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Statutes:

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

Annotations of Judicial Decisions:

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

Annotations of Attorney General Opinions:

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

Other Annotations:

References to:

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

Tables:

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

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CHAPTER 7

DAMAGE TO AND INTRUSION UPON PROPERTY

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ARTICLE 1

BURGLARY

16-7-1. Burglary.

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1. EVIDENCE SUFFICIENT.
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SENTENCING

Elements of Burglary

1. In General

Camper as dwelling place of another. — There was sufficient evidence for a jury to conclude that the use of the camper was established as a dwelling place for purposes of proving burglary under O.C.G.A. § 16-7-1(a), including evidence that the victim stayed in the camper multiple times a year during hunting season and the victim kept mattresses, lights, a cooler, and other camping and hunting supplies in the camper. *Frazier v. State*, 352 Ga. App. 98, 834 S.E.2d 107, 2019 Ga. App. LEXIS 533 (2019).

2. Unauthorized Entry

Unauthorized entry of companions. — Defendant's burglary charge under O.C.G.A. § 16-7-1(b) was upheld despite the fact that a resident voluntarily admitted the defendant into the apartment because after shooting one victim, the defendant opened the door to two companions, who stole drugs and money; the companions' entry satisfied the element of entering without authority. *Jackson v. State*, 305 Ga. 614, 825 S.E.2d 188, 2019 Ga. LEXIS 197 (2019).

Entering or remaining in home without authority. — Evidence supported the conclusion that the defendant entered or remained in the victim's home without authority and for the purpose of committing theft, after a struggle by the front of the home, was sufficient to support the defendant's convictions for robbery and burglary. *Dupree v. State*, 303 Ga. 885, 815 S.E.2d 899, 2018 Ga. LEXIS 433 (2018).

Indictments

Required contents of indictment.

Defendant's trial counsel performed deficiently by failing to challenge the first-degree burglary count on the ground that the court failed to allege that defendant entered a dwelling house of another or a building designed for use as the dwelling of another because the indictment charged only that defendant entered the victim's business, trial counsel's failure to raise the issue was not a reasonable trial

strategy, and defendant was prejudiced as he should have been convicted of and sentenced for second-degree burglary. *Moore v. White*, 320 Ga. 120, 907 S.E.2d 902, 2024 Ga. LEXIS 243 (2024).

Included Crimes

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

Jury Instructions

Sua sponte charge on mistake of fact not warranted. — Trial court did not err by failing to sua sponte charge the jury on mistake of fact with regard to burglary of a home because the evidence established that the circumstances did not support a finding that the defendant acted under reasonable and honest mistake of fact as the video footage presented at trial showed that the defendant chose to enter the carport twice, the second time after ascertaining during the first entry that no one was home. *Ogle v. State*, 349 Ga. App. 872, 827 S.E.2d 61, 2019 Ga. App. LEXIS 217 (2019).

Trial court did not err in failing to instruct the jury, sua sponte, on the defense of mistake of fact because, by defendant's own admission, the victim told the defendant that the defendant was not allowed inside the house. Additionally, the evidence showed that the victim explicitly refused to give the defendant a key. *Chambers v. State*, 361 Ga. App. 139, 863 S.E.2d 387, 2021 Ga. App. LEXIS 445 (2021).

Inferences, Sufficiency and Admissibility of Evidence

1. Evidence Sufficient.

Sufficient circumstantial evidence of intent. — Sufficient evidence supported defendant's conviction for second-degree burglary of the convenience store based on defendant knowing where the money was hidden, lying about returning

**Inferences, Sufficiency and
Admissibility of Evidence (Cont'd)**
1. Evidence Sufficient. (Cont'd)

the keys of a fired employee, setting up a false alibi with a friend, and the sunglasses on the suspect in the surveillance footage being found at defendant's bedside table. *Ford v. State*, 370 Ga. App. 414, 897 S.E.2d 621, 2024 Ga. App. LEXIS 27 (2024).

Sufficient evidence supported the burglary conviction as to the abandoned house based on the video showing the suspect walking toward the vacant house where defendant was found. *Ford v. State*, 370 Ga. App. 414, 897 S.E.2d 621, 2024 Ga. App. LEXIS 27 (2024).

Fingerprint evidence. — Evidence was sufficient to adjudicate the defendant juvenile delinquent for acts that, if committed by an adult, would constitute the offenses of burglary and attempted burglary because, for purposes of the first burglary, it appeared to the investigating officers that the burglar had entered through a kitchen window at the rear of the house, and the officers found the defendant's palm prints on the outside of the bottom lower window pane of that window; for purposes of the second burglary, the officers found the defendant's palm prints on the outside of three windows at the back of the house; and the only reasonable hypothesis was that the defendant's palm prints were impressed at the time of the burglaries. In the Interest of S. B., 348 Ga. App. 339, 822 S.E.2d 835, 2019 Ga. App. LEXIS 3 (2019).

Denial of defendant's motion for a directed verdict of acquittal was appropriate. — Trial court did not err in denying the defendant's motion for a directed verdict of acquittal as to the burglary-in-the-first-degree charge because the evidence, including the defendant's entry into the house through a window and the victim's refusal to provide the defendant with a key to the house and statement that the defendant was not permitted inside the house when the victim was not present, was sufficient to support the defendant's conviction. *Chambers v. State*, 361 Ga. App. 139, 863 S.E.2d 387, 2021 Ga. App. LEXIS 445 (2021).

Burglary of home where previously lived.

Evidence was sufficient to support defendant's conviction of burglary because it showed that, after the victim had broken up with defendant and had repeatedly asked for the return of the victim's key, defendant let himself into the victim's home without permission, waited in a closet for the victims to return, and angrily confronted the victims with the other victim's handgun moments after the victims entered the home. *Hall v. State*, 371 Ga. App. 606, 901 S.E.2d 743, 2024 Ga. App. LEXIS 189 (2024).

House under construction was a dwelling. — Evidence that the house, which was under construction, was designed for use as a dwelling did not preclude a finding that the house was a dwelling at the time of the burglary despite the fact that the house was not complete and the victim had not begun living in the house and, thus, the evidence was sufficient to support the defendant's conviction for burglary. *Showers v. State*, 353 Ga. App. 754, 839 S.E.2d 245, 2020 Ga. App. LEXIS 78 (2020), cert. denied, No. S20C0926, 2020 Ga. LEXIS 728 (Ga. Sept. 8, 2020).

Sufficient evidence for conviction.

Evidence was sufficient to convict the defendant of murder and burglary because, given that the bolt-action rifle was required to be reloaded after each shot, the defendant's claim that the gun simply discharged multiple times during a scuffle could easily be disbelieved by the jury in favor of a conclusion that the defendant deliberately shot the victim; and, once the defendant shot the victim, the defendant entered into the victim's bedroom without authority to steal the victim's wallet. *Williamson v. State*, 305 Ga. 889, 827 S.E.2d 857, 2019 Ga. LEXIS 319 (2019).

Evidence was sufficient to convict the defendant of burglary because, despite the fact that the defendant was admitted to the apartment, the defendant was a party to the crime of burglary as, after shooting the victim, the defendant opened the apartment door to admit two of the defendant's companions who, along with the defendant and the others that had already been let into the apartment, proceeded to

ransack the apartment, steal drugs and money, and hold individuals present in the apartment at gunpoint; and the jury was authorized to find that the defendant did not have the authority to admit the defendant's two companions into the apartment, and that their entry satisfied the element of entering without authority. *Jackson v. State*, 305 Ga. 614, 825 S.E.2d 188, 2019 Ga. LEXIS 197 (2019).

Evidence including the geographic proximity of the defendant's home to the crime and pawn shop, the temporal proximity of the defendant's visit to the pawn shop after the intrusion, the victim's vehicle being found running across from the pawn shop, the defendant's initial denial of pawning the stolen television, and the lack of evidence about the identity of the person the defendant claimed to have gotten the television from supported robbery for force, burglary, aggravated battery, false imprisonment, and theft by taking convictions. *Strickland v. State*, 348 Ga. App. 892, 825 S.E.2d 379, 2019 Ga. App. LEXIS 92 (2019).

Sufficient evidence supported the appellant's convictions for burglary, cruelty to children, terroristic threats, and aggravated assault as neither parent gave the appellant permission to enter their home, appellant was identified as the intruder who held a knife to the child's neck, and struggled with one parent as the appellant tried to remove the child from the home, and the appellant threatened to kill one of the children while holding a knife to the child's neck. *Cordova v. State*, 351 Ga. App. 652, 832 S.E.2d 465, 2019 Ga. App. LEXIS 461 (2019).

Evidence was sufficient to support the defendants' convictions for burglary and theft by taking because someone broke into two homes and stole cooking ranges, one of which was recovered at the defendants' home; police recovered computers from the defendants' home, and the police found internet advertisements and e-mails related to the sale of the stolen goods on those computers; and the internet account was linked to the second defendant, and the first defendant's e-mails were on the computers. *Hamlett v. State*, 350 Ga. App. 93, 828 S.E.2d 132, 2019 Ga. App. LEXIS 254 (2019), cert. denied, No.

S19C1274, 2019 Ga. LEXIS 860 (Ga. Dec. 23, 2019), cert. denied, No. S19C1275, 2019 Ga. LEXIS 890 (Ga. Dec. 23, 2019).

Convictions for burglary, rape, and aggravated battery were supported by sufficient evidence as the record showed that seminal fluid and the defendant's DNA were found in the victim's underwear, the defendant's alibi did not check out when police attempted to verify the alibi, and it was undisputed that the defendant had knowledge of how to enter the house through a broken door without a key, having previously been in a relationship with the victim's daughter. *McEady v. State*, 355 Ga. App. 820, 846 S.E.2d 94, 2020 Ga. App. LEXIS 395 (2020).

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

Convictions for burglary, rape, and aggravated battery were supported by sufficient evidence as the record showed that seminal fluid and the defendant's DNA were found in the victim's underwear, the defendant's alibi did not check out when police attempted to verify the alibi, and it was undisputed that the defendant had knowledge of how to enter the house through a broken door without a key, having previously been in a relationship with the victim's daughter. *McEady v. State*, 355 Ga. App. 820, 846 S.E.2d 94, 2020 Ga. App. LEXIS 395 (2020).

Evidence was sufficient to support the defendant's conviction for burglary because the defendant entered the recycling facility's upper and lower warehouses without authority and for the purpose of stealing copper. *Tyler v. State*, 311 Ga. 727, 859 S.E.2d 73, 2021 Ga. LEXIS 292 (2021).

Evidence was sufficient to support defendant's burglary conviction because the

Inferences, Sufficiency and Admissibility of Evidence (Cont'd)

1. Evidence Sufficient. (Cont'd)

victim testified that the back door of her home appeared to have been kicked in, a window was shattered, several items were taken, and she saw defendant leave the house and flee the scene. A witness who was with the victim testified that she knew defendant from the neighborhood and recognized him immediately. *Johnson v. State*, 369 Ga. App. 414, 893 S.E.2d 792, 2023 Ga. App. LEXIS 465 (2023).

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

Accomplice testimony sufficiently corroborated. — Accomplice's testimony implicating the defendant was corroborated by the hat found at the scene of the crime containing the defendant's DNA and, thus, the evidence was sufficient for the jury to have found beyond a reasonable doubt that the defendant was guilty of burglary and criminal damage to property in the second degree. *Dunlap v. State*, 351 Ga. App. 685, 832 S.E.2d 667, 2019 Ga. App. LEXIS 473 (2019).

Evidence sufficient for criminal attempt at burglary. — Evidence that the defendant rang the doorbell, made a motion in which the defendant appeared to adjust a gun, and that two other people stood to the defendant's side, one wearing a mask and holding a sawed-off shotgun and the other crouched behind the defendant with a pistol was sufficient to support the defendant's conviction for criminal attempt to commit burglary. *Owens v. State*, 353 Ga. App. 616, 838 S.E.2d 909, 2020 Ga. App. LEXIS 58 (2020).

2. Evidence Insufficient.

Variance between named victim and evidence presented at trial. —

Claim of insufficient evidence had merit as to one count of burglary because the indictment alleged in that count that the

defendant broke into a storage unit leased to a male but the state presented testimony and a lease agreement showing that the unit in question belonged to a female and while they had the same last name, the state did not present any evidence at trial showing that they were in some way related or that the male was ever involved with the storage facility or leased a unit that was unlawfully entered. *McCulloch v. State*, 357 Ga. App. 67, 849 S.E.2d 795, 2020 Ga. App. LEXIS 559 (2020).

Sentencing

Construction with federal law. — In a 28 U.S.C. § 2255 case in which an inmate argued that a Georgia burglary cannot qualify as a violent felony under the Armed Career Criminal Act's enumerated-crimes clause because Georgia's burglary statute was indivisible and criminalized conduct broader than generic burglary, the United States Court of Appeals for the Eleventh Circuit rejected that argument in the *Gundy* decision by ruling that O.C.G.A. § 16-7-1(a) was divisible and subject to the modified categorical approach. *Davis v. United States*, No. 17-12497-K, 2018 U.S. App. LEXIS 30800 (11th Cir. Oct. 30, 2018).

Where the defendant was convicted of being felon in possession of firearm in violation of 18 U.S.C. § 922(g), district court did not err sentencing the defendant pursuant to the Armed Career Criminal Act (ACCA) because his Georgia burglary conviction under O.C.G.A. § 16-7-1 counted as one of three predicate crimes necessary to invoke ACCA. Defendant failed to establish a realistic probability that party-to-a-crime liability under the Georgia burglary statute extended significantly beyond liability under the generic accomplice liability standard. *United States v. Coats*, 8 F.4th 1228, 2021 U.S. App. LEXIS 24027 (11th Cir. 2021).

Multiple convictions. — Trial court did not err in imposing maximum and consecutive sentences on the second defendant for the burglary and theft by taking convictions as the second defendant's prior convictions for three or more felonies qualified the second defendant to be sentenced as a recidivist, requiring the

second defendant to be sentenced to the maximum time allowed; the sentences were within the statutory ranges; and the trial court had the authority to require that the sentences run consecutively. *Hamlett v. State*, 350 Ga. App. 93, 828 S.E.2d 132, 2019 Ga. App. LEXIS 254 (2019), cert. denied, No. S19C1274, 2019 Ga. LEXIS 860 (Ga. Dec. 23, 2019), cert. denied, No. S19C1275, 2019 Ga. LEXIS 890 (Ga. Dec. 23, 2019).

Recidivist sentencing appropriate.

— Trial court did not err in sentencing the defendant to an eight-year sentence on a burglary offense because the defendant was incorrect that the maximum permissible sentence for that offense was five years as certified copies of prior burglary convictions were presented and the trial court properly sentenced the defendant as a recidivist. *Martin v. State*, 349 Ga. App. 656, 825 S.E.2d 227, 2019 Ga. App. LEXIS

8 (2019), cert. denied, No. S19C1043, 2019 Ga. LEXIS 814 (Ga. Nov. 18, 2019).

Partially suspended sentence was void. — In a burglary action, when the defendant had eight prior felony convictions, five of them for burglary, O.C.G.A. § 16-7-1(d) barred suspension of the defendant's sentence, so the sentence the trial court imposed, 25 years in prison with the final 20 suspended, was void. *State v. Stanford*, 312 Ga. 707, 864 S.E.2d 448, 2021 Ga. LEXIS 655 (2021).

Correction of sentence required.

Defendant's seven-year prison sentence for first-degree burglary was void because the trial court erred by failing to sentence defendant to the maximum sentence of 25 years under O.C.G.A. § 17-10-7, as defendant had several prior felony convictions. *State v. Ault*, 369 Ga. App. 163, 892 S.E.2d 586, 2023 Ga. App. LEXIS 421 (2023).

ARTICLE 1A

HOME INVASION

16-7-5. Home invasion in the first and second degree.

JUDICIAL DECISIONS

Home invasion required defendant to bring weapon into home. — Because the uncontroverted evidence showed that the defendant did not possess the iron used in the assault of the victim at the time the defendant entered the apartment but found the iron after making the unlawful entry, the state failed to prove an essential element of the crime of home invasion in the first degree and the trial court erred when the court denied the defendant's motion for a directed verdict on that count of the indictment. *Mahone v. State*, 348 Ga. App. 491, 823 S.E.2d 813, 2019 Ga. App. LEXIS 31 (2019).

Indictment sufficient as to victim's authority to be present in home. —

Trial lawyer's failure to file a general demurrer to the count of the indictment that charged the defendant with home invasion based on the indictment referring to the victim's dwelling house without specifying that the victim had authority to be present was not ineffective

assistance of counsel because the allegation that the house was the dwelling house of the victim necessarily implied that the victim had the authority to be present therein; thus, the indictment was sufficient. *Jordan v. State*, 307 Ga. 450, 836 S.E.2d 86, 2019 Ga. LEXIS 801 (2019).

Indictment specified that defendant intended to commit underlying crimes inside residence. —

Counsel was not ineffective for failing to file a general demurrer or a motion in arrest of judgment as those motions would have been meritless because the indictment did not fail to specify that the defendant intended to commit the underlying crimes of armed robbery and aggravated assault inside the residence for purposes of the offense of home invasion as the allegation that the defendant entered the victim's home without authority and with the intent to commit various felonies necessarily implied that the defendant intended to

commit the underlying crimes inside the residence. *Subar v. State*, 309 Ga. 805, 848 S.E.2d 109, 2020 Ga. LEXIS 607 (2020).

Evidence sufficient for conviction. — Evidence was sufficient to convict the defendant of armed robbery, aggravated assault, first degree home invasion, and possession of a firearm during the commission of a felony as the victim testified that the defendant entered the victim’s home without permission, pointed a gun at the victim and the others in the home, and took their money. *Mahogany v. State*, 366 Ga. App. 750, 884 S.E.2d 141, 2023 Ga. App. LEXIS 76 (2023).

Failure to request lesser-included offense instruction. — Defendant failed to show that trial counsel was ineffective for failing to request a jury charge on burglary as a lesser-included offense of a home invasion because the language of the home invasion statute and the indictment did not require proof that the firearm used in the incident was a function-

ing pistol. The evidence showed that defendant entered the home while holding a weapon that appeared to be a pistol and used that weapon as a bludgeon to strike the victim on the head. *Slaughter v. State*, 366 Ga. App. 803, 884 S.E.2d 407, 2023 Ga. App. LEXIS 83 (2023).

Jury instruction on second-degree home invasion not supported by evidence. — Trial court did not err in denying the defendant’s written request for a charge on second-degree home invasion as a lesser-included offense of first-degree home invasion because the evidence did not support the defendant’s argument that the defendant did not possess a deadly weapon and the defendant pointed to no evidence that the defendant intended to commit an assault by some means other than with a deadly weapon. *Campbell v. State*, 359 Ga. App. 391, 858 S.E.2d 83, 2021 Ga. App. LEXIS 207 (2021).

ARTICLE 2

CRIMINAL TRESPASS AND DAMAGE TO PROPERTY

PART 1

GENERAL PROVISIONS

16-7-20. Possession of tools for the commission of crime.

JUDICIAL DECISIONS

Possession of altered credit cards. — Evidence was sufficient to support the defendant’s convictions for financial transaction card fraud and possession of tools for the commission of a crime as the defendant was not merely present during the criminal activity as the two financial transaction card forgery counts pertained to the credit cards with embossed numbers were found in the driver’s door pocket of the defendant’s car, which the defendant was driving at the time of the stop. *Riley v. State*, 356 Ga. App. 290, 846 S.E.2d 617, 2020 Ga. App. LEXIS 431 (2020), overruled, *Hill v. State*, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to support conviction, etc. Evidence was sufficient to convict the defendant of possession of tools for the commission of a crime as the evidence adduced at trial indicated that the defendant wore a wig during the robbery and that the wig was recovered following the defendant’s apprehension, and it was well within the jury’s ability to determine whether the wigs were commonly used in the commission of a crime and whether the defendant had the necessary intent to use the wig in that manner. *Williams v. State*, 356 Ga. App. 820, 849 S.E.2d 681, 2020 Ga. App. LEXIS 537 (2020).

16-7-21. Criminal trespass.**JUDICIAL DECISIONS****ANALYSIS****EVIDENCE AND CORROBORATION****Evidence and Corroboration****Evidence sufficient for conviction.**

— In a domestic dispute case between the defendant, a father, and the defendant's adult children, the evidence was sufficient to convict the defendant of trespass for refusing to leave the property because the defendant's older son told the defendant to leave more than once before calling police and the defendant's younger son told the defendant to leave more times than the younger son could remember; and the jury was authorized to find that the defendant had reasonable time to leave between the time the defendant's sons told the defendant to leave and when the police arrived. *Anderson v. State*, 348 Ga. App. 322, 822 S.E.2d 684, 2018 Ga. App. LEXIS 650 (2018).

S.E.2d 684, 2018 Ga. App. LEXIS 650 (2018).

Evidence insufficient. — In a domestic dispute case between the defendant, a father, and the defendant's adult children, there was insufficient evidence to convict the defendant of trespass arising from the defendant's initial presence on the property because, even if an officer previously told the defendant not to enter the property, no evidence was presented at trial that such an instruction was authorized by an owner or occupant of the property. *Anderson v. State*, 348 Ga. App. 322, 822 S.E.2d 684, 2018 Ga. App. LEXIS 650 (2018).

16-7-21.1. Unlawful squatting.

(a)(1) A person commits the offense of unlawful squatting when he or she enters upon the land or premises of another and resides on such land or premises for any period of time knowingly acting without the knowledge or consent of the owner, the rightful occupant, or an authorized representative of the owner. As used in this Code section, the term "resides" means to inhabit or live on or within any land or premises.

(2) Any person who commits or is accused of committing the offense of unlawful squatting as provided for in paragraph (1) of this subsection shall receive a citation advising that he or she shall present to the head of the issuing law enforcement agency or its designee, within three business days of receiving the citation for such alleged offense, properly executed documentation that authorizes the person's entry on such land or premises. Such documentation may include a properly executed lease or rental agreement or proof of rental payments.

(3) If such person is unable to provide the documentation required by paragraph (2) of this subsection, such person shall be subject to arrest for unlawful squatting and, upon conviction thereof, shall be subject to the penalty provided in subsection (b) of this Code section.

(4) If such person provides documentation that authorizes such

person’s entry on the land or premises, a hearing shall be set within seven days of the submission of such documentation, and, if the court of appropriate jurisdiction finds that the submitted documentation was not properly executed or is not meritorious, such person shall be subject to demand for possession and removal as provided in Code Section 44-11-32, be subject to arrest and upon conviction penalties as provided for in Code Sections 16-9-1 and 16-9-2, and be assessed an additional fine based on the fair market monthly rental rate of the land or premises.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor which upon conviction shall be punished as provided in Code Section 17-10-3.

History.

Code 1981, § 16-7-21.1, enacted by Ga. L. 2024, p. 400, § 3/HB 1017, effective April 24, 2024; Ga. L. 2025, p. 1029, § 16(7)/SB 153, effective July 1, 2025.

Effective date.

This Code section became effective April 24, 2024.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, in paragraph (a)(1), inserted “the” following “owner,” in the first sentence and substituted “As used in” for “For the purposes of” at the beginning of the second sentence; in paragraph (a)(2), substituted “he or she shall” for “they must” and “its designee,” for “their designee” and inserted a comma following “alleged offense” in the first sentence; in paragraph (a)(3), inserted a comma following “and” and inserted

“thereof, shall be subject”; in paragraph (a)(4), substituted “provides” for “does provide” near the beginning, substituted “such documentation, and if”, (due to multiple instances of “documentation” and “and” in paragraph (a)(4)) inserted “of appropriate jurisdiction”, and deleted “shall” preceding “be assessed”; and, in subsection (b), substituted “punished” for “punishable”.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2024, Code Section 16-7-21.1, as enacted by Ga. L. 2024, p. 475, § 2/HB 827, was redesignated as Code Section 16-7-21.2.

Editor’s notes.

Ga. L. 2024, p. 400, § 1/HB 1017, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Squatter Reform Act.’”

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 16-7-21.1 appear to be offenses for which

fingerprinting is required. 2024 Op. Att’y Gen. No. 24-3.

16-7-21.2. Criminal trespass involving a wild animal.

- (a) As used in this Code section, the term:
- (1) “Harass” means to engage in any act which demonstrates a disregard for the well-being of a wild animal, or which creates the likelihood of injury to or disrupts normal behavior patterns of the wild animal, such as feeding, watering, resting, and breeding.
 - (2) “Wild animal” means any land or sea animal currently or

historically found in the wild, other than a domestic animal or livestock, including an animal kept, exhibited, or housed at any facility operating with the purpose of public visitation, conservation, education, or science, including but not limited to a zoological institution as defined in paragraph (87) of Code Section 48-8-3, and any animal kept, exhibited, or housed in aquariums, safaris, or animal sanctuaries.

(b)(1) A person commits the offense of criminal trespass involving a wild animal in the first degree if such person enters a cage, enclosure, or other area where a wild animal is housed or otherwise contained, into which the person knows he or she has no legal authority, license, or permission to enter, and harasses the wild animal and such wild animal suffers an injury or death.

(2) A person commits the offense of criminal trespass involving a wild animal in the second degree if such person enters a cage, enclosure, or other area where a wild animal is housed or otherwise contained, into which the person knows he or she has no legal authority, license, or permission to enter.

(c)(1) A person convicted of the offense of criminal trespass involving a wild animal in the first degree shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than ten years.

(2) A person convicted of the offense of criminal trespass involving a wild animal in the second degree shall be guilty of a misdemeanor and punished by imprisonment for not more than 12 months.

(d) In addition to any other fine, penalty, or restitution which may be imposed by law, such person would be liable for the cost of any damage to, and loss of, property connected to the criminal trespass, including, but not limited to, the injury or death of the wild animal.

(e) It shall not be an affirmative defense to prosecution under this Code section that:

(1) Entry into the cage, enclosure, or other area where the wild animal was housed or otherwise contained was not sufficiently guarded, locked, or otherwise made inaccessible so as to prevent entry into the cage, enclosure, or other area;

(2) The wild animal was provoked by means other than the presence of the person in the cage, enclosure, or other area; or

(3) Injury to the wild animal was necessary to protect the person from injury or death.

(f) Subsection (b) of this Code section shall not apply to a person who enters a cage, enclosure, or other area for the purpose of aiding another person or a wild animal in the cage, enclosure, or other area.

History.

Code 1981, § 16-7-21.2, enacted by Ga. L. 2024, p. 475, § 2/HB 827, effective July 1, 2024.

Effective date.

This Code section became effective July 1, 2024.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2024, Code Section 16-7-21.1, as enacted by Ga. L. 2024, p. 475, § 2/HB 827, was redesignated as Code Section 16-7-21.2.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 16-7-21.1 appear to be offenses for which

fingerprinting is required. 2024 Op. Att’y Gen. No. 24-3.

16-7-22. Criminal damage to property in the first degree.

- (a) As used in this Code section, the term:
 - (1) “Critical infrastructure” shall have the same meaning as provided in Code Section 16-11-220.
 - (2) “Electronic means” means any unauthorized transmission of fraudulent or unauthorized data, including data that is self-replicating or self-propagating, and any use of other technology that successfully modifies, alters, damages, destroys, records, or transmits information which disrupts normal operations.
 - (3) “Public transportation system” shall have the same meaning as provided in Code Section 16-11-220.
 - (4) “Vital public service” includes water, sewerage, drainage, energy, electric, gas, natural gas, telecommunication, internet, cable, navigation, collision avoidance, public transportation systems, railroads, and other services the loss of which would have a debilitating impact on the health, safety, or financial security of the public.
- (b) A person commits the offense of criminal damage to property in the first degree when he or she:
 - (1) Knowingly and without authority interferes with any property in a manner so as to endanger human life;
 - (2) Knowingly and without authority and by either force or violence or by electronic means interferes with the proper operation of any critical infrastructure or any vital public service; or
 - (3) Knowingly and without justification causes damage to a building by discharging a firearm while inside a vehicle or after immediately exiting a vehicle.
- (c) A person convicted of the offense of criminal damage to property in the first degree shall be punished by imprisonment for not less than one

nor more than ten years; provided, however, that a person convicted of a violation of paragraph (2) of subsection (b) of this Code section shall be punished by imprisonment for not less than two nor more than 20 years.

History.

Code 1933, § 26-1501, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 2023, p. 69, § 2/HB 227, effective July 1, 2023; Ga. L. 2024, p. 528, § 1-2/SB 421, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, added subsection (a); redesignated former subsections (a) and (b) as present subsections (b) and (c), respectively; in subsection (b), added “or she” at the beginning, rewrote paragraph (b)(2), which formerly read: “Knowingly and

without authority and by force or violence interferes with the operation of any system of public communication, public transportation, sewerage, drainage, water supply, gas, power, or other public utility service or with any constituent property thereof.”; and added the proviso at the end of subsection (c).

The 2024 amendment, effective July 1, 2024, deleted “or” from the end of paragraph (b)(1), substituted “; or” for a period at the end of paragraph (b)(2), and added paragraph (b)(3).

16-7-23. Criminal damage to property in the second degree.

(a) A person commits the offense of criminal damage to property in the second degree when he or she:

(1) Intentionally damages any property of another person without his or her consent and the damage thereto exceeds \$500.00; or

(2) Recklessly or intentionally, by means of fire, explosive, or fireworks, damages property of another person.

(b) A person convicted of the offense of criminal damage to property in the second degree shall be punished by imprisonment for not less than one nor more than five years.

History.

Code 1933, § 26-1502, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1985, p. 484, § 2; Ga. L. 1985, p. 1491, § 2; Ga. L. 2008, p. 444, § 2/SB 400; Ga. L. 2024, p. 945, § 2/SB 417, effective July 1, 2024; Ga. L. 2025, p. 1029, § 16(8)/SB 153, effective July 1, 2025.

Amendments.

The 2024 amendment, effective July 1, 2024, inserted “or she” at the end of

subsection (a), inserted “or her” in the middle of paragraph (a)(1), and substituted “fire, explosive, or fireworks” for “fire or explosive,” in paragraph (a)(2).

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, inserted a comma following “fireworks” in paragraph (a)(2).

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

MERGER OF OFFENSES

Application

Evidence of property value. — There was sufficient evidence to support the defendant's conviction for criminal damage to property in the second degree as the state presented evidence from the victim that the damage to the victim's car was a shot-out window and that the cost to get the car fixed exceeded \$500 as well as a photograph showing the damaged window. *Motes v. State*, 352 Ga. App. 707, 834 S.E.2d 565, 2019 Ga. App. LEXIS 474 (2019), cert. denied, No. S20C0564, 2020 Ga. LEXIS 492 (Ga. June 29, 2020).

Accomplice testimony sufficiently corroborated. — Accomplice's testimony implicating the defendant was corroborated by the hat found at the scene of the crime containing the defendant's DNA and, thus, the evidence was sufficient for the jury to have found beyond a reasonable doubt that the defendant was guilty of burglary and criminal damage to property in the second degree. *Dunlap v. State*, 351 Ga. App. 685, 832 S.E.2d 667, 2019 Ga. App. LEXIS 473 (2019).

Evidence sufficient for conviction.

Evidence was sufficient to convict the defendant of criminal damage to property

in the second degree as the second victim testified that the second victim's phone was new and in good condition at the time of the incident; it was rendered totally useless as a result of the defendant's actions of slapping it out of the second victim's hand; and it cost \$657 to replace. *Flakes v. State*, 365 Ga. App. 97, 877 S.E.2d 635, 2022 Ga. App. LEXIS 388 (2022).

Merger of Offenses

Criminal trespass is lesser included offense. — While the evidence was insufficient to support the defendant's conviction for second-degree criminal damage to property because there was no evidence that the property damage exceeded \$500, the evidence was sufficient on the lesser included offense of criminal trespass because the hostess testified as to the extent of the damage, and there was evidence that the defendant had picked up a small chair or similar item from the porch and thrown the chair at the front of the house, breaking a window. *Simpson v. State*, 353 Ga. App. 568, 839 S.E.2d 47, 2020 Ga. App. LEXIS 49 (2020).

16-7-25. Damaging, injuring, or interfering with property of public utility companies, municipalities, or political subdivisions.

(a) As used in this Code section, the term "critical infrastructure" shall have the same meaning as set forth in Code Section 16-11-220.

(b) It shall be unlawful for any person intentionally and without authority to alter or interfere with any critical infrastructure to prevent the proper registering of the quantity of such service supplied; in any way to interfere with the proper action of a company, municipality, or political subdivision owning critical infrastructure; intentionally to divert any services of such company, municipality, or political subdivision; or otherwise intentionally and without authority to use or cause to be used, without the consent of the company, municipality, or political subdivision, any service manufactured, sold, or distributed by the company, municipality, or political subdivision.

(c) Where there is no evidence to the contrary, the person performing any of the illegal acts set forth in subsection (b) of this Code section and the person who with knowledge of such violation receives the benefit of such service without proper charge as a result of the improper action

shall be presumed to be responsible for the act of tampering or diversion.

(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.

(e) Any person who violates this Code section shall be guilty of a misdemeanor.

History.

Ga. L. 1897, p. 69, § 1; Penal Code 1910, § 783; Ga. L. 1916, p. 153, § 1; Code 1933, §§ 26-3801, 26-3802; Ga. L. 1957, p. 490, §§ 1-5; Code 1933, § 26-1507, enacted by Ga. L. 1976, p. 773, § 1; Ga. L. 1978, p. 1658, § 1; Ga. L. 2023, p. 69, § 3/HB 227, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, added subsection (a); redesignated former subsections (a) through (d) as present subsections (b) through (e), respectively; in subsection (b), substituted “authority to alter or interfere with any critical infrastructure to prevent the

proper registering of the quantity” for “authority to injure or destroy any meter, pipe, conduit, wire, line, post, lamp, or other apparatus belonging to a company, municipality, or political subdivision engaged in the manufacture or sale of electricity, gas, water, telephone, or other public services; intentionally and without authority to prevent a meter from properly registering the quantity”, substituted “a company” for “such company”, and inserted “owning critical infrastructure”; and, in subsection (c), substituted “subsection (b) of this Code section” for “subsection (a) of this Code section”.

16-7-29. Interference with electronic monitoring devices.

(a) For purposes of this Code section, the term “electronic monitoring device” shall include any device that is utilized to track the location of a person.

(b) It shall be unlawful for any person to knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device which is being used for the purpose of monitoring a person who is:

(1) Complying with a home arrest program as set forth in Code Section 42-1-8;

(2) Wearing an electronic monitoring device as a condition of bond or pretrial release;

(3) Wearing an electronic monitoring device as a condition of probation; or

(4) Wearing an electronic monitoring device as a condition of parole.

(c) It shall be unlawful for any person to knowingly and without

authority request or solicit any other person to remove, destroy, or circumvent the operation of an electronic monitoring device which is being used for the purposes described in subsection (b) of this Code section.

(d) Any person who violates this Code section shall be guilty of the offense of tampering with the operation of an electronic monitoring device and shall be punished by imprisonment for not less than one nor more than five years.

History.

Code 1981, § 16-7-29, enacted by Ga. L. 2004, p. 761, § 2; Ga. L. 2005, p. 60, § 16/HB 95; Ga. L. 2006, p. 72, § 16/SB 465; Ga. L. 2010, p. 168, § 4/HB 571; Ga. L. 2023, p. 637, § 3-12/HB 188, effective May 4, 2023.

Amendments.

The 2023 amendment, effective May 4, 2023, added “or” at the end of para-

graph (b)(3), substituted a period for “; or” at the end of paragraph (b)(4), and deleted paragraph (b)(5), which read: “Wearing an electronic monitoring device as required in Code Section 42-1-14.”

Editor’s notes.

Ga. L. 2023, p. 637, § 1-1/HB 188, not codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘Mariam’s Law.’”

JUDICIAL DECISIONS

Commitment reversed as no condition of electronic monitoring was imposed. — In a delinquency adjudication appeal of the commitment of a juvenile to the Department of Juvenile Justice, the state presented no evidence that wearing an electronic monitoring device was a condition of the juvenile’s probation because

the handwritten notation on the conditions of probation document was not reasonably specific, and conditions of probation must be prescribed by the court, not the probation officer. In the Interest of N. C., 372 Ga. App. 825, 906 S.E.2d 904, 2024 Ga. App. LEXIS 367 (2024).

ARTICLE 3

ARSON AND EXPLOSIVES

16-7-60. Arson in the first degree.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
EVIDENCE

General Consideration

Merger of offenses not required. — Defendant’s contention that the offense of arson should merge into the offense of concealing a death was without merit be-

cause the offense of arson in the first degree was committed when a person, by means of fire or explosive, knowingly damaged the dwelling of another without that person’s consent or under such circumstances that it was reasonably foreseeable

that human life might be endangered; and arson required proof of facts not required by the offense of concealing a death, which required an accused to hinder a discovery of whether or not a person was unlawfully killed. *Horton v. State*, 310 Ga. 310, 849 S.E.2d 382, 2020 Ga. LEXIS 740 (2020).

Evidence

Evidence sufficient to sustain conviction. — Trial court did not abuse the court's discretion by denying the defendant's motion for a new trial because sufficient evidence supported the defendant's convictions for arson and aggravated assault based on the testimony of the witnesses who testified that the witnesses could see the defendant starting the fire through the kitchen windows and witnessed the defendant shoot a shotgun in the direction of a neighbor and four law enforcement officers who were at the scene as well as the defendant's admission that the defendant set the fire. *Jackson v. State*, 347 Ga. App. 199, 818 S.E.2d 268, 2018 Ga. App. LEXIS 485 (2018).

Jury was authorized to find that the defendant was a party to the crimes of attempted murder and first degree arson based on evidence that the defendant and an accomplice intended to rob the victim and then kill the victim to avoid detection and hitting the victim with a machete and setting fire to the victim's residence were done in execution of that purpose. *Lonon v. State*, 348 Ga. App. 527, 823 S.E.2d 842, 2019 Ga. App. LEXIS 43 (2019).

Evidence was sufficient to support appellant's arson conviction because the arson investigation showed that fires were set in three separate locations around the house while the victim's dead body was inside, and that an accelerant had been used; a witness also testified that appellant met up with the rest of the group later in the day and stated it was taken care of, which supported an inference that appellant had set those fires to cover up evidence of the shooting. *Pierce v. State*, 319 Ga. 846, 907 S.E.2d 281, 2024 Ga. LEXIS 212 (2024).

16-7-60.1. Arson of a law enforcement vehicle.

(a) A person commits the offense of arson of a law enforcement vehicle when, by means of fire or explosive, he or she knowingly damages or knowingly causes, aids, abets, advises, encourages, hires, counsels, or procures another to damage a law enforcement vehicle.

(b) A person convicted of the offense of arson of a law enforcement vehicle shall be punished by a fine of not more than \$100,000.00 or by imprisonment for not less than five years nor more than 20 years, or both.

History.

Code 1981, § 16-7-60.1, enacted by Ga. L. 2024, p. 548, § 1/HB 500, effective July 1, 2024.

Effective date.

This Code section became effective July 1, 2024.

CHAPTER 8

OFFENSES INVOLVING THEFT

Article 1		Sec.	
Theft			
Sec.		16-8-14.2.	Organized retail theft.
16-8-5.2.	Retail property fencing; civil forfeiture; related matters.	16-8-20.	Livestock theft.
16-8-11.	Venue for purposes of Code Sections 16-8-2 through 16-8-9 and 16-8-13 through 16-8-15.	16-8-24.	Theft by possession of stolen mail.
16-8-12.	Penalties for theft in violation of Code Sections 16-8-2 through 16-8-9.	16-8-25.	Porch piracy.
16-8-14.	Theft by shoplifting.	Article 3	
16-8-14.1.	Refund fraud.	Criminal Reproduction and Sale of Recorded Material	
		16-8-60.	Reproduction of recorded material; transfer, sale, distribution, circulation; civil forfeiture; restitution.

ARTICLE 1
THEFT

Law reviews.

For note, “An Avenue for Fairness: Disclosure-Based Compensation Schemes for Good Faith Purchasers of Stolen Art,” see 54 Ga. L. Rev. 1015 (2020).

16-8-1. Definitions.

JUDICIAL DECISIONS

Effect of proving criminal intent at time of taking. — Evidence authorized the jury to find that appellant, either by force or intimidation, caused the victim to exit the car; drove the victim’s car away while the victim was screaming for help; and lied about identity when found in possession of the car; therefore, this evidence was sufficient to permit the jury to infer that appellant intended to deprive the victim of the car, either permanently or temporarily. *Sinkfield v. State*, 318 Ga. 531, 899 S.E.2d 103, 2024 Ga. LEXIS 62 (2024).

Spouse’s property not “property of another.” — When the defendant was charged with aggravated assault and family-violence battery arising from a chokehold the defendant applied to the defendant’s pregnant wife, the defendant’s motion for immunity was improperly granted because the defendant and the victim were married at the time of the altercation, they lived in the house where the incident occurred together, the victim routinely took care of the parties’ small dog, and the victim was entitled to handle the dog, including putting the dog out of the house; and the defendant reacted to the victim’s struggling against the chokehold by tightening the defendant’s grip, which was not justified as the victim was not committing a forcible felony against the dog. *State v. Morgan*, 346 Ga. App. 702, 814 S.E.2d 823, 2018 Ga. App. LEXIS 314 (2018), cert. denied, No. S18C1552, 2019 Ga. LEXIS 188 (Ga. Mar. 11, 2019).

16-8-2. Theft by taking.

Law reviews.

For article, “HB 479: Repeal of Georgia’s Citizen’s Arrest Law,” see 38 Ga. St. U.L. Rev. 25 (2021).

For annual survey on torts, see 74 Mercer L. Rev. 243 (2022).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

INCLUDED CRIMES

EVIDENCE AND INFERENCES

PUNISHMENT

General Consideration

Fraudulent transfer not predicate act under RICO. — Trial court erred by failing to dismiss the plaintiff’s claim for theft as a predicate offense under the Georgia RICO statute 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).

Violation of criminal statute did not automatically give rise to civil liability. — Trial court erred in denying the defendant’s summary judgment on the claims alleging that the defendant committed the criminal offenses of theft by taking, theft by deception, and theft by conversion because the violation of a penal statute did not automatically give rise to a civil cause of action on the part of one who was injured thereby and plaintiff made no showing that the alleged penal violations gave rise to civil liability. *McCalla Raymer, LLC v. Foxfire Acres, Inc.*, 356 Ga. App. 117, 846 S.E.2d 404, 2020 Ga. App. LEXIS 418 (2020).

Civil liability for damages. — In a dispute involving a homeowners’ association’s (HOA) claim of a pedestrian easement access across a subdivision lot to a lake, the term “10’ PEDESTRIAN ESMT” on the plat was void for uncertainty of description. The lot owners’ counterclaims for trespass, theft by taking (for removal

of a sign), interfering with the right of quiet enjoyment, attorney’s fees, and punitive damages presented jury questions; however, their claim for intentional infliction of emotional distress was subject to summary judgment. *The Plantation at Bay Creek Homeowners Association, Inc. v. Glasier*, 349 Ga. App. 203, 825 S.E.2d 542, 2019 Ga. App. LEXIS 132 (2019).

Forfeiture actions. — Appellate court erred by concluding that the state adequately alleged theft by taking in the in rem civil forfeiture complaint because the second amended complaint failed to recite theft by taking’s intent-to-deprive element as the theft-by-taking allegations addressed only what happened to the property after the property was allegedly stolen. *Smith v. State*, 319 Ga. 352, 903 S.E.2d 878, 2024 Ga. LEXIS 151 (2024).

Merger inappropriate. — Because the defendant’s convictions for forgery and theft by taking each required proof that the other did not, there was no merit to the defendant’s argument that those offenses should have merged. *Townsend v. State*, 357 Ga. App. 111, 848 S.E.2d 210, 2020 Ga. App. LEXIS 574 (2020).

Merger of several counts was required. Defendant could not be convicted of or sentenced for multiple counts of theft by taking because the motor-vehicle and non-motor-vehicle offenses were committed during a single course of conduct. The defendant acted with the same intent, to steal the company’s property, from the moment the defendant entered the company’s building until the defendant left the property, and all crimes occurred in

General Consideration (Cont'd)

the same targeted area. *Johnson v. State*, 364 Ga. App. 749, 874 S.E.2d 807, 2022 Ga. App. LEXIS 302 (2022).

Included Crimes

Theft by taking did not merge with exploitation and intimidation of a disabled adult or elder person. — Defendant's claim that the defendant was entitled to a new trial because the convictions for theft by taking and exploitation and intimidation of a disabled adult, elder person, or resident were mutually exclusive failed because the convictions at issue were legally and logically capable of existing simultaneously. *Poole v. State*, 370 Ga. App. 244, 896 S.E.2d 602, 2023 Ga. App. LEXIS 566 (2023).

Libel action involving published statements that trailer purchased was stolen. — Judgment in favor of the plaintiffs in a libel action was upheld because the defendants published newspaper advertisements that offered a reward for the return of the trailer purchased by the plaintiffs, stating that the trailer was taken without proper ownership, documentation, and payment and was last seen with the plaintiffs and the plain import of those words imputed the criminal offense of theft to the plaintiffs, a crime for which the plaintiffs had not been charged or found guilty. *Cate v. Patterson*, 354 Ga. App. 108, 840 S.E.2d 489, 2020 Ga. App. LEXIS 135 (2020).

Evidence and Inferences

Wrong standard of proof applied in juvenile's case. — Juvenile's adjudication as delinquent for theft related acts was reversed because the juvenile court applied an erroneous standard of proof by concluding that there was some evidence to find that the juvenile removed a teacher's wallet from the teacher's desk since the wallet was found in the juvenile's book bag as the proper standard was proof beyond a reasonable doubt, not the lesser and different standard of some evidence. *In the Interest of A. G.*, 355 Ga. App. 771, 845 S.E.2d 779, 2020 Ga. App. LEXIS 385 (2020).

Evidence sufficient to support con-

viction of juvenile. — Evidence the defendant juvenile was apprehended after fleeing a stolen car, a cell phone from a car broken into was found, one of the juveniles told investigators the defendant was involved in the break-ins, and the defendant and other juveniles were members of a gang whose modus operandi was breaking into and stealing cars established probable cause to believe the defendant committed 32 acts of entering an automobile with intent to commit a theft and one count of theft by taking a motor vehicle. *In the Interest of K. S.*, 348 Ga. App. 440, 823 S.E.2d 536, 2019 Ga. App. LEXIS 23 (2019).

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 sufficient to support conviction. — Evidence was sufficient to support the defendant's convictions of exploitation of a disabled adult and theft by taking because the jury was presented sufficient from which the jury could conclude that the defendant acted with guilty knowledge and criminal intent when taking funds from the defendant's mother's account, especially after the defendant became the mother's guardian and the conservator of the mother's assets. The evidence showed that the defendant concealed the required information on the petition for appointment of guardian and/or conservator, the defendant wrote checks and executed transfers from the mother's individual account to joint accounts and then transferred the money to the defendant's individual account and used the money to pay the defendant's personal expenses. *Law v. State*, 349 Ga. App. 823, 824 S.E.2d 778, 2019 Ga. App. LEXIS 171 (2019).

Evidence including the geographic proximity of the defendant's home to the crime and pawn shop, the temporal proximity of the defendant's visit to the pawn shop after the intrusion, the victim's vehicle being found running across from the pawn shop, the defendant's initial denial of pawning the stolen television, and the lack of evidence about the identity of the person the defendant claimed to have gotten the television from supported robbery for force, burglary, aggravated battery, false imprisonment, and theft by taking convictions. *Strickland v. State*, 348 Ga. App. 892, 825 S.E.2d 379, 2019 Ga. App. LEXIS 92 (2019).

Sufficient evidence supported the appellant's convictions on two counts of exploitation of elder person, two counts of theft by taking, and 11 counts of financial-transaction-card fraud based on at least circumstantial evidence that the appellant's mother did not authorize the appellant's near total depletion of various financial accounts by transfers to the appellant's account, ATM withdrawals, money sent to another country, and buying online merchandise, furniture, and jewelry. *Anderson v. State*, 350 Ga. App. 369, 829 S.E.2d 453, 2019 Ga. App. LEXIS 310 (2019).

Evidence was sufficient to support the defendants' convictions for burglary and theft by taking because someone broke into two homes and stole cooking ranges, one of which was recovered at the defendants' home; police recovered computers from the defendants' home, and police found internet advertisements and e-mails related to the sale of the stolen goods on those computers; and the internet account was linked to the second defendant, and the first defendant's e-mails were on the computers. *Hamlett v. State*, 350 Ga. App. 93, 828 S.E.2d 132, 2019 Ga. App. LEXIS 254 (2019), cert. denied, No. S19C1274, 2019 Ga. LEXIS 860 (Ga. Dec. 23, 2019), cert. denied, No. S19C1275, 2019 Ga. LEXIS 890 (Ga. Dec. 23, 2019).

Evidence that the defendant was hired to perform landscaping work, paid the full contract amount, but only marked the locations for new plantings, sprayed the yard to kill existing grass, and had someone remove shrubs and then refused to

complete the work or return the money supported the defendant's conviction for theft by taking. *Wilson v. State*, 355 Ga. App. 73, 842 S.E.2d 521, 2020 Ga. App. LEXIS 255 (2020).

Evidence that the defendant contacted an individual about buying a car that the defendant then took from the owner without the owner's permission supported the defendant's conviction for theft by taking. *Shine v. State*, 362 Ga. App. 269, 868 S.E.2d 236, 2022 Ga. App. LEXIS 18 (2022).

Trial court did not err by denying the defendant's motion for a directed verdict on the charge of theft by taking because the evidence permitted the jury to find that the defendant obtained money from the credit union by deceitful means and then kept the majority of those funds. *Huff v. State*, 367 Ga. App. 774, 888 S.E.2d 575, 2023 Ga. App. LEXIS 233 (2023).

Evidence authorized the jury to find that appellant, either by force or intimidation, caused the victim to exit the car; drove the victim's car away while the victim was screaming for help; and lied about identity when found in possession of the car; therefore, this evidence was sufficient to permit the jury to infer that appellant intended to deprive the victim of the car, either permanently or temporarily. *Sinkfield v. State*, 318 Ga. 531, 899 S.E.2d 103, 2024 Ga. LEXIS 62 (2024).

Surveillance footage and testimony about appellant taking a black rectangular box from the motel office was sufficient evidence for the theft by taking conviction, in violation of O.C.G.A. § 16-8-2, even though the specific nature of the box was unclear. *Harvey v. State*, 373 Ga. App. 59, 907 S.E.2d 352, 2024 Ga. App. LEXIS 386 (2024).

Punishment

Sentence as a recidivist proper. —

Trial court did not err in imposing maximum and consecutive sentences on the second defendant for the burglary and theft by taking convictions as the second defendant's prior convictions for three or more felonies qualified the second defendant to be sentenced as a recidivist, requiring the second defendant to be sentenced to the maximum time allowed; the

Punishment (Cont'd)

sentences were within the statutory ranges; and the trial court had the authority to require that the sentences run consecutively. *Hamlett v. State*, 350 Ga. App. 93, 828 S.E.2d 132, 2019 Ga. App. LEXIS 254 (2019), cert. denied, No. S19C1274, 2019 Ga. LEXIS 860 (Ga. Dec. 23, 2019), cert. denied, No. S19C1275, 2019 Ga. LEXIS 890 (Ga. Dec. 23, 2019).

Merger was proper. — By merging defendant's theft by taking convictions, the defendant was convicted of only one crime and punished only once and, thus, to the extent defendant argued that the other theft by taking counts included in his indictment were "illegal," he was incorrect as he stood convicted of theft by taking only once. *Johnson v. State*, 370 Ga. App. 12, 893 S.E.2d 123, 2023 Ga. App. LEXIS 435 (2023).

16-8-3. Theft by deception.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
DECEITFUL REPRESENTATION OF EXISTING FACT OR PAST EVENT
APPLICATION

General Consideration

Fraudulent transfer not predicate act under RICO. — Trial court erred by failing to dismiss the plaintiff's claim for theft as a predicate offense under the Georgia RICO statute 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. *Z-Space, Inc. v. Dantanna's CNN Center, LLC*, 349 Ga. App. 248, 825 S.E.2d 628, 2019 Ga. App. LEXIS 142 (2019).

Violation of criminal statute did not automatically give rise to civil liability. — Trial court erred in denying the defendants summary judgment on the claims alleging that the defendants committed the criminal offenses of theft by taking, theft by deception, and theft by conversion because the violation of a penal statute did not automatically give rise to a civil cause of action on the part of one who was injured thereby and the plaintiff made no showing that the alleged penal violations gave rise to civil liability. *McCalla Raymer, LLC v. Foxfire Acres, Inc.*, 356 Ga. App. 117, 846 S.E.2d 404, 2020 Ga. App. LEXIS 418 (2020).

Deceitful Representation of Existing Fact or Past Event

Coroner's billing for investigations not performed. — In the defendant's trial for violating the defendant's oath of office as coroner and theft by deception, O.C.G.A. §§ 16-10-1 and 16-8-3(a), respectively, there was no fatal variance between the indictment, which alleged the defendant had billed the county for "pronouncing the death of" nursing home patients, and the proof that the defendant billed the county for conducting investigations into the deaths of the same named patients. *Fortner v. State*, 350 Ga. App. 226, 828 S.E.2d 434, 2019 Ga. App. LEXIS 273 (2019).

Application

Evidence sufficient to support conviction. — Evidence that the first defendant knew the second defendant did not have a medical license and the first defendant confirmed the false impression that the second defendant was a licensed doctor by calling the second defendant "doctor" or that the first defendant failed to correct the false impression when patients and staff referred to the second defendant as "doctor" supported the first defendant's

theft by deception convictions. *Ulbrich v. State*, 363 Ga. App. 503, 870 S.E.2d 859, 2022 Ga. App. LEXIS 152 (2022).

Paralegal guilty of theft by deception. — Since the defendant worked as an independent paralegal for several attorneys, the evidence was sufficient to convict the defendant of three counts of theft by deception against the first client because the first client wrote two checks totaling \$25,000 to the defendant's company based on the defendant's false statement that the computer forensic expert charged \$25,000 for the expert's services, when the expert actually charged only \$8,500; and the defendant knowingly made a false statement in order to obtain the \$5,000 check from the first client as the attorney that the defendant was working for testified that the attorney never asked the first client for the additional funds, nor did the attorney ask the defendant to do so. *Pruitt v. State*, 349 Ga. App. 101, 825 S.E.2d 490, 2019 Ga. App. LEXIS 124 (2019).

Since the defendant worked as an independent paralegal for several attorneys, the evidence was sufficient to convict the defendant of two counts of theft by deception against the second client because the

second client made payments based on the defendant's statement that additional money was needed to compensate the defendant for 60 hours of additional legal research on a new law that might help the appeal of the second client's husband, but the attorney that the defendant was working for did not remember authorizing the defendant to perform the additional research, nor was the attorney aware of any purported new law that the defendant allegedly researched; and the defendant only performed 12-13 hours of additional research. *Pruitt v. State*, 349 Ga. App. 101, 825 S.E.2d 490, 2019 Ga. App. LEXIS 124 (2019).

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 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).

16-8-4. Theft by conversion.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION APPLICATION

General Consideration

Fraudulent transfer not predicate act under RICO. — Trial court erred by failing to dismiss the plaintiff's claim for theft as a predicate offense under the Georgia RICO statute 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).

Violation of criminal statute did not automatically give rise to civil liability. — Trial court erred denying the defendants summary judgment on the claims alleging that the defendants committed the criminal offenses of theft by taking, theft by deception, and theft by conversion because the violation of a penal statute did not automatically give rise to a civil cause of action on the part of one who was injured thereby and plaintiff made no showing that the alleged penal violations gave rise to civil liability. *McCalla Raymer, LLC v. Foxfire Acres*,

General Consideration (Cont'd)

Inc., 356 Ga. App. 117, 846 S.E.2d 404, 2020 Ga. App. LEXIS 418 (2020).

Verdicts a legal nullity. — In an action for theft by conversion, the verdict was a legal nullity as to five counts because, although the jury found the defendant guilty as a fiduciary, the jury specifically found the defendant not guilty of theft by conversion and, thus, the findings were at best ambiguous and a fair reading of the verdict readily included the possibility that the defendant was acting in a fiduciary capacity for the employer but was not guilty of theft by conversion. *Jackson v. State*, 349 Ga. App. 368, 825 S.E.2d 848, 2019 Ga. App. LEXIS 176 (2019).

Application

Evidence sufficient for conviction. — Evidence was sufficient to support defendant's conviction for converting \$2,100 to purchase an oven for the biscuit opera-

tion because a witness testified that he gave defendant \$2,100 to purchase the equipment and defendant failed to either purchase the equipment or return the money. *Combs v. State*, 370 Ga. App. 709, 898 S.E.2d 878, 2024 Ga. App. LEXIS 74 (2024).

Insufficient evidence to support conviction. — Evidence was insufficient to support defendant's conviction for stealing over \$7,000 from the business because defendant was engaged in the work of the business throughout the time at issue and the testimony and evidence was not sufficient to foreclose the possibility that the cash withdrawals and many of the debits were made for the business. The witness had no personal knowledge of how defendant spent any of the cash that was taken as change after valid business purchases or as withdrawals from the business account. *Combs v. State*, 370 Ga. App. 709, 898 S.E.2d 878, 2024 Ga. App. LEXIS 74 (2024).

16-8-5. Theft of services.**Law reviews.**

For article, "HB 479: Repeal of Georgia's

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

16-8-5.2. Retail property fencing; civil forfeiture; related matters.

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

(1) "Retail property" means any article, product, commodity, item, or component intended to be sold in retail commerce.

(2) "Retail property fence" means a person or entity that buys, sells, transfers, or possesses with the intent to sell or transfer retail property that such person knows or should have known was stolen.

(3) "Value" means the retail value of the item as stated or advertised by the affected retail establishment, to include applicable taxes.

(b) A person commits the offense of retail property fencing when such persons receives, disposes of, or retains retail property which was unlawfully taken or shoplifted over a period not to exceed 180 days with the intent to:

(1) Transfer, sell, or distribute such retail property to a retail property fence; or

(2) Attempt or cause such retail property to be offered for sale, transfer, or distribution for money or other things of value.

(c) Whoever knowingly receives, possesses, conceals, stores, barter, sells, or disposes of retail property with the intent to distribute any retail property which is known or should be known to have been taken or stolen in violation of this subsection with the intent to distribute the proceeds, or to otherwise promote, manage, carry on, or facilitate an offense described in this subsection, shall have committed the offense of retail property fencing.

(d)(1) It shall not be necessary in any prosecution under this Code section for the state to prove that any intended profit was actually realized. The trier of fact may infer that a particular scheme or course of conduct was undertaken for profit from all of the attending circumstances.

(2) It shall not be a defense to violating this Code section that the property was obtained by means other than through the commission of a theft offense if the property was explicitly represented to the accused as being obtained through the commission of a theft.

(e)(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 are declared to be contraband and no person shall have a property right in them; provided, however, that notwithstanding paragraph (2) of subsection (a) of Code Section 9-16-17, no property of any owner shall be forfeited under this subsection, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.

(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) Each violation of this Code section shall constitute a separate offense.

History.

Code 1981, § 16-8-5.2, enacted by Ga. L. 2008, p. 679, § 1/HB 1346; Ga. L. 2015, p. 693, § 2-6/HB 233; Ga. L. 2021, p. 273, § 3-1/HB 327.

Amendments.

The 2021 amendment, effective July 1, 2021, deleted “new” preceding “article” in paragraph (a)(1).

Editor’s notes.

Ga. L. 2021, p. 273, § 1-1/HB 327, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Organized Retail Crime Prevention Act.’”

16-8-7. Theft by receiving stolen property.

JUDICIAL DECISIONS

ANALYSIS

- GENERAL CONSIDERATION
- ELEMENTS OF CRIME
- INCLUDED CRIMES
- BURDEN OF PROOF
- APPLICATION
- SENTENCING

General Consideration

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

Elements of Crime

Essential elements of offense, etc.

Although the second amended complaint alleged that a recycling company, by its owners or authorized agents, purchased various items that they knew or should have known were stolen, the second amended complaint did not include any allegation that the company purchased the stolen property without the intent to restore the property to its rightful owner. and, thus, the second amended complaint did not allege the essential elements of theft by receiving stolen property. *NoFree, LLC v. State of Georgia*, 373 Ga. App. 753, 909 S.E.2d 852, 2024 Ga. App. LEXIS 478 (Nov. 18, 2024).

Knowledge that goods have been stolen. — Defendant’s conviction for theft by receiving stolen property, O.C.G.A. § 16-8-7(a), was reversed because the firearm had been reported missing two months earlier, the defendant stated that the defendant had just bought the gun

from a person the defendant did not know, and there was no evidence that the defendant knew or should have known that the firearm was stolen. *McMurray v. State*, 355 Ga. App. 420, 844 S.E.2d 303, 2020 Ga. App. LEXIS 325 (2020).

Included Crimes

Convictions for hijacking vehicle and theft by receiving mutually exclusive. — Jury returned verdicts that were legally and logically irreconcilable when the jury found the defendant guilty of hijacking a motor vehicle, necessarily finding that the defendant was the principal thief of the motor vehicle, and also finding the defendant guilty of theft by receiving for retaining the same motor vehicle, finding that the defendant was not the principal thief of that vehicle. Accordingly, the defendant’s convictions on those two counts were mutually exclusive. *Middleton v. State*, 309 Ga. 337, 846 S.E.2d 73, 2020 Ga. LEXIS 476 (2020).

Burden of Proof

State’s burden of proof. — When a defendant is charged with both theft by taking and theft by receiving, the trial court should clearly instruct the jury that the jury cannot find the defendant guilty of both offenses based on the same conduct; however, when the defendant is only charged with theft by receiving, a court reviewing the sufficiency of the evidence presented as to that charge need only determine whether the evidence presented at trial, viewed in the light most favorable to the verdict, supports the jury’s guilty verdict as to that charge — not whether the evidence excludes the possibility that the defendant was the

principal thief of the stolen property. *Pender v. State*, 311 Ga. 98, 856 S.E.2d 302, 2021 Ga. LEXIS 87 (2021).

Application

Defendant aware vehicle was stolen. — Defendant was convicted of two counts of theft by receiving stolen property after VIN numbers had been falsified and the cars reported stolen and, furthermore, the defendant was unable to produce any paperwork supporting defendant's claimed lawful ownership. *Clarke v. State*, 356 Ga. App. 580, 848 S.E.2d 192, 2020 Ga. App. LEXIS 492 (2020).

Evidence sufficient for knowledge.

— Conviction for receiving stolen property was supported by evidence implying knowledge that the vehicle was stolen, including evidence that a co-conspirator tried to sell the vehicle and described it as hot. *Fuller v. State*, 363 Ga. App. 217, 871 S.E.2d 79, 2022 Ga. App. LEXIS 141 (2022).

Conviction of armed robbery and theft by receiving. — Defendant could not be convicted of both armed robbery and theft by receiving because those crimes were mutually exclusive. By finding the defendant guilty of armed robbery, the jury necessarily found that the defendant was the person who had stolen the victim's purse and cellphone during the armed robbery and, thus, the defendant was the principal in the theft and could not also be guilty of receiving the same property. *Turner v. State*, 353 Ga. App. 741, 839 S.E.2d 310, 2020 Ga. App. LEXIS 76 (2020), cert. denied, No. S20C0985, 2020 Ga. LEXIS 848 (Ga. Sept. 28, 2020).

Evidence of possession or control.

— Sufficient evidence supported the defendant's conviction for receiving stolen property because the evidence undisputedly demonstrated that the van had been stolen mere hours before the defendant was observed by deputies driving the van and when the deputies attempted to detain the defendant, the defendant attempted to strike two of them with the van and then fled the scene in the van. *Miller v. State*, 351 Ga. App. 757, 833 S.E.2d 142, 2019 Ga. App. LEXIS 497 (2019).

Evidence sufficient to support conviction of theft by receiving stolen property, etc.

Evidence was sufficient to convict the defendant of theft by receiving stolen property because the defendant knew or should have known that the truck was stolen and that the defendant retained the truck with no intention of returning the truck to the truck's owner. *Pender v. State*, 311 Ga. 98, 856 S.E.2d 302, 2021 Ga. LEXIS 87 (2021).

Defendant's conviction for theft by receiving stolen property was supported by evidence that the defendant was driving a stolen vehicle a few days shortly after the vehicle was stolen. *Shine v. State*, 362 Ga. App. 269, 868 S.E.2d 236, 2022 Ga. App. LEXIS 18 (2022).

Evidence that the stolen firearm was found in the residence where defendant was residing and jailhouse telephone calls reflecting that the defendant knew where the firearm was hidden, was able to describe the bag in which it was stored, had insight into the functionality of the firearm, and acknowledged that it was stolen was sufficient to support the defendant's conviction for theft by receiving stolen property. *Kennedy v. State*, 2024 Ga. App. LEXIS 132.

Evidence that the stolen firearm was found in the residence where the defendant was residing and jailhouse telephone calls reflecting that the defendant knew where the firearm was hidden, was able to describe the bag it was stored in, had insight into its functionality, and acknowledged that it was stolen supported the conviction for theft by receiving stolen property. *Kennedy v. State*, 371 Ga. App. 163, 899 S.E.2d 803, 2024 Ga. App. LEXIS 138 (2024).

There was insufficient evidence to show that the defendant was guilty of theft, etc.

Because the state did not produce any evidence to establish that the defendant knew or should have known the gun found in the defendant's vehicle was stolen, the evidence was not sufficient to support the defendant's conviction for theft by receiving stolen property. *Wooten v. State*, 348 Ga. App. 408, 823 S.E.2d 98, 2019 Ga. App. LEXIS 19 (2019), overruled, *Hill v.*

Application (Cont'd)

State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Insufficient evidence that juvenile guilty of theft by receiving stolen property. — Although the state pointed to the defendant juvenile's attempts to flee as guilty knowledge that the gun was stolen, as a minor, the defendant's mere possession of a gun was a crime and, thus, while the defendant's attempts to escape may reflect guilty knowledge of the gun's presence in the defendant's backpack, that evidence did not establish beyond a reasonable doubt that the defendant knew the gun was stolen. In the Interest of G. M. W., 355 Ga. App. 151, 842 S.E.2d 920, 2020 Ga. App. LEXIS 278 (2020), overruled in part, Shumate v. State, 372 Ga. App. 807, 906 S.E.2d 885, 2024 Ga. App. LEXIS 365 (2024).

Evidence was insufficient to support the defendant's conviction of theft by receiving stolen property because the robbery occurred almost a year after the handgun was stolen from its owner, and although the victim placed the gun in defendant's possession and control during the robbery and identified the handgun at trial, there was no evidence offered as to whether the defendant knew or should have known that the handgun was stolen. Defendant testified that the gun belonged to one of the other robbers, that the defendant had

not pulled a weapon on anyone, and that they had not robbed the victim. Newsome v. State, 355 Ga. App. 13, 842 S.E.2d 339, 2020 Ga. App. LEXIS 248 (2020).

Juvenile court erred by adjudicating the juvenile guilty of theft by receiving stolen property because, at best, the record showed that the juvenile touched the outside of the driver's door at some unknown point in time and nothing indicated that the juvenile's fingerprints were on the driver's side door handle or found inside the vehicle. In the Interest of J. B., 358 Ga. App. 19, 852 S.E.2d 874, 2020 Ga. App. LEXIS 683 (2020).

Sentencing

Sentence based on value of received property. — Evidence was insufficient to support the defendant's felony conviction and sentence for theft by receiving stolen property as the state's evidence failed to prove the fair cash market value either at the time and place of the theft of the van or at any time during the receipt or concealment of the property; and it would require pure guesswork and speculation on the part of the jury to conclude that a vehicle purchased in April 2015 for \$8,000 and valued in May 2018 for \$2,990 would have a fair market value of at least \$5,000 in November 2017. Carswell v. State, 362 Ga. App. 662, 869 S.E.2d 621, 2022 Ga. App. LEXIS 79 (2022).

16-8-9. Theft by bringing stolen property into state.**JUDICIAL DECISIONS****Evidence supported defendant's conviction, etc.**

Evidence that a car stolen in Michigan was found in the defendant's possession in Georgia and that the vehicle contained documents belonging to the defendant

that were issued in Michigan around the time of the theft was sufficient to support the defendant's conviction for theft by bringing stolen property into the state. Mims v. State, 304 Ga. 851, 823 S.E.2d 325, 2019 Ga. LEXIS 15 (2019).

16-8-11. Venue for purposes of Code Sections 16-8-2 through 16-8-9 and 16-8-13 through 16-8-15.

(a) In a prosecution under Code Sections 16-8-2 through 16-8-9 and 16-8-13 through 16-8-15, the crime shall be considered as having been committed:

(1) In any county in which the accused exercised control over the property which was the subject of the theft; or

(2) If the subject of the theft involves the movement or transfer of digital or electronic money or currency, cryptocurrency, or other such forms of electronic or digital currency held in an account at a financial institution, the crime shall be considered as having been committed:

(A) In any county in which any act was performed in furtherance of the violation occurred; or

(B) In any county in which an alleged victim resides.

(b) In any prosecution under Code Section 16-8-4 in which there is a written rental agreement for personal property, the crime shall also be considered to have been committed in the county in which the accused signed the rental agreement.

History.

Code 1933, § 26-1811, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1972, p. 841, § 3; Ga. L. 1994, p. 650, § 2; Ga. L. 2023, p. 634, § 2/HB 219, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, rewrote this Code section, which read: “In a prosecution under Code Sections 16-8-2 through 16-8-9 and 16-8-13 through 16-8-15, the crime shall be con-

sidered as having been committed in any county in which the accused exercised control over the property which was the subject of the theft. In addition, in any prosecution under Code Section 16-8-4 in which there is a written rental agreement for personal property, the crime shall also be considered to have been committed in the county in which the accused signed the rental agreement.”

JUDICIAL DECISIONS

Venue in theft case was in the county where defendant exercised control over the items at issue. —

Evidence that the tractor was stolen and recovered in Douglas County, the defendant went to the sheriff's office and informed the deputy that the defendant owned the tractor, and the defendant's testimony that the defendant lived in

Douglas County for about seven years was sufficient to establish that the defendant exercised control over the stolen tractor in Douglas County and, thus, venue there was appropriate. *Diaz v. State*, 348 Ga. App. 256, 820 S.E.2d 249, 2018 Ga. App. LEXIS 637 (2018), cert. denied, No. S19C0504, 2019 Ga. LEXIS 542 (Ga. Aug. 5, 2019).

16-8-12. Penalties for theft in violation of Code Sections 16-8-2 through 16-8-9.

(a) A person convicted of a violation of Code Sections 16-8-2 through 16-8-9 shall be punished as for a misdemeanor except:

(1)(A) If the property which was the subject of the theft exceeded \$24,999.99 in value, by imprisonment for not less than two nor more than 20 years;

(B) If the property which was the subject of the theft was at least

\$5,000.00 in value but was less than \$25,000.00 in value, by imprisonment for not less than one nor more than ten years and, in the discretion of the trial judge, as for a misdemeanor;

(C) If the property which was the subject of the theft was at least \$1,500.01 in value but was less than \$5,000.00 in value, by imprisonment for not less than one nor more than five years and, in the discretion of the trial judge, as for a misdemeanor; and

(D) If the defendant has two prior convictions for a violation of Code Sections 16-8-2 through 16-8-9, upon a third conviction or subsequent conviction, such defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years and, in the discretion of the trial judge, as for a misdemeanor;

(2) If the property was any amount of anhydrous ammonia, as defined in Code Section 16-11-111, by imprisonment for not less than one nor more than ten years, a fine not to exceed the amount provided by Code Section 17-10-8, or both;

(3) If the property was taken by a fiduciary in breach of a fiduciary obligation or by an officer or employee of a government or a financial institution in breach of his or her duties as such officer or employee, by imprisonment for not less than one nor more than 15 years, a fine not to exceed the amount provided by Code Section 17-10-8, or both;

(4) If the crime committed was a violation of Code Section 16-8-2 and if the property which was the subject of the theft was a memorial to the dead or any ornamentation, flower, tree, or shrub placed on, adjacent to, or within any enclosure of a memorial to the dead, by imprisonment for not less than one nor more than three years. Nothing in this paragraph shall be construed as to cause action taken by a cemetery, cemetery owner, lessee, trustee, church, religious or fraternal organization, corporation, civic organization, or club legitimately attempting to clean, maintain, care for, upgrade, or beautify a grave, gravesite, tomb, monument, gravestone, or other structure or thing placed or designed for a memorial of the dead to be a criminal act;

(5)(A) The provisions of paragraph (1) of this subsection notwithstanding, if the theft or unlawful activity was committed in violation of subsection (b) of Code Section 10-1-393.5 or in violation of subsection (b) of Code Section 10-1-393.6 or while engaged in telemarketing conduct in violation of Chapter 5B of Title 10, by imprisonment for not less than one nor more than ten years or, in the discretion of the trial judge, as for a misdemeanor; provided, however, that any person who is convicted of a second or subsequent offense under this paragraph shall be punished by imprisonment for not less than one year nor more than 20 years.

(B) Subsequent offenses committed under this paragraph, including those which may have been committed after prior felony convictions unrelated to this paragraph, shall be punished as provided in Code Section 17-10-7;

(6)(A) As used in this paragraph, the term:

(i) “Destructive device” means a destructive device as such term is defined by Code Section 16-7-80.

(ii) “Explosive” means an explosive as such term is defined by Code Section 16-7-80.

(iii) “Firearm” means any rifle, shotgun, pistol, or similar device which propels a projectile or projectiles through the energy of an explosive.

(B) If the property which was the subject of the theft offense was a destructive device, explosive, or firearm, by imprisonment for not less than one year nor more than ten years; provided, however, that upon a second or subsequent conviction, by imprisonment for not less than five nor more than ten years;

(7) If the property which was the subject of the theft is a grave marker, monument, or memorial to one or more deceased persons who served in the military service of this state, the United States of America or any of the states thereof, or the Confederate States of America or any of the states thereof, or a monument, plaque, marker, or memorial which is dedicated to, honors, or recounts the military service of any past or present military personnel of this state, the United States of America or any of the states thereof, or the Confederate States of America or any of the states thereof, and if such grave marker, monument, memorial, plaque, or marker is privately owned or located on privately owned land, by imprisonment for not less than one nor more than three years if the value of the property which was the subject of the theft is \$1,000.00 or less, and by imprisonment for not less than three years and not more than five years if the value of the property which was the subject of the theft is more than \$1,000.00;

(8) Reserved; or

(9) Notwithstanding the provisions of paragraph (1) of this subsection, if the property of the theft was regulated metal property, as such term is defined in Code Section 10-1-350, and the sum of the aggregate amount of such property, in its original and undamaged condition, plus any reasonable costs which are or would be incurred in the repair or the attempt to recover any property damaged in the theft or removal of such regulated metal property, exceeds \$500.00, by imprisonment for not less than one nor more than five years, a fine of not more than \$5,000.00, or both.

(b) Reserved.

(c) Where a violation of Code Sections 16-8-2 through 16-8-9 involves the theft of a growing or otherwise unharvested commercial agricultural product which is being grown or produced as a crop, such offense shall be punished by a fine of not less than \$1,000.00 and not more than the maximum fine otherwise authorized by law. This minimum fine shall not in any such case be subject to suspension, stay, or probation. This minimum fine shall not be required in any case in which a sentence of confinement is imposed and such sentence of confinement is not suspended, stayed, or probated; but this subsection shall not prohibit imposition of any otherwise authorized fine in such a case.

History.

Code 1933, § 26-1812, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1972, p. 841, § 4; Ga. L. 1978, p. 1457, § 1; Ga. L. 1981, p. 1552, § 1; Ga. L. 1981, p. 1576, § 1; Ga. L. 1982, p. 1371, § 2; Ga. L. 1984, p. 900, § 3; Ga. L. 1986, p. 1228, § 1; Ga. L. 1992, p. 6, § 16; Ga. L. 1994, p. 359, § 1; Ga. L. 1996, p. 231, § 4; Ga. L. 1996, p. 416, § 4; Ga. L. 1997, p. 1507, § 4; Ga. L. 1998, p. 643, § 5; Ga. L. 2000, p. 1085, § 3; Ga. L. 2001, p. 1153, § 2; Ga. L. 2003, p. 177, § 1; Ga. L. 2004, p. 1072, § 2; Ga. L. 2006, p. 329, § 1/HB 1275; Ga. L. 2007, p. 650, § 4/SB 203; Ga. L. 2009, p. 731, § 4/SB 82; Ga. L. 2012, p. 112, § 1-2/HB 872; Ga. L. 2012, p. 899, § 3-2/HB 1176; Ga. L. 2014, p. 195, § 2/HB 749; Ga. L. 2018, p. 550, § 4-1/SB 407; Ga. L. 2021, p. 384, § 5/HB 363.

Amendments.

The 2021 amendment, effective July 1, 2021, substituted “Reserved.” for the

former provisions of subsection (b), which read: “Except as otherwise provided in paragraph (5) of subsection (a) of this Code section, any person who commits the offense of theft by deception when the property which was the subject of the theft exceeded \$500.00 in value and the offense was committed against a person who is 65 years of age or older shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than ten years.”

Law reviews.

For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018).

For annual survey on criminal law, see 70 Mercer L. Rev. 63 (2018).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Merger. — Trial court did not err in the manner in which it merged the defendant’s convictions because both the theft by taking motor vehicle offenses and the theft by taking property offense carried the same potential sentence, and whether that sentence ran consecutively or concurrently to the defendant’s burglary sen-

tence was up to the discretion of the trial judge. *Johnson v. State*, 370 Ga. App. 12, 893 S.E.2d 123, 2023 Ga. App. LEXIS 435 (2023).

Failure to apply rule of lenity. —

Trial court erred in failing to apply the rule of lenity as the court sentenced the appellant under the pre-amendment version of O.C.G.A. § 16-8-12 and since the indictment only generally alleged that the

offenses occurred at some point in a three-year span and the jury only had a general verdict form, it was impossible to discern if the appellant was found guilty for conduct occurring before or after the

amendment; thus, the appellant could not be sentenced to a longer term imposed by the pre-amendment version. *Anderson v. State*, 350 Ga. App. 369, 829 S.E.2d 453, 2019 Ga. App. LEXIS 310 (2019).

16-8-14. Theft by shoplifting.

(a) A person commits the offense of theft by shoplifting when such person alone or in concert with another person, with the intent of appropriating merchandise to his or her own use without paying for the same or to deprive the owner of possession thereof or of the value thereof, in whole or in part, does any of the following:

(1) Conceals or takes possession of the goods or merchandise of any store or retail establishment;

(2) Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;

(3) Transfers the goods or merchandise of any store or retail establishment from one container to another;

(4) Interchanges the label or price tag from one item of merchandise with a label or price tag for another item of merchandise; or

(5) Wrongfully causes the amount paid to be less than the merchant's stated price for the merchandise.

(b)(1) A person convicted of the offense of theft by shoplifting, as provided in subsection (a) of this Code section, when the property which was the subject of the theft is \$500.00 or less in value shall be punished as for a misdemeanor; provided, however, that:

(A) Upon conviction of a second offense for shoplifting, where the first offense is either a felony or a misdemeanor, as defined by this Code section, in addition to or in lieu of any imprisonment which might be imposed, the defendant shall be fined not less than \$500.00, and the fine shall not be suspended or probated;

(B) Upon conviction of a third offense for shoplifting, when the first two offenses are either felonies or misdemeanors, or a combination of a felony and a misdemeanor, as defined by this Code section, in addition to or in lieu of any fine which might be imposed, the defendant shall be punished by imprisonment for not less than 30 days or confinement in a "special alternative incarceration-probation boot camp," probation detention center, or other community correctional facility of the Department of Corrections for a period of 120 days or shall be sentenced to monitored house arrest for a period of 120 days and, in addition to such types of confinement, may be required to undergo psychological evaluation and

treatment to be paid for by the defendant; and such sentence of imprisonment or confinement shall not be suspended, probated, deferred, or withheld; and

(C)(i) As used in this subparagraph, the term “conviction” shall include a plea of *nolo contendere*.

(ii) Upon conviction of a fourth or subsequent offense for shoplifting, when the prior convictions are either felonies or misdemeanors, or any combination of felonies and misdemeanors, as defined by this Code section, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than ten years; and the first year of such sentence shall not be suspended, probated, deferred, or withheld; provided, however, that, in the court’s discretion, the court may depart from such mandatory minimum sentence when the prosecuting attorney and defendant have agreed to a sentence that is below such mandatory sentence.

(2) A person convicted of the offense of theft by shoplifting, as provided in subsection (a) of this Code section, when the property which was the subject of the theft exceeds \$500.00 in value commits a felony and shall be punished by imprisonment for not less than one nor more than ten years.

(3) A person convicted of the offense of theft by shoplifting, as provided in subsection (a) of this Code section, when the property which was the subject of the theft is taken from three separate stores or retail establishments within one county during a period of seven days or less and when the aggregate value of the property which was the subject of each theft exceeds \$500.00 in value, commits a felony and shall be punished by imprisonment for not less than one nor more than ten years.

(4) A person convicted of the offense of theft by shoplifting, as provided in subsection (a) of this Code section, when the property which was the subject of the theft is taken during a period of 180 days and when the aggregate value of the property which was the subject of each theft exceeds \$500.00 in value, commits a felony and shall be punished by imprisonment for not less than one nor more than ten years.

(c) In all cases involving theft by shoplifting, the term “value” means the actual retail price of the property at the time and place of the offense. The unaltered price tag or other marking on property, or duly identified photographs thereof, shall be prima-facie evidence of value and ownership of the property.

(d) Subsection (b) of this Code section shall in no way affect the authority of a sentencing judge to provide for a sentence to be served on

weekends or during the nonworking hours of the defendant as provided in Code Section 17-10-3, relative to punishment for misdemeanors.

History.

Ga. L. 1957, p. 115, §§ 1, 3; Code 1933, § 26-1802.1, enacted by Ga. L. 1978, p. 2257, § 2; Ga. L. 1983, p. 457, § 1; Ga. L. 1997, p. 1394, § 1; Ga. L. 1998, p. 578, § 1; Ga. L. 2000, p. 870, § 1; Ga. L. 2012, p. 899, § 3-3/HB 1176; Ga. L. 2016, p. 443, § 13-1/SB 367; Ga. L. 2017, p. 774, § 16/HB 323; Ga. L. 2021, p. 273, § 3-2/HB 327.

Amendments.

The 2021 amendment, effective July 1, 2021, substituted the present provisions of subparagraph (b)(1)(C) for the former provisions, which read: "Upon conviction of a fourth or subsequent offense for shoplifting, where the prior convictions are either felonies or misdemeanors,

or any combination of felonies and misdemeanors, as defined by this Code section, the defendant commits a felony and shall be punished by imprisonment for not less than one nor more than ten years; and the first year of such sentence shall not be suspended, probated, deferred, or withheld."

Editor's notes.

Ga. L. 2021, p. 273, § 1-1/HB 327, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Organized Retail Crime Prevention Act.'"

Law reviews.

For annual survey on criminal law, see 70 Mercer L. Rev. 63 (2018).

JUDICIAL DECISIONS

Element of intent. — Trial court plainly erred in instructing the jury on the elements of shoplifting because the court omitted the element of intent, a material element of the offense, which relieved the state of the state's burden to prove each element of the crime. *Amosu v. State*, 356 Ga. App. 501, 847 S.E.2d 858, 2020 Ga. App. LEXIS 471 (2020).

Proof of value of stolen property. —

Testimony by the asset protection associate who witnessed the theft and later reviewed the store's video recording of the events, that the associate had a very clear shot of the defendant collecting the games, was able to count the number of games taken and which games were selected was sufficient to show that the value of the items taken exceeded \$500, as required for a felony conviction. *Turner v. State*, 345 Ga. App. 894, 815 S.E.2d 219, 2018 Ga. App. LEXIS 300 (2018).

Evidence sufficient to support conviction, etc. Evidence that an asset protection officer observed the defendant actively help conceal merchandise and hand items to the other women, who then selectively scanned items and placed the unpaid merchandise in bags just before they all left the store moved beyond mere presence at the scene of a crime and consisted

of activities intended to assist in appropriating the items taken from the store, thereby supporting the defendant's conviction for misdemeanor theft by shoplifting. *Saintpaul v. State*, 358 Ga. App. 393, 855 S.E.2d 399, 2021 Ga. App. LEXIS 68 (2021).

Evidence was sufficient to convict the defendant of theft by shoplifting as the officers testified that the defendant matched the description of one of the females shoplifting in the store; and the manager identified the clothing found in the defendant's vehicle as the clothing that was stolen; however, trial counsel was ineffective for failing to object to hearsay evidence because there was no reason why a reasonable attorney would have decided not to object to the hearsay testimony that provided the only evidentiary basis for a conviction of theft by shoplifting; and the defendant was prejudiced as the hearsay testimony was the only evidence offered to prove the elements of the theft by shoplifting offense. *Harris v. State*, 359 Ga. App. 356, 857 S.E.2d 815, 2021 Ga. App. LEXIS 198 (2021).

Uncounseled prior convictions could not be used to enhance offenses. — Defendant's previous uncounseled theft by shoplifting convictions could

not be used to enhance the misdemeanor offense of shoplifting to that of felony shoplifting and the accusation was quashed because the defendant contended that the defendant had not been represented by counsel in any of the shoplifting convictions relied upon for the felony shoplifting charge and that the defendant did not knowingly and intelligently waive the defendant's right to counsel; the de-

fendant presented evidence that the defendant's prior guilty pleas had not been entered into knowingly and voluntarily; and the state did not meet the state's burden of proving that the defendant's prior guilty pleas were informed and voluntary. *State v. Athey*, 352 Ga. App. 419, 834 S.E.2d 913, 2019 Ga. App. LEXIS 579 (2019).

16-8-14.1. Refund fraud.

(a)(1) It shall be unlawful for a person to give a false or fictitious name or address or to give the name or address of another person without that person's approval or permission for the purpose of obtaining a refund from a store or retail establishment for merchandise.

(2) It shall be unlawful for a person to obtain a refund in the form of cash, check, credit on a credit or debit card, a merchant gift card, or credit in any other form from a store or retail establishment using a driver's license not issued to such person, a driver's license containing false information, an identification card containing false information, an altered identification card, or an identification card not issued to such person.

(b) A person who violates subsection (a) of this Code section shall be guilty of refund fraud and, upon conviction, except as provided in subsection (c) of this Code section, shall:

(1) When the property which was the subject of the fraud is \$500.00 or less in value, be punished as for a misdemeanor;

(2) When the property which was the subject of the fraud exceeds \$500.00 in value, be guilty of a felony and shall be punished by imprisonment for not less than one nor more than ten years;

(3) When the property which was the subject of the fraud is taken from three separate stores or retail establishments within one county during a period of seven days or less and when the aggregate value of the property which was the subject of each fraud exceeds \$500.00 in value, be guilty of a felony and shall be punished by imprisonment for not less than one nor more than ten years; and

(4) When the property which was the subject of the fraud is taken during a period of 180 days and when the aggregate value of the property which was the subject of each fraud exceeds \$500.00 in value, be guilty of a felony and shall be punished by imprisonment for not less than one nor more than ten years.

(c)(1) Upon conviction of a second offense for a violation of any

provision of this Code section, in addition to or in lieu of any imprisonment which might be imposed, the defendant shall be fined not less than \$500.00, and the fine shall not be suspended or probated.

(2) Upon conviction of a third offense for a violation of any provision of this Code section, the defendant shall be guilty of a felony and, in addition to or in lieu of any fine which might be imposed, the defendant shall be punished by imprisonment for not less than 30 days or confinement in a “special alternative incarceration-probation boot camp,” probation detention center, or other community correctional facility of the Department of Corrections for a period of 120 days or shall be sentenced to monitored house arrest for a period of 120 days and, in addition to such types of confinement, may be required to undergo psychological evaluation and treatment to be paid for by the defendant; and such sentence of imprisonment or confinement shall not be suspended, probated, deferred, or withheld.

(3)(A) As used in this paragraph, the term “conviction” shall include a plea of nolo contendere.

(B) Upon conviction of a fourth or subsequent offense for a violation of any provision of this Code section, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than ten years; and the first year of such sentence shall not be suspended, probated, deferred, or withheld; provided, however, that, in the court’s discretion, the court may depart from such mandatory minimum sentence when the prosecuting attorney and defendant have agreed to a sentence that is below such mandatory sentence.

(d) In all cases involving refund fraud, the term “value” means the actual retail price of the property at the time and place of the offense. The unaltered price tag or other marking on property, or duly identified photographs thereof, shall be prima-facie evidence of value and ownership of the property.

(e) Subsection (b) of this Code section shall not affect the authority of a judge to provide for a sentence to be served on weekends or during the nonworking hours of the defendant as provided in Code Section 17-10-3, relative to punishment for misdemeanors.

History.

Code 1981, § 16-8-14.1, enacted by Ga. L. 2014, p. 404, § 1-1/SB 382; Ga. L. 2015, p. 5, § 16/HB 90; Ga. L. 2016, p. 443, § 13-2/SB 367; Ga. L. 2017, p. 774, § 16/HB 323; Ga. L. 2021, p. 273, § 3-3/HB 327.

Amendments.

The 2021 amendment, effective July 1, 2021, substituted the present provisions of paragraph (c)(3) for the former provisions, which read: “Upon conviction of a fourth or subsequent offense for a violation of any provision of this Code

section, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than ten years; and the first year of such sentence shall not be suspended, probated, deferred, or withheld.”

Editor’s notes.

Ga. L. 2021, p. 273, § 1-1/HB 327, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Organized Retail Crime Prevention Act.’”

16-8-14.2. Organized retail theft.

(a) A person commits the offense of organized retail theft when such person intentionally organizes, plans, finances, directs, manages, or supervises one or more other persons to appropriate property of a store or retail establishment to his or her own use without paying for such property or to deprive the owner of the property of the value thereof, in whole or in part, and when such property is taken from one or more stores or retail establishments over a period of 180 days with the intent to sell such property for monetary or other gain and when the aggregate value of the property which was the subject of the theft has a value exceeding \$24,999.99 and is placed or is to be placed in the control of a retail property fence as defined in Code Section 16-8-5.2 or other person in exchange for consideration.

(b) In all cases involving organized retail theft, the term “value” means the actual retail price of the property at the time and place of the offense. The unaltered price tag or other marking on property, or duly identified photographs thereof, shall be prima-facie evidence of value and ownership of the property.

(c) In any criminal proceeding pursuant to this Code section, the crime shall be considered to have been committed in any county in which an incident of organized retail theft occurred.

(d) A person convicted of a violation of this Code section shall be guilty of a felony and shall be punished by imprisonment for not less than three nor more than 20 years, a fine not to exceed \$50,000.00, or both.

History.

Code 1981, § 16-8-14.2, enacted by Ga. L. 2021, p. 273, § 3-4/HB 327.

Effective date.

This Code section became effective July 1, 2021.

Cross references.

Organized retail crime prevention, § 10-1-310.

Editor’s notes.

Ga. L. 2021, p. 273, § 1-1/HB 327, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Organized Retail Crime Prevention Act.’”

16-8-18. Entering automobile or other motor vehicle with intent to commit theft or felony.

Law reviews.

For article, “SB 174: Revising Georgia’s

List of Bail Restricted Offenses,” see 38 Ga. St. U.L. Rev. 41 (2021).

JUDICIAL DECISIONS

Evidence sufficient for conviction of juvenile.

— Evidence the defendant juvenile was apprehended after fleeing a stolen car, a cell phone from a car broken into was found, one of the juveniles told investigators the defendant was involved in the break-ins, and the defendant and other juveniles were members of a gang whose modus operandi was breaking into and stealing cars established probable cause to believe the defendant committed 32 acts of entering an automobile with intent to commit a theft and one count of theft by taking a motor vehicle. In the Interest of K. S., 348 Ga. App. 440, 823 S.E.2d 536, 2019 Ga. App. LEXIS 23 (2019).

Evidence sufficient for conviction.

— There was sufficient evidence of the defendant’s intent to commit a theft in order to convict the defendant of entering an automobile as the evidence demon-

strated that the defendant and the defendant’s confederates took the car owner’s keys in order to steal the car as part of their effort to flee from the robbery. Williams v. State, 356 Ga. App. 820, 849 S.E.2d 681, 2020 Ga. App. LEXIS 537 (2020).

Evidence sufficient for criminal attempt to enter automobile.

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

16-8-20. Livestock theft.

(a) A person commits the offense of livestock theft when he unlawfully takes or, being in lawful possession thereof, unlawfully appropriates any livestock of another with the intention of depriving the owner of such livestock.

(b) For the purposes of this Code section, the term “livestock” means horses, cattle, swine, sheep, goats, rabbits, and any domestic animal produced as food for human consumption.

(c) Any person committing the offense of livestock theft shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than two nor more than 15 years and by a fine of \$10,000.00; provided, however, that, if the fair market value of the livestock taken or appropriated is \$100.00 or less, the person shall be guilty of a misdemeanor of a high and aggravated nature.

(d) For the purposes of this Code section, if any livestock is killed or mutilated and a portion thereof taken, the value of the whole animal while alive or his entire carcass, whichever is greater, shall be consid-

ered for the purpose of distinguishing between a misdemeanor offense and a felony offense.

History.

Code 1933, § 26-1817, enacted by Ga. L. 1974, p. 1006, § 1; Ga. L. 1995, p. 244, § 10; Ga. L. 2008, p. 458, § 7/SB 364; Ga. L. 2024, p. 475, § 3/HB 827, effective July 1, 2024.

“shall be guilty of” for “commits”, “two nor more than 15 years” for “one nor more than ten years”, and “\$10,000.00” for “\$1,000.00”, and added “of a high and aggravated nature” at the end.

Amendments.

The 2024 amendment, effective July 1, 2024, in subsection (c), substituted

16-8-24. Theft by possession of stolen mail.

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

(1) “Mail” means a letter, post card, package, bag, or other sealed article that:

(A) Is delivered by the United States Postal Service, a common carrier, or a delivery service and has not yet been received by the person to whom it is addressed; or

(B) Has been left in a location to be collected for delivery by the United States Postal Service, a common carrier, or a delivery service.

(2) “Possesses stolen mail” means to knowingly receive, retain, possess, conceal, or dispose of stolen mail knowing that it has been stolen and to withhold such stolen mail from the true owner or person to whom the mail is addressed or to appropriate such stolen mail to the use of any person other than the true owner or the person to whom the mail is addressed.

(b) A person shall be guilty of the crime of theft by possession of stolen mail if he or she:

(1) Possesses stolen mail addressed to three or more different mailboxes or addresses; and

(2) Possesses a minimum of ten separate pieces of stolen mail.

(c) 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 five years, or, in the discretion of the trial judge, as for a misdemeanor.

(d) Each set of ten separate pieces of stolen mail addressed to three or more different mailboxes or addresses constitutes a separate and distinct crime and may be punished accordingly.

(e) The fact that the person who stole the mail has not been

convicted, apprehended, or identified shall not be a defense to the charge of theft by possession of stolen mail.

History.

Code 1981, § 16-8-24, enacted by Ga. L. 2021, p. 652, § 1/HB 94.

Effective date.

This Code section became effective July 1, 2021.

Cross references.

Theft or receipt of stolen mail matter generally, 18 U.S.C. § 1708.

16-8-25. Porch piracy.

(a) As used in this Code section, the term “dwelling” has the same meaning as provided in Code Section 16-7-1.

(b) A person shall be guilty of the crime of porch piracy if such person takes, removes, or otherwise appropriates three or more envelopes, bags, packages, or other related articles of another person without the permission of such other person from the porch, steps, or immediate vicinity of any entrance or exit of a dwelling of three or more different mailboxes or addresses.

(c) 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 five years, or, in the discretion of the trial judge, as for a misdemeanor.

History.

Code 1981, § 16-8-25, enacted by Ga. L. 2021, p. 652, § 2/HB 94.

Effective date.

This Code section became effective July 1, 2021.

ARTICLE 2**ROBBERY****16-8-40. Robbery.****JUDICIAL DECISIONS****ANALYSIS**

ROBBERY BY FORCE
APPLICATION
JURY INSTRUCTIONS
SENTENCE

Robbery by Force**Evidence sufficient to support conviction.**

Evidence was sufficient to show defendants’ participation in the attempted robbery

during which the victim was killed based on the evidence showing that defendant 1 rolled up the window just before or as defendant 2 drove off, from which the jury could infer was an attempt to retain the victim’s cash and cell phone that was

Robbery by Force (Cont'd)

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

Application**Evidence sufficient for conviction.**

Evidence supported the conclusion that the defendant entered or remained in the victim's home without authority and for the purpose of committing theft, after a struggle by the front of the home, was sufficient to support the defendant's convictions for robbery and burglary. *Dupree v. State*, 303 Ga. 885, 815 S.E.2d 899, 2018 Ga. LEXIS 433 (2018).

Evidence was sufficient to support the verdicts of attempted hijacking of a motor vehicle and attempted armed robbery as the jury could have found that the act of demanding the victim's keys and wallet, even if the victim ultimately failed to do so, constituted an attempt to obtain the motor vehicle and attempt to rob the victim of the wallet. *Richardson v. State*, 373 Ga. App. 252, 908 S.E.2d 234, 2024 Ga. App. LEXIS 415 (2024).

Evidence sufficient for conspiracy to commit robbery. — Evidence including the geographic proximity of the defendant's home to the crime and pawn shop, the temporal proximity of the defendant's visit to the pawn shop after the intrusion, the victim's vehicle being found running across from the pawn shop, the defendant's initial denial of pawning the stolen television, and the lack of evidence about the identity of the person the defendant claimed to have gotten the television from supported robbery for force, burglary, aggravated battery, false imprisonment, and theft by taking convictions. *Strickland v. State*, 348 Ga. App. 892, 825 S.E.2d 379, 2019 Ga. App. LEXIS 92 (2019).

Evidence was sufficient to support the defendant's conviction of conspiracy to commit robbery because the evidence was sufficient for a reasonable juror to infer that the defendant entered into an agreement with the other codefendants to carry out a plot to recover drugs and money from the victim's home. In the week prior

to the incident, a codefendant repeatedly met the defendant to discuss "retrieving" drugs and cash from the victim's home, on the night of the home invasion the defendant left the hotel with the other codefendants in a white truck, which was identified as being at the scene of the incident, and the defendant was present with the other co-defendants in the hotel room after the incident. *Stokes v. State*, 355 Ga. App. 565, 845 S.E.2d 305, 2020 Ga. App. LEXIS 353 (2020), cert. denied, No. S20C1425, 2021 Ga. LEXIS 58 (Ga. Feb. 1, 2021).

Jury Instructions

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

Jury instructions on immediate presence proper in robbery by sudden snatching case. — Trial counsel was not ineffective in failing to object to the trial court's jury charge as to conspiracy to commit robbery because it did not appear that the trial court's charge could have misled the jury into convicting the defendant on a basis other than what was charged in the indictment. The trial court instructed the jury that the burden of proof rested upon the state to prove every material allegation of the indictment, and the trial court sent the indictment with the jury during the jury's deliberations. *Stokes v. State*, 355 Ga. App. 565, 845 S.E.2d 305, 2020 Ga. App. LEXIS 353 (2020), cert. denied, No. S20C1425, 2021 Ga. LEXIS 58 (Ga. Feb. 1, 2021).

Sentence

Sentencing appropriate. — Magistrate determined that the defendant's sentence was properly enhanced under the Armed Career Criminal Act, 18 U.S.C. § 924(e), because the defendant's Georgia

robbery convictions remained predicate offenses while armed robbery and robbery by intimidation constituted separate offenses when armed robbery clearly had as an element the use, attempted use, or threatened use of physical force against the person of another, robbery by intimidation occurred when a person, by the use of threat or coercion, placed a person in fear of immediate serious bodily

injury to oneself or to another, and the defendant had one conviction for armed robbery and two convictions for robbery by intimidation. *Green v. United States*, No. CV416-153, No. CR405-139, 2017 U.S. Dist. LEXIS 29759 (S.D. Ga. Mar. 1, 2017), rejected, No. CV416-153, No. CR405-139, 2017 U.S. Dist. LEXIS 96676 (S.D. Ga. June 22, 2017).

16-8-41. Armed robbery; robbery by intimidation; taking controlled substance from pharmacy in course of committing offense.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
USE OF WEAPON
INCLUDED OFFENSES
APPLICATION
SENTENCE

General Consideration

Equal likelihood of timing of offense. — Defendant's armed robbery conviction under Count 8 was reversed because it was at least equally likely that the defendant took the knife and keys before rather than after encountering the victim; thus, the evidence was insufficient to support beyond a reasonable doubt that the defendant used a knife to take the keys from the victim. *Gee v. State*, 360 Ga. App. 793, 861 S.E.2d 634, 2021 Ga. App. LEXIS 396 (2021).

No fatal variance in indictment. —

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

Prior arrest for armed robbery improperly admitted. — In a case in which the defendant was convicted of, inter alia, armed robbery, the trial court erred in

allowing the state to present character evidence in the form of the defendant's prior arrest for armed robbery because defense counsel's cross-examination of an accomplice did not amount to an offer of evidence of a pertinent character trait as it was an attempt to establish that the accomplice was afraid of someone other than the defendant. *Blackwell v. State*, 351 Ga. App. 302, 830 S.E.2d 782, 2019 Ga. App. LEXIS 429 (2019).

Use of Weapon

Timing of use of weapon. — Defendant's armed robbery conviction under Count 9 was upheld as to the theft of credit cards, a smart watch and two cell phones because in light of the five-hour standoff that occurred wherein the defendant remained inside the victims' home before surrendering, facts presented by the evidence did not provide a reasonable hypothesis that the defendant was able to obtain the stolen items prior to brandishing the weapon, and there was no contention that these thefts occurred before the use of the force. *Gee v. State*, 360 Ga. App. 793, 861 S.E.2d 634, 2021 Ga. App. LEXIS 396 (2021).

Use of Weapon (Cont'd)

Perception of weapon. — Defendant's conviction for armed robbery of a taxi driver under O.C.G.A. § 16-8-41(a) was supported by video evidence that the defendant reached from the backseat to shove an object into the driver's back while the defendant demanded that the driver hand over the driver's money or else the defendant would shoot the driver; the driver testified that although the driver believed that the defendant may have threatened the driver with the defendant's finger, nevertheless, the driver complied with the defendant's orders because the driver was not positive that the defendant did not have a gun. *Rice v. State*, 351 Ga. App. 96, 830 S.E.2d 429, 2019 Ga. App. LEXIS 388 (2019), cert. denied, No. S19C1434, 2020 Ga. LEXIS 66 (Ga. Jan. 27, 2020).

Weapon need not be seen by victim. — Evidence was sufficient to support defendant's armed robbery conviction because the eyewitness's statements to police that defendant struck the victim with the same hand in which he was holding a gun constituted evidence that defendant accomplished the robbery "by use of" the gun. *Grant v. State*, 370 Ga. App. 882, 899 S.E.2d 469, 2024 Ga. App. LEXIS 100 (2024).

Proof was insufficient, etc. Defendant's conviction for robbery had to be vacated because, pretermittting whether the state established that the defendant was in recent possession of the stolen jewelry, there had to be more evidence than the defendant was short and another suspects' testimony about recently possessed stolen property to support such a conviction. *Robinson v. State*, 348 Ga. App. 285, 822 S.E.2d 35, 2018 Ga. App. LEXIS 644 (2018).

Included Offenses**Merger with aggravated assault.** —

Aggravated assault count merged into the conviction for armed robbery because the trial court failed to recognize that both charges arose from the same conduct, that of threatening the victim at gunpoint to make the victim open the cash register so the assailants could take cash and checks

inside. *Chambers v. Hall*, 305 Ga. 363, 825 S.E.2d 162, 2019 Ga. LEXIS 134, cert. denied, 140 S. Ct. 274, 205 L. Ed. 2d 174, 2019 U.S. LEXIS 5561 (2019).

Trial court erred by failing to merge all of the aggravated assault convictions into the armed robbery conviction because all of the aggravated assault convictions were based on the defendant's commission of an assault with a deadly weapon. *Irving v. State*, 351 Ga. App. 779, 833 S.E.2d 162, 2019 Ga. App. LEXIS 494 (2019).

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

Application

Theft of automobile may constitute armed robbery. — Trial court properly denied the defendant's motion for a directed verdict with regard to the convictions of armed robbery and hijacking a motor vehicle because the evidence supported the jury's finding that the defendant took the victim's car after pointing a gun at the victim and the fact that the victim fled to a nearby hiding place from where the police were called did not negate that the victim's vehicle was taken from the victim's presence by force and violence. *Merritt v. State*, 353 Ga. App. 374, 837 S.E.2d 521, 2020 Ga. App. LEXIS 1 (2020).

Participation sufficient to establish conviction. — Evidence was sufficient to enable the jury to find the appellant guilty of armed robbery, as well as felony murder based upon the armed robbery, beyond a reasonable doubt, as the evidence in the case was sufficient to prove that at a minimum, the appellant was a participant in the armed robbery of the victim and a participant in a crime may be convicted for the crime although they are not the one who directly committed the crime. *Waller v. State*, 311 Ga. 517, 858 S.E.2d 683, 2021 Ga. LEXIS 271 (2021), overruled in part, *Cook v. State*, 313 Ga. 471, 870 S.E.2d 758, 2022 Ga. LEXIS 65 (2022).

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

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

Breaking cell phone to prevent calling police. — Defendant's claim that the defendant did not have the mens rea to commit armed robbery because the defendant's conduct demonstrated the defendant never intended to take the victim's phone for the defendant's own use was unavailing as the jury could have found that breaking the phone was putting it to the defendant's use by preventing the victim from using the phone to call police. *McCullough v. State*, 351 Ga. App. 385, 830 S.E.2d 745, 2019 Ga. App. LEXIS 348 (2019), cert. denied, No. S19C1617, 2020 Ga. LEXIS 153 (Ga. Feb. 28, 2020).

Codefendant's testimony implicating defendant sufficiently corroborated. — Testimony by the victim that the defendant led the victim to the location where the accomplice was waiting with a gun to rob the victim, that the defendant simply walked away when the accomplice appeared with a gun, and that the accomplice did not pursue the defendant or attempt to hinder the defendant's exit from the scene, and the accomplice's testimony that the two planned to rob the

victim was sufficient to support the defendant's conviction for armed robbery. *Harp v. State*, 347 Ga. App. 610, 820 S.E.2d 449, 2018 Ga. App. LEXIS 573 (2018).

Factual basis sufficient for guilty plea. — Defendant was not entitled to an out-of-time appeal based on the defendant's guilty plea to armed robbery and other crimes; the state proffered a detailed factual basis for the armed robbery count, including the defendant's confession that the defendant and the defendant's accomplice planned to steal the victim's car; forced their way into the victim's apartment, with the defendant carrying a pistol; took the victim's car keys from the victim's apartment; and drove away in the victim's car. *Frisby v. State*, 304 Ga. 271, 818 S.E.2d 543, 2018 Ga. LEXIS 550 (2018), overruled in part, *Collier v. State*, 307 Ga. 363, 834 S.E.2d 769, 2019 Ga. LEXIS 708 (2019).

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

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

Evidence sufficient to sustain conviction for armed robbery.

Victim's testimony that the defendant was with the gunman and another man when all three men approached the victim and said to give them the victim's wallet and that the defendant and the other man

Application (Cont'd)

told the gunman to make the victim empty the victim's pockets and get everything the victim had was sufficient to support the defendant's conviction for armed robbery. *Anthony v. State*, 348 Ga. App. 417, 823 S.E.2d 92, 2019 Ga. App. LEXIS 20 (2019), cert. denied, No. S19C0720, 2019 Ga. LEXIS 661 (Ga. Sept. 23, 2019).

Video showing the defendant bursting into the store and holding a gun on the clerk while the defendant stole cash and lottery tickets was sufficient to support the defendant's convictions for armed robbery, aggravated assault, and possession of a firearm during a felony. *Beamon v. State*, 348 Ga. App. 732, 824 S.E.2d 624, 2019 Ga. App. LEXIS 76 (2019).

Since the victim remained on the property during the robbery and the items that were stolen were taken from the victim's residence, which was under the victim's control, the defendant, who pistol whipped the victim and demanded to know the location of property, could not be resolved of armed robbery simply because the defendant forcibly removed the victim from the residence during the course of the theft. *Benton v. State*, 305 Ga. 242, 824 S.E.2d 322, 2019 Ga. LEXIS 97 (2019).

Evidence that the defendant and another went to the victim's house, held the victim at gunpoint, removed various items from the home, and the defendant then sold the victim's cell phone at a kiosk in a grocery store was sufficient to support the defendant's conviction for armed robbery. *Rogers v. State*, 350 Ga. App. 163, 828 S.E.2d 398, 2019 Ga. App. LEXIS 262 (2019).

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

Evidence that the victim had three dollars in a wallet just prior to the shooting, no wallet was found with the victim, the defendant gave a friend three dollars in gas money after the shooting, had a firearm, and took the victim's money after killing the victim authorized the jury to convict the defendant of armed robbery. *Johnson v. State*, 307 Ga. 44, 834 S.E.2d 83, 2019 Ga. LEXIS 646 (2019).

Evidence supported a finding that the defendant took the money from the store manager's presence by using a weapon and was sufficient for the jury to have found the defendant guilty of armed robbery beyond a reasonable doubt. *Powell v. State*, 352 Ga. App. 14, 833 S.E.2d 602, 2019 Ga. App. LEXIS 516 (2019).

Sufficient evidence supported the defendant's convictions for armed robbery and other crimes based on evidence that three taxi drivers were robbed and the number used to call the taxis was registered to the defendant's mother, who allowed the defendant to use the phone, and an accomplice identified the defendant as the person with a gun. *Gay v. State*, 351 Ga. App. 811, 833 S.E.2d 305, 2019 Ga. App. LEXIS 496 (2019), cert. denied, No. S20C0264, 2020 Ga. LEXIS 317 (Ga. Apr. 20, 2020).

Trial court did not err in denying the defendant's motion for directed verdict on the armed robbery charge underlying the defendant's felony murder conviction and the defendant's felony murder conviction because a rational jury could conclude that on the night of the shooting, the defendant went to the co-defendant's residence; told the co-defendant that the defendant was about to rob the victim; approached the victim's SUV, where the victim was selling crack cocaine; shot the victim in the face; took cash from the victim, leaving only a ten-dollar bill; and then fled on foot. *Holmes v. State*, 307 Ga. 441, 836 S.E.2d 97, 2019 Ga. LEXIS 800 (2019).

Evidence was sufficient to convict the defendant of armed robbery as a party to the offense and to find that the defendant did not abandon the defendant's effort to commit the crime prior to the crime's completion because, although the defendant told police that the defendant begged off from the robbery at the last moment,

the defendant helped plan the robbery of the bank, provided the guns used in the robbery, dropped the accomplices off near the bank so that the accomplices could rob the bank, waited at the gas station knowing the robbery was taking place, and then followed the accomplices as the accomplices fled after taking the money. *Birdsong v. State*, 353 Ga. App. 316, 836 S.E.2d 232, 2019 Ga. App. LEXIS 683 (2019).

Evidence that the victim was in the basement at the time of the incident, which was where the victim was shot and, thus, the place from which the laptop was taken was under the victim's control was sufficient for the state to prove that the defendant took the laptop from the victim's immediate presence and, thus, to support the conviction for armed robbery. *Dozier v. State*, 307 Ga. 583, 837 S.E.2d 294, 2019 Ga. LEXIS 835 (2019).

Evidence that the co-indictee had a gun when the co-indictee and the defendant walked the husband to the minivan to retrieve money was sufficient to support the defendant's conviction for armed robbery and possession of a weapon during the commission of a crime even though the wife did not see the gun because the wife testified that the wife noticed something that appeared to be a knife or a pistol, making the wife fearful. *Parker v. State*, 353 Ga. App. 493, 838 S.E.2d 150, 2020 Ga. App. LEXIS 26 (2020).

Victim's testimony that the defendant grabbed the victim's necklaces, the jewelry fell to the ground and the victim secured the necklaces by stepping on the items, and then the defendant pulled out a gun and shot the victim in the chest was sufficient to support the defendant's conviction for armed robbery. *Williams v. State*, 353 Ga. App. 821, 840 S.E.2d 32, 2020 Ga. App. LEXIS 90 (2020).

Evidence was sufficient to convict the defendant of armed robbery of the second victim because the second victim testified that the defendant and another individual stole drugs from the table before they fled, and that a third person stole drugs from the table while the defendant and the other individual held both victims at gunpoint. *Coates v. State*, 310 Ga. 94, 849 S.E.2d 435, 2020 Ga. LEXIS 733 (2020).

Evidence was sufficient to support the jury verdict as to armed robbery and felony murder predicated on armed robbery since the evidence showed that an exterior door was kicked in and four armed men rushed inside to the basement where the defendant's bedroom was located and where the defendant was at the time, allowing the jury to infer that the perpetrators fired multiple gunshots, eventually hitting the defendant with a single, fatal gunshot. *Lumpkin v. State*, 310 Ga. 139, 849 S.E.2d 175, 2020 Ga. LEXIS 669 (2020).

Because the trial court properly permitted a victim to identify the defendant, coupled with other evidence at trial, including the defendant's text message to a buyer of the stolen wheels and the recovery of two guns from the car in which the defendant was stopped, the evidence was sufficient for the jury to convict the defendant for armed robbery and possession of a firearm during the commission of a felony. *Redding v. State*, 354 Ga. App. 525, 841 S.E.2d 192, 2020 Ga. App. LEXIS 194 (2020).

Evidence that the defendant approached the victim with a handgun, pointed the gun at the victim while demanding money, and ultimately shot the victim was sufficient to support the defendant's convictions for armed robbery, criminal attempt to commit armed robbery, aggravated assault, and possession of a firearm during the commission of a crime. *Cooke v. State*, 356 Ga. App. 679, 848 S.E.2d 693, 2020 Ga. App. LEXIS 509 (2020).

Evidence was sufficient to convict the defendant of armed robbery and possession of a firearm during the commission of a felony because the defendant rented a box truck and a storage unit; the tires on the truck had the same characteristics as the impressions left at the crime scene; the jury could conclude that the defendant arrived in the rented truck at the main gate and then shot the victim before entering the property to complete the theft of copper; and there was no evidence that the victim was restrained in any way to keep the victim from calling the police while the theft was completed. *Tyler v. State*, 311 Ga. 727, 859 S.E.2d 73, 2021 Ga. LEXIS 292 (2021).

Application (Cont'd)

Evidence was sufficient for the jury to have found that the defendant had a knife and used it to take the victim's cell phone before killing the victim, or that the defendant took the phone right after killing the victim, and under either scenario, the evidence supported the defendant's conviction for armed robbery. *Thornton v. State*, 312 Ga. 224, 862 S.E.2d 113, 2021 Ga. LEXIS 579 (2021).

Since a rational jury could have found that the victim's property was taken from the victim's immediate presence, the trial court properly denied the motion for directed verdict as to the armed robbery charge. *Stokes v. State*, 362 Ga. App. 223, 867 S.E.2d 834, 2022 Ga. App. LEXIS 7 (2022).

There was sufficient evidence to support the defendant's conviction for armed robbery since the testimony of two accomplices corroborated one another, placing the defendant at the scene and in possession of the firearm. Their testimony was further corroborated by evidence that the defendant acknowledged owning a black firearm with an extended clip matching that used during the robbery, the defendant owned shoes with the same distinctive sole pattern as the shoe print discovered after the robbery, and the defendant appeared to be left-handed as did the armed robber in the surveillance footage. *Best v. State*, 363 Ga. App. 345, 870 S.E.2d 904, 2022 Ga. App. LEXIS 159 (2022).

Evidence was sufficient to convict the defendant of armed robbery, aggravated assault, first degree home invasion, and possession of a firearm during the commission of a felony as the victim testified that the defendant entered the victim's home without permission, pointed a gun at the victim and the others in the home, and took their money. *Mahogany v. State*, 366 Ga. App. 750, 884 S.E.2d 141, 2023 Ga. App. LEXIS 76 (2023).

Defendant's conviction for being a party to armed robbery was supported by evidence that the defendant held a shotgun and ordered the victim to sit down while an accomplice collected the victim's guns. *Sauder v. State*, 318 Ga. 791, 901 S.E.2d 124, 2024 Ga. LEXIS 97 (2024).

Evidence was sufficient to support defendant's conviction of armed robbery, even though the victim fled into a nearby room for her own safety before he robbed her, because, despite the door between, the victim was extremely close to defendant with a firearm when he robbed her. *MacMillan v. State*, 372 Ga. App. 796, 906 S.E.2d 876, 2024 Ga. App. LEXIS 362 (2024).

Evidence was sufficient to support the defendant's conviction for armed robbery as the evidence showed that the victim was shot twice in the head, and two witnesses testified that, while the defendant was holding a gun and the victim was lying unresponsive on the kitchen floor, the defendant took money and a jar containing "green stuff," which the evidence showed was marijuana, from the kitchen cabinet. *Sharkey v. State*, 320 Ga. 477, 910 S.E.2d 216, 2024 Ga. LEXIS 289 (2024).

Evidence sufficient to support conviction of criminal attempt to commit armed robbery. — Jury was authorized to conclude that the defendant used a firearm to attempt to take money from the victim given the victim's testimony that the defendant pulled out a gun and asked the victim what the victim had in the victim's pockets. *Green v. State*, 304 Ga. 385, 818 S.E.2d 535, 2018 Ga. LEXIS 553 (2018).

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

Victim's testimony that the defendant pointed a gun at the victim, the victim got on the ground, and the defendant then asked where the money was allowed a reasonable jury to conclude that the de-

fendant's demand for money was not merely a demand for the deceased victim's money and supported the attempted armed robbery conviction. *Wilson v. State*, 320 Ga. 766, 911 S.E.2d 670, 2025 Ga. LEXIS 19 (2025).

Error in admitting evidence of the defendant's prior arrest for armed robbery was not harmless as the evidence against the defendant was not overwhelming because none of the people in the bank during the robbery identified the defendant as one of the robbers; and the only witness connecting the defendant to the robbery was an accomplice, whose testimony, standing alone, would not support the defendant's conviction as corroboration of the accomplice's testimony was required. *Blackwell v. State*, 351 Ga. App. 302, 830 S.E.2d 782, 2019 Ga. App. LEXIS 429 (2019).

Prior arrest for armed robbery improperly admitted. — When the defendant was convicted of, *inter alia*, armed robbery, the trial court erred in allowing the state to present character evidence in the form of the defendant's prior arrest for armed robbery as the defendant's references to mentoring children did not open the door to rebuttal evidence from the state because neither the defendant's counsel nor the state questioned the defendant about the references or attempted to tie the defendant's mentoring to any character trait; and even if the references to being a mentor did open the door to rebuttal testimony, the evidence of the defendant's prior arrest for armed robbery was not tailored to rebut evidence of any pertinent character trait offered by the defendant's testimony. *Blackwell v. State*, 351 Ga. App. 302, 830 S.E.2d 782, 2019 Ga. App. LEXIS 429 (2019).

Sentence

Trial court's departure from negotiated plea agreement abuse of discre-

tion without state's consent. — Trial court exceeded its discretion under O.C.G.A. § 17-10-6.1(e) by sentencing defendant following a guilty plea to armed robbery and various other offenses by departing further than the negotiated plea agreement without the state's consent. *State v. Dixon*, 370 Ga. App. 211, 896 S.E.2d 121, 2023 Ga. App. LEXIS 556 (2023).

Sentence appropriate.

Magistrate determined that the defendant's sentence was properly enhanced under the Armed Career Criminal Act, 18 U.S.C. § 924(e), because the defendant's Georgia robbery convictions remained predicate offenses while armed robbery and robbery by intimidation constituted separate offenses when armed robbery clearly had as an element the use, attempted use, or threatened use of physical force against the person of another, robbery by intimidation occurred when a person, by the use of threat or coercion, placed a person in fear of immediate serious bodily injury to oneself or to another, and the defendant had one conviction for armed robbery and two convictions for robbery by intimidation. *Green v. United States*, No. CV416-153, No. CR405-139, 2017 U.S. Dist. LEXIS 29759 (S.D. Ga. Mar. 1, 2017), rejected, No. CV416-153, No. CR405-139, 2017 U.S. Dist. LEXIS 96676 (S.D. Ga. June 22, 2017).

Defendant's sentences of life imprisonment for armed robbery and 20 years' imprisonment for aggravated assault were within the statutory range and were not void. *Williams v. State*, 368 Ga. App. 678, 890 S.E.2d 65, 2023 Ga. App. LEXIS 295 (2023).

ARTICLE 3

CRIMINAL REPRODUCTION AND SALE OF RECORDED MATERIAL

16-8-60. Reproduction of recorded material; transfer, sale, distribution, circulation; civil forfeiture; restitution.

(a) It is unlawful for any person, firm, partnership, corporation, or association knowingly to:

(1) Transfer or cause to be transferred any sounds or visual images recorded on a phonograph record, disc, wire, tape, videotape, film, memory card, flash drive, hard drive, data storage device, or other article on which sounds or visual images are recorded onto any other phonograph record, disc, wire, tape, videotape, film, memory card, flash drive, hard drive, data storage device, or article without the consent of the person who owns the master phonograph record, master disc, master tape, master videotape, master film, memory card, flash drive, hard drive, data storage device, or other article from which the sounds or visual images are derived; or

(2) Sell; distribute; circulate; offer for sale, distribution, or circulation; possess for the purpose of sale, distribution, or circulation; cause to be sold, distributed, or circulated; cause to be offered for sale, distribution, or circulation; or cause to be possessed for sale, distribution, or circulation any article or device on which sounds or visual images have been transferred, knowing it to have been made without the consent of the person who owns the master phonograph record, master disc, master tape, master videotape, master film, or other device or article from which the sounds or visual images are derived.

(b) It is unlawful for any person, firm, partnership, corporation, or association to sell; distribute; circulate; offer for sale, distribution, or circulation; or possess for the purposes of sale, distribution, or circulation any phonograph record, disc, wire, tape, videotape, film, memory card, flash drive, hard drive, data storage device, or other article on which sounds or visual images have been transferred unless such phonograph record, disc, wire, tape, videotape, film, memory card, flash drive, hard drive, data storage device, or other article bears the actual name and address of the transferor of the sounds or visual images in a prominent place on its outside face or package.

(c) This Code section shall not apply to any person who transfers or causes to be transferred any such sounds or visual images:

(1) Intended for or in connection with radio or television broadcast transmission or related uses;

(2) For archival purposes; or

(3) Solely for the personal use of the person transferring or causing the transfer and without any profit being derived by the person from the transfer.

(d) Every person convicted of violating this Code section shall be guilty of a felony and shall be punished as follows:

(1) Upon the first conviction of violating this Code section, by a fine of not less than \$500.00 nor more than \$25,000.00, by imprisonment for not less than one year nor more than two years, or both such fine and imprisonment;

(2) Upon the second conviction of violating this Code section, by a fine of not less than \$1,000.00 nor more than \$100,000.00, by imprisonment for not less than one year nor more than three years and the judge may suspend, stay, or probate all but 48 hours of any term of imprisonment, or both such fine and imprisonment; or

(3) Upon the third or subsequent conviction of violating this Code section, by a fine of not less than \$2,000.00 nor more than \$250,000.00, by imprisonment for not less than two nor more than five years and the judge may suspend, stay, or probate all but six days of any term of imprisonment, or both such fine and imprisonment.

(e) This Code section shall neither enlarge nor diminish the right of parties to enter into a private contract.

(f)(1) Any phonograph record, disc, wire, tape, videotape, film, memory card, flash drive, hard drive, data storage device, or other article onto which sounds or visual images have been transferred in violation of this Code section is declared to be contraband and no person shall have a property right in it; provided, however, that notwithstanding paragraph (2) of subsection (a) of Code Section 9-16-17, no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.

(2) Any property subject to forfeiture pursuant to paragraph (1) of this subsection shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9.

(g) For purposes of imposing restitution pursuant to Chapter 14 of Title 17 when a person is convicted pursuant to this Code section, the court shall consider damages to any owner or lawful producer of a master phonograph record, master disc, master tape, master videotape, master film, or other device or article from which sounds or visual images are derived. Restitution shall be based upon the aggregate wholesale value of lawfully manufactured and authorized recorded devices corresponding to the nonconforming recorded devices involved

in the violation of this Code section and shall also include reasonable investigative costs related to the detection of the violation of this Code section.

History.

Ga. L. 1975, p. 44, § 1; Ga. L. 1978, p. 1938, § 1; Ga. L. 1986, p. 652, § 1; Ga. L. 1988, p. 13, § 16; Ga. L. 2008, p. 240, § 1/SB 406; Ga. L. 2015, p. 693, § 2-7/HB 233; Ga. L. 2020, p. 317, § 1/HB 341.

Amendments.

The 2020 amendment, effective January 1, 2021, inserted “memory card, flash drive, hard drive, data storage device,”

following “film,” in two places in paragraph (a)(1), twice in subsection (b) and once in paragraph (f)(1); substituted “memory card, flash drive, hard drive, data storage device, or other article” for “or other device or article” near the end of paragraph (a)(1); and near the beginning of paragraph (f)(1), substituted “Code section is” for “Code section are”; and “right in it” for “right in them”.

ARTICLE 4

MOTOR VEHICLE CHOP SHOPS AND STOLEN AND ALTERED PROPERTY

16-8-80. Short title.

Cross references.

Grants for enforcement of motor vehicle related statutes, § 35-6A-16.

CHAPTER 9

FORGERY AND FRAUDULENT PRACTICES

Article 4

Fraud and Related Offenses

Sec.

16-9-63. False representation as veteran.

ARTICLE 1

FORGERY AND RELATED OFFENSES

16-9-1. Forgery; classification of forgery offenses.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

EVIDENCE

JURY INSTRUCTIONS

General Consideration

Merger. — Because the defendant's convictions for forgery and theft by taking each required proof that the other did not, there was no merit to the defendant's argument that those offenses should have merged. *Townsend v. State*, 357 Ga. App. 111, 848 S.E.2d 210, 2020 Ga. App. LEXIS 574 (2020).

Evidence

Evidence sufficient for conviction.

— Evidence that when stopped for traffic violations, the defendant provided the police officer with a driver's license bearing the defendant's own photograph but another person's name and address and that the other person had provided the defendant with a copy of the other person's driver's license so that the defendant could help the other person obtain a license to operate a taxi but the other person did not give the defendant permission to use it for duplicitous purposes or know that the defendant would do so was sufficient to support the defendant's conviction for forgery. *Sambou v. State*, 358 Ga. App. 645, 854 S.E.2d 392, 2021 Ga. App. LEXIS 112 (2021).

Evidence was sufficient to support the defendant's conviction for first-degree forgery based on the defendant's possession and delivery of fraudulent money orders that purported to have been made by authority of the Federal Reserve Bank of Atlanta without the bank having given such authority. *Rogers v. State*, 363 Ga. App. 794, 872 S.E.2d 770, 2022 Ga. App. LEXIS 220 (2022).

Defendant's conviction for forgery was supported by evidence that the defendant possessed checks with an intent to defraud; depositing fraudulent checks, immediately removing money and using it to purchase money orders to spend the money without a trace. *Champion v. State*, 369 Ga. App. 775, 894 S.E.2d 611, 2023 Ga. App. LEXIS 528 (2023).

Jury Instructions

Failure to require use of fictitious name in instruction was not error. —

Trial court's instruction on first-degree forgery was not error because the use of a fictitious name is not an essential element of the crime and the instruction closely tracked the relevant statutory language. *Rogers v. State*, 363 Ga. App. 794, 872 S.E.2d 770, 2022 Ga. App. LEXIS 220 (2022).

ARTICLE 2

DEPOSIT ACCOUNT FRAUD

16-9-20. Deposit account fraud.

JUDICIAL DECISIONS

ANALYSIS

CIVIL LIABILITY

Civil Liability

Evidence of malice shown in malicious prosecution case. — Trial court did not err in denying summary judgment on the plaintiff's claim for malicious prosecution because there was evidence from which a jury could determine that the defendant withheld information on the parties' course of dealings from the mag-

istrate judge at the time the warrants were procured, which the defendant signed despite knowing that the checks had not been delivered for present consideration and that at least 16 of the checks were less than 30 days old. *Sheffield v. Futch*, 354 Ga. App. 661, 839 S.E.2d 294, 2020 Ga. App. LEXIS 80 (2020), cert. denied, No. S20C1090, 2020 Ga. LEXIS 807 (Ga. Oct. 5, 2020).

ARTICLE 3

ILLEGAL USE OF FINANCIAL TRANSACTION CARDS

16-9-31. Financial transaction card theft.

JUDICIAL DECISIONS

Wrong standard of proof applied in juvenile’s case. — Juvenile’s adjudication as delinquent for theft related acts was reversed because the juvenile court applied an erroneous standard of proof by concluding that there was some evidence to find that the juvenile removed a teacher’s wallet from the teacher’s desk since

the wallet was found in the juvenile’s book bag as the proper standard was proof beyond a reasonable doubt, not the lesser and different standard of some evidence. In the Interest of A. G., 355 Ga. App. 771, 845 S.E.2d 779, 2020 Ga. App. LEXIS 385 (2020).

16-9-32. Forgery of financial transaction card.

JUDICIAL DECISIONS

Possession of altered credit cards. — Evidence was sufficient to support the defendant’s convictions for financial transaction card fraud and possession of tools for the commission of a crime as the defendant was not merely present during the criminal activity as the two financial transaction card forgery counts pertained to the credit cards with embossed num-

bers were found in the driver’s door pocket of the defendant’s car, which the defendant was driving at the time of the stop. Riley v. State, 356 Ga. App. 290, 846 S.E.2d 617, 2020 Ga. App. LEXIS 431 (2020), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

16-9-33. Financial transaction card fraud.

JUDICIAL DECISIONS

Evidence sufficient for conviction. — Sufficient evidence supported the appellant’s convictions on two counts of exploitation of elder person, two counts of theft by taking, and 11 counts of financial-transaction-card fraud based on at least circumstantial evidence that the appellant’s mother did not authorize the appellant’s near total depletion of various financial accounts by transfers to the appellant’s account, ATM withdrawals, money sent to another country, and buying online merchandise, furniture, and jewelry. Anderson v. State, 350 Ga. App. 369, 829 S.E.2d 453, 2019 Ga. App. LEXIS 310 (2019).

Evidence insufficient for conviction. — In the defendant’s murder trial, circumstantial evidence supported the

jury’s verdict: the evidence included text messages showing the defendant and the victim were meeting for sex; the defendant’s saliva was on the victim’s penis; the murder weapon was found in the defendant’s backpack; however, the defendant’s financial transaction fraud conviction was reversed because, despite the defendant’s attempts, the defendant was not able to obtain anything of value using the victim’s debit card. Carter v. State, 305 Ga. 863, 828 S.E.2d 317, 2019 Ga. LEXIS 325 (2019).

Rule of lenity not applicable. — Defendant’s convictions arising from forcibly taking an 84-year-old woman’s purse and using the victim’s credit cards shortly after were upheld because the rule of lenity did not apply since the statutes for iden-

tity fraud, O.C.G.A. § 16-9-121(a)(1), and financial transaction card fraud, O.C.G.A. § 16-9-33(a)(1), were not ambiguous and contained different elements. *Olushola v. State*, 373 Ga. App. 274, 908 S.E.2d 249, 2024 Ga. App. LEXIS 418 (2024).

ARTICLE 4

FRAUD AND RELATED OFFENSES

16-9-50. Deceptive business practices.

Law reviews.

For article, “Individual Accountability

for Corporate Crime,” see 34 Ga. St. U. L. Rev. 335 (2018).

RESEARCH REFERENCES

ALR.

Criminal Simulation Under State Laws,
79 A.L.R.7th 6.

16-9-63. False representation as veteran.

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

(1) “Armed forces of the United States” means the army, navy, air force, space force, marine corps, or coast guard and the reserve components thereof and the uniformed components of the Public Health Service or the National Oceanic and Atmospheric Administration.

(2) “Military decoration” means:

(A) A medal, decoration, badge, or ribbon authorized by law, executive order, or regulation to be awarded to a member of the armed forces of the United States by the President of the United States, Congress, the United States Department of Defense, or the United States Department of Homeland Security;

(B) A medal, decoration, badge, or ribbon authorized by law, executive order, or regulation to be awarded to members of the organized militia; or

(C) A rosette or metal lapel button depicting a medal, decoration, badge, or ribbon described in subparagraph (A) or (B) of this paragraph which is authorized by law, executive order, or regulation to be worn on civilian clothing.

(3) “Military medal award” shall have the same meaning as provided for under Code Section 40-2-85.1.

(4) “Military veteran” means a current, former, or retired member of the armed forces of the United States, the organized militia, or a state military force of another state.

(5) “Organized militia” means the Army National Guard, the Air National Guard, the Georgia Naval Militia, and the State Defense Force.

(6) “Tangible benefit” means:

(A) A benefit, preference, service, or other thing of value offered to a military veteran which is enhanced or offered at a reduced rate or free of charge by an agency of this state, or any political subdivision or authority thereof, based on such military veteran’s service or the award of a military decoration;

(B) Employment or promotion in an individual’s employment; or

(C) Election to public office.

(b) It shall be unlawful for any individual, with the intent to secure a tangible benefit for himself or herself, to make a false, fictitious, or fraudulent statement or representation that such individual is a military veteran or recipient of a military decoration.

(c) It shall be unlawful for any individual, with the intent to deceive, to appear in a court of this state while wearing:

(1) The uniform of the armed forces of the United States or of the organized militia of this state if such individual is not authorized to wear such uniform; or

(2) Any military decoration which such individual has not, in fact, been awarded.

(d) Any person who violates this Code section shall be guilty of a misdemeanor; provided, however, that if such violation involves a military medal award, such person shall be guilty of a misdemeanor of a high and aggravated nature.

(e) Any violation of this Code section shall be considered a separate offense and shall not merge with any other offense. If an individual is convicted of a violation of Code Section 16-10-20 and this Code section arising out of the same incident, any penalty imposed for a violation of this Code section shall be served consecutively to any sentence that may be imposed for a violation of Code Section 16-10-20.

History.

Code 1981, § 16-9-63, enacted by Ga. L. 2016, p. 608, § 1/SB 270; Ga. L. 2024, p. 81, § 2/HB 299, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, inserted “space force,” in the middle of paragraph (a)(1).

ARTICLE 5

**REMOVAL OR ALTERATION OF IDENTIFICATION FROM
PROPERTY**

**16-9-70. Criminal use of an article with an altered identification
mark.**

Law reviews. this Code section, see 35 Ga. St. U.L. Rev.
For article on the 2018 amendment of 45 (2018).

ARTICLE 6

COMPUTER SYSTEMS PROTECTION

PART 1

COMPUTER CRIMES

Law reviews. Insurance Coverage,” see 36 Ga. St. U.L.
For note, “Phishing for Computer Fraud Rev. 407 (2020).

16-9-90. Short title.

JUDICIAL DECISIONS

Injunction for retained information. — In suit alleging computer theft and other claims, trial court erred holding that plaintiff’s claim for injunctive relief was moot because plaintiff sought order enjoining defendants from retaining copies of information taken from plaintiff’s computer, and there was no record evidence to suggest that defendants no longer retained that information. *Patel v. Duke Hospitality, LLC*, 364 Ga. App. 538, 875 S.E.2d 520, 2022 Ga. App. LEXIS 335 (2022).

16-9-92. Definitions.

JUDICIAL DECISIONS

Evidence sufficient to convict after entering false grades. — Contrary to the defendant’s assertion on appeal that the state did not prove intent to appropriate, the state established that by entering passing grades for classes the defendant failed, the defendant appropriated \$5,700 of National Guard funds without author-ity or right for the defendant’s exclusive use by eliminating the debt the defendant owed to the National Guard. *Countryman v. State*, 355 Ga. App. 573, 845 S.E.2d 312, 2020 Ga. App. LEXIS 360 (2020), cert. denied, No. S20C1455, 2021 Ga. LEXIS 107 (Ga. Mar. 1, 2021).

16-9-93. Computer crimes defined; exclusivity of article; civil remedies; criminal penalties.

Law reviews. Competence Post-COVID: Why Georgia
For note, “The Lawyer’s Duty of Tech Needs a New Professional Rule Now More

Than Ever,” see 39 Ga. St. U.L. Rev. 551 (2023).

JUDICIAL DECISIONS

Evidence sufficient to convict. —

Contrary to the defendant’s assertion on appeal that the state did not prove intent to appropriate, the state established that by entering passing grades for classes the defendant failed, the defendant appropriated \$5,700 of National Guard funds without authority or right for the defendant’s exclusive use by eliminating the debt the defendant owed to the National Guard. *Countryman v. State*, 355 Ga. App. 573, 845 S.E.2d 312, 2020 Ga. App. LEXIS 360 (2020), cert. denied, No. S20C1455, 2021 Ga. LEXIS 107 (Ga. Mar. 1, 2021).

Claim did not state a violation. —

Opinion testimony related to computer trespass claims was speculative, irrelevant, and unhelpful because the expert’s statements indicated only that damage was possible, rather than probable; moreover, claims of computer trespass and computer invasion of privacy failed because the alleged conduct occurred outside Georgia. *Krise v. Sei/Aaron’s, Inc.*, No. 1:14-CV-1209-TWT, 2017 U.S. Dist. LEXIS 133818 (N.D. Ga. Aug. 18, 2017).

Computer invasion of privacy. —

Trial court erred awarding summary judgment to defendants on plaintiff’s claim for violation of Georgia Computer Systems Protection Act (GCSA), O.C.G.A. § 16-9-90 et seq., due to plaintiff’s purported lack of damages with regard to the disclosure of plaintiff’s medical records because there was no limitation on the category of compensatory damages available for a violation as either nominal damages or O.C.G.A. § 51-12-6 damages were available for the claim if proven. *Nayani v. Bhatia*, 371 Ga. App. 44, 899 S.E.2d 485, 2024 Ga. App. LEXIS 113 (2024).

Retention of data from computer. —

In a suit alleging computer theft and other claims, the trial court erred by holding that the plaintiff’s claim for injunctive relief was moot because the plaintiff sought an order enjoining the defendants from retaining copies of the information taken from the plaintiff’s computer, and there was no record evidence to suggest that the defendants no longer retained that information. *Patel v. Duke Hospitality, LLC*, 364 Ga. App. 538, 875 S.E.2d 520, 2022 Ga. App. LEXIS 335 (2022).

Evidence insufficient to convict when employee tampered with boss’s e-mail. —

Evidence was insufficient to support the defendant’s conviction of computer trespass because the state presented no evidence that the defendant’s scheme of forwarding the defendant’s boss’s e-mails to the defendant’s personal e-mail account blocked or even hindered the flow of data to the boss, who continued to receive the e-mails intended for the boss. *Kinslow v. State*, 311 Ga. 768, 860 S.E.2d 444, 2021 Ga. LEXIS 471 (2021).

Tolling of statute of limitations. —

Prosecution of the defendant’s case was not barred by the four year statute of limitations for computer theft because even if the National Guard were actually aware that the defendant entered the defendant’s own grades, with or without authorization to do so; in October 2012, the undisputed evidence showed that the Guard did not become aware that the grades entered were false until January 2015. *Countryman v. State*, 355 Ga. App. 573, 845 S.E.2d 312, 2020 Ga. App. LEXIS 360 (2020), cert. denied, No. S20C1455, 2021 Ga. LEXIS 107 (Ga. Mar. 1, 2021).

16-9-94. Venue.

Law reviews.

For annual survey on criminal law, see 70 Mercer L. Rev. 63 (2018).

ARTICLE 7

MOTOR VEHICLE SALES AND TRANSFERS

Cross references. vehicle sales or lease transactions,
Protection of consumer data in motor § 10-1-632.

ARTICLE 8

IDENTITY FRAUD

16-9-121. Elements of offense.

JUDICIAL DECISIONS

Four year statute of limitations. —
Four-year limitation period applied to the allegations of theft and identify fraud. *State v. Green*, 350 Ga. App. 238, 828 S.E.2d 635, 2019 Ga. App. LEXIS 282 (2019).

Altering Facebook page sufficient for conviction. — Evidence that the defendant used the personal information of the missing child, which the defendant obtained from the child's mother, to alter the child's Facebook page by posting "wanted posters" and to lock the child out of the account by changing the password was sufficient to support the defendant's conviction for identity fraud. *Libri v. State*, 346 Ga. App. 420, 816 S.E.2d 417, 2018 Ga. App. LEXIS 397 (2018).

Evidence sufficient for conviction.
Evidence that credit cards opened in the victims' names were used to purchase items found at the defendant's residence, documents including the victims' names were found there, and computers in the residence were used to search ways to get gift cards instantly and easy ways to get credit cards was sufficient to support identity fraud convictions. *Porter v. State*, 358 Ga. App. 442, 855 S.E.2d 657, 2021 Ga. App. LEXIS 82 (2021).

Trial court did not err by denying the defendant's motion for a directed verdict on the charge of identity fraud because the evidence showed that the victim never

gave the defendant or the accomplice permission to use the victim's information or to sell a car on the victim's behalf. *Huff v. State*, 367 Ga. App. 774, 888 S.E.2d 575, 2023 Ga. App. LEXIS 233 (2023).

The evidence was sufficient to support defendant's conviction for identity fraud because the state presented sufficient evidence that the victim, a corporation, was a person. *Brown v. State*, 368 Ga. App. 747, 890 S.E.2d 778, 2023 Ga. App. LEXIS 364 (2023).

Evidence that the defendant deposited fraudulent checks, immediately removed money and used it to purchase money orders to spend the money without a trace, and used another person's debit card to deposit fraudulent checks was sufficient to support the defendant's conviction for identity theft. *Champion v. State*, 369 Ga. App. 775, 894 S.E.2d 611, 2023 Ga. App. LEXIS 528 (2023).

Rule of lenity not applicable. — Defendant's convictions arising from forcibly taking an 84-year-old woman's purse and using the victim's credit cards shortly after were upheld because the rule of lenity did not apply since the statutes for identity fraud, O.C.G.A. § 16-9-121(a)(1), and financial transaction card fraud, O.C.G.A. § 16-9-33(a)(1), were not ambiguous and contained different elements. *Olushola v. State*, 373 Ga. App. 274, 908 S.E.2d 249, 2024 Ga. App. LEXIS 418 (2024).

ARTICLE 9
COMPUTER SECURITY

Law reviews.
For article, “The Code of the Platform,”
see 54 Ga. L. Rev. 605 (2020).

CHAPTER 10
OFFENSES AGAINST PUBLIC ADMINISTRATION

Article 1		Sec.	
Abuse of Governmental Office		16-10-28.	Transmitting a false public alarm; restitution.
Sec.		16-10-35.	Obstructing emergency personnel with fireworks.
16-10-1.	Violation of oath by public officer.		
Article 2		Article 3	
Obstruction of Public Administration and Related Offenses		Escape and Other Offenses Related to Confinement	
16-10-23.	Impersonating a public officer or employee.	16-10-51.	Bail jumping.
16-10-24.	Obstructing or hindering law enforcement officers.	Article 4	
		Perjury and Related Offenses	
		16-10-70.	Perjury.

Law reviews. List of Bail Restricted Offenses,” see 38
For article, “SB 174: Revising Georgia’s Ga. St. U.L. Rev. 41 (2021).

ARTICLE 1
ABUSE OF GOVERNMENTAL OFFICE

16-10-1. Violation of oath by public officer.

- (a) Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years.
- (b) Any peace officer, as such term is defined in Code Section 35-8-2, who has sworn the oath or oaths prescribed in Code Sections 15-16-4 and 45-3-7 shall be subject to prosecution under this Code section only for violations of such oath or oaths as prescribed.
- (c) No individual shall be subject to prosecution for violation of his or her oath of office under this Code section, except where such violation is

predicated upon the commission of a felony or a misdemeanor of a high and aggravated nature.

History.

Code 1933, § 26-2302, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 2025, p. 497, § 4/HB 582, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, designated the existing provisions of this Code section as subsection (a) and added subsections (b) and (c).

Editor's notes.

Ga. L. 2025, p. 497, § 1/HB 582, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Survivor Justice Act.'"

JUDICIAL DECISIONS

Police officer. — Evidence was insufficient to support the defendant's conviction of violation of oath by a public officer based on defendant's violation of the police department's use of force policy because a violation of the policy, by its express terms, could not form the basis of a criminal conviction. *Olsen v. State*, 371 Ga. App. 12, 899 S.E.2d 518, 2024 Ga. App. LEXIS 104 (2024).

Violating oath of office of coroner.

— In the defendant's trial for violating the defendant's oath of office as coroner and theft by deception, O.C.G.A. §§ 16-10-1 and 16-8-3(a), respectively, there was no fatal variance between the indictment, which alleged the defendant had billed the county for "pronouncing the death of" nursing home patients, and the proof that the defendant billed the county for conducting investigations into the deaths of the same named patients. *Fortner v. State*, 350 Ga. App. 226, 828 S.E.2d 434, 2019 Ga. App. LEXIS 273 (2019).

Denial of demurrer was erroneous.

— Facts as alleged in this indictment did

not support the charge that the police officers violated their oaths of office by failing to conduct investigations of two other police officers because the officers' purported failures to investigate and undertake the administrative actions alleged were not Brady violations. Thus, the indictment could not withstand a general demurrer, and the trial court's denial of the general demurrers was erroneous. *Powell v. State*, 318 Ga. 875, 901 S.E.2d 182, 2024 Ga. LEXIS 98 (2024).

Evidence sufficient for conviction.

— Since there was sufficient evidence to show that the terms of the oath taken by the defendant, a police officer, were prescribed by law and that the defendant engaged in sexual contact with the victim and inappropriate conduct with two others during traffic stops, the evidence was sufficient to support the defendant's conviction for violation of an oath by a police officer. *Pierson v. State*, 348 Ga. App. 765, 824 S.E.2d 657, 2019 Ga. App. LEXIS 82 (2019), cert. denied, No. S19C0921, 2019 Ga. LEXIS 785 (Ga. Nov. 4, 2019).

16-10-2. Bribery.

RESEARCH REFERENCES

ALR.

Effect of McDonnell v. U.S. Definition of "Official Act" upon Bribery Prosecution

Involving Public Official Under 18 U.S.C.A. § 201, 32 A.L.R. Fed. 3d 6.

ARTICLE 2

OBSTRUCTION OF PUBLIC ADMINISTRATION AND RELATED
OFFENSES**16-10-20. False statements and writings, concealment of facts,
and fraudulent documents in matters within jurisdic-
tion of state or political subdivisions.**

JUDICIAL DECISIONS

No merger when two material facts were at issue. — Two counts of making a false statement did not merge because there were two material facts at issue. *Dukes v. State*, 365 Ga. App. 246, 878 S.E.2d 104, 2022 Ga. App. LEXIS 428 (2022).

Jury instructions. — Trial court did not err by failing to charge on mistake of fact as a defense to the counts of perjury and use of a false document in connection with filing the petition for appointment of a guardian and/or conservator because it was undisputed that the defendant reviewed and verified the accuracy of the information to be filed, any mistake about what persons were the defendant's mother's lineal descendants was a mistake of law and therefore did not require a charge on mistake of fact, and the trial court fully and adequately charged the jury regarding perjury and filing a false document and that each required knowing and willful action. *Law v. State*, 349 Ga. App. 823, 824 S.E.2d 778, 2019 Ga. App. LEXIS 171 (2019).

No merger. — Convictions for hindering apprehension or punishment of a criminal did not merge with the false statement counts because the hindering apprehension count required proof that the defendant knew or had reason to believe an individual murdered the victim and the defendant concealed the individual's confession to hinder the defendant's apprehension. *Dukes v. State*, 365 Ga. App. 246, 878 S.E.2d 104, 2022 Ga. App. LEXIS 428 (2022).

Efforts to keep police from arresting child sufficient for conviction. —

Defendant's challenge to the sufficiency of the evidence to support the convictions for making false statements and misdemeanor obstruction of justice failed because there was evidence that the defendant was involved with and assisted the codefendant in the ruse to keep the police from arresting the defendant's child. *Reeves v. State*, 346 Ga. App. 414, 816 S.E.2d 401, 2018 Ga. App. LEXIS 393 (2018).

16-10-23. Impersonating a public officer or employee.

A person who falsely holds himself or herself out as a peace officer, officer of the court, or other public officer or employee with intent to mislead another into believing that he or she is actually such officer commits the offense of impersonating an officer and, upon conviction thereof, shall be punished by a fine of not more than \$1,000.00 or by imprisonment for not less than one nor more than five years, or both.

History.

Code 1933, § 26-2405, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1986, p. 1059, § 1; Ga. L. 2022, p. 753, § 1/SB 10.

Amendments.

The 2022 amendment, effective July 1, 2022, inserted "or herself", ", officer of the court,", and "or she".

JUDICIAL DECISIONS**Evidence sufficient for conviction.**

— Evidence that the defendant phoned an officer and self-identified as an “agent,” used common police terminology, and told the officer that the Metro Atlanta Human Trafficking Task Force got the case was sufficient to support the defendant’s conviction for impersonating a peace officer. *Libri v. State*, 346 Ga. App. 420, 816

S.E.2d 417, 2018 Ga. App. LEXIS 397 (2018).

Defendant’s identification as an investigator to a missing child’s mother was sufficient to support a conviction for impersonating a peace officer. *Libri v. State*, 346 Ga. App. 420, 816 S.E.2d 417, 2018 Ga. App. LEXIS 397 (2018).

16-10-24. Obstructing or hindering law enforcement officers.

(a) Except as otherwise provided in subsection (b) of this Code section, a person who knowingly and willfully obstructs or hinders any law enforcement officer, prison guard, jailer, correctional officer, community supervision officer, county or Department of Juvenile Justice juvenile probation officer, probation officer serving pursuant to Article 6 of Chapter 8 of Title 42, or game warden in the lawful discharge of his or her official duties shall be guilty of a misdemeanor.

(b) Whoever knowingly and willfully resists, obstructs, or opposes any law enforcement officer, prison guard, jailer, correctional officer, community supervision officer, county or Department of Juvenile Justice juvenile probation officer, probation officer serving pursuant to Article 6 of Chapter 8 of Title 42, or game warden in the lawful discharge of his or her official duties by offering or doing violence to the person of such officer or legally authorized person shall be guilty of a felony and shall, upon a first conviction thereof, be punished by imprisonment for not less than one year nor more than five years. Upon a second conviction for a violation of this subsection, such person shall be punished by imprisonment for not less than two years nor more than ten years. Upon a third or subsequent conviction for a violation of this subsection, such person shall be punished by imprisonment for not less than three years nor more than 15 years.

(c) Whoever knowingly and willfully resists, obstructs, or opposes any law enforcement officer, prison guard, jailer, correctional officer, community supervision officer, county or Department of Juvenile Justice juvenile probation officer, probation officer serving pursuant to Article 6 of Chapter 8 of Title 42, or game warden in the lawful discharge of his or her official duties by knowingly and willfully throwing, projecting, or expelling human or animal blood, urine, feces, vomitus, or seminal fluid on or at such individual shall be guilty of a felony and shall, upon conviction thereof, be punished by imprisonment for not less than one year nor more than five years.

(d) A person convicted under this Code section shall be punished, in addition to any term of imprisonment imposed, by a fine as provided by

law which shall be at least \$300.00. With respect to \$300.00 of the fine imposed, after distributing the surcharges and deductions required by Chapter 21 of Title 15, Code Sections 36-15-9 and 42-8-34, and Title 47, it shall be earmarked for the Georgia State Indemnification Fund for purposes of payment of indemnification for death or disability as provided for in Part 1 of Article 5 of Chapter 9 of Title 45.

History.

Laws 1833, Cobb’s 1851 Digest, p. 806.; Code 1863, § 4370; Ga. L. 1865-66, p. 233, § 2; Code 1868, § 4408; Code 1873, § 4476; Code 1882, § 4476; Penal Code 1895, § 306; Penal Code 1910, § 311; Code 1933, § 26-4401; Code 1933, § 26-2505, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1986, p. 484, § 1; Ga. L. 2015, p. 422, § 5-22/HB 310; Ga. L. 2017, p. 500,

§ 3-4/SB 160; Ga. L. 2019, p. 808, § 7/SB 72.

Amendments.

The 2019 amendment, effective July 1, 2019, substituted “game warden” for “conservation ranger” in subsections (a), (b), and (c).

Law reviews.

For article “Crimes of Suspicion” see 72 Emory L.J. 1429 (2023).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
LAWFUL DISCHARGE OF OFFICIAL DUTIES
APPLICATION

General Consideration

Merger of felony obstruction with aggravated battery. — Because injuring another’s ankle amounted to doing violence, the defendant’s convictions for felony obstruction merged into aggravated battery; thus, the defendant was entitled to resentencing. *Cooper v. State*, 350 Ga. App. 365, 829 S.E.2d 433, 2019 Ga. App. LEXIS 304 (2019).

Lawful Discharge of Official Duties

Conservation officer/ranger engaged in official duties enforcing traffic laws. — Sufficient evidence supported the defendant’s convictions of felony and misdemeanor obstruction of an officer and driving without carrying a license because the on-duty and uniformed conservation ranger had authority to arrest and was authorized to enforce traffic offenses and the state showed that the ranger was acting within the lawful discharge of official duties when the defendant was asked to turn down the music from the vehicle. *Thornton v. State*, 353 Ga. App. 252, 836 S.E.2d 541, 2019 Ga. App. LEXIS 596

(2019), *aff’d*, 310 Ga. 460, 851 S.E.2d 564, 2020 Ga. LEXIS 774 (2020).

Application

Flight, or attempted flight, after command to halt, etc.

Sufficient evidence supported the defendant’s conviction for obstruction and fleeing because the evidence showed that both deputies were in uniform and driving marked patrol vehicles when the deputies ordered the defendant to stop and the defendant ignored those commands while the deputies were attempting to conduct, with justification, at the very least a second-tier detention of the defendant. *Miller v. State*, 351 Ga. App. 757, 833 S.E.2d 142, 2019 Ga. App. LEXIS 497 (2019).

Evidence sufficient for purposes of juvenile delinquency adjudication.

Evidence that the officers were acting in the lawful discharge of the officers’ duties and that the defendant juvenile moved away from the officers to avoid a lawful search incident to arrest and then became irate and tensed up as if trying to pull away from their grip was sufficient to support the finding of delinquency for ob-

struction. In the Interest of G. M. W., 355 Ga. App. 151, 842 S.E.2d 920, 2020 Ga. App. LEXIS 278 (2020), overruled in part, *Shumate v. State*, 372 Ga. App. 807, 906 S.E.2d 885, 2024 Ga. App. LEXIS 365 (2024).

Wearing a mask during protest when asked by officer to remove mask. — In a prosecution for wearing a mask to conceal identity and obstruction of an officer, the trial court did not err by denying the defendant's motion for a directed verdict since the evidence showed that the defendant was masked and the defendant's arms were interlocked with a group of counter-protestors who were shouting obscenities, chanting anti-police slogans, and banging a drum, and the defendant was asked to take the mask off multiple times but never did. *Hutzel v. State*, 359 Ga. App. 493, 859 S.E.2d 495, 2021 Ga. App. LEXIS 228 (2021), cert. denied, 142 S. Ct. 904, 211 L. Ed. 2d 608, 2022 U.S. LEXIS 743 (2022).

“Obstruction” during brief investigatory stop.

Evidence was insufficient to support defendant's conviction of misdemeanor obstruction of an officer because, to the extent that the officer's encounter with defendant was a first-tier encounter, the officer was not entitled to command defendant to drop the baseball bat and defendant's temporary continued march down the sidewalk did not amount to obstruction of an officer. *Terry v. State*, 372 Ga. App. 255, 904 S.E.2d 104, 2024 Ga. App. LEXIS 292 (2024).

Struggling with officer after being handcuffed. — Defendant may commit the offense of resisting arrest even after being informed that the defendant is under arrest. Moreover, the fact that an officer has managed to apply handcuffs to a struggling arrestee does not foreclose continuing efforts to resist arrest, such as refusing to enter a patrol car or continuing to struggle with officers. *Raines v. State*, 304 Ga. 582, 820 S.E.2d 679, 2018 Ga. LEXIS 687 (2018).

Evidence was sufficient when defendant physically resisted police. —

Evidence in the record supported the trial court's alternative finding that the patrol officer's use of force was justified

because the arrestee had engaged in a forcible felony, when she grabbed the front of the patrol officer's vest. *State v. Larscheid*, 367 Ga. App. 660, 888 S.E.2d 197, 2023 Ga. App. LEXIS 205 (2023).

Striking officer's feet. — Even if the trial court erred by failing to give an instruction on misdemeanor obstruction as a lesser-included offense of felony obstruction, the defendant failed to show plain error in light of the strong evidence supporting the defendant's conviction of felony obstruction, including evidence that the defendant attempted to drive away and struck an officer as the officer's feet were still outside the moving vehicle. *Stringer v. State*, 369 Ga. App. 30, 892 S.E.2d 41, 2023 Ga. App. LEXIS 397 (2023).

Attack on correctional officer. —

Evidence was sufficient to support the defendant's convictions for aggravated battery, felony obstruction of an officer, and simple battery where it showed that the defendant sucker punched a cellmate resulting in substantial bleeding and a broken jaw, and attacked a corrections officer, attempting to gouge out the officer's eyes. *Stewart v. State*, 361 Ga. App. 636, 865 S.E.2d 237, 2021 Ga. App. LEXIS 526 (2021).

Efforts to keep police from arresting child sufficient for conviction. —

Defendant's challenge to the sufficiency of the evidence to support the convictions for making false statements and misdemeanor obstruction of justice failed because there was evidence that the defendant was involved with and assisted the codefendant in the ruse to keep the police from arresting the defendant's son. *Reeves v. State*, 346 Ga. App. 414, 816 S.E.2d 401, 2018 Ga. App. LEXIS 393 (2018).

Sufficient evidence for conviction.

Evidence was sufficient to support the defendant's conviction for misdemeanor obstruction, where it showed that an officer repeatedly commanded the defendant to get on the ground, put the defendant's hands behind the defendant's back, and not move, but the defendant ran deeper into the woods. *Cephas v. State*, 365 Ga. App. 320, 878 S.E.2d 572, 2022 Ga. App. LEXIS 439 (2022).

Application (Cont'd)

Evidence was sufficient to authorize the jury to find the defendant guilty beyond a reasonable doubt of obstruction of a law enforcement officer, as the officer testified that, while the blue lights of the vehicle in which the officer was a passenger were activated, the officer made eye contact with the defendant, who then turned the steering wheel toward the officers' vehicle, accelerated so that the defendant's wheels spun, and then struck the passenger side of the vehicle. *Shockley v. State*, 368 Ga. App. 286, 890 S.E.2d 1, 2023 Ga. App. LEXIS 303 (2023).

Evidence sufficient for misdemeanor obstruction. — Evidence that the defendant failed to comply with the officers' request that the defendant answer the door was sufficient to support the defendant's conviction for misdemeanor obstruction. *Lee v. State*, 347 Ga. App. 508, 820 S.E.2d 147, 2018 Ga. App. LEXIS 559 (2018).

Defendant's motion for a directed verdict of acquittal was properly denied as the evidence was sufficient to convict the defendant of two misdemeanor counts of obstructing a law enforcement officer because there was ample testimony about the existence and purpose of the order pursuant to which they assisted the deputies in taking the defendant into custody for transport to a mental health facility; the defendant refused to comply with the officers' verbal commands, and began fighting with the officers when the officers tried to detain the defendant; the defendant hit, kicked, and scratched the officers; and the officers and the defendant fell to the ground, and the defendant continued fighting until the officers were able to gain control of the defendant. *Gille v. State*, 351 Ga. App. 875, 833 S.E.2d 573, 2019 Ga. App. LEXIS 510 (2019).

Evidence was sufficient to support the conviction for misdemeanor obstruction of an officer as the captain stated the captain was a law enforcement officer while displaying a badge and informed the defendant that the captain was acting on behalf of the property owners, authorizing the jury to conclude that the defendant had the requisite knowledge of the captain's

identity, and testimony that the captain directed the defendant to stop filming or leave three times and told the defendant that failure to comply would result in an arrest before the captain forced the defendant from the venue while the defendant struggled authorized the jury to conclude that the defendant was given adequate time to comply. *Tisdale v. State*, 354 Ga. App. 735, 841 S.E.2d 82, 2020 Ga. App. LEXIS 179 (2020), cert. denied, No. S20C1349, 2021 Ga. LEXIS 47 (Ga. Feb. 1, 2021).

Altering Facebook page sufficient for conviction. — Evidence that the defendant's creation of a fake Facebook account after the child was reported missing resulted in three investigators wasting twelve hours looking in the wrong direction for the juvenile and hindered law enforcement's ability to track the child's possible whereabouts for about six hours was sufficient to support the defendant's conviction for obstruction of justice. *Libri v. State*, 346 Ga. App. 420, 816 S.E.2d 417, 2018 Ga. App. LEXIS 397 (2018).

Police discharging official duties when responding to 911 call. — Contrary to the defendant's claim, police officers were lawfully discharging their official duties when the officers responded to a 911 call by the defendant's mother regarding the defendant's suicidal and erratic behavior and, thus, the evidence supported the defendant's conviction for obstructing law enforcement. *Copley v. State*, 347 Ga. App. 309, 819 S.E.2d 294, 2018 Ga. App. LEXIS 512 (2018).

Evidence insufficient to support conviction. — Insufficient evidence supported the defendant's misdemeanor obstruction conviction because the deputy gave the defendant an unlawful command to stop where, even if the information provided by the concerned citizen was true and reliable, the state presented no evidence showing a reasonable, articulable suspicion to believe that defendant had committed a crime involving "grand theft auto." *Johnson v. State*, 363 Ga. App. 12, 869 S.E.2d 177, 2022 Ga. App. LEXIS 63 (2022).

No evidence defendant ordered to open mouth thus no showing of non-compliance with officer. — When an officer suspected that the defendant might

have swallowed contraband, the evidence was insufficient to sustain the defendant's conviction for obstructing a law enforcement officer because, although there was evidence that the defendant's mouth was closed, and that the defendant made chewing motions, there was simply no evidence that any of the officers commanded the defendant to open the defen-

dant's mouth; and, in the absence of that evidence, the state failed to establish that the defendant knowingly or willfully failed to submit to lawful authority by disobeying a command to open the defendant's mouth. *Taylor v. State*, 349 Ga. App. 185, 825 S.E.2d 552, 2019 Ga. App. LEXIS 130 (2019).

RESEARCH REFERENCES

ALR.

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

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

16-10-24.3. Obstructing or hindering persons making emergency telephone calls.

JUDICIAL DECISIONS

Evidence sufficient for conviction.

— Victim's testimony that the defendant strangled her with his hands and the photo evidence of the victim's injuries were sufficient to support the aggravated assault conviction. However, the victim's testimony that she tried to call for help

was insufficient to show she intended to call 911 or the police, as required for the hindering an emergency phone call conviction, therefore, that conviction was reversed. *Fuller v. State*, 374 Ga. App. 432, 913 S.E.2d 66, 2025 Ga. App. LEXIS 66 (2025).

16-10-25. Giving false name, address, or birthdate to law enforcement officer.

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

Application

Prolonged detention to investigate drug activity, instead of false ID, not permitted. — When the defendant provided false identification during a traffic stop, that gave the officers reasonable suspicion to detain defendant to investigate; however, the officers immediately abandoned that investigation and instead conducted a drug investigation by subjecting defendant's car to a K-9 free air sniff, without any additional reasonable suspicion of drug activity thus prolonging the defendant's detention in violation of U.S. Const., amend. IV, requiring suppression

of the drug evidence discovered. *Shumate v. State*, 372 Ga. App. 807, 906 S.E.2d 885, 2024 Ga. App. LEXIS 365 (2024).

Evidence sufficient for conviction of juvenile. — Evidence that the juvenile defendant first gave the officers a false name and birthdate, as the defendant later demonstrated when the defendant provided the correct information, was sufficient to support the finding of delinquency for giving false information. In the *Interest of G. M. W.*, 355 Ga. App. 151, 842 S.E.2d 920, 2020 Ga. App. LEXIS 278 (2020), overruled in part, *Shumate v. State*, 372 Ga. App. 807, 906 S.E.2d 885, 2024 Ga. App. LEXIS 365 (2024).

Application (Cont'd)**Evidence sufficient for conviction.**

— Evidence that an officer was at the hospital to obtain information about the motorcycle accident when the defendant provided the officer with a different name was sufficient to support the defendant's conviction for giving false information to a law enforcement officer. *Ceballos v. State*, 345 Ga. App. 714, 815 S.E.2d 89, 2018 Ga. App. LEXIS 269 (2018).

Evidence that an officer encountered the defendant outside the defendant's rooming house while investigating the victim's allegation of rape; the officer asked the defendant his name and the defendant gave several different names, social security numbers, and birth dates, none of which matched any information in the police database; and police did not learn the defendant's true identity until the

defendant was fingerprinted at the police station was sufficient for the jury to convict the defendant of giving false information to a law enforcement officer. *Riley v. State*, 356 Ga. App. 606, 848 S.E.2d 474, 2020 Ga. App. LEXIS 496 (2020).

False information justified longer detention.

— Trial court properly concluded that the search that led to the discovery of cocaine and marijuana did not violate the defendant's rights and properly denied the defendant's motion to suppress because by the time the drug dog arrived, the defendant was no longer in a temporary, second-tier encounter, investigative detention but, instead, was in a third-tier encounter, under arrest for giving false information to a law enforcement officer. *Cromartie v. State*, 348 Ga. App. 563, 824 S.E.2d 32, 2019 Ga. App. LEXIS 47 (2019).

16-10-26. False report of a crime.**JUDICIAL DECISIONS**

Malicious prosecution. — District court properly dismissed plaintiffs' malicious prosecution claims, because it was undisputed that an officer had probable cause to initiate a criminal prosecution against plaintiffs for falsely reporting a crime in violation of O.C.G.A. § 16-10-26; the plaintiffs falsely reported that \$500 was stolen from the female's purse outside a department store by police, because the male plaintiff testified at his deposition

that the woman had removed the money from her purse and given it to him before the confrontation with the law enforcement officers occurred. The video evidence supported the deposition testimony because the store security camera footage showed that no one had stolen \$500 from the woman's purse. *Faison v. Ratliff*, No. 21-11098, 2022 U.S. App. LEXIS 5190 (11th Cir. Feb. 25, 2022).

16-10-28. Transmitting a false public alarm; restitution.

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

(1) "Critical infrastructure" means any building, place of assembly, or facility that is located in this state and necessary for national or public security, education, or public safety.

(2) "Destructive device" shall have the same meaning as provided in Code Section 16-7-80.

(3) "Dwelling" shall have the same meaning as provided in Code Section 16-7-1.

(4) "Hazardous substance" shall have the same meaning as provided in Code Section 12-8-92.

(5) “Public agency” means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides or has authority to provide fire-fighting, law enforcement, ambulance, medical, or other emergency services.

(6) “Public safety agency” means a functional division of a public agency which provides fire-fighting, law enforcement, emergency medical, suicide prevention, emergency management dispatching, poison control, drug prevention, child abuse, spouse abuse, or other emergency services.

(7) “Request for emergency services assistance” means a report, transmission, or request for assistance made to a public safety agency through a public safety answering point or other form of communication or a report, statement, or request for assistance knowingly made to another person that is likely to result in the recipient making a report, transmission, or request for assistance from a public safety agency through a public safety answering point or other form of communication.

(b) A person commits the offense of making an unlawful request for emergency services assistance when he or she knowingly and intentionally transmits in any manner a request for emergency services assistance knowing at the time of the request for emergency services assistance that there is no reasonable ground for believing the truth of information which forms the basis of such request and when the request involves or relates to:

(1) A purported destructive device or hazardous substance located in such a place that its explosion, detonation, or release would endanger human life or cause injury or damage to property;

(2) An individual who purportedly has caused or threatened to cause physical harm to himself or herself or another individual by using a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to result in serious bodily injury;

(3) An individual who purportedly has committed a criminal act involving the use or threat of physical force or violence or an act constituting an immediate threat to any person’s life or safety; or

(4) The knowing use of any electronic device or software to alter, conceal, or disguise, or attempt to alter, conceal, or disguise, the location or identity of the person making the request.

(c) Except as provided in subsection (d) of this Code section, a person convicted of a violation of subsection (b) of this Code section shall be punished as follows:

(1) Upon a first conviction, a misdemeanor of a high and aggravated nature;

(2) Upon a second conviction, a felony and punished by imprisonment for not less than five nor more than ten years, by a fine of not less than \$5,000.00, or both; and

(3) Upon a third or subsequent conviction, a felony and punished by imprisonment for not less than ten nor more than 15 years, by a fine of not less than \$25,000.00, or both.

(d)(1) If the location of the unlawful request for emergency services assistance in violation of paragraph (1) of subsection (b) of this Code section is critical infrastructure, a person convicted of a violation of this Code section shall be guilty of a felony and shall be punished by imprisonment for not less than five nor more than ten years, by a fine of not more than \$100,000.00, or both.

(2) If serious bodily harm or death results from the response of a public safety agency or if the location of response to an unlawful request for emergency assistance is a dwelling or a place of worship, a person convicted of a first violation of this Code section shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than ten years, by a fine of not less than \$5,000.00, or both.

(e) In addition to any other penalty imposed by law for a violation of this Code section, the court shall require the defendant to make restitution to any affected natural person or public or private entity for the reasonable costs or damages associated with the offense, including, without limitation, damage to property, expenses to treat bodily injuries, and the actual value of any goods, services, or income lost as a result of such violation. 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.

Code 1933, § 26-2609, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1996, p. 416, § 5; Ga. L. 2002, p. 1094, § 3; Ga. L. 2016, p. 608, § 2/SB 270; Ga. L. 2019, p. 306, § 2/HB 118; Ga. L. 2024, p. 528, § 2-1/SB 421, effective July 1, 2024.

Amendments.

The 2019 amendment, effective July 1, 2019, added paragraphs (a)(4) through (a)(6); substituted the present provisions of subsection (b) for the former provisions, which read: “A person commits the offense of transmitting a false public alarm when

he or she knowingly and intentionally transmits in any manner a report or warning knowing at the time of the transmission that there is no reasonable ground for believing such report or warning and when the report or warning relates to.”; in paragraph (b)(1), inserted “purported” near the beginning, deleted “is” following “substance” near the middle, and deleted “or” at the end; in paragraph (b)(2), inserted “purportedly” near the beginning and substituted a semicolon for a period at the end; added paragraphs (b)(3) and (b)(4); and designated the existing

provisions of paragraph (c)(2) as subparagraph (c)(2)(A) and added subparagraph (c)(2)(B).

The 2024 amendment, effective July 1, 2024, in paragraph (a)(2), substituted “shall have the same meaning as provided in” for “means a destructive device as such term is defined by”; added paragraph (a)(3) and redesignated former paragraphs (a)(3) through (a)(6) as present paragraphs (a)(4) through (a)(7); in paragraph (a)(4), substituted “shall have the same meaning as provided in” for “means a hazardous substance as such term is defined by”; substituted the present provisions of paragraph (a)(7) for the former provisions, which read: “Request for emergency services assistance’ means a report, transmission, or request for assistance to a public safety agency, or to another person knowing at the time of such report, transmission, or request that such report, transmission, or request is

likely to result in such other person making a report, transmission, or request to a public safety agency, through a public safety answering point or other form of communication.”; inserted “knowing” near the beginning of paragraph (b)(4); rewrote former paragraph (c)(1) as subsection (c); rewrote former subparagraphs (c)(2)(A) and (c)(2)(B) as paragraphs (d)(1) and (d)(2); redesignated former subsection (d) as subsection (e); and, in the first sentence in subsection (e), substituted “shall” for “may” near the beginning, inserted “natural person or” near the middle and inserted “damage to property, expenses to treat bodily injuries, and” near the end.

Editor’s notes.

Ga. L. 2019, p. 306, § 1/HB 118, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Protection Against False Claims for Emergency Services Act.’”

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 16-10-28 are offenses for which

fingerprinting is required. 2019 Op. Att’y Gen. No. 19-3.

16-10-31. Concealing death of another person.

JUDICIAL DECISIONS

Evidence sufficient to support conviction. — Evidence was sufficient to convict the defendant of concealing a death because the jury was authorized to conclude that the defendant’s statement that the defendant intended to “finish it” was evidence of the defendant’s intent to conceal the murder; and the defendant’s actions hindered the discovery that the victim was unlawfully killed as, while sheriff’s deputies believed that the deputies were investigating a fire of undetermined origin resulting in a death, the scene was left unsecured for almost four days and witness interviews were delayed, allowing evidence to deteriorate and to be cleaned, destroyed, or moved in the interim. *Horton v. State*, 310 Ga. 310, 849 S.E.2d 382, 2020 Ga. LEXIS 740 (2020).

Evidence sufficient for concealing

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

Merger of offenses not required. —

Defendant’s contention that the offense of arson should merge into the offense of concealing a death was without merit because the offense of arson in the first degree was committed when a person, by means of fire or explosive, knowingly damaged the dwelling of another without that

person’s consent or under such circumstances that it was reasonably foreseeable that human life might be endangered; and arson required proof of facts not required by the offense of concealing a death, which

required an accused to hinder a discovery of whether or not a person was unlawfully killed. *Horton v. State*, 310 Ga. 310, 849 S.E.2d 382, 2020 Ga. LEXIS 740 (2020).

16-10-32. Attempted murder or threatening of witnesses in official proceedings.

JUDICIAL DECISIONS

Threat of physical harm element. — Conviction under O.C.G.A. § 16-10-32 for threatening physical harm included a “threat of physical force” as an element because “physical harm” was a phrase that the dictionary, as well as the Georgia Supreme Court, defined similarly to how the Supreme Court had defined “physical

force” as used in the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924; the defendant’s conviction under the Georgia statute qualified as a violent felony under ACCA’s elements clause. *United States v. Ferguson*, 100 F.4th 1301, 2024 U.S. App. LEXIS 10491 (11th Cir. 2024).

16-10-35. Obstructing emergency personnel with fireworks.

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

(1) “Emergency medical technician” shall have the same meaning as set forth in Code Section 16-10-24.2.

(2) “Firefighter” shall have the same meaning as set forth in Code Section 16-10-24.1.

(3) “Firework” means any combustible or explosive composition or any substance or combination of substances or article the possession of which is regulated by Chapter 10 of Title 25.

(4) “Law enforcement officer” means any person certified by the Georgia Peace Officer Standards and Training Council as having successfully completed the course of training required by Chapter 8 of Title 35, the “Georgia Peace Officer Standards and Training Act.”

(b) It shall be unlawful for any person to knowingly and intentionally ignite a firework when such firework or component thereof explodes or detonates within 150 feet of or causes injury or harm to an emergency medical technician, firefighter, or law enforcement officer for the purpose of hindering or disrupting such emergency medical technician, firefighter, or law enforcement officer during the lawful discharge of his or her duties.

(c) Any person who violates subsection (b) of this Code section shall be guilty of a high and aggravated misdemeanor.

History. Code 1981, § 16-10-35, enacted by Ga. L. 2024, p. 945, § 3/SB 417, effective July 1, 2024.

Effective date.

This Code section became effective July 1, 2024.

Cross references.

Prohibited fireworks activities, § 25-10-2.

ARTICLE 3

ESCAPE AND OTHER OFFENSES RELATED TO CONFINEMENT

16-10-50. Hindering apprehension or punishment of criminal.

JUDICIAL DECISIONS

Murder and hindering the apprehension of a criminal not mutually exclusive crimes. — Court overruled prior case law that held that murder and hindering the apprehension of a criminal, O.C.G.A. § 16-10-50(a), were mutually exclusive; the facts did not require the jury to choose one crime or the other because the defendant was one of the gunmen who shot at the victim, and the defendant subsequently hindered the apprehension of two others by driving the others from the scene to the hospital. *Nalls v. State*, 304 Ga. 168, 815 S.E.2d 38, 2018 Ga. LEXIS 396 (2018).

Evidence sufficient for conviction of hindering apprehension of criminal. Evidence that the defendant knew a wanted individual on the defendant's property had outstanding felony warrants, but that the defendant was just trying to help the individual out allowed

the jury to conclude beyond a reasonable doubt that the defendant knew the individual had committed a felony, the defendant aided in harboring the individual allowing the individual to stay on the defendant's property, and that the defendant's acts were intentional and, thus, was sufficient to support a conviction for hindering the apprehension or punishment of a criminal. *Haney v. State*, 2022 Ga. App. LEXIS 370.

No merger. — Convictions for hindering apprehension or punishment of a criminal did not merge with the false statement counts because the hindering apprehension count required proof that the defendant knew or had reason to believe an individual murdered the victim and the defendant concealed the individual's confession to hinder the defendant's apprehension. *Dukes v. State*, 365 Ga. App. 246, 878 S.E.2d 104, 2022 Ga. App. LEXIS 428 (2022).

16-10-51. Bail jumping.

(a) Any person who has been charged with or convicted of the commission of a felony under the laws of this state and has been set at liberty on bail or on an unsecured judicial release as provided for in Code Section 17-6-12 upon the condition that he or she will subsequently appear at a specified time and place commits the offense of felony-bail jumping if, after actual notice to the defendant in open court or notice to the person by mailing to his or her last known address or otherwise being notified personally in writing by a court official or officer of the court, he or she fails without sufficient excuse to appear at that time and place. A person convicted of the offense of felony-bail jumping shall be punished by imprisonment for not less than one nor more than five years or by a fine of not more than \$5,000.00, or both.

(b) Any person who has been charged with or convicted of the commission of a misdemeanor and has been set at liberty on bail or on

an unsecured judicial release as provided for in Code Section 17-6-12 upon the condition that he or she will subsequently appear at a specified time and place commits the offense of misdemeanor-bail jumping if, after actual notice to the defendant in open court or notice to the person by mailing to his or her last known address or otherwise being notified personally in writing by a court official or officer of the court, he or she fails without sufficient excuse to appear at that time and place. A person convicted of the offense of misdemeanor-bail jumping shall be guilty of a misdemeanor.

(c)(1) Any person who has been charged with or convicted of the commission of any of the misdemeanors listed in paragraph (2) of this subsection and has been set at liberty on bail or on an unsecured judicial release as provided for in Code Section 17-6-12 upon the condition that he or she will subsequently appear at a specified time and place and who, after actual notice to the defendant in open court or notice to the defendant by mailing to the defendant's last known address or otherwise being notified personally in writing by a court official or officer of the court, leaves the state to avoid appearing in court at such time commits the offense of out-of-state-bail jumping. A person convicted of the offense of out-of-state-bail jumping shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than five years or by a fine of not less than \$1,000.00 nor more than \$5,000.00, or both.

(2) Paragraph (1) of this subsection shall apply only to the following misdemeanors:

(A) Abandonment, as provided in Code Sections 19-10-1 and 19-10-2;

(B) Simple assault, as provided in Code Section 16-5-20;

(C) Carrying a weapon or long gun in an unauthorized location, as provided in Code Section 16-11-127;

(D) Bad checks, as provided in Code Section 16-9-20;

(E) Simple battery, as provided in Code Section 16-5-23;

(F) Bribery, as provided in Code Section 16-10-3;

(G) Failure to report child abuse, as provided in Code Section 19-7-5;

(H) Criminal trespass, as provided in Code Section 16-7-21;

(I) Contributing to the delinquency of a minor, as provided in Code Section 16-12-1;

(J) Escape, as provided in Code Sections 16-10-52 and 16-10-53;

(K) Tampering with evidence, as provided in Code Section 16-10-94;

(L) Family violence, as provided in Code Section 19-13-6;

(M) Deceptive business practices, as provided in Code Section 16-9-50;

(N) Reserved;

(O) Fraud in obtaining public assistance, food stamps, or Medicaid, as provided in Code Section 49-4-15;

(P) Reckless conduct, as provided in Code Section 16-5-60;

(Q) Any offense under Chapter 8 of this title which is a misdemeanor;

(R) Any offense under Chapter 13 of this title which is a misdemeanor;

(S) Driving under the influence of alcohol or drugs, as provided in Code Section 40-6-391;

(T) Driving without a license in violation of Code Section 40-5-20 or driving while a license is suspended or revoked as provided in Code Section 40-5-121; and

(U) Any offense under Code Section 40-6-10, relating to requirement of the operator or owner of a motor vehicle to have proof of insurance.

(d) Subsections (b) and (c) of this Code section shall not apply to any person who has been charged or convicted of the commission of a misdemeanor under the laws of this state and has been set at liberty after posting a cash bond and fails to appear in court at the specified time and place where such failure to appear, in accordance with the rules of the court having jurisdiction over such misdemeanor, is construed as an admission of guilt and the cash bond is forfeited without the need for any further statutory procedures and the proceeds of the cash bond are applied and distributed as any fine imposed by the court would be.

History.

Code 1933, § 26-2511, enacted by Ga. L. 1980, p. 387, § 1; Ga. L. 1988, p. 670, § 1; Ga. L. 1989, p. 14, § 16; Ga. L. 1989, p. 623, § 1; Ga. L. 1997, p. 973, § 1; Ga. L. 2010, p. 963, § 2-4/SB 308; Ga. L. 2020, p. 570, § 3-2/SB 402.

Amendments.

The 2020 amendment, effective January 1, 2021, throughout subsections (a)

and (b), inserted “or she” and “or her”, substituted “an unsecured judicial release as provided for in Code Section 17-6-12” for “his own recognizance” in subsections (a) and (b); and substituted “an unsecured judicial release as provided for in Code Section 17-6-12” for “his or her own recognizance” in paragraph (c)(1).

Law reviews.

For article, “SB 174: Revising Georgia’s

List of Bail Restricted Offenses,” see 38 Ga. St. U.L. Rev. 41 (2021).

16-10-52. **Escape.**

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Juvenile never put on notice of felony escape charge. — Juvenile court was not authorized to commit the appellant juvenile to the custody of the Department of Juvenile Justice as the appellant was never put on notice that the appellant was being charged with felony escape or that by admitting that the appellant violated the terms of the appellant’s proba-

tion the appellant was admitting to committing acts constituting a new felony offense; and neither the state’s complaint, nor its petition for delinquency and attachment, set forth that the appellant was being charged with a class A or B designated felony act. In the Interest of J. W., 363 Ga. App. 616, 871 S.E.2d 886, 2022 Ga. App. LEXIS 187 (2022).

16-10-56. **Unlawful acts of violence in a penal institution.**

JUDICIAL DECISIONS

Sufficient evidence for conviction.

Defendant’s convictions for unlawful acts of violence in a penal institution were upheld as despite counsel’s deficiencies no prejudice was found since the video evidence strongly corroborated the charges and defendant failed to show how additional witnesses or evidence could have

changed the outcome, but the portion of the sentence imposing a \$500 attorney fee was vacated as the trial court failed to properly assess defendant’s ability to pay the fee. White v. State, 374 Ga. App. 242, 912 S.E.2d 118, 2025 Ga. App. LEXIS 27 (2025).

ARTICLE 4

PERJURY AND RELATED OFFENSES

16-10-70. **Perjury.**

(a) A person to whom a lawful oath or affirmation has been administered or a person who executes an unsworn declaration as defined in Code Section 9-1-1 commits the offense of perjury when, in a judicial proceeding, he or she knowingly and willfully makes a false statement material to the issue or point in question.

(b) A person convicted of the offense of perjury shall be punished by a fine of not more than \$1,000.00 or by imprisonment for not less than one nor more than ten years, or both. A person convicted of the offense of perjury that was a cause of another’s being imprisoned shall be sentenced to a term not to exceed the sentence provided for the crime

for which the other person was convicted. A person convicted of the offense of perjury that was a cause of another's being punished by death shall be punished by life imprisonment.

History.

Laws 1833, Cobb's 1851 Digest, pp. 804, 805.; Code 1863, §§ 4355, 4356, 4363; Code 1868, §§ 4393, 4394, 4401; Code 1873, §§ 4460, 4461, 4468; Code 1882, §§ 4460, 4461, 4468; Penal Code 1895, §§ 256, 257, 262; Penal Code 1910, §§ 259, 260, 265; Ga. L. 1933, p. 40, § 1; Code 1933, §§ 26-4001, 26-4002, 26-4007; Code 1933, § 26-2401, enacted by Ga. L.

1968, p. 1249, § 1; Ga. L. 1973, p. 159, § 2; Ga. L. 2023, p. 120, § 2/HB 80, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, in subsection (a), inserted "or a person who executes an unsworn declaration as defined in Code Section 9-1-1" and inserted "or she".

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Mistake of fact as defense to perjury. — Trial court did not err by failing to charge on mistake of fact as a defense to the counts of perjury and use of a false document in connection with filing the petition for appointment of guardian and/or conservator because it was undisputed that the defendant reviewed and verified the accuracy of the information to

be filed, any mistake about what persons were the defendant's mother's lineal descendants was a mistake of law and therefore does not require a charge on mistake of fact, and the trial court fully and adequately charged the jury regarding perjury and filing a false document and that each required knowing and willful action. *Law v. State*, 349 Ga. App. 823, 824 S.E.2d 778, 2019 Ga. App. LEXIS 171 (2019).

ARTICLE 5

OFFENSES RELATED TO JUDICIAL AND OTHER PROCEEDINGS

16-10-93. Influencing witnesses.

JUDICIAL DECISIONS

Evidence sufficient to support conviction. — There was sufficient evidence to support the defendant's conviction for attempt to influence a witness as the defendant and a friend went to the victim's apartment armed with three guns and the defendant pointed a gun at the victim, threatened to shoot police, the victim's children, and the victim's brother,

threatened to throw a flammable "cocktail" through the children's window, and provided the victim's name, physical appearance, and the apartment the victim lived in to the people on the jail calls. *Seals v. State*, 358 Ga. App. 783, 856 S.E.2d 384, 2021 Ga. App. LEXIS 130 (2021).

16-10-94. Tampering with evidence.

JUDICIAL DECISIONS

Parent’s tampering with evidence for benefit of child. — Evidence was sufficient to convict the defendant of evidence tampering because, based on the circumstantial evidence, the defendant retrieved a firearm that the defendant’s child had hidden and that the defendant’s child had used to shoot and kill the victim; a friend drove the defendant to a fishing pond and heard a splash; law enforcement recovered a firearm matching the description of the murder weapon in the exact place where the friend heard the splash; and there was no evidence presented at trial to support a reasonable inference that the defendant disposed of a different gun than the one used by the defendant’s child to commit murder. *Elkins v. State*, 350 Ga. App. 816, 830 S.E.2d 345, 2019 Ga. App. LEXIS 383 (2019).

No evidence tampering by officer. — Detective’s action of removing unfired rounds from the detective’s duty weapon and placing them into the magazine of the defendant’s 9-millimeter pistol until it was full to determine the cartridge capacity of the pistol did not amount to evidence tampering because the defendant cited no legal authority or record evidence to support the defendant’s claim; and the appellate court did not find any such authority to support that proposition. *Clay v. State*, 309 Ga. 593, 847 S.E.2d 530, 2020 Ga. LEXIS 592 (2020).

Evidence sufficient to sustain conviction. — Evidence that a search of the defendant’s home revealed drug paraphernalia and suspected methamphetamine, and that drug-related objects and suspected methamphetamine had been covered in bleach, which would have destroyed any evidence, was sufficient to support the defendant’s conviction for tampering with evidence. *Lee v. State*, 347

Ga. App. 508, 820 S.E.2d 147, 2018 Ga. App. LEXIS 559 (2018).

Evidence was sufficient to convict the defendant of tampering with evidence as the jury could infer that the defendant concealed the camera to obstruct the defendant’s prosecution because, at some point after the defendant took pictures of the victim, the defendant hid the defendant’s camera in a dishwasher, and then enlisted a friend to remove the camera from the defendant’s home. *Nguyen v. State*, 351 Ga. App. 509, 831 S.E.2d 213, 2019 Ga. App. LEXIS 443 (2019), cert. dismissed, No. S20C0488, 2020 Ga. LEXIS 402 (Ga. May 18, 2020).

Sufficient evidence that appellant tampered with evidence in violation of O.C.G.A. § 16-10-94 to prevent the apprehension of the accomplice, as charged in the indictment, rather than to prevent appellant’s own apprehension. *Harvey v. State*, 373 Ga. App. 59, 907 S.E.2d 352, 2024 Ga. App. LEXIS 386 (2024).

Void sentence. Defendant’s 10-year sentence for tampering with evidence was void because a sentence of between one and ten years was only authorized if the tampering involved the prosecution of another person and this case involved tampering with evidence in the defendant’s own case. *Goodman v. State*, 313 Ga. 762, 873 S.E.2d 150, 2022 Ga. LEXIS 152 (2022).

Crime was misdemeanor because tampering involved defendant’s own case. — Because the defendant was found guilty of tampering with evidence in the defendant’s own case, the defendant was guilty only of a misdemeanor and should not have received a 10-year sentence. *Schoicket v. State*, 312 Ga. 825, 865 S.E.2d 170, 2021 Ga. LEXIS 682 (2021).

RESEARCH REFERENCES

ALR.

Jury Tampering Involving Distribution

of Written Materials to Jurors, 56

A.L.R.7th 5.

16-10-97. Intimidation or injury of any officer in or of any court.

JUDICIAL DECISIONS

Indictment insufficient. — Defendant’s special demurrer challenging the sufficiency of charges of impeding a court officer under O.C.G.A. § 16-10-97(a)(1) was properly sustained because the indictment provided no information about the language of the defendant’s alleged threatening communications, how they

were communicated, or how the communications allegedly impeded a court officer. However, the trial court erred in dismissing the entire indictment. *State v. Cerajewski*, 347 Ga. App. 454, 820 S.E.2d 67, 2018 Ga. App. LEXIS 543 (2018).

CHAPTER 11

OFFENSES AGAINST PUBLIC ORDER AND SAFETY

Article 2

Offenses Against Public Order

Sec.

- 16-11-38. Wearing mask, hood, or device which conceals identity of wearer.
- 16-11-43.1. Promoting or organizing drag races or laying drags exhibitions.

Article 3

Invasions of Privacy

PART 1

WIRETAPPING, EAVESDROPPING, SURVEILLANCE,
AND RELATED OFFENSES

- 16-11-62. Eavesdropping, surveillance, or intercepting communication which invades privacy of another; divulging private message.

PART 3

INVASION OF PRIVACY

- 16-11-90. Prohibition on nude or sexually explicit electronic transmissions.
- 16-11-92. Sexual extortion.

Article 4

Dangerous Instrumentalities and Practices

PART 1

GENERAL PROVISIONS

Sec.

- 16-11-101.1. Furnishing pistol or revolver to person under the age of 18 years.
- 16-11-106. Possession of firearm or knife during commission of or attempt to commit certain crimes.
- 16-11-107. Interfering with, harming of, or aggravated harming of a public safety animal or search and rescue animal.
- 16-11-112. Vehicles with false or secret compartments.

PART 2

POSSESSION OF DANGEROUS WEAPONS

- 16-11-124. Exemptions from application of part.

PART 3

CARRYING AND POSSESSION OF FIREARMS

- 16-11-125.1. Definitions.

- Sec.
16-11-126. Having or carrying handguns, long guns, or other weapons; exceptions for homes, motor vehicles, private property, and other locations and conditions; unlawful carrying of a weapon.
- 16-11-127. Carrying weapons or long guns in unauthorized locations.
- 16-11-127.1. Carrying weapons within school safety zones, at school functions, or on a bus or other transportation furnished by a school.
- 16-11-129. Weapons carry license; gun safety information; temporary renewal permit; mandamus; verification of license.
- 16-11-130. Exemptions from Code Sections 16-11-126 through 16-11-127.2.
- 16-11-131. Possession of firearms by convicted felons and first offender probationers.
- 16-11-133. Minimum periods of confinement for persons convicted who have prior convictions.

- Sec.
16-11-135. Public or private employer's parking lots; right of privacy in vehicles in employer's parking lot or invited guests on lot; exceptions; severability; rights of action.
- 16-11-137. Detention for investigation of license to carry prohibited.

PART 4A

ENHANCED CRIMINAL PENALTIES

- 16-11-160. Use of machine guns, sawed-off rifles, sawed-off shotguns, or firearms with silencers during commission of certain offenses; enhanced criminal penalties.

PART 5

BRADY LAW REGULATIONS

- 16-11-171. Definitions.

Article 6

Domestic Terrorism

- 16-11-220. Definitions.
- 16-11-221. Domestic terrorism; penalties.

ARTICLE 1

TREASON AND OTHER SUBVERSIVE ACTIVITIES

PART 2

SEDITION AND SUBVERSIVE ACTIVITIES

16-11-6. Definitions.

RESEARCH REFERENCES

ALR. Justice Against Sponsors of Terrorism Act ("JASTA"), Pub. L. No. 114-222, 130	Stat. 852 (2016) (Codified at 28 U.S.C.A. § 1605B), 31 A.L.R. Fed. 3d 4.
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ARTICLE 2
OFFENSES AGAINST PUBLIC ORDER

RESEARCH REFERENCES

ALR. Sleeping in Public known as Anti-Homeless or Anti-Vagrancy Ordinances, 62 A.L.R. Fed. 3d 4.
Eighth Amendment Challenges to Laws that Limit, Penalize, or Ban Camping or

16-11-34.1. Preventing or disrupting General Assembly sessions or other meetings of members; unlawful activities within the state capitol or certain Capitol Square buildings.

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 16-11-34.1(a), which criminalizes conduct that is likely to disrupt meetings and other official business of the General Assembly and its members and employees, was not unconstitutionally overbroad as it only regulated expression in the context of legislative meetings by a discrete group of elected officials, rather than all gatherings; therefore, any infringement on protected expression was not substantial relative to its legitimate sweep. *Williams v. Powell*, 320 Ga. 221, 908 S.E.2d 599, 2024 Ga. LEXIS 257 (2024).

Knocking on door insufficient. — Dismissal of appellant's as-applied claim was upheld because the complaint failed to state a claim as the alleged conduct of appellant knocking on the governor's office door did not violate O.C.G.A. § 16-11-34.1, which criminalized conduct that is likely to disrupt meetings and other official business of the General Assembly and its members and employees. *Williams v. Powell*, 320 Ga. 221, 908 S.E.2d 599, 2024 Ga. LEXIS 257 (2024).

16-11-36. Loitering or prowling.

JUDICIAL DECISIONS

Subsequent search of automobile after arrest for loitering. — Trial court did not abuse the court's discretion in denying the motion to suppress because following the defendant's arrest for loitering, according to the officer's testimony, there was no one to release the car to so it was necessary to impound the car and conduct an inventory search in order to protect the police department from any liability. *Bowler v. State*, 355 Ga. App. 77, 842 S.E.2d 546, 2020 Ga. App. LEXIS 257 (2020).

Evidence supports conviction. — State presented sufficient evidence to support the defendant's convictions for

loitering because as for the first residence, the state presented evidence that a witness observed the defendant's vehicle parked at the house when the owner was not at home and no one was authorized to be there, and as to the second residence the defendant pulled up to it and asked the owner to leave with the defendant just after committing a burglary on the witness's property allowing the jury to conclude the activities created a justifiable and reasonable alarm for the safety of property in the vicinity. *Bowles v. State*, 362 Ga. App. 212, 867 S.E.2d 623, 2022 Ga. App. LEXIS 4 (2022).

16-11-37. Terroristic threats and acts.

Law reviews.

For article “Militant Democracy Comes to the Metaverse?” see 72 Emory L.J. 1105 (2023).

For comment, “State Constitutions as a

Check on the New Governors: Using State Free Speech Clauses to Protect Social Media Users from Arbitrary Political Censorship by Social Media Platforms,” see 69 Emory L.J. 111 (2019).

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

Application

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

Terroristic threats against family members. — Sufficient evidence supported defendant’s conviction of making terroristic threats against defendant’s brother based on defendant indicating that defendant was going to stab the brother during the course of a violent physical attack, and the offense did not require defendant to have the immediate ability to carry out the threat. Meite v. State, 369 Ga. App. 109, 892 S.E.2d 414, 2023 Ga. App. LEXIS 414 (2023).

Threats to kill home occupants during burglary. — Sufficient evidence supported the appellant’s convictions for burglary, cruelty to children, terroristic threats, and aggravated assault as neither parent gave the appellant permission to enter their home, the appellant was identified as the intruder who held a knife

to the child’s neck, and struggled with one parent as the appellant tried to remove the child from the home, and the appellant threatened to kill one of the children while holding a knife to their neck. Cordova v. State, 351 Ga. App. 652, 832 S.E.2d 465, 2019 Ga. App. LEXIS 461 (2019).

Threats to kill occurring in parking lot. — Victim’s testimony that after the victim argued with the defendant, the victim left the hotel and proceeded through the parking lot, at which point the defendant followed the victim, hollered at the victim, and stabbed the victim, and testimony from two witnesses that the witnesses heard the man remaining in the hotel yell and threaten to “f’ing kill” the man walking away through the parking lot before stabbing the victim was sufficient to support the defendant’s conviction for terroristic threats. Batchelor v. State, 358 Ga. App. 761, 856 S.E.2d 323, 2021 Ga. App. LEXIS 121 (2021).

Terroristic threats is violent felony under federal Armed Career Criminal Act. — Defendant’s terroristic threats conviction under Georgia law qualified as a violent felony under the Armed Career Criminal Act’s, 18 U.S.C. § 924(e), elements clause because Georgia’s terroristic-threats statute was divisible, and the threat that predicated the defendant’s conviction, threat “to commit any crime of violence,” required threatened use of violent force against another. United States v. Oliver, 962 F.3d 1311, 2020 U.S. App. LEXIS 19088 (11th Cir. 2020).

Evidence was insufficient for conviction. — Defendant’s statement “you will regret this” and one incident of non-lethal violence against the victim two to three months before the shooting was not sufficient to authorize the jury to conclude that when the communication was made to the victim the defendant was threatening to kill the victim and, thus, the conviction for terroristic threat had to be reversed. *Bryant v. State*, 306 Ga. 687, 832 S.E.2d 826, 2019 Ga. LEXIS 589 (2019).

Denial of motion to withdraw guilty plea upheld. — Denial of appellant’s motion to withdraw a guilty plea to the offenses of making a terroristic threat and aggravated assault was upheld because the record showed the appellant was advised of the appellant’s rights and the plea consequences, thus, the Alford plea was valid; further, the trial court used adequate language to convey the appellant’s right to confront witnesses, so the Boykin advisement was satisfactory. *McCallum v. State*, 369 Ga. App. 683, 894 S.E.2d 426, 2023 Ga. App. LEXIS 511 (2023).

Terroristic threats conviction did not merge with aggravated assault. — Because the offense of terroristic threats was proven by the evidence that

the defendant threatened to kill the victim, and the offense of aggravated assault was proven by the evidence that the defendant assaulted the victim with a knife by stabbing the victim, the two counts did not merge. *Batchelor v. State*, 358 Ga. App. 761, 856 S.E.2d 323, 2021 Ga. App. LEXIS 121 (2021).

Sufficient indictment. — First count of the indictment charging terroristic threats was not deficient as the indictment clearly recited the language of the statute, alleging that the defendant did with the purpose of terrorizing numerous individuals, threaten to commit a crime of violence to wit: murder by way of a Burn/aka Kill aka/Hit List. *Stapleton v. State*, 362 Ga. App. 740, 869 S.E.2d 83, 2021 Ga. App. LEXIS 588 (2021).

Five year felony sentence proper. — Defendant’s challenge to the terroristic threats sentence lacked merit, as the defendant’s threat to shoot the victims suggested death of the victims and the defendant’s five-year felony sentence would have been lawful even under the current version of O.C.G.A. § 16-11-37(d)(1). *Torres v. State*, 361 Ga. App. 149, 863 S.E.2d 399, 2021 Ga. App. LEXIS 447 (2021).

16-11-38. Wearing mask, hood, or device which conceals identity of wearer.

(a) A person is guilty of a misdemeanor when he or she:

(1) Wears a mask, hood, or device by which any portion of his or her face is so hidden, concealed, or covered as to conceal his or her identity;

(2) Is upon:

(A) Any public way or public property; or

(B) The private property of another without the written permission of the owner or occupier of such private property to do so; and

(3) Intends to conceal his or her identity.

(b) Without limiting the generality of subsection (a) of this Code section, no person shall be guilty of violating this Code section by:

(1) Wearing a traditional holiday costume on the occasion of the holiday;

(2) Lawfully engaging in trade and employment or in a sporting activity where a mask is worn for the purpose of ensuring the physical safety of the wearer or because of the nature of the occupation, trade, profession, or sporting activity;

(3) Using a mask in a theatrical production including use in Mardi gras celebrations and masquerade balls;

(4) Wearing a gas mask prescribed in emergency management drills and exercises or emergencies; or

(5) Wearing a mask for the purpose of complying with the guidance of any health care agency or health care provider to prevent the spread of COVID-19 or other coronaviruses or influenza or other infectious diseases.

History.

Ga. L. 1951, p. 9, §§ 3, 7; Code 1933, § 26-2913, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 2021, p. 82, § 1/SB 235.

Amendments.

The 2021 amendment, effective July 1, 2021, substituted the present provisions of subsection (a) for the former provisions, which read: “A person is guilty of a misdemeanor when he wears a mask, hood, or device by which any portion of the face is so hidden, concealed, or covered as to conceal the identity of the wearer and is upon any public way or public property or upon the private property of another without the written permission of the owner or occupier of the property to do so.”; substituted

the present provisions of subsection (b) for the former provisions, which read: “This Code section shall not apply to”; substituted “Wearing” for “A person wearing” at the beginning of paragraphs (b)(1) and (b)(4); in paragraph (b)(2), substituted “Lawfully engaging” for “A person lawfully engaged” at the beginning, deleted a comma following “wearer” in the middle, and deleted “or” preceding “profession” near the end; in paragraph (b)(3), substituted “Using” for “A person using” at the beginning, and deleted “or” at the end; substituted “; or” for a period at the end of paragraph (b)(4); and added paragraph (b)(5).

JUDICIAL DECISIONS

Evidence sufficient to support conviction. — In a prosecution for wearing a mask to conceal identity and obstruction of an officer, the trial court did not err by denying the defendant’s motion for a directed verdict where the evidence showed that the defendant was masked and the defendant’s arms were interlocked with a group of counter-protestors who were

shouting obscenities, chanting anti-police slogans, and banging a drug, and the defendant was asked to take the mask off multiple times but never did. *Hutzel v. State*, 359 Ga. App. 493, 859 S.E.2d 495, 2021 Ga. App. LEXIS 228 (2021), cert. denied, 142 S. Ct. 904, 211 L. Ed. 2d 608, 2022 U.S. LEXIS 743 (2022).

16-11-39. Disorderly conduct.**JUDICIAL DECISIONS****ANALYSIS****GENERAL CONSIDERATION****General Consideration**

Sufficiency of evidence. — Trial court should have granted the defendant's motion for directed verdict on the defendant's disorderly conduct charge because the state had to show the victim's interest in the property was more than mere control over the property of someone else, but the state failed to present any evidence that the nurse had more than the permission of the owner — the hospital — to exercise control over the medical equipment at risk of being damaged by the defendant. *Mays v. State*, 351 Ga. App. 434, 831 S.E.2d 1, 2019 Ga. App. LEXIS 389 (2019).

Evidence was not sufficient to sustain the defendant's conviction for "fighting words" disorderly conduct because no testimony or other evidence showed that the defendant directed any specific profanity at the victim under circumstances tending to result in violence. The evidence showed it was the victim, not the defendant, who threatened violence immediately before the shirt-ripping incident. *Daniels v. State*, 372 Ga. App. 773, 906 S.E.2d 780, 2024 Ga. App. LEXIS 357 (2024).

RESEARCH REFERENCES**ALR.**

"Fighting Words" Supporting Charges Under State Disorderly Conduct Laws, 72 A.L.R.7th 2.

Disorderly Conduct on School Property —State Cases, 72 A.L.R.7th 5.

16-11-39.1. Harassing communications; venue; separate offenses; impact on free speech.**JUDICIAL DECISIONS**

Evidence sufficient to support conviction. — There was sufficient evidence to authorize the jury to find that the defendant had committed the crime of making harassing communications including evidence that the defendant repeatedly emailed the victim, despite the victim's insistence that the defendant stop and despite acknowledging that the victim found the emails, containing comments or attached photographs or documents that implied the defendant might harm the victim or the victim's family, harassing. *Maynard v. State*, 355 Ga. App. 84, 842 S.E.2d 532, 2020 Ga. App. LEXIS 261 (2020).

Admission of the photographs was not a

blatant abuse of discretion that qualified as clear or obvious error in appellant's trial for making harassing communications as the photographs at issue were probative to provide context for the underlying dispute between the parties, particularly in light of the victim's testimony describing the condition of the dog, and it was defendant's burden to prove trial court error using the appellate court record, and the appellate court could not say from the black-and-white copies of the photographs in the record that the evidence was unduly prejudicial. *Gilmore v. State*, 369 Ga. App. 305, 893 S.E.2d 449, 2023 Ga. App. LEXIS 451 (2023).

RESEARCH REFERENCES

ALR. Unsolicited Calling and Messaging Under Communications Act of 1934, as Amended by Telephone Consumer Protection Act of 1991, as Amended, (TCPA) (47 U.S.C.A. § 227) and Regulations Thereunder (47 C.F.R. § 64.1200) — Federal Cases, 52 A.L.R. Fed. 3d 1.

16-11-40. Unlawful use of emergency exit door.

Law reviews.

For annual survey on criminal law, see 70 Mercer L. Rev. 63 (2018).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offenses arising from a violation of O.C.G.A. § 16-11-40 do not, at this time, appear to be offenses for which fingerprinting is required. 2018 Op. Att’y Gen. No. 18-3.

16-11-43.1. Promoting or organizing drag races or laying drags exhibitions.

(a) Any person who knowingly promotes or organizes an exhibition of illegal drag racing, in violation of Code Section 40-6-186, or of laying drags, in violation of Code Section 40-6-251, shall be guilty of a misdemeanor of a high and aggravated nature.

(b) Any person who is knowingly present and actively facilitating an exhibition of illegal drag racing, in violation of Code Section 40-6-186, or of laying drags, in violation of Code Section 40-6-251, shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$250.00. For purposes of this subsection, active facilitation may be evidenced by using a vehicle to block the portion of the roadway closest to exhibition participants allowing the event to take place.

History.

Code 1981, § 16-11-43.1, enacted by Ga. L. 2021, p. 228, § 1/HB 534; Ga. L. 2024, p. 532, § 1/SB 10, effective July 1, 2024.

Effective date.

This Code section became effective May 3, 2021. See Editor’s notes for applicability.

Amendments.

The 2024 amendment, effective July 1, 2024, designated the existing provisions of this Code section as subsection (a) and added subsection (b).

Editor’s notes.

Ga. L. 2021, p. 228, § 11/HB 534, not codified by the General Assembly, provides that: “This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all offenses committed on and after such date.” This Act was approved by the Governor on May 3, 2021.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Misdemeanor offenses arising under O.C.G.A. § 16-11-43.1 are offenses for which those charged are to be fingerprinted. 2024 Op. Att’y Gen. No. 24-3.

Offenses arising from violation of O.C.G.A. § 16-11-43.1(b) appear to be offenses for which fingerprinting is required. 2024 Op. Att’y Gen. No. 24-3.

ARTICLE 3

INVASIONS OF PRIVACY

Cross references.

Protection of Personally Identifiable Data of Judges, § 15-5-110 et seq.

Are Outdated: How Netflix, YouTube and Disney+ Can Monitor Your Family At No Real Cost,” see 55 Ga. L. Rev. 467 (2020).

Law reviews.

For note, “Why the VPPA and COPPA

RESEARCH REFERENCES

ALR.

Children’s Online Privacy Protection Act, 81 A.L.R. Fed. 3d 3.

PART 1

WIRETAPPING, EAVESDROPPING, SURVEILLANCE, AND RELATED OFFENSES

16-11-62. Eavesdropping, surveillance, or intercepting communication which invades privacy of another; divulging private message.

It shall be unlawful for:

(1) Any person in a clandestine manner intentionally to overhear, transmit, or record or attempt to overhear, transmit, or record the private conversation of another which shall originate in any private place;

(2) Any person, through the use of any device, without the consent of all persons observed, to observe, photograph, or record the activities of another which occur in any private place and out of public view; provided, however, that it shall not be unlawful:

(A) To use any device to observe, photograph, or record the activities of persons incarcerated in any jail, correctional institution, or other facility in which persons who are charged with or who have been convicted of the commission of a crime are incarcerated, provided that such equipment shall not be used while the prisoner is discussing his or her case with his or her attorney;

(B) For an owner or occupier of real property to use for security purposes, crime prevention, or crime detection any device to

observe, photograph, or record the activities of persons who are on the property or an approach thereto in areas where there is no reasonable expectation of privacy;

(C) To use for security purposes, crime prevention, or crime detection any device to observe, photograph, or record the activities of persons who are within the curtilage of the residence of the person using such device. A photograph, videotape, or record made in accordance with this subparagraph, or a copy thereof, may be disclosed by such resident to the district attorney or a law enforcement officer and shall be admissible in a judicial proceeding, without the consent of any person observed, photographed, or recorded; or

(D) For a law enforcement officer or his or her agent to use a device in the lawful performance of his or her official duties to observe, photograph, videotape, or record the activities of persons that occur in the presence of such officer or his or her agent;

(3) Any person to go on or about the premises of another or any private place, except as otherwise provided by law, for the purpose of invading the privacy of others by eavesdropping upon their conversations or secretly observing their activities;

(4) Any person intentionally and secretly to intercept by the use of any device, instrument, or apparatus the contents of a message sent by telephone, telegraph, letter, or by any other means of private communication;

(5) Any person to divulge to any unauthorized person or authority the content or substance of any private message intercepted lawfully in the manner provided for in Code Section 16-11-65;

(6) Any person to sell, give, or distribute, without legal authority, to any person or entity any photograph, videotape, or record, or copies thereof, of the activities of another which occur in any private place and out of public view without the consent of all persons observed;

(7) Any person, through the use of any device, without the consent of all patients observed, to knowingly photograph or record the activities of patients which occur in a facility that is operated by a county board of health created pursuant to Code Section 31-3-1, except that such acts shall not be unlawful as provided in subparagraphs (2)(A) through (2)(D) of this Code section;

(8) Any person to intentionally and in a clandestine manner place, or direct someone else to place, a global positioning system monitoring device, or any other electronic monitoring device, on a motor vehicle owned or leased by another person without the consent of such person when such person has a protective order pursuant to

Code Section 17-17-16, 19-13-4, or 19-13A-4, or a protective order from another jurisdiction, against the person who places, or directs another to place, the global positioning system monitoring device or other electronic device. Nothing in this paragraph shall be construed to limit electronic monitoring as provided in Code Sections 31-7-12, 31-7-12.1, and 31-6-2; or

(9) Any person to commit any other acts of a nature similar to those set out in paragraphs (1) through (8) of this Code section which invade the privacy of another.

History.

Ga. L. 1967, p. 844, § 1; Code 1933, § 26-3001, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1976, p. 1100, § 1; Ga. L. 1985, p. 149, § 16; Ga. L. 2000, p. 491, § 1; Ga. L. 2000, p. 875, § 2; Ga. L. 2015, p. 1046, § 2/SB 94; Ga. L. 2022, p. 667, § 1/SB 539; Ga. L. 2022, p. 753, § 2/SB 10.

Amendments.

The first 2022 amendment, effective July 1, 2022, added paragraph (7); redesignated former paragraph (7) as present paragraph (9); and substituted “paragraphs (1) through (7)” for “paragraphs (1) through (6)” in paragraph (9). The second 2022 amendment, effective July 1, 2022, added paragraph (7), redesignated former paragraph (7) as present paragraph (8), and substituted “paragraphs (1) through

(7)” for “paragraphs (1) through (6)” in paragraph (7). See the Code Commission notes regarding the effect of these amendments.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2022, paragraph (7), as added by Ga. L. 2022, p. 753, § 2/SB 10, was redesignated as paragraph (8), “or” was deleted at the end of paragraph (7), “or” was added at the end of paragraph (8), former paragraph (8) was redesignated as present paragraph (9), and “paragraphs (1) through (8)” was substituted for “paragraphs (1) through (7)” in paragraph (9).

Law reviews.

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

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Search warrant properly set forth probable cause to search defendant’s cell phone. — Trial court did not abuse its discretion in finding that there was probable cause to issue a search warrant for the defendant’s phone as it was reasonable to believe that the object of the search would be found inside the cell phone, thus, although the search warrant did not specifically reference the memory card, a search of the phone would necessarily include its contents, which included the memory card. *Serdula v. State*, 356 Ga. App. 94, 845 S.E.2d 362, 2020 Ga. App. LEXIS 359 (2020), cert. denied, No.

S20C1508, 2021 Ga. LEXIS 241 (Ga. Apr. 5, 2021).

Officer’s recording part of official duties. — When the defendant was convicted of one count of sexual battery and five counts of child molestation, the officer was recording the officer’s interaction with the defendant and the defendant’s wife as part of the officer’s official duties, the recording was not prohibited by O.C.G.A. § 16-11-62, and the trial court did not abuse the court’s discretion in admitting the recording into evidence. *Solis-Macias v. State*, 356 Ga. App. 561, 848 S.E.2d 180, 2020 Ga. App. LEXIS 490 (2020), cert. denied, No. S21C0218, 2021 Ga. LEXIS 380 (Ga. Apr. 19, 2021).

General Consideration (Cont'd)

Crime detection need not be sole intent of party to satisfy subparagraph (2)(C). — Trial court did not in granting the attorneys' summary judgment motion regarding the plaintiff's claims that the defendants violated O.C.G.A. § 16-11-62(2) and were thus per se liable because crime detection did not need to be the sole intent of a party in order to satisfy § 16-11-62(2)(C). *Rimert v. Meriwether & Tharp, LLC*, 361 Ga. App. 589, 865 S.E.2d 199, 2021 Ga. App. LEXIS 520 (2021).

Recorded telephone conversation properly admitted. — Because the defendant's friend did not violate O.C.G.A. § 16-11-62(1) when the friend made the audio recording of a conversation with the defendant, O.C.G.A. § 16-11-67 did not require the trial court to exclude the recording. *Suggs v. State*, 310 Ga. 762, 854 S.E.2d 674, 2021 Ga. LEXIS 29 (2021).

Private places. — Defendant's motion to dismiss for failure to state a claim was properly denied as to the counts of the complaint alleging conspiracy and concert action to videotape the plaintiff during sexual activity in the privacy of a bedroom without knowledge or consent because that action was an illegal recording and extortion was properly pled. *Rogers v. Dupree*, 349 Ga. App. 777, 824 S.E.2d 823, 2019 Ga. App. LEXIS 204 (2019), cert. denied, No. S19C1170, 2019 Ga. LEXIS 880 (Ga. Dec. 23, 2019), cert. denied, No. S19C1132, 2019 Ga. LEXIS 889 (Ga. Dec. 23, 2019).

Trial court erred in denying the defendant's motion in limine to preclude the state from tendering a cell phone recording of a dispute the defendant had with the defendant's pregnant wife in their living room because the court failed to make specific findings addressing whether the recording, made by an individual temporarily staying with the couple, took place in a private place with respect to both the audio and video portions of the recording. *Weintraub v. State*, 352 Ga. App. 880, 836 S.E.2d 162, 2019 Ga. App. LEXIS 659 (2019).

Telephone calls from jail. — Because the commander in charge of jail adminis-

tration testified that use of the language line or a live interpreter was the jail's policy, and jail records showed that the defendant was booked in at the same time that the warning form was signed, the trial court was authorized to find that the defendant was informed about and consented to the recording of the defendant's telephone calls from the jail; thus, the recordings of the defendant's telephone calls to the defendant's spouse were admissible. *Leekomon v. State*, 351 Ga. App. 836, 832 S.E.2d 437, 2019 Ga. App. LEXIS 441 (2019), cert. denied, No. S20C0283, 2020 Ga. LEXIS 412 (Ga. May 4, 2020), cert. denied, 141 S. Ct. 920, 208 L. Ed. 2d 466, 2020 U.S. LEXIS 5816 (2020).

State official immune from tort liability for assumed intentional eavesdropping. — Employee's suit against a supervisor at a state agency alleging illegal eavesdropping and invasion of privacy in violation of O.C.G.A. § 16-11-62 was dismissed based on immunity under O.C.G.A. §§ 50-21-21(b) and 50-21-25(a); the supervisor was a state employee acting within the scope of the supervisor's employment when the supervisor answered the employee's accidental call and listened in on the employee's conversation with the employee's spouse, which was critical of the supervisor. *Stephens v. Coan*, 349 Ga. App. 147, 825 S.E.2d 525, 2019 Ga. App. LEXIS 117 (2019).

Recording from elderly person's room admissible under security exception. — In an action for depriving an elder person of essential services and concealing the death, the trial court properly denied the defendant's motion to exclude a video recording captured on a camera concealed in the elder person's room at the residential rehabilitation center where the defendant worked because the recording fell within the security exception. *Nuckles v. State*, 310 Ga. 624, 853 S.E.2d 81, 2020 Ga. LEXIS 927 (2020).

Evidence sufficient for conviction. — Sufficient evidence supported defendant's convictions for invasion of privacy and sexual battery against a child under 16 based on the victims' testimony that a camera was used to film them showering and the text messages were properly al-

lowed in deliberations as original documentary evidence, not written testimony subject to the continuing witness rule.

Culverson v. State, 371 Ga. App. 424, 900 S.E.2d 632, 2024 Ga. App. LEXIS 161 (2024).

RESEARCH REFERENCES

ALR.

Tort of Intrusion upon Seclusion by

Placement of Recording Device in Private Space, 60 A.L.R. 7th 7.

16-11-64. Interception of wire or oral transmissions by law enforcement officers.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Standing to challenge wiretap recordings could be established through state's evidence. — In the defendant's motion to suppress the contents of intercepted telephone calls in which the defendant allegedly set up a drug deal with the target of wiretapping warrants, the trial court erred in concluding that the defendant could not rely on the state's evidence to establish standing; the defendant should have been permitted to rely on a sergeant's testimony that the defendant was the speaker on the call in an attempt to establish standing. *Bourassa v.*

State, 306 Ga. 329, 830 S.E.2d 189, 2019 Ga. LEXIS 450 (2019).

Failure to demonstrate ineffective assistance of counsel. — When and how to raise objections to evidence at trial is generally a matter of trial strategy, thus, neither the fact that the appellant's counsel could have pursued a different strategy to suppress the wiretap evidence nor the fact that the chosen strategy was partially unsuccessful necessarily renders the counsel's performance constitutionally deficient. *Kilpatrick v. State*, 308 Ga. 194, 839 S.E.2d 551, 2020 Ga. LEXIS 132 (2020).

16-11-66. Interception of wire, oral, or electronic communication by party thereto; consent requirements for recording and divulging conversations to which child under 18 years is a party; parental exception.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Telephone calls from jail. — Because the commander in charge of jail administration testified that use of the language line or a live interpreter was the jail's policy, and jail records showed that the

defendant was booked in at the same time that the warning form was signed, the trial court was authorized to find that the defendant was informed about and consented to the recording of the defendant's telephone calls from the jail; thus, the recordings of the defendant's telephone

General Consideration (Cont'd)

calls to the defendant's spouse were admissible. *Leekomon v. State*, 351 Ga. App. 836, 832 S.E.2d 437, 2019 Ga. App. LEXIS 441 (2019), cert. denied, No. S20C0283, 2020 Ga. LEXIS 412 (Ga. May 4, 2020), cert. denied, 141 S. Ct. 920, 208 L. Ed. 2d 466, 2020 U.S. LEXIS 5816 (2020).

16-11-67. Admissibility of evidence obtained in violation of part.

Law reviews.

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

PART 3

INVASION OF PRIVACY

16-11-90. Prohibition on nude or sexually explicit electronic transmissions.

- (a) As used in this Code section, the term:
 - (1) “Harassment” means engaging in conduct directed at a depicted person that is intended to cause substantial emotional harm to the depicted person.
 - (2) “Nudity” means:
 - (A) The showing of the human male or female genitals, pubic area, or buttocks without any covering or with less than a full opaque covering;
 - (B) The showing of the female breasts without any covering or with less than a full opaque covering; or
 - (C) The depiction of covered male genitals in a discernibly turgid state.
 - (3) “Sexually explicit conduct” shall have the same meaning as set forth in Code Section 16-12-100.
- (b) A person violates this Code section if he or she, knowing the content of a transmission or post, knowingly and without the consent of the depicted person:
 - (1) Electronically transmits or posts, in one or more transmissions or posts, a photograph or video which depicts nudity or sexually explicit conduct of an adult, including a falsely created videographic or still image, when the transmission or post is harassment or causes financial loss to the depicted person, serves no legitimate purpose to the depicted person, and is transmitted or posted:
 - (A) To a website, peer-to-peer file-sharing site, thumbnail gallery, movie gallery post, linked list, live webcam, web page, or

message board that advertises or promotes its service as showing, previewing, or distributing sexually explicit conduct; or

(B) Via any other electronic means that does not fall within subparagraph (A) of this paragraph; or

(2) Causes the electronic transmission or posting, in one or more transmissions or posts, of a photograph or video which depicts nudity or sexually explicit conduct of an adult, including a falsely created videographic or still image, when the transmission or post is harassment or causes financial loss to the depicted person, serves no legitimate purpose to the depicted person, and is transmitted or posted:

(A) To a website, peer-to-peer file-sharing site, thumbnail gallery, movie gallery post, linked list, live webcam, web page, or message board that advertises or promotes its service as showing, previewing, or distributing sexually explicit conduct; or

(B) Via any other electronic means that does not fall within subparagraph (A) of this paragraph.

Nothing in this Code section shall be construed to impose liability on an interactive computer service, as such term is defined in 47 U.S.C. Section 230(f)(2), or an information service or telecommunications service, as such terms are defined in 47 U.S.C. Section 153, for content provided by another person.

(c)(1) Any person who violates subparagraph (b)(1)(B) or (b)(2)(B) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature; provided, however, that upon a second or subsequent violation of this Code section, he or she shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one nor more than five years, a fine of not more than \$100,000.00, or both.

(2) Any person who violates subparagraph (b)(1)(A) or (b)(2)(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 nor more than five years, a fine of not more than \$100,000.00, or both. Upon the second and all subsequent convictions for violations of subparagraph (b)(1)(A) or (b)(2)(A) of this Code section, such person shall be guilty of a felony and shall be punished by imprisonment of not less than two nor more than five years, a fine of not more than \$100,000.00, or both.

(d) 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, by such conduct, the

person commits a violation of this Code section which involves an individual who resides in this state; or

(2) Within this state if, by such conduct, the person commits a violation of this Code section which involves an individual who resides within or outside this state.

(e) 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;

(3) Any person who transmits or posts a photograph or video depicting only himself or herself engaged in nudity or sexually explicit conduct;

(4) The transmission or posting of a photograph or video that was originally made for commercial purposes;

(5) Any person who transmits or posts a photograph or video depicting a person voluntarily engaged in nudity or sexually explicit conduct in a public setting; or

(6) A transmission that is made pursuant to or in anticipation of a civil action.

(f) There shall be a rebuttable presumption that an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet, for content provided by another person, does not know the content of an electronic transmission or post.

(g) Any violation of this Code section shall constitute a separate offense and shall not merge with any other crimes set forth in this title.

History.

Code 1981, § 16-11-90, enacted by Ga. L. 2014, p. 220, § 1/HB 838; Ga. L. 2015, p. 5, § 16/HB 90; Ga. L. 2020, p. 579, § 1/SB 337; Ga. L. 2021, p. 442, § 1/SB 78; Ga. L. 2021, p. 922, § 16/HB 497; Ga. L. 2022, p. 352, § 16/HB 1428.

Amendments.

The 2020 amendment, effective August 3, 2020, inserted “, including a falsely created videographic or still image” in paragraphs (b)(1) and (b)(2) and added the ending undesignated paragraph of subsection (b). See Editor’s note for applicability.

The first 2021 amendment, effective

July 1, 2021, rewrote subsection (b); designated the existing provisions of subsection (c) as paragraph (c)(1); inserted “subparagraph (b)(1)(B) or (b)(2)(B) of” near the beginning of paragraph (c)(1); and added paragraph (c)(2). The second 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, in the ending undesignated language of subsection (b), substituted “47 U.S.C. Section 230(f)(2)” for “47 U.S.C. 230(f)(2)” and substituted “47 U.S.C. Section 153” for “47 U.S.C. 153”.

The 2022 amendment, effective May 2, 2022, part of an Act to revise, modern-

ize, and correct the Code, revised punctuation in subparagraphs (b)(1)(A) and (b)(2)(A).

Editor's notes.

Ga. L. 2020, p. 579, § 2/SB 337, not codified by the General Assembly, provides that the amendment of subsection (b) shall apply to all conduct occurring on or after August 3, 2020.

Law reviews.

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).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Misdemeanor offenses arising under O.C.G.A. § 16-11-90(b)(1)(B) are offenses for which those charged are to be fingerprinted. 2021 Op. Att'y Gen. No. 21-1.

Misdemeanor offenses arising under O.C.G.A. § 16-11-90(b)(2)(B) are offenses for which those charged are to be fingerprinted. 2021 Op. Att'y Gen. No. 21-1.

RESEARCH REFERENCES

ALR.

State Law Liability and Relief for "Revenge Porn," 54 A.L.R.7th 2.

Claims Concerning Use of "Cookies" To Acquire Internet Users' Web Browsing Data Under Federal Law, 36 A.L.R. Fed. 3d Art. 5.

Civil Immunity Under Communications Decency Act, 47 U.S.C.A. § 230(c)(2), in Cases Involving Sex Trafficking — Post-FOSTA Amendments, 79 A.L.R. Fed. 3d 4.

16-11-92. Sexual extortion.

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

(1) "Coerce" means:

(A) Exposing or threatening to expose any fact or information that if revealed would tend to subject an individual to hatred, contempt, ridicule, or economic harm;

(B) Exposing or threatening to expose any photograph or video depicting an individual in a state of nudity or engaged in sexually explicit conduct;

(C) Exposing or threatening to expose any fact or information that if revealed would tend to subject an individual to criminal proceedings or threatening to accuse any individual of a criminal offense;

(D) Threatening to take or withhold action as a public official or cause an official to take or withhold action; or

(E) Threatening to take or withhold action as an employer or cause an employer to take or withhold action which would cause economic harm to an individual.

(2) “Distribute” means to sell, lend, rent, lease, give, advertise, publish, exhibit, or otherwise disseminate.

(3) “Nudity” shall have the same meaning as set forth in Code Section 16-11-90.

(4) “Sexually explicit conduct” shall have the same meaning as set forth in Code Section 16-12-100.

(b)(1) No person shall intentionally coerce orally, in writing, or electronically another individual who is more than 18 years of age to distribute any photograph, video, or other image that depicts any individual in a state of nudity or engaged in sexually explicit conduct.

(2) The provisions of this subsection shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses.

(3) The provisions of this subsection shall not apply to requests for disclosures, production of documents or evidence, or similar discovery actions under the provisions of Chapter 11 of Title 9, the “Georgia Civil Practice Act.”

(c) Any person that violates paragraph (1) of subsection (b) of this Code section shall:

(1) Upon the first offense, be guilty of and punished as for a misdemeanor of a high and aggravated nature; or

(2) Upon a second or subsequent offense, be guilty of a felony and upon conviction, be punished by imprisonment for not less than one year and not more than five years.

(d) 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 in which the person engages while:

(1) Within or outside this state if, by such conduct, the person commits a violation of this Code section that involves an individual who resides within this state; or

(2) Within this state if, by such conduct, the person commits a violation of this Code section that involves an individual who resides within or outside this state.

(e) Each violation of this Code section shall be considered a separate offense and shall not merge with any other offense.

History.

Code 1981, § 16-11-92, enacted by Ga. L. 2019, p. 912, § 2/SB 9.

Effective date.

This Code section became effective July 1, 2019.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Misdemeanor offenses arising under O.C.G.A. § 16-11-92 are offenses for which those charged are to be fingerprinted. 2020 Op. Att’y Gen. No. 20-4.

ARTICLE 4

DANGEROUS INSTRUMENTALITIES AND PRACTICES

PART 1

GENERAL PROVISIONS

16-11-101.1. Furnishing pistol or revolver to person under the age of 18 years.

(a) For the purposes of this Code section, the term:

(1) “Minor” means any person under the age of 18 years.

(2) “Pistol or revolver” means a handgun as defined in Code Section 16-11-125.1.

(b) It shall be unlawful for a person intentionally, knowingly, or recklessly to sell or furnish a pistol or revolver to a minor, except that it shall be lawful for a parent or legal guardian to permit possession of a pistol or revolver by a minor for the purposes specified in subsection (c) of Code Section 16-11-132 unless otherwise expressly limited by subsection (c) of this Code section.

(c)(1) It shall be unlawful for a parent or legal guardian to permit possession of a pistol or revolver by a minor if the parent or legal guardian knows of a minor’s conduct which violates the provisions of Code Section 16-11-132 and fails to make reasonable efforts to prevent any such violation of Code Section 16-11-132.

(2) Notwithstanding any provisions of subsection (c) of Code Section 16-11-132 or any other law to the contrary, it shall be unlawful for any parent or legal guardian intentionally, knowingly, or recklessly to furnish to or permit a minor to possess a pistol or revolver if such parent or legal guardian is aware of a substantial risk that such minor will use a pistol or revolver to commit a felony offense or if such parent or legal guardian who is aware of such substantial risk fails to make reasonable efforts to prevent commission of the offense by the minor.

(3) In addition to any other act which violates this subsection, a parent or legal guardian shall be deemed to have violated this subsection if such parent or legal guardian furnishes to or permits possession of a pistol or revolver by any minor who has been convicted of a forcible

felony or forcible misdemeanor, as defined in Code Section 16-1-3, or who has been adjudicated for committing a delinquent act under the provisions of Article 6 of Chapter 11 of Title 15 for an offense which would constitute a forcible felony or forcible misdemeanor, as defined in Code Section 16-1-3, if such minor were an adult.

(d) Upon conviction of a violation of subsection (b) or (c) of this Code section, a person shall be guilty of a felony and punished by a fine not to exceed \$5,000.00 or by imprisonment for not less than three nor more than five years, or both.

History.

Code 1981, § 16-11-101.1, enacted by Ga. L. 1994, p. 1012, § 13; Ga. L. 2000, p. 1630, § 1; Ga. L. 2010, p. 963, § 2-6/SB 308; Ga. L. 2013, p. 294, § 4-9/HB 242; Ga. L. 2023, p. 730, § 7(5)/HB 475, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, deleted “subsection (a) of” following “defined in” in paragraph (a)(2).

16-11-102. Pointing or aiming gun or pistol at another.

JUDICIAL DECISIONS

Lesser included offense instruction inappropriate. — Trial court did not err in refusing to instruct the jury on the offense of pointing a pistol at another as a lesser-included offense of aggravated assault, as the evidence showed the victim

was placed in reasonable apprehension of immediate violent injury from the firearm being pointed at the victim. *Rivera v. State*, 375 Ga. App. 211, 915 S.E.2d 412, 2025 Ga. App. LEXIS 163 (2025).

16-11-106. Possession of firearm or knife during commission of or attempt to commit certain crimes.

(a) For the purposes of this Code section, the term “firearm” shall include stun guns and tasers. A stun gun or taser is any device that is powered by electrical charging units such as batteries and emits an electrical charge in excess of 20,000 volts or is otherwise capable of incapacitating a person by an electrical charge.

(b) Any person who shall have on or within arm’s reach of his or her person a firearm or a knife having a blade of three or more inches in length during the commission of, or the attempt to commit:

- (1) Any crime against or involving the person of another;
- (2) The unlawful entry into a building or vehicle;
- (3) A theft from a building or theft of a vehicle;
- (4) Any crime involving the possession, manufacture, delivery, distribution, dispensing, administering, selling, or possession with intent to distribute any controlled substance or marijuana as pro-

vided in Code Section 16-13-30, any counterfeit substance as defined in Code Section 16-13-21, or any noncontrolled substance as provided in Code Section 16-13-30.1; or

(5) Any crime involving the trafficking of substances in violation of Code Section 16-13-31,

and which crime is a felony, commits a felony and, upon conviction thereof, shall be punished by confinement for a period of five years, such sentence to run consecutively to any other sentence which the person has received.

(c) Upon the second or subsequent conviction of a person under this Code section, the person shall be punished by confinement for a period of ten years. Notwithstanding any other law to the contrary, the sentence of any person which is imposed for violating this Code section a second or subsequent time shall not be suspended by the court and probationary sentence imposed in lieu thereof.

(d) The punishment prescribed for the violation of subsections (b) and (c) of this Code section shall not be reducible to misdemeanor punishment as is provided by Code Section 17-10-5.

(e) Any crime committed in violation of subsections (b) and (c) of this Code section shall be considered a separate offense.

History.

Ga. L. 1968, p. 982, §§ 1, 2; Ga. L. 1974, p. 385, § 1; Ga. L. 1976, p. 1591, §§ 1, 2; Ga. L. 1985, p. 425, § 1; Ga. L. 1986, p. 1205, § 1; Ga. L. 1987, p. 624, § 1; Ga. L. 2000, p. 1618, § 1; Ga. L. 2001, p. 4, § 16; Ga. L. 2025, p. 460, § 2-2/SB 79, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, substituted “trafficking of substances in violation of” for “trafficking of cocaine, marijuana, or illegal drugs as

provided in” in paragraph (b)(5). See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2025, p. 460, § 1-1/SB 79, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Fentanyl Eradication and Removal Act.’”

Ga. L. 2025, p. 460, § 3-1/SB 79, not codified by the General Assembly, provides that the 2025 amendment shall be applicable to all offenses committed on or after July 1, 2025.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

APPLICATION

JURY INSTRUCTIONS

PUNISHMENT

General Consideration

Multiple convictions prohibited. —

Trial court erred when the court con-

victed the defendant of three counts of possession of a firearm during the commission of a crime because the defendant was not convicted of any enumerated

General Consideration (Cont'd)

crimes and, thus, only one conviction was authorized. *Outler v. State*, 305 Ga. 701, 827 S.E.2d 659, 2019 Ga. LEXIS 277 (2019).

Evidence sufficient to support convictions. — Evidence that the defendant entered the victim's bedroom with a knife and that the victim suffered lacerations to the arm and head that required the victim's hospitalization was sufficient to support the defendant's conviction for aggravated assault and possession of a knife during the commission of a felony. *Williams v. State*, 345 Ga. App. 692, 814 S.E.2d 818, 2018 Ga. App. LEXIS 262 (2018), overruled in part, *Flowers v. State*, 307 Ga. 618, 837 S.E.2d 824, 2020 Ga. LEXIS 8 (2020).

Application

No merger of related offenses. Defendant's possession of a firearm by a convicted felon count did not merge with the possession of a firearm during the commission of a felony count. *Beamon v. State*, 314 Ga. 798, 879 S.E.2d 457, 2022 Ga. LEXIS 261 (2022).

Video showing use of firearm in armed robbery. — Video showing the defendant bursting into the store and holding a gun on the clerk while the defendant stole cash and lottery tickets was sufficient to support the defendant's convictions for armed robbery, aggravated assault, and possession of a firearm during a felony. *Beamon v. State*, 348 Ga. App. 732, 824 S.E.2d 624, 2019 Ga. App. LEXIS 76 (2019).

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

Sufficient evidence supported the defendant's convictions for armed robbery, ag-

gravated assault, and possession of a firearm during commission of a felony, based on evidence that three taxi drivers were robbed and the telephone number used to call the taxis was registered to the defendant's mother, who allowed the defendant to use the phone, and an accomplice identified the defendant as the person with a gun. *Gay v. State*, 351 Ga. App. 811, 833 S.E.2d 305, 2019 Ga. App. LEXIS 496 (2019), cert. denied, No. S20C0264, 2020 Ga. LEXIS 317 (Ga. Apr. 20, 2020).

Evidence that the co-indictee had a gun when the co-indictee and the defendant walked the husband to the minivan to retrieve money was sufficient to support the defendant's conviction for armed robbery and possession of a weapon during the commission of a crime even though the wife did not see the gun because the wife testified that the wife noticed something that appeared to be a knife or a pistol, making the wife fearful. *Parker v. State*, 353 Ga. App. 493, 838 S.E.2d 150, 2020 Ga. App. LEXIS 26 (2020).

Possession of firearm.

Sufficient evidence supported the defendant's conviction for possession of a firearm during the commission of a felony because the victim's testimony established the victim saw the defendant with the gun near the shop shortly before the police officer found the defendant in possession of items taken from the shop. *Martin v. State*, 349 Ga. App. 656, 825 S.E.2d 227, 2019 Ga. App. LEXIS 8 (2019), cert. denied, No. S19C1043, 2019 Ga. LEXIS 814 (Ga. Nov. 18, 2019).

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

Evidence was sufficient to support defendant's convictions for possession of a firearm during the commission of a felony because it was uncontroverted that defen-

dant took the handgun from the victim after the confrontation began and that, while the handgun was in defendant's possession and he was actively fighting with the victim, the weapon was discharged, thereby fatally wounding the victim. *Hall v. State*, 371 Ga. App. 606, 901 S.E.2d 743, 2024 Ga. App. LEXIS 189 (2024).

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

Identification of defendant sufficient. — In an action for aggravated battery, aggravated assault with a deadly weapon and possession of a firearm during a felony, there was sufficient evidence for the jury to determine that the defendant was the shooter including testimony from the victims identifying the defendant and any inconsistency between that testimony and the victims' pretrial identifications was for the jury. *Smith v. State*, 354 Ga. App. 782, 841 S.E.2d 444, 2020 Ga. App. LEXIS 219 (2020).

Evidence sufficient for crime not suicide. — Evidence was sufficient to convict the defendant of felony murder and possession of a firearm during the commission of a felony because the defendant had previously threatened to kill the victim; on the day of the shooting, during an argument with the victim, the defendant was "playing" with a firearm; the medical examiner (ME) determined that the cause of death was a gunshot wound located on the back of the left side of the victim's head, just above the victim's ear; the ME testified that the injury was not a contact wound; and the ME opined that the gunshot was not a typical suicide gunshot wound, and that the manner of death was homicide. *Anderson v. State*,

309 Ga. 618, 847 S.E.2d 572, 2020 Ga. LEXIS 593 (2020).

Evidence sufficient to support conviction.

Although the victim recanted parts of the victim's inculpatory testimony while the trial was still in progress, the jury was authorized to find the defendant guilty beyond a reasonable doubt of the crimes charged because the jury's guilty verdicts showed that the jury credited the victim's testimony and the corroborating evidence that the defendant beat and threatened the victim and held a knife during the attack and showed that the jury discredited the victim's contradictory testimony that someone else bruised the victim's face. *Walker v. State*, 348 Ga. App. 273, 821 S.E.2d 567, 2018 Ga. App. LEXIS 639 (2018).

Evidence was sufficient to convict the defendant of malice murder of the first victim, aggravated assault of the second victim, and possession of a firearm during the commission of a crime because the defendant pulled alongside the second victim's car at an intersection and shot into the passenger side of the car several times, killing the first victim; the second victim identified the defendant as the shooter; and the video recordings from the gas station's surveillance system and the city's street surveillance system that showed the incident that took place at the gas station before the shooting and showed the shooting were played for the jury. *Johnson v. State*, 305 Ga. 475, 826 S.E.2d 89, 2019 Ga. LEXIS 152 (2019).

Because the trial court properly permitted a victim to identify the defendant, coupled with other evidence at trial, including the defendant's text message to a buyer of the stolen wheels and the recovery of two guns from the car in which the defendant was stopped, the evidence was sufficient for the jury to convict the defendant for armed robbery and possession of a firearm during the commission of a felony. *Redding v. State*, 354 Ga. App. 525, 841 S.E.2d 192, 2020 Ga. App. LEXIS 194 (2020).

Evidence was sufficient to convict the defendant of aggravated assault of the victim with a deadly weapon and possession of a firearm during the commission of

Application (Cont'd)

that crime because the victim testified that a passenger in a vehicle shot the victim; and the victim positively identified the defendant as the driver of the vehicle. *Perdomo v. State*, 307 Ga. 670, 837 S.E.2d 762, 2020 Ga. LEXIS 9 (2020).

Evidence that the defendant approached the victim with a handgun, pointed the gun at the victim while demanding money, and ultimately shot the victim was sufficient to support the defendant's convictions for armed robbery, criminal attempt to commit armed robbery, aggravated assault, and possession of a firearm during the commission of a crime. *Cooke v. State*, 356 Ga. App. 679, 848 S.E.2d 693, 2020 Ga. App. LEXIS 509 (2020).

Evidence was sufficient to convict the defendant of armed robbery and possession of a firearm during the commission of a felony because the defendant rented a box truck and a storage unit; the tires on the truck had the same characteristics as the impressions left at the crime scene; the jury could conclude that the defendant arrived in the rented truck at the main gate and then shot the victim before entering the property to complete the theft of copper; and there was no evidence that the victim was restrained in any way to keep the victim from calling the police while the theft was completed. *Tyler v. State*, 311 Ga. 727, 859 S.E.2d 73, 2021 Ga. LEXIS 292 (2021).

Evidence was sufficient to convict the defendant of armed robbery, aggravated assault, first degree home invasion, and possession of a firearm during the commission of a felony as the victim testified that the defendant entered the victim's home without permission, pointed a gun at the victim and the others in the home, and took their money. *Mahogany v. State*, 366 Ga. App. 750, 884 S.E.2d 141, 2023 Ga. App. LEXIS 76 (2023).

Evidence was sufficient to support defendant's convictions of malice murder and possession of a firearm during the commission of a crime either as the shooter or as a party to the crimes because the morning after the victim was shot a witness told police that defendant shot the

victim. In addition, the witness told police that defendant and the co-defendant went looking for the victim together after arguing with the victim, they left the scene together in the co-defendant's car after the victim was shot, and the victim's blood was found inside the co-defendant's car. *Milton v. State*, 318 Ga. 737, 900 S.E.2d 590, 2024 Ga. LEXIS 90 (2024).

Evidence insufficient to support conviction. — Defendant's conviction for possession of a firearm during the commission of a crime involving the possession of cocaine could not be sustained because the commission of the felony named in the indictment was an essential element of the offense; and there was no evidence from which a rational trier of fact could have found that the defendant possessed the cocaine found in the house. *Blue v. State*, 350 Ga. App. 702, 830 S.E.2d 279, 2019 Ga. App. LEXIS 369 (2019).

Jury Instructions**Charge on possession of a firearm was not in error, etc.**

Counsel was not ineffective for failing to make a meritless objection to the jury instruction on possession of a firearm during the commission of a crime because the defendant was indicted, in counts one through four, for the murder of the first victim and the aggravated assaults of the first and second victims by shooting at them; in count five of the indictment, the defendant was alleged to have on the defendant's person a firearm during the commission of a crime involving another person; and the charge as given was consistent with the entirety of the indicted charges for which verdicts of guilty were returned. *Johnson v. State*, 305 Ga. 475, 826 S.E.2d 89, 2019 Ga. LEXIS 152 (2019).

Trial court did not give an erroneous jury instruction on possession of a firearm during the commission of a felony because armed robbery was per se a crime involving another person, the jury did not have to make a finding on that issue, and the trial court therefore did not plainly err by instructing the jury that the crime of armed robbery was a "crime involving the person of another" for purposes of the

statute prohibiting possession of a firearm during the commission of a felony. *Cabrera-Zamarripa v. State*, 371 Ga. App. 598, 901 S.E.2d 737, 2024 Ga. App. LEXIS 188 (2024).

Improper instructions required reversal. — Jury could have mistakenly inferred that reckless conduct, a lesser included offense of the charge of aggravated assault, was sufficient as the predicate felony for the charge of possession of a firearm during the commission of a felony because the jury was not informed that reckless conduct was a misdemeanor and could have inferred from the charge given that reckless conduct was a felony. *Aguirre-Gomez v. State*, 347 Ga. App. 282, 819 S.E.2d 81, 2018 Ga. App. LEXIS 505 (2018).

Punishment

Failure to merge offense. — One of the defendant's convictions for possession of a firearm during commission of a felony, which were based on the two firearms used in the shooting, should have merged because, after proper merger of the other counts, only malice murder remained as the predicate felony. Thus, only one conviction for possession of a firearm during commission of a felony was permitted. *Miller v. State*, 312 Ga. 702, 864 S.E.2d 451, 2021 Ga. LEXIS 651 (2021).

Consecutive sentencing required.

Trial court erred when it originally ordered that the defendant's sentence on Count 10 for possession of a firearm during the commission of a felony run concurrent with the defendant's other sentences as the mandatory language in O.C.G.A. § 16-11-106(b) stated that an individual convicted of possession of a firearm during the commission of a felony "shall be punished by confinement for a period of five years," and that the sentence shall

"run consecutively to any other sentence which the person has received." *Barber v. State*, 314 Ga. 759, 879 S.E.2d 428, 2022 Ga. LEXIS 270 (2022).

Consecutive sentencing expressly authorized. — To the extent that the appellant argued that the trial court erred in imposing consecutive sentences, the argument was without merit because the trial court had broad discretion to impose either a concurrent or consecutive sentence for possession of a firearm by a convicted felon, and the record did not show that the court made that decision under a misapprehension about the scope of the court's discretion. *Cade v. State*, 351 Ga. App. 637, 832 S.E.2d 453, 2019 Ga. App. LEXIS 462 (2019).

Consecutive sentencing not required. — After the aggravated assault conviction merged into the malice murder conviction, because the trial court did not understand that O.C.G.A. § 16-11-106 did not require the trial court to run the sentence for the defendant's possession of a firearm during the commission of a felony count consecutively to the defendant's sentence on a count other than the aggravated assault count, the defendant's sentence was vacated. *Williams v. State*, 306 Ga. 674, 832 S.E.2d 843, 2019 Ga. LEXIS 590 (2019).

Error in written sentence required remand for correction. — Defendant's case required remand to the trial court, in part, with regard to the firearm conviction because the trial court's written sentence failed to conform with both the terms of the negotiated plea as well as the trial court's orally pronounced sentence at the plea hearing and correction of the scrivener's error in the written sentence was needed as to that count. *Oladunni v. State*, 370 Ga. App. 584, 898 S.E.2d 585, 2024 Ga. App. LEXIS 51 (2024).

16-11-107. Interfering with, harming of, or aggravated harming of a public safety animal or search and rescue animal.

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

(1) "Public safety animal" means any animal that is specially trained and may be used to assist a public safety officer, as such term

is defined in Code Section 16-5-19, in the performance of the officer's official duties.

(2) "Search and rescue animal" means any animal that is specially trained and may be used to assist in a search and rescue operation or to search for human remains.

(b)(1) A person commits the offense of interfering with a public safety animal or search and rescue animal when he or she knows or should have known that an animal is a public safety animal or search and rescue animal and intentionally commits, conspires, or attempts to commit an act that:

(A) Frightens, agitates, harasses, or tampers with the animal; or

(B) Delays, obstructs, or hinders the animal in the performance of its duty as a public safety animal or search and rescue animal.

(2) Any person convicted of a violation of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment not to exceed 12 months, a fine not to exceed \$1,000.00, or both.

(c)(1) A person commits the offense of harming a public safety animal or search and rescue animal when he or she knows or should have known that an animal is a public safety animal or search and rescue animal and intentionally commits, conspires, or attempts to commit an act that causes or is likely to cause physical harm, pain, or suffering to a public safety animal or search and rescue animal.

(2) Any person convicted of a violation of this subsection shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by imprisonment for not less than six nor more than 12 months, a fine not to exceed \$5,000.00, or both.

(d)(1) A person commits the offense of aggravated harming of a public safety animal or search and rescue animal when he or she knows or should have known that an animal is a public safety animal or search and rescue animal and when he or she intentionally commits, conspires, or attempts to commit an act that:

(A) Causes the death of the animal; or

(B) Injures the animal in a manner that materially affects its ability to perform as a public safety animal or search and rescue animal.

(2) Any person convicted of a violation of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than two nor more than ten years, a fine

not to exceed \$50,000.00, or both, and the first two years of such sentence shall not be suspended, probated, deferred, or withheld by a sentencing court; provided, however, that in the court's discretion, the court may depart from such mandatory minimum sentence when the prosecuting attorney and defendant have agreed to a sentence that is below such mandatory minimum.

(e) In addition to any other penalty provided for under this Code section, the court shall order the defendant to make restitution pursuant to Article 1 of Chapter 14 of Title 17 to the owner of a public safety animal or search and rescue animal for the costs of the veterinary expenses incurred in the treatment of such animal and the costs of any restorative training necessary to enable the animal to resume its duties. Notwithstanding Code Section 17-14-2 to the contrary, restitution when a public safety animal or search and rescue animal dies or is no longer able to engage in performance of its duties as a result of a violation of this Code section shall additionally include the amount of the actual replacement value of the public safety animal or search and rescue animal, which shall include the value of an animal to replace the public safety animal or search and rescue animal and all costs associated with training such animal and its handler or handlers.

(f) Nothing in this Code section shall prohibit the killing or euthanasia of a public safety animal or search and rescue animal for humane purposes.

(g) Nothing in this Code section shall prohibit the defense of a person against a public safety animal or search and rescue animal that attacks such person without or in spite of commands given by its handler.

History.

Code 1981, § 16-11-107, enacted by Ga. L. 1983, p. 528, § 1; Ga. L. 1996, p. 370, § 1; Ga. L. 1996, p. 778, § 1; Ga. L. 1998, p. 657, § 1.2; Ga. L. 2015, p. 203, § 3-3/SB 72; Ga. L. 2023, p. 90, § 2/SB 155, effective July 1, 2023; Ga. L. 2024, p. 1052, § 6(10)/SB 448, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, rewrote this Code section.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, inserted "is" before "defined" in paragraph (a)(1).

Editor's notes.

Ga. L. 2023, p. 90, § 1/SB 155, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Figo's Law.'"

16-11-112. Vehicles with false or secret compartments.

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

(1)(A) "False or secret compartment" means any enclosure which is integrated into or attached to a vehicle and the purpose of the compartment is to conceal, hide, or prevent discovery by law enforcement officers of:

(i) A person concealed for an unlawful purpose;

(ii) Controlled substances possessed in violation of Article 2 of Chapter 13 of this title; or

(iii) Other contraband.

(B) Examples of “false or secret compartment” may include, but are not limited to:

(i) False, altered, or modified fuel tanks;

(ii) Original factory equipment on a vehicle that has been modified; or

(iii) Any compartment, space, or box that is added or attached to existing compartments, spaces, or boxes of the vehicle.

(2) “Vehicle” includes, but is not limited to, cars, trucks, buses, motorcycles, bicycles, aircraft, helicopters, boats, ships, yachts, and other vessels.

(b) It may be inferred that the accused intended to use a false or secret compartment if a person knowingly has a false or secret compartment which:

(1) Is concealing a person for an unlawful purpose;

(2) Is concealing a controlled substance in violation of Article 2 of Chapter 13 of this title;

(3) Is concealing other contraband;

(4) Shows evidence of the previous concealment of a person for an unlawful purpose;

(5) Shows evidence of the previous concealment of controlled substances in violation of Article 2 of Chapter 13 of this title; or

(6) Shows evidence of the previous concealment of other contraband.

(c)(1) It is unlawful for any person to knowingly own or operate any vehicle containing a false or secret compartment.

(2) It is unlawful for any person to knowingly install, create, build, or fabricate in any vehicle a false or secret compartment.

(3) It is unlawful for any person to knowingly sell, trade, or otherwise dispose of a vehicle which is in violation of this Code section.

(d) Any person who violates this Code section shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than two years, by a fine not to exceed \$10,000.00, or both.

(e) Upon the arrest of a person who owns or is operating a vehicle which is in violation of this Code section, if the vehicle is not otherwise subject to forfeiture under other provisions of law, or not determined to be needed to be held as evidence, the law enforcement officer shall seize the license plate and registration for such vehicle and shall issue a citation for violation of this Code section and a temporary operating permit for the vehicle. The temporary operating permit shall be on a form as prescribed by the state revenue commissioner. The temporary operating permit shall be valid for 30 days or until the owner of the vehicle provides verification that such vehicle has been repaired so as to eliminate any violation of this Code section, whichever occurs first. Such vehicle shall be subject to inspection by law enforcement and if it is determined that such vehicle has been repaired, the license plate and registration shall be returned to the owner at such time.

History.

Code 1981, § 16-11-112, enacted by Ga. L. 2006, p. 157, § 1/HB 1193; Ga. L. 2023, p. 554, § 1/HB 183, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, substituted “temporary operating

permit” for “temporary license plate” in three places in subsection (e).

16-11-113. Offense of transferring firearm to individual other than actual buyer.

Law reviews.

For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018).

For annual survey on criminal law, see 70 Mercer L. Rev. 63 (2018).

RESEARCH REFERENCES

ALR.

Federal Interstate Handgun Transfer Ban, as Implemented by 18 U.S.C.A. §§

922(a)(3) and 922(b)(3), and 27 C.F.R. § 478.99(a), 43 A.L.R. Fed. 3d Art. 1.

PART 2

POSSESSION OF DANGEROUS WEAPONS

16-11-123. Unlawful possession of firearms or weapons.

JUDICIAL DECISIONS

Special demurrer regarding description of weapon improperly denied. — Special demurrer to counts two and three charging possession of illegal weapons was improperly denied as the weapons, which were referred to as a

“sawed-off shotgun” and a “sawed-off rifle,” were not described with sufficient particularity and had to be described with greater particularity, such as their appearance or color, make, model, caliber, exact barrel measurement, serial number,

and any other distinguishing characteristics; the indictment did not apprise the defendant of what the defendant had to be prepared to defend against; and the indictment did not show with accuracy to what extent the defendant could plead a

former acquittal or conviction should other proceedings be taken against the defendant for a similar offense. *Thomas v. State*, 366 Ga. App. 738, 884 S.E.2d 120, 2023 Ga. App. LEXIS 72 (2023).

RESEARCH REFERENCES

ALR.

Proscription of 18 U.S.C.A. § 922(g)(3) that Persons Who Are Unlawful Users of or Addicted to Any Controlled Substance

Cannot Possess Any Firearm or Ammunition in or Affecting Commerce, 44 A.L.R. Fed. 3d Art. 3.

16-11-124. Exemptions from application of part.

This part shall not apply to:

- (1) A peace officer of any duly authorized police agency of this state or of any political subdivision thereof, or a law enforcement officer of any department or agency of the United States who is regularly employed and paid by the United States, this state, or any such political subdivision, or an employee of the Department of Corrections of this state who is authorized in writing by the commissioner of corrections to transfer or possess such firearms while in the official performance of his duties;
- (2) A member of the National Guard or of the armed forces of the United States to wit: the army, navy, marine corps, air force, space force, or coast guard who, while serving therein, possesses such firearm in the line of duty;
- (3) Any sawed-off shotgun, sawed-off rifle, machine gun, dangerous weapon, or silencer which has been modified or changed to the extent that it is inoperative. Examples of the requisite modification include weapons with their barrel or barrels filled with lead, hand grenades filled with sand, or other nonexplosive materials;
- (4) Possession of a sawed-off shotgun, sawed-off rifle, machine gun, dangerous weapon, or silencer by a person who is authorized to possess the same because he has registered the sawed-off shotgun, sawed-off rifle, machine gun, dangerous weapon, or silencer in accordance with the dictates of the National Firearms Act, 68A Stat. 725 (26 U.S.C. Sections 5841-5862); and
- (5) A security officer employed by a federally licensed nuclear power facility or a licensee of such facility, including a contract security officer, who is trained and qualified under a security plan approved by the United States Nuclear Regulatory Commission or other federal agency authorized to regulate nuclear facility security; provided, however, that this exemption shall apply only while such

security officer is acting in connection with his or her official duties on the premises of such nuclear power facility or on properties outside the facility property pursuant to a written agreement entered into with the local law enforcement agency having jurisdiction over the facility. The exemption under this paragraph does not include the possession of silencers.

History.

Ga. L. 1968, p. 983, § 5; Ga. L. 1985, p. 283, § 1; Ga. L. 2006, p. 812, § 1/SB 532; Ga. L. 2024, p. 81, § 3/HB 299, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, inserted “space force,” in the middle of paragraph (2).

Editor’s notes.

Ga. L. 2024, p. 81, § 3/HB 299, which amended this Code section, purported to amend paragraph (a)(2) of this Code section but actually amended paragraph (2) of this Code section.

PART 3

CARRYING AND POSSESSION OF FIREARMS

Cross references.

Right to bear arms, U.S. Const., amend. 5.

Right to keep and bear arms, Ga. Const. 1983, Art. I, Sec. I, Para. VIII.

Law reviews.

For article, “Proposed Constitutional Carry Act of 2019: To Amend Title 12 of the Official Code of Georgia Annotated, Relating to the Use or Possession of Any

Handgun in Parks, Historic Sites, or Recreational Areas; and to Amend Title 16 of the Official Code of Georgia Annotated, Relating to the Definition of Carrying and Possession of Firearms & Executive Order by the Governor Temporarily Extending Renewal Requirements for Weapons Carry Licenses,” see 37 Ga. St. U.L. Rev. 219 (2020).

16-11-125.1. Definitions.

As used in this part, the term:

(1) “Handgun” means a firearm of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged by an action of an explosive where the length of the barrel, not including any revolving, detachable, or magazine breech, does not exceed 12 inches; provided, however, that the term “handgun” shall not include a gun which discharges a single shot of 0.46 centimeter or less in diameter.

(2) “Knife” means a cutting instrument designed for the purpose of offense and defense consisting of a blade that is greater than 12 inches in length which is fastened to a handle.

(2.1) “Lawful weapons carrier” means any person who is licensed or eligible for a license pursuant to Code Section 16-11-129 and who is not otherwise prohibited by law from possessing a weapon or long gun, any resident of any other state who would otherwise be eligible

to obtain a license pursuant to such Code section but for the residency requirement, and any person licensed to carry a weapon in any other state.

(3) “License holder” means a person who holds a valid weapons carry license.

(4) “Long gun” means a firearm with a barrel length of at least 18 inches and overall length of at least 26 inches designed or made and intended to be fired from the shoulder and designed or made to use the energy of the explosive in a fixed:

(A) Shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger or from which any shot, bullet, or other missile can be discharged; or

(B) Metallic cartridge to fire only a single projectile through a rifle bore for each single pull of the trigger;

provided, however, that the term “long gun” shall not include a gun which discharges a single shot of 0.46 centimeter or less in diameter.

(5) “Weapon” means a knife or handgun.

(6) “Weapons carry license” or “license” means a license issued pursuant to Code Section 16-11-129.

History.

Code 1981, § 16-11-125.1, enacted by Ga. L. 2010, p. 963, § 1-1/SB 308; Ga. L. 2017, p. 555, § 3/HB 292; Ga. L. 2018, p. 1112, § 16/SB 365; Ga. L. 2022, p. 74, § 4/SB 319.

Amendments.

The 2022 amendment, effective April 12, 2022, added paragraph (2.1).

Editor’s notes.

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, “SB 319: Chairman John Meadows Act,” see 39 Georgia St. U.L. Rev. 1 (2022).

JUDICIAL DECISIONS

Evidence sufficient for adjudication of possession of small-caliber revolver. — Adjudication of delinquency

was affirmed because the officer’s testimony that the weapon was inside the juvenile’s pocket and the description of the

weapon as a small-caliber revolver was sufficient evidence from which the juvenile court could have found beyond a reasonable doubt that the juvenile committed

the crime charged. In the Interest of A. P., 348 Ga. App. 638, 824 S.E.2d 94, 2019 Ga. App. LEXIS 62 (2019).

16-11-126. Having or carrying handguns, long guns, or other weapons; exceptions for homes, motor vehicles, private property, and other locations and conditions; unlawful carrying of a weapon.

(a) Any person who is not prohibited by law from possessing a handgun or long gun may have or carry on his or her person a weapon or long gun on his or her property or inside his or her home, motor vehicle, or place of business.

(b) Any person who is not prohibited by law from possessing a handgun or long gun may have or carry on his or her person a long gun.

(c) Any person who is a lawful weapons carrier may transport a handgun or long gun in any private passenger motor vehicle; provided, however, that private property owners or persons in legal control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such private property shall have the right to exclude or eject a person who is in possession of a weapon or long gun on their private property in accordance with paragraph (3) of subsection (b) of Code Section 16-7-21, except as provided in Code Section 16-11-135.

(d)(1) Any person licensed to carry a weapon in any other state shall be authorized to carry a weapon in this state; provided, however, that:

(A) Such licensee licensed to carry a weapon in any other state shall carry the weapon in compliance with the laws of this state; and

(B) No other state shall be required to recognize and give effect to a license issued pursuant to this part that is held by a person who is younger than 21 years of age.

(2)(A) The Attorney General shall create and maintain on the Department of Law's website a list of states whose laws recognize and give effect to a license issued pursuant to this part.

(B) The Attorney General shall enter into an agreement with any state that requires an agreement to recognize and give effect to a license issued pursuant to this part.

(e)(1) Any person with a valid hunting or fishing license on his or her person, or any person not required by law to have a hunting or fishing license, who is engaged in legal hunting, fishing, or sport shooting when the person has the permission of the owner of the land on which

the activities are being conducted may have or carry on his or her person a weapon or long gun while hunting, fishing, or engaging in sport shooting.

(2) Any person with a valid hunting or fishing license on his or her person, or any person not required by law to have a hunting or fishing license, who is otherwise engaged in legal hunting, fishing, or sport shooting on recreational or wildlife management areas owned by this state may have or carry on his or her person a knife while engaging in such hunting, fishing, or sport shooting.

(f) Notwithstanding Code Sections 12-3-10, 27-3-1.1, 27-3-6, and 16-12-122 through 16-12-127, any lawful weapons carrier may carry a weapon in all parks, historic sites, or recreational areas, as such term is defined in Code Section 12-3-10, including all publicly owned buildings located in such parks, historic sites, and recreational areas, in wildlife management areas, and on public transportation; provided, however, that a person shall not carry a handgun into a place where it is prohibited by federal law.

(g)(1) Except as otherwise provided in subsections (a) through (f) of this Code section, no person shall carry a weapon unless he or she is a lawful weapons carrier.

(2) A person commits the offense of unlawful carrying of a weapon when he or she violates the provisions of paragraph (1) of this subsection.

(h) Upon conviction of the offense of unlawful carrying of a weapon, a person shall be punished as follows:

(1) For the first offense, he or she shall be guilty of a misdemeanor; and

(2) For the second offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, and for any subsequent offense, he or she shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than two years and not more than five years.

(i) Nothing in this Code section shall in any way operate or be construed to affect, repeal, or limit the exemptions provided for under Code Section 16-11-130.

History.

Laws 1837, Cobb's 1851 Digest, pp. 848, 849.; Ga. L. 1851-52, p. 269, §§ 1-3; Code 1863, § 4413; Ga. L. 1865-66, p. 233, §§ 1, 2; Code 1868, § 4454; Code 1873, § 4527; Ga. L. 1882-83, p. 48, § 1; Code 1882,

§ 4527; Ga. L. 1898, p. 60, § 1; Penal Code 1895, § 341; Penal Code 1910, § 347; Code 1933, § 26-5101; Code 1933, § 26-2901, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1976, p. 1430, § 1; Ga. L. 1982, p. 3, § 16; Ga. L. 1992, p. 6, § 16;

Ga. L. 1996, p. 108, § 1; Ga. L. 1998, p. 1153, § 1; Ga. L. 2000, p. 1630, § 3; Ga. L. 2007, p. 47, § 16/SB 103; Ga. L. 2008, p. 533, § 3/SB 366; Ga. L. 2008, p. 1199, § 3/HB 89; Ga. L. 2009, p. 8, § 16/SB 46; Ga. L. 2010, p. 963, § 1-2/SB 308; Ga. L. 2014, p. 599, § 1-4/HB 60; Ga. L. 2015, p. 805, § 2/HB 492; Ga. L. 2017, p. 8, § 1/HB 406; Ga. L. 2017, p. 555, § 4/HB 292; Ga. L. 2022, p. 74, § 5/SB 319; Ga. L. 2022, p. 86, § 1/HB 218.

Amendments.

The first 2022 amendment, effective April 12, 2022, rewrote this Code section.

The second 2022 amendment, effective July 1, 2022, deleted “whose laws recognize and give effect to a license issued pursuant to this part” following “in any other state” near the beginning of former subparagraph (e)(1)(A) (now paragraph (d)(1)) and in former paragraph (e)(2) following “in any other state”; added division (e)(1)(B)(ii) (now subparagraph (d)(2)(B)); and redesignated the existing provisions of former subparagraph (e)(1)(B) as division (e)(1)(B)(i) (now paragraph (d)(2)(A)).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2022, paragraph (d)(2) in Ga. L. 2022, p. 74, § 5/SB 319 was redesignated as subparagraph (d)(2)(A), and division

(e)(1)(B)(ii) in Ga. L. 2022, p. 86, § 1/HB 218 was redesignated as subparagraph (d)(2)(B).

Editor’s notes.

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, “SB 319: Chairman John Meadows Act,” see 39 Georgia St. U.L. Rev. 1 (2022).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Contents of indictment. — Count charging defendant with carrying a weapon without a valid license was insufficient to withstand a general demurrer and therefore was properly dismissed by the trial court because after April 2022,

carrying a firearm without a valid license was no longer a criminal offense and the state failed to show how defendant could admit the allegations in the count as written and still be guilty of a crime. *State v. Meadows*, 372 Ga. App. 748, 906 S.E.2d 449, 2024 Ga. App. LEXIS 353 (2024).

16-11-127. Carrying weapons or long guns in unauthorized locations.

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

(1) “Courthouse” means a building occupied by judicial courts and containing rooms in which judicial proceedings are held.

(2) “Government building” means:

(A) The building in which a government entity is housed;

(B) The building where a government entity meets in its official capacity; provided, however, that if such building is not a publicly owned building, such building shall be considered a government building for the purposes of this Code section only during the time such government entity is meeting at such building; or

(C) The portion of any building that is not a publicly owned building that is occupied by a government entity.

(3) “Government entity” means an office, agency, authority, department, commission, board, body, division, instrumentality, or institution of the state or any county, municipal corporation, consolidated government, or local board of education within this state.

(4) “Parking facility” means real property owned or leased by a government entity, courthouse, jail, prison, or place of worship that has been designated by such government entity, courthouse, jail, prison, or place of worship for the parking of motor vehicles at a government building or at such courthouse, jail, prison, or place of worship.

(b) Except as provided in Code Section 16-11-127.1 and subsection (d) or (e) of this Code section, a person shall be guilty of carrying a weapon or long gun in an unauthorized location and punished as for a misdemeanor when he or she carries a weapon or long gun while:

(1) In a government building without being a lawful weapons carrier;

(2) In a courthouse;

(3) In a jail or prison;

(4) In a place of worship, unless the governing body or authority of the place of worship permits the carrying of weapons or long guns by persons who are lawful weapons carriers;

(5) In a state mental health facility as defined in Code Section 37-1-1 which admits individuals on an involuntary basis for treatment of mental illness, developmental disability, or addictive disease; provided, however, that carrying a weapon or long gun in such location in a manner in compliance with paragraph (3) of subsection (d) of this Code section shall not constitute a violation of this subsection;

(6) On the premises of a nuclear power facility, except as provided in Code Section 16-11-127.2, and the punishment provisions of Code

Section 16-11-127.2 shall supersede the punishment provisions of this Code section; or

(7) Within 150 feet of any polling place when elections are being conducted and such polling place is being used as a polling place as provided for in paragraph (27) of Code Section 21-2-2, except as provided in subsection (i) of Code Section 21-2-413.

(c) Any lawful weapons carrier shall be authorized to carry a weapon as provided in Code Section 16-11-135 and in every location in this state not listed in subsection (b) or prohibited by subsection (e) of this Code section; provided, however, that private property owners or persons in legal control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such private property shall have the right to exclude or eject a person who is in possession of a weapon or long gun on his or her private property in accordance with paragraph (3) of subsection (b) of Code Section 16-7-21, except as provided in Code Section 16-11-135. A violation of subsection (b) of this Code section shall not create or give rise to a civil action for damages.

(d) Subsection (b) of this Code section shall not apply:

(1) To the use of weapons or long guns as exhibits in a legal proceeding, provided that such weapons or long guns are secured and handled as directed by the personnel providing courtroom security or the judge hearing the case;

(2) To a lawful weapons carrier who approaches security or management personnel upon arrival at a location described in subsection (b) of this Code section and notifies such security or management personnel of the presence of the weapon or long gun and explicitly follows the security or management personnel's direction for removing, securing, storing, or temporarily surrendering such weapon or long gun; and

(3) To a weapon or long gun possessed by a lawful weapons carrier which is under the possessor's control in a motor vehicle or is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle and such vehicle is parked in a parking facility.

(e)(1) A lawful weapons carrier shall be authorized to carry a weapon in a government building when the government building is open for business and where ingress into such building is not restricted or screened by security personnel. A lawful weapons carrier who enters or attempts to enter a government building carrying a weapon where ingress is restricted or screened by security personnel shall be guilty of a misdemeanor if at least one member of such security personnel is

certified as a peace officer pursuant to Chapter 8 of Title 35; provided, however, that a lawful weapons carrier who immediately exits such building or immediately leaves such location upon notification of his or her failure to clear security due to the carrying of a weapon shall not be guilty of violating this subsection or paragraph (1) of subsection (b) of this Code section. A person who is not a lawful weapons carrier and who attempts to enter a government building carrying a weapon shall be guilty of a misdemeanor.

(2) Any lawful weapons carrier who violates subsection (b) of this Code section in a place of worship shall not be arrested but shall be fined not more than \$100.00. Any person who is not a lawful weapons carrier who violates subsection (b) of this Code section in a place of worship shall be punished as for a misdemeanor.

(f) Nothing in this Code section shall in any way operate or be construed to affect, repeal, or limit the exemptions provided for under Code Section 16-11-130.

History.

Ga. L. 1870, p. 421, §§ 1, 2; Ga. L. 1878-79, p. 64, § 1; Code 1882, § 4528; Penal Code 1895, § 342; Ga. L. 1909, p. 90, § 1; Penal Code 1910, § 348; Code 1933, § 26-5102; Code 1933, § 26-2902, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1976, p. 1430, § 2; Ga. L. 1986, p. 673, § 1; Ga. L. 1987, p. 358, § 1; Ga. L. 1992, p. 1315, § 1; Ga. L. 1996, p. 748, § 11; Ga. L. 1997, p. 514, § 1; Ga. L. 2003, p. 423, § 1; Ga. L. 2008, p. 1199, § 4/HB 89; Ga. L. 2010, p. 963, § 1-3/SB 308; Ga. L. 2014, p. 432, § 2-5/HB 826; Ga. L. 2014, p. 599, § 1-5/HB 60; Ga. L. 2015, p. 805, § 3/HB 492; Ga. L. 2022, p. 74, § 6/SB 319.

Amendments.

The 2022 amendment, effective April 12, 2022, substituted “without being a lawful weapons carrier” for “as a nonlicense holder” at the end of paragraph (b)(1); substituted “persons who are lawful weapons carriers” for “license holders” at the end of paragraph (b)(4); in subsection (c), substituted “Any lawful weapons carrier” for “A license holder or person recognized under subsection (e) of Code Section 16-11-126” at the beginning, and “his or her” for “their” near the end of the first sentence; inserted “that” in paragraph (d)(1); and substituted “lawful weapons carrier” for “license holder” in paragraphs (d)(2), (d)(3), four times in paragraph (e)(1), and twice in paragraph (e)(2).

Editor’s notes.

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 annual survey on real property law, see 70 Mercer L. Rev. 209 (2018).

For note, “Education Under Fire?: An Analysis of Campus Carry and University Autonomy in Georgia,” see 54 Ga. L. Rev. 387 (2019).

For article, “SB 319: Chairman John

Meadows Act,” see 39 Georgia St. U.L. Rev. 1 (2022).

For annual survey on labor and employment law, see 74 Mercer L. Rev. 153 (2022).

For annual survey on real property law, see 74 Mercer L. Rev. 233 (2022).

JUDICIAL DECISIONS

Interpretation of private property. — Supreme Court of Georgia determined that for purposes of O.C.G.A. § 16-11-127(c), property may be considered private only if the holder of the present estate in the property is a private person or entity. *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 306 Ga. 829, 834 S.E.2d 27, 2019 Ga. LEXIS 639 (2019).

If the city, a public entity, was the holder of a present estate under the lease, the leased premises was not private property within the meaning of O.C.G.A. § 16-11-127(c), thus, the garden would have no right to exclude the carrying of firearms on the leased premises because the garden was not in legal control of private property through a lease; however,

since the lease was not in the record on appeal the garden was not entitled to summary judgment. *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 306 Ga. 829, 834 S.E.2d 27, 2019 Ga. LEXIS 639 (2019).

In an action related to the carrying of weapons in the botanical garden, the trial court did not err in granting summary judgment to the garden and finding it held an estate for years and therefore the property was private property, as the language of the lease was consistent with the intention to create an estate for years rather than a usufruct. *GeorgiaCarry.org Inc. v. The Atlanta Botanical Garden, Inc.*, 362 Ga. App. 413, 868 S.E.2d 802, 2022 Ga. App. LEXIS 43 (2022).

16-11-127.1. Carrying weapons within school safety zones, at school functions, or on a bus or other transportation furnished by a school.

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

(1) “Bus or other transportation furnished by a school” means a bus or other transportation furnished by a public or private elementary or secondary school.

(2) “School function” means a school function or related activity that occurs outside of a school safety zone and is for a public or private elementary or secondary school.

(3) “School safety zone” means in or on any real property or building owned by or leased to:

(A) Any public or private elementary school, secondary school, or local board of education and used for elementary or secondary education; and

(B) Any public or private technical school, vocational school, college, university, or other institution of postsecondary education.

(4) “Weapon” means and includes any pistol, revolver, or any weapon designed or intended to propel a missile of any kind, or any

dirk, bowie knife, switchblade knife, ballistic knife, any other knife having a blade of two or more inches, straight-edge razor, razor blade, spring stick, knuckles, whether made from metal, thermoplastic, wood, or other similar material, blackjack, any bat, club, or other bludgeon-type weapon, or any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain, or any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, or any weapon of like kind, and any stun gun or taser as defined in subsection (a) of Code Section 16-11-106. This paragraph excludes any of these instruments used for classroom work authorized by the teacher.

(b)(1) Except as otherwise provided in subsection (c) of this Code section, it shall be unlawful for any person to carry to or to possess or have under such person's control while within a school safety zone, at a school function, or on a bus or other transportation furnished by a school any weapon or explosive compound, other than fireworks or consumer fireworks the possession of which is regulated by Chapter 10 of Title 25.

(2) Except as provided for in paragraph (20) of subsection (c) of this Code section, any lawful weapons carrier who violates this subsection shall be guilty of a misdemeanor. Any person who is not a lawful weapons carrier who violates this subsection shall be guilty of a felony and, upon conviction thereof, be punished by a fine of not more than \$10,000.00, by imprisonment for not less than two nor more than ten years, or both.

(3) Any person convicted of a violation of this subsection involving a dangerous weapon or machine gun, as such terms are defined in Code Section 16-11-121, shall be punished by a fine of not more than \$10,000.00 or by imprisonment for a period of not less than five nor more than ten years, or both.

(4) A child who violates this subsection may be subject to the provisions of Code Section 15-11-601.

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

(1) Baseball bats, hockey sticks, or other sports equipment possessed by competitors for legitimate athletic purposes;

(2) Participants in organized sport shooting events or firearm training courses;

(3) Persons participating in military training programs conducted by or on behalf of the armed forces of the United States or the Georgia Department of Defense;

(4) Persons participating in law enforcement training conducted by a police academy certified by the Georgia Peace Officer Standards and Training Council or by a law enforcement agency of the state or the United States or any political subdivision thereof;

(5) The following persons, when acting in the performance of their official duties or when en route to or from their official duties:

(A) A peace officer as defined by Code Section 35-8-2;

(B) A law enforcement officer of the United States government;

(C) A prosecuting attorney of this state or of the United States;

(D) An employee of the Department of Corrections or a correctional facility operated by a political subdivision of this state or the United States who is authorized by the head of such department or correctional agency or facility to carry a firearm;

(E) An employee of the Department of Community Supervision who is authorized by the commissioner of community supervision to carry a firearm;

(F) A person employed as a campus police officer or school security officer who is authorized to carry a weapon in accordance with Chapter 8 of Title 20; and

(G) Medical examiners, coroners, and their investigators who are employed by the state or any political subdivision thereof;

provided, however, that this Code section shall not apply to any extent to persons who are provided for under Code Section 16-11-130;

(6) A person who has been authorized in writing by a duly authorized official of a public or private elementary or secondary school or a public or private technical school, vocational school, college, university, or other institution of postsecondary education or a local board of education as provided in Code Section 16-11-130.1 to have in such person's possession or use within a school safety zone, at a school function, or on a bus or other transportation furnished by a school a weapon which would otherwise be prohibited by this Code section. Such authorization shall specify the weapon or weapons which have been authorized and the time period during which the authorization is valid;

(7) A lawful weapons carrier when such person carries or picks up a student within a school safety zone, at a school function, or on a bus or other transportation furnished by a school or a lawful weapons carrier when he or she has any weapon legally kept within a vehicle when such vehicle is parked within a school safety zone or is in transit through a designated school safety zone;

(8) A weapon possessed by a lawful weapons carrier which is under the possessor's control in a motor vehicle or which is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle which is being used by an adult over 21 years of age to bring to or pick up a student within a school safety zone, at a school function, or on a bus or other transportation furnished by a school, or when such vehicle is used to transport someone to an activity being conducted within a school safety zone which has been authorized by a duly authorized official or local board of education as provided by paragraph (6) of this subsection; provided, however, that this exception shall not apply to a student attending a public or private elementary or secondary school;

(9) Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the weapon is necessary for manufacture, transport, installation, and testing under the requirements of such contract;

(10) Those employees of the State Board of Pardons and Paroles when specifically designated and authorized in writing by the members of the State Board of Pardons and Paroles to carry a weapon;

(11) The Attorney General and those members of his or her staff whom he or she specifically authorizes in writing to carry a weapon;

(12) Community supervision officers employed by and under the authority of the Department of Community Supervision when specifically designated and authorized in writing by the commissioner of community supervision;

(13) Public safety directors of municipal corporations;

(14) State and federal trial and appellate judges;

(15) United States attorneys and assistant United States attorneys;

(16) Clerks of the superior courts;

(17) Teachers and other personnel who are otherwise authorized to possess or carry weapons, provided that any such weapon is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle;

(18) Constables of any county of this state;

(19) Any person who is 18 years of age or older or currently enrolled in classes on the campus in question and carrying, possessing, or having under such person's control an electroshock weapon while in or on any building or real property owned by or leased to such public technical school, vocational school, college or university

or other public institution of postsecondary education; provided, however, that, if such person makes use of such electroshock weapon, such use shall be in defense of self or others. The exemption under this paragraph shall apply only to such person in regard to such electroshock weapon. As used in this paragraph, the term “electroshock weapon” means any commercially available device that is powered by electrical charging units and designed exclusively to be capable of incapacitating a person by electrical charge, including, but not limited to, a stun gun or taser as defined in subsection (a) of Code Section 16-11-106; or

(20)(A) Any lawful weapons carrier when he or she is in any building or on real property owned by or leased to any public technical school, vocational school, college, or university, or other public institution of postsecondary education; provided, however, that such exception shall:

(i) Not apply to buildings or property used for athletic sporting events or student housing, including, but not limited to, fraternity and sorority houses;

(ii) Not apply to any preschool or childcare space located within such buildings or real property;

(iii) Not apply to any room or space being used for classes related to a college and career academy or other specialized school as provided for under Code Section 20-4-37;

(iv) Not apply to any room or space being used for classes in which high school students are enrolled through a dual enrollment program, including, but not limited to, classes related to the “Dual Enrollment Act” as provided for under Code Section 20-2-161.3;

(v) Not apply to faculty, staff, or administrative offices or rooms where disciplinary proceedings are conducted; and

(vi) Only apply to the carrying of handguns which are concealed.

(B) Any lawful weapons carrier who carries a handgun in a manner or in a building, property, room, or space in violation of this paragraph shall be guilty of a misdemeanor; provided, however, that for a conviction of a first offense, such lawful weapons carrier shall be punished by a fine of \$25.00 and not be sentenced to serve any term of confinement.

(C) As used in this paragraph, the term:

(i) “Concealed” means carried in such a fashion that does not actively solicit the attention of others and is not prominently,

openly, and intentionally displayed except for purposes of defense of self or others. Such term shall include, but not be limited to, carrying on one's person while such handgun is substantially, but not necessarily completely, covered by an article of clothing which is worn by such person, carrying within a bag of a nondescript nature which is being carried about by such person, or carrying in any other fashion as to not be clearly discernible by the passive observation of others.

(ii) "Preschool or childcare space" means any room or continuous collection of rooms or any enclosed outdoor facilities which are separated from other spaces by an electronic mechanism or human-staffed point of controlled access and designated for the provision of preschool or childcare services, including, but not limited to, preschool or childcare services licensed or regulated under Article 1 of Chapter 1A of Title 20.

(d)(1) This Code section shall not prohibit any person who resides or works in a business or is in the ordinary course transacting lawful business or any person who is a visitor of such resident located within a school safety zone from carrying, possessing, or having under such person's control a weapon within a school safety zone; provided, however, that it shall be unlawful for any such person to carry, possess, or have under such person's control while at a school building or school function or on school property or a bus or other transportation furnished by a school any weapon or explosive compound, other than fireworks the possession of which is regulated by Chapter 10 of Title 25.

(2) Any person who violates this subsection shall be subject to the penalties specified in subsection (b) of this Code section.

(e) 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 bus or other transportation furnished by a school.

(f) 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 of the real property of a school board or a private or public elementary or secondary school that is used for school purposes or the area of any public or private technical school, vocational school, college, university, or other institution of postsecondary education, 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.

(g) A county school board may adopt regulations requiring the posting of signs designating the areas of school boards and private or public elementary and secondary schools as “Weapon-free and Violence-free School Safety Zones.”

(h) Nothing in this Code section shall in any way operate or be construed to affect, repeal, or limit the exemptions provided for under Code Section 16-11-130.

History.

Code 1981, § 16-11-127.1, enacted by Ga. L. 1992, p. 1315, § 2; Ga. L. 1994, p. 543, § 1; Ga. L. 1994, p. 547, § 1; Ga. L. 1994, p. 1012, § 4; Ga. L. 1995, p. 10, § 16; Ga. L. 1999, p. 362, § 1; Ga. L. 2000, p. 20, § 6; Ga. L. 2000, p. 1630, § 4; Ga. L. 2003, p. 140, § 16; Ga. L. 2008, p. 533, § 3/SB 366; Ga. L. 2008, p. 1199, § 5/HB 89; Ga. L. 2009, p. 8, § 16/SB 46; Ga. L. 2010, p. 463, § 2/SB 299; Ga. L. 2010, p. 963, § 1-4/SB 308; Ga. L. 2013, p. 294, § 4-10/HB 242; Ga. L. 2014, p. 432, § 1-1/HB 826; Ga. L. 2014, p. 599, § 1-6/HB 60; Ga. L. 2015, p. 5, § 16/HB 90; Ga. L. 2015, p. 274, § 1/HB 110; Ga. L. 2015, p. 422, § 5-27/HB 310; Ga. L. 2015, p. 805, § 4/HB 492; Ga. L. 2016, p. 848, § 1/HB 792; Ga. L. 2017, p. 341, § 1/HB 280; Ga. L. 2017, p. 555, § 5/HB 292; Ga. L. 2020, p. 4, § 2/HB 444; Ga. L. 2022, p. 74, § 7/SB 319.

Amendments.

The 2020 amendment, effective July 1, 2020, substituted “Dual Enrollment Act” for “Move on When Ready Act” in the middle of division (c)(20)(A)(iv).

The 2022 amendment, effective April 12, 2022, substituted “lawful weapons carrier” for “license holder” twice in paragraph (b)(2) and in paragraph (c)(8); in paragraph (c)(7), substituted “lawful weapons carrier” for “person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10,” and for “person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10”; substituted “lawful weapons carrier” for “weapons carry license holder” in subparagraph (c)(20)(A) and twice in subparagraph (c)(20)(B); added “and” at the end of division (c)(20)(A)(v); deleted former division (c)(20)(A)(vi), which read: “Only apply to the carrying of handguns which a licensee is licensed to carry pursuant to subsection (e) of Code Section 16-11-126 and pursuant to Code Section 16-11-129; and”; and redesignated former division (c)(20)(A)(vii) as division (c)(20)(A)(vi).

Editor’s notes.

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 note, “Education Under Fire?: An Analysis of Campus Carry and University Autonomy in Georgia,” see 54 Ga. L. Rev. 387 (2019).

For article, “SB 319: Chairman John Meadows Act,” see 39 Georgia St. U.L. Rev. 1 (2022).

JUDICIAL DECISIONS

Case moot. — Trial court did not err in dismissing the professors’ suit as the case was moot because granting the only relief the professors sought, a declaration that the 2017 amendment to O.C.G.A. § 16-11-127.1 constituted a

separation-of-powers violation, would not eliminate the harm of which the professors complained. *Knox v. State of Ga.*, 316 Ga. 426, 888 S.E.2d 497, 2023 Ga. LEXIS 122 (2023).

OPINIONS OF THE ATTORNEY GENERAL

Limitation on carrying weapons. — Notwithstanding whether a person has a license to carry a weapon, Georgia law separately prohibits individuals from carrying weapons into both faculty, staff and

administrative offices, as well as any room on a school campus in which disciplinary proceedings are conducted. 2018 Op. Att’y Gen. No. U18-1.

16-11-129. Weapons carry license; gun safety information; temporary renewal permit; mandamus; verification of license.

(a) Application for weapons carry license or renewal license; term.

(1) The judge of the probate court of each county shall, on application under oath, on payment of a fee of \$30.00, and on investigation of the applicant pursuant to subsections (b) and (d) of this Code section, issue a weapons carry license or renewal license valid for a period of five years to any person whose domicile is in that county or who is on active duty with the United States armed forces and who is not a domiciliary of this state but who either resides in that county or on a military reservation located in whole or in part in that county at the time of such application. Such license or renewal license shall authorize that person to carry any weapon in any county of this state

notwithstanding any change in that person's county of residence or state of domicile.

(2)(A) As used in this paragraph, the term "service member" means an active duty member of the regular or reserve component of the United States Army, United States Navy, United States Marine Corps, United States Coast Guard, United States Air Force, United States Space Force, United States National Guard, Georgia Army National Guard, or Georgia Air National Guard.

(B) Applicants shall submit the application for a weapons carry license or renewal license to the judge of the probate court on forms prescribed and furnished free of charge to persons wishing to apply for the license or renewal license.

(C)(i) An application shall be considered to be for a renewal license if the applicant has a weapons carry license or renewal license with 90 or fewer days remaining before the expiration of such weapons carry license or renewal license or 30 or fewer days since the expiration of such weapons carry license or renewal license regardless of the county of issuance of the applicant's expired or expiring weapons carry license or renewal license.

(ii) An application of any service member whose weapons carry license or renewal license expired while such service member was serving on active duty outside this state shall be considered to be for a renewal license if such service member applies within six months from the date of his or her discharge from active duty or reassignment to a location within this state as provided for in a copy of such service member's official military orders or a written verification signed by such service member's commanding officer as provided by the service member.

(iii) An applicant who is not a United States citizen shall provide sufficient personal identifying data, including without limitation his or her place of birth and United States issued alien or admission number, as the Georgia Bureau of Investigation may prescribe by rule or regulation. An applicant who is in nonimmigrant status shall provide proof of his or her qualifications for an exception to the federal firearm prohibition pursuant to 18 U.S.C. Section 922(y). Forms shall be designed to elicit information from the applicant pertinent to his or her eligibility under this Code section, including citizenship, but shall not require data which is nonpertinent or irrelevant, such as serial numbers or other identification capable of being used as a de facto registration of firearms owned by the applicant. The Department of Public Safety shall furnish application forms and license forms required by this Code section. The forms shall be

furnished to each judge of each probate court within this state at no cost.

(a.1) Gun safety information.

(1) Upon receipt of an application for a weapons carry license or renewal license, the judge of the probate court may provide applicants printed information on gun safety that is produced by any person or organization that, in the discretion of the judge of the probate court, offers practical advice for gun safety. The source of such printed information shall be prominently displayed on such printed information.

(2) The Department of Natural Resources shall maintain on its principal, public website information, or a hyperlink to information, which provides resources for information on hunter education and classes and courses in this state that render instruction in gun safety. No person shall be required to take such classes or courses for purposes of this Code section where such information shall be provided solely for the convenience of the citizens of this state.

(3) Neither the judge of the probate court nor the Department of Natural Resources shall be liable to any person for personal injuries or damage to property arising from conformance to this subsection.

(b) Licensing exceptions.

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

(A) “Armed forces” means active duty or a reserve component of the United States Army, United States Navy, United States Marine Corps, United States Coast Guard, United States Air Force, United States National Guard, Georgia Army National Guard, or Georgia Air National Guard.

(B) “Controlled substance” means any drug, substance, or immediate precursor included in the definition of controlled substances in paragraph (4) of Code Section 16-13-21.

(C) “Convicted” means an adjudication of guilt. Such term shall not include an order of discharge and exoneration pursuant to Article 3 of Chapter 8 of Title 42.

(D) “Dangerous drug” means any drug defined as such in Code Section 16-13-71.

(2) No weapons carry license shall be issued to:

(A) Any person younger than 21 years of age unless he or she:

(i) Is at least 18 years of age;

(ii) Provides proof that he or she has completed basic training in the armed forces of the United States; and

(iii) Provides proof that he or she is actively serving in the armed forces of the United States or has been honorably discharged from such service;

(B) Any person who has been convicted of a felony by a court of this state or any other state; by a court of the United States, including its territories, possessions, and dominions; or by a court of any foreign nation and has not been pardoned for such felony by the President of the United States, the State Board of Pardons and Paroles, or the person or agency empowered to grant pardons under the constitution or laws of such state or nation;

(C) Any person against whom proceedings are pending for any felony;

(D) Any person who is a fugitive from justice;

(E) Any person who is prohibited from possessing or shipping a firearm in interstate commerce pursuant to subsections (g) and (n) of 18 U.S.C. Section 922;

(F) Any person who has been convicted of an offense arising out of the unlawful manufacture or distribution of a controlled substance or other dangerous drug;

(G) Any person who has had his or her weapons carry license revoked pursuant to subsection (e) of this Code section within three years of the date of his or her application;

(H) Any person who has been convicted of carrying a weapon or long gun in an unauthorized location in violation of Code Section 16-11-127 and has not been free of all restraint or supervision in connection therewith and free of any other conviction for at least five years immediately preceding the date of the application;

(I) Any person who has been convicted of any misdemeanor involving the use or possession of a controlled substance and has not been free of all restraint or supervision in connection therewith or free of:

(i) A second conviction of any misdemeanor involving the use or possession of a controlled substance; or

(ii) Any conviction under subparagraphs (E) through (G) of this paragraph

for at least five years immediately preceding the date of the application;

(J) Except as provided for in subsection (b.1) of this Code section, any person who has been hospitalized as an inpatient in any mental hospital or alcohol or drug treatment center within the five

years immediately preceding the application. The judge of the probate court may require any applicant to sign a waiver authorizing any mental hospital or treatment center to inform the judge whether or not the applicant has been an inpatient in any such facility in the last five years and authorizing the superintendent of such facility to make to the judge a recommendation regarding whether the applicant is a threat to the safety of others and whether a license to carry a weapon should be issued. When such a waiver is required by the judge, the applicant shall pay a fee of \$3.00 for reimbursement of the cost of making such a report by the mental health hospital, alcohol or drug treatment center, or the Department of Behavioral Health and Developmental Disabilities, which the judge shall remit to the hospital, center, or department. The judge shall keep any such hospitalization or treatment information confidential. It shall be at the discretion of the judge, considering the circumstances surrounding the hospitalization and the recommendation of the superintendent of the hospital or treatment center where the individual was a patient, to issue the weapons carry license or renewal license;

(K) Except as provided for in subsection (b.1) of this Code section, any person who has been adjudicated mentally incompetent to stand trial; or

(L) Except as provided for in subsection (b.1) of this Code section, any person who has been adjudicated not guilty by reason of insanity at the time of the crime pursuant to Part 2 of Article 6 of Chapter 7 of Title 17.

(b.1) Petitions for relief from certain licensing exceptions.

(1) Persons provided for under subparagraphs (b)(2)(J), (b)(2)(K), and (b)(2)(L) of this Code section may petition the court in which such adjudication, hospitalization, or treatment proceedings, if any, under Chapter 3 or 7 of Title 37 occurred for relief. A copy of such petition for relief shall be served as notice upon the opposing civil party or the prosecuting attorney for the state, as the case may be, or their successors, who appeared in the underlying case. Within 30 days of the receipt of such petition, such court shall hold a hearing on such petition for relief. Such prosecuting attorney for the state may represent the interests of the state at such hearing.

(2) At the hearing provided for under paragraph (1) of this subsection, the court shall receive and consider evidence in a closed proceeding concerning:

(A) The circumstances which caused the person to be subject to subparagraph (b)(2)(J), (b)(2)(K), or (b)(2)(L) of this Code section;

(B) The person's mental health and criminal history records, if

any. The judge of such court may require any such person to sign a waiver authorizing the superintendent of any mental hospital or treatment center to make to the judge a recommendation regarding whether such person is a threat to the safety of others. When such a waiver is required by the judge, the applicant shall pay a fee of \$3.00 for reimbursement of the cost of making such a report by the mental health hospital, alcohol or drug treatment center, or the Department of Behavioral Health and Developmental Disabilities, which the judge shall remit to the hospital, center, or department;

(C) The person's reputation which shall be established through character witness statements, testimony, or other character evidence; and

(D) Changes in the person's condition or circumstances since such adjudication, hospitalization, or treatment proceedings under Chapter 3 or 7 of Title 37.

The judge shall issue an order of his or her decision no later than 30 days after the hearing.

(3) The court shall grant the petition for relief if such court finds by a preponderance of the evidence that the person will not likely act in a manner dangerous to public safety in carrying a weapon and that granting the relief will not be contrary to the public interest. A record shall be kept of the hearing; provided, however, that such records shall remain confidential and be disclosed only to a court or to the parties in the event of an appeal. Any appeal of the court's ruling on the petition for relief shall be de novo review.

(4) If the court grants such person's petition for relief, the applicable subparagraph (b)(2)(J), (b)(2)(K), or (b)(2)(L) of this Code section shall not apply to such person in his or her application for a weapons carry license or renewal; provided, however, that such person shall comply with all other requirements for the issuance of a weapons carry license or renewal license. The clerk of such court shall report such order to the Georgia Crime Information Center immediately, but in no case later than ten business days after the date of such order.

(5) A person may petition for relief under this subsection not more than once every two years. In the case of a person who has been hospitalized as an inpatient, such person shall not petition for relief prior to being discharged from such treatment.

(c) **Fingerprinting.** Following completion of the application for a weapons carry license, the judge of the probate court shall require the applicant to proceed to an appropriate law enforcement agency in the county or to any vendor approved by the Georgia Bureau of Investiga-

tion for fingerprint submission services with the completed application so that such agency or vendor can capture the fingerprints of the applicant. The law enforcement agency shall be entitled to a fee of \$5.00 from the applicant for its services in connection with fingerprinting and processing of an application. Fingerprinting shall not be required for applicants seeking temporary renewal licenses or renewal licenses.

(d) Investigation of applicant; issuance of weapons carry license; renewal.

(1)(A) For weapons carry license applications, the judge of the probate court shall within five business days following the receipt of the application or request direct the law enforcement agency to request a fingerprint based criminal history records check from the Georgia Crime Information Center and Federal Bureau of Investigation for purposes of determining the suitability of the applicant and return an appropriate report to the judge of the probate court. Fingerprints shall be in such form and of such quality as prescribed by the Georgia Crime Information Center and under standards adopted by the Federal Bureau of Investigation. The Georgia Bureau of Investigation may charge such fee as is necessary to cover the cost of the records search.

(B) For requests for license renewals, the presentation of a weapons carry license issued by any probate judge in this state shall be evidence to the judge of the probate court to whom a request for license renewal is made that the fingerprints of the weapons carry license holder are on file with the judge of the probate court who issued the weapons carry license, and the judge of the probate court to whom a request for license renewal is made shall, within five business days following the receipt of the request, direct the law enforcement agency to request a nonfingerprint based criminal history records check from the Georgia Crime Information Center and Federal Bureau of Investigation for purposes of determining the suitability of the applicant and return an appropriate report to the judge of the probate court to whom a request for license renewal is made.

(2) For both weapons carry license applications and requests for license renewals, the judge of the probate court shall within five business days following the receipt of the application or request also direct the law enforcement agency, in the same manner as provided for in subparagraph (B) of paragraph (1) of this subsection, to conduct a background check using the Federal Bureau of Investigation's National Instant Criminal Background Check System and return an appropriate report to the probate judge.

(3) When a person who is not a United States citizen applies for a weapons carry license or renewal of a license under this Code section,

the judge of the probate court shall direct the law enforcement agency to conduct a search of the records maintained by United States Immigration and Customs Enforcement and return an appropriate report to the probate judge. As a condition to the issuance of a license or the renewal of a license, an applicant who is in nonimmigrant status shall provide proof of his or her qualifications for an exception to the federal firearm prohibition pursuant to 18 U.S.C. Section 922(y).

(4) The law enforcement agency shall report to the judge of the probate court within 20 days, by telephone and in writing, of any findings relating to the applicant which may bear on his or her eligibility for a weapons carry license or renewal license under the terms of this Code section. When no derogatory information is found on the applicant bearing on his or her eligibility to obtain a license or renewal license, a report shall not be required. The law enforcement agency shall return the application directly to the judge of the probate court within such time period. Not later than ten days after the judge of the probate court receives the report from the law enforcement agency concerning the suitability of the applicant for a license, the judge of the probate court shall issue such applicant a license or renewal license to carry any weapon unless facts establishing ineligibility have been reported or unless the judge determines such applicant has not met all the qualifications, is not of good moral character, or has failed to comply with any of the requirements contained in this Code section. The judge of the probate court shall date stamp the report from the law enforcement agency to show the date on which the report was received by the judge of the probate court. The judge of the probate court shall not suspend the processing of the application or extend, delay, or avoid any time requirements provided for under this paragraph.

(e) Revocation, loss, or damage to license.

(1) If, at any time during the period for which the weapons carry license was issued, the judge of the probate court of the county in which the license was issued shall learn or have brought to his or her attention in any manner any reasonable ground to believe the licensee is not eligible to retain the license, the judge may, after notice and hearing, revoke the license of the person upon a finding that such person is not eligible for a weapons carry license pursuant to subsection (b) of this Code section or an adjudication of falsification of application, mental incompetency, or chronic alcohol or narcotic usage. The judge of the probate court shall report such revocation to the Georgia Crime Information Center immediately but in no case later than ten days after such revocation. It shall be unlawful for any person to possess a license which has been revoked pursuant to this

paragraph, and any person found in possession of any such revoked license, except in the performance of his or her official duties, shall be guilty of a misdemeanor.

(2) If a person is convicted of any crime or otherwise adjudicated in a matter which would make the maintenance of a weapons carry license by such person unlawful pursuant to subsection (b) of this Code section, the judge of the superior court or state court hearing such case or presiding over such matter shall inquire whether such person is the holder of a weapons carry license. If such person is the holder of a weapons carry license, then the judge of the superior court or state court shall inquire of such person the county of the probate court which issued such weapons carry license, or if such person has ever had his or her weapons carry license renewed, then of the county of the probate court which most recently issued such person a renewal license. The judge of the superior court or state court shall notify the judge of the probate court of such county of the matter which makes the maintenance of a weapons carry license by such person to be unlawful pursuant to subsection (b) of this Code section. The Council of Superior Court Judges of Georgia and The Council of State Court Judges of Georgia shall provide by rule for the procedures which judges of the superior court and the judges of the state courts, respectively, are to follow for the purposes of this paragraph.

(3) Loss of any license issued in accordance with this Code section or damage to the license in any manner which shall render it illegible shall be reported to the judge of the probate court of the county in which it was issued within 48 hours of the time the loss or damage becomes known to the license holder. The judge of the probate court shall thereupon issue a replacement for and shall take custody of and destroy a damaged license; and in any case in which a license has been lost, he or she shall issue a cancellation order. The judge shall charge the fee specified in subsection (k) of Code Section 15-9-60 for such services.

(4) Any person, upon petition to the judge of the probate court, who has a weapons carry license or renewal license with more than 90 days remaining before the expiration of such weapons carry license or renewal license and who has had a legal name change, including, but not limited to, on account of marriage or divorce, or an address change shall be issued a replacement weapons carry license for the same time period of the weapons carry license or renewal license being replaced. Upon issuance and receipt of such replacement weapons carry license, the license holder shall surrender the weapons carry license being replaced to the judge of the probate court and such judge shall take custody of and destroy the weapons carry license being replaced. The judge of the probate court shall provide

for the updating of any records as necessary to account for the license holder's change of name or address. The judge of the probate court shall charge the fee specified in paragraph (13) of subsection (k) of Code Section 15-9-60 for services provided under this paragraph.

(f) Weapons carry license specifications.

(1) Weapons carry licenses issued prior to January 1, 2012, shall be in the format specified by the former provisions of this paragraph as they existed on June 30, 2013.

(2) On and after January 1, 2012, newly issued or renewal weapons carry licenses shall incorporate overt and covert security features which shall be blended with the personal data printed on the license to form a significant barrier to imitation, replication, and duplication. There shall be a minimum of three different ultraviolet colors used to enhance the security of the license incorporating variable data, color shifting characteristics, and front edge only perimeter visibility. The weapons carry license shall have a color photograph viewable under ambient light on both the front and back of the license. The license shall incorporate custom optical variable devices featuring the great seal of the State of Georgia as well as matching demetalized optical variable devices viewable under ambient light from the front and back of the license incorporating microtext and unique alphanumeric serialization specific to the license holder. The license shall be of similar material, size, and thickness of a credit card and have a holographic laminate to secure and protect the license for the duration of the license period.

(3) Using the physical characteristics of the license set forth in paragraph (2) of this subsection, The Council of Probate Court Judges of Georgia shall create specifications for the probate courts so that all weapons carry licenses in this state shall be uniform and so that probate courts can petition the Department of Administrative Services to purchase the equipment and supplies necessary for producing such licenses. The department shall follow the competitive bidding procedure set forth in Code Section 50-5-102.

(g) Alteration or counterfeiting of license; penalty. A person who deliberately alters or counterfeits a weapons carry license or who possesses an altered or counterfeit weapons carry license with the intent to misrepresent any information contained in such license shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for a period of not less than one nor more than five years.

(h) Licenses for former law enforcement officers.

(1) Except as otherwise provided in Code Section 16-11-130, any person who has served as a law enforcement officer for at least:

(A) Ten of the 12 years immediately preceding the retirement of such person as a law enforcement officer; or

(B) Ten years and left such employment as a result of a disability arising in the line of duty; and

retired or left such employment in good standing with a state or federal certifying agency and receives benefits under the Peace Officers' Annuity and Benefit Fund provided for under Chapter 17 of Title 47 or from a county, municipal, State of Georgia, state authority, federal, private sector, individual, or educational institution retirement system or program shall be entitled to be issued a weapons carry license as provided for in this Code section without the payment of any of the fees provided for in this Code section.

(2) Such person as provided for in paragraph (1) of this subsection shall comply with all the other provisions of this Code section relative to the issuance of such licenses, including, but not limited to the requirements under paragraph (2) of subsection (b) of this Code section. Any person seeking to be issued a license pursuant to this subsection shall state his or her qualifications for eligibility under this subsection on his or her application under oath as provided for in subsection (a) of this Code section.

(3) As used in this subsection, the term "law enforcement officer" means any peace officer who is employed by the United States government or by the State of Georgia or any political subdivision thereof and who is required by the terms of his or her employment, whether by election or appointment, to give his or her full time to the preservation of public order or the protection of life and property or the prevention of crime. Such term shall include game wardens.

(i) Temporary renewal licenses.

(1) Any person who holds a weapons carry license under this Code section may, at the time he or she applies for a renewal of the license, also apply for a temporary renewal license if less than 90 days remain before expiration of the license he or she then holds or if the previous license has expired within the last 30 days.

(2) Unless the judge of the probate court knows or is made aware of any fact which would make the applicant ineligible for a five-year renewal license, the judge shall at the time of application issue a temporary renewal license to the applicant.

(3) Such a temporary renewal license shall be in the form of a paper receipt indicating the date on which the court received the renewal application and shall show the name, address, sex, age, and race of the applicant and that the temporary renewal license expires 90 days from the date of issue.

(4) During its period of validity the temporary renewal license, if carried on or about the holder's person together with the holder's previous license, shall be valid in the same manner and for the same purposes as a five-year license.

(5) A \$1.00 fee shall be charged by the probate court for issuance of a temporary renewal license.

(6) A temporary renewal license may be revoked in the same manner as a five-year license.

(j) **Applicant may seek relief.** When an eligible applicant fails to receive a license, temporary renewal license, or renewal license within the time period required by this Code section and the application or request has been properly filed, the applicant may bring an action in mandamus or other legal proceeding in order to obtain a license, temporary renewal license, or renewal license. When an applicant is otherwise denied a license, temporary renewal license, or renewal license and contends that he or she is qualified to be issued a license, temporary renewal license, or renewal license, the applicant may bring an action in mandamus or other legal proceeding in order to obtain such license. Additionally, the applicant may request a hearing before the judge of the probate court relative to the applicant's fitness to be issued such license. Upon the issuance of a denial, the judge of the probate court shall inform the applicant of his or her rights pursuant to this subsection. If such applicant is the prevailing party, he or she shall be entitled to recover his or her costs in such action, including reasonable attorney's fees.

(k) **Data base prohibition.**

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

(A) "Government entity" means an office, agency, authority, department, commission, board, body, division, instrumentality, or institution of the state or of any county, municipal corporation, or consolidated government within this state.

(B) "Multijurisdictional data base" means a data base of information shared between or among more than one government entity or between or among a government entity and any office, agency, authority, department, commission, board, body, division, instrumentality, or institution of the United States or of any other state.

(2) No person or government entity shall knowingly and willfully:

(A) Create or maintain a multijurisdictional data base regarding persons issued or who have applied for weapons carry licenses; or

(B) Keep, or cause to be kept, any list, record, or registry of privately owned firearms or owners of such firearms; provided,

however, that nothing in this subparagraph shall prohibit a person from keeping, or causing to be kept, any list, record, or registry of firearms owned by such person.

(1) **Verification of license.** The judge of a probate court or his or her designee shall be authorized to verify the legitimacy and validity of a weapons carry license of a license holder pursuant to a subpoena or court order, for public safety purposes to law enforcement agencies pursuant to paragraph (40) of subsection (a) of Code Section 50-18-72, and for licensing to a judge of a probate court or his or her designee pursuant to paragraph (40) of subsection (a) of Code Section 50-18-72; provided, however, that the judge of a probate court or his or her designee shall not be authorized to provide any further information regarding license holders.

History.

Ga. L. 1910, p. 134, §§ 2, 3; Code 1933, §§ 26-5104, 26-5105; Ga. L. 1960, p. 938, § 1; Code 1933, § 26-2904, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1976, p. 1430, § 4; Ga. L. 1978, p. 1607, §§ 1, 2; Ga. L. 1981, p. 946, § 1; Ga. L. 1981, p. 1325, § 1; Ga. L. 1983, p. 1431, § 1; Ga. L. 1984, p. 935, § 1; Ga. L. 1984, p. 1388, § 1; Ga. L. 1986, p. 305, § 1; Ga. L. 1986, p. 481, §§ 1, 2; Ga. L. 1990, p. 138, § 1; Ga. L. 1990, p. 2012, § 1; Ga. L. 1992, p. 6, § 16; Ga. L. 1994, p. 351, § 1; Ga. L. 1996, p. 108, §§ 3-5; Ga. L. 1997, p. 514, § 2; Ga. L. 2002, p. 1011, § 2; Ga. L. 2006, p. 264, § 1/HB 1032; Ga. L. 2008, p. 1199, § 6/HB 89; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2010, p. 963, § 1-7/SB 308; Ga. L. 2011, p. 752, § 16/HB 142; Ga. L. 2014, p. 599, § 1-7/HB 60; Ga. L. 2015, p. 805, § 6/HB 492; Ga. L. 2016, p. 864, § 16/HB 737; Ga. L. 2017, p. 509, § 1/SB 15; Ga. L. 2017, p. 555, § 6/HB 292; Ga. L. 2018, p. 1112, § 16/SB 365; Ga. L. 2019, p. 275, § 1/HB 33; Ga. L. 2019, p. 808, § 7/SB 72; Ga. L. 2022, p. 74, § 8/SB 319; Ga. L. 2024, p. 81, § 4/HB 299, effective July 1, 2024; Ga. L. 2024, p. 139, § 2/HB 1018, effective July 1, 2024.

Amendments.

The first 2019 amendment, effective July 1, 2019, rewrote subsection (a).

The second 2019 amendment, effective July 1, 2019, substituted “game wardens” for “conservation rangers” at the end of the second sentence in paragraph (h)(3).

The 2022 amendment, effective April 12, 2022, deleted former subparagraph

(a)(2)(B), which read: “Any service member whose weapons carry license or renewal license expired while such service member was serving on active duty outside this state shall be authorized to carry any weapon in accordance with such expired license for a period of six months from the date of his or her discharge from active duty or reassignment to a location within this state. When carrying a weapon pursuant to Code Section 16-11-137, the service member shall also have in his or her immediate possession a copy of the official military orders or a written verification signed by such service member’s commanding officer which shall evidence that such service member is authorized to carry any weapon in accordance with such expired license for a period of six months from the date of his or her discharge from active duty or reassignment to a location within this state.”; redesignated former subparagraphs (a)(3)(A) and (a)(3)(B) as present subparagraphs (a)(2)(B) and (a)(2)(C), respectively; and rewrote subparagraph (b)(2)(H), which read: “Any person who has been convicted of any of the following:

“(i) Carrying a weapon without a weapons carry license in violation of Code Section 16-11-126; or

“(ii) Carrying a weapon or long gun in an unauthorized location in violation of Code Section 16-11-127

“and has not been free of all restraint or supervision in connection therewith and free of any other conviction for at least five years immediately preceding the date of the application;”.

The first 2024 amendment, effective July 1, 2024, inserted “United States Space Force,” near the end of subparagraph (a)(2)(A).

The second 2024 amendment, effective July 1, 2024, substituted the present provisions of subsection (k) for the former provisions, which read: “Data base prohibition. A person or entity shall not create or maintain a multijurisdictional data base of information regarding persons issued weapons carry licenses.”

Editor’s notes.

For application of this statute in 2020 and 2021, see Executive Orders 05.08.20.01, 07.31.20.02, 09.15.20.01, 09.30.20.02, 10.30.20.02, 11.13.20.01, 11.30.20.02, 12.08.20.01, 12.30.20.02, 01.15.21.01, 01.29.21.02, 02.15.21.01, 02.26.21.02, 03.12.21.01, 03.31.21.03, 04.30.21.01, 05.28.21.02, 06.30.21.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02.

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, “SB 319: Chairman John Meadows Act,” see 39 Georgia St. U.L. Rev. 1 (2022).

JUDICIAL DECISIONS

Sovereign immunity waived. — Georgia General Assembly waived sovereign immunity for claims brought under O.C.G.A. § 16-11-129(j) and the Separation of Powers Provision of Ga. Const. 1983, Art. I, Sec. II, Para. III was not implicated by the recovery of costs, including reasonable attorney’s fees, against a probate judge pursuant to § 16-11-129(j) because processing a weapons carry license does not involve the exercise of judicial power. *Roberts v. Cuthpert*, 317 Ga. 645, 893 S.E.2d 73, 2023 Ga. LEXIS 207 (2023).

Not a judicial function. — Granting or denying a weapons carry license was held not a judicial function as the application for a weapons carry license does not involve the resolution of a dispute between parties or anything else inherent to the judicial role. *Roberts v. Cuthpert*, 317 Ga. 645, 893 S.E.2d 73, 2023 Ga. LEXIS 207 (2023).

Determining “appropriate report”. — Appellate court erred by concluding that the probate judge could make a dis-

cretionary choice to deny the application on the ground that the judge did not find the applicant’s criminal history report appropriate because O.C.G.A. § 16-11-129 gives no indication that a probate judge has discretion to determine what constitutes an “appropriate report.” An “appropriate report” is simply one that includes any potentially relevant information derived from the records check process. *Bell v. Hargrove*, 313 Ga. 30, 867 S.E.2d 101, 2021 Ga. LEXIS 733 (2021).

County not attempting to regulate firearms. — Judge did not violate the prohibition against county officials regulating firearms as the judge did not attempt to regulate the possession, transport, or carrying of firearms in any manner; rather, the only rule or regulation at issue was the judge’s determination as to whether the plaintiff was entitled to a Georgia weapons carry license under O.C.G.A. § 16-11-129, which was a statute passed by the General Assembly. *Hise v. Bordeaux*, 364 Ga. App. 138, 874

S.E.2d 175, 2022 Ga. App. LEXIS 275 (2022).

Judge did not violate the prohibition against county officials regulating firearms as the judge did not attempt to regulate the possession, transport, or carrying of firearms in any manner; rather, the only rule or regulation at issue was the judge's determination as to whether the plaintiff was entitled to a Georgia weapons carry license under O.C.G.A. § 16-11-129, which was a statute passed by the General Assembly. *Hise v. Bordeaux*, 364 Ga. App. 138, 874 S.E.2d 175, 2022 Ga. App. LEXIS 275 (2022).

Mandamus for weapons carry license. — Superior court did not err by granting appellee a writ of mandamus and directing appellant judge to issue appellee a Georgia weapons carry license because appellee properly brought the mandamus action following the denial of the application and the appellee was not required to request a hearing with a probate judge before pursuing the extraordinary remedy of mandamus as the plain language of O.C.G.A. § 16-11-129 authorized an applicant to file a mandamus action as a first response. *Bordeaux v. Hise*, 355 Ga. App. 688, 845 S.E.2d 408, 2020 Ga. App. LEXIS 369 (2020), cert. denied, No. S20C1460, 2020 Ga. LEXIS 641 (Ga. Aug. 10, 2020).

Unknown outcome from arrest cannot disqualify. — Probate judge had no authority to deny an application for a weapons carry license under O.C.G.A. § 16-11-129 based on a determination that the applicant's criminal history records report failed to show the outcome of an arrest that could have resulted in a disqualifying conviction. *Bell v. Hargrove*, 313 Ga. 30, 867 S.E.2d 101, 2021 Ga. LEXIS 733 (2021).

Probate judge erred by denying the application for a weapons carry license because the applicant stated the applicant had never been convicted of a misdemeanor crime of domestic violence, no evidence indicated that the applicant's statement was false, and facts establishing ineligibility were not reported in the applicant's criminal history report. *Bell v. Hargrove*, 313 Ga. 30, 867 S.E.2d 101, 2021 Ga. LEXIS 733 (2021).

Sovereign immunity barred suit brought by organization. — Trial court did not err in finding that sovereign immunity barred the appellants' request for declaratory relief against a judge in the judge's official capacity because the trial court made no finding about whether the appellants' request for a writ of mandamus would be barred by sovereign immunity as the court dismissed the mandamus claims as moot and the entire action asserted by the open carry organization since the entity lacked standing to bring that action. *GeorgiaCarry.Org, Inc. v. Bordeaux*, 352 Ga. App. 399, 834 S.E.2d 896, 2019 Ga. App. LEXIS 581 (2019).

Suit against judge in individual capacity for failing to timely process license. — Trial court erred in holding that there was no claim against a judge in the judge's individual capacity because the appellants alleged that by failing to process weapons carry licenses within the time allowed by law, the judge violated O.C.G.A. § 16-11-129(d)(4) and the Georgia Supreme Court ruled that when state officers or agents are sued personally, the suit was generally maintainable for acts done in violation of a statute. *GeorgiaCarry.Org, Inc. v. Bordeaux*, 352 Ga. App. 399, 834 S.E.2d 896, 2019 Ga. App. LEXIS 581 (2019).

Action against probate judge following denial of license. — After the plaintiff filed an action for damages against the probate judge who denied the plaintiff a Georgia weapons carry license (GWCL), the plaintiff's claim that the judge violated the plaintiff's fundamental right to bear arms was properly dismissed as the U.S. Supreme Court had held that the right was not absolute and lawful regulatory measures were permissible, and the Georgia Supreme Court permitted the State to regulate the right to carry weapons to some extent. Further, the plaintiff's claims were barred by the doctrine of judicial immunity as determining whether to issue a GWCL was unquestionably a normal function of a probate judge. *Hise v. Bordeaux*, 364 Ga. App. 138, 874 S.E.2d 175, 2022 Ga. App. LEXIS 275 (2022).

Action against judge properly dismissed as advisory opinion. — In a suit against a probate court judge, the

trial court's grant of the motion to dismiss the plaintiffs' request for declaratory judgment on the ground that a ruling would be advisory was affirmed because the plaintiffs faced no imminent or actual threat of an injury and, in a few years, the plaintiffs would again apply for the carry permits

and whether the probate court judge would issue the permits again were hypothetical questions based on a possible future event. *Georgiacarry.org v. Bordeaux*, 360 Ga. App. 807, 861 S.E.2d 649, 2021 Ga. App. LEXIS 394 (2021).

16-11-130. Exemptions from Code Sections 16-11-126 through 16-11-127.2.

(a) Except to the extent provided for in subsection (c.1) of this Code section, Code Sections 16-11-126 through 16-11-127.2 shall not apply to or affect any of the following persons if such persons are employed in the offices listed below or when authorized by federal or state law, regulations, or order:

(1) Peace officers, as such term is defined in paragraph (11) of Code Section 16-1-3, and retired peace officers so long as they remain certified whether employed by the state or a political subdivision of the state or another state or a political subdivision of another state but only if such other state provides a similar privilege for the peace officers of this state;

(2) Wardens, superintendents, and keepers of correctional institutions, jails, or other institutions for the detention of persons accused or convicted of an offense;

(3) Persons in the military service of the state or of the United States;

(4) Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the weapon or long gun is necessary for manufacture, transport, installation, and testing under the requirements of such contract;

(5) District attorneys, investigators employed by and assigned to a district attorney's office, assistant district attorneys, attorneys or investigators employed by the Prosecuting Attorneys' Council of the State of Georgia, and any retired district attorney, assistant district attorney, district attorney's investigator, or attorney or investigator retired from the Prosecuting Attorneys' Council of the State of Georgia, if such employee is retired in good standing and is receiving benefits under Title 47 or is retired in good standing and receiving benefits from a county or municipal retirement system;

(6) State court solicitors-general; investigators employed by and assigned to a state court solicitor-general's office; assistant state court solicitors-general; the corresponding personnel of any city court expressly continued in existence as a city court pursuant to Article

VI, Section X, Paragraph I, subparagraph (5) of the Constitution; and the corresponding personnel of any civil court expressly continued as a civil court pursuant to said provision of the Constitution;

(7) Those employees of the State Board of Pardons and Paroles when specifically designated and authorized in writing by the members of the State Board of Pardons and Paroles to carry a weapon or long gun;

(8) The Attorney General and those members of his or her staff whom he or she specifically authorizes in writing to carry a weapon or long gun;

(9) Community supervision officers employed by and under the authority of the Department of Community Supervision when specifically designated and authorized in writing by the commissioner of community supervision;

(10) Public safety directors of municipal corporations;

(11) Explosive ordnance disposal technicians, as such term is defined by Code Section 16-7-80, and persons certified as provided in Code Section 35-8-25 to handle animals trained to detect explosives, while in the performance of their duties;

(12) Federal judges, Justices of the Supreme Court, Judges of the Court of Appeals, judges of superior, state, probate, juvenile, and magistrate courts, full-time judges of municipal and city courts, permanent part-time judges of municipal and city courts, and administrative law judges;

(12.1) Former federal judges, Justices of the Supreme Court, Judges of the Court of Appeals, judges of superior, state, probate, juvenile, and magistrate courts, full-time judges of municipal and city courts, permanent part-time judges of municipal courts, and administrative law judges who are retired from their respective offices, provided that such judge or Justice would otherwise be qualified to be issued a weapons carry license;

(12.2) Former federal judges, Justices of the Supreme Court, Judges of the Court of Appeals, judges of superior, state, probate, juvenile, and magistrate courts, full-time judges of municipal and city courts, permanent part-time judges of municipal courts, and administrative law judges who are no longer serving in their respective office, provided that he or she served as such judge or Justice for more than 24 months; and provided, further, that such judge or Justice would otherwise be qualified to be issued a weapons carry license;

(13) United States Attorneys and Assistant United States Attorneys;

(14) County medical examiners and coroners and their sworn officers employed by county government;

(15) Clerks of the superior courts; and

(16) Constables employed by a magistrate court of this state.

(b) Except to the extent provided for in subsection (c.1) of this Code section, Code Sections 16-11-126 through 16-11-127.2 shall not apply to or affect persons who at the time of their retirement from service with the Department of Community Supervision were community supervision officers, when specifically designated and authorized in writing by the commissioner of community supervision.

(c)(1) As used in this subsection, the term “courthouse” means a building or annex occupied by judicial courts and containing rooms in which judicial proceedings are held.

(2) Except to the extent provided for in subsection (c.1) of this Code section, Code Sections 16-11-126 through 16-11-127.2 shall not apply to or affect any:

(A) Sheriff, retired sheriff, deputy sheriff, or retired deputy sheriff if such retired sheriff or deputy sheriff is eligible to receive or is receiving benefits under the Peace Officers’ Annuity and Benefit Fund provided under Chapter 17 of Title 47, the Sheriffs’ Retirement Fund of Georgia provided under Chapter 16 of Title 47, or any other public retirement system established under the laws of this state for service as a law enforcement officer;

(B) Member of the Georgia State Patrol, agent of the Georgia Bureau of Investigation, retired member of the Georgia State Patrol, or retired agent of the Georgia Bureau of Investigation if such retired member or agent is receiving benefits under the Employees’ Retirement System;

(C) Full-time law enforcement chief executive engaging in the management of a county, municipal, state, state authority, or federal law enforcement agency in the State of Georgia, including any college or university law enforcement chief executive who is registered or certified by the Georgia Peace Officer Standards and Training Council; or retired law enforcement chief executive who formerly managed a county, municipal, state, state authority, or federal law enforcement agency in the State of Georgia, including any college or university law enforcement chief executive who was registered or certified at the time of his or her retirement by the Georgia Peace Officer Standards and Training Council, if such retired law enforcement chief executive is receiving benefits under the Peace Officers’ Annuity and Benefit Fund provided under Chapter 17 of Title 47 or is retired in good standing and receiving

benefits from a county, municipal, State of Georgia, state authority, or federal retirement system;

(D) Police officer of any county, municipal, state, state authority, or federal law enforcement agency in the State of Georgia, including any college or university police officer who is registered or certified by the Georgia Peace Officer Standards and Training Council, or retired police officer of any county, municipal, state, state authority, or federal law enforcement agency in the State of Georgia, including any college or university police officer who was registered or certified at the time of his or her retirement by the Georgia Peace Officer Standards and Training Council, if such retired police officer is receiving benefits under the Peace Officers' Annuity and Benefit Fund provided under Chapter 17 of Title 47 or is retired in good standing and receiving benefits from a county, municipal, State of Georgia, state authority, or federal retirement system; or

(E) Person who is a citizen of this state and:

(i) Has retired with at least ten years of aggregate service as a law enforcement officer with powers of arrest under the laws of any state of the United States or of the United States;

(ii) Separated from service in good standing, as determined by criteria established by the Georgia Peace Officer Standards and Training Council, from employment with his or her most recent law enforcement agency; and

(iii) Possesses on his or her person an identification card for retired law enforcement officers as issued by the Georgia Peace Officer Standards and Training Council; provided, however, that such person meets the standards for the issuance of such card as provided for by the council, including, but not limited to, maintenance of qualification in firearms training.

In addition, any such sheriff, retired sheriff, deputy sheriff, retired deputy sheriff, member or retired member of the Georgia State Patrol, agent or retired agent of the Georgia Bureau of Investigation, officer or retired officer of the Department of Natural Resources, active or retired law enforcement chief executive, person who is a retired law enforcement officer as provided for in paragraph (2) of this subsection, or other law enforcement officer referred to in this subsection shall be authorized to carry a handgun on or off duty anywhere within this state, including, but not limited to, in a courthouse except to the extent provided for in subsection (c.1) of this Code section, and Code Sections 16-11-126 through 16-11-127.2 shall not apply to the carrying of such firearms.

(c.1)(1) As used in the subsection, the term:

(A) “Active” means nonretired.

(B) “Courthouse” means a building or annex occupied by judicial courts and containing rooms in which judicial proceedings are held.

(C) “Law enforcement agency” means sheriffs or any unit, organ, or department of this state, or a subdivision or municipality thereof, whose functions by law include the enforcement of criminal or traffic laws; the preservation of public order; the protection of life and property; the prevention, detection, or investigation of crime; or court security that is providing security for a courthouse.

(D) “Law enforcement personnel” means sheriffs or deputy sheriffs or peace officers employed by a law enforcement agency.

(2)(A) Pursuant to a security plan implemented by law enforcement personnel, including as provided for under a comprehensive plan as provided for in subsection (a) of Code Section 15-16-10, the law enforcement agency with jurisdiction over a courthouse may provide for facilities or the means for the holding of weapons carried by persons enumerated under this Code section, except as provided for in paragraph (3) of this subsection, provided that ingress to such courthouse is actively restricted or screened by law enforcement personnel and such facilities or means are located in the immediate proximity of the area which is restricted or screened by such law enforcement personnel.

(B) If the requirements of this paragraph are met, the persons enumerated under this Code section shall, except as provided for in paragraph (3) of this subsection, upon request of law enforcement personnel place his or her weapons in such holding with law enforcement personnel while such persons are within the restricted or screened area. Upon request of any person enumerated under this Code section, in preparation for his or her exit from the restricted or screened area, law enforcement personnel shall immediately provide for the return of the person’s weapons which are in holding.

(3) Notwithstanding a security plan implemented by law enforcement personnel, including as provided for under a comprehensive plan as provided for in subsection (a) of Code Section 15-16-10, active law enforcement officers referred to in subsection (c) of this Code section shall be authorized to carry their service handguns and weapons in any courthouse if they are wearing the assigned uniform of their law enforcement office or have the official badge and identification credentials issued to them by their law enforcement office displayed and plainly visible on their person while in the performance of their official duties.

(d) A prosecution based upon a violation of Code Section 16-11-126 or 16-11-127 need not negative any exemptions.

History.

Code 1933, § 26-2907, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1974, p. 481, § 1; Ga. L. 1979, p. 1019, § 1; Ga. L. 1982, p. 3, § 16; Ga. L. 1982, p. 789, § 2; Ga. L. 1984, p. 22, § 16; Ga. L. 1985, p. 283, § 1; Ga. L. 1986, p. 1205, § 2; Ga. L. 1988, p. 472, § 1; Ga. L. 1990, p. 558, § 1; Ga. L. 1991, p. 94, § 16; Ga. L. 1993, p. 604, § 1; Ga. L. 1994, p. 547, § 2; Ga. L. 1996, p. 416, § 6; Ga. L. 1996, p. 748, § 12; Ga. L. 1997, p. 514, § 3; Ga. L. 1998, p. 657, §§ 1-3; Ga. L. 2000, p. 843, §§ 1, 2; Ga. L. 2003, p. 140, § 16; Ga. L. 2006, p. 531, § 1/1B 1044; Ga. L. 2008, p. 577, § 16/SB 396; Ga. L. 2010, p. 963, § 2-7/SB 308; Ga. L. 2011, p. 508, § 1/1B 266; Ga. L. 2014, p. 599, § 1-8/HB 60; Ga. L. 2015, p. 422, § 5-28/HB 310; Ga. L. 2016, p. 263, § 1/SB 332; Ga. L. 2017, p. 24, § 1/SB 18; Ga. L. 2017, p. 555, § 7/HB 292; Ga. L. 2022, p. 74, § 9/SB 319.

Amendments.

The 2022 amendment, effective April 12, 2022, substituted “Code Section 35-8-25” for “Code Section 35-8-13” in paragraph (a)(11).

Editor’s notes.

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, “SB 319: Chairman John Meadows Act,” see 39 Georgia St. U.L. Rev. 1 (2022).

16-11-131. Possession of firearms by convicted felons and first offender probationers.

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

(1) “Felony” means any offense punishable by imprisonment for a term of one year or more and includes conviction by a court-martial under the Uniform Code of Military Justice for an offense which would constitute a felony under the laws of the United States.

(2) “Firearm” includes 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.

(b) Any person who is on probation as a felony first offender pursuant to Article 3 of Chapter 8 of Title 42, who is on probation and was sentenced for a felony under subsection (a) or (c) of Code Section 16-13-2, or who has been convicted of a felony by a court of this state or any other state; by a court of the United States including its territories, possessions, and dominions; or by a court of any foreign nation and who

receives, possesses, or transports a firearm commits a felony and, upon conviction thereof, shall be imprisoned for not less than one year nor more than ten years; provided, however, that upon a second or subsequent conviction, such person shall be imprisoned for not less than five nor more than ten years; provided, further, that if the felony for which the person is on probation or has been previously convicted is a forcible felony, then upon conviction of receiving, possessing, or transporting a firearm, such person shall be imprisoned for a period of five years.

(b.1) Any person who is prohibited by this Code section from possessing a firearm because of conviction of a forcible felony or because of being on probation as a first offender or under conditional discharge for a forcible felony and who attempts to purchase or obtain transfer of a firearm shall be guilty of a felony and upon conviction shall be punished by imprisonment for not less than one year nor more than five years; provided, however, that upon a second or subsequent conviction, such person shall be punished by imprisonment for not less than five nor more than ten years.

(c) This Code section shall not apply to any person who has been pardoned for the felony by the President of the United States, the State Board of Pardons and Paroles, or the person or agency empowered to grant pardons under the constitutions or laws of the several states or of a foreign nation and, by the terms of the pardon, has expressly been authorized to receive, possess, or transport a firearm.

(d) A person who has been convicted of a felony, but who has been granted relief from the disabilities imposed by the laws of the United States with respect to the acquisition, receipt, transfer, shipment, or possession of firearms by the secretary of the United States Department of the Treasury pursuant to 18 U.S.C. Section 925, shall, upon presenting to the Board of Public Safety proof that the relief has been granted and it being established from proof submitted by the applicant to the satisfaction of the Board of Public Safety that the circumstances regarding the conviction and the applicant's record and reputation are such that the acquisition, receipt, transfer, shipment, or possession of firearms by the person would not present a threat to the safety of the citizens of Georgia and that the granting of the relief sought would not be contrary to the public interest, be granted relief from the disabilities imposed by this Code section. A person who has been convicted under federal or state law of a felony pertaining to antitrust violations, unfair trade practices, or restraint of trade shall, upon presenting to the Board of Public Safety proof, and it being established from said proof, submitted by the applicant to the satisfaction of the Board of Public Safety that the circumstances regarding the conviction and the applicant's record and reputation are such that the acquisition, receipt,

transfer, shipment, or possession of firearms by the person would not present a threat to the safety of the citizens of Georgia and that the granting of the relief sought would not be contrary to the public interest, be granted relief from the disabilities imposed by this Code section. A record that the relief has been granted by the board shall be entered upon the criminal history of the person maintained by the Georgia Crime Information Center and the board shall maintain a list of the names of such persons which shall be open for public inspection.

(e) As used in this Code section, the term “forcible felony” means any felony which involves the use or threat of physical force or violence against any person and further includes, without limitation, murder; murder in the second degree; burglary in any degree; robbery; armed robbery; home invasion in any degree; kidnapping; hijacking of an aircraft or hijacking a motor vehicle in the first degree; aggravated stalking; rape; aggravated child molestation; aggravated sexual battery; arson in the first degree; the manufacturing, transporting, distribution, or possession of explosives with intent to kill, injure, or intimidate individuals or destroy a public building; terroristic threats; or acts of treason or insurrection.

(f) Any person sentenced as a first offender pursuant to Article 3 of Chapter 8 of Title 42 or sentenced pursuant to subsection (a) or (c) of Code Section 16-13-2 and subsequently discharged without court adjudication of guilt as a matter of law pursuant to Code Section 42-8-60 or 16-13-2, as applicable, shall, upon such discharge, be relieved from the disabilities imposed by this Code section.

(g) For any violation of subsection (b) or (b.1) of this Code section involving multiple firearms, each firearm connected to such violation shall constitute a separate offense.

History.

Code 1933, § 26-2914, enacted by Ga. L. 1980, p. 1509, § 1; Ga. L. 1982, p. 1171, § 2; Ga. L. 1983, p. 945, § 1; Ga. L. 1987, p. 476, §§ 1, 2; Ga. L. 1989, p. 14, § 16; Ga. L. 2000, p. 1630, § 5; Ga. L. 2012, p. 899, § 8-5/HB 1176; Ga. L. 2014, p. 426, § 4/HB 770; Ga. L. 2014, p. 444, § 2-5/HB 271; Ga. L. 2016, p. 443, § 6C-2/SB 367; Ga. L. 2017, p. 417, § 3-1/SB 104; Ga. L. 2018, p. 550, § 4-4/SB 407; Ga. L. 2022, p. 103, § 1/SB 479.

Amendments.

The 2022 amendment, effective July 1, 2022, substituted “a firearm” for “any

firearm” preceding “commits a felony” in the middle of subsection (b) and added subsection (g).

Law reviews.

For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018).

For annual survey on criminal law, see 70 Mercer L. Rev. 63 (2018).

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

For annual survey on criminal law, see 74 Mercer L. Rev. 93 (2022).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
DOUBLE JEOPARDY

General Consideration

Federal constitutional claim maintainable. — Declaratory judgment action was a proper method for the applicant to seek review of the constitutionality of O.C.G.A. § 16-11-131 as applied to the applicant, and the superior court erred when it failed to construe the applicant's complaint as properly seeking declaratory relief against the state based on Georgia law rather than on 42 U.S.C. § 1983. *Kuhlman v. State*, 317 Ga. 232, 892 S.E.2d 753, 2023 Ga. LEXIS 189 (2023).

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

Construction of subsection (b). —

Georgia Supreme Court held that the phrase any firearm, as used in O.C.G.A. § 16-11-131(b), indicated that the quantity of firearms was inconsequential and that the gravamen of the offense was the general receipt, possession, or transportation of firearms by convicted felons, rather than the specific quantity of firearms received, possessed, or transported and, therefore, the statute unambiguously permitted only one conviction for simultaneous possession of any number of firearms. *Edvalson v. State*, 310 Ga. 7, 849 S.E.2d 204, 2020 Ga. LEXIS 672 (2020).

Stipulation worded in present tense is adequate. — Evidence was sufficient to support the defendant's conviction

of possession of a firearm by a convicted felon, even though the stipulation was worded in the present tense, because the purpose of the stipulation was clear and no alternative hypothesis was presented to the jury to suggest that the defendant was not a convicted felon at the time of the home invasion. *Jenkins v. State*, 313 Ga. 81, 868 S.E.2d 205, 2022 Ga. LEXIS 13 (2022).

Defense of self may be asserted if unlawful possession of weapon. — Appellant's convictions for felony murder predicated on possession of a firearm by a convicted felon and possession of a firearm during the commission of a felony were reversed because trial counsel was constitutionally ineffective in failing to request a jury instruction on O.C.G.A. § 16-11-138, which provides an absolute defense to possession of a firearm by a convicted felon if the defendant was acting in self-defense. *Floyd v. State*, 318 Ga. 312, 898 S.E.2d 431, 2024 Ga. LEXIS 40 (2024).

Constructive possession is sufficient to prove a violation, etc.

Sufficient circumstantial evidence supported defendant constructively possessed the firearm based on defendant's suspicious conduct as a passenger in refusing to exit the vehicle and the search of the truck revealing a loaded revolver between the driver's seat and console. *McAnnally v. State*, 370 Ga. App. 340, 897 S.E.2d 497, 2024 Ga. App. LEXIS 19 (2024).

Possession of firearms by convicted felons.

In an applicant's challenge to the Georgia Board of Public Safety's denial of relief from the prohibition on the possession of firearms by convicted felons, the trial court erred finding sovereign immunity barred the applicant's statutory claim under O.C.G.A. § 16-11-131(d) as the claim specifically asserted that the Board's act of denying the application violated the laws of the State of Georgia, thus, the

General Consideration (Cont'd)

claim came within the constitutional waiver of sovereign immunity. *Kuhlman v. State*, 317 Ga. 232, 892 S.E.2d 753, 2023 Ga. LEXIS 189 (2023).

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

Declaratory relief denied on statutory claim. — Absent any argument that the applicant's health care fraud conviction fell within any of the specific categories in O.C.G.A. § 16-11-131(d) permitting an exemption from the prohibition of a convicted felon to possess firearms, the applicant could not receive the requested declaratory relief on that claim and the trial court's alternative ruling rejecting that claim on the merits was upheld. *Kuhlman v. State*, 317 Ga. 232, 892 S.E.2d 753, 2023 Ga. LEXIS 189 (2023).

Severance of firearm charge. — Trial counsel was not ineffective for failing to request a severance of the firearm charge because that charge served as the predicate offense for one of the felony murder counts. *Talley v. State*, 314 Ga. 153, 875 S.E.2d 789, 2022 Ga. LEXIS 188 (2022).

Proof of previous felony conviction, etc.

In the defendant's murder trial, trial counsel was not ineffective for failing to specially demur to the counts in the defendant's indictment charging possession of a firearm by a convicted felon and felony murder predicated on that crime because neither count specified the felony of which the defendant was previously convicted; although it was required that the state prove a felony, it was not required that the

felony be listed in the indictment. *Varner v. State*, 306 Ga. 726, 832 S.E.2d 792, 2019 Ga. LEXIS 593 (2019).

Consecutive sentences not an abuse of discretion. — To the extent that the appellant argued that the trial court erred in imposing consecutive sentences, the argument was without merit because the trial court had broad discretion to impose either a concurrent or consecutive sentence for possession of a firearm by a convicted felon, and the record did not show that the court made that decision under a misapprehension about the scope of the court's discretion. *Cade v. State*, 351 Ga. App. 637, 832 S.E.2d 453, 2019 Ga. App. LEXIS 462 (2019).

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

Ineffective assistance of counsel shown. — Defendant's conviction for possession of a firearm by a convicted felon was reversed because the defendant established ineffective assistance of counsel for counsel's failure to object to the witness's testimony that improperly bolstered the investigator's testimony and credibility. *Jones v. State*, 350 Ga. App. 618, 829 S.E.2d 820, 2019 Ga. App. LEXIS 347 (2019), overruled, *Hill v. State*, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Discretion to impose probation. — Court of Appeals erred in holding that trial courts lack the discretion to probate any portion of a sentence imposed for possession of a firearm by a convicted felon and thus in construing the phrase "shall be imprisoned" in O.C.G.A. § 16-11-131(b) to deprive the trial court of discretion to impose a probated sentence pursuant to O.C.G.A. § 17-10-1(a)(1)(A). *Langley v. State*, 313 Ga. 141, 868 S.E.2d 759, 2022 Ga. LEXIS 14 (2022).

Evidence sufficient to sustain conviction.

Evidence was sufficient to establish the defendant's constructive possession of a

gun because the defendant had access to the gun and had exercised control over the gun and there was evidence to corroborate the defendant's statement to police that the defendant had purchased a gun since the defendant knew where the gun was hidden and the defendant gave police permission to enter the room, indicating the intent to exert control over the room and contents. *Jones v. State*, 350 Ga. App. 618, 829 S.E.2d 820, 2019 Ga. App. LEXIS 347 (2019), overruled, *Hill v. State*, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to convict the defendant of malice murder and possession of a firearm by a convicted felon as a 2013 felony conviction for terroristic threats made the defendant's subsequent possession of a gun illegal; numerous witnesses identified the defendant as having shot the victim; while in the county jail, the defendant confessed to two other inmates that the defendant shot the victim, and the defendant told one inmate that the gun could be found with the rest of the defendant's possessions in the woods; and the two other surviving occupants of the car both testified that the defendant shot the victim, with the shooting happening at close range to the back of the victim's head, a narrative supported by physical evidence. *Turner v. State*, 315 Ga. 274, 882 S.E.2d 241, 2022 Ga. LEXIS 324 (2022).

Evidence insufficient to support conviction. — Since the defendant's first-offender probation expired prior to the date on which the defendant was alleged to have possessed a firearm and the state presented no evidence that the defendant possessed a firearm during the term of probation and prior to the defendant's discharge, the defendant's conviction for possession of a firearm by a first-offender probationer had to be reversed. *Chavez v. State*, 307 Ga. 804, 837 S.E.2d 766, 2020 Ga. LEXIS 10 (2020).

No evidence of constructive possession. — There was not sufficient evidence to support the defendant's conviction for possession of a firearm by a convicted felon, as there was no evidence that the defendant actually or constructively possessed the rifle found at the girlfriend's

home where the defendant stayed part-time and which belonged to the girlfriend's son. While defendant arranged for the son to acquire the rifle, the girlfriend transported the rifle and there was no evidence the defendant had the power or the intention at a given time to exercise dominion or control over the firearm. *Lee v. State*, 362 Ga. App. 171, 867 S.E.2d 303, 2021 Ga. App. LEXIS 580 (2021).

Double Jeopardy

Count of possession of firearm by convicted felon does not merge, etc.

Defendant's possession of a firearm by a convicted felon count did not merge with the possession of a firearm during the commission of a felony count. *Beamon v. State*, 314 Ga. 798, 879 S.E.2d 457, 2022 Ga. LEXIS 261 (2022).

Failure to merge offense. — Defendant's possession of a handgun when the defendant shot the victim on July 29, 2012, was not simultaneous with the defendant's possession of the long guns on August 2, 2012, when the defendant carried them from the house and hid them in the overgrown area of the backyard; thus, those convictions did not merge. However, because the defendant possessed all six of the long guns simultaneously, those six counts of possession of a firearm by a convicted felon involving the long guns merged for purposes of sentencing. *Martin v. State*, 306 Ga. 538, 832 S.E.2d 402, 2019 Ga. LEXIS 529 (2019).

Trial court erred by imposing separate sentences for two counts of possession of a firearm by a first offender probationer because the state failed to make the times of the handgun possessions material averments in the indictment and, thus, double jeopardy precluded the trial court from sentencing the defendant on both counts. *Dukes v. State*, 311 Ga. 561, 858 S.E.2d 510, 2021 Ga. LEXIS 268 (2021).

Only one prosecution permitted regardless of number of firearms.

Because the gravamen of the offense of possession of a firearm by a convicted felon is the general receive, possession, or transportation of firearms by convicted felons, rather than the specific quantity of firearms received, possessed, or transported, O.C.G.A. § 16-11-131(b) was

Double Jeopardy (Cont'd)

found ambiguous and permitted only one prosecution and conviction for the

simultaneous possession of multiple firearms. *Coates v. State*, 304 Ga. 329, 818 S.E.2d 622, 2018 Ga. LEXIS 579 (2018).

RESEARCH REFERENCES

ALR.

Review of Excessiveness of Sentence for Conviction of Felon in Possession of Weapon or Firearm—21st Century State Court Cases, 76 A.L.R.7th 2.

Proscription of 18 U.S.C.A. § 922(g)(3)

that Persons Who Are Unlawful Users of or Addicted to Any Controlled Substance Cannot Possess Any Firearm or Ammunition in or Affecting Commerce, 44 A.L.R. Fed. 3d Art. 3.

16-11-132. Possession of handgun by person under the age of 18 years.

JUDICIAL DECISIONS

Evidence sufficient for adjudication. — Adjudication of delinquency was affirmed because the officer’s testimony that the weapon was inside the juvenile’s pocket and the description of the weapon as a small-caliber revolver was sufficient

evidence from which the juvenile court could have found beyond a reasonable doubt that the juvenile committed the crime charged. In the Interest of A. P., 348 Ga. App. 638, 824 S.E.2d 94, 2019 Ga. App. LEXIS 62 (2019).

16-11-133. Minimum periods of confinement for persons convicted who have prior convictions.

- (a) As used in this Code section, the term:
- (1) “Felony” means any offense punishable by imprisonment for a term of one year or more and includes conviction by a court-martial under the Uniform Code of Military Justice for an offense which would constitute a felony under the laws of the United States.

(2) “Firearm” includes any handgun, rifle, shotgun, stun gun, taser, or other weapon which will or can be converted to expel a projectile by the action of an explosive or electrical charge.
- (b) Any person who has previously been convicted of or who has previously entered a guilty plea to the offense of murder, murder in the second degree, armed robbery, home invasion in any degree, kidnapping, rape, aggravated child molestation, aggravated sodomy, aggravated sexual battery, or any felony involving the use or possession of a firearm and who shall have on or within arm’s reach of his or her person a firearm during the commission of, or the attempt to commit:
- (1) Any crime against or involving the person of another;

(2) The unlawful entry into a building or vehicle;

(3) A theft from a building or theft of a vehicle;

(4) Any crime involving the possession, manufacture, delivery, distribution, dispensing, administering, selling, or possession with intent to distribute any controlled substance as provided in Code Section 16-13-30; or

(5) Any crime involving the trafficking of substances in violation of Code Section 16-13-31,

and which crime is a felony, commits a felony and, upon conviction thereof, shall be punished by confinement for a period of 15 years, such sentence to run consecutively to any other sentence which the person has received.

(c) Upon the second or subsequent conviction of a convicted felon under this Code section, such convicted felon shall be punished by confinement for life. Notwithstanding any other law to the contrary, the sentence of any convicted felon which is imposed for violating this Code section a second or subsequent time shall not be suspended by the court and probationary sentence imposed in lieu thereof.

(d) Any crime committed in violation of subsections (b) and (c) of this Code section shall be considered a separate offense.

History.

Code 1981, § 16-11-133, enacted by Ga. L. 1995, p. 137, § 1; Ga. L. 2014, p. 426, § 5/HB 770; Ga. L. 2014, p. 444, § 2-6/HB 271; Ga. L. 2025, p. 460, § 2-3/SB 79, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, substituted “trafficking of substances in violation of” for “trafficking of cocaine, marijuana, or illegal drugs as provided in” in paragraph (b)(5). See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2025, p. 460, § 1-1/SB 79, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Fentanyl Eradication and Removal Act.’”

Ga. L. 2025, p. 460, § 3-1/SB 79, not codified by the General Assembly, provides that the 2025 amendment shall be applicable to all offenses committed on or after July 1, 2025.

JUDICIAL DECISIONS

Evidence sufficient. — Evidence presented at trial was sufficient to sustain the defendant’s conviction for violating O.C.G.A. § 16-11-133(b), as the evidence showed that the defendant had previously pled guilty to theft by receiving stolen property (a firearm), a felony, and that the defendant then possessed a firearm during the commission of several crimes, including the murders of two victims. *Montanez v. State*, 311 Ga. 843, 860 S.E.2d 551, 2021 Ga. LEXIS 485 (2021).

Insufficient evidence of defendant as convicted felon. — Evidence was

insufficient to support the defendant’s conviction of possession of a firearm by a convicted felon during the commission of another felony because the stipulation concerning the prior conviction did not state that the aggravated assault involved the use of a firearm and the title of the crime, aggravated assault with intent to rob, did not suggest the use of a firearm. *Brooks v. State*, 309 Ga. 630, 847 S.E.2d 555, 2020 Ga. LEXIS 591 (2020).

Severance of firearm charge. — Trial counsel was not ineffective for failing to request a severance of the firearm

charge because the defendant was charged with malice murder, and the defendant's status as a convicted felon would have allowed the jury to find the defendant guilty of the lesser offense of felony murder (based on the felon-in-possession charge) even though the defendant had not been charged separately with that crime. *Talley v. State*, 314 Ga. 153, 875 S.E.2d 789, 2022 Ga. LEXIS 188 (2022).

Stipulation to prior conviction involving use or possession of a firearm.

— Defendant's argument that the trial court erred by not allowing defendant to stipulate to a prior conviction failed because the state had to establish that defendant's prior conviction involved the use or possession of a firearm to prove that defendant violated O.C.G.A. § 16-11-133, and defendant's preferred stipulation was to stipulate only to a prior felony, not to the fact that the felony involved a firearm. *Bowman v. State*, 317 Ga. 457, 893 S.E.2d 735, 2023 Ga. LEXIS 220 (2023).

16-11-134. Discharging firearm while under the influence of alcohol or drugs.

RESEARCH REFERENCES

ALR. Proscription of 18 U.S.C.A. § 922(g)(3) that Persons Who Are Unlawful Users of or Addicted to Any Controlled Substance Cannot Possess Any Firearm or Ammunition in or Affecting Commerce, 44 A.L.R. Fed. 3d Art. 3.

16-11-135. Public or private employer's parking lots; right of privacy in vehicles in employer's parking lot or invited guests on lot; exceptions; severability; rights of action.

- (a) Except as provided in this Code section, no private or public employer, including the state and its political subdivisions, shall establish, maintain, or enforce any policy or rule that has the effect of allowing such employer or its agents to search the locked privately owned vehicles of employees or invited guests on the employer's parking lot and access thereto.
- (b) Except as provided in this Code section, no private or public employer, including the state and its political subdivisions, shall condition employment upon any agreement by a prospective employee that prohibits an employee from entering the parking lot and access thereto when the employee's privately owned motor vehicle contains a firearm or ammunition, or both, that is locked out of sight within the trunk, glove box, or other enclosed compartment or area within such privately owned motor vehicle, provided that any such prospective employee is a lawful weapons carrier.

(c) Subsection (a) of this Code section shall not apply:

- (1) To searches by certified law enforcement officers pursuant to valid search warrants or valid warrantless searches based upon probable cause under exigent circumstances;
- (2) To vehicles owned or leased by an employer;

(3) To any situation in which a reasonable person would believe that accessing a locked vehicle of an employee is necessary to prevent an immediate threat to human health, life, or safety; or

(4) When an employee consents to a search of his or her locked privately owned vehicle by licensed private security officers for loss prevention purposes based on probable cause that the employee unlawfully possesses employer property.

(d) Subsections (a) and (b) of this Code section shall not apply:

(1) To an employer providing applicable employees with a secure parking area which restricts general public access through the use of a gate, security station, security officers, or other similar means which limit public access into the parking area, provided that any employer policy allowing vehicle searches upon entry shall be applicable to all vehicles entering the property and applied on a uniform and frequent basis;

(2) To any penal institution, correctional institution, detention facility, jail, or similar place of confinement or confinement alternative;

(3) To facilities associated with electric generation owned or operated by a public utility;

(4) To any United States Department of Defense contractor, if such contractor operates any facility on or contiguous with a United States military base or installation or within one mile of an airport;

(5) To an employee who is restricted from carrying or possessing a firearm on the employer's premises due to a completed or pending disciplinary action;

(6) Where transport of a firearm on the premises of the employer is prohibited by state or federal law or regulation;

(7) To parking lots contiguous to facilities providing natural gas transmission, liquid petroleum transmission, water storage and supply, and law enforcement services determined to be so vital to the State of Georgia, by a written determination of the Georgia Department of Homeland Security, that the incapacity or destruction of such systems and assets would have a debilitating impact on public health or safety; or

(8) To any area used for parking on a temporary basis.

(e) No employer, property owner, or property owner's agent shall be held liable in any criminal or civil action for damages resulting from or arising out of an occurrence involving the transportation, storage, possession, or use of a firearm, including, but not limited to, the theft of

a firearm from an employee's automobile, pursuant to this Code section unless such employer commits a criminal act involving the use of a firearm or unless the employer knew that the person using such firearm would commit such criminal act on the employer's premises. Nothing contained in this Code section shall create a new duty on the part of the employer, property owner, or property owner's agent. An employee at will shall have no greater interest in employment created by this Code section and shall remain an employee at will.

(f) In any action relating to the enforcement of any right or obligation under this Code section, an employer, property owner, or property owner's agent's efforts to comply with other applicable federal, state, or local safety laws, regulations, guidelines, or ordinances shall be a complete defense to any employer, property owner, or property owner's agent's liability.

(g) In any action brought against an employer, employer's agent, property owner, or property owner's agent relating to the criminal use of firearms in the workplace, the plaintiff shall be liable for all legal costs of such employer, employer's agent, property owner, or property owner's agent if such action is concluded in such employer, employer's agent, property owner, or property owner's agent's favor.

(h) This Code section shall not be construed so as to require an employer, property owner, or property owner's agent to implement any additional security measures for the protection of employees, customers, or other persons. Implementation of remedial security measures to provide protection to employees, customers, or other persons shall not be admissible in evidence to show prior negligence or breach of duty of an employer, property owner, or property owner's agent in any action against such employer, its officers or shareholders, or property owners.

(i) All actions brought based upon a violation of subsection (a) of this Code section shall be brought exclusively by the Attorney General.

(j) In the event that subsection (e) of this Code section is declared or adjudged by any court to be invalid or unconstitutional for any reason, the remaining portions of this Code section shall be invalid and of no further force or effect. The General Assembly declares that it would not have enacted the remaining provisions of this Code section if it had known that such portion hereof would be declared or adjudged invalid or unconstitutional.

(k) Nothing in this Code section shall restrict the rights of private property owners or persons in legal control of property through a lease, a rental agreement, a contract, or any other agreement to control access to such property. When a private property owner or person in legal control of property through a lease, a rental agreement, a contract, or any other agreement is also an employer, his or her rights as a private property owner or person in legal control of property shall govern.

History.

Code 1981, § 16-11-135, enacted by Ga. L. 2008, p. 1199, § 7/HB 89; Ga. L. 2009, p. 8, § 16/SB 46; Ga. L. 2010, p. 963, § 1-9/SB 308; Ga. L. 2015, p. 805, § 7/HB 492; Ga. L. 2016, p. 443, § 13-3/SB 367; Ga. L. 2022, p. 74, § 10/SB 319.

Amendments.

The 2022 amendment, effective April 12, 2022, substituted “such prospective employee is a lawful weapons carrier” for “applicable employees possess a Georgia weapons carry license” at the end of subsection (b).

Editor’s notes.

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 annual survey on labor and employment law, see 70 Mercer L. Rev. 125 (2018).

For annual survey on labor and employment law, see 71 Mercer L. Rev. 137 (2019).

For article, “SB 319: Chairman John Meadows Act,” see 39 Georgia St. U.L. Rev. 1 (2022).

For annual survey on labor and employment law, see 74 Mercer L. Rev. 153 (2022).

16-11-137. Detention for investigation of license to carry prohibited.

A person carrying a weapon shall not be subject to detention for the sole purpose of investigating whether such person has a weapons carry license, whether such person is exempt from having a weapons carry license pursuant to Code Section 16-11-130 or subsection (c) of Code Section 16-11-127.1, or whether such person is a lawful weapons carrier as defined in Code Section 16-11-125.1.

History.

Code 1981, § 16-11-137, enacted by Ga. L. 2014, p. 432, § 1-2/HB 826; Code 1981, § 16-11-137, enacted by Ga. L. 2014, p. 599, § 1-10/HB 60; Ga. L. 2022, p. 74, § 11/SB 319.

Amendments.

The 2022 amendment, effective April 12, 2022, rewrote this Code section, which read: “(a) Every license holder shall have his or her valid weapons carry license in his or her immediate possession at all times when carrying a weapon, or if such person is exempt from having a weapons carry license pursuant to Code Section 16-11-130 or subsection (c) of Code Section

16-11-127.1, he or she shall have proof of his or her exemption in his or her immediate possession at all times when carrying a weapon, and his or her failure to do so shall be prima-facie evidence of a violation of the applicable provision of Code Sections 16-11-126 through 16-11-127.2.

“(b) A person carrying a weapon shall not be subject to detention for the sole purpose of investigating whether such person has a weapons carry license.

“(c) A person convicted of a violation of this Code section shall be fined not more than \$10.00 if he or she produces in court his or her weapons carry license, provided that it was valid at the time of his or her

arrest, or produces proof of his or her exemption.”

Editor’s notes.

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, “SB 319: Chairman John Meadows Act,” see 39 Georgia St. U.L. Rev. 1 (2022).

16-11-138. Defense of self or others as absolute defense.

JUDICIAL DECISIONS

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

Because the defendant shot the first victim in February 2014, and the Safe Carry Protection Act of 2014, Ga. L. 2014, p. 599 et seq., did not become law until July 2014, the Safe Carry Protection Act did not apply, and the defendant was not entitled to any instruction about whether the defendant, a convicted felon, might have been justified in possessing a firearm in February 2014. *Brown v. State*, 309 Ga. 511, 847 S.E.2d 152, 2020 Ga. LEXIS 516 (2020).

Trial counsel was ineffective for failing to object to the state’s incorrect explanation of self defense as applied to felony murder predicated on possession of a fire-

arm by a convicted felon because the prosecutor’s statements incorrectly suggested that if defendant illegally possessed a gun before or after the shooting, he could not claim self-defense on the felony murder charge even if the shooting was justified. Defendant was prejudiced because there was a reasonable probability the jury was confused and erroneously convicted defendant of felony murder despite finding he acted in self-defense during the shooting. *Brundage v. State*, 320 Ga. 721, 911 S.E.2d 656, 2025 Ga. LEXIS 11 (2025).

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

Appellant’s convictions for felony murder predicated on possession of a firearm by a convicted felon and possession of a

firearm during the commission of a felony were reversed because trial counsel was constitutionally ineffective in failing to request a jury instruction on O.C.G.A. § 16-11-138, which provides an absolute

defense to possession of a firearm by a convicted felon if the defendant was acting in self-defense. *Floyd v. State*, 318 Ga. 312, 898 S.E.2d 431, 2024 Ga. LEXIS 40 (2024).

PART 4A

ENHANCED CRIMINAL PENALTIES

16-11-160. Use of machine guns, sawed-off rifles, sawed-off shotguns, or firearms with silencers during commission of certain offenses; enhanced criminal penalties.

(a)(1) It shall be unlawful for any person to possess or to use a machine gun, sawed-off rifle, sawed-off shotgun, or firearm equipped with a silencer, as those terms are defined in Code Section 16-11-121, during the commission or the attempted commission of any of the following offenses:

- (A) Aggravated assault as defined in Code Section 16-5-21;
- (B) Aggravated battery as defined in Code Section 16-5-24;
- (C) Robbery as defined in Code Section 16-8-40;
- (D) Armed robbery as defined in Code Section 16-8-41;
- (D.1) Home invasion in any degree as defined in Code Section 16-7-5;
- (E) Murder or felony murder as defined in Code Section 16-5-1;
- (F) Voluntary manslaughter as defined in Code Section 16-5-2;
- (G) Involuntary manslaughter as defined in Code Section 16-5-3;
- (H) Sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances in violation of any provision of Article 2 of Chapter 13 of this title, the “Georgia Controlled Substances Act”;
- (I) Terroristic threats or acts as defined in Code Section 16-11-37;
- (J) Arson as defined in Code Section 16-7-60, 16-7-61, or 16-7-62 or arson of lands as defined in Code Section 16-7-63;
- (K) Influencing witnesses as defined in Code Section 16-10-93; and
- (L) Participation in criminal gang activity as defined in Code Section 16-15-4.

(2)(A) As used in this paragraph, the term “bulletproof vest” means a bullet-resistant soft body armor providing, as a minimum standard, the level of protection known as “threat level I,” which means at least seven layers of bullet-resistant material providing protection from at least three shots of 158-grain lead ammunition fired from a .38 caliber handgun at a velocity of 850 feet per second.

(B) It shall be unlawful for any person to wear a bulletproof vest during the commission or the attempted commission of any of the following offenses:

(i) Any crime against or involving the person of another in violation of any of the provisions of this title for which a sentence of life imprisonment may be imposed;

(ii) Any felony involving the manufacture, delivery, distribution, administering, or selling of controlled substances or marijuana as provided in Code Section 16-13-30; or

(iii) Trafficking of substances in violation of Code Section 16-13-31.

(b) Any person who violates paragraph (1) of subsection (a) of this Code section shall be guilty of a felony, and, upon conviction thereof, shall be punished by confinement for a period of ten years, such sentence to run consecutively to any other sentence which the person has received. Any person who violates paragraph (2) of subsection (a) of this Code section shall be guilty of a felony, and, upon conviction thereof, shall be punished by confinement for a period of one to five years, such sentence to run consecutively to any other sentence which the person has received.

(c) Upon the second or subsequent conviction of a person under this Code section, the person shall be punished by life imprisonment. Notwithstanding any other law to the contrary, the sentence of any person which is imposed for violating this Code section a second or subsequent time shall not be suspended by a court or a probationary sentence imposed in lieu thereof.

(d) The punishment prescribed for the violation of subsections (a) and (c) of this Code section shall not be probated or suspended as is provided by Code Section 17-10-7.

(e) Any crime committed in violation of this Code section shall be considered a separate offense.

History.

Code 1981, § 16-11-160, enacted by Ga. L. 1996, p. 354, § 1; Ga. L. 2003, p. 256, § 1; Ga. L. 2008, p. 444, § 4/SB 400; Ga. L. 2014, p. 426, § 6/HB 770; Ga. L. 2015,

p. 5, § 16/HB 90; Ga. L. 2025, p. 460, § 2-4/SB 79, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, substituted “Trafficking of sub-

stances in violation of” for “Trafficking of cocaine, illegal drugs, marijuana, or methamphetamine as provided in” in division (a)(2)(B)(iii). See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2025, p. 460, § 1-1/SB 79, not codified by the General Assembly,

provides: “This Act shall be known and may be cited as the ‘Fentanyl Eradication and Removal Act.’”

Ga. L. 2025, p. 460, § 3-1/SB 79, not codified by the General Assembly, provides that the 2025 amendment shall be applicable to all offenses committed on or after July 1, 2025.

PART 5

BRADY LAW REGULATIONS

16-11-171. Definitions.

As used in this part, the term:

(1) “Center” means the Georgia Crime Information Center within the Georgia Bureau of Investigation.

(2) “Dealer” means any person licensed as a dealer pursuant to 18 U.S.C. Section 921, et seq.

(3) “Firearm” means any weapon that is designed to or may readily be converted to expel a projectile by the action of an explosive or the frame or receiver of any such weapon, any firearm muffler or firearm silencer, or any destructive device as defined in 18 U.S.C. Section 921(a)(3).

(4) “Involuntarily hospitalized” means hospitalized as an inpatient in any mental health facility pursuant to Code Section 37-3-81 or hospitalized as an inpatient in any mental health facility as a result of being adjudicated mentally incompetent to stand trial or being adjudicated not guilty by reason of insanity at the time of the crime pursuant to Part 2 of Article 6 of Chapter 7 of Title 17.

(5) “NICS” means the National Instant Criminal Background Check System created by the federal “Brady Handgun Violence Prevention Act” (P. L. No. 103-159).

History.

Code 1981, § 16-11-171, enacted by Ga. L. 1995, p. 139, § 2; Ga. L. 2005, p. 613, § 1/SB 175; Ga. L. 2015, p. 5, § 16/HB 90; Ga. L. 2015, p. 805, § 8/HB 492; Ga. L. 2025, p. 1029, § 16(9)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, inserted “of Chapter 7” following “Article 6” in paragraph (4).

16-11-173. **Legislative findings; preemption of local regulation and lawsuits; exceptions.**

Law reviews. Autonomy in Georgia,” see 54 Ga. L. Rev. 387 (2019).
For note, “Education Under Fire?: An Analysis of Campus Carry and University

JUDICIAL DECISIONS

County not attempting to regulate firearms. — Judge did not violate the prohibition against county officials regulating firearms as the judge did not attempt to regulate the possession, transport, or carrying of firearms in any manner; rather, the only rule or regulation at issue was the judge’s determination as to whether the plaintiff was entitled to a Georgia weapons carry license under O.C.G.A. § 16-11-129, which was a statute passed by the General Assembly. *Hise v. Bordeaux*, 364 Ga. App. 138, 874 S.E.2d 175, 2022 Ga. App. LEXIS 275 (2022).

ARTICLE 5
OFFENSES INVOLVING ILLEGAL ALIENS

Law reviews. Tactics in Removal Proceedings,” see 53 Ga. L. Rev. 283 (2018).
For note, “Detainee Transfers and Immigration Judges: ICE Forum-Shopping

16-11-200. **Offense of transporting or moving illegal aliens; exceptions.**

Law reviews. thy: Social Visibility in the Eleventh Circuit,” see 35 Ga. St. U.L. Rev. 777 (2019).
For note, “Deference Condoning Apa-

16-11-203. **Authority of law enforcement officers to enforce federal immigration laws; documentation.**

Law reviews. ture Series Remarks,” see 36 Ga. St. U.L. Rev. 971 (2020).
For article, “Taming Immigration: The 64th Henry J. Miller Distinguished Lec-

ARTICLE 6
DOMESTIC TERRORISM

16-11-220. **Definitions.**

As used in this article, the term:

(1) “Assassination” means the intentional killing of an elected public official by an individual acting to prevent or retaliate for the performance of official duties or because of the public position held by the official.

(2) “Critical infrastructure” means publicly or privately owned

facilities, systems, functions, or assets, whether physical or virtual, providing or distributing services for the benefit of the public, including, but not limited to, energy, fuel, water, agriculture, health care, finance, communication, or any other vital public service.

(3) “Public transportation system” means all facilities, conveyances, and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of individuals or cargo.

(4) “Serious bodily harm” means harm to the body of another by depriving him or her of a member of his or her body, by rendering a member of his or her body useless, or by seriously disfiguring his or her body or a member thereof.

(5) “State or government facility” means any permanent or temporary facility or conveyance that is used or occupied by representatives of this state or any of its political subdivisions, by the legislature, by the judiciary, or by officials or employees of this state or any of its political subdivisions.

(6) “Vital public service” shall have the same meaning as provided in Code Section 16-7-22.

History.

Code 1981, § 16-11-220, enacted by Ga. L. 2017, p. 536, § 2-2/HB 452; Ga. L. 2023, p. 69, § 4/HB 227, effective July 1, 2023; Ga. L. 2025, p. 224, § 2-1/HB 161, effective July 1, 2025.

Amendments.

The 2023 amendment, effective July 1, 2023, substituted “finance, communication, or any other vital public service” for “finance, or communication” at the end of paragraph (1) and added paragraph (6).

The 2025 amendment, effective July 1, 2025, added paragraph (1); redesignated former paragraph (1) as present paragraph (2); and deleted former paragraph (2), which read: “‘Domestic terrorism’ means any felony violation of, or attempt to commit a felony violation of the laws of this state which, as part of a single unlawful act or a series of unlawful acts

which are interrelated by distinguishing characteristics, is intended to cause serious bodily harm, kill any individual or group of individuals, or disable or destroy critical infrastructure, a state or government facility, or a public transportation system when such disability or destruction results in major economic loss, and is intended to:

“(A) Intimidate the civilian population of this state or any of its political subdivisions;

“(B) Alter, change, or coerce the policy of the government of this state or any of its political subdivisions by intimidation or coercion; or

“(C) Affect the conduct of the government of this state or any of its political subdivisions by use of destructive devices, assassination, or kidnapping.”

16-11-221. Domestic terrorism; penalties.

(a) A person commits the crime of domestic terrorism when he or she commits or attempts to commit a felony violation of the laws of this state which, as part of a single unlawful act or a series of unlawful acts which are interrelated by distinguishing characteristics, is intended to

cause serious bodily harm, kill any individual or group of individuals, or disable or destroy critical infrastructure, a state or government facility, or a public transportation system when such disability or destruction results in major economic loss, and is intended to:

- (1) Intimidate the civilian population of this state or any of its political subdivisions;
 - (2) Alter, change, or coerce the policy of the government of this state or any of its political subdivisions by intimidation or coercion; or
 - (3) Affect the conduct of the government of this state or any of its political subdivisions by use of destructive devices, assassination, or kidnapping.
- (b) Any person who commits domestic terrorism shall be guilty of a felony and upon conviction thereof shall be punished as follows:
- (1) If death results to any individual, by death, by imprisonment for life without parole, or by imprisonment for life;
 - (2) If kidnapping occurs, by imprisonment for not less than 15 nor more than 35 years, or by imprisonment for life;
 - (3) If serious bodily harm occurs, by imprisonment for not less than 15 nor more than 35 years; or
 - (4) If critical infrastructure, a state or government facility, or a public transportation system is disabled or destroyed, by imprisonment for not less than five nor more than 35 years.
- (c) No sentence imposed under this Code section shall be suspended, stayed, probated, deferred, or withheld by the sentencing court; provided, however, that in the court’s discretion, the court may suspend, stay, probate, defer, or withhold part of such sentence when the prosecuting attorney and the defendant have agreed to such sentence.

History.

Code 1981, § 16-11-221, enacted by Ga. L. 2017, p. 536, § 2-2/HB 452; Ga. L. 2025, p. 224, § 2-2/HB 161, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, added subsection (a) and redesignated former subsections (a) and (b) as present subsections (b) and (c).