-200.
Production.
Controlled substances, §16-13-21.
Promote.
Pyramid promotional schemes, §16-12-38.
Proof of insurance document, §16-9-5.
Proper identification.
Sale, possession, etc., of tobacco related objects by underage individuals, §16-12-170.
Property.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Computer related offenses, §16-9-92.
Criminal code, §16-1-3.
Trafficking of persons for labor or sexual servitude, §16-5-46.
Property of another.
Theft, §16-8-1.
Prosecution.
Criminal code, §16-1-3.
Protected computer.
Spam email, §16-9-100.
Provider.
Criminal destruction, alteration, etc., of records, §16-10-94.1.
Pseudoephedrine.
Ephedrine and pseudoephedrine, possession of substances containing, §16-13-30.3.
Psychic dependency.
Controlled substances, §16-13-21.
Psychological dependency.
Controlled substances, §16-13-21.
Psychotherapy.
Crimes, improper sexual contact by employee or agent, §16-6-5.1.
Public agency.
Unlawful request for emergency services assistance, §16-10-28.
Public buildings.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Public highway.
Discharge of firearm on or near public highway, §16-11-103.
Public housing.
Fraudulently obtaining or attempting to obtain housing or reduction in rent, §16-9-55.

DEFINED TERMS —Cont'd
Public or private property.
Litter control law, §16-7-42.
Public place.
Criminal code, §16-1-3.
Public indecency, §16-6-8.
Public safety agency.
Unlawful request for emergency services assistance, §16-10-28.
Public safety officer.
Assault and battery definitions, §16-5-19.
Public school.
Criminal failure to leave campus or facility, §16-11-35.
Public transit vehicle.
Assault and battery definitions, §16-5-19.
Simple assault, §16-5-20.
Public transportation system.
Criminal damage to property in first degree, §16-7-22.
Domestic terrorism, §16-11-220.
Publish.
Illegal use of financial transaction cards, §16-9-39.
Purchasing card.
Illegal use of financial transaction cards, §16-9-30.
Pyramid promotional scheme, §16-12-38.
Racketeering activity, §16-14-3.
Raffles, §16-12-22.1.
Railroad car.
Burglary, §16-7-1.
Rail vehicle.
Transportation passenger safety, §16-12-122.
Real property.
Racketeer influenced and corrupt organizations, §16-14-3.
Real-time electronic logging system.
Ephedrine and pseudoephedrine, possession of substances containing, §16-13-30.3.
Reasonable belief.
Criminal code, §16-1-3.
Receives.
Illegal use of financial transaction cards, §16-9-30.
Receiving.
Illegal use of financial transaction cards, §16-9-30.
Recipient.
Spam email, §16-9-100.

DEFINED TERMS —Cont'd
Record.
Criminal destruction, alteration, etc., §16-10-94.1.
Recreational bingo, §16-12-51.
Register.
Controlled substances, §16-13-21.
Registered.
Controlled substances, §16-13-21.
Registered patient.
Medical cannabis, access, §16-12-200.
Registrant.
Controlled substances, §16-13-21.
Remote computing service.
Computer offenses, §16-9-92.
Remuneration.
Illegal remuneration of law enforcement personnel, §16-10-98.
Replica.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Representing.
Theft of trade secrets, §16-8-13.
Request for emergency services assistance.
Unlawful request for emergency services assistance, §16-10-28.
Required information.
Ephedrine and pseudoephedrine, possession of substances containing, §16-13-30.3.
Resident.
Neglect of disabled adult, elder person or resident of long-term care facility, §16-5-100.
Residential mortgage loan.
Residential mortgage fraud, §16-8-101.
Resides.
Squatting on property of another, §16-7-21.1.
Resources.
Identity fraud, §16-9-120.
Restricted dangerous drug, §16-13-71.
Retail establishment.
Smash and grab burglary, §16-7-2.
Retail property.
Retail property fencing, §16-8-5.2.
Retail property fence, §16-8-5.2.
Revoked financial transaction card, §16-9-30.
Routine transmission.
Spam email, §16-9-100.
Sadomasochistic abuse.
Computer pornography and child exploitation, §16-12-100.2.

DEFINED TERMS —Cont'd
Sadomasochistic abuse —Cont'd
Materials harmful to minors, §16-12-102.
Obscene telephone contact, §16-12-100.3.
Sawed-off rifle.
Dangerous weapons possession, §16-11-121.
Sawed-off shotgun.
Dangerous weapons possession, §16-11-121.
Schedule II, III, IV or V controlled substance, §16-13-21.
School function.
Carrying weapons at or near school, §16-11-127.1.
School personnel, §16-11-130.1.
School organization.
Hazing, §16-5-61.
School property.
Simple assault, §16-5-20.
Schools.
Crimes, improper sexual contact by employee or agent, §16-6-5.1.
Hazing, §16-5-61.
School safety zone.
Carrying weapons within, §16-11-127.1.
School personnel, §16-11-130.1.
Seeks medical assistance.
Immunity from arrest or prosecution for person seeking medical assistance for overdose, §16-13-5.
Sensitive care facilities.
Crimes, improper sexual contact by employee or agent, §16-6-5.1.
Serious bodily harm.
Domestic terrorism, §16-11-220.
Serious injury.
Contributing to delinquency or dependency of a minor, §16-12-1.
Methamphetamine, §16-5-73.
Service.
Computer related offenses, §16-9-92.
Service member.
Carrying concealed weapon, license, §16-11-129.
Service provider.
Contributing to delinquency or dependency of a minor, §16-12-1.
Custodial interference, §16-5-45.
Sexual abuse.
Neglect of disabled adult, elder person or resident of long-term care facility, §16-5-100.

DEFINED TERMS —Cont'd
Sexual conduct.
Computer pornography and child exploitation, §16-12-100.2.
Distribution of material depicting, §16-12-81.
Electronically furnishing obscene material, §16-12-100.1.
Materials harmful to minors, §16-12-102.
Obscene telephone contact, §16-12-100.3.
Sexual contact.
Crimes, improper sexual contact by employee or agent, §16-6-5.1.
Sexual crime.
Defense to sexual crimes committed while person being trafficked for sexual servitude, §16-3-6.
Sexual excitement.
Computer pornography and child exploitation, §16-12-100.2.
Electronically furnishing obscene material, §16-12-100.1.
Materials harmful to minors, §16-12-102.
Obscene telephone contact, §16-12-100.3.
Sexual felony.
Aggravated assault, §16-5-21.
Sexually explicit conduct.
Causing minor to be identified as individual in obscene depiction, §16-11-40.1.
Child sexual exploitation, §16-12-100.
Crimes, improper sexual contact by employee or agent, §16-6-5.1.
Nude or sexually explicit electronic transmissions, §16-11-90.
Sexual extortion, coercion to distribute sexually explicit image of individual, §16-11-92.
Sexually explicit nudity.
Computer pornography and child exploitation, §16-12-100.2.
Materials harmful to minors.
Sale, distribution, etc., §16-12-102.
Sexual servitude.
Defense to sexual crimes committed while person being trafficked for sexual servitude, §16-3-6.
Trafficking of persons for labor or sexual servitude, §16-5-46.
Sheriff.
Raffles operated by nonprofit, tax-exempt organizations, §16-12-22.1.

DEFINED TERMS —Cont'd
Shotgun.
Dangerous weapons possession, §16-11-121.
Silencer.
Dangerous weapons possession, §16-11-121.
Solid substance.
Controlled substances, §16-13-30.
Some skill.
Amusement games or devices, §16-12-35.
Spontaneous abortion.
Abortion, criminal, §16-12-141.
Sport shooting range.
Discharge of firearm on or near public highway, §16-11-103.
Sports official.
Battery, §16-5-23.
State.
Controlled substances, §16-13-21.
Criminal code, §16-1-3.
State or government facility.
Domestic terrorism, §16-11-220.
State taxes.
Deposit account fraud, §16-9-20.
Strangulation.
Assault and battery definitions, §16-5-19.
Student.
Hazing, §16-5-61.
Substantially nude.
Human trafficking hotline information to be posted in certain establishments, §16-5-47.
Subversive organization.
Advocating overthrow of government, §16-11-4.
Sedition and subversive activities, §16-11-6.
Subversive person.
Sedition and subversive activities, §16-11-6.
Suicide.
Assisted suicide, §16-5-5.
Syringe services programs.
Forfeitures for transactions in drug related objects, exemption, §16-13-32.
Tangible benefits.
Fraud and deceit, deception as to veteran status or military decoration award, §16-9-63.
Tattoo.
Criminal offense, §16-12-5.

DEFINED TERMS —Cont'd
Telephone record.
Telephone records privacy protection, §16-11-70.
Telephone records broker.
Telephone records privacy protection, §16-11-70.
Terminal.
Transportation passenger safety, §16-12-122.
Tobacco product.
Sales, possession, etc., of tobacco related objects by underage individuals, §16-12-170.
Tobacco product sample, §16-12-174.
Tobacco related objects.
Sale, possession, etc., by underage individuals, §16-12-170.
Tolerance.
Controlled substances, §16-13-21.
Toxins.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Tracking system.
Medical cannabis, access, §16-12-200.
Trade secrets.
Theft, §16-8-13.
Transaction data.
Sales suppression devices, §16-9-62.
Transaction reports.
Sales suppression devices, §16-9-62.
Transportation company.
Transportation passenger safety, §16-12-122.
Trap and trace device.
Criminal invasions of privacy, §16-11-60.
Truck stop.
Human trafficking hotline information to be posted in certain establishments, §16-5-47.
Ultimate user.
Controlled substances, §16-13-21.
Unborn child.
Assault on unborn child, §16-5-28.
Battery of unborn child, §16-5-29.
Feticide, §16-5-80.
Simple assault, §16-5-20.
Unidentifiable.
Chop shop, §16-8-82.
Unit of government.
Discharge of firearm on or near public highway, §16-11-103.
Unit of the university system.
Criminal failure to leave campus or facility, §16-11-35.

DEFINED TERMS —Cont'd
Use.
Computer related offenses, §16-9-92.
Value.
Organized retail theft, §16-8-14.2.
Refund fraud, §16-8-14.1.
Retail property fencing, §16-8-5.2.
Shoplifting, §16-8-14.
Vapor product.
Sales, possession, etc., of tobacco related objects by underage individuals, §16-12-170.
Vector.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Vehicle.
Cargo theft, §16-8-22.
Vehicles with false or secret compartment, §16-11-112.
Vehicle identification number.
Chop shop, §16-8-82.
Victim expenditure.
Computer related offenses, §16-9-92.
Video game.
Duties of video game retailers, §16-12-103.
Video game retailer.
Duties of video game retailers, §16-12-103.
Video movie.
Offense of failure to display official rating, §16-8-61.
Visual bodily harm.
Battery, §16-5-23.1.
Visual depiction.
Computer pornography and child exploitation, §16-12-100.2.
Visual medium.
Child sexual exploitation, §16-12-100.
Vital public service.
Criminal damage to property in first degree, §16-7-22.
Domestic terrorism, §16-11-220.
Weapon.
Carrying and possession of weapons, §16-11-125.1.
Carrying weapons at or near school, §16-11-127.1.
School personnel, §16-11-130.1.
Hijacking motor vehicle, §16-5-44.1.
Weapon of mass destruction.
Bombs, explosives and chemical or biological weapons, §16-7-80.
Weapons carry license.
Carrying and possession of weapons, §16-11-125.1.

DEFINED TERMS —Cont'd
Web page.
Use of Internet or email to induce person to provide personal information by posing as a business, §16-9-109.1.
Wholesale druggist.
Armed robbery, §16-8-41.
Wild animal.
Wild animal, criminal trespass involving, §16-7-21.2.
Without authority.
Computer related offenses, §16-9-92.
Criminal code, §16-1-3.
Without his consent.
Criminal code, §16-1-3.
Writing.
Forgery, §16-9-1.
Zapper.
Sales suppression devices, §16-9-62.

DELUSIONAL COMPULSION.
Defense to criminal prosecutions, §16-3-3.

DENTAL ASSISTANTS.
Drug violations.
Sanctions against licensed persons generally, §§16-13-110 to 16-13-114.

DENTAL HYGIENISTS.
Drugs.
Professions and occupations.
Sanctions against licensed persons for certain violations generally, §§16-13-110 to 16-13-114.

DENTISTS.
Assisted suicide, §16-5-5.
Drugs.
Professions and occupations.
Sanctions against licensed persons for certain violations generally, §§16-13-110 to 16-13-114.
Notice.
Assisted suicide, notice to licensing boards of conviction, §16-5-5.

DEPOSIT ACCOUNT FRAUD, §§16-9-20, 16-9-21.

DEPOTS.
Transportation passenger safety, §§16-12-121 to 16-12-129.

DEPRESSANTS.
Conditional discharge for possession, §16-13-2.

DESECRATION.
Places of religious worship, §16-7-26.

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Obstructing or hindering officers by throwing, etc, blood, urine, feces, vomitus or seminal fluid, §16-10-24.

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Obstructing or hindering officers by throwing, etc, blood, urine, feces, vomitus or seminal fluid, §16-10-24.
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Simple battery, §16-5-23.
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Commercial gambling, §16-12-22.
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PRISON TERMS —Cont'd
Gambling —Cont'd
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Engaging in sexual act with intent to transmit HIV, §16-5-60.
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Manufacturing, possessing, etc., §16-7-85.
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Human body parts.
Removal from scene of death or dismemberment, §16-12-161.
Trafficking, §16-12-160.
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Impersonating a peace officer, public officer or employee, or officer of the court, §16-10-23.
Impersonating a public officer or employee, §16-10-23.
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Interference with government property, §16-7-24.
Intimidation of jury, court officer or law enforcement officer, §16-10-97.
Invasions of privacy.
Filming or viewing underneath or through clothing to view intimate body parts or undergarments, §16-11-91.
Sexual extortion.
Coercion to distribute sexually explicit image of individual, §16-11-92.
Jury tampering, §16-10-91.
Intimidation or injury of juror, §16-10-97.
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Law enforcement animals.
Interfering with or harming public safety or search and rescue animals, §16-11-107.
Law enforcement officers.
Intimidation of law enforcement officer, §16-10-97.
Legislative action.
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Liens.
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Livestock.
Theft, §16-8-20.

PRISON TERMS —Cont'd
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Involuntary manslaughter, §16-5-3.
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Medical marijuana.
Access to medical cannabis.
Licensee or licensee's employees, criminal offenses, §16-12-225.
Low THC oil, possession, purchase and use.
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Presence of children in manufacture, §16-5-73.
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Methaqualone.
Trafficking in, §16-13-31.
Minors.
Child in need of services, causing minor to be, §16-12-1.
Contributing to delinquency or dependency of a minor, §16-12-1.
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Owning, operating or conducting, §16-8-83.
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Altering, counterfeiting, defacing, etc., §16-8-83.
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PRISON TERMS —Cont'd
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Persuading, enticing, aiding, etc., §16-10-55.
Natural products.
Failing to pay for, §16-9-58.
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9-1-1 call.
Unlawful conduct during, §16-11-39.2.
Unlawful request for emergency services assistance, §16-10-28.
Nitrous oxide.
Distributing or possessing for other than medical treatment, §16-13-79.
Noise pollution.
Buses, rapid rail cars or stations.
Playing radios, cassettes, etc., §16-12-120.
Nude or sexually explicit electronic transmissions, §16-11-90.
Sexual extortion.
Coercion to distribute sexually explicit image of individual, §16-11-92.
Oath by public officer.
Violation, §16-10-1.
Obscenity.
Child sexual exploitation, §16-12-100.
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Electronically furnishing obscene material to minors, §16-12-100.1.
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Advocating, §16-11-4.
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Hindering or obstructing, §16-10-24.2.
Park rangers.
Obstructing or hindering, §16-10-24.4.
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Payday loans.
Violation of provisions, §16-17-2.
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False representation as representative, §16-9-57.
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PRISON TERMS —Cont'd
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Bribery, §16-10-2.
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Influencing official action, §16-10-5.
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Violation, §16-10-1.
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Public safety animals.
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Safety devices.
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Person living with HIV engaging in sexual act with intent to transmit HIV, §16-5-60.
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Criminal reproduction, §16-8-60.
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PRISON TERMS —Cont'd
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Search and rescue animals.
Interfering with or harming public safety or search and rescue animals, §16-11-107.
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Sexting, §16-11-90.
Sexual battery.
Aggravated sexual battery, §16-6-22.2.
Sexual exploitation of children, §16-12-100.
Sexual extortion.
Coercion to distribute sexually explicit image of individual, §16-11-92.
Sexual offenses.
Improper sexual contact by employee or agent, §16-6-5.1.
Shoplifting, §16-8-14.
Smash and grab burglary in retail establishment, §16-7-2.
Social networking websites, access by high-risk sexual offenders, §16-12-100.4.
Sodomy, §16-6-2.
Soliciting, §16-6-15.
Spam email.
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Statutory rape, §16-6-3.
Suicide.
Assisted suicide, §16-5-5.
Surveillance violations, §16-11-69.
Terroristic threats or acts, §16-11-37.
Antiterroristic training.
Prohibited training, §16-11-151.
Theft.
Conversion of payments for realty improvements, §16-8-15.
Entering motor vehicle with intent to commit, §16-8-18.
Extortion, §16-8-16.
Livestock theft, §16-8-20.
Mail, theft by possession of stolen mail, §16-8-24.
Particular offenses, §16-8-12.
Porch piracy, §16-8-25.
Robbery, §16-8-40.
Armed robbery, §16-8-41.

PRISON TERMS —Cont'd
Theft —Cont'd
Shoplifting, §16-8-14.
Stealing, embezzling, etc., trade secrets, §16-8-13.
Trade secrets, §16-8-13.
Trafficking of disabled adults, elder persons or residents, §16-5-102.1.
Trafficking of persons for labor or sexual servitude, §16-5-46.
Unborn child.
Voluntary manslaughter, §16-5-80.
Unlawful request for emergency services assistance, §16-10-28.
Vandalism to places of worship, §16-7-26.
Violent or tumultuous acts in penal institutions, §16-10-56.
Weapons.
Aggravated assault using firearm within school safety zone, §16-5-21.
Airports, carrying weapons in certain areas, §16-11-130.2.
Buses or railroads.
Boarding with concealed dangerous or deadly weapon, §16-12-123.
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Convicted felons.
Firearms, possession, §16-11-131.
Criminal use of firearm with altered identification mark, §16-9-70.
Dangerous weapons possession, §16-11-123.
Hunting.
Misuse of firearm or archery tackle while hunting, §§16-11-108, 16-11-109.
Persons convicted who have prior convictions, §16-11-133.
Witnesses.
Acceptance of benefit, reward, etc., for changing testimony or being absent from proceeding, §16-10-92.
Attempted murder of witness, §16-10-32.
Influencing, §16-10-93.
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PRIVACY.
Computer invasion of privacy, §16-9-93.
Concealed weapons permit.
Privacy rights regarding locked vehicles containing firearms locked out of sight.
Action against employer or agent for use of firearms in the workplace, §16-11-135.
Criminal invasions of privacy.
Filming or viewing underneath or through clothing to view intimate body parts or undergarments, §16-11-91.
Generally, §§16-11-60 to 16-11-70.
Nude or sexually explicit electronic transmissions, §16-11-90.
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Sexual extortion.
Coercion to distribute sexually explicit image of individual, §16-11-92.
Firearms.
Employer parking lot for employees or invited guests.
Privacy rights regarding locked vehicles containing firearms locked out of sight, §16-11-135.
Motor vehicles.
Employer parking lot for employees or invited guests.
Privacy rights regarding locked vehicles containing firearms locked out of sight, §16-11-135.
Sexual extortion.
Coercion to distribute sexually explicit image of individual, §16-11-92.

PRIVATE SCHOOLS.
Controlled substances.
Manufacturing, distributing, possessing, etc., in, on or near schools, §16-13-32.4.
Medical marijuana.
Access to medical cannabis.
Covered entities.
Operations in proximity to covered entities.
Restrictions on operations of licensees, §16-12-215.

PROBATION.
Armed robbery conviction, §16-8-41.

PROBATION —Cont'd
Bombs, explosives and chemical or biological weapons.
Violation done with intent to cause death or bodily injury or cause damage to public buildings.
Probation prohibited, §16-7-88.
Child molesters, §16-6-4.
Persons convicted of enticing children for indecent purposes, §16-6-5.
Chop shop violators, §16-8-83.
Community supervision officers.
Blood.
Obstructing or hindering officers by throwing, etc, blood, urine, feces, vomitus or seminal fluid, §16-10-24.
Feces.
Obstructing or hindering officers by throwing, etc, blood, urine, feces, vomitus or seminal fluid, §16-10-24.
Firearms.
Carrying weapons and firearms.
Exemption from provisions, §16-11-130.
Theft of weapon from peace officer, correction officer, etc., §16-10-33.
Intimidation or injury to court officer, §16-10-97.
Laser device, projecting against law enforcement officers, §16-10-34.
Obstructing or hindering, §16-10-24.
Seminal fluid.
Obstructing or hindering officers by throwing, etc, blood, urine, feces, vomitus or seminal fluid, §16-10-24.
Terroristic threats or acts as retaliation for participation in judicial or official proceeding, §16-11-37.
Urine.
Obstructing or hindering officers by throwing, etc, blood, urine, feces, vomitus or seminal fluid, §16-10-24.
Vomitus.
Obstructing or hindering officers by throwing, etc, blood, urine, feces, vomitus or seminal fluid, §16-10-24.
Criminal street gang members.
Participation in criminal gang activity, §16-15-4.
PROBATION —Cont'd
Domestic terrorism.
Restrictions on suspension, stays, probation, deferral, etc, §16-11-221.
Drug traffickers, §16-13-31.
Ecstasy, sale, possession or other offenses associated with, §16-13-31.1.
Electronic monitoring devices.
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