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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.

In Volume 41A, an updated version of Table Fifteen reflects legislation through the 2025 Regular Session of the General Assembly.

Indices:

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

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Autopsy photos of child murder victim. — Trial court did not abuse the court’s discretion by concluding that the danger of unfair prejudice from the admission of autopsy photos did not substantially outweigh the probative value as the photographs were used by the medical examiner to help explain conclusions about the child’s injuries and were proba-

tive as to both the timing and the manner of injury; and, even if the single pre-autopsy photo should not have been admitted, it was highly probable that it did not contribute to the verdicts since it was far less graphic. *Johnson v. State*, 316 Ga. 672, 889 S.E.2d 914, 2023 Ga. LEXIS 127 (2023).

Trial court did not abuse the court's discretion by admitting five pre-incision autopsy photographs of the victim's body because they were relevant and not unduly prejudicial because the photographs were neither especially graphic nor gruesome and the probative value of the photographs was high because they helped the medical examiner explain how the medical examiner ruled out other possible causes of death. *White v. State*, 319 Ga. 367, 903 S.E.2d 891, 2024 Ga. LEXIS 150 (2024).

When evidence of other crime admissible.

Defendant's prior conviction for possession of methamphetamine with intent to distribute methamphetamine, and its probative value was not substantially outweighed by its unfair prejudice because the trial relied heavily upon attempting to discredit the confidential informant, and the state had a need for and was entitled to present other acts evidence to combat the defendant's attacks on the informant's credibility. *Ashley v. State*, 374 Ga. App. 153, 911 S.E.2d 701, 2025 Ga. App. LEXIS 16 (2025).

Prior difficulties evidence.

In a murder case, when the defendant claimed self-defense, the trial court did not err in admitting evidence of prior incidents between the defendant and the victim, the defendant's wife, because the two prior incidents were directly relevant to motive in the context of the defendant's relationship with the wife, notwithstanding the defendant's claim of self-defense and the probative value outweighed any prejudice. *Miller v. State*, 320 Ga. 255, 908 S.E.2d 586, 2024 Ga. LEXIS 259 (2024).

"Proof of Incarceration" document relevant. — Trial court did not plainly err by admitting into evidence a document entitled "proof of incarceration" because it was found in the trap house and contained a picture of defendant with dreadlocks,

tending to make it more probable that defendant was present in the trap house with dreadlocks like the shooter and therefore was of consequence to the determination of who murdered the victim. *Carter v. State*, 317 Ga. 689, 895 S.E.2d 295, 2023 Ga. LEXIS 246 (2023).

911 call. — Defendant failed to show that his trial counsel was ineffective for failing to object to the 911 call made by the victim's neighbor because a relevance objection would have failed. Defendant testified that his encounter with the victim was consensual, and the portion of the call mentioning defendant's attempt to forcibly enter the caller's apartment before pursuing the victim was relevant to rebut defendant's assertion that he was at the apartment complex for a previously planned encounter with the victim. *Anderson v. State*, 371 Ga. App. 139, 899 S.E.2d 770, 2024 Ga. App. LEXIS 127 (2024).

Relevance of evidence found.

Trial counsel was not ineffective for failing to object to testimony from a forensic toxicologist because the testimony was relevant, as the testimony that the victim's blood and urine were negative for gamma hydroxybutyric acid (GHB) tended to show that the person who raped and killed her did not drug her with GHB, and therefore any objection would have been meritless. *Kimbrow v. State*, 317 Ga. 442, 893 S.E.2d 678, 2023 Ga. LEXIS 223 (2023).

Trial court did not err in admitting three photographs which showed that the co-defendants had a relationship with each other because the photographs were relevant where the co-defendants were alleged to have committed the crimes together and the defendant disputed sharing a common criminal intent with the co-defendants. *Siders v. State*, 320 Ga. 367, 907 S.E.2d 645, 2024 Ga. LEXIS 237 (2024).

Officer's testimony explaining that the "gang's bible" listed language that matched a tattoo on the defendant's left arm was relevant to proving that the defendant was associated with the gang, as required for a conviction under the Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-3 et seq. *Dupree v.*

Relevant Evidence in Criminal Cases (Cont'd)

State, 374 Ga. App. 421, 913 S.E.2d 41, 2025 Ga. App. LEXIS 65 (2025).

Evidence that defendant made unwanted, sexually suggestive comments to adults was relevant evidence of whether defendant's later solicitation, enticement, or taking of a minor was done for the purpose of child molestation or indecent acts as they were made close in time and under similar circumstances of trying to lure the victims into a car through deception and the comments had some tendency to make it more probable that defendant's enticement of the minor was done for a sexual purpose. *State v. Green*, 321 Ga.

204, 913 S.E.2d 621, 2025 Ga. LEXIS 49 (2025).

Reasonable inference that another committed crime not shown. — Defendant's convictions for fatally shooting one victim and the aggravated assault of another were upheld because the trial court did not abuse the court's discretion excluding evidence that the defendant contended would show that another person murdered the victim because the proffered evidence failed to raise a reasonable inference of the defendant's innocence since there was an absence of showing a direct connection of the other person with the corpus delicti. *Morgan v. State*, No. S25A0412, 2025 Ga. LEXIS 94 (Ga. May 6, 2025).

24-4-402. Relevant evidence generally admissible; irrelevant evidence not admissible.

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IRRELEVANT EVIDENCE IN CIVIL CASES
IRRELEVANT EVIDENCE IN CRIMINAL CASES

Irrelevant Evidence in Civil Cases

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Trial court did not err by bifurcating the customer's claims of battery and false imprisonment against the officer from his claim of false imprisonment against the store because the disturbing evidence of the officer's battery of the customer, which occurred after he initially detained the customer, was not relevant to the store's potential liability for false imprisonment and would be unduly prejudicial to the store. *Carnegay v. Wal-Mart Stores, Inc.*, 370 Ga. App. 688, 898 S.E.2d 871, 2024 Ga. App. LEXIS 73 (2024).

Irrelevant Evidence in Criminal Cases

Evidence of developmentally disabled adult victim during life relevant. — In defendant's felony murder trial, the trial court did not abuse its discretion by admitting four videos of the developmentally disabled adult victim during life as the videos of the victim were

relevant to show the victim's limited cognitive development, which was an important fact, because the state needed to show how defendant's possession of heroin could proximately cause the victim's death. *Eubanks v. State*, 317 Ga. 563, 894 S.E.2d 27, 2023 Ga. LEXIS 233 (2023).

Autopsy photo admissible. — Trial court did not err by admitting autopsy photographs into evidence because the trial court determined that the photographs were necessary for the medical examiner to explain the victim's injuries and the photographs were relevant to show the nature and location of the victim's wounds, which corroborated the state's evidence of the circumstances of the killing. *Greene v. State*, 316 Ga. 584, 889 S.E.2d 864, 2023 Ga. LEXIS 126 (2023).

Autopsy photos of child murder victim. — Trial court did not abuse the court's discretion by concluding that the danger of unfair prejudice from the admission of autopsy photos did not substantially outweigh the probative value as

they were used by the medical examiner to help explain conclusions about the child's injuries and were probative as to both the timing and the manner of injury; and, even if the single pre-autopsy photo should not have been admitted, it was highly probable that it did not contribute to the verdicts since it was far less graphic. *Johnson v. State*, 316 Ga. 672, 889 S.E.2d 914, 2023 Ga. LEXIS 127 (2023).

Reasonable inference that another committed crime not shown. — Defendant's convictions for fatally shooting one

victim and the aggravated assault of another were upheld because the trial court did not abuse the court's discretion excluding evidence that the defendant contended would show that another person murdered the victim because the proffered evidence failed to raise a reasonable inference of the defendant's innocence since there was an absence of showing a direct connection of the other person with the corpus delicti. *Morgan v. State*, No. S25A0412, 2025 Ga. LEXIS 94 (Ga. May 6, 2025).

24-4-403. Exclusion of relevant evidence on the grounds of prejudice, confusion, or waste of time.

Law reviews.

For article, "You Shall Not Pass! Georgia Court of Appeals Narrows the Admis-

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CRIMINAL CASES
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When evidence of other crime admissible.

Defendant's convictions for first-degree vehicular homicide and drunk driving were upheld and evidence of a prior DUI conviction was properly admitted because by volunteering that he was a law-abiding citizen, defendant opened the door to the state impeaching that testimony with evidence of the prior DUI conviction and admitted cocaine use. *Da Silva v. State*, 369 Ga. App. 75, 890 S.E.2d 876, 2023 Ga. App. LEXIS 368 (2023).

Trial court abused its discretion by excluding the other acts evidence, which related to defendant's alleged sexual assault of four prior victims, offered by the state because it was strikingly similar to the current alleged crime, temporally close in time, and was needed by the prosecution to show the victim's lack of consent. *State v. Shalghien*, 370 Ga. App. 202, 896 S.E.2d 23, 2023 Ga. App. LEXIS 555 (2023).

Trial court did not err by admitting into evidence a prior robbery because defendant made intent a material issue by pleading not guilty, both offenses occurred in the same area, in broad daylight, and involved the use of a firearm, the events were separated by only two years, and the probative value of the evidence was strengthened by the prosecutorial need for it. Defendant did not show that the evidence's prejudice outweighed its probative value. *Mitchell v. State*, 317 Ga. 107, 891 S.E.2d 915, 2023 Ga. LEXIS 183 (2023).

Trial court did not err by admitting evidence of a prior armed robbery because it was admissible to prove intent, as defendant pled not guilty to the armed robbery charges, and in both incidents defendant robbed a business at night by vaulting over the counter to confront the employee with a small handgun and asking about a safe and the two events occurred three days apart. The prejudicial value of the evidence was fairly low given that no one was physically harmed in the course of the robbery. *Randolph v. State*,

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317 Ga. 146, 891 S.E.2d 818, 2023 Ga. LEXIS 181 (2023).

Trial court did not err by admitting evidence of defendant's prior assaults by strangulation of his ex-girlfriends because the similarities between defendant's acts of strangling his ex-girlfriend and taking her car and the theft of the victim's car following her death by strangulation were substantial, and the victim's death occurred two years after defendant's violent strangulation of his ex-girlfriend and theft of her car. *Greene v. State*, 316 Ga. 584, 889 S.E.2d 864, 2023 Ga. LEXIS 126 (2023).

Trial court did not abuse its discretion in admitting the prior acts evidence under O.C.G.A. § 24-4-413 because it was relevant and probative, and the court properly balanced any unfair prejudice and whether the prior act qualified as an offense of sexual assault was a question of law for the trial court rather than an issue for the jury. *Thomas v. State*, 370 Ga. App. 370, 896 S.E.2d 885, 2024 Ga. App. LEXIS 3 (2024).

Trial court did not abuse its discretion by admitting evidence showing that defendant participated in another murder 11 days after the instant murder because the crimes had significant similarities, by asserting that defendant was merely present and did not share his codefendants' criminal intent to murder the victim defendant made intent a crucial issue at trial, and the trial court gave the jury a limiting instruction. *Rooks v. State*, 317 Ga. 743, 893 S.E.2d 899, 2023 Ga. LEXIS 230 (2023).

Probative value of the victim's bank records was not substantially outweighed by their prejudice because the records themselves did not show that defendant was stealing from the victim and the records were highly probative of defendant's financial motive to kill the victim. *Jennings v. State*, 318 Ga. 579, 899 S.E.2d 210, 2024 Ga. LEXIS 59 (2024).

Trial court did not abuse the court's discretion by admitting evidence that defendant attacked his ex-wife in the hours prior to killing the victim because the probative value of the evidence was not

substantially outweighed by the danger of unfair prejudice, as the state needed to rebut defendant's insanity defense, and because there was no evidence that defendant's mental state changed over the course of the day, the attack on his ex-wife was probative of his awareness of the wrongness of his actions and ability to act with deliberation. *Wyatt v. State*, 319 Ga. 658, 906 S.E.2d 380, 2024 Ga. LEXIS 184 (2024).

Probative value of defendant's prior convictions in 2017 for possession of methamphetamine with intent to distribute and possession of a handgun while being a convicted felon, and in 2010 for possession of methamphetamine and manufacturing methamphetamine outweighed any prejudice, as the convictions were probative of intent since the defense argued that there were no fingerprints on the backpack and no video footage of the chase. *Brown v. State*, 374 Ga. App. 87, 911 S.E.2d 352, 2025 Ga. App. LEXIS 7 (2025).

Defendant's prior conviction for possession of methamphetamine with intent to distribute methamphetamine was properly admitted since the probative value was not substantially outweighed by unfair prejudice because the trial court relied heavily upon attempting to discredit the confidential informant, and the state had a need for and was entitled to present other acts evidence to combat the defendant's attacks on the informant's credibility. *Ashley v. State*, 374 Ga. App. 153, 911 S.E.2d 701, 2025 Ga. App. LEXIS 16 (2025).

Where defendant was accused in two separate indictments of two acts of rape and aggravated sodomy against two separate victims, the allegations in the other indictment were admissible in each trial as highly probative in proving lack of consent, which was a key disputed issue. The alleged offenses were also very similar in nature and close in time, reducing the risk of unfair prejudice and the prosecutorial need for the evidence was high given the "he said, she said" nature of the allegations. *State v. Chowdhury*, 374 Ga. App. 189, 911 S.E.2d 730, 2025 Ga. App. LEXIS 21 (2025).

Admission of rap music video. — Trial court did not err in admitting a rap

music video, into evidence to show plan, preparation, and identity because the video was not unduly prejudicial, as it showed the defendant and another with weapons similar to those used in the robberies and filmed in the same neighborhood as the robbery. *Gordon v. State*, 373 Ga. App. 592, 908 S.E.2d 297, 2024 Ga. App. LEXIS 431 (2024).

Evidence of victim's prior crimes properly excluded.

Trial court did not abuse the court's discretion by finding that the possibility of unfair prejudice was high if the court permitted admission of five prior acts because the state specifically argued that the state needed evidence of the five other acts to prove the defendant's propensity for initiating and continuing violent encounters, and propensity to resort to threats or use of firearms with little or no provocation, which were inherently prejudicial purposes. *State v. Flowers*, 320 Ga. 882, 912 S.E.2d 527, 2025 Ga. LEXIS 35 (2025).

Defendant's convictions for fatally shooting one victim and the aggravated assault of another were upheld because the trial court did not abuse the court's discretion in excluding evidence that the victim of the fatal shooting may have possessed drugs at the time of the shooting, as the probative value was substantially outweighed by the danger of unfair prejudice given that the jury might conclude that the victim was a drug dealer whose death was somehow justified. *Morgan v. State*, No. S25A0412, 2025 Ga. LEXIS 94 (Ga. May 6, 2025).

Admission of other acts evidence in murder trial constituted harmless error.

Appellant failed to demonstrate that any error in admitting the evidence of appellant's three prior misdemeanor convictions for simple battery likely affected the outcome of the trial because appellant's guilt for the murder was overwhelming, including the admission to shooting the victim, appellant's fingerprint inside the victim's car and DNA on the gun, and the discovery of the murder weapon and the victim's cell phone in appellant's apartment the morning after the shooting. *Ruthenberg v. State*, 317 Ga.

227, 892 S.E.2d 728, 2023 Ga. LEXIS 192 (2023).

Similarities between attacks sufficient for admission.

Previous altercation between defendant and sister, during which defendant had assaulted the sister with a knife following a petty argument, was not required to be excluded because the prosecutorial need was significant as defendant claimed to have blacked out during the aggravated assault and defendant claimed that the victim, another sister, provoked defendant by attacking defendant with a bottle. The similarity of the acts against the sister to the charged crimes was strong, and the previous altercation occurred less than two months before defendant stabbed the victim. *Henderson v. State*, 318 Ga. 752, 900 S.E.2d 596, 2024 Ga. LEXIS 86 (2024).

With regard to appellant's conviction for aggravated assault and simple battery family violence, the trial court did not abuse the court's discretion in admitting the January 2014 extrinsic act evidence under O.C.G.A. § 24-4-404(b) to prove intent, as the probative value was not substantially outweighed by the danger of unfair prejudice considering the similarity of intent required, the prosecutorial need, and the trial court's limiting instruction. *Smith v. State*, 373 Ga. App. 33, 907 S.E.2d 327, 2024 Ga. App. LEXIS 383 (2024).

Failure to determine if prejudice substantially outweighed probative value. — In a child molestation case, the trial court abused the court's discretion by excluding any reference to the investigator's arrest, the charges asserted against the investigator, and the subsequent termination of the investigator's employment because the trial court found only that evidence of the investigator's pending charges was more prejudicial than probative and never analyzed whether such prejudice substantially outweighed any probative value. *Ridley v. State*, 368 Ga. App. 481, 890 S.E.2d 385, 2023 Ga. App. LEXIS 341 (2023).

Prejudicial impact outweighed probative value in child's death.

Trial court did not abuse its discretion by excluding evidence of the mother's

Criminal Cases (Cont'd)

drug use because it applied O.C.G.A. § 24-4-403 in assessing the admissibility of the evidence and the evidence was prejudicial, as it could have created the potential for the jury to convict the mother based on her character as a drug user. *Payne v. State*, 318 Ga. 249, 897 S.E.2d 809, 2024 Ga. LEXIS 26 (2024).

Probative value not outweighed by prejudicial effect in murder case.

In an action for malice murder and cruelty to children, it was not obvious that some of the testimony about the victim's prior injuries should have been excluded or that the jury should have been instructed that defendant did not cause those injuries because the existence of some overlap in the testimony of multiple witnesses did not necessarily make that evidence so cumulative or unfairly prejudicial as to require its exclusion. *Sconyers v. State*, 318 Ga. 855, 901 S.E.2d 170, 2024 Ga. LEXIS 105 (2024).

Trial court did not abuse its discretion by admitting evidence of defendant's methamphetamine use because any unfair prejudice did not outweigh its probative value, as defendant admitting to using methamphetamine in the weeks leading up to the child victim's death because defendant was "stressed out and overwhelmed" as the children's caregiver, which was highly relevant in explaining the victim's death while in defendant's sole care, and it was unlikely that jury improperly convicted defendant based solely on evidence of previous methamphetamine use. *Coleman v. State*, No. S25A0355, 2025 Ga. LEXIS 82 (Ga. May 6, 2025).

Testimony on seeing defendant with gun admissible. — The admission of a witness's testimony about having seen the defendant with a .22 caliber pistol two years before the murders was not unduly prejudicial because the testimony about the defendant's gun ownership was limited to the witness's observation of the defendant with a gun similar to the murder weapon and the witness did not offer any details about the circumstances of their interaction, which might have unfairly cast the defendant in a negative

light. *Lee v. State*, 318 Ga. 412, 897 S.E.2d 856, 2024 Ga. LEXIS 31 (2024).

Evidence of gang activity.

Although O.C.G.A. § 24-4-418 was held not to require a nexus between the other act and an intent to further gang activity, evidence admitted under it remains subject to O.C.G.A. § 24-4-403, which allows exclusion of overly prejudicial evidence. *McKinney v. State*, 318 Ga. 566, 899 S.E.2d 121, 2024 Ga. LEXIS 66 (2024).

Trial court did not abuse the court's discretion by admitting evidence regarding defendant's gang affiliation and defendant's commission of prior gang activity because the probative value of the gang evidence at issue was not substantially outweighed by the danger of unfair prejudice, as defendant disputed that he committed the robbery or that it was intended to further the gang's interests. Evidence of defendant's prior gang activity involving firearms had significant probative value in establishing a nexus between the armed robbery and the intent to further the gang's interests. *Lee v. State*, 374 Ga. App. 329, 912 S.E.2d 700, 2025 Ga. App. LEXIS 49 (2025).

State's exhibits showing the defendant making gang signs, engaging in other gang activity, which was accompanied by testimony indicating that the defendant was involved in a gang were clearly relevant to prove the Georgia Street Gang and Terrorism Prevention Act, O.C.G.A. § 16-15-3, count and were not unduly prejudicial even if the exhibits showed the defendant with guns. *Tucker v. State*, 321 Ga. 278, 912 S.E.2d 639, 2025 Ga. LEXIS 30 (2025).

Defendant's conviction for felony murder and other crimes was upheld because the trial court did not abuse the court's discretion in admitting evidence of defendant's gang membership as the evidence was relevant to show the defendant's motive arising from violating the gang's code by dating a certain person, which led to the dispute with the victim's grandson and ultimately the shooting and the probative value of that evidence was not substantially outweighed by any danger of unfair prejudice. *Johnson v. State*, 321 Ga. 422, 2025 Ga. LEXIS 93 (2025).

No prejudice in armed robbery case. — Defendant failed to show that trial counsel was deficient for failing to object to the testimony of an armed robbery victim because the risk of unfair prejudice to defendant was low and, therefore, an objection would not have succeeded as the trial evidence clearly established that the defendant had not participated in the armed robbery that was the subject of the victim's testimony. *Rosenau v. State*, 321 Ga. 299, 914 S.E.2d 300, 2025 Ga. LEXIS 65 (2025).

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).

Trial court did not abuse the court's discretion by admitting five pre-incision autopsy photographs of the victim's body because the photographs were relevant and not unduly prejudicial, the photographs were neither especially graphic nor gruesome, and the probative value of the photographs was high because the photographs helped the medical examiner explain how the medical examiner ruled out other possible causes of death. *White v. State*, 319 Ga. 367, 903 S.E.2d 891, 2024 Ga. LEXIS 150 (2024).

Probative value outweighed any undue prejudice in criminal case.

Any error in admitting the victim's diary statements that the defendant was "locked up" and "in jail" was harmless because the evidence of defendant's guilt was strong, including that the defendant was the only person besides the victim present in the apartment when the victim was shot and that the defendant was touching the gun when the victim was shot. *Watkins v. State*, 320 Ga. 862, 912 S.E.2d 574, 2025 Ga. LEXIS 32 (2025).

Trial court abused the court's discretion by admitting evidence of defendant's past battery of his ex-girlfriend during his murder trial because it was not truly relevant to proving his motive or absence of mistake in killing the victim, and its minimal probative value was substantially outweighed by its unfair prejudicial effect. While the evidence could theoretically be relevant to disproving accident or mistake, the probative value was minimal because the defense was self-defense, not mistake, and the evidence was powerful, highly prejudicial propensity evidence. *Harris v. State*, 321 Ga. 87, 913 S.E.2d 570, 2025 Ga. LEXIS 52 (2025).

Probative value outweighed any undue prejudice in murder case. — In a murder case where the defendant claimed self-defense, the trial court did not err in admitting evidence of prior incidents between the defendant and the victim, the defendant's wife, because the two prior incidents were directly relevant to motive in the context of the defendant's relationship with the wife, notwithstanding the defendant's claim of self-defense and the probative value outweighed any prejudice. *Miller v. State*, 320 Ga. 255, 908 S.E.2d 586, 2024 Ga. LEXIS 259 (2024).

Probative value not outweighed by prejudicial effect.

Trial court did not abuse discretion concluding that danger of unfair prejudice from the admission of autopsy photos did not substantially outweigh probative value as they were used by the medical examiner to help explain conclusions about the child's injuries and were probative as to both the timing and the manner of injury; and, even if the single pre-autopsy photo should not have been admitted, it was highly probable that it did not contribute to the verdicts since it was far less graphic. *Johnson v. State*, 316 Ga. 672, 889 S.E.2d 914, 2023 Ga. LEXIS 127 (2023).

Intrinsic evidence that the defendant tried to coax drugstore employees into the defendant's car on the same day that the defendant tried to get the victim into the defendant's car was not unfairly prejudicial. Although the employee evidence might have cast the defendant in an unflattering light, it did not do so unfairly.

Criminal Cases (Cont'd)

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

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

Recorded jail phone call admissible.

Recording of the defendant's jail house phone calls was admissible as it was highly probative because the phone calls illustrated consciousness of guilt. Blash v. State, 318 Ga. 325, 898 S.E.2d 522, 2024 Ga. LEXIS 41 (2024).

"Proof of incarceration" document relevant. — Trial court did not plainly err by admitting into evidence a document entitled "proof of incarceration" because the jury knew that defendant was a convicted felon and the trial court mitigated any prejudice by redacting the charges from the document. Carter v. State, 317 Ga. 689, 895 S.E.2d 295, 2023 Ga. LEXIS 246 (2023).

Statement victim's mother made on 911 call. — Defendant's conviction of rape and furnishing alcohol to a minor was upheld because the trial court did not err by excluding a statement the victim's mother made on the call to 911 and a

statement included in a police report as the 911 call was hearsay and not a prior inconsistent statement contradicting the mother's or victim's testimony and the defendant never proffered the excluded police report at trial so the evidentiary ruling excluding the report was presumed correct. Martinez-Gaspar v. State, 375 Ga. App. 189, 915 S.E.2d 79, 2025 Ga. App. LEXIS 156 (2025).

Civil Cases

Evidence of battery in false imprisonment case. — Trial court did not err by bifurcating the customer's claims of battery and false imprisonment against the officer from the customer's claim of false imprisonment against the store because the disturbing evidence of the officer's battery of the customer, which occurred after the officer initially detained the customer, was not relevant to the store's potential liability for false imprisonment and would be unduly prejudicial to the store. Carnegay v. Wal-Mart Stores, Inc., 370 Ga. App. 688, 898 S.E.2d 871, 2024 Ga. App. LEXIS 73 (2024).

Admission of photos in fraud case. — Admission of the challenged photos did not prejudice appellant given the overwhelming evidence that the appellant — a woman in her thirties — fraudulently induced the decedent — a man in his eighties suffering from dementia — to: give her control of all of his business affairs; add her to the deed on his home; make her the sole beneficiary of the homeowner's insurance purchased for his home; purchase clothes and a truck, as well as a new home solely in her name, with insurance proceeds received after his house burned down; and make her a beneficiary in his will in contemplation of his marriage to her. Baker v. Cuthbertson, 372 Ga. App. 753, 906 S.E.2d 764, 2024 Ga. App. LEXIS 355 (2024).

24-4-404. Character evidence not admissible to prove conduct; exceptions; evidence of other crimes.

Law reviews.

For article, "You Shall Not Pass! Georgia Court of Appeals Narrows the Admis-

sibility of Prior Acts Character Evidence Under Georgia Evidence Rule 404(b)," see 74 Mercer L. Rev. 1631 (2023).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

CIVIL CASES

CRIMINAL CASES

1. IN GENERAL
2. CHARACTER
3. SPECIFIC CRIMES
 - a. ASSAULT, BATTERY, AND HOMICIDE CRIMES
 - b. ROBBERY, BURGLARY, AND THEFT CRIMES
 - d. MISCELLANEOUS CRIMES
4. VICTIM'S CHARACTER
5. JURY INSTRUCTIONS

General Consideration

Character evidence of defendant's son death inadmissible. — Trial court did not abuse the court's discretion in precluding defendant from questioning an agent about a drug-related shooting with no apparent connection to the instant case that resulted in defendant's son's death two months after the murders because, to the extent defendant was attempting to show the son's participation in the murders based solely on the fact that he had recently committed a crime of the same or similar nature, the testimony was inadmissible character evidence. *Palmer v. State*, 318 Ga. 511, 899 S.E.2d 192, 2024 Ga. LEXIS 61 (2024).

Civil Cases

Evidence in medical malpractice cases. — During a medical malpractice action, the trial court did not abuse its discretion in excluding evidence of the physician's alleged prior hospital privilege suspensions resulting from prior issues the doctor had with patient documentation 20 years before the instant action because such evidence was irrelevant to show that he had issues with documenting the patient's condition and whether his treatment of the patient violated the standard of care. *Zweigel v. N. Atlanta Obstetrics & Gynecology*, 374 Ga. App. 579, 913 S.E.2d 719, 2025 Ga. App. LEXIS 96 (2025).

Criminal Cases

1. In General

Proper admission of similar transaction evidence, etc.

Trial court did not abuse its discretion admitting evidence of a prior strangling allegation because defendant pled not guilty and did not affirmatively withdraw the issue of intent, thus, the evidence that defendant committed a similar act with the same sort of intent was relevant, and the trial court mitigated any unfair prejudice by twice cautioning the jury that the other acts evidence could be considered only for the limited purpose of establishing intent. *Johnson v. State*, 368 Ga. App. 762, 890 S.E.2d 325, 2023 Ga. App. LEXIS 332 (2023).

With regard to appellant's conviction for aggravated assault and simple battery family violence, the trial court did not abuse the court's discretion in admitting the January 2014 extrinsic act evidence under O.C.G.A. § 24-4-404(b) to prove intent as the probative value was not substantially outweighed by the danger of unfair prejudice considering the similarity of intent required, the prosecutorial need, and the trial court's limiting instruction. *Smith v. State*, 373 Ga. App. 33, 907 S.E.2d 327, 2024 Ga. App. LEXIS 383 (2024).

Appellant's conviction for felony murder and aggravated assault in connection with the shooting death of his stepfather was

Criminal Cases (Cont'd)**1. In General (Cont'd)**

upheld because appellant failed to show a denial of effective assistance of counsel when counsel did not object to the admission of evidence of a prior misdemeanor arrest for family violence as the evidence was fleeting, the court gave a curative instruction, and there was compelling evidence of guilt. *Edwards-Tuggle v. State*, 320 Ga. 558, 910 S.E.2d 555, 2024 Ga. LEXIS 304 (2024).

Trial court properly applied the three-part balancing test for admitting other acts evidence of the defendant's violence against the defendant's former girlfriend, holding that the evidence was admissible for a proper purpose, that the state presented sufficient evidence to establish that the defendant had committed those acts, and that the evidence satisfied the O.C.G.A. § 24-4-403 balancing test. *Harris v. State*, 374 Ga. App. 81, 911 S.E.2d 346, 2025 Ga. App. LEXIS 8 (2025).

Section not applicable to intrinsic evidence.

Trial court did not err in admitting other acts evidence of violence against the victim by the defendant as it was intrinsic evidence not subject to the test for admission under O.C.G.A. § 24-4-404(b). *Harris v. State*, 374 Ga. App. 81, 911 S.E.2d 346, 2025 Ga. App. LEXIS 8 (2025).

Evidence of other crimes part of same series of transactions admissible.

Evidence of uncharged crimes in a county other than the one where the trial was held were properly admitted because the evidence was linked closely in time and circumstance and was an integral and natural part of the story of the defendant's shooting spree. *Callaway v. State*, 321 Ga. 186, 913 S.E.2d 595, 2025 Ga. LEXIS 58 (2025).

Evidence of gang activity.

Defendant's conviction for felony murder and other crimes was upheld because the trial court did not abuse its discretion in admitting evidence of defendant's gang membership as the evidence was relevant to show the defendant's motive arising from violating the gang's code by dating a certain person, which led to the dispute

with the victim's grandson and ultimately the shooting and the probative value of that evidence was not substantially outweighed by any danger of unfair prejudice. *Johnson v. State*, 321 Ga. 422, 2025 Ga. LEXIS 93 (2025).

Similar transaction evidence admissible.

Intrinsic evidence that the defendant tried to coax drugstore employees into the defendant's car on the same day that the defendant tried to get the victim into the defendant's car was not unfairly prejudicial. Although the employee evidence might have cast the defendant in an unflattering light, it did not do so unfairly. *Green v. State*, 371 Ga. App. 259, 899 S.E.2d 493, 2024 Ga. App. LEXIS 146 (2024), rev'd in part, 321 Ga. 204, 913 S.E.2d 621, 2025 Ga. LEXIS 49 (2025).

Conduct by family members.

Denial of defendant's motion for a new trial with regard to the defendant's drug-related convictions was upheld because the evidence of the son's prior convictions was properly excluded as inadmissible propensity evidence under O.C.G.A. § 24-4-404(b) as it was offered to show the son likely possessed the drugs in the case because of past drug convictions. *Garrison v. State*, 371 Ga. App. 514, 901 S.E.2d 594, 2024 Ga. App. LEXIS 180 (2024).

2. Character

Defendant's character not "put in issue." — Co-defendant 1 failed to establish ineffective assistance of counsel as a result of counsel failing to object to statements made at trial referencing co-defendant 1's same-sex relationship with co-defendant 2 because any objection to the admission would have been meritless given that the relationship showed co-defendant 1's personal interest in the neighborhood disputes. *Kirkland v. State*, 318 Ga. 639, 898 S.E.2d 536, 2024 Ga. LEXIS 39 (2024).

Transcript from son's trial improperly admitted on character. — Trial court plainly erred by allowing the State to read portions of a transcript from defendant's son's guilty plea during its cross-examination because it was improper bad character evidence, as defendant did not put his good character in issue and did not

offer his son's testimony to establish a pertinent trait of character that would allow for rebuttal. The error was not harmless because the transcript of the son's attorney's comments was the last evidence the jury heard before the jury instructions and deliberations, the jury was left with the opinions of an attorney that defendant was "an absolute scumbag," "a criminal menace," "horrible father," and "piece of garbage" and likely affected the outcome of defendant's trial. *Fraday v. State*, 373 Ga. App. 261, 908 S.E.2d 242, 2024 Ga. App. LEXIS 419 (2024).

Defendant's character not "put in issue." — Co-defendant 1 failed to establish ineffective assistance of counsel as a result of counsel failing to object to statements made at trial referencing co-defendant 1's same-sex relationship with co-defendant 2 because any objection to the admission would have been meritless given that the relationship showed co-defendant 1's personal interest in the neighborhood disputes. *Kirkland v. State*, 318 Ga. 639, 898 S.E.2d 536, 2024 Ga. LEXIS 39 (2024).

Evidence of motive.

Trial court did not abuse its discretion by deciding that evidence of the co-defendant's prior arrest was relevant to the charged crimes of malice murder and other offenses in connection with two arson-related deaths as it was properly admitted to show motive under O.C.G.A. § 24-4-404(b). *Kirkland v. State*, 318 Ga. 639, 898 S.E.2d 536, 2024 Ga. LEXIS 39 (2024).

Evidence of drug use.

Co-defendant failed to establish ineffective assistance of counsel as a result of counsel failing to object to statements made at trial referencing the co-defendant's drug use because any objection to the admissions would have been meritless given that the single reference to drug houses was brief. *Kirkland v. State*, 318 Ga. 639, 898 S.E.2d 536, 2024 Ga. LEXIS 39 (2024).

Specific acts to prove character.

Trial court's jury instruction on other acts evidence to prove identity in the charged crimes, a purpose for which it was not offered by the state or approved for

admission by the court, was erroneous but harmless error considering the instructions as a whole and the strong evidence of guilt. *Kirkland v. State*, 318 Ga. 639, 898 S.E.2d 536, 2024 Ga. LEXIS 39 (2024).

Defendant failed to show that trial counsel was ineffective for failing to file a motion under O.C.G.A. § 24-4-404 to present evidence related to the victim's propensity to carry firearms because defendant failed to show that the evidence would have been admissible. Defendant never sought to prove the victim's alleged violent character by reputation and opinion testimony, and admission of the victim's prior gun charge was not admissible to prove his character. *Ward v. State*, 318 Ga. 884, 901 S.E.2d 189, 2024 Ga. LEXIS 100 (2024).

3. Specific Crimes

a. Assault, Battery, and Homicide Crimes

Admission of similar transaction proper.

Trial court did not abuse its discretion by admitting testimony from the defendant's former girlfriend that he had choked the girlfriend until the girlfriend passed out because the testimony was properly admitted to show motive and the defendant failed to show any error. *Burns v. State*, 368 Ga. App. 642, 889 S.E.2d 447, 2023 Ga. App. LEXIS 287 (2023), *aff'd* on other grounds, 320 Ga. 320, 907 S.E.2d 581, 2024 Ga. LEXIS 239 (2024).

Trial court did not plainly err in admitting other-acts evidence that the defendant and others allegedly assaulted another person following a verbal altercation because the evidence that the defendant and another were fellow gang members and the defendant had previously retaliated against someone following a verbal altercation involving the other gang member, in combination with the expert testimony that gangs consider standing up to them to be an act of disrespect, provided evidence of the defendant's motive to shoot the victim for standing up to a fellow gang member. *Mills v. State*, 320 Ga. 457, 910 S.E.2d 143, 2024 Ga. LEXIS 292 (2024).

Self defense claims prohibited admission of other acts evidence. — Trial court did not abuse the court's dis-

Criminal Cases (Cont'd)**3. Specific Crimes (Cont'd)****a. Assault, Battery, and Homicide Crimes (Cont'd)**

cretion in excluding evidence of the five other acts of the defendant who was charged with murder and other offenses because the defendant's claim of self-defense precluded admission of the other acts to show intent, knowledge, absence of mistake or accident, identity, or motive. *State v. Flowers*, 320 Ga. 882, 912 S.E.2d 527, 2025 Ga. LEXIS 35 (2025).

Domestic violence against prior victim inadmissible in murder trial.

— Trial court abused the court's discretion by admitting evidence of the defendant's past battery of his ex-girlfriend during his murder trial because that evidence was not truly relevant to proving his motive or absence of mistake in killing the victim, and its minimal probative value was substantially outweighed by its unfair prejudicial effect. While the evidence could theoretically be relevant to disproving accident or mistake, the probative value was minimal because the defense was self-defense, not mistake, and the evidence was powerful, highly prejudicial propensity evidence. *Harris v. State*, 321 Ga. 87, 913 S.E.2d 570, 2025 Ga. LEXIS 52 (2025).

Evidence of prior difficulties between victim and defendant.

Trial court did not plainly err in admitting evidence of prior incidents of domestic abuse between the defendant and the victim, as such evidence was probative to show the nature of their relationship and the defendant's potential motive. *Fuller v. State*, 374 Ga. App. 432, 913 S.E.2d 66, 2025 Ga. App. LEXIS 66 (2025).

Bank records admissible. — Trial court did not err by admitting other-acts evidence in the form of the victim's bank records because the records were intrinsic evidence as the bank records were necessary to complete the story of the crimes and helped explain the defendant's financial motive to kill the victim. *Jennings v. State*, 318 Ga. 579, 899 S.E.2d 210, 2024 Ga. LEXIS 59 (2024).

Admission of other acts evidence in murder trial constituted harmless error.

Appellant's convictions for malice murder and other crimes in connection with

the shooting death of a 73-year-old man in a pharmacy parking lot were upheld as appellant admitted to attempting to rob the victim and the evidence showed malice based on the entry paths of the bullets and attempts to hide evidence and any error in admitting appellant's prior robbery conviction or instructing the jury about it was harmless given the strong evidence of the intent to commit robbery. *Bennett v. State*, 320 Ga. 580, 910 S.E.2d 601, 2024 Ga. LEXIS 303 (2024).

Evidence of a prior violent act.

Trial court did not err by admitting evidence of defendant's prior assaults by strangulation of his ex-girlfriends because it was relevant to defendant's intent, as the charged offense of felony murder predicated on aggravated assault by strangulation involved similar intent to defendant's prior acts of strangulation, and the charged offense of theft by taking for stealing the victim's car involved similar intent to his theft of an ex-girlfriend's car after she passed out from strangulation. *Greene v. State*, 316 Ga. 584, 889 S.E.2d 864, 2023 Ga. LEXIS 126 (2023).

Evidence of other conduct or crimes was admissible.

Trial court did not abuse its discretion in admitting the other acts evidence because the other acts evidence concerning defendant's prior fraudulent possession of financial material was relevant to prove knowledge and intent and was not unfairly prejudicial. *Champion v. State*, 369 Ga. App. 775, 894 S.E.2d 611, 2023 Ga. App. LEXIS 528 (2023).

Trial court did not err by admitting five instances of other acts evidence concerning defendant's penchant for brandishing and/or discharging firearms during perceived or actual disputes with others because more than one victim testified that they did not know whether the shooter knew they were on the river and the other acts showed defendant's tendency to respond to the presence of other people on or near his land with violence. *Brewton v. State*, 370 Ga. App. 224, 896 S.E.2d 133, 2023 Ga. App. LEXIS 558 (2023).

Trial court did not abuse its discretion by admitting evidence showing that defendant participated in another murder

11 days after the instant murder because the crimes had significant similarities, by asserting that defendant was merely present and did not share his codefendants' criminal intent to murder the victim defendant made intent a crucial issue at trial, and the trial court gave the jury a limiting instruction. *Rooks v. State*, 317 Ga. 743, 893 S.E.2d 899, 2023 Ga. LEXIS 230 (2023).

Defendant's prior conviction for possession of methamphetamine with intent to distribute methamphetamine was not substantially outweighed by its unfair prejudice because the trial court relied heavily upon attempting to discredit the confidential informant, and the state had a need for and was entitled to present other acts evidence to combat the defendant's attacks on the informant's credibility. *Ashley v. State*, 374 Ga. App. 153, 911 S.E.2d 701, 2025 Ga. App. LEXIS 16 (2025).

b. Robbery, Burglary, and Theft Crimes

Admission of similar transaction evidence proper.

Trial court did not err by admitting evidence of a previous altercation between defendant and a sister because evidence that defendant had assaulted the sister with a knife following a petty argument two months prior to the charged offense, during which defendant stabbed and killed the victim, another sister, was admissible to prove defendant's intent. *Henderson v. State*, 318 Ga. 752, 900 S.E.2d 596, 2024 Ga. LEXIS 86 (2024).

Trial court did not abuse the court's discretion in admitting evidence of a prior robbery by defendant to prove defendant's identity because the prior robbery was sufficiently similar to the charged crime, as both involved defendant using a vehicle to rob lone women of their purses within a short timeframe. *Olushola v. State*, 373 Ga. App. 274, 908 S.E.2d 249, 2024 Ga. App. LEXIS 418 (2024).

Appellant's conviction for possession of marijuana with intent to distribute and the denial of his motion for new trial were upheld because appellant's prior drug con-

victions were admissible under O.C.G.A. § 24-4-404(b) as they were relevant to showing intent, similar to the charged offense, and not overly remote in time, and appellant's statements claiming ownership were spontaneous and not made in response to interrogation, so Miranda warnings were not required. *Davis v. State*, 373 Ga. App. 891, 910 S.E.2d 621, 2024 Ga. App. LEXIS 496 (2024).

Defendant's prior convictions in 2017 for possession of methamphetamine with intent to distribute and possession of a handgun while being a convicted felon, and in 2010 for possession of methamphetamine and manufacturing methamphetamine were properly admitted as relevant to establish the defendant's intent given that he was not in actual possession of the backpack when it was found. *Brown v. State*, 374 Ga. App. 87, 911 S.E.2d 352, 2025 Ga. App. LEXIS 7 (2025).

Prior crimes properly admitted.

Trial court did not err by admitting evidence of a prior armed robbery because it was admissible to prove intent, as defendant pleaded not guilty to the armed robbery charges, and in both incidents defendant robbed a business at night by vaulting over the counter to confront the employee with a small handgun and asking about a safe and the two events occurred three days apart. *Randolph v. State*, 317 Ga. 146, 891 S.E.2d 818, 2023 Ga. LEXIS 181 (2023).

Trial court did not err by admitting into evidence a prior robbery because defendant made intent a material issue by pleading not guilty, both offenses occurred in the same area, in broad daylight, and involved the use of a firearm, the events were separated by only two years, and the probative value of the evidence was strengthened by the prosecutorial need for it. Defendant did not show that the evidence's prejudice outweighed its probative value. *Mitchell v. State*, 317 Ga. 107, 891 S.E.2d 915, 2023 Ga. LEXIS 183 (2023).

d. Miscellaneous Crimes

Admission of other acts evidence was erroneous. — Trial court erred in admitting certain other-acts evidence be-

Criminal Cases (Cont'd)
3. Specific Crimes (Cont'd)
d. Miscellaneous Crimes (Cont'd)

cause the evidence did not show any special knowledge or skill, the argument as to motive was merely an impermissible one seeking to demonstrate that the defendant's bad character gave the defendant the propensity to commit the crimes charged, and the defendant never claimed the incident was the result of an accident or mistake. *Underwood v. State*, 375 Ga. App. 238, 2025 Ga. App. LEXIS 172 (2025).

No evidence of prior bad act of child molestation. — Trial court did not err by denying defendant's motion for a mistrial based on the state asking defendant about defendant's relationship with defendant's adult daughter because, while the state made a reference to allegations the daughter may have made about defendant, defendant provided no record support for the claim that the daughter ever alleged defendant molested her as a child, and the trial court gave a prompt curative instruction to the jury to disregard the state's questions. *Day v. State*, 367 Ga. App. 803, 888 S.E.2d 608, 2023 Ga. App. LEXIS 238 (2023).

4. Victim's Character

Evidence of victim's criminal activity.

Defendant failed to show that defen-

dant was prejudiced by counsel's failure to present evidence of the victim's criminal convictions to the jury because defendant could not show that the evidence would have been admitted, as the evidence would not have been admissible to prove that the victim had a violent or non-law-abiding character and defendant offered no evidence that defendant knew of the victim's past crimes at the time of the shooting. *Copeland v. State*, 316 Ga. 452, 888 S.E.2d 517, 2023 Ga. LEXIS 113 (2023).

5. Jury Instructions

Meritless objection not required.

Defense counsel was not ineffective for failing to object to trying appellant jointly with co-defendant because, *inter alia*, the state introduced trial evidence under O.C.G.A. § 24-4-404(b), that co-defendant pled guilty to involuntary manslaughter in 2008, and before the state introduced that evidence, the trial court instructed the jury that the evidence could be considered only as to co-defendant, and not for any other purpose. *Beltran-Gonzales v. State*, 317 Ga. 168, 891 S.E.2d 801, 2023 Ga. LEXIS 180 (2023).

24-4-405. Methods of proving character.

JUDICIAL DECISIONS

Evidence of victim's prior acts involving others. — Defendant failed to establish that the trial court committed a clear or obvious error by not allowing the defendant to call other witnesses to testify about the victim's prior acts of violence against other women. *Wood v. State*, 320 Ga. 466, 910 S.E.2d 150, 2024 Ga. LEXIS 294 (2024).

Evidence of victim's violent character. — Defendant failed to show that trial counsel was ineffective for failing to file a motion under O.C.G.A. § 24-4-405 to present evidence related to the victim's propensity to carry firearms because the

defendant failed to show that the evidence would have been admissible. Defendant never sought to prove the victim's alleged violent character by reputation and opinion testimony, and admission of the victim's prior gun charge was not admissible to prove his character. *Ward v. State*, 318 Ga. 884, 901 S.E.2d 189, 2024 Ga. LEXIS 100 (2024).

Evidence of victim's prior convictions.

Defendant failed to show that defendant was prejudiced by counsel's failure to present evidence of the victim's criminal convictions to the jury because defendant

could not show that the evidence would have been admitted, as the evidence would not have been admissible to prove that the victim had a violent or non-law-abiding character and defendant offered no evidence that defendant knew of the victim's past crimes at the time of the shooting. *Copeland v. State*, 316 Ga. 452, 888 S.E.2d 517, 2023 Ga. LEXIS 113 (2023).

Transcript from son's trial improperly admitted on character. — Trial court plainly erred by allowing the State to read portions of a transcript from defendant's son's guilty plea during its cross-examination because it was improper bad character evidence, as defendant did not

put his good character in issue and did not offer his son's testimony to establish a pertinent trait of character that would allow for rebuttal. The error was not harmless because the transcript of the son's attorney's comments was the last evidence the jury heard before the jury instructions and deliberations, the jury was left with the opinions of an attorney that defendant was "an absolute scumbag," "a criminal menace," "horrible father," and "piece of garbage" and likely affected the outcome of defendant's trial. *Fraday v. State*, 373 Ga. App. 261, 908 S.E.2d 242, 2024 Ga. App. LEXIS 419 (2024).

24-4-408. Compromises and offers to compromise.

JUDICIAL DECISIONS

ANALYSIS

APPLICATION AND ILLUSTRATIONS

Application and Illustrations

Admission of statements from settlement conference for limited purposes. — In an action for trespass, the trial court did not err in admitting statements made during a settlement conference for the limited purpose of proving intent and state of mind, which was relevant to the jury's consideration of whether to award punitive damages. *Whitaker Farms v. Fitzgerald Fruit Farms*, 368 Ga. App. 563, 890 S.E.2d 454, 2023 Ga. App. LEXIS 350 (2023), vacated in part, 320 Ga. 208, 908 S.E.2d 531, 2024 Ga. LEXIS 258 (2024).

No offer to compromise found.

Trial court did not abuse its discretion by admitting into evidence an audio-recorded excerpt of the jail phone call over an objection that the excerpt was not admissible under O.C.G.A. § 24-4-408(a), because the defendant asking the defendant's mother to ask the state to provide a plea deal did not constitute an offer to compromise. *Sauder v. State*, 318 Ga. 791, 901 S.E.2d 124, 2024 Ga. LEXIS 97 (2024).

Erroneous admission.

In a case a lessee was locked out of the leased premises, the statements made during a settlement negotiation by the owner to the lessee were improperly admitted at trial because the evidence of the owner's statements was offered to prove the owner's state of mind and intent, which were elements of the punitive damages claim, which evidence was necessarily offered to prove the owner's liability for that claim and, thus, offered for a purpose forbidden by O.C.G.A. § 24-4-408(a). *Whitaker Farms, LLC v. Fitzgerald Fruit Farms, LLC*, 320 Ga. 208, 908 S.E.2d 531, 2024 Ga. LEXIS 258 (2024).

Claim for punitive damages. —

Claim for punitive damages constituted a claim under O.C.G.A. § 24-4-408(a) and, therefore, evidence of statements made during settlement negotiations were inadmissible to prove liability for punitive damages. *Whitaker Farms, LLC v. Fitzgerald Fruit Farms, LLC*, 320 Ga. 208, 908 S.E.2d 531, 2024 Ga. LEXIS 258 (2024).

24-4-411. Liability insurance.

JUDICIAL DECISIONS

Counsel cannot inform jury of existence of liability coverage. — In an action arising from a motor vehicle accident, the trial court erred in permitting appellee’s counsel to inform the jury that

appellant had liability coverage because the court violated O.C.G.A. § 24-4-411 and was extraordinarily prejudicial. *Woods v. Heath*, 372 Ga. App. 22, 903 S.E.2d 705, 2024 Ga. App. LEXIS 244 (2024).

24-4-412. Complainant’s past sexual behavior not admissible in prosecutions for certain sexual offenses; exceptions.

JUDICIAL DECISIONS

Procedure

Failure to conduct proper analysis. — Trial court and the Court of Appeals believed incorrectly that the now-displaced probable-falsity standard adopted in *Smith v. State*, 259 Ga. 135 (1989) applied and, thus, the courts did not

conduct the analysis required by the 2013 Evidence Code with regard to evidence concerning a victim’s allegedly false accusation of sexual misconduct against a person other than the defendant. *Gallegos-Munoz v. State*, 319 Ga. 803, 906 S.E.2d 711, 2024 Ga. LEXIS 196 (2024).

24-4-413. Evidence of similar transaction crimes in sexual assault cases.

JUDICIAL DECISIONS

Similar acts or omissions on other and different occasions.

Severance of the second victim’s rape charge was not required because evidence of it would be admissible in the first victim’s case under Georgia’s evidentiary rule allowing prior sexual assaults to be admitted. *McCullum v. State*, 318 Ga. 485, 899 S.E.2d 171, 2024 Ga. LEXIS 68 (2024).

Where defendant was accused in two separate indictments of two acts of rape and aggravated sodomy against two separate victims, the allegations in the other indictment were admissible in each trial as highly probative in proving lack of consent, which was a key disputed issue. The alleged offenses were also very similar in nature and close in time, reducing the risk of unfair prejudice and the prosecutorial need for the evidence was high given the “he said, she said” nature of the allegations. *State v. Chowdhury*, 374 Ga. App. 189, 911 S.E.2d 730, 2025 Ga. App. LEXIS 21 (2025).

No plain error admitting evidence of prior child molestation. — Trial

court did not plainly err by admitting defendant’s ex-girlfriend’s testimony about child molestation on the ground that it was not within the definition of evidence that could be admitted under O.C.G.A. § 24-4-413 because the ex-girlfriend only briefly testified, and her daughter testified at length about specifics of the abuse, including that defendant raped her, which was intertwined with the testimony about child molestation. *Martin v. State*, 369 Ga. App. 668, 894 S.E.2d 244, 2023 Ga. App. LEXIS 507 (2023).

Admission of similar transaction proper.

Other acts testimony about the witness’s non-consensual sexual encounters with the defendant was admissible because it showed the defendant’s propensity to engage in non-consensual sex, which was relevant to the charged offense where consent was an issue. The testi-

mony was also more probative than unfairly prejudicial. *Dely v. State*, 374 Ga. App. 853, 914 S.E.2d 386, 2025 Ga. App. LEXIS 133 (2025).

Similar transaction evidence admissible.

Trial court did not abuse its discretion in admitting the prior acts evidence under O.C.G.A. § 24-4-413 because it was relevant and probative, and the court properly balanced any unfair prejudice and whether the prior act qualified as an offense of sexual assault was a question of law for the trial court rather than an issue for the jury. *Thomas v. State*, 370 Ga. App. 370, 896 S.E.2d 885, 2024 Ga. App. LEXIS 3 (2024).

Trial court abused its discretion by excluding the other acts evidence, which related to defendant's alleged sexual as-

sault of four prior victims, offered by the state because it was strikingly similar to the current alleged crime, temporally close in time, and was needed by the prosecution to show the victim's lack of consent. *State v. Shalgheen*, 370 Ga. App. 202, 896 S.E.2d 23, 2023 Ga. App. LEXIS 555 (2023).

Trial court did not abuse the court's discretion in admitting defendant's prior conviction for child molestation as similar transaction evidence as the similar transaction evidence was properly admitted because the state gave timely notice and the evidence was highly relevant to defendant's lustful disposition and the victim's credibility. *Ebersole v. State*, 371 Ga. App. 520, 901 S.E.2d 572, 2024 Ga. App. LEXIS 179 (2024).

24-4-414. Evidence of similar transaction crimes in child molestation cases.

JUDICIAL DECISIONS

ANALYSIS

OTHER CRIMES

Other Crimes

Evidence of similar prior offense held admissible.

Trial court did not err by admitting the defendant's 2003 prior conviction for child molestation and statutory rape because the state needed the evidence of the defendant's prior act of child molestation to counter any attack on the victim's credibility after the victim disclosed that the defendant had touched the victim inappropriately only after denying in the first forensic interview that the defendant had done so, and there was no physical evidence supporting the victim's disclosure. *Miller v. State*, 368 Ga. App. 879, 891

S.E.2d 444, 2023 Ga. App. LEXIS 382 (2023).

Out of court statement about out of state molestation admissible. — With regard to the defendant's convictions for child molestation, the trial court acted within the court's discretion in ruling that evidence of out-of-court statements in the victim's recorded forensic interview about incidents in which the defendant allegedly molested the victim in Florida were admissible to show intent, motive, and propensity under O.C.G.A. § 24-4-414(a). *Brantley v. State*, 370 Ga. App. 757, 899 S.E.2d 284, 2024 Ga. App. LEXIS 84 (2024).

24-4-418. Admissibility of criminal gang activity; disclosure.

JUDICIAL DECISIONS

No nexus between other act and intent to further gang activity required. — Plain language of O.C.G.A. §

24-4-418 was held not to require proof of a nexus between the other act and an intent to further gang activity as § 24-4-418

references the definition of “criminal gang activity” in the Georgia Street Gang Terrorism and Prevention Act, O.C.G.A. § 16-15-3, which does not contain such a nexus requirement. *McKinney v. State*, 318 Ga. 566, 899 S.E.2d 121, 2024 Ga. LEXIS 66 (2024).

No abuse of discretion in admitting evidence of alleged gang membership.

Trial court did not abuse the court’s discretion by admitting evidence regarding defendant’s gang affiliation and defendant’s commission of prior gang activity because the probative value of the gang evidence at issue was not substantially outweighed by the danger of unfair prejudice, as defendant disputed that he committed the robbery or that it was intended to further the gang’s interests. Evidence of defendant’s prior gang activity involving firearms had significant probative value in establishing a nexus between the armed robbery and the intent to further the gang’s interests. *Lee v. State*, 374 Ga. App. 329, 912 S.E.2d 700, 2025 Ga. App. LEXIS 49 (2025).

Overly prejudicial evidence excludable. — Although O.C.G.A. § 24-4-418 was held not to require a nexus between the other act and an intent to further gang activity, evidence admitted under it remains subject to O.C.G.A. § 24-4-403, which allows exclusion of overly prejudicial evidence. *McKinney v. State*, 318 Ga. 566, 899 S.E.2d 121, 2024 Ga. LEXIS 66 (2024).

Admission of misdemeanor did not affect outcome of trial. — Appellant failed to demonstrate that any error in admitting the evidence of appellant’s three prior misdemeanor convictions for simple battery likely affected the outcome of the trial because appellant’s guilt for the murder was overwhelming, including the admission to shooting the victim, appellant’s fingerprint inside the victim’s car and DNA on the gun, and the discovery of the murder weapon and the victim’s cell phone in appellant’s apartment the morning after the shooting. *Ruthenberg v. State*, 317 Ga. 227, 892 S.E.2d 728, 2023 Ga. LEXIS 192 (2023).

CHAPTER 5

PRIVILEGES

Sec.		in victim centered practices or victim-offender dialogues.
24-5-501.	Certain communications privileged.	
24-5-511.	Privileged communications	

24-5-501. Certain communications privileged.

- (a) There are certain admissions and communications excluded from evidence on grounds of public policy, including, but not limited to, the following:
- (1) Communications between husband and wife;
 - (2) Communications between attorney and client;
 - (3) Communications among grand jurors;
 - (4) Secrets of state;
 - (5) Communications between psychiatrist and patient;

(6) Communications between licensed psychologist and patient as provided in Code Section 43-39-16;

(7) Communications between a licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, or licensed professional counselor and patient;

(8) Communications between or among any psychiatrist, psychologist, licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, and licensed professional counselor who are rendering psychotherapy or have rendered psychotherapy to a patient, regarding that patient's communications which are otherwise privileged by paragraph (5), (6), or (7) of this subsection;

(9) Communications between accountant and client as provided by Code Section 43-3-29; and

(10) Communications made in the context of victim centered practices or victim-offender dialogues as provided for in Code Section 24-5-511.

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

(1) "Psychotherapy" means the employment of psychotherapeutic techniques.

(2) "Psychotherapeutic techniques" shall have the same meaning as provided in Code Section 43-10A-3.

History.

Code 1981, § 24-5-501, enacted by Ga. L. 2011, p. 99, § 2/HB 24; Ga. L. 2014, p. 136, § 2-1/HB 291; Ga. L. 2025, p. 497, § 7/HB 582, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, deleted "and" at the end of paragraph (a)(8), substituted "; and" for a pe-

riod at the end of paragraph (a)(9), and added paragraph (a)(10).

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

ANALYSIS

COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT

10. CRIMINAL MATTERS

Communications Between Attorney and Client

10. Criminal Matters

Information provided to detective

by counsel. — Trial court did not err by granting the defendant's motion to suppress because the defendant's attorney-client privilege was violated through his attorney's disclosures of information ob-

Communications Between Attorney and Client (Cont'd)
10. Criminal Matters (Cont'd)

tained from defendant to the detective. Defendant did not waive his attorney-client privilege as counsel testified that he

did not have any waiver or permission to share information from defendant and defendant testified that he never gave counsel permission to share any information with the detective. *State v. Ledbetter*, 318 Ga. 457, 899 S.E.2d 222, 2024 Ga. LEXIS 58 (2024).

RESEARCH REFERENCES

ALR. Attorney-Client Privilege Predominant Purpose Test in Dual Purpose Communications with Business Clients Under State Law, 88 A.L.R.7th 4.

24-5-505. Party or witness privilege.

RESEARCH REFERENCES

ALR. Qualified or Absolute Privilege as Protecting Identity or Statements of Complainant, Victim, or Witness of Sexual Misconduct in Employment Related Context for Purposes of Defamation Suit, 91 A.L.R.7th 2.
Insurance Implications of Invoking Fifth Amendment Right Against Self-Incrimination, 85 A.L.R. Fed. 3d Art. 2.

24-5-511. Privileged communications in victim centered practices or victim-offender dialogues.

- (a) As used in this Code section, the term:
- (1) “Facilitator” means a person who is trained to facilitate a victim centered practice or victim-offender dialogue.
 - (2) “Party” means a person, including a facilitator, a victim, an offender, a community member, and any other participant, who voluntarily consents to participate with others in a victim centered practice or victim-offender dialogue.
 - (3) “Proceeding” means any legal action subject to the laws of this state, including, but not limited to, civil, criminal, juvenile, or administrative hearings.
 - (4) “Victim centered practice” or “practice” means a gathering in which parties gather to identify and respond to wrongdoing, repair harm, reduce the likelihood of further harm, and strengthen community ties by focusing on the needs and obligations of all parties involved through a participatory process.
 - (5) “Victim-offender dialogue” or “dialogue” means a process in which the victim of a crime, or his or her surviving family members, and the offender who committed the crime meet in a secure setting to engage in a dialogue facilitated by a facilitator with the goal of repairing harm and addressing trauma.

(b)(1) Any communication or action made at any time while preparing for or participating in a victim centered practice or a victim-offender dialogue or as a follow up to such practice or dialogue, or the fact that such practice or dialogue has been planned or convened, shall be privileged and shall not be referred to, used, or admitted in any proceeding unless such privilege is waived. Such waiver may be made during the proceeding or in writing by the party or parties protected by the privilege. Privileged information shall not be subject to discovery or disclosure in any judicial or extrajudicial proceeding and shall not be subject to public inspection as provided by Article 4 of Chapter 18 of Title 50.

(2) Parties of a victim centered practice or victim-offender dialogue may refuse to disclose communications relating to a victim centered practice or victim-offender dialogue and prevent others from disclosing such communications.

(3) Any waiver of privilege shall be limited to the participation and communications of the waiving party only, and the participation or communications of any other party shall remain privileged unless waived by such other party.

(c) Evidence that is created or discovered outside of the victim centered practice or victim-offender dialogue shall not become inadmissible or protected from discovery solely because it was discussed or used in a victim centered practice or victim-offender dialogue.

(d)(1) The privilege afforded by this Code section shall not extend to a situation in which:

(A) There are threats of imminent violence to self or others; or

(B) The facilitator believes that a child is being abused or that the safety of any party or other person is in danger.

(2) A court, tribunal, or administrative body may require a report on a victim centered practice or victim-offender dialogue, but such report shall be limited to the fact that a practice or dialogue has taken place and whether further practices or dialogues are expected.

(e) The privilege created by this Code section shall not be grounds to fail to comply with mandatory reporting requirements as set forth in Code Section 19-7-5 or Chapter 5 of Title 30, the "Disabled Adults and Elder Persons Protection Act."

(f) No facilitator shall be held liable for civil damages for any statement, action, omission, or decision made in the course of a victim centered practice or victim-offender dialogue unless that statement, action, omission, or decision is:

(1) Grossly negligent and made with malice; or

(2) Made with willful disregard for the safety or property of any party to the victim centered practice or victim-offender dialogue.

History.

Code 1981, § 24-5-511, enacted by Ga. L. 2025, p. 497, § 8/HB 582, effective July 1, 2025.

Effective date.

This Code section became effective July 1, 2025.

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.’”

CHAPTER 6
WITNESSES
ARTICLE 1
GENERAL PROVISIONS

24-6-606. Juror as witness.

JUDICIAL DECISIONS

ANALYSIS

STATEMENTS BY JURORS

Statements by Jurors

Manner of arriving at verdict.

While jurors were permitted to testify on the question of whether extraneous prejudicial information was improperly brought to their attention, they were prohibited from testifying as to how such information affected their deliberations or the verdict, the precise purpose for which defendant sought to admit the affidavits. *Tedder v. State*, 320 Ga. 29, 907 S.E.2d 623, 2024 Ga. LEXIS 230 (2024).

No misconduct established.

Trial court did not abuse the court’s

discretion in denying the motion for mistrial based on juror misconduct because the juror misconduct did not deprive defendants of a fair trial based on the trial court’s assessment of the jurors’ credibility which indicated that neither the jurors’ conversations nor the jurors’ general safety concerns impacted the jurors’ ability to be fair and impartial and to base the jurors’ verdicts on the evidence and the law. *McCabe v. State*, 319 Ga. 275, 903 S.E.2d 78, 2024 Ga. LEXIS 135 (2024).

24-6-607. Who may impeach.

JUDICIAL DECISIONS

Trial court did not abuse discretion limiting cross-examination. — Trial court did not abuse the court’s discretion in prohibiting the defense from cross-ex-

amining the child murder victim’s mother regarding her purported dishonesty about the paternity of the twins’ half-brother, the fact that she had lost custody of a

child, and her postpartum depression as those topics were not relevant to defendant's guilt or innocence. *Johnson v. State*,

316 Ga. 672, 889 S.E.2d 914, 2023 Ga. LEXIS 127 (2023).

24-6-608. Evidence of character and conduct of witness.

JUDICIAL DECISIONS

Proof of Bad Character

Harmless error where other testimony showed victim's prior untruthfulness. — Even if the trial court erred in precluding the defendant from fully exploring the victim's character for untruthfulness, the error was harmless because the victim testified about the incidents

where the victim's aunt made the victim wear a shirt that said something about lying about school and phones and stuff and, thus, it was highly probable that the error did not contribute to the verdict. *Page v. State*, 372 Ga. App. 128, 903 S.E.2d 815, 2024 Ga. App. LEXIS 262 (2024).

24-6-609. Impeachment by evidence of conviction of a crime.

JUDICIAL DECISIONS

ANALYSIS

PRIOR CONVICTIONS OF DEFENDANT ACTIONS OF COUNSEL

Prior Convictions of Defendant

Prior conviction properly admitted to impeach defendant's credibility.

Trial court did not err in finding that defendant's prior convictions, which were over 10 years old, were admissible under O.C.G.A. § 24-6-609 for the purpose of impeachment because the probative value of defendant's prior convictions was high because defendant's credibility was central to the outcome of the trial. *Johnson v. State*, 368 Ga. App. 180, 889 S.E.2d 369, 2023 Ga. App. LEXIS 278 (2023).

For convictions less than 10 years old under O.C.G.A. § 24-6-609(a)(1) (Rule 609), the trial court was not required to list the specific factors supporting its probative value versus prejudicial effect finding on the record and any error in admitting the 2007 conviction of defendant under Rule 609(b) was harmless given the strong eyewitness evidence against defendant. *Redding v.*

State, 320 Ga. 107, 907 S.E.2d 258, 2024 Ga. LEXIS 217 (2024).

Defendant's felony murder and aggravated assault convictions were upheld because any error in admitting the other-acts evidence under O.C.G.A. § 24-6-404(b) was harmless given the relative weakness of that evidence compared to the eyewitness testimony, defendant's admissions, the limiting instructions, and the brevity with which the evidence was presented. *Redding v. State*, 320 Ga. 107, 907 S.E.2d 258, 2024 Ga. LEXIS 217 (2024).

Actions of Counsel

Counsel not ineffective.

Trial counsel was not ineffective for failing to present evidence of the criminal histories of other witnesses for impeachment purposes as such evidence would have been inadmissible or cumulative. *Ryals v. State*, 321 Ga. 151, 913 S.E.2d 604, 2025 Ga. LEXIS 42 (2025).

24-6-613. Prior statements of witnesses.

JUDICIAL DECISIONS

ANALYSIS

ADMISSIBILITY OF STATEMENT

2. WHAT STATEMENTS ADMISSIBLE

FOUNDATION

Admissibility of Statement

2. What Statements Admissible

Statement victim’s mother made on 911 call. — Defendant’s conviction of rape and furnishing alcohol to a minor was upheld because the trial court did not err by excluding a statement the victim’s mother made on the call to 911 and a statement included in a police report as the 911 call was hearsay and not a prior inconsistent statement contradicting the mother’s or victim’s testimony and the defendant never proffered the excluded police report at trial, so the evidentiary ruling excluding the report was presumed correct. *Martinez-Gaspar v. State*, 375 Ga. App. 189, 915 S.E.2d 79, 2025 Ga. App. LEXIS 156 (2025).

Foundation

Witness given opportunity to admit, explain, or deny.
Because there was sufficient foundation

laid under O.C.G.A. § 24-6-613 (b) as a result of appellant stating that appellant did not remember making a previous statement to law enforcement, the trial court did not abuse its discretion in admitting appellant’s recorded interview as a prior inconsistent statement. *Green v. State*, 317 Ga. 250, 892 S.E.2d 733, 2023 Ga. LEXIS 191 (2023).

Witness failing to recall previous statements. — State established the foundation for offering a witness’s recorded interview with investigators as a prior inconsistent statement by asking the witness several times if the witness remembered making the statements, which the witness did not recall making due to being under the influence of drugs at the time. *Hayes v. State*, 320 Ga. 505, 910 S.E.2d 198, 2024 Ga. LEXIS 297 (2024).

24-6-615. Exclusion of witnesses.

JUDICIAL DECISIONS

ANALYSIS

EXCEPTIONS TO SEQUESTRATION RULE

Exceptions to Sequestration Rule

Investigating officer.
Trial court did not abuse the court’s discretion by exempting the state’s chief

investigative agent from sequestration and allowing him to remain in the courtroom during trial. *Riley v. State*, 321 Ga. 112, 913 S.E.2d 559, 2025 Ga. LEXIS 51 (2025).

24-6-616. Presence in courtroom of victim of criminal offense.

RESEARCH REFERENCES

ALR. Qualified or Absolute Privilege as Protecting Identity or Statements of Complainant, Victim, or Witness of Sexual

Misconduct in Employment Related Context for Purposes of Defamation Suit, 91 A.L.R.7th 2.

ARTICLE 2 CREDIBILITY

24-6-620. Credibility a question for trier of fact.

JUDICIAL DECISIONS

ANALYSIS

CRIMINAL CASES

Criminal Cases

Credibility of victim in rape prosecution.

Trial counsel's failure to object to testimony from the victim's mother improperly bolstering the victim's credibility constituted deficient performance and prejudiced the defendant because there was no strategic reason for failing to object when the victim's credibility was central to the case against the defendant and the bolstering was particularly harmful given the lack of other evidence and the defense's focus on challenging the victim's

credibility. *Flores-Avila v. State*, 374 Ga. App. 48, 911 S.E.2d 235, 2025 Ga. App. LEXIS 1 (2025).

Failure to show ineffective assistance of counsel.

Trial counsel was not ineffective for failing to object to the detective's testimony that the victim's statement was consistent with surveillance footage of the crime because none of the testimony defendant cited directly addressed the victim's credibility and therefore the testimony was not bolstering. *Ramirez v. State*, 374 Ga. App. 646, 913 S.E.2d 768, 2025 Ga. App. LEXIS 103 (2025).

24-6-621. Impeachment by contradiction.

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

3. CRIMINAL MATTERS

Application

3. Criminal Matters

Criminal defendant.

Defendant's convictions for first-degree vehicular homicide and drunk driving were upheld and evidence of a prior DUI conviction was properly admitted because

by volunteering that he was a law-abiding citizen, defendant opened the door to the state impeaching that testimony with evidence of the prior DUI conviction and admitted cocaine use. *Da Silva v. State*, 369 Ga. App. 75, 890 S.E.2d 876, 2023 Ga. App. LEXIS 368 (2023).

CHAPTER 7

OPINIONS AND EXPERT TESTIMONY

RESEARCH REFERENCES

ALR.

Products liability: necessity and admissibility of expert or opinion evidence as to design and manufacture of industrial equipment and chemicals, 74 A.L.R.7th 1.

Products liability: necessity and admissibility of expert or opinion evidence as to

design and manufacture of agricultural equipment, chemicals, and feed, 75 A.L.R.7th 3.

Products liability: necessity and admissibility of expert or opinion evidence as to design and manufacture of sporting equipment, 76 A.L.R.7th 4.

24-7-701. Lay witness opinion testimony.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
OPINION TESTIMONY ADMISSIBLE
2. SPECIFIC EXAMPLES

General Consideration

Statement not an opinion. — Trial counsel was not ineffective for failing to object to detectives’ testimony because their testimony that the hoodie depicted in surveillance footage was consistent with the hoodie recovered from defendant’s mother’s vehicle was non-opinion, factual testimony and was not governed by this section’s provisions regarding lay opinion testimony. *Ramirez v. State*, 374 Ga. App. 646, 913 S.E.2d 768, 2025 Ga. App. LEXIS 103 (2025).

Opinion Testimony Admissible

2. Specific Examples

Cause for attack. — Trial court did not err in allowing the victim to testify that the attack was due to the victim saying the victim was part of the gang because the victim’s testimony was based upon the victim’s own experience and the testimony was supported by the video recording of the attack played for the jury. *Dupree v. State*, 374 Ga. App. 421, 913 S.E.2d 41, 2025 Ga. App. LEXIS 65 (2025).

Identity.

Trial court did not err in allowing testimony from the co-defendant identifying the defendant in surveillance footage because the defendant did not provide any legal authority suggesting the trial court must find that images were unclear or blurry or codefendant was the only witness in a better position than the jury to identify the defendant in the surveillance footage. *Cross v. State*, 370 Ga. App. 250, 896 S.E.2d 607, 2023 Ga. App. LEXIS 565 (2023).

Trial court did not abuse the court’s discretion by denying defendant’s motion to suppress the lay eyewitness identification of defendant because there was not a substantial likelihood of irreparable misidentification as the witness had observed defendant’s appearance, mannerisms, gait, and similar characteristics depicted in the video footage before, giving him a better chance to correctly identify defendant than the jury would have. *Mitchell v. State*, 320 Ga. 673, 911 S.E.2d 607, 2025 Ga. LEXIS 7 (2025).

24-7-702. Expert opinion testimony; medical experts.**JUDICIAL DECISIONS****ANALYSIS****GENERAL CONSIDERATION****ILLUSTRATIONS**

1. OPINIONS ADMISSIBLE
2. OPINIONS INADMISSIBLE

CIVIL CASES

2. MEDICAL EXPERTS
3. OTHER SPECIFIC EXPERTS

CRIMINAL CASES

1. PROCEDURAL CONSIDERATIONS
2. QUALIFICATION AS EXPERT

General Consideration**Court determines expert's qualifications.**

In a suit for damages by a resident against a condominium association, the trial court failed to determine the admissibility of the resident's expert testimony, which required a remand, as it was not part of the record whether the trial court considered the admissibility of that testimony, which ruling may be dispositive of the resident's claims, each of which required evidence of causation. *Ovation Condominium Association, Inc. v. Cox*, 369 Ga. App. 481, 893 S.E.2d 867, 2023 Ga. App. LEXIS 480 (2023).

Illustrations**1. Opinions Admissible**

Vascular surgeon testimony as expert proper. — Defendant's claim that the trial court erred in allowing a vascular surgeon and defense expert to testify as to the standard of care for administering medicine for patients prior to a transcatheter artery revascularization procedure failed because the court found the expert was qualified to testify as to the administration of medicine prior to a vascular or arterial procedure and any issue as to experience was weighed by the jury. *Boone v. Vascular Surgical Associates, P.C.*, 372 Ga. App. 547, 905 S.E.2d 199, 2024 Ga. App. LEXIS 326 (2024).

Expert on pharmacology. — Trial court abused the court's discretion in excluding the expert testimony of the phar-

macology professor on the grounds that the professor's testimony would not be sufficiently reliable to assist the trier of fact, despite finding that the professor was otherwise qualified as an expert, improperly conflating the requirements of helpfulness and reliability and failing to act as a gatekeeper by excluding the expert testimony based on the court's belief that the opinion was not persuasive. *Wright v. State*, 374 Ga. App. 28, 910 S.E.2d 839, 2024 Ga. App. LEXIS 501 (2024).

2. Opinions Inadmissible**Testimony was inadmissible as expert testimony in the following cases.**

Trial court erred in denying defendant's motion to exclude an expert's opinion testimony as the expert essentially opined that defendant should have done more, but did not establish that a recognized standard of care required it to do more, nor articulated any standard of care requiring emergency responders to disbelieve or override what they are told by law enforcement at the scene. *Nat'l Emergency Med. Servs. v. Smith*, 368 Ga. App. 18, 889 S.E.2d 162, 2023 Ga. App. LEXIS 258 (2023).

In a suit for legal fees under a quantum meruit theory, the trial court did not err in precluding the client's expert from testifying about an alleged ethical violation as such testimony was properly excluded as irrelevant to the issue of damages since liability had already been determined via summary judgment and that ruling was

Illustrations (Cont'd)
2. Opinions Inadmissible (Cont'd)

not challenged on appeal. *Cordial Endeavor Concessions of Atlanta, LLC v. Gebo Law LLC*, 370 Ga. App. 528, 898 S.E.2d 259, 2024 Ga. App. LEXIS 46 (2024).

Physician not an expert on sepsis. — Trial court properly limited the expert testimony of a physician by precluding the physician from testifying about when the patient developed sepsis or septic shock and whether earlier treatment would have resulted in a different outcome, as the physician lacked sufficient expertise in diagnosing and treating sepsis and septic shock. *Zweigle v. N. Atlanta Obstetrics & Gynecology*, 374 Ga. App. 579, 913 S.E.2d 719, 2025 Ga. App. LEXIS 96 (2025).

Civil Cases

2. Medical Experts

Medical malpractice.

Trial court did not err when it denied appellants’ motion to exclude appellee’s expert’s testimony under O.C.G.A. § 24-7-702 because both the relevance and reliability of the expert’s opinions as to causation were supported by and consistent with multiple medical journal articles addressing ovarian squamous cell carcinoma, and the testimony of three doctors at trial provided additional support, as they testified that appellant’s spouse’s prognosis worsened as a result of the failure to treat her adnexal mass earlier. *Preferred Women’s Healthcare LLC v. Sain*, 367 Ga. App. 821, 888 S.E.2d 599, 2023 Ga. App. LEXIS 236 (2023).

Trial court did not abuse its discretion by disqualifying appellants’ expert because appellants did not cite evidence showing how and when, during at least three of the five years preceding the patient’s death, the expert supervised, taught, or instructed nurses such that he was qualified to opine on the standard of care for nurses to identify signs and symptoms of post-surgical internal bleeding and report them to the surgeon. *Smaha v. Medical Ctr. of Cent. Ga.*, 368 Ga. App. 299, 890 S.E.2d 47, 2023 Ga. App. LEXIS 297 (2023).

3. Other Specific Experts

Jockey truck expert. — In a lawsuit by a longshoreman claiming a company failed to maintain and inspect a jockey truck, summary judgment for the company was upheld as the trial court correctly excluded the expert’s testimony on the standard of care for lack of experience as a mechanic and knowledge of port maintenance practices. Consequently, the expert’s opinions on the company’s alleged breach were deemed unreliable and inadmissible, preventing a genuine issue of material fact regarding the company’s duty of care. *Johnson v. Terminal Investment Corporation*, 374 Ga. App. 629, 913 S.E.2d 14, 2025 Ga. App. LEXIS 60 (2025).

Toxicologist.

In a suit asserting personal injury, nuisance, and other claims arising from plaintiffs’ condominium residence being above a diesel-powered emergency generator, the trial court properly struck the environmental consultant because that expert lacked the necessary expertise in toxicology to opine on whether diesel particulate exposure caused plaintiff’s symptoms, the consultant was not a toxicologist and had no specific training or knowledge about the health effects of diesel particulates. *Ovation Condo. Ass’n v. Cox*, 374 Ga. App. 681, 913 S.E.2d 819, 2025 Ga. App. LEXIS 115 (2025).

Investigating officer. — When an investigating officer is called to provide an expert opinion following a fatal collision, the trial court has to perform the same gatekeeping function under O.C.G.A. § 24-7-703 that it is required to do with all expert witnesses. *Miller v. Golden Peanut Company, LLC*, 317 Ga. 22, 891 S.E.2d 776, 2023 Ga. LEXIS 176 (2023).

Expert testimony from property manager on industry practices. — Trial court did not abuse the court’s discretion by admitting the expert’s testimony because the record showed that the expert had decades of experience in property management, including senior residential housing as regulated by HUD and other agencies, the expert testified on the basis of this experience as to the responsibilities owed by owners to residents of senior housing, and after reviewing the

HUD regulations at issue, the expert testified as to the expert's opinion of defendants' performance in this respect, including their failure to ensure that residents were provided with wearable emergency pendant systems. *Mercy Housing Georgia III, L.P. v. Kaapa*, 368 Ga. App. 270, 888 S.E.2d 346, 2023 Ga. App. LEXIS 226 (2023).

Expert on safety and causation.

In a suit asserting personal injury, nuisance, and other claims arising from plaintiff's condominium residence being above a diesel-powered emergency generator, the trial court erred striking an environmental and industrial hygiene consultant because the consultant employed a reliable methodology in concluding that soot was present in plaintiff's unit and that the generator was the likely source, based on the consultant's review of various reports and testing. *Ovation Condo. Ass'n v. Cox*, 374 Ga. App. 681, 913 S.E.2d 819, 2025 Ga. App. LEXIS 115 (2025).

Opinion of police officer on auto accident.

Trial court abused its discretion by admitting the sergeant's testimony and part of his accident reconstruction report because it failed to consider either the reliability or helpfulness of his testimony. *Miller v. Golden Peanut Company, LLC*, 317 Ga. 22, 891 S.E.2d 776, 2023 Ga. LEXIS 176 (2023).

Employment expert's opinion held unreliable. — Trial court did not err by excluding plaintiff's expert in a Federal Employers' Liability Act action, based on its finding that the expert's reliance on studies was unreliable, because the expert could not explain how the information in those studies could be applied to plaintiff's case given the expert's inability to determine whether the positions in which plaintiff worked corresponded with the ones cited in the studies. *Bowers v. CSX Transportation, Inc.*, 369 Ga. App. 875, 894 S.E.2d 690, 2023 Ga. App. LEXIS 540 (2023).

Trial court did not err by excluding plaintiff's expert in the Federal Employers' Liability Act action because the expert's refusal to rule out smoking rendered the expert's differential diagnosis

unreliable. The expert made assumptions that the exposure contributed to plaintiff's lung cancer, while at the same time the expert acknowledged that smoking could be a contributing factor, yet the expert offered no explanation for why the expert ruled it out as the sole cause of plaintiff's cancer. *Bowers v. CSX Transportation, Inc.*, 369 Ga. App. 875, 894 S.E.2d 690, 2023 Ga. App. LEXIS 540 (2023).

Criminal Cases

1. Procedural Considerations

Failure to apply amended version of statute. — Appellate court by failing to apply O.C.G.A. § 24-7-702 in determining whether the trial court abused the court's discretion in admitting the HGN evidence erred because the defendant's trial occurred after O.C.G.A. § 24-7-702 was amended. The error was not harmless because evidence of defendant's impairment was circumstantial and far from overwhelming and the trooper's testimony about defendant's performance on the HGN test was the strongest piece of evidence regarding impairment. *Garrison v. State*, 319 Ga. 711, 905 S.E.2d 629, 2024 Ga. LEXIS 178 (2024).

2. Qualification as Expert

Fingerprint expert. — Trial court did not abuse the court's discretion in admitting the testimony of the state's material analyst as an expert witness on fingerprinting because the trial court properly applied the Daubert standard in finding the expert was qualified and that the expert's testimony was relevant and reliable. *Arnold v. State*, 321 Ga. 434, 2025 Ga. LEXIS 91 (2025).

Nurse as expert on strangulation. — Trial court did not plainly err by qualifying the nurse examiner as an expert, even though it referred to former O.C.G.A. § 24-9-67 (now repealed) and *Harper v. State*, 249 Ga. 519 (1982) in its ruling, because it also cited O.C.G.A. § 24-7-702 and the nurse recounted the nurse's educational background and training in forensic nursing and identifying signs of strangulation. *Wilson v. State*, 370 Ga. App. 399, 897 S.E.2d 597, 2024 Ga. App. LEXIS 22 (2024).

RESEARCH REFERENCES

ALR.
Liability of cruise ship operator for medical negligence, 77 A.L.R.7th 5.
Malpractice of Nurse Practitioners, 80 A.L.R.7th 3.
Malpractice of nurse practitioners, 80 A.L.R.7th 3.

Expert Testimony and Evidence in Medical Malpractice Cases Involving Diagnosis or Treatment of Pneumonia — State Cases, 90 A.L.R.7th 3.

24-7-704. Ultimate issue opinion.

JUDICIAL DECISIONS

Audio-recorded interview between defendant and the state’s psychiatrist. — Trial court did not abuse the court’s discretion by admitting into evidence the audio-recorded interview between the defendant and the state’s psychiatrist because the recording did not

violate O.C.G.A. § 24-7-704 or the trial court’s previous ruling, as the psychiatrist’s remarks only addressed the purpose of the interview and did not constitute an opinion or inference of any sort. *Holmes v. State*, 318 Ga. 213, 897 S.E.2d 829, 2024 Ga. LEXIS 22 (2024).